

# Agenda

## Benchers

Date: Friday, July 14, 2023  
Time: **9:00 am – Call to Order**

Location: Hybrid: Bencher Room, 9th Floor, Law Society Building & 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 hybrid meeting. If you would like to attend the meeting as a virtual attendee, please email [BencherRelations@lsbc.org](mailto:BencherRelations@lsbc.org)

### OATH OF OFFICE

President McPherson will administer the oath of office (in the form set out in Rule 1-3) to the newly elected Bencher for District 1 (Vancouver County).

### RECOGNITION

1	2023 Rule of Law Essay Contest: Presentation of Winner and Runner-up
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### 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.

2	Minutes of June 3, 2023 meeting (regular session)
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# Agenda

3	Minutes of June 3, 2023 meeting ( <i>in camera</i> session)	
4	Memorandum of Understanding – Federal Government Lawyer Mobility	
5	Rule Amendments to Change Name of Equity Ombudsperson Program	
6	2023 Law Society Scholarship for Graduate Legal Studies	
7	2023 Law Society Indigenous Scholarship	
<b>REPORTS</b>		
8	President’s Report	Christopher A. McPherson, KC
9	CEO’s Report	Don Avison, KC
10	Briefing by the Law Society’s Member of the Federation Council	Brook Greenberg, KC
<b>DISCUSSION/DECISION</b>		
11	Indigenous Engagement in Regulatory Matters Final Report	Christopher A. McPherson, KC
12	Amendments to the Discrimination, Harassment, and Sexual Harassment Provisions of the <i>Code of Professional Conduct for British Columbia</i>	Thomas Spraggs Cary Ann Moore
<b>UPDATES</b>		
13	2023 May Financial Report	Jeevyn Dhaliwal, KC Jeanette McPhee
<b>FOR INFORMATION</b>		
14	Mid-Year Advisory Committee Reports	
15	Trust Review Task Force Status Update Report	
16	External Appointments: Continuing Legal Education of BC	

# Agenda

<b>IN CAMERA</b>	
17	Other Business

# Memo

To: Benchers  
From: Ethics and Lawyer Independence Advisory Committee  
Date: June 27, 2023  
Subject: **Rule of Law Essay Contest Winners**

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The Rule of Law Essay Contest for BC secondary students has been judged, with a winner and runner-up selected from 30 submissions. Many thanks to the Committee's volunteers, Judge Jacqueline McQueen, Jon Festinger, KC, and Marko Vesely, KC, with the support of Michael Lucas, KC.

Students were asked to write an essay between 1000-1500 words on the question:

*How has the rule of law affected - positively, adversely or otherwise - the advancement of minority rights in Canada?*

Ethan Yang, from St. George's (Vancouver) won with the essay "[The Rule of Law and Minority Rights: A Theoretical and Practical Perspective](#)", and Emma Chang from Fraser Heights Senior Secondary (Surrey) was selected as runner-up, with the essay "[The Rule of Law and Canadian Minority Rights: An Analysis](#)". The winner and runner-up are awarded \$1000 and \$500 respectively, and will attend the July 14 Benchers' meeting virtually to be recognized for their achievements. Their essays are also profiled on the Law Society's [website](#).

Submissions were received from at least 23 different schools, located across the province. The contest was also open to both grades 11 and 12, and at least 11 of the submissions were from Grade 11, including this year's winner.

# Minutes

## Benchers

Date: Saturday, June 03, 2023

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

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

Unable to Attend: Kelly H. Russ

Staff: Don Avison, KC  
 Avalon Bourne  
 Jennifer Chan  
 Natasha Dookie  
 Kerryn Holt  
 Jeffrey Hoskins, KC  
 Aara Johnson

Michael Lucas, KC  
 Claire Marchant  
 Jeanette McPhee  
 Lesley Small  
 Christine Tam  
 Adam Whitcombe, KC

Guests:	Andrea Argue, KC	President of the Law Society of Saskatchewan
	Katie Armitage	Legal Counsel, Ministry of Attorney General
	Chief Justice Robert J. Bauman	Chief Justice of BC, Chief Justice of the Court of Appeal for BC, and Chief Justice of the Court of Appeal for Yukon
	Dom Bautista	Executive Director, Courts Center & Executive Director, Amici Curiae Friendship Society
	Tim Brown, KC	CEO of the Law Society of Saskatchewan
	Barbara Carmichael, KC	Deputy Attorney General of British Columbia
	Christina Cook	Vice-Chair, Aboriginal Lawyers Forum
	Chief Judge Melissa Gillespie	Chief Judge of the Provincial Court of British Columbia
	Bill Hendsbee, KC	President of the Law Society of Alberta
	Jonathan Herman	CEO of the Federation
	Amelia Hill	Ministerial Advisor, Office of the Attorney General
	Chief Justice Christopher E. Hinkson	Chief Justice of the Supreme Court of British Columbia
	Mark Meredith	Treasurer and Board Member, Mediate BC
	Scott Morishita	First Vice President, Canadian Bar Association, BC Branch
	Dr. Val Napoleon	Interim Dean of Law, University of Victoria
	Elizabeth J. Osler, KC	CEO & ED of the Law Society of Alberta
	Josh Paterson	Executive Director, Law Foundation of BC
	Jill Perry, KC	President of the Federation of Law Societies of Canada
	Ngai Pindell	Dean of Law, Peter A. Allard School of Law
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Hon. Niki Sharma, KC	Attorney General of British Columbia
	Lana Walker	Assistant Dean of Law, Thompson Rivers University & Continuing Legal Education Society of BC Board Director

## CONSENT AGENDA

### 1. Minutes of April 28, 2023, meeting (regular session)

The minutes of the meeting held on April 28, 2023 were approved unanimously and by consent as circulated.

### 2. Minutes of April 28, 2023, meeting (*in camera* session)

The minutes of the *in camera* meeting held on April 28, 2023 were approved unanimously and by consent as circulated.

### 3. 2023 KC Appointments Advisory Committee

The following resolution was passed unanimously and by consent:

**BE IT RESOLVED** that the Benchers appoint President Christopher A. McPherson, KC and First Vice-President Jeevyn Dhaliwal, KC as the Law Society's representatives on the 2023 KC Appointments Advisory Committee.

## REPORTS

### 4. President's Report

President Christopher A. McPherson, KC confirmed that no conflicts of interest had been declared.

Mr. McPherson began his report by speaking about the impending retirement of Chief Justice Robert J. Bauman. He spoke about the strong working relationship between the Chief Justice and the Law Society, and the many issues that had been faced together over the past several years. Mr. McPherson indicated that the Chief Justice's retirement celebration would take place on September 8, 2023.

Mr. McPherson then announced the results of the recent Executive Committee election and the election for Benchers' Nominee for 2024 Second Vice-President. He congratulated Jennifer Chow, KC and Lindsay LeBlanc, respectively, and thanked all those who put forward their names for consideration. Mr. McPherson also congratulated the recent King's Counsel appointees, including Sarah Westwood, KC and Katrina Harry, KC.

Mr. McPherson spoke about the Law Society's retreat conference, which had taken place the day before. He indicated that the debate format of the conference had worked well and thanked First Vice-President, Jeevyn Dhaliwal, KC for organizing. Mr. McPherson also spoke about the theme of the conference, which had focused on AI and the regulation of AI, and he indicated that the

conference discussions had brought up some profound issues for consideration in regard to the regulation of legal services in the future.

Mr. McPherson then spoke about the current status of the single legal regulator initiative and the Ministry's What We Heard report, which had been developed in response to the Ministry's Intentions Paper regarding the single legal regulator initiative. He indicated that based on the responses received to the Ministry's Intentions Paper and referenced in the What We Heard report, there is a great deal of concern from lawyers regarding what effects the single legal regulator initiative will have on the independence of the profession. Mr. McPherson spoke about the importance of the independence of the profession and the Law Society's position that for the profession to be independent, the regulator must also be independent. He spoke about *Canada (Attorney General) v. Federation of Law Societies in Canada* and *Jabour v. Law Society of British Columbia*, which both reaffirm the importance of the independence of the profession, both of which were referenced in the report. He referenced the Commonwealth Law Conference, which he had attended in Goa, India, and the significant declaration that had come out of the conference regarding the importance of preserving and strengthening the independence of the judiciary and of the profession. Mr. McPherson indicated that the Law Society's position has consistently been that in order for the profession to continue to be independent, the regulator must also be independent, which would require a majority of lawyers on the board of the new entity. He spoke about the importance of the profession having confidence in its regulator to understand the role that lawyers play in the preservation of the public's constitutional rights, which is necessary to have a free and democratic society. Mr. McPherson also spoke about the question of proportionality, indicating that there are over 14,000 lawyers in BC in comparison to 500 notaries. He spoke about the importance of the board of the new entity having the necessary knowledge and expertise to understand the varied work of lawyers in order to protect the public. Mr. McPherson concluded his remarks by speaking about the Law Society's important work in maintaining the public interest in the administration of justice.

## 5. CEO's Report

Mr. Avison began his report by updating Benchers on the Law Society's recent appearance before the Standing Committee on Finance, which hears from people across the province in relation to what should be included within the provincial budget. Mr. Avison indicated that the Law Society's focus for the provincial budget was on access to justice, including improving eligibility for support in family law matters. The single legal regulator initiative was also discussed, and Mr. Avison indicated that he had spoken about the impact that licensing paralegals would have on increasing access to justice.

Mr. Avison spoke about the Law Society's upcoming Annual General Meeting (AGM), which would be taking place on June 27. He indicated that several member resolutions had been received, including one following upon the member resolution received last year expressing opposition to any proposed changes to the *Legal Profession Act*.



Mr. Avison updated Benchers on a recent meeting with the CBABC and Aboriginal Lawyers Forum, which was also attended by Terri-Lynn Williams-Davidson, KC, Co-Chair of the Indigenous Engagement in Regulatory Matters (IERM) Task Force. He indicated that the meeting had focused on the final report of the IERM Task Force, a key priority in the strategic plan of Law Society.

Mr. Avison informed Benchers that he had received a request for a meeting from the First Nations Justice Council to discuss a number of items, including improving the numbers of Indigenous lawyers in BC.

Mr. Avison then spoke about the number of reforms the Law Society had recently implemented to the Tribunal and discipline processes. He indicated that Herman Van Ommen, KC, Tribunal Chair, would likely present on some additional proposed areas of reform at a future Bencher meeting.

Benchers discussed displaying the completion of the Indigenous Intercultural Course on the CPD page within the Member Portal. Mr. Avison advised that this would be done over the course of the next few months.

## 6. Remarks

Mr. McPherson welcomed Attorney General Niki Sharma, KC to the meeting.

Ms. Sharma began her remarks with an acknowledgement of the work of the Law Society and the Benchers, as well as the members of the judiciary in attendance. She spoke about the importance of a strong independent profession, as well as the need to address access to justice challenges in BC. Ms. Sharma also spoke about the work the Law Society has done thus far to prepare for the licensing of paralegals. She informed Benchers that as previously indicated, it would not be possible to both proclaim 2018 amendments to the *Legal Profession Act* to allow for the licensing of paralegals and to implement the single legal regulator initiative, so the focus would be on the latter. She then reviewed with Benchers some of the key considerations from the What We Heard Report, including the importance of fulfilling obligations regarding Indigenous engagement, the importance of protecting the independence of the profession, and continuing the inclusion of publicly appointed board members. Ms. Sharma then reviewed with Benchers the Ministry's principles in considering the implementation of the single legal initiative, including protecting the independence of the profession, considering proportionality in terms of board composition, the use of an electoral model, ensuring a diversity of representation on the board, access to justice, and Indigenous engagement. She indicated that the size of the board of the new entity would likely be smaller than the Law Society's board. She concluded her remarks by indicating that the Ministry's intention was to introduce legislation in the fall, and that the Ministry would be sharing ideas with the Law Society regarding plans for the legislation.

Benchers engaged in discussions with Ms. Sharma on a number of matters related to the single legal regulator initiative, including the involvement and participation of the new entity in the Federation of Law Societies of Canada; whether or not the new entity would be able to license paralegals on a case by case basis; the revision of principles expressed in the Intentions Paper based on the submissions and feedback received; the timeline for legislation and the transition; the next steps for those in the Innovation Sandbox once the legislation is implemented; the extent of consultation with Indigenous groups; and the importance of having a large enough board to reflect the diversity of those regulated and the population of BC, while also maintaining a majority of lawyers.

Ms. Sharma indicated that the intention would be for the legislation to allow the regulator to be flexible and to evolve to serve better the needs of the population of BC. She also indicated that the goal of the single legal regulator initiative would be to allow greater access to justice, and that the work the Law Society has already done to address the barriers and impediments to access to justice would be continued.

Mr. McPherson thanked Ms. Sharma for attending the meeting and for engaging with Benchers on their questions and concerns related to the single legal regulator initiative.

## **DISCUSSION**

### **8. Federation of Law Societies of Canada and Law Societies of Alberta and Saskatchewan Roundtable Discussion**

Mr. McPherson introduced Jill Perry, KC, President of the Federation of Law Societies of Canada, Jonathan Herman, CEO of the Federation of Law Societies of Canada, Bill Hendsbee, KC, President of the Law Society of Alberta, Elizabeth J. Osler, KC, CEO and Executive Director of the Law Society of Alberta, Andrea Argue, KC, President of the Law Society of Saskatchewan, and Tim Brown, KC, Executive Director of the Law Society of Saskatchewan.

Ms. Perry and Mr. Herman provided an update on the work of the Federation of Law Societies of Canada. Ms. Perry indicated that the Federation's fall conference would be focused on AI and the challenges and opportunities provided by this new technology. She highlighted four main strategic priorities for the Federation, including the National Committee on Accreditation's lawyer competency profile, anti-money laundering and solicitor client privilege and the joint working group with the federal government on these matters; mental health and implementing the recommendations of the National Survey; and truth and reconciliation. Mr. Herman spoke about the role of the Federation in bringing together Canada's law societies to support the regulation of the legal profession in the public interest. He indicated that the other law societies are watching carefully what is happening in BC regarding the single legal regulator initiative.

Mr. Hendsbee and Ms. Osler provided an update on the work of the Law Society of Alberta. Mr. Hendsbee highlighted the Law Society of Alberta's strategic priorities, including a new licensure plan and experiential learning competency framework, as well as a new CPD profile. He also spoke about The Path, the Law Society of Alberta's mandatory cultural competence course. He indicated that only nine lawyers failed to complete the course, which resulted in some administrative suspensions, following which a group of lawyers called for a special meeting to put forward a resolution preventing the Law Society from mandating any mandatory training, which was soundly defeated. Ms. Osler spoke about entry to practice and the experiential learning competency framework. She indicated that this work would help with creating alternatives to the traditional articling practice. She also spoke about the part-time practice initiative pilot, which allows lawyers to take part-time practice status and pay a part-time fee. She indicated that the pilot had been approved by Benchers and the program would start officially next year. Mr. Hendsbee provided an update on the Law Society of Alberta's strategic planning process and reviewed with Benchers the plan's strategic pillars, including innovation and proactive regulation; competence and wellness; access; and equity, diversity and inclusion.

Ms. Argue and Mr. Brown provided an update on the work of the Law Society of Saskatchewan. Ms. Argue spoke about the value of discussing and collaborating on inter-provincial priorities and common issues facing legal regulators. Mr. Brown spoke about shared issues being addressed by the law societies, then spoke about particular priorities for Saskatchewan, including addressing gaps in the articling process and working on alternative approaches to licensure. He also spoke about the value in having a consistent approach to accreditation across Canada. Mr. Brown concluded his remarks with comments regarding the single legal regulator. He urged caution with changes to the regulator's governance model.

## **7. Proactive Practice Assessments Pilot Project**

Chief Legal Officer Natasha Dookie gave a presentation updating Benchers on the status of the Law Society's new regulatory processes. She reviewed the impact of pre-citation consent agreements, administrative penalties, and the alternative discipline program.

Ms. Dookie then provided some background on the recommendation to amend the Law Society Rules to allow for the creation of a proactive practice review program to be administered by the Practice Standards department. She indicated that the program, proposed as a two-year pilot project, would enable the Law Society to conduct a type of practice assessment targeting at-risk lawyers prior to their involvement in the complaints investigation and committee-based professional conduct process.

Benchers discussed the proposal with some Benchers raising concerns regarding the selection process for the pilot project. Following some discussion, the Benchers agreed to defer this matter to a later meeting due to time constraints.

**FOR INFORMATION****9. External Appointments: Continuing Legal Education Society of BC**

There was no discussion on this item.

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

AB  
2023-07-05

# Memo

To: Benchers  
From: Staff  
Date: June 20, 2023  
Subject: **Memorandum of Understanding on Mobility for Federal Government Lawyers**

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## Purpose

1. This memorandum seeks the Benchers' approval for the Law Society of British Columbia to sign a Memorandum of Understanding ("MOU") with common law provincial law societies across Canada and the Government of Canada regarding mobility for lawyers who work for the federal government.

## Discussion<sup>1</sup>

2. At the Federation Council Meeting held on October 14, 2022, Council was asked to approve a draft MOU with the Government of Canada for submission to the common law provincial law societies for consideration and execution. The Law Society of British Columbia Representative on Council supported the motion, which passed unanimously.
3. The MOU, a copy of which is attached as Appendix "A", applies only to the common law provinces and does not impact the provisions of the earlier Territorial Mobility Agreement or the Territorial Mobility Agreement 2013. Accordingly, the anticipated signatories to the MOU were the law societies in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador, and the federal government. The Federation of Law Societies has confirmed that seven of the nine intended signatory law societies have executed the MOU, with the Law Society of British Columbia and the Nova Scotia Barristers' Society outstanding.
4. The MOU, which is drafted to apply to all legal counsel in the exclusive employ of the federal government, contemplates two significant changes to the application of the National Mobility Agreement and the National Mobility Agreement 2013, specifically:

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<sup>1</sup> Adapted from the report to the Benchers provided for information at the November 4, 2022 meeting by Pinder K. Cheema, KC, Law Society Representative on the Federation Council, available at page 37 of the [November 4, 2022 Agenda Package](#).

- a. exempting legal counsel who provide legal services exclusively to the federal government from the temporary mobility provisions; and
  - b. exempting federal government advisory, policy, and legislative counsel (those who do not engage in litigation) from the obligation to be licensed in any jurisdiction in which they establish an economic nexus, and, instead requiring such counsel to be and remain a practising lawyer in good standing of a law society.
5. The MOU is intended to respond to the practices for federal government lawyers, who provide legal advice across the country in a manner that makes compliance with the National Mobility Agreement challenging, and to resolve an issue of advisory counsel wishing to remain licensed in their “home” jurisdiction when they transfer to another jurisdiction without requiring them to be licensed in multiple jurisdictions.
  6. Given that the purpose of the MOU is to facilitate mobility across the common law provinces for federal government lawyers, that our Council member voted in favour of implementing the MOU and that the law societies of seven of those nine provinces have executed the MOU, it is recommended that the Law Society of British Columbia execute the MOU to provide the exception to the current mobility agreements for federal government lawyers.

## Decision

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

**BE IT RESOLVED the Law Society of British Columbia execute the Memorandum of Understanding in the form attached as Appendix “A” to this memorandum.**

**MEMORANDUM OF UNDERSTANDING****BETWEEN**

**THE LAW SOCIETY OF BRITISH COLUMBIA  
THE LAW SOCIETY OF ALBERTA  
THE LAW SOCIETY OF SASKATCHEWAN  
THE LAW SOCIETY OF MANITOBA  
THE LAW SOCIETY OF ONTARIO  
THE LAW SOCIETY OF NEW BRUNSWICK  
THE NOVA SCOTIA BARRISTERS' SOCIETY  
THE LAW SOCIETY OF PRINCE EDWARD ISLAND  
THE LAW SOCIETY OF NEWFOUNDLAND AND LABRADOR**

**AND**

**THE GOVERNMENT OF CANADA**

This memorandum of understanding sets out the agreement of the signatories on the application of the National Mobility Agreement, the National Mobility Agreement 2013 and the Quebec Mobility Agreement to legal counsel employed by the Government of Canada.

**Introduction**

1. The National Mobility Agreement (“NMA”) is an agreement between the provincial law societies that facilitates temporary and permanent mobility of lawyers between the common law provinces. Under the NMA a lawyer licensed in a common law province may practise for up to 100 days a year in any other common law province and may transfer between common law jurisdictions without having to complete the bar admission program or exams. The Quebec Mobility Agreement (“QMA”) provides more limited mobility rights to lawyers seeking to transfer to or from Quebec. The National Mobility Agreement 2013 (“NMA 2013”) extends the provisions of the NMA to the transfer of lawyers to and from the Barreau du Québec. At the time of the signing of this memorandum, a number of jurisdictions have not yet implemented the NMA 2013. The NMA and the QMA remain in force in those jurisdictions.
2. The NMA, NMA 2013, and QMA (referred to hereinafter as “the mobility agreements”) apply to all lawyers, including those employed by the Government of Canada. Legal counsel employed by the Government of Canada provide litigation, advisory and legislative services across the country, working in federal government departments, agencies and Crown Corporations, and for the Department of Justice in regional offices and the headquarters in the National Capital Region. A memorandum of understanding between the Law Society of Ontario (formerly the Law Society of Upper Canada) (“LSO”) and the Barreau du Québec (“Barreau”) signed in 2005 (the “LSO-Barreau MOU”), permits lawyer members of the LSO or the Barreau who provide legal services exclusively to the Government of Canada and who do not appear in the courts of the province in which they are not licensed, excluding federal courts and tribunals, to practise in either jurisdiction.
3. The parties agree that the provisions of the mobility agreements should be applied in a way that is responsive to the unique circumstances of Government of Canada legal counsel.

## **Objectives and Scope**

4. This memorandum of understanding clarifies how the mobility agreements will be applied to Government of Canada legal counsel. Except as provided by the LSO-Barreau MOU, the terms of this memorandum of understanding apply to all legal counsel who work for and provide legal services exclusively to the Government of Canada in the jurisdictions of the signatory law societies except that until such time as the NMA 2013 is in force in Quebec, the permanent mobility provisions of the NMA, and the QMA will continue to apply to legal counsel working in Quebec.

## **Application of Mobility Agreements**

5. Notwithstanding the provisions of the mobility agreements, provincial statutes, or the rules, regulations or bylaws of the signatory law societies, the parties agree:
  - a. Legal counsel employed by and providing legal services exclusively to the Government of Canada, including those in management positions, will be exempted from the temporary mobility provisions of the mobility agreements.
  - b. Legal counsel who appear before courts or tribunals on behalf of the Government of Canada must be and remain practising members in good standing of the provincial law society in which they primarily work and practice.
  - c. Legal counsel who appear before courts or tribunals on behalf of the Government of Canada and who are on temporary assignments or secondments will be exempted from the requirement to be a practising member in good standing in the jurisdiction in which they primarily work and practice for the duration of the temporary assignment or secondment.
  - d. All legal counsel providing advisory, policy or legislative services must be and remain practising members in good standing of a provincial or territorial law society.
6. The Government of Canada will ensure that all legal counsel in its employ comply with the law society membership requirements set out above.

## **Amendments**

7. This memorandum may be amended with the mutual written consent of all signatories.

## **Duration and Termination**

8. This memorandum will remain in effect unless terminated with the mutual written consent of all signatories.

## **Effective date**

9. This memorandum becomes effective on the date of the last signature.



**Government of Canada**

Per: \_\_\_\_\_  
Authorized Signatory

Date: \_\_\_\_\_

**Law Society of British Columbia**

Per: \_\_\_\_\_  
Authorized Signatory

Date: \_\_\_\_\_

**Law Society of Saskatchewan**

Per: \_\_\_\_\_  
Authorized Signatory

Date: \_\_\_\_\_

**Law Society of Ontario**

Per: \_\_\_\_\_  
Authorized Signatory

Date: \_\_\_\_\_

**Law Society of Alberta**

Per: \_\_\_\_\_  
Authorized Signatory

Date: \_\_\_\_\_

**Law Society of Manitoba**

Per: \_\_\_\_\_  
Authorized Signatory

Date: \_\_\_\_\_

**Law Society of New Brunswick**

Per: \_\_\_\_\_  
Authorized Signatory

Date: \_\_\_\_\_

**Nova Scotia Barristers Society**

Per: \_\_\_\_\_  
Authorized Signatory

Date: \_\_\_\_\_

**Law Society of Prince Edward Island**

Per: \_\_\_\_\_  
Authorized Signatory

Date: \_\_\_\_\_

**Law Society of Newfoundland and Labrador**

Per: \_\_\_\_\_  
Authorized Signatory

Date: \_\_\_\_\_

# Memo

To: Benchers  
From: Executive Committee  
Date: July 4, 2023  
Subject: **Changing the title from Equity Ombudsperson to Equity Advisor**

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## Background

1. The purpose of the Equity Ombudsperson program is to provide confidential advice on issues of discrimination and harassment to lawyers, articulated students, law students and support staff of legal employers. The position was brought inside the Law Society as part of the Practice Advice team in mid-2017.
2. The title of Equity Ombudsperson is no longer an accurate description of the functions performed by the position. The title is confusing to the profession and the public, and this lack of accuracy creates a potential barrier to the profession understanding the role and the support it can provide.
3. The phrase “Equity Advisor,” better aligns the title with the scope of the program and the Law Society’s Practice Advice function.

## Drafting Notes

4. The proposed amendments are straightforward. Redlined and clean versions of the proposed amendments are attached.

## Decision

5. A recommended resolution is attached.

# LAW SOCIETY RULES

## Definitions

1 In these rules, unless the context indicates otherwise:

“~~Ombudsperson~~ Equity Advisor” means a person appointed by the Executive Director to provide confidential dispute resolution and mediation assistance to lawyers, articulated students, law students and support staff of legal employers, regarding allegations of harassment or discrimination by lawyers and includes anyone employed to assist the ~~Ombudsperson~~ Equity Advisor in that capacity;

## Demand for disclosure of evidence

5-4.6 (1) At any time after a citation has been issued and before the hearing begins, a respondent may demand in writing that Law Society counsel disclose the evidence that the Society intends to introduce at the hearing.

(2) On receipt of a demand for disclosure under subrule (1), Law Society counsel must provide the following to the respondent by a reasonable time before the beginning of the hearing:

(a) a copy of every document that the Society intends to tender in evidence;

(b) a copy of any statement made by a person whom the Society intends to call as a witness;

(c) if documents provided under paragraphs (a) and (b) do not provide enough information, a summary of the evidence that the Society intends to introduce;

(d) a summary of any other relevant evidence in Law Society counsel’s possession or in a Society file available to counsel, whether or not counsel intends to introduce that evidence at the hearing.

(3) Despite subrule (2), Law Society counsel must not provide any information or documents about any discussion or other communication with the ~~Ombudsperson~~ Equity Advisor in that capacity.

## Communication with ~~Ombudsperson~~ Equity Advisor confidential

10-2.1(1) This rule must be interpreted in a way that will facilitate the ~~Ombudsperson~~ Equity Advisor assisting in the resolution of disputes through communication without prejudice to the rights of any person.

(2) Communication between the ~~Ombudsperson~~ Equity Advisor acting in that capacity and any person receiving or seeking assistance from the ~~Ombudsperson~~ Equity Advisor is confidential and must remain confidential in order to foster an effective relationship between the ~~Ombudsperson~~ Equity Advisor and that individual.

(3) The ~~Ombudsperson~~ Equity Advisor must hold in strict confidence all information acquired in that capacity from participants.

# LAW SOCIETY RULES

## Definitions

1 In these rules, unless the context indicates otherwise:

“**Equity Advisor**” means a person appointed by the Executive Director to provide confidential dispute resolution and mediation assistance to lawyers, articulated students, law students and support staff of legal employers, regarding allegations of harassment or discrimination by lawyers and includes anyone employed to assist the Equity Advisor in that capacity;

## Demand for disclosure of evidence

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(c) if documents provided under paragraphs (a) and (b) do not provide enough information, a summary of the evidence that the Society intends to introduce;

(d) a summary of any other relevant evidence in Law Society counsel’s possession or in a Society file available to counsel, whether or not counsel intends to introduce that evidence at the hearing.

(3) Despite subrule (2), Law Society counsel must not provide any information or documents about any discussion or other communication with the Equity Advisor in that capacity.

## Communication with Equity Advisor confidential

**10-2.1**(1) This rule must be interpreted in a way that will facilitate the Equity Advisor assisting in the resolution of disputes through communication without prejudice to the rights of any person.

(2) Communication between the Equity Advisor acting in that capacity and any person receiving or seeking assistance from the Equity Advisor is confidential and must remain confidential in order to foster an effective relationship between the Equity Advisor and that individual.

(3) The Equity Advisor must hold in strict confidence all information acquired in that capacity from participants.

## EQUITY ADVISOR

### RESOLUTION

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

1. *In Rule 1, the definition of "Ombudsperson" is rescinded and the following substituted:*

“**Equity Advisor**” means a person appointed by the Executive Director to provide confidential dispute resolution and mediation assistance to lawyers, articulated students, law students and support staff of legal employers, regarding allegations of harassment or discrimination by lawyers and includes anyone employed to assist the Equity Advisor in that capacity;

2. *Rule 5-4.6(3) is rescinded and the following substituted:*

(3) Despite subrule (2), Law Society counsel must not provide any information or documents about any discussion or other communication with the Equity Advisor in that capacity.

3. *Rule 10-2.1 is rescinded and the following substituted:*

#### **Communication with Equity Advisor confidential**

**10-2.1** (1) This rule must be interpreted in a way that will facilitate the Equity Advisor assisting in the resolution of disputes through communication without prejudice to the rights of any person.

(2) Communication between the Equity Advisor acting in that capacity and any person receiving or seeking assistance from the Equity Advisor is confidential and must remain confidential in order to foster an effective relationship between the Equity Advisor and that individual.

(3) The Equity Advisor must hold in strict confidence all information acquired in that capacity from participants.

**REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT**

# CEO Report

July 14, 2023

**Prepared for:    Benchers**

**Prepared by:    Don Avison, KC**

## 1. Single Legal Regulator Update

Discussions continue with government and with our colleagues at the Society of Notaries Public and the Paralegal Association. We are informed that government remains committed to bringing legislation forward during the fall sitting of the Legislative Assembly.

We continue to emphasize the fundamental importance of preserving independence and I believe that the comments made by First Vice-President Jeevyn Dhaliwal, KC at the Annual General Meeting, and by President Christopher McPherson, KC at the June 3 Benchers meeting, have demonstrated our commitment to what we see as the essential attributes of that independence.

Benchers will note from Brook Greenberg, KC's report on recent Federation meetings that this was an area of significant concern and I can report that this was also an area of concern at the recent Law Society of Alberta Retreat.

## 2. Follow-up on Annual General Meeting Resolutions

As Benchers will know, there were six member resolutions considered at our recent Annual General Meeting, four of which were passed.

Section 13 of the *Legal Profession Act* provides that a resolution of a general meeting is not binding on the benchers unless a referendum of all members is called for by 5% of the members in good standing and 1/3rd of all members in good standing of the society vote in the referendum with 2/3rd of those voting in favour of the resolution. As a result, none of the resolutions are yet binding on the Benchers. However, I believe Benchers should consider each resolution and determine how you might wish to proceed.

The first successful resolution directed the Benchers to create an independent task force headed by persons with physical disabilities to review the *Act*, the *Law Society Rules*, the *Code of Professional Conduct* and related policies, procedures, and practices, so that recommendations may be made to improve the Law Society's inclusion of persons with physical disabilities and to break down unintentional barriers that members of the legal profession may face. I would suggest the Benchers refer the matter to the Equity, Diversity and Inclusion Advisory Committee to investigate and report back on the extent to which the Law Society fails to provide adequate accommodation for persons with physical disabilities and what might be done to address any identified barriers.

The second successful resolution directed the Benchers to amend Rule 3-10 of the *Law Society Rules* and any other appropriate sections of the *Law Society Rules* from the date



of this resolution, revoking an interim action board's right to restrict the enrolment of a prospective articulated student whose principal is in good standing with the Law Society. Rule 3-10 provides the authority for an interim action board to make an order with respect to a lawyer or articulated student who is the subject of an investigation or intended investigation or a citation. The intention is to permit extraordinary action necessary to protect the public by imposing conditions or limitations on the practice of a lawyer or on the enrolment of an articulated student, or by suspending the lawyer or the enrolment of an articulated student. Given the limitations in Rule 3-10 and the very limited extent to which it has been used, I would suggest that the Benchers refer the resolution to the Executive Committee to evaluate what is proposed. There may be merit in developing an administrative approach that could minimize disruption in proposed articling arrangements.

The third successful resolution proposed amendments to Rule 3-36(1)(b) and Rule 3-37(1)(b). Rule 3-36 sets out the requirements necessary to permit a lawyer to act as a family law arbitrator. Rule 3-37 sets out the requirements necessary to permit a lawyer to act as a parenting coordinator. Both rules have an experiential requirement that the lawyer must possess for a total of 10 years. Sitting as a judge or master counts towards the 10 years. The resolution proposed adding "tribunal member" to this list. I would suggest that the Benchers refer this resolution to the Executive Committee as our regulatory policy committee to evaluate whether the proposed changes should be made.

The fourth successful resolution proposed an exemption to Rule 2-89 where a lawyer takes time away from practice for the purpose of a parental leave and the lawyer has not engaged in the practice of law for a time that is equivalent to their federally entitled parental leave(s). Rule 2-89 sets out the conditions for return to practice after an absence. Specifically, the Rule requires that if, for a total of 3 years or more in the relevant period, a lawyer has not engaged in the practice of law, the lawyer must not practice law without first passing the qualification examination or obtaining the permission of the Credentials Committee. For the purposes of the Rule, the relevant period is the shortest of 5 years, the time since the lawyer's first call and admission in any jurisdiction or the time since the lawyer last passed the qualification examination. The resolution may propose adding the time equivalent to the federal parental leave to the 3 years where the absence was for parental leave. I would suggest that the Benchers refer consideration of this resolution to the Credentials Committee and the EDI Advisory Committee which are already considering the issue of parental leave and return to practice.

### **3. Vancouver County By-election**

The by-election in Vancouver is currently underway with a number of candidates seeking the position that came open with the appointment of the Honourable Jacqueline McQueen to the Provincial Court of British Columbia.

Voting will close on July 11 and, as a result, we expect to have the successful candidate sworn in at the July 14 meeting of Benchers.

### **4. Indigenous Engagement Initiatives**

This is an area of significant priority. Much of the focus of the July 14 Bencher meeting will be on the recommendations of the Indigenous Engagement in Regulatory Matters Task Force and those recommendations will guide the work that we expect to undertake over the course of the next couple of years. In addition to that we have had recent discussions both with the office of the BC Treaty Commission and with the First Nations Summit on modifications they would like to see to our Indigenous Intercultural Program. Based on that input, we have begun work on a number of updates to the program and we hope to have those modifications in place over the course of the coming weeks. We have also been in contact with the First Nations Justice Council regarding a number of their priorities including some of the challenges associated with operationalizing the Indigenous Justice Centres.

### **5. Some Thoughts About Access to Justice**

Brook Greenberg, KC's comments regarding discussion at the Federation caused me to think about a number of things that the profession does to support access to justice.

Leaving aside the volunteer pro bono work that so many lawyers do, and not including the access support that flows to the Law Foundation from the interest on lawyer trust accounts (\$18.1 million in 2021), the commitment that lawyers make – every year – to Courthouse Libraries BC, to CanLII, which Chief Justice Wagner of the Supreme Court of Canada has described as a “tremendous boon for access to justice in Canada” and to access programs (Rise, Access Pro Bono, etc.) amounts to approximately \$4 million dollars per year. This reflects a profoundly important contribution to access that I believe is rarely discussed or understood.

Don Avison, KC  
Chief Executive Officer

# Memo

To: Benchers  
From: Brook Greenberg, KC, Law Society Representative on the Federation Council  
Date: July 14, 2023  
Subject: **Report on the Federation of Law Societies of Canada (the “Federation”) June 5, 2023 Council Meeting**

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## Purpose

1. This memorandum is intended to provide a summary of the Federation Council meeting held on June 5, 2023, in Ottawa.

## Guest Presentations

2. The Council meeting was attended, for part of the time, by the following guests, each of whom engaged in a dialogue with the Council:
  - a. The Minister of Justice and Attorney General of Canada, The Honourable David Lametti.
  - b. The President of the Indigenous Bar Association, Drew Lafond.
  - c. The Chief Justice of Canada, The Rt. Honourable Richard Wagner.
3. Minister Lametti summarized some of the matters his Ministry had been focused on recently, including:
  - a. efforts to promote equity, diversity, and inclusion in the justice system, including in the judiciary;
  - b. bail reform legislation;
  - c. the establishment of a Wrongful Conviction Task Force; and
  - d. reforms in respect of the Canadian Judicial Council.

4. In discussions with the Minister, members of the Council raised concerns with respect to Bill C47, and in particular, issues about mandatory disclosure provisions in the legislation, including the obligation to report possible tax avoidance schemes, and the potential effects on solicitor-client privilege such reporting obligations could have.
5. The Minister advised that work on Bill C47 was continuing, and that the concerns raised by the Federation, “had been heard”.
6. The Minister was also asked about the pace of judicial appointments and the re-establishment of Judicial Advisory Committees in a number of jurisdictions.
7. The Minister advised that he was pleased with the quality of judicial appointments, and the increased diversity of the judiciary.
8. The Minister also advised that the Judicial Advisory Committees were in fact being reconstituted, and that the two Committees that at the time were not fully staffed were in provinces with no current judicial vacancies.
9. The Minister reported that judicial appointments were increasing in pace, and that he expected that to continue.
10. Drew Lafond spoke to the Council about the purpose of the Indigenous Bar Association (the “IBA”), which is to support indigenous law students, lawyers, and judges.
11. President Lafond explained that the IBA takes on a few projects per year, including research projects and initiatives on self-governance.
12. President Lafond reviewed some of the IBA’s recent projects including:
  - a. a National Indigenous Justice strategy meant to address systemic discrimination and over-representation in the Canadian criminal justice system, as well as to respond to violence perpetrated against indigenous peoples, and to make recommendations on the implementation of indigenous justice systems;
  - b. work on Indigenous Citizenship, considering how Indigenous Nations can develop and implement their own citizenship systems;
  - c. considering how UNDRIP could be implemented practically, and making recommendations in that respect.
13. There was discussion with the Council about how the Federation could support and promote the IBA’s work. President Lafond identified that capacity and resources are always issues for the IBA, and any support that can be provided in that regard are both needed and welcomed.

14. The Chief Justice addressed a number of topics that were top of mind for the Supreme Court of Canada.
15. In a wide-ranging discussion with the Council, the Chief Justice noted that the Federation was a leader within the legal community in Canada, and noted that the creation and maintenance of CanLII as a free source of legal information was a great success and a tremendous boon for access to justice in Canada.
16. The Chief Justice spoke about the benefits that the Court's experience with virtual hearings had in terms of access to justice, and advocated for courts in Canada to make the most out of the advantages that technology could provide in making courts more accessible.
17. The Chief Justice spoke about the issue of judicial vacancies and the importance of ensuring sufficient resources were committed to the justice system.
18. The Chief Justice noted that 2025 was the 150<sup>th</sup> anniversary of the Supreme Court of Canada and that planning for an appropriate recognition of that anniversary was underway.
19. Arising out of the Chief Justice's comments about the National Wellness Study, the Chief Justice was asked about opportunities for more collaboration between both the bench and the bar with respect to concerns about wellness. The Chief Justice noted that among both the bench and the bar there was discernibly more willingness to speak about these issues, and that collaboration is always helpful.
20. The Chief Justice was also asked about the SCC's "road shows" and whether more were planned. In response, the Chief Justice advised that the court sitting outside of Ottawa had been very positive and was well received, but that the resources required to do so were significant. As a result, the SCC would likely have hearings outside of Ottawa again, but that this would not become too frequent or too regular a feature of the Court's hearing schedule.

## **COUNCIL BUSINESS**

21. Council received reports from each of its committees as follows.
22. The Public Affairs and Government Relations Committee reported on its presentations to both the House of Commons and to the Senate considering Bill C47. The Committee's report included that despite having raised significant concerns with respect to issues of privilege and solicitor-client relationships in both presentations, the Federation representative was not asked any questions in either the appearance before the House or the Senate.

23. The Indigenous Advisory Council (“IAC”) held its second meeting on April 11, 2023. The IAC met with three Federation Committees that sought to consult in respect of reconciliation initiatives.
24. The IAC planned to meet virtually, bi-monthly for the remainder of the year.
25. The IAC also met with the joint working group of the Council of Canadian Law Deans to discuss Calls to Action 27 and 28.
26. The NCA Assessment Modernization Committee completed a revised draft competency profile, which was being shared with Law Societies and the IAC for feedback.
27. The Law Society of BC’s Lesley Small is a member of the NCA Assessment Modernization Committee.
28. The National Requirement Review Committee reported that it was finalizing a discussion paper to be released for consultation and feedback with respect to the National Requirement standards for graduates of Canadian common law programs and for internationally trained lawyers and law graduates to be admitted to bar admission programs in Canadian common law jurisdictions.
29. That Discussion Paper was subsequently issued on June 26, 2023, and is available here:  
  
<https://flsc.ca/wp-content/uploads/2023/06/NRRC-Discussion-Paper-Eng.pdf>
30. The Standing Committee on Anti-Money Laundering and Terrorist Financing (the “SCAMLTF”) reported that the English version of the online education program is now complete. A demonstration trailer for the online program was played for Council.
31. Both Law Society of BC’s Gurprit Bains and Jeanette McPhee are members of the SCAMLTF.
32. The National Wellness Study Steering Committee reported that Phase II interviews for the National Wellness Study were complete for a number of provinces and territories. The Timeline for completion of the Phase II Reports remains fall of 2024.
33. Council then discussed next steps in terms of addressing the issues and recommendations identified in Phase I of the National Wellness Study.
34. Council agreed that a number of steps should be undertaken to coordinate resources and best practices, as well as to facilitate sharing of information among law societies.
35. In order to best investigate and implement the contemplated steps, Council reached a consensus that a new standing committee on wellness should be established. That issue was referred to the Executive Committee for consideration and decision.

36. In addition to the reports from the committees, Council received a report from CanLII.
37. As noted previously, CanLII is working on incorporating AI tools into their platforms, and they are excited about the potential for those tools.
38. CanLII's President, Francis Barragan reported that after attending the Canadian Law Librarians Conference, the feedback there about CanLII was extremely positive.
39. President Barragan also reported that CanLII had a "clean" financial audit, and that its financial results were "solid".
40. As the Council member nominated by the LSBC, I provided Council with an update on the Single Legal Regulator issues, including reporting on our meeting with and questions of the Attorney General at our Bencher meeting on June 3, 2023.
41. There were many questions, and a great deal of interest among members of Council with respect to the Single Legal Regulator, including inquiries and concerns about:
  - a. the independence of the bar and of the regulator in British Columbia;
  - b. diversity and expertise within the board of the regulator in British Columbia;
  - c. the implications for the Federation should the regulator in British Columbia cease to be a law society, given that the Federation is a voluntary association of law societies; and
  - d. the implications for national mobility should the regulator in British Columbia pursue a different approach to regulation than the remaining law society members of the Federation.
42. Finally, there was discussion of the Federation Conference set to meet in Whitehorse from October 11 to 13, with a Federation Council meeting on October 14, 2023.
43. The topic of the Federation Conference is to consider the effect that technology, and generative AI in particular, will have on legal regulation.
44. As the newest member of Federation Council, the writer was volunteered to chair the Conference Planning Committee. Michael Lucas, KC is also a member of the Conference Planning Committee.

## **NEXT MEETING**

45. The next meeting of the Federation Council will be in Whitehorse on October 14, 2023.

# Report of the Indigenous Engagement in Regulatory Matters Task Force

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## Indigenous Engagement in Regulatory Matters Task Force

Christopher A. McPherson, KC (Co-chair)  
Terri-Lynn Williams-Davidson, KC (Co-chair)  
Lisa H. Dumbrell  
Leah B.M. Fontaine, KC  
Brittany Goud  
Sasha Hobbs  
Thomas L. Spraggs

January 10, 2023

Prepared for: Benchers

Prepared by: Indigenous Engagement in Regulatory Matters Task Force

Purpose: For Discussion and Decision



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## Preface

1. The Indigenous Engagement in Regulatory Matters Task Force (“Task Force”) was created in response to the *Bronstein*<sup>1</sup> decision from 2021. The Task Force acknowledges that many people perceive the Law Society’s penalty for Bronstein’s misconduct as inadequate and unjust. The Task Force sincerely regrets that the outcome of the decision has caused disappointment, grief, and anguish amongst the Tsilhqot’in people, in particular. The members of the Task Force all hold in common a commitment and desire to start the decolonization<sup>2</sup> and Indigenization<sup>3</sup> of the Law Society’s regulation of the legal profession, so that the situation experienced by the Tsilhqot’in residential school survivors (Survivors) who were impacted by Bronstein and affected by the Law Society’s processes never happens again.
2. The overarching theme of this report is the Law Society’s need, and desire, to reconcile its processes with Indigenous legal principles. The Task Force understands that reconciliation requires ongoing transformation; the recommendations signal the beginning of transformation for the Law Society, not the end. Going forward, the Law Society commits to renewing the recommendations to reflect the Law Society’s progress on reconciliation, input from ongoing Indigenous engagement, and emerging issues.

## Acknowledgements

3. The Law Society of British Columbia respectfully acknowledges that this review has taken place on the unceded ancestral territories of First Nations in what is now commonly known as British Columbia.
4. We express deep gratitude to all the individuals who took the time to respond to our questions, and provided valuable insights for the report.
5. We also thank Alice Joe for the graphic design of the report. [N.B. Graphic Design to be included with final report once approved]
6. The report is dedicated to all who have been deterred from bringing complaints forward due to systemic barriers posed by the Law Society’s processes, and to all who have been through the complaints process in the past, but did not experience it as welcoming or supportive, or did not receive outcomes that met their expectations.

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<sup>1</sup> *Bronstein (Re)*, 2021 LSBC 19 (CanLII) (*Bronstein*). Bronstein is no longer licenced to practice law in BC.

<sup>2</sup> “Decolonization” is the removal or undoing of colonial elements. ([What is Decolonization? What is Indigenization?](#))

<sup>3</sup> “Indigenization” is the addition of Indigenous elements. *Ibid*.

## Executive Summary

7. The decision in *Bronstein* revealed systemic issues with the Law Society's regulatory regime's ability to engage, address, and accommodate Indigenous complainants and witnesses, particularly Indigenous persons. In response, the Task Force was created to review the Law Society's complaints, investigation, prosecution, and adjudication processes to ensure that these processes accommodate the full participation of Indigenous complainants and witnesses who may be experiencing marginalization or vulnerability.
8. The Task Force's key findings are that the Law Society is a colonial institution that relies on policies and processes that are inconsistent with Indigenous legal principles regarding dispute resolution. The Law Society needs to decolonize and Indigenize and build trust and relationships with Indigenous individuals, organizations, and communities. The Law Society must also continue its efforts to clarify and uphold standards of intercultural competence for lawyers, with a view to preventing harm to Indigenous clients.

## What Happened?

9. From 2009 until February 2015, Stephen Bronstein, a non-Indigenous lawyer, acted for approximately 624 residential school survivors (Survivors) who made Independent Assessment Process (IAP) claims under the Indian Residential School Settlement Agreement. Bronstein's practice consisted almost exclusively of residential school claims from 2000 until 2017.
10. From September 2008 until July 2012, Bronstein contracted a paroled murderer, Ivon Johnny (Contractor) to recruit Survivors and support them through the IAP. In 2009, a number of people, including Survivors and Native Courtworkers, began contacting Bronstein and his firm with concerns that Johnny was requesting money from Survivors' settlement funds. Bronstein failed to adequately investigate or address their concerns.
11. Ultimately, a complaint was made to the Law Society, and an investigation was launched. During its investigation of the complaint, the Law Society hired external counsel with a high level of Indigenous intercultural competence to consult with the Survivors, and offered to hold the hearing in Tsilhqot'in territory, which the Survivors declined. Eventually, the Law Society negotiated an agreement with Bronstein, in which the Lawyer:
  - Admitted to: (i) failing to exercise due diligence prior to hiring the Contractor; (ii) inadequately investigating complaints that the Contractor was demanding money from Survivors; (iii) neglecting to inform or take instructions from certain clients; (iv) failing to advance certain claims in a timely manner; and (v) directing staff to affix clients' signatures to revised forms that the clients had not seen; and

- Consented to: (i) a one-month suspension; (ii) a practice review for his files opened after January 1, 2017; (iii) a written commitment to the Discipline Committee that he will not act for any “Sixties Scoop” claimants; and (iv) costs of \$4,000.

Although the majority of the hearing panel accepted the consent agreement, Karen Snowshoe, the sole Indigenous panel member, dissented based on her view that the sanctions were too lenient.

12. At the time of Bronstein’s citation,<sup>4</sup> Law Society Rule 4-30 permitted a lawyer responding to a citation to submit a conditional admission of a discipline violation to the Discipline Committee, and to consent to the imposition of a specified disciplinary action (as negotiated between the lawyer and Law Society’s discipline counsel). If the Discipline Committee accepted the proposal, it was required to instruct the Law Society’s discipline counsel to recommend acceptance of the proposal to the hearing panel. Rule 4-31 required a hearing panel to either accept or reject the lawyer’s conditional admission and the parties’ proposed disciplinary action. If the panel rejected the conditional admission and proposed disciplinary action, it could not substitute a different determination or disciplinary action, but was required to advise the Discipline Committee of its decision and proceed no further with the hearing of the citation, at which point the Discipline Committee was required to instruct Law Society discipline counsel to set a date for the hearing of the citation. In *Bronstein*, the Discipline Committee and the majority of a hearing panel accepted Bronstein’s conditional admission under Rule 4-31.
13. These rules were substantially amended in March 2021 to enable a hearing panel to impose a disciplinary action that is different from the consent agreement if the parties (i.e. discipline counsel and the respondent) are given the opportunity to make submissions respecting the disciplinary action to be substituted, or if the specified disciplinary action consented to by the respondent would be contrary to the public interest in the administration of justice.<sup>5</sup>

## Objective

14. The objective of this report is to identify systemic barriers experienced by Indigenous complainants and witnesses, and propose solutions to establish and maintain culturally safe and trauma informed regulatory processes. The recommendations are also expected to benefit other complainants and witnesses who may be experiencing marginalization or vulnerability.

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<sup>4</sup> Citations are allegations against a lawyer that are considered at a discipline hearing.

<sup>5</sup> Rule 5-6.5(3). Conditional admissions made under Rule 5-6.5(3) may only be used against the respondent in a proceeding if accepted by a hearing panel (see Rule 5-6.6(2)).

## Approach

15. The Task Force applied a number of approaches to accomplish its work, including: analyzing the *Bronstein* decision; reviewing the Law Society’s processes; researching what other entities do with respect to Indigenous complainants and witnesses; consulting with Indigenous individuals and organizations and non-Indigenous service agencies that provide services to Indigenous individuals; and hosting a summit to receive feedback from consultation participants on draft recommendations. The Law Society has yet to earn the trust of many Indigenous individuals and communities, so the Task Force was not able engage with everyone who should have been consulted. The Task Force expects the Law Society to continue Indigenous engagement to inform the implementation and renewal of the recommendations.

## What We Heard

16. Immediately following the *Bronstein* decision, Chief Joe Alphonse (Tribal Chair of the Tsilhqot’in Nation) expressed dissatisfaction on behalf of the many Tsilhqot’in citizens impacted by Bronstein’s conduct:

*The failure to appropriately condemn this misconduct is yet another injustice and stain on the handling of the victims and survivors of residential schools. Bronstein failed to protect his clients and created a situation of further victimization and trauma for survivors. This outcome makes a mockery of justice. Our people have been through enough without having to contend with further ignorance and failure of the Canadian legal system. This case needed further investigation into the serious claims being made about Ivon Johnny’s intimidation and extortion of clients. It took a lot of courage for witnesses to come forward, and this is what they have to show for it – nothing. Bronstein basically got off with no repercussion. Once again the system has let us down.*<sup>6</sup>

Chief Joe Alphonse’s statement is an important starting point for analyzing the systemic issues revealed by *Bronstein* for two key reasons: 1) the Contractor was a Tsilhqot’in citizen and therefore in closest proximity to the Tsilhqot’in Survivors, so the Tsilhqot’in Survivors were more likely to be impacted by the Contractor’s conduct than other Survivors; and 2) the statement raises a number of concerns about the Law Society’s processes. Chief Alphonse’s statement must be understood within the broader context of the colonial oppression of Indigenous Peoples,<sup>7</sup> and Tsilhqot’in-specific experiences with colonial law.

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<sup>6</sup> [2021-06-09-Tsilhqotin-Nation-Condemns-BC-Law-Societys-Failure-to-Reprimand-Lawyers-misconduct-in-Residential-School-Claims.pdf \(tsilhqotin.ca\)](#) (Chief Joe Alphonse).

<sup>7</sup> Indigenous Peoples” (uppercase “P”) is a collective term referring to distinct social groups that share ancestral ties to specific territories, whereas “Indigenous people” (lowercase “p”) is used to refer to Indigenous individuals.

## Issue 1: Colonialism

17. With respect to colonial oppression of Indigenous Peoples, the colonial legal system is built on the twin myths of European superiority and Indigenous inferiority. Unlike other parts of Canada, Crown authorities signed very few treaties with the Indigenous Nations in British Columbia. Instead, colonial law was unilaterally imposed on Indigenous Peoples and territories, and suppressed existing Indigenous laws, customs and governance. The disputed legitimacy of colonial law within unceded Indigenous territories is an ongoing concern in the province. Colonial law has been (and continues to be) used to justify the subordination and assimilation of Indigenous people and the dispossession of their children, territories, and resources.<sup>8</sup> Violations of Indigenous rights have been authorized by colonial law and normalized within colonial society.<sup>9</sup> One consultation participant conveyed:

*“The legal system has contributed to the genocide of Indigenous people, when you think about the laws that forced the transfer of Indigenous people’s children, to the policies and laws and how all of that has contributed to where we are at now.”*

As an influential entity within the colonial legal system, the Law Society acknowledges it has contributed to the perpetuation of colonialism.<sup>10</sup>

18. The Tsilhqot’in Nation is well-known for the Tsilhqot’in War against colonial expansion into Tsilhqot’in territory. The Tsilhqot’in War involved six Tsilhqot’in leaders who stood up against colonial violations of Tsilhqot’in law, killing 14 non-Indigenous surveyors who were trying to build a road from the coast into the interior through Tsilhqot’in territory. The Tsilhqot’in leaders were invited to discuss terms of peace, “and then in an unexpected act of betrayal, they were arrested, imprisoned and tried for murder,”<sup>11</sup> and sentenced to death. This injustice continues to impact Tsilhqot’in perceptions of the colonial justice system, of which the Law Society is a part.

19. The 1993 *Cariboo-Chilcotin Justice Inquiry*<sup>12</sup> (into the relationship between the Indigenous people and the justice system in the Cariboo-Chilcotin region) referenced the Tsilhqot’in War as a primary source of Tsilhqot’in distrust of the Canadian legal system. The Commissioner made a number of observations and recommendations that are relevant to the Task Force’s work, including that “[Indigenous] people must be able to lodge complaints in a simple, understandable, and non-intimidating fashion” and be supported throughout the complaints

<sup>8</sup> *Honouring the Truth, Reconciling for the Future Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (The Truth and Reconciliation Commission of Canada, 2015) (*TRC Summary Report*) at 202.

<sup>9</sup> [Expanding Our Vision - Cultural Equality and Indigenous Peoples' Human Rights \(bchrt.bc.ca\)](http://bchrt.bc.ca) (*Expanding Our Vision Report*) at 11.

<sup>10</sup> For example, from 1918 until 1949, membership in the Law Society of BC was linked to registration on the provincial voters list, which effectively excluded Indigenous people with “Indian status” from practising law.

<sup>11</sup> October 23, 2014, Speech by Premier Christy Clark in the British Columbia Legislature.

<sup>12</sup> Sarich, Anthony. *Report of the Cariboo-Chilcotin Justice Inquiry, 1993 (Cariboo-Chilcotin Justice Inquiry)*, at 8.

process.<sup>13</sup> These recommendations from 1993 were not implemented, and in 2021 Tsilhqot'in complainants experienced systemic barriers to the Law Society's complaints and discipline processes. Given this context, Chief Joe Alphonse's exasperation is understandable. Indigenous people are frequently studied, but too often recommendations resulting from the studies are not implemented and do not lead to any noticeable changes for Indigenous people.

20. The devaluation of Indigenous people within the colonial legal system also has implications for Indigenous victims. As repeatedly demonstrated throughout the colonial justice system, Indigenous complaints are often not taken seriously or investigated thoroughly. For example, the *Missing and Murdered Indigenous Women's Inquiry* described "delayed, or a lack of, [police] responses to reports from Indigenous victims."<sup>14</sup> Another study found that where complaints are investigated, sanctions are absent or lower when an Indigenous person is the victim.<sup>15</sup> The low investigative efforts and sanctions have significant impacts on the level of distrust Indigenous people have with colonial systems. As one consultation participant explained:

*"When [Indigenous people] make a complaint to the Law Society, their expectation is that they won't be taken seriously. Their expectation is that the dominant culture will steamroll them, and they won't have a chance. That expectation is honestly and rationally held."*

21. Moreover, the colonial perspective views Indigenous people as inherently deficient. This perception influences the colonial legal system, where Indigenous victims are often perceived as unreliable witnesses based on negative biases and assumptions about Indigenous people.<sup>16</sup> Blame for low investigation efforts and sanctions is accordingly deflected onto Indigenous witnesses. Ironically, Indigenous reluctance to engage in colonial legal processes contributes to the assumption that Indigenous witnesses are not reliable.<sup>17</sup> Colonial devaluation of Indigenous people is a systemic inequity that erodes Indigenous perceptions of, and engagement with, the colonial legal system.
22. Negative connotations regarding Indigenous reluctance to engage with colonial legal processes are evident in *Bronstein*, where the majority reasoned that:

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<sup>13</sup> *Ibid*, at 40.

<sup>14</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (June 2019), vol. 1b (MMIW), at 154. See also *Expanding Our Vision Report*, *supra* note 9, at 24.

<sup>15</sup> [Victimization of First Nations people, Métis and Inuit in Canada \(statcan.gc.ca\)](https://www.statcan.gc.ca), [Aboriginal Victimization in Canada: A Summary of the Literature - Victims of Crime Research Digest No. 3 \(justice.gc.ca\)](https://www.justice.gc.ca) (*Aboriginal Victimization Report*), and *MMIW (ibid)* at 153. The *Aboriginal Victimization Report* states: "there are higher rates of dismissed charges or not guilty outcomes when an Indigenous person is the victim." Although these examples arise in the context of criminal justice, the experiences and implications extend beyond criminal law.

<sup>16</sup> Such negative biases and assumptions are often described as "high risk" factors.

<sup>17</sup> *Aboriginal Victimization Report*, *supra* note 15.

*Absent the Respondent's admission, it will be difficult to prove the allegations in the Citation with admissible evidence, especially because the Respondent's former clients have indicated that they are not willing to testify at a contested hearing.*<sup>18</sup>

*[If the conditional admission is rejected], there is a good or real possibility that the Respondent will face no discipline at all for his misconduct.*<sup>19</sup>

The dissenting panel member perceived this reasoning as a deflection of the blame for the low sanction onto the Indigenous witnesses who declined to participate in the Law Society's adversarial hearing process, rather than on the systemic issues and procedural barriers that deterred Indigenous participation.

23. A Task Force member observed that:

*Passively accepting that Indigenous witnesses are unlikely to participate in formal complaints processes reinforces barriers to participation. The facts in Bronstein would have been difficult to prove without an admission because of the power imbalances between the Lawyer and the Survivors.*

The power imbalances occur on both the systemic and practical levels. At the systemic level, at a hearing into the conduct of a lawyer, the Law Society has the burden of proof to establish that the lawyer has engaged in professional misconduct, conduct unbecoming,<sup>20</sup> or is in breach of the *Legal Profession Act (Act)*, or the Law Society Rules (Rules). The Law Society decides whether and how to pursue the complaint, and the complainant's role is limited to providing information about the complaint. At the practical level, a lawyer likely has more familiarity and experience with legal processes than non-lawyer complainants.

24. Another aspect of the systemic imbalance is a colonial perception that Indigenous laws are inferior to colonial laws and that including Indigenous laws in colonial processes would deplete rather than enrich the colonial system. The Task Force advises that this perception should forever be laid to rest, and that the positive aspects of Indigenous laws should be incorporated into the Law Society's regulatory regime for the benefit of all complainants and witnesses.

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<sup>18</sup> *Bronstein, supra* note 1, at para. 227.

<sup>19</sup> *Ibid*, at para. 15.

<sup>20</sup> "Conduct unbecoming" includes a matter, conduct, or thing that is considered (a) to be contrary to the best interest of the public or of the legal profession, or (b) to harm the standing [or reputation] of the legal profession. (Law Society Rules, section 1.)



## Issue 2: Indigenous and Colonial Concepts

25. The Law Society’s authority comes from colonial legislation, and Indigenous laws<sup>21</sup> are currently absent from the Law Society’s regulatory regime. Previous reports have explored differences between Indigenous<sup>22</sup> and colonial worldviews, and the Bronstein matter provides tangible examples of some key concepts.
26. Indigenous perspectives are often described as “holistic” whereas colonial perspectives are described as “fragmented”. Problems with fragmentation emerge in the Law Society’s processes in a few ways:
- i. In relation to jurisdictional fragmentation, the Law Society’s authority comes from the *Legal Profession Act*, which grants the Law Society jurisdiction over lawyers and the practice of law. The Law Society’s jurisdiction does not currently extend to non-lawyers (such as the Contractor). However, Chief Joe Alphonse’s comment conveys an expectation that the Law Society could, and should, have investigated and sanctioned the Contractor’s conduct. The Law Society could not directly investigate or sanction the Contractor, and was also limited in its ability to hold the Lawyer entirely responsible for the Contractor’s conduct. This jurisdictional fragmentation of colonial law contrasts with the holistic ideals of Indigenous law. For example, the *Cariboo-Chilcotin Justice Inquiry* explains that Indigenous people may accept full responsibility (e.g. plead guilty) if they are remotely involved in an incident, even if they did not directly cause the harm at issue.<sup>23</sup> Chief Joe Alphonse’s statement expresses an expectation that the Lawyer should be held accountable for the Contractor’s conduct. In addition to jurisdictional fragmentation, this example also highlights colonial law’s focus on the rights and responsibilities of individuals, in contrast to Indigenous law’s focus on the rights and responsibilities at the collective level.
  - ii. The Law Society’s complaints process is subdivided into different stages, including: intake, investigation, citation, and hearing. Some of these stages also have additional “sub-stages”. Taken together, complainants may view the various stages and sub-stages as complex, difficult to comprehend and navigate, and time consuming, and may therefore be deterred from engaging with the processes.
  - iii. Subdivided processes may also pose additional barriers if complainants or witnesses are required to interact with different people and recall and repeat their experiences at each of

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<sup>21</sup> Law is intrinsically connected to the society, traditions, culture, and landscape from which the legal system has emerged. Indigenous laws are accordingly diverse.

<sup>22</sup> Indigenous Peoples are diverse and dynamic, and their worldviews are not monolithic. However, previous reports have identified common aspects of Indigenous worldviews which the Task Force believes are relevant to this report.

<sup>23</sup> E.g. *Cariboo-Chilcotin Justice Inquiry*, *supra* note 12, at 14-15.

the various stages. Such repetition is particularly problematic with respect to the recollection of traumatic experiences.

- iv. Another issue with subdivided processes is that witness participation may be limited to providing specific information about particular allegations at certain stages of the process (e.g. during the investigation and hearing). This compartmentalized approach to evidence gathering may prevent witnesses from sharing all of the information they believe is relevant, including how they were impacted by the conduct at issue.
- v. With respect to the hearing process, the Law Society has made specific efforts to emphasize the independence of tribunals as a separate decision making body. Despite these efforts, the public (including Indigenous individuals) may continue to perceive tribunals as connected with the Law Society. Given the current Tribunal Chair is a former president of the Law Society, the pool of tribunal hearing members includes Benchers, and it is customary for at least one Bencher to sit on each hearing panel, the separation may seem artificial.
- vi. If there is a deficiency with any component of the fragmented colonial processes, Indigenous holistic worldview may see “such failure as a failure of the whole system, and not just a failure of an individual component.”<sup>24</sup> Chief Joe Alphonse conveys this sentiment in his statement: “*Once again, the system has let us down.*”

27. Colonial approaches to dispute resolution are often described as “adversarial” whereas Indigenous approaches may be described as “relational”<sup>25</sup>. The adversarial approach involves opposing parties presenting their positions before an impartial decision maker, who attempts to determine the truth and pass judgment accordingly. The relational approach seeks to restore relationships that have been harmed by a dispute, and involves collaboration to determine an appropriate outcome. While the adversarial approach assumes conflict, the relational approach attempts to minimize it.

28. In *Bronstein*, the dissenting panel member described the “Law Society’s current adversarial regulatory process as a barrier to the participation of vulnerable witnesses like the Respondent’s former clients.”<sup>26</sup> Previous reports have described how adversarial processes deter Indigenous participation. For example, the *Cariboo-Chilcotin Justice Inquiry* explained that Indigenous people perceive adversarial proceedings as:

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<sup>24</sup> *Ibid*, at 14.

<sup>25</sup> The report uses “relational” instead of “restorative” because the term “restorative” is commonly associated with the criminal justice system. Use of the term “relational” is meant to avoid connotations of the criminal justice system with respect to the Law Society’s processes.

<sup>26</sup> *Bronstein*, *supra* note 1, at para. 414.

*“a contest in which there must be a winner and a loser, and where one party must denounce and degrade the other in order to prevail. Such a concept runs counter to their traditional values and understanding.”<sup>27</sup>*

29. The adversarial system generally applies interrogation and cross-examination to establish facts and determine the truth of a matter. Many Indigenous understandings of truth include an underlying presumption that individuals are only able to report an event the way they experienced it; truth depends on perspective, so it is understood as a plural concept (i.e. “truths”). Indigenous people may have strong societal expectations that everyone will share their own truth without deception. Adversarial tactics for establishing a single truth in the colonial system are contrary to Indigenous concepts that accept plural truths. Indigenous people may be apprehensive of processes that involve interrogation or cross-examination to test their recollections of the truth from their perspective.
30. The adversarial process also involves a number of institutional formalities such as hierarchical relationships, strict adherence to timelines and processes, and the use of specialized language and formal attire. Such formalities may deter Indigenous participation.

### **Issue 3: Trust and Relationships**

31. In general (for Indigenous and non-Indigenous people alike), members of the public lack awareness about the Law Society’s mandate and role and therefore do not engage with the Law Society’s processes. Information about the Law Society’s processes is primarily conveyed through its English text-based website, which likely deters people who: a) lack the infrastructure to access the website, b) prefer verbal rather than textual communication, or c) use a primary language other than English.
32. As mentioned above, many Indigenous people do not trust the Law Society because it is a colonial institution within a legal system that has facilitated harms against Indigenous Peoples and territories.
33. A key factor in building trust and engagement with Indigenous people is the presence of Indigenous individuals within an organization. As one Indigenous consultation participant put it: *“Where I don’t see my people, I don’t feel safe.”* Indigenous individuals often prefer to interact with people with similar lived-experiences to their own. Legal Aid BC’s report entitled *Building Bridges: Improving Legal Services for Aboriginal Peoples* found that:

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<sup>27</sup> *Cariboo-Chilcotin Justice Inquiry*, *supra* note 12, at 14.

*[Indigenous clients] are uncomfortable with seeking help from [non-Indigenous people] because most of the times [non-Indigenous people] are not sensitive or aware of [Indigenous] history and culture, or do not fully understand their unique legal needs.<sup>28</sup>*

The Law Society is making progress on increasing Indigenous representation at the Benchers table, on committees and task forces, and as panel members. The Law Society does not track the diversity demographics of its employees, but it seems that publicly self-identifying Indigenous employees are currently underrepresented as compared to the Indigenous population of BC. Intercultural competence training may help to increase empathy and understanding, but does not replicate the level of compassion gained through lived experiences.

## Issue 4: Preventing Harm

34. Task Force members and consultation participants emphasized that preventing harm is preferable to repairing it. The Law Society has a central role in preventing lawyers from harming their clients, including Indigenous clients. The Law Society is responsible for regulating the legal profession in BC, including setting and upholding standards for lawyer competence, investigating complaints against lawyers, and disciplining lawyers who breach the set standards of conduct. The Law Society also supports lawyers to achieve the set standards of competence and ethics.

## Updates

35. The Law Society has already made some improvements since the Bronstein matter arose:
- i. As mentioned above, Rules 4-30 and 4-31 were updated to enable a hearing panel to impose a disciplinary action that is different from the consent agreement.
  - ii. The Law Society has adopted an Indigenous framework of principles<sup>29</sup> to guide its application of the *Act*, Rules, *Code*, policies, procedures, and practices.
  - iii. An enhanced trauma informed approach to receiving and investigating complaints has now been implemented, which includes contact with a trauma informed staff member throughout the Law Society's processes for certain complainants in appropriate circumstances (e.g. complaints involving discrimination or sexual harassment).
  - iv. The Discipline Department has introduced a new Witness Accommodations and Considerations Policy, with a corresponding Information Sheet that describes a number

<sup>28</sup> [Building Bridges: Improving Legal Services for Aboriginal Peoples \(legalaid.bc.ca\)](#) at 8.

<sup>29</sup> [Truth and Reconciliation Advisory Committee-Indigenous-Framework-Report.pdf](#) (Indigenous Framework).

of protective measures and supports for witnesses in the Law Society’s hearing and review panel processes.

- v. The Law Society has approved an alternative discipline process (ADP), which provides a less adversarial method of addressing alleged misconduct outside of the formal discipline stream. The ADP is currently limited to complaints in which a lawyer’s health condition is a contributing factor. However, the ADP signals the Law Society’s expanded focus on, and options for, individualizing the regulatory response — with a focus on support, treatment, practice interventions and other remedial measures — to address underlying health conditions, rather than imposing sanctions.
- vi. There have been developments with respect to options for consent agreements, including pre-citation consent agreements, and administrative penalties (e.g. fines) for minor contraventions of certain Law Society Rules. Consent options are meant to facilitate lawyer admissions at an early stage, thereby avoiding the need for further escalation through the formal complaints process.
- vii. All new hires to the Law Society are required to complete the Law Society’s Indigenous intercultural course.

## Recommendations

36. The Task Force’s Terms of Reference frame the primary issue as the need to accommodate Indigenous complainants and witnesses in the Law Society’s processes. However, the Task Force understands there is a deeper issue regarding the disputed legitimacy of the imposition of colonial law in Indigenous territories without Indigenous consent.<sup>30</sup> Canadian society is becoming increasingly aware of its colonial origins, and the need to reconcile with Indigenous Peoples. In 2019, British Columbia introduced the *Declaration on the Rights of Indigenous Peoples Act (DRIPA)* to align its laws with the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*. One of the actions specified in the *DRIPA* Action Plan is for the Province to: “implement improvements to public...complaints processes...and new models for including Indigenous laws in complaints resolution.” The Task Force believes that aligning the Law Society’s processes with *UNDRIP* principles is key to increasing Indigenous access to and engagement with these processes.

37. Colonial laws have been, and continue to be, used to oppress Indigenous people in Canada. The Law Society acknowledges the oppressive role that the legal system plays in the lives of Indigenous people that results in ongoing disparities between Indigenous people and broader

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<sup>30</sup> For example, see: John Borrows, “Sovereignty’s Alchemy: An Analysis of *Delgamuukw v British Columbia*”, (1999) 37 Osgoode Hall LJ 537-596.

Canadian society. The Law Society is in the early stages of its efforts toward reconciliation with Indigenous people. The Task Force's recommendations are meant to further advance reconciliation by identifying actions for the Law Society to reduce systemic barriers and improve Indigenous access to the Law Society's processes. Fundamental changes will be required to build the level of trust that is necessary for Indigenous complainants and witnesses to feel safe in approaching the Law Society and engaging with its processes.

38. The Task Force makes the following recommendations for decision by the Benchers:

**Recommendation 1.0: The Law Society should decolonize its institution, policies, procedures, and practices.**

**Recommendation 1.1:** The Law Society should encourage individuals at all levels of the organization to self-reflect on and remove their colonial biases, attitudes, and behaviours that are based on perceptions of Indigenous people and laws as deficient.

**Recommendation 1.2:** The Law Society should retain an Indigenous expert to identify and remove unnecessary colonial principles from the Rules, *Code*, policies, procedures, and practices, and should support the provincial government's efforts to remove unnecessary colonial principles from the *Act*.<sup>31</sup>

**Recommendation 1.3:** The Law Society should identify and remove unnecessary adversarial aspects of its processes.

- i. The Law Society should make it as easy as possible for lawyers to apologize without fear of further sanctions, including by increasing opportunities for consent agreements and alternative discipline processes.
- ii. The Law Society should support the use of victim impact statements more often in appropriate circumstances.
- iii. The Law Society should adopt alternative options for giving evidence, such as the use of video-conferencing, privacy screens, victim impact statements, and an inquisitive model of questioning (e.g. where a panel member instead of an opposing lawyer poses questions to witnesses).

**Recommendation 1.4:** The Law Society should review its processes and practices with a view to increasing efficiencies in the resolution of complaints.

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<sup>31</sup> Because the Law Society is a creation of British Columbia's colonial laws, the Law Society cannot completely divorce itself from its colonial legal structures and requirements. It can, nevertheless, take measures to identify and remove unnecessary colonial principles that impede Indigenous access to the Law Society's processes.

**Recommendation 1.5:** The Law Society should minimize unnecessary formalities within its processes and practices, such as specialized language, hierarchical seating arrangements, formal dress codes, and colonial symbols.

**Recommendation 2.0: The Law Society should Indigenize its institution, policies, procedures, and practices.**

*“Integrating Indigenous laws and protocols and processes into the existing process...needs to be in conjunction, consultation, and engagement with First Nations or Indigenous communities and it needs to be done in a respectful manner.”<sup>32</sup>*

**Recommendation 2.1:** The Law Society should apply the Indigenous Framework<sup>33</sup> in its application of the *Act*, Rules, *Code*, policies, procedures, and practices.

- i. The Law Society should ensure that all Law Society representatives receive training on the Indigenous Framework and its application in relation to the *Act*, Rules, *Code*, policies, procedures, and practices.

**Recommendation 2.2:** The Law Society should uphold its prior commitments to increase Indigenous representation throughout the organization, including at the governance, leadership, and staff levels.

- i. Given the current perceived underrepresentation of Indigenous individuals at the staff level, the Law Society should develop an Indigenous recruitment strategy to hire, promote, and support the retention of more Indigenous staff throughout the Law Society, including in executive leadership roles.
- ii. The Law Society should create an organizational culture that supports the inclusion and success of Indigenous representatives at all levels of the organization.

**Recommendation 2.3:** The Law Society should engage with Indigenous individuals, including Indigenous lawyers and legal academics, to incorporate Indigenous legal principles into the Law Society’s processes and practices.

**Recommendation 2.4:** The Law Society should continue adapting its processes to incorporate flexible, culturally relevant, and trauma informed options and resources for Indigenous complainants and witnesses.

**Recommendation 2.5:** The Law Society should develop a process for investigating and addressing systemic issues that may be affecting Indigenous legal clients on a broad scale, rather than relying on individuals to bring forward complaints.

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<sup>32</sup> Consultation participant.

<sup>33</sup> Indigenous Framework, *supra* note 29.

**Recommendation 3.0: The Law Society should build trust and relationships with Indigenous individuals, organizations, and communities.**

*“Trust and accountability comes back to relationships, connecting words to actions, collaborative processes, and having conversations.”<sup>34</sup>*

**Recommendation 3.1:** The Law Society should raise awareness throughout the province about the Law Society’s role and the services it provides, including supports and options available to Indigenous complainants and witnesses.

- i. The Law Society should ensure that a variety of communications tools are used, such as pamphlets, social media, in-person conversations, and videos.
- ii. The Law Society should provide clear, plain language information about:
  - a. the standards of conduct that clients should expect from their lawyers, including specific examples of the types of conduct and circumstances that may warrant a complaint against a lawyer;
  - b. how to make a complaint, steps involved, anticipated timelines, and possible outcomes; and
  - c. all supports that are available for Indigenous complainants and witnesses in the Law Society’s processes.

**Recommendation 3.2:** The Law Society should prioritize hiring an Indigenous “navigator” to guide Indigenous complainants and witnesses through the Law Society’s processes.<sup>35</sup>

**Recommendation 3.3:** The Law Society should create a safe atmosphere for Indigenous individuals, including in the institution’s organizational, physical, and digital spaces.

**Recommendation 3.4:** The Law Society should develop connections with support agencies to identify potential resources and opportunities to assist Indigenous complainants and witnesses.<sup>36</sup>

**Recommendation 3.5:** Subject to guidance from the Leadership of the Tsilhqot’in Nation, the Law Society should continue its efforts to make amends with the Tsilhqot’in Survivors for the outcome of the *Bronstein* decision having caused disappointment, grief, and anguish amongst the Tsilhqot’in people, and to engage with the Tsilhqot’in Survivors on how the Law Society’s processes could be improved.

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<sup>34</sup> Consultation participant.

<sup>35</sup> The “navigator” should serve as a central contact person assigned across all stages of a file.

<sup>36</sup> These connections may be helpful in circumstances where the Law Society is not the appropriate entity for dealing with the complaint.



**Recommendation 4.0: The Law Society should be more proactive in the prevention of harm to the public, particularly Indigenous individuals.**

**Recommendation 4.1:** The Law Society should clarify competency requirements in the Law Society’s Code of Professional Conduct to specifically include intercultural competence.

**Recommendation 4.2:** The Law Society should ensure Practice Advisors are equipped to provide practice support materials, resources, and guidance on intercultural competency and trauma-informed legal services.

**Recommendation 4.3:** The Law Society should ensure that lawyers have access to resources, leading practice guides, and educational opportunities with respect to the provision of inter-culturally competent and trauma informed legal services to Indigenous clients.

**Recommendation 4.4:** The Law Society should consult with Indigenous legal organizations to consider ways to identify lawyers who can demonstrate high levels of intercultural competence and positive professional engagement with Indigenous clients.

**Recommendation 5.0: The Law Society should implement the recommendations.**

**Recommendation 5.1:** Once the Task Force completes its mandate, the Law Society must ensure that there is effective oversight of the implementation of its recommendations.<sup>37</sup>

**Recommendation 5.2:** To optimize implementation, an implementation plan that identifies immediate steps to be taken in the first six months following the approval of the recommendations should be developed.

- i. The Law Society should update the implementation plan annually, and track progress in its annual report.

**Recommendation 5.3:** In collaboration with Indigenous individuals and organizations, the Law Society should develop evaluation mechanisms to collect, review, and evaluate data regarding the experiences of Indigenous complainants and witnesses, taking privacy considerations into account.

**Recommendation 5.4:** The Law Society should annually assess whether revised processes and policies are working well, and make appropriate adjustments as necessary.

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<sup>37</sup> The provincial government’s move to modernize legal regulation may affect oversight of the recommendations in the future, but the Task Force believes that immediate oversight by the Law Society’s Truth and Reconciliation Advisory Committee would be most effective.

## Appendix A: Terms of Reference



### Indigenous Engagement in Regulatory Matters Task Force

#### Terms of Reference

##### Preamble

The decision in *Re Bronstein* raised serious questions about the ability of the Law Society's regulatory process to engage, address and accommodate marginalized complainants and witnesses, particularly Indigenous persons. In particular, the Law Society accepts the recommendation that the Law Society undertake a comprehensive review of its regulatory processes as they relate to access to justice and its responsiveness to all members of the diverse public it serves. Such a review will inform the steps to be taken by the Law Society, as contemplated within the 2021-2025 Strategic Plan, to address the unique needs of Indigenous people within our regulatory processes and to establish and maintain an interculturally competent regulatory process.

##### Mandate

The Task Force will examine the Law Society's regulatory processes, specifically its complaints, investigation, prosecution and adjudication processes, as they relate to complainants and witnesses, particularly Indigenous persons, who may be experiencing vulnerability or marginalization and make recommendations to the Benchers to ensure that the Law Society's regulatory processes accommodate the full participation of such complainants and witnesses.

##### Composition

The Task Force shall consist of seven members.

##### Meeting Practices

The Task Force shall operate in a manner that is consistent with the Benchers' governance policies.

The Task Force shall meet as required.

Quorum is four members of the Task Force (Rule 1-16(2)).

## Accountability

The Task Force is accountable to the Benchers as a whole.

## Reporting Requirements

The Task Force will deliver its report containing any recommendations for future action to the Benchers within twelve months from the date on which its work plan is delivered.

## Duties and Responsibilities

1. Following its appointment, the Task Force will prepare a work plan which will be provided to the Benchers at their September 2021 meeting, outlining the anticipated scope of the review, including interviews and any anticipated research, and the procedures to be undertaken to gather information to complete its work. The work plan would also include any proposed changes or additions the Task Force, after consultation with the Truth and Reconciliation Advisory Committee, would recommend with respect to their mandate.
2. Consult with key stakeholders, including Law Society staff, members of the Law Society Tribunal, members of the Truth and Reconciliation Advisory Committee, Indigenous leaders, and any others that the Task Force considers necessary for the purpose of preparing its report.
3. Conduct research into the engagement, accommodation and participation of Indigenous people in regulatory processes in other professions and jurisdictions.
4. The Task Force should include the following in developing any recommendations:
  - a. An analysis of the effects on Indigenous complainants and witnesses of the processes used to gather, assess, introduce and submit evidence during investigations and hearings;
  - b. An analysis of the nature and goals of proceedings that involve Indigenous people and Indigenous communities;
  - c. Consideration and comparison of the differences that exist between Indigenous perspectives regarding conflict resolution, and the conventional approach of the Law Society and the Law Society Tribunal to investigation, discipline and adjudication;
  - d. Consideration of how to incorporate Indigenous perspectives into Law Society complaints, investigation, discipline and Tribunal processes and procedures;
  - e. An assessment of intercultural competence and trauma-informed practices at the Law Society, and identification of opportunities for training and development;
  - f. Consideration of the use of interculturally competent and trauma-informed expertise by Law Society staff, the Tribunal and outside counsel; and

- g. Identification of actions to prevent, and remedial measures to address, the impacts of members' misconduct on Indigenous complainants, witnesses and communities.
5. The Task Force should also consider and make recommendations where lessons learned as a result of this review could have relevance to the interests of non-Indigenous complainants and witnesses, or to enhancing trust and relationship-building between the Law Society and communities, including Indigenous communities.

## **Staff Support**

Andrea Hilland, KC

Jennifer Chan

# Memo

To: Benchers  
 From: Ethics and Lawyer Independence Advisory Committee  
 Date: July 4, 2023  
 Subject: Amendments to the discrimination, harassment, and sexual harassment provisions of the *Code of Professional Conduct for British Columbia*

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## Introduction

1. A key item of the Committee's work for 2023 has been the consideration of amendments to the Federation of Law Societies of Canada's Model Code of Professional Conduct ("Model Code") in regard to discrimination, harassment, and sexual harassment, and how the amendments could be incorporated into the *Code of Professional Conduct for British Columbia* ("BC Code").
2. The Committee has completed its review and recommends rescission of *BC Code* rules 6.3-1 to 6.3-5 and replacement with new *BC Code* rules of 6.3-1 to 6.3-4. A redlined and clean version of the suggested *BC Code* amendments, which reflect the Model Code section 6.3 with some revisions as approved by the Committee, has been attached to this memorandum. This memorandum provides context for the Committee's recommendation and seeks a decision from the Benchers on that recommendation.

## Background

### Development at the Federation of Law Societies of Canada

3. Beginning in early 2020, the Federation of Law Societies of Canada's Standing Committee on the Model Code consulted with the law societies of Canada and other legal stakeholders on proposed changes to the Model Code's provisions on discrimination, harassment, and sexual harassment. Two consultation reports were issued, to which the Law Society of British Columbia, through the Ethics Committee (as it then was), provided feedback.
4. In October 2022, the provisions were approved at the Federation Council, with the Law Society of British Columbia abstaining on the motion, due to concerns raised by the Ethics Committee

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about the scope and language of the amendments. In abstaining, it was made clear that the Law Society approved the underlying intent of the amendments, but that revision was needed before being incorporated into the *BC Code*.

### **Relationship between the Model Code and the *BC Code***

5. In 2013, the Model Code was adopted across Canadian law societies. The Model Code acts as a law society's professional code of conduct for some jurisdictions, which generally adopt the Model Code provisions without modification, while others like British Columbia have dedicated committees that consider the provisions and determine how the provisions relate to practice and professional responsibility in their respective province.
6. The Committee will only recommend a departure from the Model Code when there is a distinction in the legal practice specific to British Columbia, or where it thinks that the Model Code provisions need to be clarified.

### **Consideration by the Committee**

7. This year, the Committee has spent considerable time discussing the Model Code provisions and what revisions were necessary for a British Columbia context. The Committee sought to maintain the Model Code version of the provisions as much as possible but amend the provisions to provide further clarity, particularly in context of the issues provided by the Ethics Committee in 2021.

### **Consultation**

8. The Committee consulted with the Equity, Diversity, and Inclusion Advisory Committee, the Truth and Reconciliation Advisory Committee, and staff from the Law Society's Investigation, Monitoring, and Enforcement, and Discipline departments about the suggested amendments to the provisions on discrimination, harassment, and sexual harassment in the *BC Code*. The Committee is grateful for the feedback it received.

### **Purpose of the amendments on discrimination, harassment, and sexual harassment**

9. The *BC Code's* current rules on discrimination, harassment, and sexual harassment are the Model Code's version prior to its amendment in October 2022. The *BC Code* rules and commentaries are quite brief, and are included in the redlined copy attached to this memorandum.
10. The new Model Code rules kept the basis of the rules (a lawyer must not discriminate, must not harass, and must not sexually harass, any person) and provides more guidance, including

key definitions and examples, in the commentaries. The new Model Code rules also expressly address reprisals. The expanded commentaries provide important context and guidance, providing definitions and examples of conduct which clearly sets out what a lawyer should not do in regard to discrimination, harassment, sexual harassment, bullying and reprisals. These expansions serve to illustrate the standards expected of the profession to lawyers, as well as to those who interact with lawyers, such as articulated students, administrative staff and clients.

## Drafting notes

11. The following drafting notes have been provided to assist the Benchers' consideration of the new provisions. Key revisions to the Model Code version include:

- a. Incorporating the language used in *BC Code* rule 2.2-1, commentary [3] and [4] on the scope of the Law Society's regulatory reach into the private lives of lawyers at *BC Code* 6.3-1, commentary [8], 6.3-2, commentary [5], and 6.3-3, commentary [4];
- b. Modifying the language used when a commentary introduces a definition. For example, *BC Code* 6.3-1, commentary [5] has been amended to "Discrimination can be defined as..." from the Model Code language of "Discrimination is...";
- c. Revising how examples are introduced in the commentaries. For example, Model Code 6.3-2, commentary [2] originally said "Examples of behaviour that constitute harassment include, but are not limited to" has been amended in the *BC Code* to read "Harassment can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that are likely to constitute harassment. The examples are not exhaustive." This amended language mirrors that used in *BC Code* rule 3.4-1 commentary [11]. A similar introductory sentence has been added to *BC Code* 6.3-1, commentary [6], 6.3-2, commentary [3], 6.3-3, commentary [2], and 6.3-4, commentary [1];
- d. Adding the commentary "Lawyers should avoid condoning or being willfully blind to conduct in their workplaces that constitutes discrimination", which originally only existed in commentary [3] to Model Code rule 6.3-3, to the provisions on discrimination (*BC Code* 6.3-1) and harassment (*BC Code* 6.3-2), commentaries [7] and [4] respectively;
- e. Amending Model Code 6.3-1 commentary [3] to better represent the experience of Indigenous peoples in Canada;
- f. Removing qualifiers to the different types of biases for clarity and consistency (for example, "internal biases" and "unconscious biases" are now "biases"); and

- g. Making other minor changes for clarity, structure, and drafting preferences in accordance with the *BC Code*.

## Recommendation

The Committee recommends that the Benchers adopt the following resolution:

**BE IT RESOLVED** the Benchers rescind rules 6.3-1 to 6.3-5 of the *Code of Professional Conduct for British Columbia*, and adopt amended rules 6.3-1 to 6.3-4 as recommended by the Ethics and Lawyer Independence Advisory Committee, and set out in the red-lined version of those provisions included in the Committee's memorandum to the Benchers dated July 4, 2023.

Attachments:

- Clean and Red-Lined Amendments to the *Code of Professional Conduct for British Columbia* (DM4081420)

[End of memorandum]



## Redlined – Amendments to the *Code of Professional Conduct for British Columbia*

~~6.3-1 The principles of human rights laws and related case law apply to the interpretation of this section.~~

~~6.3-2 A term used in this section that is defined in human rights legislation has the same meaning as in the legislation.~~

~~6.3-3 A lawyer must not sexually harass any person.~~

~~6.3-4 A lawyer must not engage in any other form of harassment of any person.~~

~~6.3-5 A lawyer must not discriminate against any person.~~

### **Commentary**

~~[1] A lawyer has a special responsibility to comply with the requirements of human rights laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights laws.~~

### **Discrimination**

~~6.3-1 A lawyer must not, directly or indirectly, discriminate against a colleague, employee, client or any other person.~~

### **Commentary**

~~[1] Lawyers are expected to respect the dignity and worth of all persons. A lawyer has a special responsibility to respect and uphold the principles and requirements of human rights and workplace health and safety laws, and to stay apprised of developments in the law pertaining to discrimination and harassment, applicable to them.~~

~~The principles of human rights, workplace health and safety laws, and related case law apply to the interpretation of this Code rule and to Code rules 6.3-2 to 6.3-4. What constitutes discrimination, harassment, and protected grounds continues to evolve over time and may vary by jurisdiction.~~

~~[2] A lawyer engaging in discriminatory or harassing behaviour undermines confidence in the legal profession and our legal system. A lawyer should foster a professional environment that is respectful, accessible, and inclusive, and should strive to recognize their own biases and take particular care to avoid engaging in practices that would reinforce those biases, when offering services to the public and when organizing their workplace.~~

[3] As a result of the history of the colonization of Indigenous peoples in Canada, including ongoing repercussions of the colonial legacy, systemic factors, and biases, Indigenous peoples experience unique challenges in relation to discrimination and harassment. Lawyers should guard against engaging in, allowing, or being willfully blind to actions that constitute discrimination or any form of harassment against Indigenous peoples.

[4] Lawyers should be aware that discrimination includes adverse effects and systemic discrimination, that can arise from organizational policies, practices and cultures that create, perpetuate, or unintentionally result in unequal treatment of a person or persons. Lawyers should consider the distinct needs and circumstances of their colleagues, employees, and clients, and should be alert to biases that may inform these relationships and that serve to perpetuate systemic discrimination and harassment. Lawyers should guard against any express or implicit assumption that another person's views, skills, capabilities, and contributions are necessarily shaped or constrained by their gender, race, Indigeneity, disability or other personal characteristic.

[5] Discrimination can be defined as the distinction, intentional or not, based on grounds related to actual or perceived personal characteristics of an individual or group, that has the effect of imposing burdens, obligations or disadvantages on the individual or group that are not imposed on others, or which withhold or limit access to opportunities, benefits and advantages that are available to other members of society. Harassment may constitute or be linked to discrimination. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will typically constitute discrimination. Human rights laws recognize some actions based on grounds related to actual or perceived personal characteristics of an individual or group are not discriminatory, including for example, establishing or providing programs, services or activities that have the object of ameliorating conditions of those individuals or groups. It is important to recognize that people are multi-faceted, and the intersection of overlapping and interdependent systems of discrimination they may experience.

[6] Discrimination can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that are likely to constitute discrimination. The examples are not exhaustive.

(a) refusing to employ or to continue to employ any person on the basis of any personal characteristic protected by applicable law;

(b) refusing to provide legal services to any person on the basis of any personal characteristic protected by applicable law;

(c) charging higher fees on the basis of any personal characteristic protected by applicable law;

(d) assigning lesser work or paying an employee or staff member less on the basis of any personal characteristic protected by applicable law;

(e) using derogatory racial, gendered, or religious language to describe a person or group of persons;

(f) failing to provide reasonable accommodation to the point of undue hardship;

(g) applying policies regarding leave that are facially neutral (i.e. that apply to all employees equally), but which have the effect of penalizing individuals who take parental leave, in terms of seniority, promotion or partnership;

(h) providing training or mentoring opportunities in a manner that has the effect of excluding any person from such opportunities on the basis of any personal characteristic protected by applicable law;

(i) providing unequal opportunity for advancement by evaluating employees on facially neutral criteria that fail to take into account differential needs and needs requiring accommodation;

(j) comments, jokes or innuendos that cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive; or

(k) instances when any of the above behaviour is directed toward someone because of their association with a group or individual with certain personal characteristics.

[7] Lawyers should avoid condoning or being willfully blind to conduct in their workplaces that constitutes discrimination.

[8] Lawyers are reminded that dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Society may be justified in taking disciplinary action. Generally, however, the Society will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer's professional integrity (see Code rule 2.2-1 commentaries [3] and [4]).

## **Harassment**

**6.3-2** A lawyer must not harass a colleague, employee, client or any other person.

### **Commentary**

[1] Harassment can be defined as an incident or a series of incidents involving physical, verbal or non-verbal conduct (including electronic communications) that might reasonably be expected to cause humiliation, offence or intimidation to the person who is subjected to the conduct. The intent of the lawyer engaging in the conduct is not determinative. Harassment may constitute or be linked to discrimination.

DM4081420

[2] Harassment can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that are likely to constitute harassment. The examples are not exhaustive.

(a) objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome, including comments and displays that demean, belittle, intimidate or cause humiliation or embarrassment;

(b) behaviour that is degrading, threatening or abusive, whether physically, mentally or emotionally;

(c) bullying;

(d) verbal abuse;

(e) abuse of authority where a lawyer uses the power inherent in their position to endanger, undermine, intimidate, or threaten a person, or otherwise interfere with another person's career;

(f) comments, jokes or innuendos that are known or ought reasonably to be known to cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive; or

(g) assigning work inequitably.

[3] Bullying, including cyberbullying, is a form of harassment. It may involve physical, verbal or non-verbal conduct. It is characterized by conduct that might reasonably be expected to harm or damage the physical or psychological integrity of another person, their reputation or their property. Bullying can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that are likely to constitute bullying. The examples are not exhaustive.

(a) unfair or excessive criticism;

(b) ridicule;

(c) humiliation;

(d) exclusion or isolation;

(e) constantly changing or setting unrealistic work targets; or

(f) threats or intimidation.

[4] Lawyers should avoid condoning or being willfully blind to conduct in their workplaces that constitutes harassment.

[5] Lawyers are reminded that dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Society may be justified in taking disciplinary action. Generally, however, the Society will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer's professional integrity (see Code rule 2.2-1 commentaries [3] and [4]).

### **Sexual harassment**

**6.3-3 A lawyer must not sexually harass a colleague, employee, client or any other person.**

### **Commentary**

[1] Sexual harassment can be defined as an incident or series of incidents involving unsolicited or unwelcome sexual advances or requests, or other unwelcome physical, verbal, or nonverbal conduct (including electronic communications) of a sexual nature. Sexual harassment can be directed at others based on their gender, gender identity, gender expression, or sexual orientation. The intent of the lawyer engaging in the conduct is not determinative. Sexual harassment may occur:

- (a) when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the person who is subjected to the conduct;
- (b) when submission to such conduct is implicitly or explicitly made a condition for the provision of professional services;
- (c) when submission to such conduct is implicitly or explicitly made a condition of employment;
- (d) when submission to or rejection of such conduct is used as a basis for any employment decision, including;
  - (i) loss of opportunity;
  - (ii) the allocation of work;
  - (iii) promotion or demotion;
  - (iv) remuneration or loss of remuneration;
  - (v) job security; or
  - (vi) benefits affecting the employee;

(e) when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment;

(f) when a position of power is used to import sexual requirements into the workplace and negatively alter the working conditions of employees or colleagues; or

(g) when a sexual solicitation or advance is made by a lawyer who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the lawyer making the solicitation or advance knows or ought reasonably to know that it is unwelcome.

[2] Sexual harassment can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that are likely to constitute sexual harassment. The examples are not exhaustive.

(a) displaying sexualized or other demeaning or derogatory images;

(b) sexually suggestive or intimidating comments, gestures or threats;

(c) comments, jokes that cause humiliation, embarrassment or offence, or which by their nature, and in their context, are clearly embarrassing, humiliating or offensive;

(d) innuendoes, leering or comments about a person's dress or appearance;

(e) gender-based insults or sexist remarks;

(f) communications with sexual overtones;

(g) inquiries or comments about a person's sex life;

(h) sexual flirtations, advances, propositions, invitations or requests;

(i) unsolicited or unwelcome physical contact or touching;

(j) sexual violence; or

(k) unwanted contact or attention, including after the end of a consensual relationship.

[3] Lawyers should avoid condoning or being willfully blind to conduct in their workplaces that constitutes sexual harassment.

[4] Lawyers are reminded that dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Society may be justified in taking disciplinary action. Generally, however, the Society will not be

concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer's professional integrity (see Code rule 2.2-1 commentaries [3] and [4]).

### **Reprisal**

**6.3-4** A lawyer must not engage or participate in reprisals against a colleague, employee, client or any other person because that person has:

- (a) inquired about their rights or the rights of others;
- (b) made or contemplated making a complaint of discrimination, harassment or sexual harassment;
- (c) witnessed discrimination, harassment or sexual harassment; or
- (d) assisted or contemplated assisting in any investigation or proceeding related to a complaint of discrimination, harassment or sexual harassment.

### **Commentary**

**[1]** The purpose of this Code rule is to enable people to exercise their rights without fear of reprisal. Conduct that is intended to retaliate against a person, or discourage a person from exploring their rights, can constitute reprisal. Reprisals can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that are likely to constitute reprisals. The examples are not exhaustive.

- (a) refusing to employ or to continue to employ any person;
- (b) penalizing any person with respect to that person's employment or changing, in a punitive way, any term, condition or privilege of that person's employment;
- (c) intimidating, retaliating against or coercing any person;
- (d) imposing a pecuniary or any other penalty, loss or disadvantage on any person;
- (e) changing a person's workload in a disadvantageous manner, or withdrawing opportunities from them; or
- (f) threatening to do any of the foregoing.

## **Clean – Amendments to the *Code of Professional Conduct for British Columbia***

### **Discrimination**

**6.3-1** A lawyer must not, directly or indirectly, discriminate against a colleague, employee, client or any other person.

### **Commentary**

[1] Lawyers are expected to respect the dignity and worth of all persons. A lawyer has a special responsibility to respect and uphold the principles and requirements of human rights and workplace health and safety laws, and to stay apprised of developments in the law pertaining to discrimination and harassment, applicable to them.

The principles of human rights, workplace health and safety laws, and related case law apply to the interpretation of this Code rule and to Code rules 6.3-2 to 6.3-4. What constitutes discrimination, harassment, and protected grounds continues to evolve over time and may vary by jurisdiction.

[2] A lawyer engaging in discriminatory or harassing behaviour undermines confidence in the legal profession and our legal system. A lawyer should foster a professional environment that is respectful, accessible, and inclusive, and should strive to recognize their own biases and take particular care to avoid engaging in practices that would reinforce those biases, when offering services to the public and when organizing their workplace.

[3] As a result of the history of the colonization of Indigenous peoples in Canada, including ongoing repercussions of the colonial legacy, systemic factors, and biases, Indigenous peoples experience unique challenges in relation to discrimination and harassment. Lawyers should guard against engaging in, allowing, or being willfully blind to actions that constitute discrimination or any form of harassment against Indigenous peoples.

[4] Lawyers should be aware that discrimination includes adverse effects and systemic discrimination, that can arise from organizational policies, practices and cultures that create, perpetuate, or unintentionally result in unequal treatment of a person or persons. Lawyers should consider the distinct needs and circumstances of their colleagues, employees, and clients, and should be alert to biases that may inform these relationships and that serve to perpetuate systemic discrimination and harassment. Lawyers should guard against any express or implicit assumption that another person's views, skills, capabilities, and contributions are necessarily shaped or constrained by their gender, race, Indigeneity, disability or other personal characteristic.

[5] Discrimination can be defined as the distinction, intentional or not, based on grounds related to actual or perceived personal characteristics of an individual or group, that has the effect of



imposing burdens, obligations or disadvantages on the individual or group that are not imposed on others, or which withhold or limit access to opportunities, benefits and advantages that are available to other members of society. Harassment may constitute or be linked to discrimination. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will typically constitute discrimination. Human rights laws recognize some actions based on grounds related to actual or perceived personal characteristics of an individual or group are not discriminatory, including for example, establishing or providing programs, services or activities that have the object of ameliorating conditions of those individuals or groups. It is important to recognize that people are multi-faceted, and the intersection of overlapping and interdependent systems of discrimination they may experience.

[6] Discrimination can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that are likely to constitute discrimination. The examples are not exhaustive.

- (a) refusing to employ or to continue to employ any person on the basis of any personal characteristic protected by applicable law;
- (b) refusing to provide legal services to any person on the basis of any personal characteristic protected by applicable law;
- (c) charging higher fees on the basis of any personal characteristic protected by applicable law;
- (d) assigning lesser work or paying an employee or staff member less on the basis of any personal characteristic protected by applicable law;
- (e) using derogatory racial, gendered, or religious language to describe a person or group of persons;
- (f) failing to provide reasonable accommodation to the point of undue hardship;
- (g) applying policies regarding leave that are facially neutral (i.e. that apply to all employees equally), but which have the effect of penalizing individuals who take parental leave, in terms of seniority, promotion or partnership;
- (h) providing training or mentoring opportunities in a manner that has the effect of excluding any person from such opportunities on the basis of any personal characteristic protected by applicable law;
- (i) providing unequal opportunity for advancement by evaluating employees on facially neutral criteria that fail to take into account differential needs and needs requiring accommodation;

(j) comments, jokes or innuendos that cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive; or

(k) instances when any of the above behaviour is directed toward someone because of their association with a group or individual with certain personal characteristics.

[7] Lawyers should avoid condoning or being willfully blind to conduct in their workplaces that constitutes discrimination.

[8] Lawyers are reminded that dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Society may be justified in taking disciplinary action. Generally, however, the Society will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer's professional integrity (see Code rule 2.2-1 commentaries [3] and [4]).

## **Harassment**

**6.3-2** A lawyer must not harass a colleague, employee, client or any other person.

### **Commentary**

[1] Harassment can be defined as an incident or a series of incidents involving physical, verbal or non-verbal conduct (including electronic communications) that might reasonably be expected to cause humiliation, offence or intimidation to the person who is subjected to the conduct. The intent of the lawyer engaging in the conduct is not determinative. Harassment may constitute or be linked to discrimination.

[2] Harassment can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that are likely to constitute harassment. The examples are not exhaustive.

(a) objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome, including comments and displays that demean, belittle, intimidate or cause humiliation or embarrassment;

(b) behaviour that is degrading, threatening or abusive, whether physically, mentally or emotionally;

(c) bullying;

(d) verbal abuse;

(e) abuse of authority where a lawyer uses the power inherent in their position to endanger, undermine, intimidate, or threaten a person, or otherwise interfere with another person's career;

(f) comments, jokes or innuendos that are known or ought reasonably to be known to cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive; or

(g) assigning work inequitably.

**[3]** Bullying, including cyberbullying, is a form of harassment. It may involve physical, verbal or non-verbal conduct. It is characterized by conduct that might reasonably be expected to harm or damage the physical or psychological integrity of another person, their reputation or their property. Bullying can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that are likely to constitute bullying. The examples are not exhaustive.

(a) unfair or excessive criticism;

(b) ridicule;

(c) humiliation;

(d) exclusion or isolation;

(e) constantly changing or setting unrealistic work targets; or

(f) threats or intimidation.

**[4]** Lawyers should avoid condoning or being willfully blind to conduct in their workplaces that constitutes harassment.

**[5]** Lawyers are reminded that dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Society may be justified in taking disciplinary action. Generally, however, the Society will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer's professional integrity (see Code rule 2.2-1 commentaries [3] and [4]).

### **Sexual harassment**

**6.3-3** A lawyer must not sexually harass a colleague, employee, client or any other person.

### **Commentary**

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[1] Sexual harassment can be defined as an incident or series of incidents involving unsolicited or unwelcome sexual advances or requests, or other unwelcome physical, verbal, or nonverbal conduct (including electronic communications) of a sexual nature. Sexual harassment can be directed at others based on their gender, gender identity, gender expression, or sexual orientation. The intent of the lawyer engaging in the conduct is not determinative. Sexual harassment may occur:

- (a) when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the person who is subjected to the conduct;
- (b) when submission to such conduct is implicitly or explicitly made a condition for the provision of professional services;
- (c) when submission to such conduct is implicitly or explicitly made a condition of employment;
- (d) when submission to or rejection of such conduct is used as a basis for any employment decision, including;
  - (i) loss of opportunity;
  - (ii) the allocation of work;
  - (iii) promotion or demotion;
  - (iv) remuneration or loss of remuneration;
  - (v) job security; or
  - (vi) benefits affecting the employee;
- (e) when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment;
- (f) when a position of power is used to import sexual requirements into the workplace and negatively alter the working conditions of employees or colleagues; or
- (g) when a sexual solicitation or advance is made by a lawyer who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the lawyer making the solicitation or advance knows or ought reasonably to know that it is unwelcome.

[2] Sexual harassment can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that are likely to constitute sexual harassment. The examples are not exhaustive.

- (a) displaying sexualized or other demeaning or derogatory images;
- (b) sexually suggestive or intimidating comments, gestures or threats;
- (c) comments, jokes that cause humiliation, embarrassment or offence, or which by their nature, and in their context, are clearly embarrassing, humiliating or offensive;
- (d) innuendoes, leering or comments about a person's dress or appearance;
- (e) gender-based insults or sexist remarks;
- (f) communications with sexual overtones;
- (g) inquiries or comments about a person's sex life;
- (h) sexual flirtations, advances, propositions, invitations or requests;
- (i) unsolicited or unwelcome physical contact or touching;
- (j) sexual violence; or
- (k) unwanted contact or attention, including after the end of a consensual relationship.

[3] Lawyers should avoid condoning or being willfully blind to conduct in their workplaces that constitutes sexual harassment.

[4] Lawyers are reminded that dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Society may be justified in taking disciplinary action. Generally, however, the Society will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer's professional integrity (see Code rule 2.2-1 commentaries [3] and [4]).

## **Reprisal**

**6.3-4** A lawyer must not engage or participate in reprisals against a colleague, employee, client or any other person because that person has:

- (a) inquired about their rights or the rights of others;
- (b) made or contemplated making a complaint of discrimination, harassment or sexual harassment;
- (c) witnessed discrimination, harassment or sexual harassment; or

(d) assisted or contemplated assisting in any investigation or proceeding related to a complaint of discrimination, harassment or sexual harassment.

### **Commentary**

[1] The purpose of this Code rule is to enable people to exercise their rights without fear of reprisal. Conduct that is intended to retaliate against a person, or discourage a person from exploring their rights, can constitute reprisal. Reprisals can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that are likely to constitute reprisals. The examples are not exhaustive.

- (a) refusing to employ or to continue to employ any person;
- (b) penalizing any person with respect to that person's employment or changing, in a punitive way, any term, condition or privilege of that person's employment;
- (c) intimidating, retaliating against or coercing any person;
- (d) imposing a pecuniary or any other penalty, loss or disadvantage on any person;
- (e) changing a person's workload in a disadvantageous manner, or withdrawing opportunities from them; or
- (f) threatening to do any of the foregoing.

# Quarterly Financial Report

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**May 2023 YTD**

Prepared for: Finance & Audit Committee Meeting – July 11, 2023  
Bencher Meeting – July 14, 2023

Prepared by: Finance Department

## Quarterly Financial Report – May 2023 YTD

Attached are the financial results and highlights to the end of May 2023.

### General Fund (excluding capital and TAF)

To the end of May 2023, the General Fund operations resulted in a positive variance to budget. This positive result is due to higher interest income and fines and penalties revenue combined with lower operating expenses primarily due to timing differences.

### Revenue

As noted on the attached financial highlights, total revenue for the period was \$13.8 million, \$0.5 million (4%) ahead of budget.

This increase is due to interest rates in 2023 being four times higher in the first five months of the year than the beginning of 2022 while the 2023 budget projected that interest rates would double, along with higher administrative penalties.

### Operating Expenses

Operating expenses for the period were \$12.4 million, \$1.2 million (9%) below budget due to timing differences. Timing differences relate mainly to the timing of software maintenance costs, external counsel fees, meeting and travel costs, and compensation costs.

In addition, the Single Legal Regulator project is being funded from net assets/reserves, with \$76,000 spent to date.

### TAF-related Revenue and Expenses

TAF revenue for the first quarter (second quarter is received in July) was \$632,000, below budget \$324,000 as a result of the down turn in the real estate market in 2023. BCREA forecasts that real estate unit sales will decline 7% from 2022 levels. It is expected that this decline will result in lower TAF revenue for the year.

Trust assurance program costs are close to budget.



## Lawyers Indemnity Fund

LIF fee revenue was \$7.3 million, close to budget. LIF operating expenses were \$4.2 million, \$700,000 under budget, with savings in compensation costs, liability insurance, and external fees.

All investment sectors for LIF investments had positive returns YTD except for real estate which was down 1.1%. Strong foreign equities returns have been the biggest contributor resulting in the overall YTD return of 3.44%, which was slightly under the benchmark return of 3.97% mainly due to the lower real estate investment return versus the real estate benchmark. The market value of the LIF long term investment portfolio was \$243 million, an increase of \$8.1 million since December 2022.

# Law Society of British Columbia

## Summary of Financial Highlights

(\$000's)

### 2023 General Fund Results - YTD May 2023 (Excluding Capital Allocation & Depreciation)

	Actual	Budget	\$ Var	% Var
<b>Revenue (excluding capital)</b>				
Practice Fees	10,793	10,766	27	0%
PLTC and Enrolment Fees	547	544	3	1%
Electronic Filing Revenue	308	397	(89)	-22%
Interest Income	661	285	376	132%
Registration and Licensing	364	351	13	4%
Fines, Penalties & Recoveries	376	259	117	45%
Insurance Recoveries	18	13	5	0%
Other Revenue	71	56	15	27%
Other Cost Recoveries	45	53	(8)	-
Building Revenue & Tenant Cost Recoveries	624	582	42	7%
	<u>13,806</u>	<u>13,306</u>	<u>500</u>	<u>4%</u>
<b>Expenses (excluding depreciation)</b>	<u>12,421</u>	<u>13,621</u>	<u>1,200</u>	<u>9%</u>
	<u><u>1,385</u></u>	<u><u>(315)</u></u>	<u><u>1,700</u></u>	

### Summary of Variances - YTD May 2023

#### Revenue Variances:

##### Permanent Variances

Interest Income - rates are 4x higher since early 2022 while the budget projected that rates would be 2x	376
Fines, Penalties, & Recoveries - new administrative penalties program	117
Building Revenue & Tenant Cost Recoveries - higher tenant operating cost recoveries	42
Practice Fees - 2023 Budget 14,128 vs 2023 Q2 Forecast 14,341 practicing lawyers	27
Electronic Filing Revenue - 7% reduction forecasted for real estate market in 2023	(89)
	<u>472</u>

##### Timing Differences

Other timing differences	28
	<u>500</u>

#### Expense Variances:

##### Permanent Variances

Single Legal Regulator - project costs funded from net assets	(76)
Information Services - Office 365 deferred to 2024/2025	60
PLTC - Delivered remotely so travel and facilities costs will not be spent	32

##### Timing Differences

Information Services - Software costs not yet spent - Finance system, Custodianship storage, Adobe	229
External counsel fees - Savings from new staff in Prof Conduct, timing in Credentials	166
Meetings and travel timing - Call ceremonies, Benchers, staff	140
Compensation savings - additional staff vacancies and lower benefit costs	96
HR - timing of recruitment, consulting, and training costs	77
Practice Review files - co-reviewer fees and medical reports	55
Investigations - professional services and dues	48
Lawyer Education Advisory Committee - consulting	41
Operations - cleaning services and office supplies	32
Alternative Processes Program costs	32
Custodianship - storage costs	22
Other misc timing differences	246
	<u>1,200</u>

### Trust Assurance Program - YTD May 2023

	Actual	Budget	Variance	% Var
<b>TAF Revenue</b>				
Trust Assurance Department	632	956	(324)	-34%
	1,503	1,525	22	1%
<b>Net Trust Assurance Program</b>	<u>(871)</u>	<u>(569)</u>	<u>(302)</u>	

### 2023 Lawyers Indemnity Fund Long Term Investments - YTD May 2023

<b>Performance - Before investment fees</b>	3.44%
<b>Benchmark Performance</b>	3.97%

**The Law Society of British Columbia**  
**General Fund**  
**Results for the 5 Months ended May 31, 2023**  
(\$000's)

	2023 Actual	2023 Budget	\$ Variance	%
<b>REVENUE</b>				
Practice fees (1)	12,563	12,546	17	0%
PLTC and enrolment fees	547	544	3	1%
Electronic filing revenue	308	392	(84)	-21%
Interest income	661	285	376	132%
Registration and Licensing services	364	351	13	4%
Fines, penalties and recoveries	376	259	117	45%
Program Cost Recoveries	44	52	(8)	-15%
Insurance Recoveries	18	13	5	38%
Other revenue	71	56	15	27%
Other Cost Recoveries	1	1	-	0%
Building Revenue & Recoveries	624	582	42	7%
<b>Total Revenues</b>	<b>15,577</b>	<b>15,081</b>	<b>496</b>	<b>3.3%</b>
<b>EXPENSES</b>				
<b>Governance and Events</b>				
Governance	415	357	(58)	-16%
Board Relations and Events	116	116	-	0%
	<b>531</b>	<b>473</b>	<b>(58)</b>	<b>-12%</b>
<b>Corporate Services</b>				
General Office	287	313	26	8%
CEO Department	351	334	(17)	-5%
Finance	548	493	(55)	-11%
Human Resources	265	327	62	19%
Records Management	98	109	11	10%
	<b>1,549</b>	<b>1,576</b>	<b>27</b>	<b>2%</b>
<b>Education and Practice</b>				
Licensing and Admissions	685	880	195	22%
PLTC and Education	1,218	1,360	142	10%
Practice Standards	152	224	72	32%
Practice Support	-	9	9	100%
	<b>2,055</b>	<b>2,473</b>	<b>418</b>	<b>17%</b>
<b>Communications and Information Services</b>				
Communications	256	254	(2)	-1%
Information Services	926	1,193	267	22%
	<b>1,182</b>	<b>1,447</b>	<b>265</b>	<b>18%</b>
<b>Policy and Legal Services</b>				
Policy and Legal Services	699	654	(45)	-7%
Tribunal and Legislative Counsel	360	336	(24)	-7%
External Litigation & Interventions	-	8	8	100%
Unauthorized Practice	119	134	15	11%
	<b>1,178</b>	<b>1,132</b>	<b>(46)</b>	<b>-4%</b>

**The Law Society of British Columbia**  
**General Fund**  
**Results for the 5 Months ended May 31, 2023**  
(\$000's)

	<b>2023 Actual</b>	<b>2023 Budget</b>	<b>\$ Variance</b>	<b>%</b>
<b>Regulation</b>				
CLO Department	376	484	108	22%
Intake & Early Assessment	974	1,045	71	7%
Discipline	1,051	1,155	104	9%
Forensic Accounting	340	374	34	9%
Investigations, Monitoring & Enforcement	1,518	1,693	175	10%
Custodianships	811	839	28	3%
	<u>5,070</u>	<u>5,590</u>	<u>520</u>	<u>9%</u>
<b>Building Occupancy Costs</b>	886	928	42	5%
<b>Depreciation</b>	434	498	64	13%
<b>Total Expenses</b>	<u>12,885</u>	<u>14,118</u>	<u>1,232</u>	<u>8.7%</u>
<b>General Fund Results before Trust Assurance Program</b>	<b>2,692</b>	<b>963</b>	<b>1,728</b>	
<b>Trust Assurance Program (TAP)</b>				
TAF revenues	632	956	(324)	-33.9%
TAP expenses	1,503	1,525	22	1.4%
<b>TAP Results</b>	<b>(871)</b>	<b>(569)</b>	<b>(302)</b>	<b>-53.1%</b>
<b>General Fund Results including Trust Assurance Program</b>	<b>1,821</b>	<b>394</b>	<b>1,426</b>	
<b>Contribution from Trust Assurance Program to Lawyers Insurance Fund</b>	-			
<b>General Fund Results</b>	<u><u>1,821</u></u>			

(1) Membership fees include capital allocation of 1771k (Capital allocation budget = 1780k)

**The Law Society of British Columbia**  
**General Fund - Balance Sheet**  
**As at May 31, 2023**  
(\$000's)

	<b>May 31 2023</b>	<b>May 31 2022</b>
<b>Assets</b>		
<b>Current assets</b>		
Cash and cash equivalents	31,630	31,918
Unclaimed trust funds	2,224	2,186
Accounts receivable and prepaid expenses	3,470	4,231
Short Term Loan Receivable		
Due from Lawyers Insurance Fund	10,517	5,970
	<u>47,841</u>	<u>44,305</u>
<b>Property, plant and equipment</b>		
Cambie Street property	10,366	10,518
Other - net	2,126	2,042
	<u>12,492</u>	<u>12,560</u>
<b>Long Term Loan</b>		535
	<u><u>60,333</u></u>	<u><u>57,400</u></u>
<b>Liabilities</b>		
<b>Current liabilities</b>		
Accounts payable and accrued liabilities	3,157	3,129
Liability for unclaimed trust funds	2,224	2,186
Deferred revenue	16,382	15,750
Deposits	89	89
	<u>21,852</u>	<u>21,154</u>
<b>Net assets</b>		
Capital Allocation	5,692	4,803
Unrestricted Net Assets	32,789	31,443
	<u>38,481</u>	<u>36,246</u>
	<u><u>60,333</u></u>	<u><u>57,400</u></u>

**The Law Society of British Columbia**  
**General Fund - Statement of Changes in Net Assets**  
**Results for the 5 Months ended May 31, 2023**  
(\$000's)

	<i>Invested in Capital</i> \$	<i>Working Capital</i> \$	<b>Unrestricted Net Assets</b> \$	<b>Trust Assurance</b> \$	<b>Capital Allocation</b> \$	<b>2023 Total</b> \$	<b>Year ended 2022 Total</b> \$
<b>Net assets - At Beginning of Year</b>	12,223	17,766	29,989	1,868	4,803	36,660	33,724
Net (deficiency) excess of revenue over expense for the period	(613)	1,534	921	(871)	1,771	1,821	2,934
Contribution to LIF				-		-	
Purchase of capital assets:						-	
LSBC Operations	214	-	214	-	(214)	-	-
845 Cambie	668	-	668	-	(668)	-	-
<b>Net assets - At End of Period</b>	<b>12,492</b>	<b>19,300</b>	<b>31,792</b>	<b>997</b>	<b>5,692</b>	<b>38,481</b>	<b>36,660</b>

**The Law Society of British Columbia**  
**Lawyers Indemnity Fund**  
**Results for the 5 Months ended May 31, 2023**  
(\$000's)

	<b>2023</b>	<b>2023</b>	<b>\$</b>	<b>%</b>
	<b>Actual</b>	<b>Budget</b>	<b>Variance</b>	<b>Variance</b>
<b>Revenue</b>				
Annual assessment	7,298	7,266	32	0%
Investment income	8,623	4,850	3,773	78%
Other income	104	27	77	285%
<b>Total Revenues</b>	<b>16,025</b>	<b>12,143</b>	<b>3,882</b>	<b>32.0%</b>
<b>Expenses</b>				
<b>Insurance Expense</b>				
Provision for settlement of claims	6,605	6,605	-	0%
Salaries and benefits	1,317	1,580	263	17%
Contribution to program and administrative costs of General Fund	674	653	(21)	-3%
Insurance	724	968	244	25%
Office	246	407	161	40%
Actuaries, consultants and investment brokers' fees	772	769	(3)	0%
	10,354	10,982	628	6%
<b>Loss Prevention Expense</b>				
Contribution to co-sponsored program costs of General Fund	477	525	48	9%
<b>Total Expenses</b>	<b>10,831</b>	<b>11,507</b>	<b>676</b>	<b>5.9%</b>
<b>Lawyers Indemnity Fund Results before Contributions</b>	<b>5,194</b>	<b>636</b>	<b>4,558</b>	
Contribution from Trust Assurance Program	-			
<b>Lawyers Indemnity Fund Results</b>	<b>5,194</b>	<b>636</b>	<b>4,558</b>	

**The Law Society of British Columbia**  
**Lawyers Indemnity Fund - Balance Sheet**  
**As at May 31, 2023**  
(\$000's)

	May 31 2023	May 31 2022
<b>Assets</b>		
Cash and cash equivalents	1,660	1,599
Accounts receivable and prepaid expenses	1,004	735
Investments	243,535	228,046
	<u>246,199</u>	<u>230,380</u>
<b>Liabilities</b>		
Accounts payable and accrued liabilities	701	186
Deferred revenue	10,416	10,220
Due to General Fund	10,517	5,970
Provision for claims	78,615	75,153
Provision for ULAE	13,899	12,399
	<u>114,148</u>	<u>103,928</u>
<b>Net assets</b>		
Internally restricted net assets	17,500	17,500
Unrestricted net assets	114,551	108,952
	<u>132,051</u>	<u>126,452</u>
	<u>246,199</u>	<u>230,380</u>



***The Law Society of British Columbia  
Lawyers Indemnity Fund - Statement of Changes in Net Assets  
Results for the 5 Months ended May 31, 2023***

	Unrestricted \$	Internally Restricted \$	2023 Total \$	2022 Total \$
<b>Net assets - At Beginning of Year</b>	109,357	17,500	126,857	142,728
Net excess of revenue over expense for the period	5,194	-	5,194	(15,871)
<b>Net assets - At End of Period</b>	<b>114,551</b>	<b>17,500</b>	<b>132,051</b>	<b>126,857</b>

## **2023 General Fund Forecast**

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**As at May 2023**

Prepared for: Finance & Audit Committee Meeting – July 11, 2023  
Bencher Meeting – July 14, 2023

Prepared by: Finance Department

## Forecast - as at May 2023

Attached is the General Fund forecast to the end of the fiscal year.

### Overview

Based on results to the end of May 2023, we are projecting a positive result of \$301,000 for the year. As the 2023 budget was a \$775,000 deficit budget, this is a positive variance of \$1.1 million entirely due to additional revenues.

### Revenue Forecast

At this time, total revenue is projected at \$33.5 million, \$1.1 million (3%) ahead of budget, mainly due to much higher interest rates, along with slightly higher practicing lawyers and additional fines and penalties revenue.

**Practice Fees:** The 2023 practice fee budget was set based on 14,128 practicing lawyers. The number of practicing lawyers in 2022 increased 3.9%, the highest increase ever, leading to a higher number of practicing lawyers in 2023. We are projecting 14,306 practicing lawyers in 2023, 3.4% over 2022 levels, resulting in additional practice fee revenue of \$231,000.

**PLTC Revenue:** We are projecting 633 PLTC students this year compared to 627 budgeted, very close to budget.

**Interest Revenue:** Since early 2022, interest rates have quadrupled while the 2023 budget projected interest rates to double. This steep increase in interest rates is projected to bring in \$1.5 million in interest income, \$800,000 over budget.

**Fines, penalties, and recoveries:** This revenue source is projected to be over budget \$180,000 with higher trust and discipline fines and penalties, and administrative penalties.

### Operating Expense Forecast

Total operating expenses are projected to be at budget for the year, at \$33.2 million. Additional costs are expected for external counsel fees, Single Legal Regulator costs and the development of the principal training course, which will be offset by savings in PLTC travel and facility costs, staff compensation costs, and the deferred implementation of certain software programs.

**The Law Society of British Columbia**  
**General Fund**  
**For the 12 Months ending December 31, 2023**  
(\$000's)

	Forecast	Budget	\$	%
			Variance	
<b>REVENUE</b>				
Practice fees	26,069	25,838	231	1%
PLTC and enrolment fees	1,874	1,856	18	1%
Electronic filing revenue	902	966	(64)	-7%
Interest income	1,477	685	792	116%
Registration and licensing	843	843	-	0%
Fines, penalties and recoveries	632	454	178	39%
Program Cost Recoveries	126	126	-	0%
Insurance Recoveries	20	20	-	0%
Other revenue	193	193	-	0%
Building Revenue & Recoveries	1,316	1,397	(81)	-6%
<b>Total Revenues</b>	<b>33,466</b>	<b>32,392</b>	<b>1,074</b>	<b>3%</b>
<b>EXPENSES</b>				
<b>Benchers Governance and Events</b>				
Bencher Governance	629	600	(29)	-5%
Board Relations and Events	292	294	2	1%
	921	894	(27)	-3%
<b>Corporate Services</b>				
General Office	755	767	12	2%
CEO Department	900	871	(29)	-3%
Finance	1,314	1,238	(76)	-6%
Human Resources	818	826	8	1%
Records Management	328	326	(2)	-1%
	4,115	4,028	(87)	-2%
<b>Education and Practice</b>				
Licensing and Admissions	2,067	2,232	165	7%
PLTC and Education	3,353	3,554	201	6%
Practice Standards	546	546	-	0%
	5,966	6,332	366	6%
<b>Communications and Information Services</b>				
Communications	597	612	15	2%
Information Services	2,064	2,119	55	3%
	2,661	2,731	70	3%
<b>Policy and Legal Services</b>				
Policy and Legal Services	1,982	1,795	(187)	-10%
Tribunal and Legislative Counsel	859	820	(39)	-5%
External Litigation & Interventions	25	25	-	0%
Unauthorized Practice	367	331	(36)	-11%
	3,233	2,971	(262)	-9%
<b>Regulation</b>				
CLO Department	1,165	1,162	(3)	0%
Intake & Early Assessment	2,539	2,586	47	2%
Discipline	3,058	2,978	(80)	-3%
Forensic Accounting	820	920	100	11%
Investigations, Monitoring & Enforcement	4,142	4,254	112	3%
Custodianships	2,228	2,078	(150)	-7%
	13,952	13,978	26	0%
<b>Building Occupancy Costs</b>	2,241	2,233	(8)	0%
SLR and LP initiatives	76	-	(76)	0%
<b>Total Expenses</b>	<b>33,165</b>	<b>33,167</b>	<b>2</b>	<b>0%</b>
<b>General Fund Results</b>	<b>301</b>	<b>(775)</b>	<b>1,076</b>	
<b>Trust Assurance Program (TAP)</b>				
TAF revenues	3,550	3,822	(272)	-7%
TAP expenses	3,722	3,722	-	0%
<b>TAP Results</b>	<b>(172)</b>	<b>100</b>	<b>(272)</b>	
<b>General Fund Results including Trust Assurance Program</b>	<b>128</b>	<b>(675)</b>	<b>803</b>	

## **2023 Mid-Year Update**

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### **Advisory Committees and Task Forces**

**July 14, 2023**

Prepared for: Benchers

Prepared by: Policy and Planning Staff

Purpose: For information

DM4074840

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## Introduction

1. The following provides a very brief update from the Advisory Committees and Task Forces regarding progress on initiatives this year so far, and plans for the balance of the year.

### Access to Justice Advisory Committee

2. The Committee has considered a number of issues so far this year, including providing feedback to the Law Foundation of BC regarding the allocation of the Access to Justice Fund, and how best to advance Recommendation 2 of its 2021 report to the Benchers on COVID-19 and access to justice regarding maintain and expanding justice system responses enacted to address the pandemic. Additionally, the Committee has begun its discussion and analysis of alternative business structures and Multi-Disciplinary Practices in the context of access to justice, and anticipates making recommendations in December.

### Equity, Diversity and Inclusion Advisory Committee

3. A central focus for the Committee has been addressing concerns about the adverse impact of the return to practice requirements under Rule 2-89 on equity, diversity and inclusion. The matter is now with Credentials Committee for consideration, with the goal of the two Committees developing a joint recommendation for the Benchers. The Committee has also provided feedback on the Ethics & Lawyer Independence Advisory Committee's proposed approach to incorporating the recent amendments to the Model Code's discrimination, harassment, and sexual harassment provisions into the *Code of Professional Conduct for British Columbia*, as well as reviewing staff's proposal regarding updating EDI-focused practice resources. In the coming months the Committee will consider potential future initiatives in regard to the Law Society collecting demographic data from the profession, and the implementation status of the priorities identified in the Diversity Action Plan.

### Truth and Reconciliation Advisory Committee

4. The Committee has considered a number of issues so far this year, including amendments to the Barristers and Solicitors' Oath to better incorporate and reflect the Constitution's recognition and affirmation of the Aboriginal and treaty rights of First Nations, Inuit and Métis peoples, future potential updates to the functionality of the Lawyer Directory, and the Ethics & Lawyer Independence Advisory Committee's proposed approach to incorporating the recent amendments to the Model Code's discrimination, harassment, and sexual harassment provisions into the *Code of Professional Conduct for British Columbia*. The Committee looks forward to continued collaboration with the new Senior Advisor, Indigenous Engagement.

### **Ethics and Lawyer Independence Advisory Committee**

5. The main focus of the Committee so far this year has been reviewing and preparing a recommendation to the Benchers for the incorporation of the Model Code's amendments to the discrimination, harassment, and sexual harassment provisions in section 6.3 of the *Code of Professional Conduct for British Columbia*. The Committee also continues to oversee the rule of law high school essay contest and the annual rule of law lecture, as well as monitor developments and draft articles on lawyer independence and the rule of law.

### **Indigenous Engagement in Regulatory Matters Task Force**

6. The Report of the Indigenous Engagement in Regulatory Matters Task Force was discussed at the April 28, 2023 Bencher meeting, and will be considered for decision at the Bencher meeting on July 14, 2023.

### **Lawyer Development Task Force**

7. Earlier this year, the Task Force's recommendation of a mandatory principal training course was approved by the Benchers and is currently under development. The Task Force is overseeing the development of a competency framework for lawyer licensing, which is occurring in cooperation between the law societies of British Columbia, Alberta, Saskatchewan, and Manitoba, and is expected to be finalized in early 2024. The Task Force has also discussed possible alternatives to articling that can be explored once the competency framework has been further developed. Additionally, the Task Force has been working on its recommendations for minimum pay and maximum hour standards for articulated students, with a recommendation report to the Benchers anticipated for early fall 2023.

### **Mental Health Task Force**

8. In January, the recommendations of the Task Force in its fourth Recommendation Report were unanimously approved by the Benchers. The Report contained three new recommendations, including creating a roster of pro bono support counsel to assist lawyers who fail to respond to Law Society communications for reasons that may be related to mental health issues, adopting expert systems tools to enhance support and resources regarding mental health for lawyers, and hosting a mental health forum regarding the findings and recommendations of the *National Study on the Psychological Health Determinants of Legal Professionals in Canada* (the "National Study"). A number of activities supporting the implementation of these and the Task Force's previous recommendations are underway. The Task Force is currently reviewing the National Study recommendations to inform the Task Force's final report, which will also include a transition plan that addresses how the Law Society will continue to support mental health related initiatives once the Task Force's tenure concludes.

## **Trust Review Task Force**

9. Trust Review Task Force has considered relevant recommendations from the Cullen Commission Report, feedback from a consultation with the profession, and input from staff. In addition to considering the relevant recommendations from the Cullen Report, the Task Force has engaged in a preliminary analysis of numerous rules in Part 3 Division 7 of the Rules, and is on track to meet its December 2023 reporting requirement.



# Trust Review Task Force Status Update Report

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## Trust Review Task Force

Brook Greenberg, K.C. (Chair)  
Lindsay R. LeBlanc (Vice-Chair)  
Richard H. Bell  
James K. Fraser  
Graham Fulton  
Joan Letendre  
Cheryl L. Martin  
Michèle Ross  
Kevin B. Westell

**Date: July 14, 2023**

Prepared for: Benchers

Prepared by: Policy and Planning Staff

Purpose: For Information

## I. Introduction

1. The Trust Review Task Force was established in July 2022. Its mandate includes providing a final report to the Benchers with any recommendations no later than December 31, 2023.<sup>1</sup>
2. The purpose of this report is to provide a status update on the Task Force’s work. The relevant recommendations regarding the handling of trust funds and management of trust accounts in the Cullen Commission of Inquiry into Money Laundering in British Columbia (“Cullen Report”) dated June 2022 are appended (see **Appendix 1**). The Task Force does not make any of its own recommendations at this point, as its ongoing work may lead to its preliminary views being modified.

## II. Task Force Process

3. The Task Force has met five times. It is supported by staff from the Trust Regulation, Professional Conduct, Practice Advice, and Policy and Planning departments.
4. In addition to drawing on their own knowledge and experience, Task Force members reviewed materials from staff analyzing the Cullen Report. The Task Force also reviewed feedback from an online consultation and feedback from staff experts.

## III. Summaries of meetings and issues discussed

5. The Task Force considered recommendations 55-59 and 62 from the Cullen Report, and a range of trust accounting rules, which are summarized below.

**(a) Recommendation 55: amend Rule 3-59 to make it explicit that any cash received under the professional fees exception to the cash transactions rule must be commensurate with the amount required for a retainer or reasonably anticipated fees.**

6. The Task Force discussed the professional fee exception to the cash transactions rule and the concept that the cash accepted should be commensurate with the anticipated fees and disbursements to be billed on the client matter. The Task Force’s discussion included consideration of how “commensurate” could be given meaning.

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<sup>1</sup> The Task Force’s Terms of Reference are available here:

[https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/committees/terms\\_TrustReview.pdf](https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/committees/terms_TrustReview.pdf).

**(b) Recommendation 56: amend the client identification and verification rules to explain what is required when inquiring into a client’s source of money.**

7. In the discussion in the Cullen Commission Report relating to this recommendation, particular reference was made to the information on the topic that had been specified and set out in the fall 2019 Benchers’ Bulletin.
8. The Task Force’s discussion considered that when a lawyer makes inquiries into a client’s “source of money”, the lawyer relies on the client to be truthful as to its source, and recognized that where the client’s source of money comes from a third party (such as where the client is a developer), it may be difficult for the lawyer to make the necessary inquiries.
9. The analysis included a review of the information the Law Society provides to lawyers, such as [“Client ID & Verification – Frequently asked questions”](#) and the commentary to *BC Code* rule 3.2-7.
10. The Task Force discussed the value of including (or retaining) objective criteria in both the rule and the Law Society’s practice resources relating to source of money, to improve compliance.

**(c) Recommendation 57: extend the ambit of the client identification and verification rules to include the situations in which a lawyer is truly acting as a gatekeeper.**

11. In discussing matters like Client Identification Verification (CIV) and Anti-Money Laundering (AML) the Task Force recognizes that this work takes place nationally through the Federation of Law Societies, and any recommendations it ultimately makes regarding CIV and AML have to reflect that process.
12. The analysis included consideration of the potential role for technology that assesses indicia of fraud, to assist the lawyer in making the assessment, as well as the value of current, user-friendly guidelines or a handbook to assist lawyers in this work, such as the existing checklists, articles, case studies, FAQs, the Advice Decision-Making Assistant, free on-line education programs (e.g. the Anti-Money Laundering Measures webinar) and practice advisors.

**(d) Recommendation 58: amend the Law Society Rules to require lawyers to verify a client’s identity when holding fiduciary property on the client’s behalf.**

13. The Task Force discussed how to reduce the likelihood of a lawyer holding property that may have links to criminality, while not creating solutions that discourage lawyers from holding fiduciary property. The Task Force has discussed whether the Law Society should establish and define a separate category of account for fiduciary property, and that a distinct set of rules (and education materials) be created to govern how lawyers deal with fiduciary property.

**(e) Recommendation 59: amend Rule 3-58.1 of the Law Society Rules to clarify, at a minimum, what is meant by “directly related to legal services” and to consider how to further limit the use of trust accounts so that they are used only when necessary.**

14. The Task Force has discussed a range of matters, recognizing that the intent of Rule 3-58.1 is to ensure that the funds being deposited to and withdrawn from the trust account are directly related to the provision of legal services, and considered how to make the rule more specifically worded. Possible approaches include defining “legal services” as “services provided while undertaking the practice of law,” or the rule could reference “funds that are directly related to the practice of law.”
15. In addition, the Task Force analyzed the concepts of “directly related” standard, “necessary” and explored possible solutions that would not create standards that are too onerous or too ambiguous. The conversation included defining “trust account” and “fiduciary property account” to make clearer distinctions between the related requirements while comforting the profession that they are still holding the funds entrusted to them in a trust capacity.

**(f) Recommendation 62: mandatory AML training for lawyers**

16. The Task Force discussed the value of mandatory AML training, recognizing that its mandate does not include lawyer (or licensee) education, and the value of keeping the materials up-to-date and making them available on an ongoing, free basis for all lawyers who wish to refresh their knowledge and remain current, while not making ongoing training mandatory.

**(g) Discussion of Part 3 Division 7 of the Law Society Rules**

17. Discussions and consideration on this subject have focused on how to improve clarity in the rules, while seeking to balance the public protection requirements of the rules while expressing concepts in a logical and easy to follow manner. The discussions are at the level of identifying foundational principles, from which rules can later be drafted.
18. To date the Task Force has considered the following topics: identifying guiding principles for the accounting rules including: education requirements to operate a trust account, discretion for the Executive Director regarding the application of certain rules, requirement to have a general account, law practice trust accounts, fiduciary property accounts, requirements relating to reconciliation of accounts, reporting requirements for accounts, deposit into trust (including timing of deposits), location of accounts, requirement to use designated savings institutions, withdrawals from trust, use of stamped and electronic signatures on trust cheques, electronic transfers from trust, payment of fees from trust,

billing records, liens, trust reconciliations, trust account balances, trust shortages, and identifying various rules that should be deleted.

#### **IV. Subsequent Steps**

19. The Task Force continues to work towards its obligation to produce a final report for December 2023, including working through the remainder of the trust accounting rules, and has considered a series of additional recommendations on several policy issues underlying the current trust rules together with some principles to address when the rules are revised. It anticipates engaging in some targeted further consultations to seek feedback, including matters canvassed in this status report. The Task Force may divide its final report into two parts: Part 1 dealing with the trust accounting rules and related Cullen Report recommendations and Part 2 dealing with CIV and AML and the related Cullen Report recommendations.

## Appendix 1: Cullen Report Recommendations considered by the Task Force

**Recommendation 55:** I recommend that the Law Society of British Columbia amend Rule 3-59 of the *Law Society Rules* to make explicit that any cash received under the professional fees exception to the cash transactions rule must be commensurate with the amount required for a retainer or reasonably anticipated fees.

**Recommendation 56:** I recommend that the Law Society of British Columbia amend its client identification and verification rules to explain what is required when inquiring into a client’s source of money. The rules should make clear, at a minimum:

- that the client identification and verification rules require the lawyer to record the information specified in the fall 2019 Benchers’ Bulletin;
- the meaning of the term “source of money”; and
- that lawyers must consider whether the source of money is reasonable and proportionate to the client’s profile.

**Recommendation 57:** I recommend that the Law Society of British Columbia extend the ambit of its client identification and verification rules to include the situations in which a lawyer is truly acting as a gatekeeper. The rules should be extended to include, at a minimum:

- the formation of corporations, trusts, and other legal entities;
- real estate transactions that may not involve the transfer of funds, such as assisting with the transfer of title; and
- litigation involving enforcement of private loans.

**Recommendation 58:** I recommend that the Law Society of British Columbia amend the *Law Society Rules* to require lawyers to verify a client’s identity when holding fiduciary property on the client’s behalf.

**Recommendation 59:** I recommend that the Law Society of British Columbia amend Rule 3-58.1 of the *Law Society Rules* to clarify, at a minimum, what is meant by “directly related to legal services” and to consider how to further limit the use of trust accounts so that they are used only when necessary.

**Recommendation 62:** I recommend that the Law Society of British Columbia implement mandatory anti–money laundering training for lawyers who are most at risk of facing money laundering threats. The education should be required, at a minimum, for lawyers engaged in the following activities:

- the formation of corporations, trusts, and other legal entities;
- transactional work, including real estate transactions;

- some transactions that do not involve the transfer of funds (such as transfer of title); and
- litigation involving private lending.

July 5, 2023

**Sent via email**

Linda W. Russell  
Chief Executive Officer  
The Continuing Legal Education Society of BC  
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Vancouver, BC V6E 2P4

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McPherson, KC**  
*President*

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Dear Linda W. Russell:

**Re: Appointment to the Board of Directors of the Continuing Legal  
Education Society of BC – Vancouver County**

I am pleased to confirm that I have appointed Polly Storey (Vancouver County) to the Continuing Legal Education Society of BC's Board of Directors for a three-year term, effective September 1, 2023.

I am confident that the Continuing Legal Education Society of BC and its important work will be well served by the contributions of Polly Storey.

Yours truly,



Christopher A. McPherson, KC  
President, Law Society of BC

c. Michael Sinclair  
Board Chair, Continuing Legal Education Society of BC

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