

# Agenda

## Benchers

Date: Friday, December 8, 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)

### CONSENT AGENDA

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

1	Minutes of November 3, 2023 meeting (regular session)
2	Minutes of November 3, 2023 meeting ( <i>in camera</i> session)
3	Rule Amendments: Return to Practice
4	Rule Amendments: Rule 1 Definition “Motions Adjudicator”
5	External Appointment: Legal Aid BC

# Agenda

<b>REPORTS</b>		
6	President's Report	Christopher A. McPherson, KC
7	2024 Committees, Task Forces, and Working Groups	Jeevyn Dhaliwal, KC
8	CEO's Report <ul style="list-style-type: none"> <li>• Indigenous Engagement in Regulatory Matters Progress Update</li> <li>• 2021-2025 Strategic Plan Update</li> </ul>	Don Avison, KC
<b>DISCUSSION/DECISION</b>		
9	Mental Health Task Force Final Report	Brook Greenberg, KC
10	Access to Justice Report: Alternative Business Structures	Dr. Jan Lindsay
<b>UPDATES</b>		
11	Financial Matters: <ul style="list-style-type: none"> <li>• 2023 Enterprise Risk Management Plan: Update</li> <li>• Financial Report - 2023 - Q3 and Forecast</li> </ul>	Jeevyn Dhaliwal, KC Don Avison, KC Jeanette McPhee
<b>FOR INFORMATION</b>		
12	Indigenous Engagement in Regulatory Matters Progress Update Report	
13	Year-End Advisory Committee Reports	
14	Equity, Diversity and Inclusion Committee: Diversity Action Plan Implementation Report	
15	External Appointment: Law Foundation of BC	
16	2024 Schedule of Bencher and Executive Committee Meetings	
<b>IN CAMERA</b>		
17	Other Business	

# Minutes

## Benchers

Date: Friday, November 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  
Tanya Chamberlain  
Jennifer Chow, KC  
Christina J. Cook  
Cheryl S. D'Sa  
Tim Delaney  
Lisa Dumbrell  
Brian Dybwad  
Sasha Hobbs  
Lindsay R. LeBlanc

Geoffrey McDonald  
Steven McKoen, KC  
Paul Pearson  
Georges Rivard  
Michèle Ross  
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: Dr. Jan Lindsay  
Kelly H. Russ

Gurminder Sandhu

Staff: Don Avison, KC  
Gurprit Bains  
Avalon Bourne  
Barbara Buchanan, KC  
Natasha Dookie  
Jackie Drozdowski  
Vicki George  
Katrina Harry, KC  
Kerryn Holt  
Jeffrey Hoskins, KC  
Aara Johnson  
Alison Kirby  
Virginia Kwong  
Julie Lee  
Michael Lucas, KC

Alison Luke  
David MacLean  
Claire Marchant  
Jeanette McPhee  
Michael Mulhern  
Doug Munro  
Michelle Robertson  
Lesley Small  
Arrie Sturdivant  
Christine Tam  
Madison Taylor  
Herman Van Ommen, KC  
Adam Whitcombe, KC  
Vinnie Yuen

Guests:	Dom Bautista	Executive Director, Courts Center & Executive Director, Amici Curiae Friendship Society
	Ian Burns	Digital Reporter, The Lawyer's Daily
	Bailie Copeland	Co-Recipient, Law Society Indigenous Scholarship
	Dr. Cristie Ford	Professor, Peter A. Allard School of Law
	Jess Furney	Manager, Policy & Advocacy, CBABC
	Derek LaCroix, KC	Executive Director, Lawyers Assistance Program of BC
	Jamie Maclaren, KC	Executive Director, Access Pro Bono Society of BC
	Mark Meredith	Treasurer and Board Member, Mediate BC
	Shawn Mitchell	CEO, Trial Lawyers Association of BC
	Scott Morishita	President, Canadian Bar Association, BC Branch
	Joven Narwal	Member, Law Society of BC
	Caroline Nevin	CEO, Courthouse Libraries BC
	Ngai Pindell	Dean of Law, Peter A. Allard School of Law
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Ron Usher	General Counsel and Practice Advisor, The Society of Notaries Public of British Columbia
	Lana Walker	Assistant Dean of Law, Thompson Rivers University
	Tara-Lynn Wilson	Co-Recipient, Law Society Indigenous Scholarship

## RECOGNITION

### 1. Presentation of 2023 Law Society Indigenous Scholarship

Brook Greenberg, KC introduced and congratulated Bailie Copeland and Tara-Lynn Wilson as the 2023 Law Society Indigenous Scholarship co-recipients who were both in attendance at the meeting.

## CONSENT AGENDA

### 2. Minutes of September 22, 2023, meeting (regular session)

The minutes of the meeting held on September 22, 2023 were approved unanimously and by consent as circulated.

### 3. Minutes of September 22, 2023, meeting (*in camera* session)

The minutes of the *in-camera* meeting held on September 22, 2023 were approved unanimously and by consent as circulated.

### 4. External Appointment: Land Title and Survey Authority

The following resolution was passed unanimously and by consent:

**BE IT RESOLVED** the Benchers approve putting forward all five eligible candidates as the Law Society nominees for consideration by the LTSA for appointment for a three-year term commencing April 1, 2024.

## REPORTS

### 5. President's Report

Second Vice-President Brook Greenberg, KC confirmed that no conflicts of interest had been declared.

President Christopher A. McPherson, KC began his report by thanking Second Vice-President Brook Greenberg, KC for chairing the meeting in his stead. He then provided Benchers with an overview of the recent Federation meetings in Whitehorse, which had focused on the use of AI and technology within the legal profession.

Mr. McPherson provided an overview of the recent International Conference of Legal Regulators, which took place in Dublin, Ireland. He indicated that AI and the wellness of the profession were two topics of discussion.

Mr. McPherson concluded his report with some remarks regarding the use of the notwithstanding clause contained in section 33 of the Charter of Rights and Freedoms by the Government of Saskatchewan to require that teachers inform parents if any students under 16 use a different name or pronoun. Mr. McPherson spoke about his personal experiences as a member of the 2SLGBTQI+ community and the challenges that he faced, as well as those that many young people within the community face. He spoke about the importance of lawyers standing up for the individual rights of everyone to prevent discrimination, regardless of gender identity.

## **6. CEO's Report**

Don Avison, KC began his report by echoing Mr. McPherson's comments regarding the Government of Saskatchewan's use of the notwithstanding clause contained in section 33 of the Charter of Rights and Freedoms. He indicated that a number of provincial governments had been invoking the use of section 33 to override certain portions of the charter when passing legislation, and he expressed his concerns regarding the perceived comfort of some governments invoking this section. He spoke about the importance of the Federation and others, including the Attorney General, speaking out on those occasions when government invokes the notwithstanding clause in section 33.

Mr. Avison spoke about the new *International Credentials Recognition Act*, which is intended to help regulatory bodies improve the credential recognition process. He indicated that he was of the view that the substantial work the Law Society and the Federation have done in regard to the recognition of international credentials should be highlighted and that this has already been communicated to the provincial government. Mr. Avison also spoke about the significant number of lawyers in BC who have earned their credentials outside of Canada, and that he was of the view that the provincial government's focus would be more on other professions with this new statute.

Mr. Avison provided an overview of the recent International Conference of Legal Regulators, at which he had participated on a panel regarding building a better regulator with representatives from Ireland, New Zealand, Scotland, Germany, and the Netherlands. He indicated that there had been quite a bit of discussion regarding the issue of independence. He spoke about a presentation that was given regarding the use of AI within the context of the legal profession, and he indicated that he was in discussions with other Canadian law societies to make this presentation available to the profession as a whole. Mr. Avison informed Benchers that he had received quite a bit of interest from other law societies regarding the work the Law Society is currently doing in a number of areas, including trust accounting procedures and in-house audits.

Mr. Avison updated Benchers on the progress of the Indigenous Cultural Awareness Program. He indicated that quite a bit of work was taking place to ensure that all lawyers have completed the program by the deadline. He further indicated that if any lawyer has not completed the program by the deadline, there would be a financial penalty and then suspension if the program is not completed within 60 days beyond the deadline.

## **PRE-IN CAMERA SESSION**

Mr. Avison indicated that representatives from the Ministry had offered to attend an *in camera* session with Benchers to provide a status update on the single legal regulator initiative. He further indicated that if Benchers were not prepared to hold this portion of the meeting *in camera*, the session could not take place as the Ministry is involved in a process of confidential discussions with the parties affected by the proposed legislation, and is not authorized to have these discussions publicly at this point in time.

A motion was made and seconded to go *in camera*.

The Benchers discussed the advantages and disadvantages of hearing from the Ministry staff on the confidential *in camera* basis. A motion to go *in camera* was made and was approved by the majority of Benchers.

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

## **6. CEO's Report continued**

Mr. Greenberg provided a brief introduction of Virginia Kwong, Director of Registration and Licensee Services.

Ms. Kwong provided a presentation and demonstration of the Law Society's downloadable and printable member cards. She spoke about the history of Law Society member cards, the benefits of the new downloadable versions, and the timeline for the downloadable versions, which went into effect October 2023. Ms. Kwong also demonstrated how lawyers would be able to access the downloadable cards and reviewed the communications that had been sent as part of the change management plan.

Benchers discussed potential access concerns for lawyers who need to visit clients in correctional facilities, as many criminal lawyers currently rely on the printed cards for access. Benchers also discussed the importance of ensuring that administrative staff at correctional facilities were aware of the change and how best to address issues lawyers may face when visiting more remote jurisdictional areas, as internet service may not be available. Ms. Kwong advised that the Registration and Licensee Services department had met with a number of representatives from

correctional services and provided communication regarding this change. She also advised that lawyers had been encouraged to contact the Registration and Licensee Services department with any questions and concerns, and that the department would also be conducting check-ins with correctional staff to address any issues.

Benchers also discussed the security of using a downloadable PDF. Ms. Kwong advised that the PDF version of the card would only be available once the lawyer had logged into the Member Portal and that the QR code would only take users to the landing page of the lawyer directory. Adam Whitcombe, KC added that the previous process involved printing and mailing the physical cards, and that this new process would not be perfect, but would be an improvement over the old process.

## **7. Briefing by the Law Society’s Member of the Federation Council**

Mr. Greenberg provided a brief overview of the written report he provided for Benchers’ information, which included an overview of the recent Federation meetings. He indicated that the next Federation Council meeting would take place on December 11, 2023.

## **DISCUSSION/DECISION**

### **8. Return to Practice Rules**

Cheryl D’Sa, Chair of the Equity, Diversity and Inclusion Advisory Committee introduced the item and provided a brief overview of the proposed amendments to the return to practice rules. She indicated that the proposed amendments were a joint recommendation from the Equity, Diversity, and Inclusion Advisory Committee and the Credentials Committee, and that the amendments were being proposed to address barriers to practice, while also ensuring an important touchpoint to ensure that those who return to practice return with refreshed knowledge.

Benchers discussed the proposed amendments, including whether or not the Law Society’s Practice Management Course was applicable to all lawyers and the best approach for ensuring competency, whether or not flexibility in the return to practice process should be captured in the Rules, and the importance of moving quickly on this matter due to the disproportionate impact of the current return to practice requirements on women.

Ms. D’Sa indicated that the Practice Management Course was selected because the subject matters in the modules aligned with those areas that come up most frequently in disciplinary conduct reviews. In addition, Ms. D’Sa indicated that use of the Practice Management Course ensured a consistent approach for those returning to practice. Ms. D’Sa also reminded Benchers that if those returning to practice were of the view that they did not need to take the course, they could apply to the Credentials Committee.



The following resolution was passed unanimously:

**BE IT RESOLVED** to amend Rules 2-88 to 2-90 along with any necessary consequential amendments to change the Law Society’s approach to its return to practice requirements as set out in this memorandum.

## **9. Appointee Adjudicator Expense and Reimbursement Policy**

Herman Van Ommen, KC Tribunal Chair introduced this item and provided some background on the proposed Appointee Expense and Reimbursement Policy, which would expand per diem payments to include lawyer adjudicators. Mr. Van Ommen spoke about how hearings have grown longer and more complex, and that the Tribunal had need to attract people to serve on panels. He also spoke about how the policy would help in improving the quality and timeliness of writing decisions, which in turn would serve the public interest through a more expedient hearing process as a whole.

Benchers discussed the budget for the proposed policy, how the amount was determined, and whether remuneration was the best approach for recruiting people to serve on panels. Mr. Van Ommen indicated that the rates had been based on the Law Society of Ontario’s Tribunal and other administrative rates in BC. He also indicated that recruitment had become more challenging, and that he was of the view that compensation would help address this. Benchers also discussed instituting a review of the rates every three years, and Mr. Van Ommen was in agreement.

Benchers discussed metrics for adjudicator performance. Mr. Van Ommen advised that the Tribunal’s annual report was public, which included adjudicator performance. He indicated that there was not a formal process for tracking or reviewing adjudicator performance, but that he was of the view that if an adjudicator was struggling or not meeting expectations, he would intervene.

The following resolution was passed unanimously:

**BE IT RESOLVED** the compensation for appointee adjudicators of the LSBC Tribunal be amended as proposed in the Appointee Adjudicator Expense and Reimbursement Policy and Rates, effective January 1, 2024.

## **FOR INFORMATION**

### **10.2024 Fee Schedules**

There was no discussion on this item.

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

There was no discussion on this item.

**OTHER BUSINESS**

Prior to Benchers moving *in camera*, Tanya Chamberlain spoke about the recent passing of Sally Lee, and gave tribute to her many years of contribution to the legal profession through her work as a court interpreter.

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

AB  
2023-11-29

# Memo

To: Benchers  
From: Executive Committee  
Date: November 28, 2023  
Subject: **Return to Practice Rules: Amendments approved in principle November 3, 2023**

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## Background

1. At the November 3, 2023 Bencher meeting, the Benchers approved in principle amending the return to practice rules to address and better balance the purpose of the requirements and the impact of the rules on individuals who take time away from practice. In particular, the amendments were to:
  - Increase the “relevant period” from five to seven years;
  - Permit lawyers away from practice for three to five years to return to practice without taking the qualification examination, and instead requiring them to take the Law Society’s Practice Management Course;
  - Permit lawyers away from practice from between five and seven years to return on the requirement to complete the Practice Management Course *and* review materials relevant to the lawyer’s area of practice (similar to the requirement in Rule 2-81(3)) (the “Reading Requirement”); and
  - Provide for an exception that permits lawyers returning to practice between three and seven years to seek an exemption from the relevant requirements provided they could otherwise satisfy the Credentials Committee that they are properly current in their knowledge of law and practice or that the public interest does not require them to complete any additional requirements.
2. For lawyers who had been away from practice greater than seven years, no amendments were proposed other than noting the possibility of some consequential amendments arising from the amendments noted above.

3. Amendments to the Rules that would implement the Benchers' approval in principle have been reviewed by the Executive Committee and are referred to the Benchers for review and approval.

## Drafting Notes

4. The proposed amendments do away with a requirement to take the qualification examination if returning to practice having been away less than seven years. However, in order to ensure that the qualification examination remains an option that could be required on return to practice after seven years, it has been added to Rule 2-90. This necessitated a change to the definition of "qualification examination" in Rule 1.
5. The amendments approved by the Benchers in principle addressed adding in the Reading Requirement for lawyers returning to practice having been away five to seven years. The approval specifically referenced as a comparator the requirement for lawyers transferring their practice to this province under the mobility requirements. Therefore, the language from that rule (Rule 2-81(3)) has been repeated, with slight revision for grammar, in the attached draft.
6. Given that the Benchers have approved the Practice Management Course as a requirement for return to practice for absences less than seven years, the rules have been amended to include provisions enabling the Credentials Committee to include that option for return to practice after more than seven years absence as well. Similar amendments have been provided for the Reading Requirement. To ensure flexibility as other courses may be developed, the rules have been amended to provide for "other courses as approved by the Executive Director."
7. The changes regarding the elimination of the qualification examination from Rule 2-89 and replacing it as an option under Rule 2-90 result in removing Rule 2-89(6), but moving it to Rule 2-90(8).
8. Rule 2-90(5)(b)(iv) is proposed to be removed on the advice of staff that it requires a lawyer, *after return to practice*, to complete all or part of the training course, which has been viewed as impractical and has therefore never been used. Given the amendments to Rule 2-90(5)(a)(ii), if that opinion were ever to change, it is considered that the requirement to complete the training course could be subsumed in that subrule.
9. The changes also allow Rule 2-90(4) to be removed as the requirements listed in Rule 2-89(3) are now part of what may be considered in any event under Rule 2-90.
10. Consequential amendments were required for several other rules that referenced the return to practice requirements.

## **Implementation**

11. Staff recommends that the proposed rules be effective January 1, 2024 rather than immediately after approval by the Benchers. This will permit staff to ensure materials relating to change of practice status that are made available to the profession are brought up to date before the rules are implemented.

## **Resolution**

12. The proposed resolution is attached.

# LAW SOCIETY RULES

## RULE 1 – DEFINITIONS

### Definitions

1 In these rules, unless the context indicates otherwise:

“**qualification examination**” means an examination set by the Executive Director ~~for the purposes of Rule 2-89 [Returning to practice after an absence]~~that may be required by the Credentials -Committee as a condition for a lawyer’s or applicant’s return to practice;

### Release from undertaking

- 2-5 (1) A retired or non-practising member may apply for release from an undertaking given under Rule 2-3 *[Non-practising members]* or 2-4 *[Retired members]* by delivering to the Executive Director
- (a) an application in the prescribed form, including written consent for the release of relevant information to the Society, and
  - (b) the application fee specified in Schedule 1.
- (2) The Executive Director must not grant a release from an undertaking under this rule unless satisfied that the lawyer is not prohibited from practising law under Rule 2-89 *[Returning to practice of law after an absence]* or 2-90 [Conditions on returning to practice].

### Transfer from another Canadian jurisdiction

2-79

- (2) An applicant under this rule must not be called and admitted unless the Executive Director is satisfied that the lawyer is not prohibited from practising law under Rules 2-89 *[Returning to practice after an absence]* or 2-90 [Conditions on returning to practice].
- (5) An applicant who is required to write an examination under this rule or ~~Rule 2-89 [Returning to practice after an absence]~~the qualification examination must pass the required

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## LAW SOCIETY RULES

- examination within 12 months after ~~the Executive Director's~~ decision to permit the applicant to write the examination.
- (6) At least 30 days before writing the first examination, an applicant who is required to write an examination under this rule or ~~Rule 2-89 [Returning to practice after an absence]~~the qualification examination must pay the fee specified in Schedule 1 for the examination.
- (7) An applicant who fails the transfer or qualification examination
- (a) is entitled to a formal re-read of the examination on application to the Executive Director in writing within 30 days of notification of the applicant's failure,
  - (b) may re-write the examination
    - (i) at any time, provided the applicant has not failed the examination before, or
    - (ii) after a period of one year from the date of the failure if the applicant has previously failed the examination, or
  - (c) may be permitted to write the examination for a third or subsequent time at any time despite paragraph (b) (ii) on application to the Credentials Committee in writing stating
    - (i) compassionate grounds, supported by medical or other evidence, or
    - (ii) other grounds based on the applicant's past performance.

### Reinstatement of former lawyer

- 2-85** (1) A former lawyer may apply for reinstatement as a member of the Society by delivering the following to the Executive Director:
- (a) an application for reinstatement in the prescribed form, including written consent for the release of relevant information to the Society;
  - (b) the appropriate application fee specified in Schedule 1.
- (2) An applicant for reinstatement may apply for the following status on reinstatement:
- (a) practising lawyer, only if the applicant has met the conditions for practising law under Rule 2-89 ~~[Returning to practice after an absence]~~ or 2-90 [Conditions on returning to practice];
  - (b) non-practising member on compliance with Rule 2-3 ~~[Non-practising members]~~;
  - (c) retired member if the lawyer is qualified under Rule 2-4 (1) ~~[Retired members]~~ and on compliance with Rule 2-4 (2) and (3).

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# LAW SOCIETY RULES

## Returning to practice

### Definition and application

- 2-88** (1) In Rules 2-88 to 2-90, unless the context indicates otherwise, “**relevant period**” is the shortest of the following periods of time in the immediate past:
- (a) ~~5~~7 years;
  - (b) the time since the lawyer’s first call and admission in any jurisdiction;
  - (c) the time since the lawyer last passed the qualification examination.
- (2) For the purpose of paragraph (b) of the definition of “relevant period” in subrule (1), a lawyer is deemed to have been called and admitted as of the date that a practising certificate was issued under Rule 2-84 (4) [*Barristers and solicitors’ roll and oath*].
- (3) Rules 2-88 to 2-90 apply to a former lawyer and an applicant.

### Returning to practice after an absence

- 2-89** (1) If, for a total of between 3 years or more and less than 5 years in the relevant period, a lawyer has not engaged in the practice of law, the lawyer must not practise law without first completing the practice management course described in Rule 3-28 [*Practice management course*] or another course offered by the Society or by a provider approved by the Society. ~~doing one of the following:~~
- ~~(a) — passing the qualification examination;~~
  - ~~(b) — obtaining the permission of the Credentials Committee under subrule (3).~~
- (1.1) If, for a total of 5 years or more in the relevant period, a lawyer has not engaged in the practice of law, the lawyer must not practise law without first
- (a) — completing the practice management course described in Rule 3-28 or another course approved by the Executive Director, and
  - (b) — certifying, in the prescribed form, that the lawyer has reviewed and understands all of the materials reasonably required by the Executive Director.
- (2) Subrules (1) and (1.1) applies apply
- (a) despite any other rule, and
  - (b) whether or not the lawyer holds or is entitled to hold a practising certificate.

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## LAW SOCIETY RULES

- (3) A lawyer may apply in writing to the Credentials Committee for permission to practise law without ~~passing the qualification examination~~completing a requirement set out in subrule (1) or (1.1).
- (4) On an application under subrule (3), the Credentials Committee may approve the application if, in its judgement
  - (a) the lawyer has engaged in activities that have kept the lawyer current with substantive law and practice skills, or
  - (b) the public interest does not require the lawyer to ~~pass the qualification examination~~complete the relevant requirements.
- (5) Before approving an application under subrule (4), the Credentials Committee may require the lawyer to enter into a written undertaking to do any of the things set out in Rule 2-90 (5)
  - (b) [*Conditions on returning to practice*].
- (6) ~~A lawyer who is required to write the qualification examination under subrule (1) must pay, at least 30 days before writing the first examination, the fee specified in Schedule 1.~~  
[rescinded]

### Conditions on returning to practice

- 2-90** (1) A lawyer or applicant who has spent a period of 7 years or more not engaged in the practice of law must not practise law without the permission of the Credentials Committee.
- (2) Subrule (1) applies
    - (a) despite any other rule, and
    - (b) whether or not the lawyer holds or is entitled to hold a practising certificate.
  - (3) A lawyer or applicant must apply in writing to the Credentials Committee for permission to practise law under subrule (1).
  - (4) ~~An application under subrule (3) may be combined with an application under Rule 2-89 (3) [Returning to practice of law after an absence].~~ [rescinded]
  - (5) As a condition of permission to practise law under subrule (1), the Credentials Committee may require one or more of the following:
    - (a) successful completion of all or part of one or more of the following:
      - (i) the admission program;
      - (i.1) the qualification examination;

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## LAW SOCIETY RULES

- (ii) successful completion of the practice management course described in Rule 3-28 [Practice management course] or another course offered by the Society or a provider approved by the Society Executive Director;
  - (iii) certification, in the prescribed form, that the lawyer has reviewed and understands all of the materials reasonably required by the Executive Director;
- (b) a written undertaking to do any or all of the following:
- (i) practise law in British Columbia immediately on being granted permission;
  - (ii) not practise law as a sole practitioner;
  - (iii) practise law only in a situation approved by the Committee for a period set by the Committee, not exceeding 2 years;
  - (iv) ~~successfully complete the training course or a part of the training course within a period set by the Committee, not exceeding one year from the date permission is granted; [rescinded]~~
  - (v) practise law only in specified areas;
  - (vi) not practise law in specified areas.
- (6) Despite Rule 2-52 (3) [*Powers of Credentials Committee*], the Credentials Committee may vary a condition under subrule (5) (a) without the consent of the lawyer concerned.
- (7) On the written application of the lawyer, the Credentials Committee may allow a variation of an undertaking given under subrule (5) (b).

### Application for indemnity coverage

- 3-45** (1) A lawyer may apply for indemnity coverage by delivering to the Executive Director
- (a) an application for indemnity coverage, and
  - (b) the prorated indemnity fee as specified in Schedule 2.
- (2) A lawyer who is indemnified for part-time practice may apply for coverage for full-time practice by delivering to the Executive Director
- (a) an application for full-time indemnity coverage, and
  - (b) the difference between the prorated full-time indemnity fee specified in Schedule 2 and any payment made for part-time indemnity coverage for the current year.

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- (3) The Executive Director must not grant the indemnity coverage applied for under subrule (1) or (2) unless satisfied that the lawyer is not prohibited from practising law under Rule 2-89 *[Returning to practice after an absence]* or 2-90 *[Conditions on returning to practice]*.

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# LAW SOCIETY RULES

## SCHEDULE 1 – ~~2023~~2024 LAW SOCIETY FEES AND ASSESSMENTS

### E. Transfer fees

2. Transfer or qualification examination (Rules 2-79 (6) and ~~2-89 (6)~~2-90 (5)  
*[Returning to practice after an absence*Conditions on returning to practice]) . 325.00

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# LAW SOCIETY RULES

## Definitions

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“**qualification examination**” means an examination set by the Executive Director that may be required by the Credentials Committee as a condition for a lawyer’s or applicant’s return to practice;

## Release from undertaking

- 2-5 (1) A retired or non-practising member may apply for release from an undertaking given under Rule 2-3 [*Non-practising members*] or 2-4 [*Retired members*] by delivering to the Executive Director
- (a) an application in the prescribed form, including written consent for the release of relevant information to the Society, and
  - (b) the application fee specified in Schedule 1.
- (2) The Executive Director must not grant a release from an undertaking under this rule unless satisfied that the lawyer is not prohibited from practising law under Rule 2-89 [*Returning to practice after an absence*] or 2-90 [*Conditions on returning to practice*].

## Transfer from another Canadian jurisdiction

2-79

- (2) An applicant under this rule must not be called and admitted unless the Executive Director is satisfied that the lawyer is not prohibited from practising law under Rule 2-89 [*Returning to practice after an absence*] or 2-90 [*Conditions on returning to practice*].
- (5) An applicant who is required to write an examination under this rule or the qualification examination must pass the required examination within 12 months after a decision to permit the applicant to write the examination.

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- (6) At least 30 days before writing the first examination, an applicant who is required to write an examination under this rule or the qualification examination must pay the fee specified in Schedule 1 for the examination.
- (7) An applicant who fails the transfer or qualification examination
- (a) is entitled to a formal re-read of the examination on application to the Executive Director in writing within 30 days of notification of the applicant's failure,
  - (b) may re-write the examination
    - (i) at any time, provided the applicant has not failed the examination before, or
    - (ii) after a period of one year from the date of the failure if the applicant has previously failed the examination, or
  - (c) may be permitted to write the examination for a third or subsequent time at any time despite paragraph (b) (ii) on application to the Credentials Committee in writing stating
    - (i) compassionate grounds, supported by medical or other evidence, or
    - (ii) other grounds based on the applicant's past performance.

### Reinstatement of former lawyer

- 2-85** (1) A former lawyer may apply for reinstatement as a member of the Society by delivering the following to the Executive Director:
- (a) an application for reinstatement in the prescribed form, including written consent for the release of relevant information to the Society;
  - (b) the appropriate application fee specified in Schedule 1.
- (2) An applicant for reinstatement may apply for the following status on reinstatement:
- (a) practising lawyer, only if the applicant has met the conditions for practising law under Rule 2-89 [*Returning to practice after an absence*] or 2-90 [*Conditions on returning to practice*];
  - (b) non-practising member on compliance with Rule 2-3 [*Non-practising members*];
  - (c) retired member if the lawyer is qualified under Rule 2-4 (1) [*Retired members*] and on compliance with Rule 2-4 (2) and (3).

# LAW SOCIETY RULES

## Returning to practice

### Definition and application

- 2-88** (1) In Rules 2-88 to 2-90, unless the context indicates otherwise, “**relevant period**” is the shortest of the following periods of time in the immediate past:
- (a) 7 years;
  - (b) the time since the lawyer’s first call and admission in any jurisdiction;
  - (c) the time since the lawyer last passed the qualification examination.
- (2) For the purpose of paragraph (b) of the definition of “relevant period” in subrule (1), a lawyer is deemed to have been called and admitted as of the date that a practising certificate was issued under Rule 2-84 (4) [*Barristers and solicitors’ roll and oath*].
- (3) Rules 2-88 to 2-90 apply to a former lawyer and an applicant.

### Returning to practice after an absence

- 2-89** (1) If, for a total of between 3 years and less than 5 years in the relevant period, a lawyer has not engaged in the practice of law, the lawyer must not practise law without first completing the practice management course described in Rule 3-28 [*Practice management course*] or another course offered by the Society or by a provider approved by the Society.
- (1.1) If, for a total of 5 years or more in the relevant period, a lawyer has not engaged in the practice of law, the lawyer must not practise law without first
- (a) completing the practice management course described in Rule 3-28 or another course approved by the Executive Director, and
  - (b) certifying, in the prescribed form, that the lawyer has reviewed and understands all of the materials reasonably required by the Executive Director.
- (2) Subrules (1) and (1.1) apply
- (a) despite any other rule, and
  - (b) whether or not the lawyer holds or is entitled to hold a practising certificate.
- (3) A lawyer may apply in writing to the Credentials Committee for permission to practise law without completing a requirement set out in subrule (1) or (1.1).
- (4) On an application under subrule (3), the Credentials Committee may approve the application if, in its judgement

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## LAW SOCIETY RULES

- (a) the lawyer has engaged in activities that have kept the lawyer current with substantive law and practice skills, or
  - (b) the public interest does not require the lawyer to complete the relevant requirements.
- (5) Before approving an application under subrule (4), the Credentials Committee may require the lawyer to enter into a written undertaking to do any of the things set out in Rule 2-90 (5)
- (b) [*Conditions on returning to practice*].
- (6) [rescinded]

### Conditions on returning to practice

- 2-90** (1) A lawyer or applicant who has spent a period of 7 years or more not engaged in the practice of law must not practise law without the permission of the Credentials Committee.
- (2) Subrule (1) applies
- (a) despite any other rule, and
  - (b) whether or not the lawyer holds or is entitled to hold a practising certificate.
- (3) A lawyer or applicant must apply in writing to the Credentials Committee for permission to practise law under subrule (1).
- (4) [rescinded]
- (5) As a condition of permission to practise law under subrule (1), the Credentials Committee may require one or more of the following:
- (a) successful completion of all or part of one or more of the following:
    - (i) the admission program;
    - (i.1) the qualification examination;
    - (ii) successful completion of the practice management course described in Rule 3-28 [*Practice management course*] or another course approved by the Executive Director;
    - (iii) certification, in the prescribed form, that the lawyer has reviewed and understands all of the materials reasonably required by the Executive Director;
  - (b) a written undertaking to do any or all of the following:
    - (i) practise law in British Columbia immediately on being granted permission;
    - (ii) not practise law as a sole practitioner;
    - (iii) practise law only in a situation approved by the Committee for a period set by the Committee, not exceeding 2 years;

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## LAW SOCIETY RULES

- (iv) [rescinded]
  - (v) practise law only in specified areas;
  - (vi) not practise law in specified areas.
- (6) Despite Rule 2-52 (3) [*Powers of Credentials Committee*], the Credentials Committee may vary a condition under subrule (5) (a) without the consent of the lawyer concerned.
- (7) On the written application of the lawyer, the Credentials Committee may allow a variation of an undertaking given under subrule (5) (b).

### Application for indemnity coverage

- 3-45** (1) A lawyer may apply for indemnity coverage by delivering to the Executive Director
- (a) an application for indemnity coverage, and
  - (b) the prorated indemnity fee as specified in Schedule 2.
- (2) A lawyer who is indemnified for part-time practice may apply for coverage for full-time practice by delivering to the Executive Director
- (a) an application for full-time indemnity coverage, and
  - (b) the difference between the prorated full-time indemnity fee specified in Schedule 2 and any payment made for part-time indemnity coverage for the current year.
- (3) The Executive Director must not grant the indemnity coverage applied for under subrule (1) or (2) unless satisfied that the lawyer is not prohibited from practising law under Rule 2-89 [*Returning to practice after an absence*] or 2-90 [*Conditions on returning to practice*].

# LAW SOCIETY RULES

## SCHEDULE 1 – 2024 LAW SOCIETY FEES AND ASSESSMENTS

### E. Transfer fees

- 2. Transfer or qualification examination (Rules 2-79 (6) and 2-90 (5)  
*[Conditions on returning to practice]* ..... 325.00

**TOPIC: RETURN TO PRACTICE**

**RESOLUTION:**

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

1. *Rule 1 is amended in the definition of “qualification examination” by striking out “for the purposes of Rule 2-89 [Returning to practice after an absence]” and substituting “that may be required by the Credentials Committee as a condition for a lawyer’s or applicant’s return to practice;”.*
2. *Rule 2-5 (2) is amended*
  - (a) *by striking out “undertaking” and substituting “an undertaking” and*
  - (b) *by adding “or 2-90 [Conditions on returning to practice]” at the end of the subrule.*
3. *Rule 2-79 is amended:*
  - (a) *in subrule (2) by adding “or 2-90 [Conditions on returning to practice]” at the end of the subrule,*
  - (b) *in subrule (5)*
    - (i) *by striking out “Rule 2-89 [Returning to practice after an absence] and substituting “the qualification examination”, and*
    - (ii) *by striking out “the Executive Director’s decision ” and substituting “a decision”, and*
  - (c) *in subrule (6), by striking out “Rule 2-89 [Returning to practice after an absence]” and substituting “the qualification examination.”*
4. *Rule 2-85 (2) is amended by adding “or 2-90 [Conditions on returning to practice];” at the end of the subrule.*
5. *Rule 2-88 (1) is amended by rescinding paragraph (a) and substituting:*
  - (1) In Rules 2-88 to 2-90, unless the context indicates otherwise, “**relevant period**” is the shortest of the following periods of time in the immediate past:
    - (a) 7 years;
    - (b) the time since the lawyer’s first call and admission in any jurisdiction;
    - (c) the time since the lawyer last passed the qualification examination.
6. *Rule 2-89 is rescinded and the following is substituted*

**2-89** (1) If, for a total of between 3 years and less than 5 years in the relevant period, a lawyer has not engaged in the practice of law, the lawyer must not

practise law without first completing the practice management course described in Rule 3-28 [*Practice management course*] or another course offered by the Society or by a provider approved by the Society.

- (1.1) If, for a total of 5 years or more in the relevant period, a lawyer has not engaged in the practice of law, the lawyer must not practise law without first
  - (a) completing the practice management course described in Rule 3-28 or another course approved by the Executive Director, and
  - (b) certifying, in the prescribed form, that the lawyer has reviewed and understands all of the materials reasonably required by the Executive Director.
- (2) Subrules (1) and (1.1) apply
  - (a) despite any other rule, and
  - (b) whether or not the lawyer holds or is entitled to hold a practising certificate.
- (3) A lawyer may apply in writing to the Credentials Committee for permission to practise law without completing a requirement set out in subrule (1) or (1.1).
- (4) On an application under subrule (3), the Credentials Committee may approve the application if, in its judgement
  - (a) the lawyer has engaged in activities that have kept the lawyer current with substantive law and practice skills, or
  - (b) the public interest does not require the lawyer to complete the relevant requirements.
- (5) Before approving an application under subrule (4), the Credentials Committee may require the lawyer to enter into a written undertaking to do any of the things set out in Rule 2-90 (5) (b) [*Conditions on returning to practice*].

**7. Rule 2-90 is amended by rescinding subrules (4) and (5) and substituting the following:**

- (5) As a condition of permission to practise law under subrule (1), the Credentials Committee may require one or more of the following:
  - (a) successful completion of all or part of one or more of the following:
    - (i) the admission program;
    - (i.1) the qualification examination;
    - (ii) successful completion of the practice management course described in Rule 3-28 [*Practice management course*] or another course approved by the Executive Director;

- 3 -

- (iii) certification, in the prescribed form, that the lawyer has reviewed and understands all of the materials reasonably required by the Executive Director;
  - (b) a written undertaking to do any or all of the following:
    - (i) practise law in British Columbia immediately on being granted permission;
    - (ii) not practise law as a sole practitioner;
    - (iii) practise law only in a situation approved by the Committee for a period set by the Committee, not exceeding 2 years;
    - (iv) [rescinded]
    - (v) practise law only in specified areas;
    - (vi) not practise law in specified areas.
8. ***Rule 3-45 (3) is amended by adding “or 2-90 [Conditions on returning to practice].” at the end of the subrule.***
9. ***Schedule 1 is amended***
- (a) in the title, by striking out “2023” and substituting “2024”***
  - (b) in Section E. Transfer fees, by striking out “2-89 (6) [Returning to practice after an absence]” and substituting “2-90 (5) [Conditions on returning to practice]”.***

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

# Memo

To: Benchers  
From: Executive Committee  
Date: November 28, 2023  
Subject: **Proposed Rule Amendment: Definition of “Motions Adjudicator”**

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## Recommendation

At the request of the Tribunal Chair, the Executive Committee recommends that the definition of motions adjudicator be amended by the deletion of the word “Bencher” in the definition of “motions adjudicator” in Rule 1.

The proposed change would revise the requirement that a motions adjudicator must be a Bencher.

## Issue

The pool of qualified individuals to act as motions adjudicators is limited by the specific criteria for the motions adjudicator role: (1) adjudicators must be lawyer Benchers; (2) adjudicators must not have close connections to Discipline or the Executive; (3) adjudicators must be willing to commit to the additional monthly time required as motions adjudicators to hear, decide and write decisions, on top of the time they already commit to act as panel and committee members; (4) adjudicators must possess strong decision writing and hearing skills; and (5) adjudicators must have experience and familiarity with the Rules and Practice Directions. As a result, at any given time there is only a small number of benchers who meet all the criteria.

## Proposal

As the administrative head of the Tribunal, the independent Tribunal Chair is responsible for appointing motion adjudicators. In order to ensure that he is able to appoint an adequate number of motions adjudicators to meet the demand, the recommendation was made that the prerequisite of being a "Bencher" be removed. This would enhance the Tribunal's ability to appoint motions adjudicators from a wider pool of lawyers/lawyer Benchers while still ensuring that the

appointees have the requisite familiarity and experience with the Rules and Practice Directions. The proposal is consistent with our commitment to the independence of the Tribunal.

### **Proposed Amendment**

The definition of motions adjudicator would be amended by the deletion of the word “Bencher” in the definition of “motions adjudicator” in Rule 1.

### **Proposed Resolution**

A proposed form of resolution is attached.

# LAW SOCIETY RULES

## RULE 1 – DEFINITIONS

### Definitions

1 In these rules, unless the context indicates otherwise:

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



# LAW SOCIETY RULES

## RULE 1 – DEFINITIONS

### Definitions

1 In these rules, unless the context indicates otherwise:

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

**TOPIC: MOTIONS ADJUDICATOR****RESOLUTION:**

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

- 1. Rule 1 is amended in the definition of “motions adjudicator” by striking out the word “Bencher”*

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

# Memo

To: Benchers  
From: Jeevyn Dhaliwal, KC  
First Vice-President  
Date: December 8, 2023  
Subject: **2024 Committees**

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2024 will be a year of challenge and opportunity. With the government expected to table legislation to create a single legal regulator in Spring 2024, it has never been more important to ensure that fundamental issues are considered collectively and in depth by the Benchers as a whole.

The sage view that John Hunter, QC, then First Vice-President, expressed in 2007 is especially relevant today:

*... [I] would like to see Benchers meetings more focused on discussion rather than receiving presentations, and dealing with a small number of high priority items without adding matters unless they are clearly necessary. Once that is in place, the Benchers would be able to devote several hours of Benchers time to a particular issue with adequate information to produce a sound policy decision. The important thing is to move away from committees and task forces making the policy decisions rather than the Benchers.*

The independence of the bar, including the independence of the new regulator, is in critical focus as the government moves towards tabling the single legal regulator legislation. Similarly, as the regulator's efforts and ability to improve access to legal services is a central driver of the Ministry of Attorney General's proposal, delivering on this front is pivotal to its meeting public expectations. In the current climate, it is my view that the board should take responsibility for these crucial matters and not delegate them to advisory committees.

## Access to Legal Services

One of the principal objectives of the proposed reforms set out in the Ministry's Intentions Paper is "facilitating better access to legal services for the public." As noted, addressing the well-understood need for greater access to legal services for the British Columbia public is an

important challenge that is central to the government's move towards a single legal regulator. It is my view that, going forward, the range of issues connected to the need for greater access to legal services is so fundamental that they should be brought directly to the whole Benchers table for discussion, deliberation and decision.

### **Lawyer Independence**

The importance of ensuring an independent legal profession cannot be overstated. It is essential that, in protecting that independence, the regulator's ability to self-govern remains a core element of the anticipated single legal regulator legislation. This is another area where, in my view, it is not only timely and appropriate, but necessary, for this fundamental issue to be considered by the whole Benchers table.

### **Proposal**

I therefore propose that, as incoming President, for 2024 I will not appoint members to the Access to Justice Advisory Committee or the Ethics and Lawyer Independence Advisory Committee ("ELIAC") and I will ensure that both access to justice and lawyer independence are issues central to the agenda for Benchers meetings during 2024. I should note that in proposing not to populate these committees in 2024, this should not be interpreted as a lack of commitment to, or engagement with, these issues. In fact, it is quite the opposite; these issues are of such fundamental importance that I am of the view the Benchers as a whole should be directly engaged. The work will continue, and will benefit from the consideration of all Benchers.

I should add that the ethics responsibilities of ELIAC will continue to be worked up by staff, as they are now. To the extent that ethics advisories are the current subject of the work of ELIAC, I propose that the Director, Policy & Practice and our policy staff will continue to address these issues as they arise and will consult both internally and externally and bring any advisories to the Benchers for approval as necessary. In the event there is a need for the committee to be appointed at some point during 2024, I will do so at that time.

# CEO Report

**December 8, 2023**

**Prepared for: Benchers**

**Prepared by: Don Avison, KC**

## **1. 2023 Bencher Elections and Orientation Plans for New Benchers**

Bencher elections took place in November of 2023 and, as a result, there will be nine new elected Benchers sworn in at the January 2024 Bencher meeting. With Guangbin Yan's term coming to a close (we are going to miss you Guangbin!), this will be a one third turnover at the Bencher table.

With everything going on – and particularly with respect to the status of the Single Legal Regulator initiative/anticipated legislation, we are planning for a more substantial orientation program designed to provide as much information as possible to assist with preparation for what I expect will be some important discussions and decisions early in the new year.

Kerryn Holt and Avalon Bourne of our governance support group have been in contact with new Benchers regarding orientation session dates and details.

## **2. ICLR 2024 to Focus on Indigenous Issues**

The 2024 International Conference of Legal Regulations will be substantially focused on the relationship between legal regulators and Indigenous populations. I see this as an important opportunity to give priority to issues that should – but often don't – get the attention and commitment that I believe is required to help generate meaningful change.

We recently met with the 2024 ICLR conference organizers to discuss how Canada and, more specifically, BC can play a significant role in development and delivery of the conference program. This will also be an opportunity to learn about initiatives underway – or planned – in jurisdictions like New Zealand, Australia and in South Africa where reforms have been undertaken in the context of what might be described as a “post-colonial” political environment. I expect to be able to provide more information about this at the meeting.

## **3. Updates on Implementation of the Indigenous Engagement in Regulatory Matters Recommendations and the 2021-2025 Strategic Plan**

A report on the IERM implementation plan and on the status of the current LSBC strategic plan will be provided at the December meeting.

At this point, I believe it would be fair to say that we are making good progress with the Strategic Plan and, from my perspective, we are ahead of schedule with the implementation of the IERM plan, but much important work lies ahead.

I have asked Vicki George (Senior Advisor, Indigenous Engagement) to join me in updating Benchers on the IERM implementation work.

#### **4. Indigenous Intercultural Course**

The Indigenous Intercultural Course is part of the Law Society's commitment to implement the Truth and Reconciliation Commission's call to action 27. The course was launched in January 2022 and is mandatory for all practising lawyers in British Columbia. Developing, launching, and operating this course has been a significant undertaking and I am pleased with the positive response it has received.

For the vast majority of lawyers, the date for completing the mandatory online course and certifying completion is January 1, 2024. This deadline is imminent, and lawyers need to be aware that failure to certify course completion by their deadline can result in fines and, ultimately, suspension of their license to practice.

I will provide an update at the meeting on progress to date on ensuring everyone completes the course.

#### **5. Federation of Law Societies of Canada v. Canada (Attorney General)**

On November 24<sup>th</sup>, the Honourable Madam Justice Warren issued her Reasons for Judgment in [\*Federation of Law Societies of Canada v. Canada \(Attorney General\)\*, 2023 BCSC 2068](#). The decision relates to the constitutional challenge by the Federation to amendments to the *Income Tax Act (ITA)*, which would require legal professionals to report certain client transactions to the Canada Revenue Agency (CRA).

The Federation is seeking a declaration that sections 237.3 and 237.4 of the *ITA*, which pertain to these reporting requirements, are invalid as they apply to legal professionals and the Federation sought interlocutory injunctive relief as part of its constitutional challenge.

In her decision, Madam Justice Warren found that there is a serious issue to be tried and that irreparable harm would occur without the injunction, as confidential or privileged information could be disclosed, and the solicitor-client relationship could be irreparably damaged. Madam Justice Warren also found that the balance of convenience favors granting the injunction, considering the significant public interest in maintaining the integrity of the solicitor-client relationship. As a result, the injunction was granted, exempting legal professionals from the

reporting requirements of sections 237.3 and 237.4 of the ITA pending the determination of the Federation's Petition on the merits.

This is a significant case and the decision to grant the injunction is welcome. I will keep Benchers advised of developments as the case wends its way through the courts.

Don Avison, KC  
Chief Executive Officer



# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Federation of Law Societies of Canada v.  
Canada (Attorney General)*,  
2023 BCSC 2068

Date: 20231124  
Docket: S236280  
Registry: Vancouver

Between:

**Federation of Law Societies of Canada**

Petitioner

And

**Attorney General of Canada**

Respondent

Before: The Honourable Madam Justice Warren

## Reasons for Judgment

Counsel for the Petitioner:

R.W. Millen  
C. Hildebrand  
N. Tollefson  
M. Greyell, Articled Student

Counsel for the Respondent:

L. Chun  
Y. Pappas-Acreman  
K. Messakh

Place and Date of Hearing:

Vancouver, B.C.  
October 20, 2023

Place and Date of Judgment:

Vancouver, B.C.  
November 24, 2023

**I. INTRODUCTION**

[1] The Federation of Law Societies of Canada (the “Federation”) has applied for interlocutory injunctive relief as part of a constitutional challenge to certain amendments to the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) [*ITA*].

[2] The amendments require legal professionals, among other persons, to report to the Canada Revenue Agency (the “CRA”) on two broad categories of transactions undertaken by their clients: “reportable transactions” (which meet certain statutory hallmarks) and “notifiable transactions” (which are any type of transaction the Minister of National Revenue (the “Minister”) designates as notifiable). Both are lawful transactions that the CRA wishes to investigate further to determine if they are “abusive” from a taxation perspective, in which case the associated tax benefits may be denied. Failure to report may result in fines of up to \$100,000 and imprisonment.

[3] The Attorney General of Canada (the “Government”) acknowledges that the purpose of requiring legal professionals to report on reportable transactions and notifiable transactions is to allow the Government to verify the information, if any, reported by the clients of the legal professionals. The Federation says this is “an unconstitutional attempt to turn legal professionals into agents of the state”.

[4] In the constitutional challenge, the Federation ultimately seeks a declaration that ss. 237.3 and 237.4 of the *ITA* are of no force or effect to the extent they apply to legal professionals, in their role as such. The Federation claims that the reporting requirements in these sections contravene ss. 7 and 8 of the *Canadian Charter of Rights and Freedoms*.

[5] On this application, the Federation seeks to exempt legal professionals from the operation of ss. 237.3 and 237.4 of the *ITA* until the constitutional challenge is determined on the merits. The Government opposes the application.

[6] By consent of the parties, an interim injunction was granted on September 14, 2023. It provides that legal professionals are exempt from the application of ss. 237.3 and 237.4 of the *ITA* until the earlier of the release of this Court’s decision on

the injunction application, or November 20, 2023. On October 20, 2023, the day this application was heard, the interim injunction was extended to December 1, 2023. The Government emphasizes that its consent to the temporary injunction was not an agreement or acknowledgment of the need for a further injunction.

## **II. BACKGROUND**

### **A. The Impugned Legislation**

[7] On June 22, 2023, Bill C-47: *An Act to implement certain provisions of the budget tabled in Parliament on March 28, 2023*, 1st Sess., 44th Parl., 2023, received Royal Assent. Through changes to s. 237.3 of the *ITA*, Bill C-47 modified the definition of reportable transactions and altered mandatory disclosure rules as they relate to reportable transactions. Bill C-47 also introduced a mandatory disclosure requirement for notifiable transactions through s. 237.4 of the *ITA*.

[8] For both reportable and notifiable transactions, all promoters and advisors, including legal professionals, are now required to file an information return in prescribed form with the Minister. Previously, advisors were not required to file an information return if the taxpayer or another advisor had done so. Pursuant to ss. 237.3(5) and 273.4(9), information returns must be filed within 90 days of the taxpayer entering the transaction, or (if earlier) 90 days of the taxpayer becoming contractually obligated to enter the transaction.

#### **1. Reportable Transactions**

[9] Reportable transactions are defined in s. 237.3(1) of the *ITA*. A transaction is reportable if “it may reasonably be considered that one of the main purposes of the transaction, or of a series of transactions of which the transaction is a part, is to obtain a tax benefit” and the transaction exhibits any one of three possible hallmarks: a contingent fee arrangement, confidential protection, or contractual protection. If both the tax benefit purpose and the hallmark criteria are met, the transaction is reportable.

[10] There are some boundaries delineated in the legislation on both the scope of the required disclosure and the potential liability of the individuals who must report. Section 237.3(17) provides that disclosure is not required “if it is reasonable to believe that the information is subject to solicitor-client privilege”. Section 237.3(11) provides that a person required to file a return in respect of a reportable transaction is not liable for a penalty “if the person has exercised the degree of care, diligence and skill to prevent the failure to file that a reasonably prudent person would have exercised in comparable circumstances”.

[11] The mandatory disclosure rules relating to reportable transactions were not introduced in 2023 by Bill C-47. These rules have existed since 2013, but Bill C-47 changed both the definition of and disclosure rules for reportable transactions such that the threshold for reporting has been lowered and the exposure of legal professionals has been heightened. The significant changes are as follows:

- a) one of the three hallmarks is now sufficient, whereas previously two of the hallmarks were required in order for a transaction to fall within the definition of a reportable transaction;
- b) one of the main purposes of the transaction must be the obtaining of a tax benefit, whereas previously the transaction needed to be made primarily to obtain a tax benefit in order for a transaction to fall within the definition of a reportable transaction;
- c) a party (such as a legal professional) is no longer relieved from their disclosure obligation when another party (such as the legal professional’s client) fulfills the disclosure obligation;
- d) the filing deadline was shortened to 90 days, whereas previously the filing deadline was June 30 of the calendar year following the calendar year in which the transaction became reportable; and
- e) where previously an advisor who failed to report could only be subject to a penalty in the amount of the professional fee they had charged, the

amendments provide that in addition to a penalty in the amount of their fee, an advisor may be fined \$10,000 plus \$1,000 per day while not in compliance, up to \$100,000.

[12] The general offence provision in s. 238 of the *ITA* applies as it did previously, making any person who fails to file a return as required guilty of an offence and liable to a fine of up to \$25,000 and imprisonment for a term of up to 12 months.

## **2. Notifiable Transactions**

[13] Notifiable transactions are a new category of transaction introduced by Bill C-47. Notifiable transactions are single transactions (or any transaction in a series of transactions) that are the same as, or substantially similar to, transactions designated by the Minister, with the concurrence of the Minister of Finance. The Minister has not yet designated any transactions as notifiable. Section 237.4 defines “substantially similar” broadly and provides that the term “is to be interpreted broadly in favour of disclosure”.

[14] The provision on notifiable transactions also sets boundaries on the scope of the required disclosure and the potential liability of individuals with reporting obligations. As with reportable transactions, disclosure for notifiable transactions is not required “if it is reasonable to believe that the information is subject to solicitor-client privilege” (s. 237.4(18)). In addition, only advisors who know or are reasonably expected to know that a transaction is a notifiable transaction are required to file an information return (s. 237.4(7)).

## **3. Information to be Disclosed**

[15] The content for disclosure in the form is the same for every person required to report, whether that be the taxpayer, a promoter or an advisor such as a lawyer. The form is Form RC312. The prescribed form which was previously required for reportable transactions was substantially similar. The specific information that must be reported is set out in more detail in the irreparable harm section of these reasons.

**B. Previous similar litigation**

[16] Two previous cases figure prominently in the Federation’s argument. I will refer to them as the PCA litigation and the Quebec Notaries litigation.

[17] The PCA litigation arose out of provisions in what is now the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17, formerly the *Proceeds of Crime (Money Laundering) Act* or “PCA”, that required lawyers to report client financial transactions that were reasonably suspected of being related to money laundering to the federal government. In 2001, the Federation and the Law Society of British Columbia (the “LSBC”) filed a petition in this court challenging the constitutionality of the provisions, and then sought interlocutory injunctive relief exempting lawyers from the reporting requirements pending a determination of their constitutionality. Justice Allan granted the interlocutory injunctive relief: *Law Society of British Columbia v. Canada (Attorney General)*, 2001 BCSC 1593 [the PCA Injunction Decision]. The PCA Injunction Decision was upheld by the *Court of Appeal: Law Society of British Columbia v. Canada (Attorney General)*, 2002 BCCA 49.

[18] The PCA was subsequently amended and the provisions requiring lawyers to report on their clients repealed. However, in 2008, new reporting requirements applicable to lawyers were enacted. The new legislation also gave search and seizure powers to a government agency. The Federation and the LSBC again challenged the constitutionality of the legislation. The Attorney General agreed to exempt legal professionals pending a decision on the merits of the constitutional challenge.

[19] In 2011, this Court held that the challenged PCA amendments infringed the *Charter*: 2011 BCSC 1270 [*the PCA BCSC Decision*]. The PCA BCSC Decision was upheld by the Court of Appeal: 2013 BCCA 147 [*the PCA BCCA Decision*]. The PCA BCCA Decision was upheld by the Supreme Court of Canada: 2015 SCC 7 [*the PCA SCC Decision*].

[20] In the *PCA SCC Decision*, Cromwell J., writing for the majority, concluded that the challenged amendments violated both s. 7 and s. 8 of the *Charter*. He found that a lawyer's duty of commitment to their client's cause is a constitutionally protected principle of fundamental justice and legislation that compromises this duty in favour of the state is unconstitutional.

[21] The Quebec Notaries litigation arose out of provisions of the *ITA* that allowed tax authorities to require any person to provide information or documents for any purpose related to the administration of the *ITA*. Certain notaries received notices requiring them to provide information about their clients. The *Chambre des notaires du Quebec* commenced an action seeking a declaration that the provisions were unconstitutional and of no force or effect with respect to notaries. The *Barreau du Quebec* joined the proceedings for the purpose of having any declaration also apply to lawyers. The Quebec Superior Court and Court of Appeal held in favour of the *Chambre* and the *Barreau*: 2010 QCCS 4215 and 2014 QCCA 552. The Attorney General's appeal to the Supreme Court of Canada was dismissed: *Canada (Attorney General) v. Chambre des notaires du Quebec*, 2016 SCC 20 [*Chambre des notaires*]. The Supreme Court of Canada held that the provisions of the *ITA* that required notaries and lawyers to report confidential information about their clients to the CRA violated s. 8 of the *Charter*.

### **C. The legal test for injunctive relief on a constitutional challenge**

[22] *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 1994 CanLII 117, sets out the three-part test for determining whether a court should exercise its discretion to grant an interlocutory injunction: is there a serious issue to be tried; would irreparable harm result if the injunction were not granted; and is the balance of convenience in favour of granting the interlocutory injunction or denying it. These three considerations are not a checklist but a guide for considering the fundamental question of whether granting an injunction is just and equitable in all the circumstances of the case: *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34 at para. 25; *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, 2019 BCCA 29 at para. 19.

[23] The factors relevant to assessing the balance of convenience are specific to the case and potentially numerous. In constitutional cases, the public interest is a special factor to be considered in assessing the balance of convenience, and “either the applicant or the respondent may tip the scales of convenience in its favour by demonstrating to the court a compelling public interest in the granting or refusal of the relief sought”: *RJR-MacDonald* at 343–344; *Manitoba (A.G.) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110 at 149, 1987 CanLII 79.

### III. ISSUES

[24] The issues are:

1. Is there a serious issue to be tried?
2. Will irreparable harm result if the interlocutory injunction is not granted pending the determination of constitutional validity?
3. Does the balance of convenience, taking into account the public interest, favour granting injunctive relief?

### IV. DISCUSSION AND ANALYSIS

#### 1. Is there a serious issue to be tried?

[25] It is apparent from the PCA litigation and the Quebec Notaries litigation that there is a serious issue to be tried concerning the constitutionality of the reporting requirements introduced by Bill C-47; specifically, whether they contravene s. 7 or s. 8 of the *Charter*. Indeed, this has been conceded by the Government.

#### 2. Will irreparable harm result if the interlocutory injunction is not granted?

[26] This stage requires the applicant to convince the court that irreparable harm will result if the relief is not granted. It is the nature of the harm, rather than the magnitude, that is considered. Harm will be irreparable if it cannot be quantified in monetary terms, or if the harm cannot be cured, usually because one party cannot collect damages from the other: *RJR-MacDonald* at 341.



[27] The Federation says that without a temporary exemption, the new legislation will damage public confidence in the legal profession's duty of loyalty to its clients. It says the new reporting requirements will result in the disclosure of confidential client information, the potential disclosure of privileged information, and irreconcilable conflicts of interest between lawyers' interest and those of their clients.

[28] The Federation points to the PCA Injunction Decision as a directly comparable case. There, Allan J. found that enforcing the PCA reporting provisions prior to a hearing on the merits would potentially result in the unconstitutional reporting of confidential information, which would irrevocably damage the solicitor-client relationship and harm the public interest by undermining the public's confidence in an independent bar.

[29] The Government submits that the Federation has not met the irreparable harm component of the test. Its position is founded on four arguments:

- this case is distinguishable from the PCA Injunction Decision because the legislation in question in that case had a criminal law purpose;
- at this stage, only harm to the applicant is considered and, in any event, the harm the Federation has identified is speculative, with the Government emphasizing that legal professionals have been complying with mandatory reporting rules since 2013 and implying that the amendments represent no new intrusion on privacy or impact on the solicitor-client relationship;
- legal professionals are protected because information reasonably considered to be subject to solicitor-client privilege is exempt from disclosure, the client has the same obligation to report so it cannot be said that the information reported was intended to be kept confidential, and legal professionals will not be penalized for failure to report if they exercised the degree of skill to prevent such failure that a reasonably prudent person would have exercised in comparable circumstances; and

- legal professionals have had sufficient notice to adapt their legal practice to mitigate the risk of harm.

[30] It hardly needs to be said that a lawyer has a duty to keep client information confidential and not to use a client’s confidential information to the disadvantage of the client or for the benefit of the lawyer or a third person without the consent of the client (see for example, the *Code of Professional Conduct for British Columbia [BC Code]*, Rules 3.3-1, 3.3-2). The ambit of this duty goes beyond solicitor-client privileged information. The commentary for Rule 3.3-1 of the *BC Code* provides that it applies “without regard to the nature or source of the information or the fact that others may share the knowledge”. The rationale for this duty is the need for the open exchange of information between clients and lawyers. The commentary for Rule 3.3-1 of the *BC Code* explains that a lawyer “cannot render effective professional service to a client unless there is full and unreserved communication between them”.

[31] There is no question that the reporting provisions in issue will require lawyers to disclose information to the CRA that is subject to this broad duty of confidentiality. Form RC312 requires the filing party to disclose, among other things:

- the identity of the person required to file the Form;
- the relationship of the filing party to the taxpayer;
- if the filing party is an advisor, the fees received or receivable in respect of the transaction;
- the identity of the taxpayer;
- with respect to a notifiable transaction:
  - the filing party’s view as to whether the notifiable transaction is the same as or substantially similar to a transaction designated by the Minister;
  - the year the tax benefit is expected to be used; and

- the filing party's description of the reason they are disclosing the transaction;
- with respect to a reportable transaction:
  - the filing party's description of the transaction;
  - the date the transaction is required to be disclosed;
  - what hallmark(s) of a reportable transaction apply;
  - a list of all advisors connected with the transaction who have access to information requested in the Form;
  - the nature and amount of the tax benefit being sought, and the year in which it is expected to be used; and
  - the details of the transaction, which requires the filing party to describe the transaction in sufficient detail for the Minister to understand the tax structure; describe the expected, claimed or purported tax treatment of all potential benefits; and possibly include reference to any material used to determine the tax treatment.

[32] In addition to requiring the disclosure of confidential client information, it is apparent that it will be necessary for a legal professional to apply legal judgment in completing the Form. For example:

- determining whether a transaction is substantially similar to a transaction designated by the Minister as a notifiable transaction will require a qualitative legal assessment; and
- in respect of reportable transactions, determining whether it “may reasonably be considered” that “one of the main purposes” of the transaction is to obtain a “tax benefit” will require a legal assessment of what might be considered

“reasonable” views; the purposes of the transaction, and which are the “main” purposes; and whether a transaction provides a tax benefit.

These are matters about which legal professionals might disagree, and with respect to which a legal professional will have advised their client. Once this confidential information is disclosed, the CRA may use the legal professional’s knowledge and analysis of the transaction against the legal professional’s client.

[33] It is possible, or likely, that a legal professional’s opinion about these matters would be privileged. As noted, the legislation provides that disclosure is not required “if it is reasonable to believe that the information is subject to solicitor-client privilege”, but reasonable people could disagree about whether that threshold is met in relation to particular information and mistakes can be made in determining which side of the line the particular information falls. As a result, there is the potential for the disclosure of privileged information, notwithstanding the exemption. Once disclosed, solicitor-client privileged information could be used against the legal professional’s client.

[34] Additionally, the legislation creates conflicts of interest between lawyers’ interest and those of their clients. The following is a non-exhaustive list of examples:

- some of the information that must be reported is the product of legal judgment and, given the prospect of a penalty being imposed, it will be in the lawyer’s interest to err on the side of disclosure;
- similarly, because of the prospect of penalty, it will be in the lawyer’s interest to conclude that certain information is not privileged in circumstances where it is a close call;
- while structuring a transaction in a way that might be considered notifiable or reportable may be in the client’s best interest, it could be in the lawyer’s best interest to recommend an alternative structure that would not be reportable or notifiable to avoid the possibility of the lawyer having to report or face sanction; and

- if the CRA disagrees with a lawyer's determination that certain information need not be reported because it is privileged and a penalty is imposed on the lawyer, the best evidence that the lawyer may have to challenge the penalty may be the allegedly privileged information in question.

[35] In the circumstances, I am satisfied that the Federation has established at least two types of irreparable harm that would result if the injunction sought is not granted:

- if confidential or privileged information is disclosed as a result of legislation that is ultimately found to be unconstitutional, individual clients will be irreparably harmed by the loss of professional secrecy, which cannot be undone, and the prospect of that occurring will have a chilling effect on the ability of individual clients to consult with their lawyers fully and freely pending a final determination of the constitutional challenge; and
- the potential for the unconstitutional reporting of confidential and privileged information, and the conflicts of interest between lawyers and their clients that will arise as a result of potentially unconstitutional legislation, would irrevocably damage the solicitor-client relationship and harm the public interest by undermining the public's confidence in an independent bar.

[36] While the above reasoning refutes some of the Government's arguments, I will briefly address each of them directly.

[37] The Government submits that the PCA Injunction Decision is distinguishable on the issue of irreparable harm because the legislation in issue in that case was criminal in character while the legislation in issue here serves a regulatory administration purpose, reasoning that the criminal law nature of the proceeds of crime legislation resulted in a high expectation of privacy, while the regulatory nature of the *ITA* results in a lower expectation of privacy. I do not view this as a meaningful distinction. The significant protection accorded to information provided by a client to

their lawyer is unaffected by the context in which the information is disclosed:  
*Chambre des notaires* at para 39.

[38] Citing *RJR-MacDonald* at 340–341, the Government submits that, at this stage, only harm alleged to be suffered by the applicant (legal professionals themselves) is to be considered, and any harm to the Government or to the public interest is considered at the balance of convenience stage. In *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, 2018 BCSC 2084 at paras 166–170, leave to appeal to BCCA ref’d, 2019 BCCA 29, this Court recently questioned the importance of irreparable harm to the applicant on an application for injunctive relief in a public interest case and concluded that some prospective patients (that is, not the applicants themselves) would suffer irreparable harm if the injunction sought was not granted. In any event, for the reasons expressed above, legal professionals will suffer irreparable harm if the injunction sought in this case is not granted because their relationships with their clients will be irrevocably damaged.

[39] The Government emphasizes that legal professionals have been complying with mandatory reporting rules since 2013, implying that there is no new intrusion on privacy or on the solicitor-client relationship. This is not persuasive. Prior to the new amendments, a client could prevent their lawyer from disclosing anything by ensuring someone else reported. Put another way, the ability to prevent the harm that has been identified was within the client’s control. This is no longer the case.

[40] The Government says that legal professionals are protected because information reasonably considered to be subject to solicitor-client privilege is exempt from disclosure, the client has the same obligation to report so it cannot be said that the information reported was intended to be kept confidential, and legal professionals will not be penalized for failure to report if they exercised the degree of skill to prevent such failure that a reasonably prudent person would have exercised in comparable circumstances. This too is not persuasive. Whether the exemption for privileged information or the penalty exception applies in a given case is a matter about which reasonable people might disagree. The uncertainty inherent in the

exemption as a result of the words “reasonably considered” and in the exception as a result of the words “reasonably prudent person” creates a conflict of interest between lawyers’ interest and those of their clients. The fact that clients also have to report does not eliminate the harm because it is not likely that a client and their lawyer will share an identical body of information about a particular transaction, particularly the aspects that require the application of legal judgment. This reality appears to be implicit in Government’s purpose for requiring legal professionals to report; that is, as a check on the information reported by the clients.

[41] Finally, the Government argues that legal professionals have had sufficient notice to adapt their legal practice to mitigate the risk of harm by advising clients upfront about the reporting obligations and addressing in retainer agreements the consequences of any disagreement between the lawyer and client over what is reportable. However, these steps would merely identify the harm in advance; they would not eliminate the harm, particularly the chilling effect on the ability of individual clients to consult with their lawyers fully and freely pending a final determination of the constitutional challenge.

[42] The irreparable harm component of the test has been established by the Federation.

**3. Does the balance of convenience, taking into account the public interest, favour granting injunctive relief?**

[43] As mentioned, in constitutional cases the public interest is a special factor which must be considered in assessing where the balance of convenience lies.

[44] In considering the granting of an injunction suspending the operation of a validly enacted law, it must be assumed that the law is directed to the public good, and this assumption weighs heavily in the balance. As such, it is only in clear cases that interlocutory injunctions against the enforcement of a law on grounds of alleged unconstitutionality succeed because the granting such relief will temporarily frustrate the pursuit of the common good: *Harper v. Canada (Attorney General)*, 2000 SCC 57 at para. 9 and *Metropolitan Stores* at 135.

[45] The Government does not, however, have a monopoly on the public interest: *RJR-MacDonald* at 343. Where the applicant demonstrates a more compelling public interest in favour of granting injunctive relief, that may tip the scales of convenience in its favour.

[46] The Federation says that temporary injunctive relief will cause no harm to the Government or the public interest, given that other advisors, promoters and taxpayers will still be required to report the information to the CRA; there is no urgency associated with extending the mandatory reporting of reportable and notifiable transactions to legal professionals; and it is prepared to move expeditiously to a hearing on the merits of the constitutional challenge.

[47] In particular, the Federation says that the balance of convenience is in its favour because the injunction is narrow in scope, the injunction is in the public interest, its case on the merits is strong, granting the exemption will preserve the status quo, and the Government will not suffer any harm.

[48] The Government submits that the amendments serve an important purpose and are in the public interest, and that the harm alleged by the Federation does not outweigh that public interest. It emphasizes the public interest in the proper administration and enforcement of the *ITA*, and the importance of ensuring that taxpayers do not undermine the integrity of Canada's tax system by engaging in abusive tax avoidance. If the injunction is granted, the Government says the CRA and the public will be deprived of an unknown amount of reporting by legal professionals with respect to avoidance and abusive transactions.

[49] I start by observing that the strength of the applicant's case may be a factor to be weighed in assessing the balance of convenience, but a judge should not engage in an extensive review of the merits unless the interlocutory motion will effectively amount to a final determination of the action or the constitutionality question is a simple question of law alone: *RJR-MacDonald* at 337–338; *Cambie Surgeries* at paras. 113–115. Neither of those exceptions applies here.



[50] As noted, legislation enacted by a democratically elected government is assumed to be directed at the common good and to serve a valid public purpose. At the same time, I have found that harm to the public interest will result if the injunctive relief sought is not granted. The question is which is the more compelling public interest.

[51] I accept that the proper administration and enforcement of the *ITA* is in the public interest, but for the reasons that follow this is one of those rare cases where there is a far more compelling public interest in favour of granting the injunction relief sought.

[52] The injunction will deprive the public of the benefit of duly enacted legislation, but, for two reasons, the impact of such deprivation will be minimal.

[53] First, the injunction sought grants an exemption for legal professionals as opposed to a wholesale suspension of the legislation. In *RJR-MacDonald* at 346, Justice Sopinka and Justice Cory explained that the public interest in protecting duly enacted legislation weighs more heavily in a suspension case than in an exemption case because the public interest is likely to be much less detrimentally affected when a discrete and limited number of people are exempted than when the application of the law is suspended entirely. Here, other advisors, promoters, and the taxpayers themselves will still be required to report and, as a result, the injunction will not gravely impair the Government's ability to enforce the *ITA*.

[54] Second, the Federation has committed to move expeditiously to have the constitutional challenge heard on the merits, the status quo will be preserved in the meantime, and the Government has not demonstrated any particular urgency associated with expanding the scope of the reporting requirements to make disclosure by legal professionals mandatory.

[55] In contrast, the harm to the public interest if the injunction is not granted is significant and serious. I have found that the potential for the unconstitutional reporting by lawyers of confidential and privileged client information, and the

conflicts of interest between lawyers and their clients that will arise as a result of potentially unconstitutional legislation, would irrevocably damage the public interest by undermining the public's confidence in an independent bar. This is a public interest that has repeatedly been recognized as extremely important. In *Chambre des notaires*, at para. 37, the Supreme Court of Canada called the professional secrecy of legal advisers an interest “which is a principle of fundamental justice and a legal principle of supreme importance”. In the *PCA SCC Decision*, at para. 96, the Supreme Court of Canada emphasized that both clients and the broader public must feel confident that lawyers are committed to serving their clients' legitimate interests free of other obligations. This confidence was said to be “essential to the integrity of the administration of justice” and “of high public importance”.

[56] For these reasons, the balance of convenience favours the granting of the interlocutory relief sought.

## **V. CONCLUSION**

[57] Given that there is a serious question to be tried, the Federation has established that irreparable harm will result if injunctive relief, in the form of an exemption for legal professionals, is not granted, and the balance of convenience favours the granting of such relief, I conclude that it is just and equitable to grant an injunction pending the determination of the Federation's Petition on the merits.

[58] During the hearing, the Government submitted that if an injunction was to be granted, it should be slightly narrower in scope than as expressed in the Federation's Notice of Application. The Federation confirmed that it seeks the exemption to apply to legal professionals but only in their capacity as advisors. Counsel advised me that they are confident they will agree on the specific wording of the order that flows from these reasons. If that is not the case, they may seek a determination on the specific wording of the order by setting out their respective positions in writing and directing them to my attention, through Supreme Court Scheduling.

“Warren J.”

# Law Society

*of British Columbia*

## Final Report of the Mental Health Task Force

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### **Mental Health Task Force:**

Brook Greenberg, KC (Chair)  
Cheryl D'Sa  
Phil Dwyer  
Honourable Madam Justice Nitya Iyer  
Derek LaCroix, KC  
Christopher McPherson, KC  
Kendra Milne  
Honourable Judge Patricia Stark

Date: December 8, 2023

Prepared by: Policy and Planning Department

Purpose: Discussion and Decision

## Purpose

1. The first purpose of this report is to present the Benchers with a set of recommendations following the Mental Health Task Force’s comprehensive review of the *National Study on the Health and Wellness Determinants of Legal Professionals in Canada* (the “*National Study*”).
2. The second purpose of this report is to provide recommendations for the Law Society of British Columbia (the “Law Society”) to continue to engage with mental health and substance use issues in an ongoing manner once the Mental Health Task Force completes its work at the end of this year, recognizing the need for the Law Society to remain informed and up-to-date with respect to mental health and substance use issues and regulatory best practices in the absence of a task force dedicated to these matters.

## Proposed Resolution

3. The Mental Health Task Force recommends the following resolution:

BE IT RESOLVED that the Benchers approve the six recommendations contained in the Mental Health Task Force’s Final Report:

**Recommendation 1:** Enhance the development, consolidation and dissemination of the Law Society’s well-being resources and provide periodic reporting on resource-related development, collaboration, implementation and outreach activities.

**Recommendation 2:** Respond to the *National Study* data regarding factors that create barriers to lawyers seeking support by: (i) creating a set of tailored resources and communications that identify specific, practical strategies for overcoming the primary barriers to accessing support, and; (ii) highlighting and reducing the gap between real and perceived stigma.

**Recommendation 3:** Facilitate opportunities for lawyers to have greater time and means to address health issues by: (i) improving communications and resources in respect of existing options, and; (ii) exploring the potential development of additional options.

**Recommendation 4:** Assess and, if appropriate, adopt the Alternative Discipline Process as a permanent regulatory program at the conclusion of the three-year pilot program.

**Recommendation 5:** Implement a transition plan to support the Law Society’s continued engagement with mental health issues once the Task Force concludes its work that includes a

combination of committee participation in strategic direction and policy decisions, and staff support for operational activities, outreach and collaboration with stakeholders.

**Recommendation 6:** Utilize the strategic planning process to periodically assess and update the Law Society’s engagement with mental health and substance use issues at a policy level.

## Background

4. The Mental Health Task Force (the “Task Force”) was established in 2018 to assist the Law Society in taking steps to improve mental health within the profession, for the benefit of both legal professionals and the public they serve. Guided by its terms of reference, the Task Force’s primary objectives are to identify ways to reduce stigma and to undertake an integrated review of the Law Society’s regulatory approaches to mental health issues.<sup>1</sup>
5. Over the past six years, the Task Force has authored numerous reports that examine the connection between the Law Society’s public interest mandate and the prevalence of these issues within the legal profession, and that make recommendations aimed at improving lawyer well-being and serving the public interest.<sup>2</sup>
6. Due to a paucity of Canadian data, the Task Force’s policy work has primarily relied on studies from other jurisdictions. However, in October 2022, researchers from the Université de Sherbrooke, in partnership with the Federation of Law Societies and the Canadian Bar Association, released the findings of the *National Study*, which analyzed data collected from over 7,300 Canadian legal professionals in relation to a range of psychological health issues.<sup>3</sup>
7. Representing the first comprehensive data set of its kind, the *National Study* confirms that Canadian legal professionals are at a significantly elevated risk of experiencing mental health issues as compared to the general working population. Among legal professionals that participated in the study, 29% provided responses consistent with experiencing moderate to severe depressive symptoms and 36% with experiencing anxiety. A majority provided responses consistent with burnout (56%) and psychological distress (60%), and potential alcohol dependence was observed in 37% and 42% of male and female respondents, respectively.

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<sup>1</sup> Law Society of BC Mental Health Task Force [Terms of Reference](#).

<sup>2</sup> Mental Health Task Force’s [First Interim Report](#) (December 2018), [Second Interim Report](#) (January 2020); [Alternative Discipline Process Report](#) (September 2021); [Implementation Report](#) (June 2022) and [Fourth Recommendation Report](#) (January 2023).

<sup>3</sup> Cadieux, N., et. al. (2022). Research report: Towards a Healthy and Sustainable Practice of Law in Canada. *National Study on the Health and Wellness Determinants of Legal Professionals in Canada, Phase I (2020-2022)*. Université de Sherbrooke (“[Research Report](#)”). Highlights of the 422-page report are provided in an [Executive Summary](#).

8. Approximately one in four respondents reported having had suicidal thoughts in the course of their careers. Significantly, the *National Study* found that a majority of legal professionals that felt they could benefit from assistance for a mental health issue did not seek support.
9. The *National Study* also examined risk factors that contribute to mental health issues, protective factors that can prevent or mitigate the development of health problems and barriers to support-seeking behaviours. Through this analysis, a large body of evidence emerged respecting intersectionality, with legal professionals from equity-deserving groups exhibiting elevated levels of psychological distress, burnout, depression and suicidal ideation, as well as experiencing frequent incivility, workplace violence and discrimination, all of which were found to negatively affect mental health outcomes.
10. New entrants to the profession, including articulated students, similarly experience high rates of psychological distress, depression and anxiety.
11. In December 2022, a supplemental recommendation report was released identifying 35 targeted measures addressing the *National Study*'s key findings, many of which are directed at law societies.<sup>4</sup> In order to devote sufficient time to the analysis of this large body of data, and to give consideration to how the *National Study* recommendations might be implemented in BC, the Task Force's tenure was extended for an additional year.
12. During this period of review, the Task Force determined that the Law Society had already fulfilled a number of the *National Study*'s regulatory recommendations, including removing mental health disclosures from the admission program application, amending the duty to report provisions in the *BC Code* and developing an alternative discipline process.<sup>5</sup> The Task Force also concluded that approximately one-third of the *National Study* recommendations are directed at other stakeholders and fall outside of the Law Society's public interest mandate.<sup>6</sup>
13. The majority of the remaining *National Study* recommendations were found to share commonalities with the Task Force's previous 24 recommendations and, in this regard, have been at least partially addressed by past policy decisions approved by the Benchers [see **Appendix A**]. Where such overlap exists, additional operational activities addressing the

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<sup>4</sup> Cadieux, N., et. al. (2022). Targeted Recommendations: Towards a Healthy and Sustainable Practice of Law in Canada. *National Study on the Health and Wellness Determinants of Legal Professionals in Canada, Phase I* (2020-2022). Université de Sherbrooke ("[Recommendations Report](#)").

<sup>5</sup> Mental Health Task Force First Interim Report (recommendations 12 and 13); Second Interim Report (recommendations 6 and 7) and the Alternative Discipline Process Report (*supra* note 2).

<sup>6</sup> *National Study* Recommendations Report *supra* note 4 at 1.1 (law schools); 2.3, 4.1, 7.3, 8.3, 8.4, 10.1, 10.2; (legal employers); 3.3 (CPD providers); 3.4 (mentoring and peer support programs), and; 10.4 (individual lawyers).

*National Study* findings were identified, recognizing that these initiatives generally do not require further policy approval.

14. For the final sub-set of *National Study* recommendations — namely, those that have not yet been addressed by the Law Society — the Task Force examined whether developing further recommendations for the Benchers was advisable.

## Discussion

15. The recommendations contained in this report respond to the *National Study* findings by identifying priority areas of work in relation to operational activities,<sup>7</sup> policy development and strategic planning efforts that support the Law Society in continuing to address mental health within the profession from a public interest perspective. In the discussion that follows, key issues are identified, supported by empirical data, and a series of recommended responses are proposed. The supporting policy analysis is presented toward the end of the report, with a focus on the public interest benefits of the recommended approaches.

## Continuous improvement of well-being resources

**Recommendation 1:** Enhance the development, consolidation and dissemination of the Law Society’s well-being resources and provide periodic reporting on resource-related development, collaboration, implementation and outreach activities.

16. A key component of the Task Force’s mandate is to improve understandings of the prevalence of mental health and substance use issues affecting legal professionals and to encourage lawyers to seek support for these issues. From a public interest perspective, this work remains a priority for the Law Society on the basis that increased awareness and use of support and resources can help place lawyers in a stronger position to serve their clients and reduces the risk that a health issue may impact on the delivery of legal services.
17. On this basis, many of the Task Force’s early recommendations focused on improving communications about, and access to, mental health-related information and resources. Although these initiatives represent significant progress, the *National Study* data and associated recommendations suggest that more can, and should, be done.<sup>8</sup>

<sup>7</sup> If an action or activity is an extension of current Law Society operations or does not represent a new policy direction or decision it can be undertaken by staff without the direct involvement of the Board or committees.

<sup>8</sup> *National Study* Recommendations Report *supra* note 4 at 5.7, 6.1, 6.2 and 10.3.

18. The Task Force therefore recommends that the Law Society commit to the continuous review and improvement of its well-being resources and to provide periodic reporting on resource-related development, collaboration, implementation and outreach activities. In parallel with this work, the Law Society should monitor and, as appropriate, participate in the Federation's activities in relation to the development of model policies and other resources, and consider the appropriateness of these materials for use in BC.
19. If approved by the Benchers, the Task Force suggests that the implementation of this recommendation commence with a number of priority operational activities, including: ongoing training and education within the Law Society, updating and providing refresher training as required, supporting a permanent well-being hub on the Law Society website to improve the collation and dissemination of mental health-related resources,<sup>9</sup> promoting the well-being resources available through LifeSpeak, continuing to develop expert system support tools and expanding the Law Society's practice resources in relation to the key topics identified in the *National Study*, including civility, burnout, vicarious trauma, technostress, setting boundaries, substance use, suicide, the intersectionalities between mental health and EDI issues, stress management and resilience.
20. To ensure ongoing development, implementation and improvement in respect of training and resources dedicated to mental health and substance use issues, the Task Force recommends that the Benchers receive periodic reports from staff, as requested by the Executive Committee, on the operationalization of this recommendation.

## Develop additional resources and communications addressing barriers to accessing support

**Recommendation 2:** Respond to the *National Study* data regarding factors that create barriers to lawyers seeking support by: (i) creating a set of tailored resources and communications that identify specific, practical strategies for overcoming the primary barriers to accessing support, and; (ii) highlighting and reducing the gap between real and perceived stigma.

21. Many of the Task Force's past recommendations have sought to improve access to, and use of, support services on the basis of the public interest benefits associated with lawyers obtaining support that may place them in an improved position to serve the public. However, in light of the *National Study* data that indicates that nearly half of legal professionals that felt they could benefit from obtaining professional support for a psychological health issue, and two-thirds of those with suicidal thoughts, did not seek assistance, the importance of prioritizing actions that remove barriers to seeking support cannot be overstated.<sup>10</sup>

<sup>9</sup> See [Lawyer Well-Being Hub | The Law Society of British Columbia](#), which highlights the work undertaken thus far.

<sup>10</sup> *National Study* Research Report *supra* note 3 at p. 54.



22. Historically, the Task Force has focused on reducing stigma and assuaging lawyers' concerns about the confidentiality of assistance programs, based on US studies identifying these as the primary barriers to lawyers accessing support.<sup>11</sup> The *National Study* data reveals, however, that Canadian legal professionals are influenced by a broader range of factors, with the dominant barriers cited as: a belief that the health issue is temporary and will pass (56%), lack of energy (38%), lack of time (28%), being unsure if professional help should be sought (23%) and financial constraints (23%). In contrast, stigma-related barriers were reported with less frequency.<sup>12</sup>
23. In response to this new data, the Task Force recommends that the Law Society develop a tailored set of resources and communications that identify specific, practical strategies for overcoming the particular barriers to support-seeking identified in the *National Study*. These materials should be prepared in consultation with subject-matter experts, regularly reviewed and updated, and promoted through the Law Society's various communications platforms.
24. Although stigma may play a more nuanced role in deterring support-seeking, the *National Study* nevertheless strongly supports the continuation of stigma-reduction initiatives.<sup>13</sup> In particular, the data provides new insights into the "dichotomy of stigma," namely: that although respondents overwhelmingly disagreed with the negative stereotypes associated with individuals with mental health issues, many respondents nevertheless expressed a belief that others within the profession held stereotypes about those experiencing mental health issues.<sup>14</sup> This dichotomy may be a contributing factor to many legal professionals' reluctance to seek support for mental health issues.
25. To address this concern, it is recommended that the Law Society develop targeted communications aimed at reducing both the actual and perceived stigma related to mental health and substance use issues, and addressing incorrect assumptions about the prevalence of negative stereotyping and discriminatory views within the profession. To support evidence-based policy development, consideration may also be given to any additional data from Phase 2 of the *National Study* in respect of barriers that prevent BC lawyers from obtaining assistance for mental health issues.<sup>15</sup>

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<sup>11</sup> Krill P.R., Johnson R. & Albert L., "[The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys](#)" (2016) 10 J. Addiction Med. 46.

<sup>12</sup> Stigma related barriers include being ashamed (13%), fear of others finding out (9%) and fear of discrimination (3%). See *National Study* Research Report *supra* note 3 at p. 56.

<sup>13</sup> One of the *National Study*'s ten meta- themes is to "implement actions aimed at destigmatizing mental health issues in the legal profession" (*National Study* Recommendations Report *supra* note 4 at p.28).

<sup>14</sup> The *National Study* observed a difference of approximately 41% between personal stigma and perceived stigma (*National Study* Recommendations Report *supra* note 4 at p. 278).

<sup>15</sup> Results of Phase 2 of the *National Study*, which focuses on qualitative data that contextualizes the national survey data and will generate further recommendations for BC that are tailored to regional factors, are expected in 2024.

## Facilitate opportunities to take time to address health issues

**Recommendation 3:** Facilitate opportunities for lawyers to have greater time and means to address health issues by: (i) improving communications and resources in respect of existing options, and; (ii) exploring the potential development of additional options.

26. As discussed in the previous recommendation, the *National Study* data provides new evidence that lawyers' lack of time and energy, and financial concerns, all present significant obstacles to accessing support for mental health issues. In the Task Force's view, these barriers are linked to the challenges, both real and perceived, of taking time to manage health issues.
27. A two-pronged approach is therefore recommended: First, improving communications and resources in respect of existing options to reduce or take time away from practice, and; second, exploring the potential to develop additional options for practice relief or coverage.

### Enhance information and resources regarding existing options

28. The Law Society has a variety of mechanisms that facilitate absences from, or reductions in, practice, as described below.
29. In addition to a non-practising status option, BC is one of only a few Canadian law societies with a part-time indemnity category, permitting lawyers to reduce their hours of work and indemnity fees while maintaining their practising status. Currently, the information provided to the profession about this option is narrowly focused on making the necessary changes to indemnity coverage, and lacks content that contextualizes the circumstances in which there may be merit in considering this option.
30. The Law Society also facilitates a locum registry through which lawyers can arrange a substitute professional to care for matters while they take time off, which provides another option for individuals that anticipate requiring practice coverage for health or other reasons. Notably, the registry was created more than a decade ago to address the issues now under consideration, namely: lawyers lacking options for either maintaining their practice while taking time-off or temporarily reducing their practice.<sup>16</sup> Locums were identified as a solution to the pressures, particularly on sole and small firm practitioners that can contribute to burnout, which may present risks to both lawyers and their clients.

<sup>16</sup> Law Society of BC, [Small Firm Task Force Report](#) (2007) at p. 16. Locums are short-time employees or independent contractors that provide temporary practice coverage to lawyers requiring time away from practice (e.g. health-related leaves, maternity or parental leave, bereavement leave, vacation) or a reduction in practice load.

31. In undertaking a review of the Law Society’s current locum registry, the Task Force identified a number of shortcomings, including the limited information available regarding the registry, the small pool of locums, the lack of accompanying resources and restricted access through the member portal. The stigma associated with seeking locum coverage and the lack of clarity around the services available likely also contribute to the limited uptake of the program.
32. To address these issues, and to reduce barriers to use, the Task Force recommends revitalizing the locum registry through a number of operational changes, including developing checklists, sample contracts and FAQs,<sup>17</sup> as well as materials that identify different scenarios in which lawyers might consider both acting as, and utilizing locums, as well as the benefits of doing so. Additionally, the Law Society should undertake a communications program to seek to increase the number of lawyers offering to be engaged for temporary practice coverage through the locum program and ensure that this information is both actively communicated to the profession and included in the practice resource and well-being sections of the website.
33. Improvements to the locum registry’s functionality, including making it accessible through the public portion of the Law Society’s website, may also encourage use. Consideration could also be given to re-branding the program as a short-term practice coverage network to overcome the stigma that has historically been associated with locums.
34. Once these changes are implemented, usage should be periodically evaluated to assess the extent to which these modifications increase the registry’s utility.
35. As a final option, through the Custodianships program the Law Society may apply for a court order appointing the Society as the custodian of a lawyer’s practice in a number of circumstances, including those in which a lawyer is unable to maintain their practice.<sup>18</sup> Although the Law Society’s focus in a custodianship arrangement is typically on taking steps to wind up a practice, in situations in which a lawyer is undergoing medical treatment, there may be capacity for the Law Society to manage the practice for a short period of time until the individual is able to return. The Custodianships department also occasionally provides assistance in setting up short-term practice coverage outside of the court-ordered process.
36. Although these options are available in a limited set of circumstances, and as necessary to protect the public interest, communications to the profession regarding the Custodianships program would benefit from additional transparency. On this basis, it is recommended that

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<sup>17</sup> See for example, the [guides](#) for legal locums developed by organizational in the UK and resources supporting the LSO’s [Contract Registry](#), Alberta’s [Locum Connect](#) and Saskatchewan’s [Locum Registry](#).

<sup>18</sup> The circumstances in which a custodianship may be sought are enumerated Part 6 of the *LPA*.

the Law Society develop further communications for the profession in respect of the role that the Custodianships department can play in arranging the conduct of a lawyer's practice.

37. More generally, the Task Force recommends that the Law Society develop additional practice resources that enhance the information about, and the potential benefits of, utilizing the various options described above in a manner that normalizes the need to take time off or to reduce one's practice load for a variety of reasons. These resources may include: materials that present different scenarios in which lawyers may require practice reductions or coverage, FAQs for those contemplating taking or returning from a period of leave or reduced practice and checklists addressing practical and ethical considerations in relation to absences from practice.<sup>19</sup> These resources should be consolidated in the practice resources section of the website, linked to the lawyer-well-being hub and actively promoted through Law Society communications.<sup>20</sup>

### **Explore the potential development of additional options**

38. The Task Force has considered whether expanding the use of court-ordered custodianships is likely to be an effective means of enhancing the options available to lawyers that need time to address a health issue. Several barriers to broader use of the program were identified, including the requirement for lawyers to disclose their health issue to support the issuance of an order, the stigma associated with a custodianship and the broad powers provided to custodians under the *LPA*. Accordingly, the Task Force concluded that court-ordered custodianships are not the preferred mechanism for enhancing opportunities for lawyers take time off to manage a health issue.
39. In undertaking a review of existing options, the Task Force identified a "gap" in the current resources between custodianships on the one hand, which are implemented through a court order and often address unforeseen and exigent circumstances, and a planned absence to be covered through the use of a pre-arranged locum, on the other. Neither approach may be suitable in circumstances in which a lawyer requires unanticipated coverage to seek support for a health issue where there is insufficient time to arrange for a locum but the lawyer is also not in a position where it is necessary to have their entire practice assigned to a custodian through a court order.
40. On this basis, the Task Force examined the merits of a voluntary custodianship-like program that operates outside of the court-ordered process established in the *LPA*. Although developing this, or other novel approaches to facilitating taking time to address health issues

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<sup>19</sup> In November 2023, the Benchers approved changes to the Law Society's return to practice requirements, extending the period of time that lawyers may maintain non-practicing status before triggering the Credentials Committee's review of their application to resume practice.

<sup>20</sup> This approach is preferred to creating a separate webpage for medical leaves in an effort to normalize the need to take breaks and reduce the stigma associated with doing so.

to help fill the gap described above are likely to be challenging from both a policy and practical perspective, the Task Force is of the view that it is in the public interest to explore innovative ways to better enable lawyers to seek support.

41. In undertaking this work, it is recommended that an approach similar to that leading to the development of the Alternative Discipline Process (“ADP”) is adopted. This process involved considerable policy analysis and program design, and ultimately, a balancing exercise to ensure that the program has as few barriers to utilization as possible but still operates in, and is seen to be operated in, the public interest. Similar challenges exist in considering the creation of additional options to facilitate lawyers taking time to address health issues. Included among those challenges are ensuring that such a program is accessible and non-stigmatizing, as well as being cost-effective and not subject to misuse.
42. As the Task Force’s tenure concludes, it is recommended that a working group of three Benchers be appointed as a sub-committee of the Equity, Diversity and Inclusion Advisory Committee (“EDIAC”) to consider and, if advisable, develop the purpose, goals and principles for a further option or options to fill the aforementioned gap in temporary coverage between locums and court-ordered custodianships. The working group would report to the Executive Committee to determine whether steps should then be taken by staff to operationalize a program or pilot program.

## Final assessment of the ADP pilot project

**Recommendation 4:** Assess and, if appropriate, adopt, the Alternative Discipline Process as a permanent regulatory program at the conclusion of the three-year pilot project.

43. In September 2021, the Benchers approved the Task Force’s recommendation to create the ADP as a three-year pilot program. The rule changes necessary to operationalize the program were subsequently adopted and the pilot commenced in April 2022.
44. A mid-pilot assessment of the ADP will be provided to the Benchers in early 2024. Based on informal reporting to date, the Task Force considers that the program is meeting or exceeding its objectives and expects future reporting will confirm this to be the case.
45. Although the rules necessary to maintain a permanent program are already in place, it is important that the ADP is formally assessed at the conclusion of the three-year pilot project and, if appropriate, adopted as a permanent regulatory program. In particular, taking active steps to formalize the ADP is necessary to document and convey, to both the profession and to the public, the benefits of the program. Further, in the event a new regulatory regime is implemented, this reporting and decision-making will ensure that the ADP’s background,

purposes, and public interest benefits are clearly articulated for the new governing body, which may otherwise lack an understanding of the institutional history and benefits of the program.

## Implement a mental health transition plan

**Recommendation 5:** Implement a transition plan to support the Law Society’s continued engagement with mental health issues once the Task Force concludes its work that includes a combination of committee participation in strategic direction and policy decisions, and staff support for operational activities, outreach and collaboration with stakeholders.

**Recommendation 6:** Utilize the strategic planning process to periodically assess and update the Law Society’s engagement with mental health and substance use issues at a policy level.

46. The Task Force has been asked to conclude its term at the end of this year. However, given the continued relevance of mental-health related work to both the profession and the public interest, it is recommended that a transition plan, comprised of the elements described below, is implemented to support the Law Society’s continued engagement with mental health and substance use issues.

### Strategic and policy direction

47. Once the Task Force’s tenure concludes, it is proposed that the Executive Committee oversee the strategic planning aspects of future mental-health initiatives and is assigned primary responsibility for reviewing reports respecting the implementation and effectiveness of the Task Force’s past recommendations, as well as proposals for new initiatives or policy directions.

48. To ensure that these issues are addressed and reported on periodically, the Task Force further recommends that consideration of the Law Society’s policies, processes, programs, resources, training, and ongoing implementation efforts in respect of mental health and substance use issues be expressly incorporated into the formal strategic planning process.

49. As the intersectionalities between equity, diversity and inclusion and mental health issues have become a growing focus for organizations advancing mental health policy and programming,<sup>21</sup> the EDIAC should also be involved in the Law Society’s future mental health work. The *National Study* data respecting the elevated risk that legal professionals from equity-deserving groups face with respect to experiencing mental health issues<sup>22</sup>

<sup>21</sup> See for example, Mental Health Commission Canada, “[Toward an Integrated and Comprehensive Equity Framework: Report - Mental Health Commission of Canada](#) (June 2023).

<sup>22</sup> *National Study* Recommendations Report *supra* note 4 at 7.1, 7.2 7.3.

provides further support for the EDIAC assuming key responsibility for future policy and advisory functions in relation to these issues, including the review of the forthcoming results of Phase 2 of the *Study*. To facilitate this work, the Task Force also recommends that the EDIAC's mandate be amended to expressly include responsibility for monitoring, reporting on, and making policy recommendations in respect of, mental health related issues.

50. The *National Study* also cites statistics regarding the high rates of psychological distress and mental health issues among those in their early years of legal practice<sup>23</sup> and makes corresponding recommendations on training, mentorship and continuing professional development to improve health outcomes for new entrants to the profession.<sup>24</sup> Accordingly, it is recommended that the relevant *National Study* findings are considered as part of any future changes to lawyer education and development in BC, including in the work being done by the Lawyer Development Task Force.
51. Although assigning consideration of mental health matters to specific policy committees and staff is important from the perspective of ensuring the coordination of, and accountability for, this work, it is critical to recognize that mental health issues have the potential to influence the full breadth of the Law Society's educational and regulatory functions, as well as having differential impacts across the profession. In this regard, these matters should not be viewed as being the sole responsibility of a few individuals or bodies. Rather, a mental health lens should be applied the across all facets of the Law Society's work, with a particular emphasis on consultation with impacted external and internal stakeholders, including bodies such as the Truth and Reconciliation Advisory Committee and the Ethics Committee, where appropriate.

### **Operational activities**

52. Collectively, the Task Force's 30 recommendations, combined with the *National Study* findings, provide Law Society staff with a detailed roadmap for taking a proactive, evidence-based approach mental health-related work moving forward.
53. To ensure continued success and leadership in this evolving area of policy development, it is recommended that the Law Society commit to maintaining current levels of staff support for mental health initiatives for at least the duration of the current Strategic Plan. Such an approach will enable staff to continue to undertake a wide range of operational activities including: issue monitoring, research, data and policy analysis, resource development,

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<sup>23</sup> The *National Study* Research Report *supra* note 3 documented that approximately half of articulated students reported being diagnosed with a mental health issue since commencing practice.

<sup>24</sup> *National Study* Recommendations Report *supra* note 4 at 2.2 and 3.1 to 3.4. Although recommendations 1.1 to 1.3, 2.1 and 2.3 are primarily directed at law schools, they may warrant consideration given the Law Society's role in lawyer development through the Admission Program.

program evaluation and reporting. In undertaking this work, staff would also be expected to seek input from subject matter experts as necessary.

54. The implementation of the Task Force’s recommendations, coupled with periodic updates in this regard, would ensure that the Benchers remain apprised of the Law Society’s progress in fulfilling the policy directions set during the Task Force’s tenure. Staff can also be expected to participate in ongoing outreach and collaboration with others within the legal community working to advance mental health initiatives. In particular, the Task Force encourages the Law Society to contribute in pan-Canadian efforts to implement the *National Study* recommendations, including working groups and projects spearheaded by the Federation.<sup>25</sup>

## Policy Analysis

55. In developing and approving the Task Force’s recommendations, the paramount consideration must be the extent to which a particular initiative advances the public interest, including advancing equity, diversity and inclusion and reconciliation with Indigenous Peoples. Secondary factors that warrant evaluation include a proposal’s impact on licensees, public and governmental relations, as well as the budgetary and organizational implications of a particular course of action.

### Public interest

56. The guiding principle of all work at the Law Society is to uphold and protect the public interest in the administration of justice. Section 3 of the *LPA* establishes that this statutory duty can be satisfied in a variety of ways, including assisting lawyers in fulfilling their professional responsibilities. Section 27 of the Act provides further authority to establish programming to assist lawyers in managing or avoiding personal, emotional, mental health or substance use issues.
57. The public interest benefits of the recommendations presented in this report are many and varied. In a general sense, the Law Society’s interest in supporting legal professionals’ well-being is grounded in a responsibility to uphold ethical standards, ensure the quality of legal services and create a healthy and sustainable legal community. Helping lawyers to be more aware of, better understand, and seek support in respect of, mental health and substance use issues has the potential to enhance lawyer well-being and raise the level of practice within the profession. The public also benefits when steps are taken to create a regulatory and professional culture in which these issues are better understood and lawyers are encouraged to obtain support, including being provided with opportunities to devote the necessary time and energy to addressing health concerns.

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<sup>25</sup> *National Study* Recommendations Report *supra* note 4 at 4.2, 5.1, 7.1, 9.1 and 10.3.



58. The transition plan also reflects a proactive regulatory approach, encouraging lawyers to obtain support and providing a framework through which the Law Society can continue to achieve its strategic goals in relation to mental health and their associated public interest benefits. Ensuring that sufficient resources are dedicated to supporting current and future work in this area is also one of the key ways that the Law Society can continue to reduce the risk of harm in relation to these issues.

### **Licensee, government and public relations**

59. Based on the profession's positive engagement with Task Force's work to this point, the significant interest generated by the *National Study* and the Law Society's approach to communications with respect to these issues, it is expected that the recommendations contained in this report will be viewed favourably by licensees. Additional actions that facilitate access to mental-health resources and overcome barriers to seeking support have the potential to benefit many lawyers, both professionally and personally. In taking a non-stigmatizing, supportive approach to mental health issues, the recommendations also reflect the Law Society's recognition that lawyers are human beings, each with a unique set experiences and circumstances, and that their well-being matters.

60. With renewed attention on the prevalence of these issues within the legal profession following the release of the *National Study*, some may question the timing of the dissolution of the Task Force. Such concerns can be met with reference to the transition plan, which reflects the Law Society's ongoing commitment to addressing mental health and substance use issues affecting lawyers.

61. The mental health-related initiatives undertaken by the Law Society are, in some areas, quite progressive and indicate a willingness to lead on policy initiatives for legal regulators in Canada. However, beyond the profession, awareness of the Law Society's work in relation to mental health issues appears to be less extensive. To date, the Law Society's approach to communications has been to identify and explain the public interest basis for all of its work in response to the Task Force's recommendations. Provided that the rationales for addressing these issues continue to be data-driven, evidence-based and clearly articulated in terms of their public interest benefits, it is expected that both the public and the government will recognize the value of this work and be satisfied that it falls within the scope of the Law Society's statutory mandate.

### **Equity, diversity and inclusion**

62. As discussed throughout this report, the *National Study* findings highlight the differences in the prevalence of mental health issues among various populations, with legal professionals

from equity-deserving groups, including individuals that identify as Indigenous, ethnicized, women, 2SLGBTQI+ and/or living with a disability, experiencing elevated rates of mental health issues as compared to the already high prevalence of these issues within the profession more generally. In this respect, actions, including those recommended in this report, that improve mental health outcomes for all legal professionals may be of particular benefit to individuals from equity-deserving groups. Providing the EDIAC with a key role in future policy development further strengthens the Law Society's ability to address the intersectionalities identified in the *National Study*.

63. The Task Force's recommendation pertaining to resource development, in particular, will enable the Law Society to address topics that contribute to improved health outcomes for diverse lawyers, including civility, violence, discrimination and harassment. As the *National Study* data shows that mental health issues and psychological distress tend to impact lawyers' commitment to, and intention to leave, the profession, efforts to improve the experiences of equity-deserving lawyers may also enhance diversity within the profession.

### **Reconciliation with Indigenous Peoples**

64. Although the recommendations contained in this report are not specifically designed to advance reconciliation with Indigenous Peoples, to support the Law Society's broader commitment to this goal, the Senior Advisor, Indigenous Engagement and the Truth and Reconciliation Advisory Committee will be regularly consulted to ensure the impacts of mental health issues on Indigenous lawyers are considered and addressed, as appropriate, in implementing the policy and operational initiatives associated with these recommendations.

### **Transparency and disclosure**

65. The Task Force does not anticipate that its recommendations will affect transparency or disclosure requirements and, on this basis, is of the view that a privacy impact assessment is not necessary.

### **Costs and organizational impacts**

66. If the transition plan is approved, it can be left to the Executive Director to allocate resources to implement this policy direction and identify where additional resources may be required. However, provided that the current level of staff support for policy and operational activities is maintained, no additional costs are anticipated, other than the opportunity costs associated with staff being assigned to mental health work rather than pursuing other strategic goals. As many aspects of the Task Force's recommendations are extensions of the Law Society's current activities, any additional costs are likely to will fall within existing departmental

budgets. Future initiatives requiring more significant budgetary allocations would be subject to Executive Committee, if not Benchers, approval.

## Summary of Recommendations

67. Based on the materials presented in its Final Recommendation Report, the Task Force advances six recommendations for the Benchers' discussion and decision:

**Recommendation 1:** Enhance the development, consolidation and dissemination of the Law Society's well-being resources and provide periodic reporting on resource-related development, collaboration, implementation and outreach activities.

**Recommendation 2:** Respond to the *National Study* data regarding factors that create barriers to lawyers seeking support by: (i) creating a set of tailored resources and communications that identify specific, practical strategies for overcoming the primary barriers to accessing support, and; (ii) highlighting and reducing the gap between real and perceived stigma.

**Recommendation 3:** Facilitate opportunities for lawyers to have greater time and means to address health issues by: (i) improving communications and resources in respect of existing options, and; (ii) exploring the potential development of additional options.

**Recommendation 4:** Assess and, if appropriate, adopt the Alternative Discipline Process as a permanent regulatory program at the conclusion of the three-year pilot program.

**Recommendation 5:** Implement a transition plan to support the Law Society's continued engagement with mental health issues once the Task Force concludes its work that includes a combination of committee participation in strategic direction and policy decisions and staff support for operational activities, outreach and collaboration with stakeholders.

**Recommendation 6:** Utilize the strategic planning process to periodically assess and update the Law Society's engagement with mental health and substance use issues at a policy level.

## Conclusion

68. The Task Force's final report provides an opportunity to reflect on the Law Society's remarkable progress in addressing mental health and substance use issue within the legal profession. Over a six-year period, the Task Force's recommendations have catalyzed a range of initiatives that simultaneously support lawyers, reduce stigma, contribute to positive changes within the profession and protect the public.

69. The *National Study* data confirms, however, that more needs to be done, including by law societies. In light of these findings, the recommendations presented in this report enhance and expand the actions taken by the Law Society to improve lawyer well-being both now, and into the future, within the scope of its public interest mandate.

## Appendix A: Previous Mental Health Task Force recommendations

### First Interim Report (December 2018)

Recommendation 1: Promote, through a targeted communication campaign, an expanded role for Practice Advisors to include availability for confidential consultations about mental health and substance use issues and referrals to appropriate support resources.

Recommendation 2: Provide Practice Advisors with specialized education and training to enhance their knowledge, skills and access to resources related to mental health and substance use issues.

Recommendation 3: Provide Practice Standards lawyers and support staff with specialized education and training to enhance their knowledge, skills and access to resources related to mental health and substance use issues.

Recommendation 4: Provide lawyers and paralegals in the Professional Regulation Department with specialized education and training to enhance their knowledge, skills and access to resources related to mental health and substance use issues.

Recommendation 5: Provide Credentials Officers, auditors in the Trust Assurance Program and staff lawyers in the Lawyers Insurance Fund with basic education and training to improve their awareness of mental health and substance use issues.

Recommendation 6: Establish a roster of qualified mental health professionals that Practice Advisors, Practice Standards lawyers, Credentials Officers and staff in the Professional Regulation Department may consult to assist them in addressing mental health and substance use issues that arise in the course of Law Society processes involving lawyers or applicants.

Recommendation 7: Provide members of the Credentials Committee, the Practice Standards Committee and the Discipline Committee and their associated hearing panels, as well as individuals who are responsible for practice reviews, conduct meetings and conduct reviews, with basic education and training to improve awareness and knowledge of mental health and substance use issues.

Recommendation 8: Develop a comprehensive, profession-wide communication strategy for increasing awareness about mental health and substance use issues within the legal profession.

Recommendation 9: Seek assistance from LifeWorks to help the Law Society better explain to the profession what services are available and who may benefit from them, and

to explore alternate means for lawyers to connect with LifeWorks support services that do not require access through the Law Society's member portal.

Recommendation 10: Collaborate with the Lawyer Education Advisory Committee to explore the merits of the Law Society introducing a mandatory continuing professional development requirement for mental health and substance use disorder programming.

Recommendation 11: Collaborate with the Law Firm Regulation Task Force to consider developing additional guidance for the self-assessment tool that encourages firms to put in place policies, processes and resources designed to support lawyers experiencing mental health 46 DM2114189 and substance use issues, and to promote the use of these policies, processes and resources within firms.

Recommendation 12: Collaborate with the Credentials Committee in re-evaluating the Law Society's current approach to inquiries into mental health and substance use in the Law Society Admission Program Enrolment Application.

Recommendation 13: To eliminate stigmatizing language and approaches to the reporting requirements in BC Code provision 7.1-3(d) [Duty to report] and the associated Commentary.

## **Second Interim Report (January 2020)**

Recommendation 1: The Law Society will consult and collaborate with BC law schools to improve the exchange of information about the availability of support resources for mental health and substance use issues within the profession and to assist students in transitioning to these supports from those provided during law school.

Recommendation 2: Revise the material in the Benchers Orientation Manual and expand in-person training to improve the manner in which mental health and substance use issues are addressed during the Benchers interview process.

Recommendation 3: Host a town hall to encourage lawyers and firms and other legal employers to engage in a discussion about mental health and substance use within the profession, including the role that legal employers can play in improving lawyer wellness.

Recommendation 4: Staff will develop a style guide that provides guidance on the use of non-stigmatizing and non-discriminatory language in all future Law Society publications and communications and update the current practice resource on respectful language and ensure that this material is prominently displayed on the Law Society's website.

Recommendation 5: Conduct a voluntary, confidential member survey exploring mental health and substance use among BC lawyers.

Recommendation 6: Amend BC Code Rule 7.1-3 (“duty to report”) and the associated Commentary.

Recommendation 7: The medical fitness questions in Schedule A of the LSAP Application Form be removed.

### **Alternative Discipline Process Report (October 2021)**

Recommendation 1: No later than September 2022, the Law Society will implement an alternative discipline process (“ADP”) to address circumstances in which there is a connection between a health condition and a conduct issue that has resulted in a complaint investigation. The ADP will comport with the purpose, principles, design features and policy rationale described in the Mental Health Task Force’s September 2021 recommendation report and commence as a three year pilot project. Following an interim and final review of the pilot project in 2023 and 2025, respectively, the matter will return to the Benchers for a final determination as to whether to establish the ADP as a permanent regulatory program.

### **Fourth Report Recommendation Report (January 2023)**

Recommendation 1: The Law Society should enhance the support available to lawyers that, for reasons that may be related to health issues, do not respond to Law Society communications by creating a roster of pro bono support counsel to assist with the resolution of failure to respond matters and evaluating the effectiveness of the roster over a two year pilot project.

Recommendation 2: The Law Society should develop or adopt expert systems tools to broaden the means by which lawyers and articled students are aware of, and have access to, appropriate support, resources and referrals for mental health and substance use issues.

Recommendation 3: The Law Society should host a mental health forum to facilitate discussions within the legal community regarding the findings and recommendations of the National Study on the Psychological Health Determinants of Legal Professionals in Canada.

# Law Society

*of British Columbia*

## **Multi-Disciplinary Practices and Alternative Business Structures**

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### **Access to Justice Advisory Committee**

Dr. Jan Lindsay, Chair  
Geoffrey McDonald, Vice-Chair  
Tanya Chamberlain  
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Lisa H. Dumbrell  
Caroline Nevin  
Barbara Stanley, KC

Date: December 8, 2023

Prepared for: Benchers

Prepared by: Policy and Planning Department

Purpose: For Decision



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## Executive Summary

1. In 2023 the Access to Justice Advisory Committee (the “Committee”) reviewed the Law Society’s current rules regarding multi-disciplinary practices (“MDP”), and its policy regarding alternative business structures (“ABS”) to consider whether a liberalization of the current approach to ABS and MDP might result in improved access to legal services.
2. As set out in this report, the Committee concluded that liberalization would be appropriate from an access to justice perspective and recommends that reforms be explored. The Committee is of the view liberalization can occur in a fashion that creates the conditions for improved service models, and, consequently, improved access to legal services, while still preserving essential safeguards regarding lawyer independence and professionalism. The proposed reforms will need to be considered carefully to ensure

adequate safeguards are in place to preserve lawyer independence and professionalism, without necessarily requiring lawyers to maintain majority ownership/control of the business model.

## Proposed Decision

3. The Benchers are being asked to make two decisions:
  - a. to support in principle the relaxation of the current requirements in the rules for MDP regarding lawyer ownership and control, subject to determination as to what safeguards are necessary to preserve lawyer independence, professionalism and ethics; and
  - b. to support in principle permitting ABS in British Columbia, subject to determination as to what safeguards are necessary to preserve lawyer independence, professionalism and ethics.
4. The purpose of both recommendations is to create greater flexibility in the market for how legal services are delivered, recognizing that people's legal needs are often intertwined with other problems, and that many people struggle to access legal services within the existing regulatory framework.

## Background

5. The Law Society has permitted MDP since 2010. The rules governing MDP are contained in Law Society Rules 2-38 to 2-49. MDP were intended to offer both convenience and wider choice to the public, providing consumers who are looking for a wide range of professional services the advantage of one-stop shopping. It was also hoped that MDP would be in a position to reduce overhead and share profits. At present, there are a handful of MDP in British Columbia.
6. MDP are designed to facilitate lawyers entering into practice with other professionals, recognizing those professionals will not be subject to the same fiduciary and regulatory obligations as lawyers. As such, the majority ownership/control and responsibility for the MDP lies with the lawyers. In addition to considering how to approach matters from the perspective of the people who need help, the Committee also considered its prior policy determination that access to justice is about more than just accessing lawyers and courts. An MDP that co-locates a range of professional services that are commonly needed by people who experience problems with a legal element can allow for better diagnosis, triage and treatment / solutions for the client. A one stop shop can avoid the

need to navigate the maze of services that are disconnected and do not communicate with each other. In short, there are pairings of services within an MDP framework that are more likely to get people the help they need than when those services are only delivered through segregated service providers.

7. ABS are business models that involve investment and ownership in law firms by people who are not lawyers. ABS can include corporate structures with publicly traded shares, or corporate ownership of the firm where the legal services are part of the broader suite of services offered by the corporation (e.g. co-locating legal services in a grocery store).<sup>1</sup> ABS were considered extensively by the Independence and Self-governance Advisory Committee in its report to the Benchers (October 2011). The Committee’s consideration of ABS was informed by that report, and in particular by the following statements: “The Committee concludes that the alleged harm presented by ABSs could be addressed through appropriate regulations”...and, “It is important, however, to be able to demonstrate that ABSs will improve access to and delivery of legal services in order that the users of such services will benefit” (at p. 1).
8. The *Legal Profession Act* defines “law firm” as meaning “a legal entity or combination of legal entities carrying on the practice of law”. The Committee reads this definition as permitting regulation of both MDP and ABS. Entity regulation is an expansive concept, provided the nature of the regulation fits within the scope of the legislation. For example, if a saw mill offered legal services the Law Society would not be regulating whether it dumped effluent into a waterway, it would regulate the legal services provided at the mill, or whether the owners of the mill interfered with the professional judgement and responsibility of the lawyers. Having said that, the Committee recognizes there will be new legislation for the single legal regulator and it would be helpful to not only preserve entity regulation but to provide greater clarity as to the extent of the regulators ability to investigate and sanction the entity and its owners.

## Analysis

### Multi-Disciplinary Practices

9. When the Benchers adopted the policy to permit MDP, the Law Society endorsed the view that MDP can improve access to justice and legal services. However, a decade later there are only a handful of MDP. There are several possible reasons for the low

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<sup>1</sup> The Committee considered the change in the ABS landscape since the 2011 report, examining the development of ABS in the UK, recent inroads in the United States in Utah and Arizona in particular, and several unique approaches that have occurred in Ontario, Quebec and Manitoba.

uptake, including that the rules may be too onerous or restrictive, lawyers and other professionals might not have felt it economically necessary to explore MDP, lawyers and other professionals might not have sufficiently close relationships such that it occurs to them to explore the possibility of MDP given the level of trust required, etc. Of these, the Law Society has the greatest control over the regulatory requirements for MDP.

10. The current structure, which places the responsibility on the lawyers in the MDP, may be unappealing to many lawyers as they might not want to assume the risk of partnering with people who the Law Society does not directly regulate, or be responsible for their conduct. And, for professionals other than lawyers, the restrictions that place operating control in the hands of lawyers may be too limiting. In other words, what is being surrendered or risked may seem greater than what might be gained in the current model.
11. After consideration, the Committee concluded that the current rules are too restrictive to accomplish the access to legal services promise of MDP. The Committee is of the view that the current model is undesirable to lawyers because it places the regulatory burden on the lawyer, and, likely, from the prospective of other professionals requires surrendering ownership to the lawyer without offering a clear benefit over going it alone.<sup>2</sup> Moreover, the Committee is of the view that ownership of the business model is not necessary to ensure lawyers provide services in a manner consistent with their professional obligations, or that the Law Society can effectively regulate the lawyer or the MDP, ABS or firm.

## **Alternative Business Structures**

12. ABS are not currently permitted by the Law Society. As suggested above, however, the Committee is of the view this is a policy determination and not a legislative limitation on the jurisdiction of the Law Society. An ABS would be an entity or combination of entities practising law. An ABS could be an entity that only provides legal services, it is just that it would have outside ownership, or it could be a business that offers legal services and other services.
13. When the Law Society considered ABS over a decade ago it made sense to wait to see whether the intended access to justice benefits transpired where ABS was being explored, in particular the UK. The Committee is of the view that this approach need be

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<sup>2</sup> The Committee attempted to solicit input from the existing MDP to determine what the perceived benefits and barriers are. One lawyer kindly responded, indicating that after the initial set up and learning curve, the MDP (consisting of two people) worked well and created cost saving and efficiencies for clients. The principle critique was the requirement to supervise the other individual, who happened to have many years of experience in his chosen field.

revisited, as it appears the empirical evidence envisioned is not forthcoming.

14. There was no attempt in the UK to articulate in empirical terms what the environmental access to justice baseline was against which ABS could be measured. In simple terms, the advent of ABS in the UK reflects a political and philosophical shift in regulation that ran from the Clementi report<sup>3</sup> through the changes to the Legal Services Act 2007 that was predicated, in part, on a consumer choice ethos of legal services. Therefore, even though the Solicitors Regulation Authority (“SRA”) produced two reports on ABS and there is data in those reports regarding the number of ABS, some services offered, the effect on diversity of corporate structure etc., the reports did not (and could not) measure the access to justice / legal services change in the marketplace because there was no snapshot of what that meant at launch, or methodology to measure change and link it causally to the advent of ABS. Moreover, because access to justice problems and barriers to services have countless variables, it would be challenging even with an identified baseline to demonstrate improvements or failure of ABS.
15. The review of ABS in the UK included consideration of SRA reports from 2014 and 2018. By the time of the 2018 survey there were about 700 ABS, representing 7% of the total number of regulated entities, and ABS varied in size from small firms to firms of more than 200 professionals. The majority of ABS previously provided legal services under a traditional model, but about 20% were new entrants. About 23 ABS ceased, but some simply altered their form rather than go out of business. There is less academic research on the effects of ABS in the UK than one might expect, given the purpose and scope of the reform.
16. While the SRA research does not point to a direct improvement in access to legal services, it does point to innovation and improved diversity in the market place. It may be that ABS have had an impact on access to legal services but there was no empirical baseline on which to make that determination, so it was not provable in the way that the SRA could measure changes in firm size, or other metrics for which data existed. This reinforces the value of coupling any reforms with education and resources directed at encouraging entry into underserved areas of legal need.
17. It is significant, however, that the SRA notes no increased complaints and/or regulatory concerns with respect to legal services provided through ABS as compared with

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<sup>3</sup> “Report of the Review of the Regulatory Framework for Legal Services in England and Wales” (December 2004).

traditional delivery models.<sup>4</sup> In other words, while the reward side of the ledger is unclear, the risk side of the ledger seems capable of being managed. The insistence of lawyer control is predicated on the notion that the alternative places the public at risk, which, if true, ought to lead to an increase in regulatory issues for ABS. It has not. This suggests that the current approach in BC may be too restrictive, and also fails to recognize professional competency can be regulated across a range of delivery models provided the regulator has tools to enforce compliance.

18. Aside from empirical evidence, the Committee concluded that the concept that ABS can improve access to legal services is a defensible one. Quite apart from the potential of some corporations to deploy capital beyond that of a traditional law firm, corporations may be more incentivized to reinvest some profits into the ABS than partners are incentivized to reinvest their profits back into the firm, which facilitates innovation. In addition, there are opportunities to leverage customer service, accounting, marketing and IT amongst other services in a way that many firms may find difficult to replicate. With respect to IT, there is both the cost of deploying appropriate IT and staying current, as well as adequately protecting the firm's information, and some ABS may be better able to do so than many firms.
19. Beyond the benefits identified, there are some conceptual models where the advantage to the client is more obvious. For example, the Committee discussed the ability for a legal practice with family, wills and estates to operate in an MDP/ABS with accountants, social workers, and potentially health professionals, and address a range of client-issues within that closed ecosystem, without the cost and delay associated with external referrals. The time saved to the lawyer in such models by being able to refer the client down the hall, allows for more time to be spent providing legal services and has the advantage of a "team approach" particularly in areas like family law.
20. In Australia, there are family law firms, usually practising Collaborative law, who offer clients a full "team" to assist them in resolving their family law matter which includes a lawyer, a divorce coach, financial neutral and child specialist, depending on the nature of the file. This has the advantage of a "wrap around" service for clients and means that they attend at one office for all their appointments. It permits the "Collaborative team" to work more collaboratively and efficiently as everyone is under "one roof". Scheduling meetings becomes simpler and less time consuming. This model allows lawyers to focus on legal work and to let others do work for clients that does not need to be done by lawyers at a lower fee. This model has the potential to reduce the overall

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<sup>4</sup> Serious level matters averaged across ABS vs Law Firms was lower, whereas it was higher for small ABS vs law firms (2018 SRA Report at pp. 23-24). The data also suggests that ABS are more likely than traditional firms to self-report issues.

cost of a Collaborative Process for clients and will likely increase their satisfaction with it and the resolution reached.

21. For family lawyers, the model described above may be a very attractive professional arrangement because they are not solely bearing the costs (financial and otherwise) of running a law practice and will be better supported by the other Collaborative professionals in the office and their work. Such a model may increase access to justice for people going through relationship breakdown, as it will likely take less time to resolve the matter and it will be less expensive. Further, such a model is consistent with the requirement pursuant to the *Family Law Act*<sup>5</sup> that counsel resolve family law disputes without resort to litigation and with counsel's obligation to ensure that all processes and arrangements made are consistent with any children of the relationship's best interests pursuant to s. 37 of the *Family Law Act*.
22. The Committee is cognizant that some ABS (perhaps the vast majority) will not focus their services on areas of unmet and underserved need, they will focus on corporate law and areas of law where there exists a deep pool of clients that can afford services that are profitable to the ABS. Several options exist in light of this reality:
  - a. The regulator can accept reality and try and find ways to encourage ABS to focus on areas of unmet and underserved legal need, and not worry about the ABS that do not (save for ensuring they are properly regulated);
  - b. The regulator can permit ABS, but define them in a restricted manner, such that the only services which are possible are streamed to areas of unmet or underserved need (such as in Ontario, Manitoba and Quebec);<sup>6</sup> or
  - c. The regulator can refuse entry to the market.
23. Of the three approaches, the Committee favors permitting ABS and directing regulatory resources towards encouraging the creation of ABS that help people with unmet and underserved legal needs. It is the view of the Committee that it is preferable to create the conditions by which public interest work can occur and to let the public and

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<sup>5</sup> SBC 2011, c. 25.

<sup>6</sup> Ontario permits charities and non-profit civil society organizations to employ lawyers who provide services directly to the public (see: [Civil Society Organizations | Law Society of Ontario](#)); Manitoba has developed policy to permit legal services through civil society organizations and has approved five to date, and is considering possible modifications to the program ([Civil Society Organizations - The Law Society of Manitoba](#)); Le Barreau du Québec passed a resolution earlier this year to permit practising and retired members of the bar to practice law at non-profit legal entities to provide low cost legal services to the public.

professions know the regulator encourages entry into the market, than to build a closed model and hope the model has adequate appeal.

24. When presenting to the Benchers on the topic of MDP in 2000, Peter Ramsay, QC indicated: "...there is no indication that lawyers require control in order to maintain the core values of the profession and the Benchers must have confidence in the members to abide by the rules," and that "the idea of ownership control is a "red herring"; the real control lies in the rules and standards of conduct".<sup>7</sup> The Committee agrees, both with respect to MDP and ABS. The key is to have sufficient legislative and rule authority to regulate the practice of law within the ABS, rather than dictate the ownership structure of such entities.
25. The Committee is of the view that the Law Society should permit ABS. The Committee is of the opinion that lawyer control of the entity is not necessary to achieve the necessary safeguards, provided the proper regulatory power exists. This will likely require an entity regulation approach in which, as a condition to operate, the ABS acknowledges its responsibility to abide by regulatory requirements, and ensure lawyers in the ABS are not subject to interference by the owners (operating mind) of the ABS in the discharge of their professional responsibilities, and a mechanism to fine or shut down ABS that are not compliant. The Committee recognizes that such regulatory considerations are beyond the scope of its mandate, however, but is of the view the risks of ABS can be addressed through regulation and it is in the public interest to create space in the legal services market place for new delivery models to exist.

## Policy Considerations

26. In the sections that follow the Committee considers MDP and ABS through some of the traditional policy lenses that inform reports to the Benchers.

## Public Relations

27. The extent to which liberalization of the MDP rules, and/or permitting ABS, will affect public relations or perception of the Law Society is difficult to predict. As Trebilcock and Iacobucci<sup>8</sup> observe, "Liberalization predictably generates economic gains, but the size of these gains cannot be predicted with any certainty. Experience in the UK and Australia suggests that liberalization does invite change, although the pace of change

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<sup>7</sup> From the Minutes of the December 2000, Bencher Meeting.

<sup>8</sup> Edward M. Iacobucci and Michael J. Trebilcock, "An Economic Analysis of Alternative Business Structures for the Practice of Law" (University of Toronto: September 20, 2013).



appears to be more evolutionary than revolutionary, at least to date” (at pp. 59-60).<sup>9</sup> Public relations likely need to be measured over a longer time frame as well, assuming market transformation also occurs at an evolutionary pace.

## Licensee Impact

28. The Committee anticipates licensee (lawyer) impact will fall into a few categories of responses / perceptions. Some licensees will view ABS and MDP as the wrong place to focus attention, preferring greater efforts at improved funding for legal aid and/or support for sole practices and small firms. Other licensees will view relaxation of MDP rules favorably if the move to the single legal regulator is inevitable, as it can provide a means to survive and thrive in a new legal service environment, but some of these licensees may perceive ABS to be an existential threat. Other licensees will view both ABS and MDP as a useful option that allow evolution in the marketplace, particularly in response to increased operating costs around IT, and uncertainty regarding the impact of A.I. and new entrants in the market to their sustained viability (i.e. having options to evolve is helpful even if they are not pursued). Other licensees will not be impacted, provided the changes do not increase the regulatory burden on how they practice.

## Government Relations

29. In light of the government’s stated objective to move to a single legal regulator for the purpose of improving access to legal services, a liberalized MDP system and the ability for ABS to enter the market should be viewed favorably.

## Legality

30. As noted, the Committee is of the view ABS and MDP both fall within the scope of entity regulation and that the definition of law firm is expansive enough to allow for changes to occur. Although Manitoba, Ontario and Quebec have different legislation, each jurisdiction is allowing a type of ABS focusing on the social justice sector. The primary difference in what is being recommended is to expand that approach into the for profit / open market, and not requiring majority lawyer ownership or control, while encouraging ABS to direct efforts to areas of unmet and underserved legal need. Having said this, the report is drafted without knowing what the single legal regulator legislation will entail, and the Committee expresses the hope that the government will preserve authority for entity regulation and innovation, and provide sufficient tools for the

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<sup>9</sup> Although the authors speak of “economic gains” it is reasonable to extrapolate that if ABS are not seen to be economically preferable to the *status quo*, there will be little uptake and consequently the desired access to legal services benefit may be limited. ABS are business models and the businesses have to be viable.

regulator to license and regulate both MDP and ABS.

## **Equity, Diversity and Inclusion (“EDI”)**

31. MDP and ABS might improve access for equity-seeking groups. Legal needs research demonstrates that members of equity-seeking groups can experience legal problems with greater frequency, experience a clustering of problems, and face barriers to services.<sup>10</sup> There is, of course, no guarantee that MDP or ABS will target these groups and provide needed services at more affordable costs. However, traditional law firms beyond a certain size also do not target these groups, so the status quo is not the solution.
32. The SRA reports some improved diversity within ABS structures. MDP and ABS can ameliorate some of that by bringing together different groups of professionals and business people, merging cultures, and developing environments the clients are more likely to feel reflects their background. Because these models may consist of holistic delivery systems where a range of needs are addressed, it increases the chance of clients from equity-seeking groups as well as Indigenous groups interacting with a diverse group of professionals.

## **Reconciliation with Indigenous Peoples**

33. At present, the strict ownership and fee sharing requirements on lawyers can create impediments to innovative delivery models arising. In past reports the Benchers have heard about the need to remove barriers to Indigenous people who want to become lawyers from becoming licensed. And, the Benchers have heard about challenges of attracting lawyers to communities outside large urban centres.
34. If ABS develop that have ownership by Indigenous peoples there is a sound basis to believe the models will be attractive to Indigenous lawyers, encouraging practice outside large urban centres.
35. The current restrictions on service models can exacerbate access to justice barriers for Indigenous peoples.<sup>11</sup> ABS have the potential to place more power into the hands of

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<sup>10</sup> An extensive range of papers on point, as well as matters exploring multi-disciplinary problem resolution can be found at the Canadian Forum on Civil Justice: [CFCJ-FCJC | CFCJ Reports, Fact Sheets and Other Publications - CFCJ-FCJC](#).

<sup>11</sup> For greater clarity, the Committee is not suggesting that lawyers who identify as Indigenous must provide legal services to Indigenous peoples, or ABS established with Indigenous ownership must solely serve Indigenous Peoples and communities. However, to the extent the current rules and delivery systems have failed to adequately address unmet needs of, and systemic barriers experienced by, Indigenous People, the benefit of reform outweighs risk associated with maintaining the *status quo*.

Indigenous peoples and communities by removing the historical impediment of complete control by lawyers.

## **Transparency and Disclosure**

36. The Committee does not foresee the recommendations affecting transparency and disclosure efforts of the Law Society.

## **Privacy Impact Assessment**

37. Privacy impacts and considerations will be considered at a later date, if the recommendations are adopted by the Benchers.

## **Cost and Organizational Implications**

38. There can be costs associated with regulating these new entities and the key is to ensure those costs are appropriately supported by the practice fee and staffing. Provided the appropriate legislative authority exists, regulatory fees for an ABS can be developed so the cost reflects the potential nuance required to regulate such entities.<sup>12</sup> The Committee does not opine on what those models might be, simply that it may be something other than charging the lawyers of the ABS a practice fee might be required to properly support regulation of the ABS.<sup>13</sup>
39. There can also be a cost for disseminating information to lawyers and the public in terms of communications and education resources if the Law Society wants to do more than just create space for reform, and actually encourage innovation. These costs cannot be quantified in the abstract, but the Committee anticipates staff can advise the Benchers in the future as needed regarding the cost of targeted initiative and regulatory responses.

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<sup>12</sup> For example, an ABS may have a fee above and beyond what the lawyers at the ABS have to pay in order to support the tailored, regulatory requirements for an ABS. The key would be to ensure the additional fee was not an anti-competitive barrier to entry as compared to the traditional law firms which do not pay a fee beyond that of the lawyers in the firm, and the Law Society could seek expert advice on how to properly structure such fees, provided the governing legislation established the basis on which to do so. It is not a given, however, that the regulatory enforcement cost will be higher.

<sup>13</sup> It is possible that ABS could reduce some regulatory costs if, for example, the ABS had a proper accounting department and IT department (records management) thereby reducing the risk of regulatory non-compliance and potentially supporting more efficient investigations. Until there is evidence, projections of increased or decreased cost will be speculative.

## For Decision

40. The Committee recommends that the Benchers adopt the following resolution:

**BE IT RESOLVED** that the Benchers support, in principle:

- a. the relaxation of the current requirements in the rules for MDP regarding lawyer ownership and control, subject to determination as to what safeguards are necessary to preserve lawyer independence, professionalism and ethics; and
- b. permitting ABS in British Columbia, subject to determination as to what safeguards are necessary to preserve lawyer independence, professionalism and ethics.

# Memo

To: Benchers  
From: Finance and Audit Committee  
Date: November 24, 2023  
Subject: **Enterprise Risk Management Plan - 2023 Update**

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## **Background**

The Law Society's Enterprise Risk Management (ERM) Plan is a governance tool to accomplish the following objectives:

- Identify the enterprise risks that can have an impact on the achievement of the Law Society's strategic goals and mandate.
- Determine the relative priority of those risks based on the likelihood they would occur and the extent of the impact on the organization.
- Manage the risks through mitigation strategies that are either in place or in progress, which assist in reducing, avoiding or transferring the risks.

The Finance and Audit Committee reviews the ERM Plan in order to understand and monitor the organization's strategic risks, and the ERM Plan is provided as information to the Benchers. Management maintains a robust process of risk identification and management through its day-to-day operating processes.

## **2023 ERM Plan**

In 2023, management conducted their annual review of the ERM Plan and modified the plan accordingly. In addition to considering existing and emerging risks, management also reviewed existing and planned mitigation activities, and re-evaluated the resulting residual risks.

The updated 2023 ERM Plan was reviewed by the Finance and Audit Committee at their November 2023 meeting, and the ERM Plan is now being presented to the Benchers for information.

There were a number of changes to the mitigation strategies completed this year, along with new Action Plan items, as shown in red.

In addition, the prioritization of risks has been reviewed with the following changes:

- Risk #7 Cybersecurity breach - This risk has been moved higher on the risk register. There is a comprehensive cyber security plan in place, but this change recognizes the increasing risk of cyber crime and the ever-changing cyber environment, and the need to be aware of how to most appropriately manage the risks.
- Risk #12 Loss of key personnel - This risk has been moved higher on the risk register as we move to implement the Single Legal Regulator initiative. As there will be a number of key personnel retiring, succession planning will be critical to its success.

Please find attached the 2023 ERM Plan and Executive Summary, along with the Risk Heat Map and the Strategic Risk Register.

# Law Society of British Columbia Enterprise Risk Management Plan 2023 Annual Update

Presented to FAC: November 23, 2023

Presented to Benchers: December 8, 2023

# Law Society of British Columbia

## Enterprise Risk Management - Updated November 2023

### Executive Summary

An enterprise risk is the threat that an event or action will adversely affect an organization's ability to achieve its strategic goals and mandate.

The Enterprise Risk Management (ERM) Plan is a governance tool which provides for the:

- Identification of enterprise risks that can have an impact on the achievement of the Law Society's strategic goals and mandate
- Determination of relative priority of these risks based on their potential to occur and the extent of the impact
- Management of the risks through mitigation strategies, reducing, avoiding or transferring the risks

To successfully manage these risks, a framework for risk identification, measurement and monitoring has been developed and is reported to the Finance and Audit Committee (and the Benchers) on a regular basis.

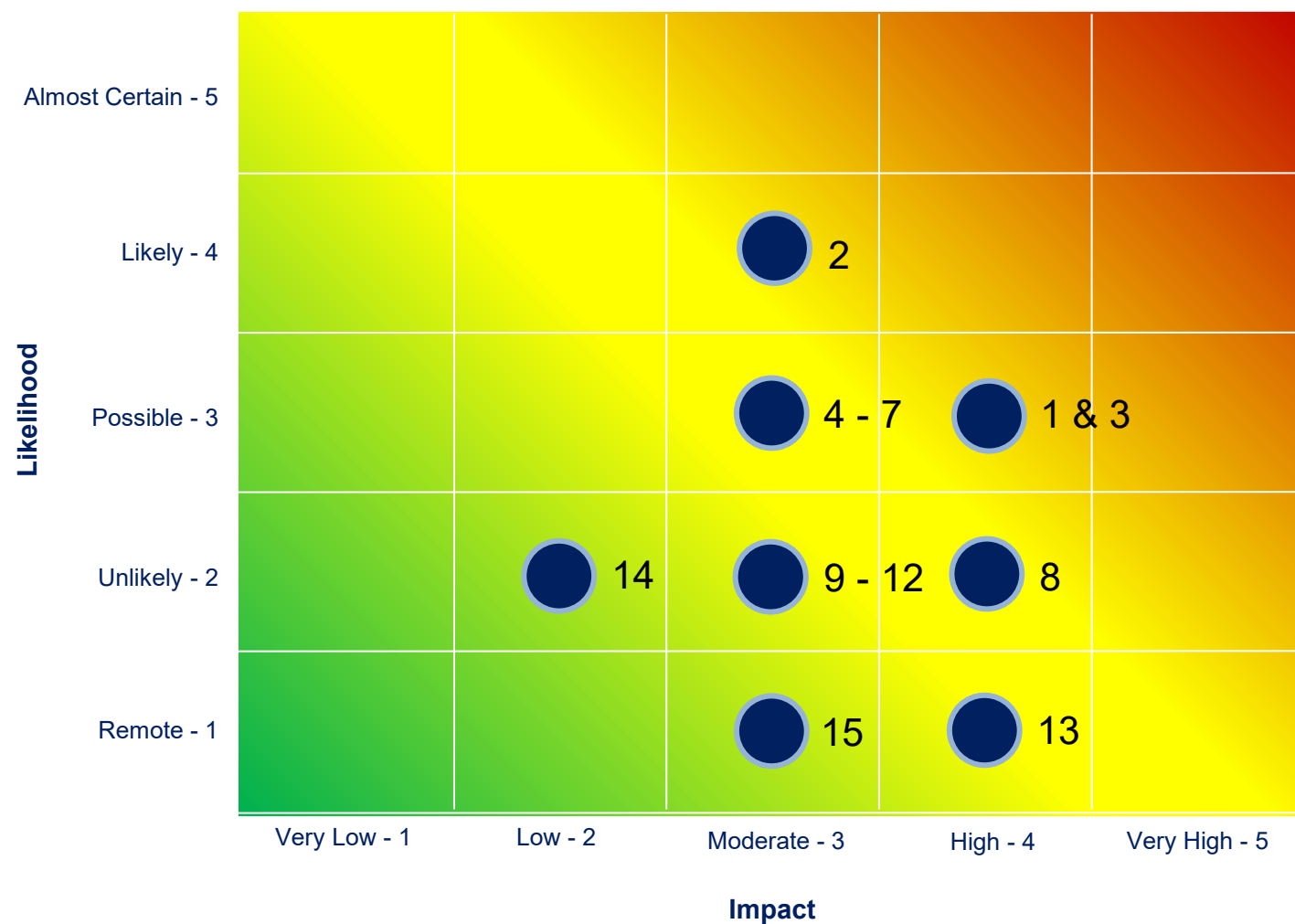
The strategic risks are summarized in the table "Summary of Major Strategic Risks".



## Summary of Major Strategic Risks

Number	Risk description	SLT Lead
1	Failure to address lawyer misconduct, incompetence and/or breach of Rules in an appropriate and/or timely manner	CLO
2	Operational challenges and risks associated with the transition to a Single Legal Regulator	ED / CEO
3	Cybersecurity breach	DED
4	Perceived or actual failure to accommodate access to a wider array of legal service providers	ED/CEO
5	Loss of key personnel or inability to recruit skilled personnel	ED/CEO
6	Impact of significant economic downturn leads to insufficient revenues	CFO
7	Bencher or staff intentionally or negligently discloses personal or confidential information	DED
8	Natural or human-induced disaster	CFO
9	Members' option to override Bencher decisions	ED / CEO
10	Reconciliation and EDI policies and actions are not adequate	ED/CEO
11	Lawyers not having minimum level of competence and experience, and good character requirements, for admission to the profession	Sr. Dir. Cred, PD & PLTC
12	Failure to fulfill duties under the <i>Legal Profession Act</i> or Law Society Rules	ED / CEO
13	Catastrophic losses under the LPL or Cyber policies	COO - LIF
14	Conflict of interest not adequately addressed	ED / CEO
15	Bencher or staff fraud that results in financial loss to the Law Society	CFO

# ERM Heat Map



#	Risk Name
1	Failure to Address Lawyer Misconduct
2	Transition to Single Legal Regulator
3	Cybersecurity Breach
4	Access to Legal Service Providers
5	Loss of Key Personnel
6	Significant Economic Downturn
7	Personal and Confidential Information Breach
8	Natural or Human-Induced Disaster
9	Members' Option to Override Bencher Decisions
10	Reconciliation & EDI Policies & Actions
11	Admission to the Profession
12	Failure to Fulfill Duties
13	Catastrophic Losses Under the LPL or Cyber Policies
14	Conflict of Interest event
15	Bencher or Staff Fraud

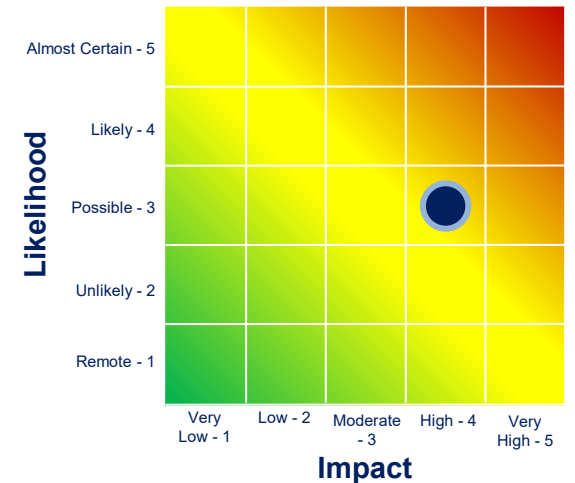
# Risk #1: Failure to Address Lawyer Misconduct

## Risk Context Overview

Name: Failure to address lawyer misconduct, incompetence and/or breach of Rules in an appropriate and/or timely manner

## Mitigation Strategies in Place

1. Appropriate procedures for investigation and prosecution of legal matters
2. Appropriate conduct and trust rules/Trust Assurance program
3. Ensure appropriate deployment of staff and resources
4. S.86 *Legal Profession Act* (statutory protection against liability)
5. Ability to seek review and/or appeal to the BC Court of Appeal
6. Enhanced role of **Tribunal Chair**/Tribunal Counsel/Tribunal case management/hearing panel composition and training
7. National Discipline standards
8. AML Strategic Plan, **Federation AML online training course**
9. Education and risk management advice to lawyers and students
10. Administrative suspensions for failures to respond
11. Increased use of consent agreements
12. Alternative Discipline Processes (ADP)
13. Administrative penalties
14. D & O insurance policy



## Risk Owner

CLO

## Potential Impact(s) if Occur

1. Political: intervention in the Law Society authority and structures
2. Reputational: diminished public confidence and loss of reputation with the profession
3. Financial: Costs and damages and possible litigation

## Risk Action Plan(s)

1. Review and revise complaint triaging process
2. Increase fines and charge investigative costs
3. Diversion pilot program – pilot in progress
4. Ongoing consideration of new regulatory tools and processes to address matters more efficiently and effectively
5. Disclosure and privacy review
6. Proactive practice assessments - pilot

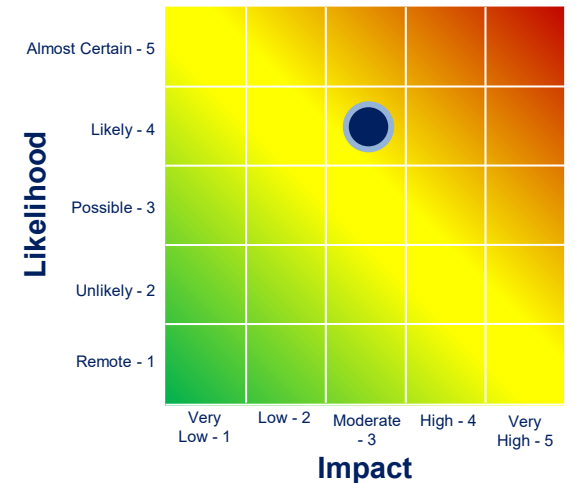
# Risk #2: Transition to Single Legal Regulator

## Risk Context Overview

Name: Operational challenges and risks associated with the transition to a Single Legal Regulator

## Mitigation Strategies in Place

1. Discussion with government, Notaries and paralegal representatives
2. Single Legal Regulator project plan
3. Identify and fund staff and other resources required to implement the plan
4. Communication plan
5. Outreach to the professions



## Risk Owner

ED/CEO

## Potential Impact(s) if Occur

1. Financial: unexpected costs, large resource commitment
2. Operational: service disruption
3. Reputational: diminished public confidence and/or loss of reputation with the profession
4. Potential adverse implications for independence of the legal profession

## Risk Action Plan(s)

1. Once legislation is known, finalize Single Legal Regulator project plan and implement
2. Independence of the legal profession mandate consideration

# Risk #3: Cybersecurity Breach

## Risk Context Overview

Name: Cybersecurity breach

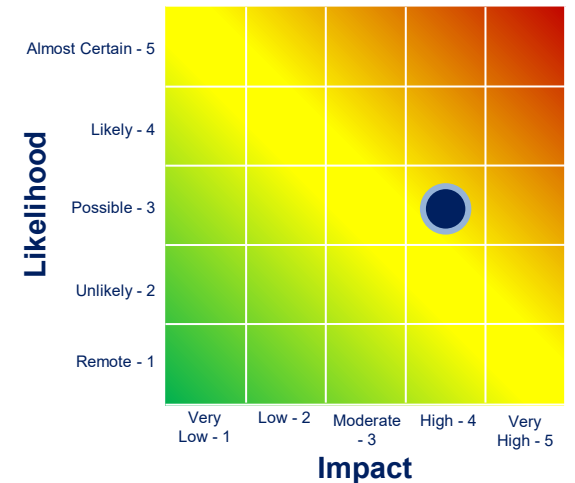
## Mitigation Strategies in Place

1. Information technology security policy, process and procedures
2. Information technology, privacy and security training of new staff
3. Cyber security plan
4. Ongoing cyber security training and testing of all staff
5. Cyber security review completed annually and cyber security contract with regular testing
6. Member portal security
7. Encryption of Bencher and committee agendas
8. Cyber insurance
9. Information technology backup plan
10. Building security system and procedures, external property manager
11. On-site and off-site server locations

## Potential Impact(s) if Occur

1. Reputational: diminished public confidence and loss of reputation with the profession
2. Operational: service disruption
3. Financial: unexpected costs or ransom paid

## Risk Action Plan(s)



## Risk Owner

DED

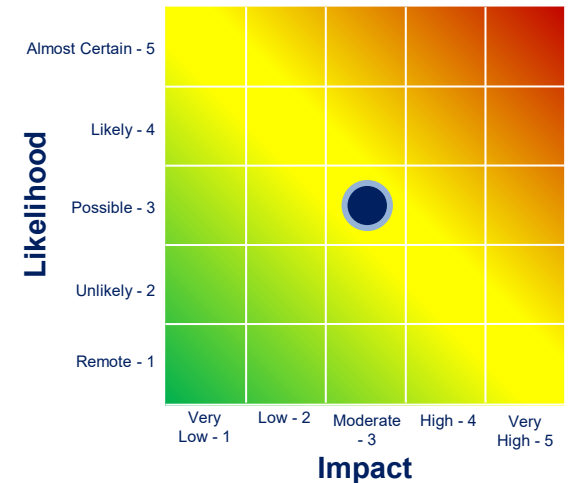
# Risk #4: Access to Legal Service Providers

## Risk Context Overview

Name: Perceived or actual failure to accommodate access to a wider array of legal service providers

## Mitigation Strategies in Place

1. Supporting and funding pro bono services and access to legal services
2. Continued engagement and collaboration with governments, courts and other stakeholders to increase the provision of legal aid, and improve the availability of cost-effective legal services
3. Committees: Access to Legal Services
4. Appropriate use of unauthorized practice authority
5. Unbundling of legal services
6. Innovation Sandbox initiatives



## Risk Owner

ED/CEO

## Potential Impact(s) if Occur

1. Reputational: diminished public confidence
2. Political: intervention in the Law Society authority and structures

## Risk Action Plan(s)

1. Request to government to pass 2018 amendments to allow paralegals to practice independently

# Risk #5: Loss of Key Personnel

## Risk Context Overview

Name: Loss of key personnel or inability to recruit skilled personnel

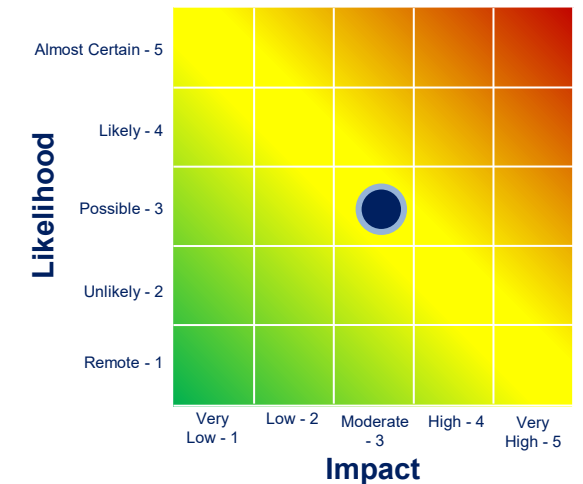
## Mitigation Strategies in Place

1. Succession planning and cross-training
2. Compensation and benefit philosophy and program
3. Compensation benchmarking practices with external compensation experts
4. Professional, leadership and skills development program and human resource policies
5. Performance management and coaching process
6. Hiring practices and recruiting firms
7. Employee surveys
8. Work life balance and flexibility
9. Remote and hybrid work schedules

## Potential Impact(s) if Occur

1. Operational: service disruption as well as loss of corporate knowledge
2. Reputational: diminished public confidence and loss of reputation with the profession

## Risk Action Plan(s)



## Risk Owner

ED/CEO

# Risk #6: Significant Economic Downturn

## Risk Context Overview

Name: Impact of significant economic downturn leads to insufficient revenues

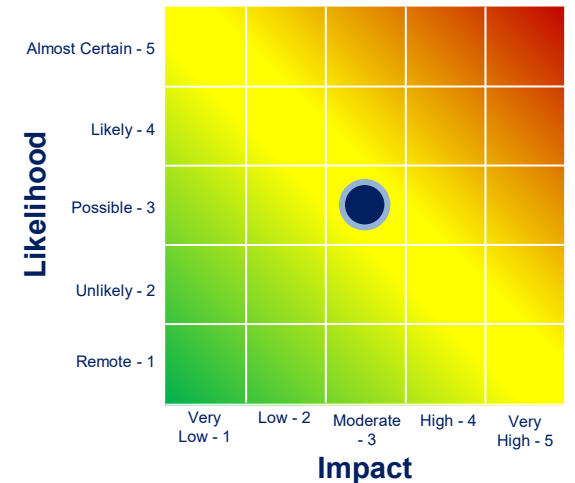
## Mitigation Strategies in Place

1. Annual operating and capital budgets and fees
2. Monthly and quarterly financial forecasting
3. Appropriate reserve level policies
4. Investment policies and procedures, diversified asset mix, external investment managers
5. Monitoring of trends in the legal profession
6. External review of investment markets and economic conditions

## Potential Impact(s) if Occur

1. Operational: disruption to operational plan and cannot perform regulatory functions and other initiatives
2. Financial: reduced or deficit reserves
3. Reputational: Significant increase in practice fees

## Risk Action Plan(s)



## Risk Owner

CFO



# Risk #7: Personal or Confidential Information

## Risk Context Overview

Name: Bencher or staff intentionally or negligently discloses personal or confidential information

## Mitigation Strategies in Place

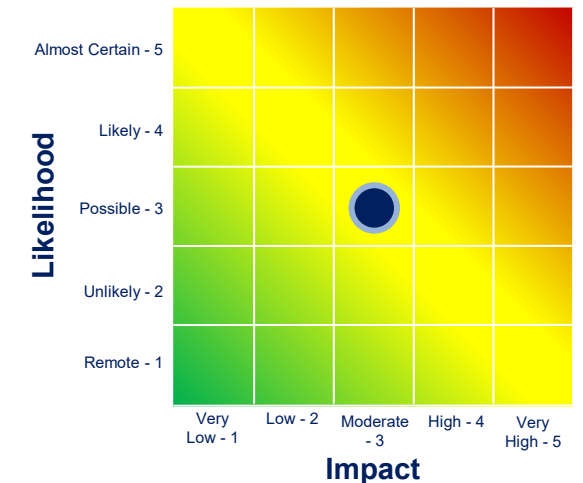
1. Privacy Policy, Breach Protocol and Privacy Impact Assessment process
2. Information technology security policy, process and procedures
3. Records management procedures and LEO security profiles, confidential shredding service
4. Staff confidentiality agreements
5. Information technology, privacy and security training of staff
6. Member portal security
7. Encryption of Bencher and committee agendas
8. Building security system and procedures, external property manager, **building access locked 24 hours**
9. Offsite storage of records and data

## Potential Impact(s) if Occur

1. Reputational: diminished public confidence and loss of reputation with the profession
2. Financial: unexpected costs and/or litigation

## Risk Action Plan(s)

1. Disclosure and Privacy review



## Risk Owner

DED

# Risk #8: Natural or Human-Induced Disaster

## Risk Context Overview

Name: Natural or human-induced disaster

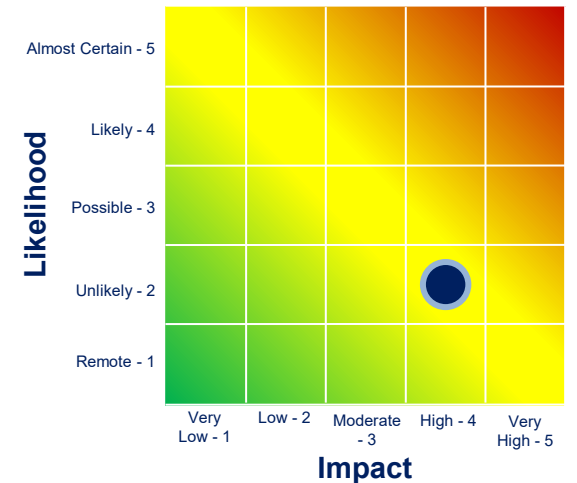
## Mitigation Strategies in Place

1. Fire and earthquake safety plan and training
2. Crisis communication plan and team
3. Safety and security plans
4. Building, human resources, and operational procedures and training
5. Health & Safety committee and first aid attendants
6. Remote and hybrid work policies
7. Information technology backup plan
8. Building due diligence review
9. Insurance coverage and Work Safe coverage
10. Off-site storage/Off-site server location

## Potential Impact(s) if Occur

1. Operational and Financial: injury of staff and/or building damage
2. Operational: service disruption
3. Financial: unexpected costs
4. Reputational: diminished public confidence and loss of reputation with the profession

## Risk Action Plan(s)



## Risk Owner

CFO

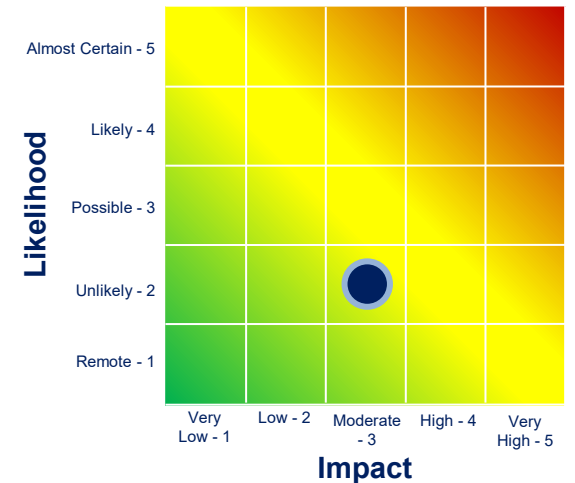
# Risk #9: Members' Option to Override Bencher Decisions

## Risk Context Overview

Name: Members' option to override Bencher decisions

## Mitigation Strategies in Place

1. Communication strategies
2. Law Society initiated consultation or member referenda
3. Policy analysis
4. AGM structure and process



## Risk Owner

ED/CEO

## Potential Impact(s) if Occur

1. Operational: disruptive to day-to-day operations
2. Reputational: diminished public confidence and loss of reputation with the profession
3. Political: intervention in the Law Society authority and structures
4. Financial: large resource commitment

## Risk Action Plan(s)

# Risk #10: Reconciliation & EDI Policies & Actions

## Risk Context Overview

Name: Reconciliation and EDI policies and actions are not adequate

## Mitigation Strategies in Place

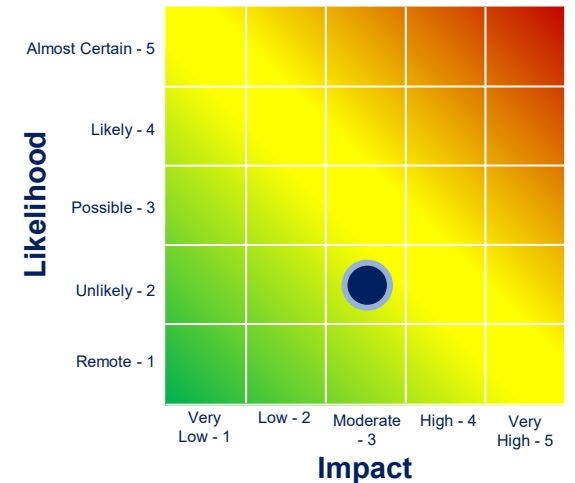
1. EDI Advisory Committee
2. TRC Advisory Committee
3. Diversity Action Plan
4. On-going review of rules and regulatory processes
5. Policy analysis
6. Indigenous Intercultural course
7. Indigenous Framework principles
8. Human Resources policies and processes
9. **Senior Indigenous advisor position**

## Potential Impact(s) if Occur

1. Reputational: diminished public confidence and loss of reputation with the profession
2. Financial: human rights lawsuit, unexpected costs

## Risk Action Plan(s)

1. Update demographic data of BC legal providers to inform policy initiatives
2. **Review and implementation of Indigenous Engagement in Regulatory Matters report recommendations**



## Risk Owner

ED/CEO

# Risk #11: Admission to the Profession

## Risk Context Overview

Name: Lawyers not having minimum level of competence and experience, and good character requirements, for admission to the profession

## Mitigation Strategies in Place

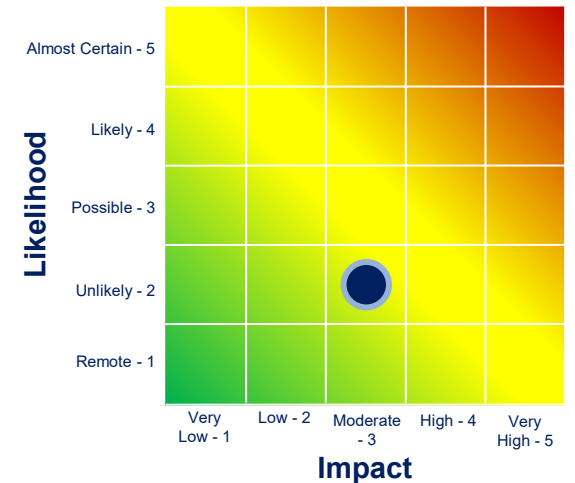
1. Law Society Admission Program
2. Credentialing standards and procedures
3. Continuous updating & enhancement of PLTC student assessment and training
4. Hearing panel composition and training
5. Enhanced role of Tribunal Counsel
6. Legislative amendment to allow Law Society appeals of prior decisions
7. National Committee on Accreditation
8. Federation law degree approval process

## Potential Impact(s) if Occur

1. Political: intervention in the Law Society authority and structures
2. Reputational: diminished public confidence and loss of reputation with the profession
3. Financial: costs and damages, possible litigation

## Risk Action Plan(s)

1. Lawyer Development Task Force review, including the Western Provinces Competency Profile work
2. **Principal training course to be developed**
3. FLSC - National Committee on Accreditation review
4. **FLCS – National Requirement Review of law schools**
5. **FLCS – National Good Character Standards**



## Risk Owner

Senior Director of PLTC, Practice Support and Credentials

# Risk #12: Failure to Fulfill Duties

Name: Failure to fulfill duties under the *Legal Profession Act*, other statutory duties, or Law Society Rules

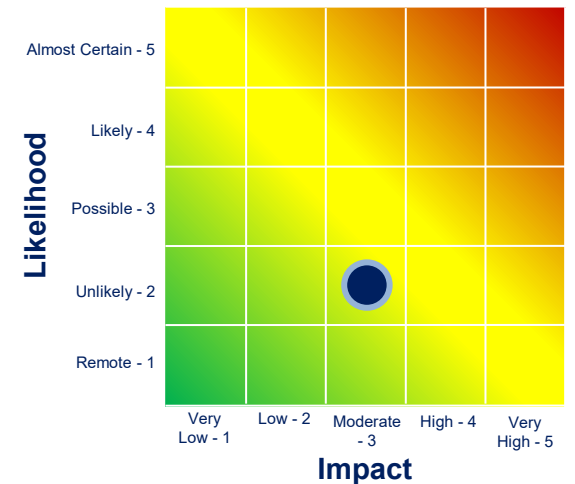
## Mitigation Strategies in Place

1. Bencher governance policies and training
2. Strategic Plan
3. Appropriate procedures for investigation and prosecution of legal matters
4. Hearing panel composition and training
5. Tribunal counsel and case management
6. Independent Tribunal
7. National Discipline Standards
8. S. 86 *Legal Profession Act* statutory protection against liability
9. D&O policy

## Potential Impact(s) if Occur

1. Political: intervention in the Law Society authority and structures
2. Reputational: diminished public confidence and loss of reputation with the profession
3. Financial: costs and damages, possible litigation

## Risk Action Plan(s)



## Risk Owner

ED/CEO

# Risk #13: Catastrophic Losses Under the LPL or Cyber Policies

## Risk Context Overview

Name: Catastrophic losses under the LPL or Cyber policies

## Mitigation Strategies in Place

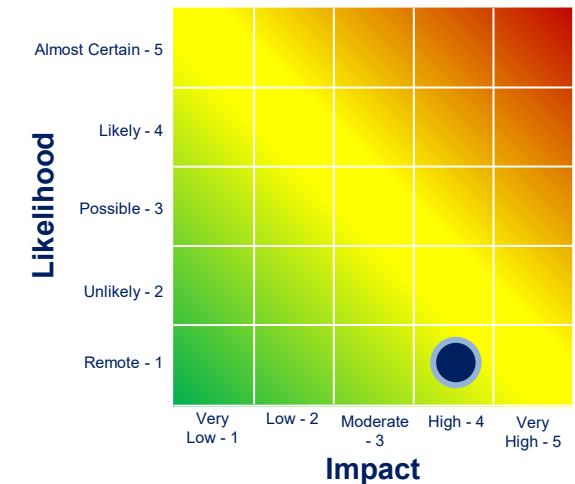
1. Policy wording on limits and “related errors”
2. Proactive claims and risk management practices
3. Monitoring of LPL insurance trends and risks
4. Education and risk management advice to the profession
5. On-going notices and risk management videos to the profession
6. Appropriate reserve levels
7. Stop-loss reinsurance treaty
8. Part B Reinsurance

## Potential Impact(s) if Occur

1. Financial and Operational: costs and damages through litigation, significant investigation expense and settlement payments
2. Reputational: Significant increase in indemnity fees
3. Significant losses to individual licensees and their clients

## Risk Action Plan(s)

1. Tightening of policy wording on “related errors” for 2024



## Risk Owner

COO - LIF

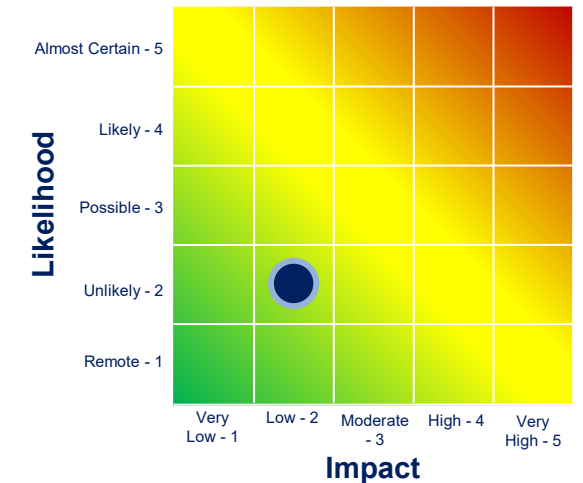
# Risk #14: Conflict of Interest

## Risk Context Overview

Name: Conflict of interest by Benchers or staff not adequately addressed

## Mitigation Strategies in Place

1. Bencher and staff policies, procedures and training
2. Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law, including investigations conducted by independent, external counsel where appropriate
3. Tribunal counsel and tribunal case management
4. Independent Tribunal
5. Hearing panel composition and training
6. Bencher Code of Conduct
7. D&O insurance policy



## Risk Owner

ED/CEO

## Potential Impact(s) if Occur

1. Political: intervention in the Law Society authority and structures
2. Reputational: diminished public confidence and loss of reputation with the profession

## Risk Action Plan(s)



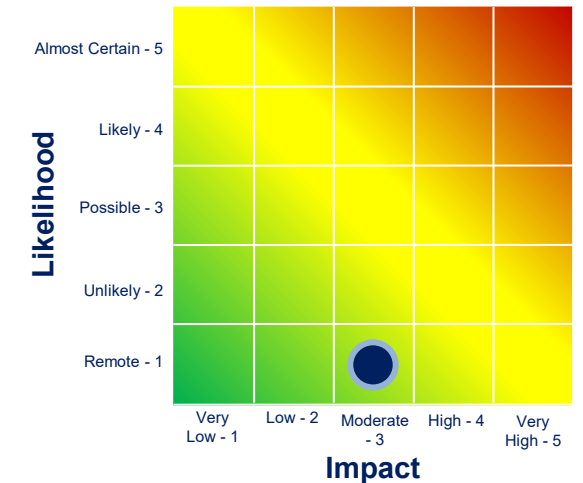
# Risk #15: Bencher or Staff Fraud

## Risk Context Overview

Name: Bencher or staff fraud that results in financial loss to the Law Society

## Mitigation Strategies in Place

1. Internal controls
2. Schedule of authorizations
3. External audit
4. Monthly and quarterly financial review process
5. Crime insurance and cyber insurance



## Risk Owner

CFO

## Potential Impact(s) if Occur

1. Reputational: diminished public confidence and loss of reputation with the profession
2. Financial: costs and damages, possible litigation

## Risk Action Plan(s)

# Strategic Priority Mapping

Risks	Innovative Regulator	Reconciliation	Access to Justice	Diversity	Confidence
1 Failure to address lawyer misconduct, incompetence and/or breach of Rules in an appropriate and/or timely manner	✓				✓
2 Transition to Single Legal Regulator	✓		✓		✓
3 Cybersecurity breach					✓
4 Perceived or actual failure to accommodate access to a wider array of legal service providers	✓		✓		✓
5 Loss of key personnel or inability to recruit skilled personnel					✓
6 Impact of significant economic downturn leads to insufficient revenues					✓
7 Bencher or staff intentionally or negligently discloses personal or confidential information					✓
8 Natural or human-induced disaster					✓
9 Members' option to override Bencher decisions					✓

# Strategic Priority Mapping

Risks	Innovative Regulator	Reconciliation	Access to Justice	Diversity	Confidence
10 Reconciliation and EDI policies and actions are not adequate		✓	✓	✓	✓
11 Lawyers not having minimum level of competence and experience, and good character requirements, for admission to the profession	✓				✓
12 Failure to fulfill duties under the <i>Legal Profession Act</i> , other statutory duties or Law Society Rules	✓				✓
13 Catastrophic losses under the LPL or Cyber policies					✓
14 Conflict of interest of Benchers or staff not adequately addressed	✓				✓
15 Bencher or staff fraud that results in financial loss to the Law Society					✓



# Quarterly Financial Report

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**September 2023 YTD**

Prepared for: Finance & Audit Committee Meeting - November 23, 2023  
Bencher Meeting - December 8, 2023

Prepared by: Finance Department

## Quarterly Financial Report - September 2023 YTD

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

### General Fund (excluding capital and TAF)

To the end of September 2023, the General Fund operations resulted in a positive variance to budget. This positive result is due to higher interest income, practice fees, and fines and penalties revenue, combined with lower operating expenses, due to both permanent savings and expense timing differences.

#### Revenue

As noted on the attached financial highlights, total revenue for the period was \$25.6 million, \$1.3 million (5%) ahead of budget.

This increase is mainly due to a significant increase in interest rates during 2022 that continued into 2023, along with slightly higher practice fees and new administrative penalties. With the high interest rates, interest income is \$1.25 million to date, compared to a budget of \$514,000. At the end of September, the number of practicing lawyers was 14,290, slightly ahead of the budget of 14,128. In addition, the new administrative penalty program was implemented in late 2022, and \$92,000 was received so far during 2023.

#### Operating Expenses

Operating expenses for the period were \$23.0 million, \$1.8 million (7%) below budget due to permanent savings of \$1.1 million and expense timing differences of \$650,000.

Permanent savings: External counsel fees were the biggest contributor, with permanent savings of \$538,000 projected in Credentials, Forensics and contingencies. Compensation and HR related cost savings were \$330,000, and the software maintenance cost savings due to the deferral of projects was \$122,000. Also, the proactive practice assessment activities were deferred, with savings of \$100,000. The Single Legal Regulator project has been funded from net assets/reserves as planned, with \$98,000 spent to date. These projected expense savings are offset by a few unbudgeted items, tribunal chair, additional online course fees and wellness support initiatives.

Timing differences: There are also timing differences of \$650,000 that relate to software maintenance costs, external counsel fees, and meeting and travel costs, which are expected to be incurred by year end.

## **TAF-related Revenue and Expenses**

TAF revenue to date was \$1.5 million, below budget \$382,000. This may be timing related but the real estate market is forecast to decline 4.8% from 2022 levels. We also may not have received all third quarter TAF revenue. We are projecting that TAF revenue will be close to budget by year end.

Trust assurance program costs are close to budget.

## **Lawyers Indemnity Fund**

LIF fee revenues were \$13.6 million, slightly over budget. LIF operating expenses were \$19.6 million, \$1 million under budget, with savings in compensation costs, liability insurance, and professional fees.

Year to date investment returns were 4.12%, slightly below the benchmark of 4.93%. For the LIF investments, all investment sectors had positive returns to benchmark YTD except for real estate and foreign equities.

# Law Society

## of British Columbia

### Summary of Financial Highlights

(\$000's)

<b>2023 General Fund Results - YTD Sept 2023 (Excluding Capital Allocation &amp; Depreciation)</b>				
	<b>Actual</b>	<b>Budget</b>	<b>\$ Var</b>	<b>% Var</b>
<b>Revenue (excluding capital)</b>				
Practice Fees	19,710	19,379	331	2%
PLTC and Enrolment Fees	1,420	1,349	70	5%
Electronic Filing Revenue	658	720	(62)	-9%
Interest Income	1,254	514	740	144%
Registration and Licensing Revenue	646	633	14	2%
Fines, Penalties & Recoveries	548	370	178	48%
Insurance Recoveries	32	24	8	0%
Other Revenue	190	165	26	15%
Other Cost Recoveries	64	96	(32)	-
Building Revenue & Tenant Cost Recoveries	1,071	1,047	24	2%
	<u>25,592</u>	<u>24,297</u>	<u>1,296</u>	<u>5%</u>
<b>Expenses (excluding depreciation)</b>				
	<u>23,030</u>	<u>24,790</u>	<u>1,759</u>	<u>7%</u>
	<u>2,562</u>	<u>(493)</u>	<u>3,055</u>	

### Summary of Variances - YTD Sept 2023

#### Revenue Variances:

##### Permanent Variances

Interest Income - significant increase in rates during 2022, which carried into 2023	740
Practice Fees - 2023 budget 14,128 vs Sept 2023 14,290 actual practicing lawyers	331
Fines, Penalties, & Recoveries - new administrative penalties \$92K	178
PLTC and Entrollment Fees - 656 actual students vs 627 budget - extra class in summer	70
Electronic Filing Revenue - 2023 down 4.8% from 2022 real estate market per BCREA forecast	(62)
	<u>1,257</u>

##### Timing Differences

Other timing differences	39
	<u>1,296</u>

#### Expense Variances:

##### Permanent Variances

External counsel fees - Credentials, Forensics and contingency savings	538
Compensation and benefits - overall net savings	170
HR - recruitment \$115K, consultants \$30K, HRIS costs \$15K	160
Software Maint - Office 365 deferred to 2024/2025 \$60K; other software cost savings \$60K	122
Building - property tax \$55K, janitorial \$31K, fire alarm system atrium \$8K	78
Proactive practice assessment pilot program delayed until 2024	100
PLTC - delivered remotely - no travel and facilities costs	76
Lawyer Education Advisory Committee - reduced costs in year for competency analysis	65
Single Legal Regulator - project costs funded from net assets	(98)
Tribunal Chair - unbudgeted	(52)
Miscellaneous - net	(50)
	<u>1,110</u>

##### Timing Differences

Software maint costs not yet incurred - Custodianship storage and Adobe	218
External counsel fees - timing	191
Meetings and travel timing - Tribunal, Benchers, call ceremonies, staff	125
Other misc timing differences	115
	<u>649</u>
	<u>1,759</u>

### Trust Assurance Program - YTD Sept 2023

	<b>Actual</b>	<b>Budget</b>	<b>Variance</b>	<b>% Var</b>
<b>TAF Revenue</b>	1,529	1,911	(382)	-20%
Trust Assurance Department	2,615	2,746	131	5%
<b>Net Trust Assurance Program</b>	<u>(1,086)</u>	<u>(835)</u>	<u>(251)</u>	

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

<b>Performance - Before investment fees</b>	4.10%
<b>Benchmark Performance</b>	4.93%

**The Law Society of British Columbia**  
**General Fund**  
**Results for the 9 Months ended September 30, 2023**  
(\$000's)

	2023 Actual	2023 Budget	\$ Variance	%
<b>REVENUE</b>				
Practice fees (1)	21,504	21,159	345	2%
PLTC and enrolment fees	1,420	1,349	71	5%
Electronic filing revenue	658	720	(62)	-9%
Interest income	1,254	514	740	144%
Registration and Licensing services	646	633	13	2%
Fines, penalties and recoveries	548	370	178	48%
Program Cost Recoveries	62	94	(32)	-34%
Insurance Recoveries	32	24	8	33%
Other revenue	190	165	25	15%
Other Cost Recoveries	2	2	-	0%
Building Revenue & Recoveries	1,071	1,047	24	2%
<b>Total Revenues</b>	<b>27,387</b>	<b>26,077</b>	<b>1,310</b>	<b>5.0%</b>
<b>EXPENSES</b>				
<b>Governance and Events</b>				
Governance	636	539	(97)	-18%
Board Relations and Events	203	209	6	3%
	839	748	(91)	-12%
<b>Corporate Services</b>				
General Office	532	566	34	6%
CEO Department	594	602	8	1%
Finance	997	891	(106)	-12%
Human Resources	445	598	153	26%
Records Management	238	239	1	0%
	2,806	2,896	90	3%
<b>Education and Practice</b>				
Licensing and Admissions	1,367	1,644	277	17%
PLTC and Education	2,532	2,703	171	6%
Practice Standards	321	404	83	21%
Practice Support	-	23	23	100%
	4,220	4,774	554	12%
<b>Communications and Information Services</b>				
Communications	454	446	(8)	-2%
Information Services	1,451	1,749	298	17%
	1,905	2,195	290	13%
<b>Policy and Legal Services</b>				
Policy and Legal Services	1,274	1,292	18	1%
Tribunal and Legislative Counsel	647	605	(42)	-7%
External Litigation & Interventions	-	19	19	100%
Unauthorized Practice	221	243	22	9%
	2,142	2,159	17	1%
<b>Regulation</b>				
CLO Department	685	892	207	23%
Intake & Early Assessment	1,841	1,901	60	3%



**The Law Society of British Columbia**  
**General Fund**  
**Results for the 9 Months ended September 30, 2023**  
(\$000's)

	<b>2023 Actual</b>	<b>2023 Budget</b>	<b>\$ Variance</b>	<b>%</b>
Discipline	2,047	2,202	155	7%
Forensic Accounting	631	673	42	6%
Investigations, Monitoring & Enforcement	2,857	3,134	277	9%
Custodianships	1,516	1,530	14	1%
	<u>9,577</u>	<u>10,332</u>	<u>755</u>	<u>7%</u>
<b>Building Occupancy Costs</b>	1,542	1,684	142	8%
<b>Depreciation</b>	816	896	80	9%
<b>Total Expenses</b>	<u>23,847</u>	<u>25,685</u>	<u>1,837</u>	<u>7.2%</u>
<b>General Fund Results before Trust Assurance Program</b>	<b>3,540</b>	<b>392</b>	<b>3,147</b>	
<b>Trust Assurance Program (TAP)</b>				
TAF revenues	1,529	1,911	(382)	-20.0%
TAP expenses	2,615	2,746	131	4.8%
<b>TAP Results</b>	<u>(1,086)</u>	<u>(835)</u>	<u>(251)</u>	<u>-30.1%</u>
<b>General Fund Results including Trust Assurance Program</b>	<u><b>2,454</b></u>	<u><b>(443)</b></u>	<u><b>2,896</b></u>	
<b>Contribution from Trust Assurance Program to Lawyers Insurance Fund</b>	-			
<b>General Fund Results</b>	<u><u><b>2,454</b></u></u>			

(1) Membership fees include capital allocation of 1794k (Capital allocation budget = 1780k)

**The Law Society of British Columbia**  
**General Fund - Balance Sheet**  
**As at September 30, 2023**  
(\$000's)

	Sep 30 2023	Sep 30 2022
<b>Assets</b>		
<b>Current assets</b>		
Cash and cash equivalents	17,985	20,869
Unclaimed trust funds	2,236	2,186
Accounts receivable and prepaid expenses	1,634	1,317
Short Term Loan Receivable		
Due from Lawyers Insurance Fund	16,919	12,196
	<u>38,775</u>	<u>36,567</u>
<b>Property, plant and equipment</b>		
Cambie Street property	10,597	10,300
Other - net	2,362	2,213
	<u>12,959</u>	<u>12,513</u>
<b>Long Term Loan</b>		535
	<u><u>51,733</u></u>	<u><u>49,615</u></u>
<b>Liabilities</b>		
<b>Current liabilities</b>		
Accounts payable and accrued liabilities	2,761	2,945
Liability for unclaimed trust funds	2,236	2,186
Deferred revenue	7,533	7,528
Deposits	89	89
	<u>12,619</u>	<u>12,748</u>
<b>Net assets</b>		
Capital Allocation	4,719	4,803
Unrestricted Net Assets	34,395	32,065
	<u>39,114</u>	<u>36,867</u>
	<u><u>51,733</u></u>	<u><u>49,615</u></u>

**The Law Society of British Columbia**  
**General Fund - Statement of Changes in Net Assets**  
**Results for the 9 Months ended September 30, 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	(1,143)	2,888	1,745	(1,086)	1,794	2,454	2,934
Contribution to LIF				-		-	
Purchase of capital assets:						-	
LSBC Operations	640	-	640	-	(640)	-	-
845 Cambie	1,238	-	1,238	-	(1,238)	-	-
<b>Net assets - At End of Period</b>	<b>12,958</b>	<b>20,654</b>	<b>33,612</b>	<b>782</b>	<b>4,719</b>	<b>39,114</b>	<b>36,660</b>

**The Law Society of British Columbia**  
**Lawyers Indemnity Fund**  
**Results for the 9 Months ended September 30, 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	13,567	13,079	488	4%
Investment income	10,199	8,730	1,469	17%
Other income	117	49	68	139%
<b>Total Revenues</b>	<b>23,883</b>	<b>21,858</b>	<b>2,025</b>	<b>9.3%</b>
<b>Expenses</b>				
<b>Insurance Expense</b>				
Provision for settlement of claims	11,889	11,889	-	0%
Salaries and benefits	2,415	2,844	429	15%
Contribution to program and administrative costs of General Fund	1,167	1,176	9	1%
Insurance	1,458	1,743	285	16%
Office	444	733	289	39%
Actuaries, consultants and investment brokers' fees	1,370	1,384	14	1%
	<b>18,768</b>	<b>19,769</b>	<b>1,001</b>	<b>5%</b>
<b>Loss Prevention Expense</b>				
Contribution to co-sponsored program costs of General Fund	868	945	77	8%
<b>Total Expenses</b>	<b>19,636</b>	<b>20,714</b>	<b>1,078</b>	<b>5.2%</b>
<b>Lawyers Indemnity Fund Results before Contributions</b>	<b>4,247</b>	<b>1,144</b>	<b>3,103</b>	
Contribution from Trust Assurance Program	-			
<b>Lawyers Indemnity Fund Results</b>	<b>4,247</b>	<b>1,144</b>	<b>3,103</b>	

**The Law Society of British Columbia**  
**Lawyers Indemnity Fund - Balance Sheet**  
**As at September 30, 2023**  
(\$000's)

	Sep 30 2023	Sep 30 2022
<b>Assets</b>		
Cash and cash equivalents	1,418	1,375
Accounts receivable and prepaid expenses	1,932	1,567
Investments	244,607	226,195
	<u><b>247,958</b></u>	<u><b>229,137</b></u>
<b>Liabilities</b>		
Accounts payable and accrued liabilities	298	209
Deferred revenue	4,372	4,294
Due to General Fund	16,919	12,196
Provision for claims	81,364	77,842
Provision for ULAE	13,899	12,399
	<u>116,853</u>	<u>106,940</u>
<b>Net assets</b>		
Internally restricted net assets	17,500	17,500
Unrestricted net assets	113,605	104,697
	<u>131,105</u>	<u>122,197</u>
	<u><b>247,958</b></u>	<u><b>229,137</b></u>

**The Law Society of British Columbia**  
**Lawyers Indemnity Fund - Statement of Changes in Net Assets**  
**Results for the 9 Months ended September 30, 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	4,248	-	4,248	(15,871)
<b>Net assets - At End of Period</b>	<b>113,605</b>	<b>17,500</b>	<b>131,105</b>	<b>126,857</b>

## **2023 General Fund Forecast**

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**As at September 2023**

Prepared for: Finance & Audit Committee Meeting - November 23, 2023  
Bencher Meeting - December 8, 2023

Prepared by: Finance Department

## Forecast - as at September 2023

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

### Overview

Based on results to the end of September 2023, we are projecting a positive result of \$1.7 million for the year. As the 2023 budget was a \$775,000 deficit budget, this is a positive variance of \$2.46 million due to additional revenues, along with projected cost savings.

### Revenue Forecast

At this time, total revenue is projected at \$33.9 million, \$1.56 million (5%) ahead of budget, mainly due to much higher interest income, slightly higher practicing lawyers and additional administrative penalties revenue.

**Interest Revenue:** During 2022 and 2023, interest rates have quadrupled which was not anticipated. This steep increase in interest rates is projected to bring in \$1.582 million in interest income, \$900,000 over budget.

**Practice Fees:** The 2023 practice fee budget was set at 14,128 practicing lawyers. As the number of practicing lawyers in 2022 increased 3.9%, the highest increase ever, this led to a higher number of practicing lawyers in 2023. We are now projecting 14,306 practicing lawyers for 2023, 3.4% over 2022 levels, resulting in practice fee revenue of \$26.1 million, over budget \$331,000 (1%).

**PLTC Revenue:** We are projecting 656 PLTC students this year compared to 627 budgeted, resulting in additional revenue of \$148,000 for the year. There was an extra class added to the summer which topped up the student numbers from projections.

**Fines, penalties, and recoveries:** This revenue is projected to be over budget \$180,000 with higher fines and penalties, mainly due to the new administrative penalty program implemented later in 2022.

### Operating Expense Forecast

Total operating expenses are projected to be \$32.3 million, \$900,000 (3%) below budget for the year.



Overall compensation and benefits, which comprise 80% of the budget, are projected to be close to budget at this time, and there are a few other budget savings projected as noted below:

- External counsel fees are projected to be under budget \$538,000, with savings in Credentials and Forensics, and the contingency was not needed.
- The proactive practice assessment pilot program was deferred, resulting in savings of \$100,000.
- HR related costs projected to be under budget \$160,000 with savings in recruitment, consultants and HRIS costs.
- Computer software maintenance will have savings of \$120,000 with the deferral of projects, such as Office 365.
- Building costs related to property taxes and maintenance projected will be under budget \$78,000.

Offsetting this, the Single Legal Regulator project has been funded from net assets/reserves as planned, with \$98,000 spent to date.

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

	Forecast vs Budget			
	Forecast	Budget	Variance	
<b>REVENUE</b>				
Practice fees	26,169	25,838	331	1%
PLTC and enrolment fees	2,004	1,856	148	8%
Electronic filing revenue	1,078	966	112	12%
Interest income	1,582	685	897	131%
Registration and Licensing	818	843	(25)	-3%
Fines, penalties and recoveries	635	454	181	40%
Program Cost Recoveries	126	126	-	0%
Insurance Recoveries	20	20	-	0%
Other revenue	193	193	-	0%
Other Cost Recoveries	14	14	-	0%
Building Revenue & Recoveries	1,316	1,397	(81)	-6%
<b>Total Revenues</b>	<b>33,955</b>	<b>32,392</b>	<b>1,563</b>	<b>5%</b>
<b>EXPENSES</b>				
<b>Benchers Governance and Events</b>				
Governance	702	600	(102)	-17%
Board Relations and Events	280	294	14	5%
	982	894	(88)	-10%
<b>Corporate Services</b>				
General Office	789	767	(22)	-3%
CEO Department	1,127	871	(256)	-29%
Finance	1,345	1,238	(107)	-9%
Human Resources	676	826	150	18%
Records Management	327	326	(1)	0%
	4,264	4,028	(236)	-6%
<b>Education and Practice</b>				
Licensing and Admissions	2,071	2,232	161	7%
PLTC and Education	3,280	3,554	274	8%
Practice Standards	399	546	147	27%
	5,749	6,332	583	9%
<b>Communications and Information Services</b>				
Communications	631	612	(19)	-3%
Information Services	1,976	2,119	143	7%
	2,607	2,731	124	5%
<b>Policy and Legal Services</b>				
Policy and Legal Services	1,836	1,795	(41)	-2%
Tribunal and Legislative Counsel	889	820	(69)	-8%
External Litigation & Interventions	75	25	(50)	-201%
Unauthorized Practice	332	331	(1)	0%
	3,132	2,971	(161)	-5%
<b>Regulation</b>				
CLO Department	900	1,162	262	23%
Intake & Early Assessment	2,540	2,586	46	2%
Discipline	2,954	2,978	24	1%
Forensic Accounting	716	920	204	22%
Investigations, Monitoring & Enforcement	4,204	4,254	50	1%
Custodianships	2,067	2,078	11	1%
	13,381	13,978	597	4%
<b>Building Occupancy Costs</b>	<b>2,155</b>	<b>2,233</b>	<b>78</b>	<b>3%</b>
<b>Total Expenses</b>	<b>32,270</b>	<b>33,167</b>	<b>897</b>	<b>3%</b>
<b>General Fund Results</b>	<b>1,685</b>	<b>(775)</b>	<b>2,460</b>	
<b>Trust Assurance Program (TAP)</b>				
TAF revenues	3,830	3,822	8	0%
TAP expenses	3,591	3,722	131	4%
<b>TAP Results</b>	<b>239</b>	<b>100</b>	<b>139</b>	
<b>General Fund Results including TAP</b>	<b>1,924</b>	<b>(675)</b>	<b>2,599</b>	

(1) Membership fees include capital allocation of \$1.8m (Capital allocation budget = \$1.78m)

## **UPDATE: Implementation of the recommendations from the Indigenous Engagement in Regulatory Matters Task Force Report**

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Date: December 8, 2023

Prepared for: Benchers

Prepared by: Staff

Purpose: For Information

## Purpose

1. The following report provides a summary of the actions taken, and actions anticipated to be taken, towards implementation of the Indigenous Engagement in Regulatory Matters (IERM) [Task Force Report](#) recommendations, which were unanimously approved at the Benchers meeting on July 14, 2023.
2. The objective of the IERM Task Force was 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 resultant report addresses the Law Society's need, and desire, to reconcile its processes with Indigenous legal principles.
3. The recommendations in the IERM Task Force Report include taking steps to build relationships, gain trust and become more proactive in preventing harm to Indigenous persons and communities and, more generally, the public. The narrative portion of this report sets out some key updates and Appendix A sets out in more detail what actions have been taken, and are anticipated to be taken, to implement the recommendations in the IERM Task Force report.
4. This report is the first annual report further to Recommendation 5.2: The Law Society should update the implementation plan annually, and track progress in its annual report.

## Background

5. In 2021, in order to ensure that the unique needs of Indigenous peoples are addressed in the Law Society's regulatory process, the Law Society established the IERM Task Force to review its rules, procedures, and processes.
6. The mandate of the IERM Task Force was to 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.

7. The IERM Task Force was appointed in July 2021. Over the course of two years, the IERM Task Force consulted with a number of individuals and organizations including: Indigenous organizations, Indigenous lawyers and judges, justice organizations that provide Indigenous-specific services, other regulatory bodies, organizations that are trying to improve access by Indigenous individuals, judges from Indigenous courts, authors of relevant reports, legal academics, a trauma-informed legal service expert, and a non-Indigenous lawyer who has worked for Indigenous Nations and has experience in regulatory matters. As per the Terms of Reference, the Task Force also consulted with Law Society staff, Tribunal members, members of the Truth and Reconciliation Advisory Committee, and chairs of other Benchers committees (e.g. Practice Standards, Complainants' Review, Discipline, Ethics and Lawyer Independence, and Executive).

## **Summary of key actions taken to December 2023**

### **Institution, policies, procedures and practice**

8. In order to build trust, the Law Society is committed to advancing reconciliation with Indigenous Peoples by acting on recommendations to remove systemic barriers and to ensure that what the Law Society does – and how it is done – works for Indigenous Peoples. Part of the work has included printing and disseminating copies of the IERM Task Force Report, and making it available on the Law Society website.
9. In recent months, the Law Society has hired two Indigenous employees: Senior Advisor, Indigenous Engagement and Director, Credentials & Licensing. In addition, two Indigenous summer law students were hired in summer 2023 as part of the Law Society's work to 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.
10. Numerous actions have been taken to decolonize and Indigenize the Law Society and its policies, procedures and practices. These actions include education of staff in all roles and departments through the Indigenous Intercultural course (approximately 2/3rds of staff

have completed the course as of November 30, 2023), small workshops about the IERM Task Force Report and what led up to the findings in *Bronstein (re)*, 2021 LSBC 19, educational information and resources shared staff wide, and staff events to celebrate National Day for Truth & Reconciliation aka Orange Shirt Day (September 30) and National Indigenous Veterans' Day (November 8).

11. The Law Society has hired an Indigenous Navigator, who will act as a resource for Indigenous complainants and witnesses to ensure they experience Law Society complaints, investigation, resolution and hearing processes in a culturally safe and trauma-informed manner. The Indigenous Navigator, reporting to the Chief Legal Officer, will also support Law Society staff working in the complaints, investigations, resolution, and hearing process, and will work closely and receive guidance as necessary, from the Senior Advisor, Indigenous Engagement.
12. In addition, several new processes have been implemented to more efficiently address complaints about lawyers and improve the services provided by the Law Society Tribunal:
  - a. Consent agreements, which allow complaints to be resolved prior to the issuance of a citation to the lawyer with a resolution that would be in the range expected if the matter went through the hearing process. This process allows for complaints to be concluded far quicker and more cost effectively than a hearing and in a less adversarial process.
  - b. The Alternative Discipline Process (“ADP”) has been implemented to divert complaints about lawyers from the usual professional conduct and discipline processes. ADP is an option where the lawyers have a health issue that may have contributed to their conduct issue. There are eligibility criteria for entrance into ADP and those admitted who continue to meet the eligibility criteria are able to focus on their health and wellbeing without fear that the Law Society’s usual investigation and discipline processes will apply to them.
  - c. The Law Society Tribunal has updated their guide on “[Information for Witnesses including Witness Accommodation](#)” which sets out the Tribunal’s commitment to

ensure an equal opportunity to participate in the hearing processes at the Law Society Tribunal.

- d. The Law Society Tribunal has developed a new guide, "[Indigenous Engagement with the LSBC Tribunal](#)." It outlines their inclusive policies, protocols, and hearing processes which can be tailored to different Indigenous cultures, laws and needs.
13. Lastly, the Law Society has taken the following steps in the process to decolonize:
- a. At the March 2023 meeting, the Benchers approved 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. As a consequence of the amendment, every new, incoming lawyer will swear or affirm to uphold these rights as guaranteed by the *Constitution*; and
  - b. In fall 2021 the Law Society retired its Latin motto and initiated the process towards a new logo design — one that communicates the Law Society's role and responsibilities to the public, and better reflects the diversity of the profession and the province in which the Law Society operates. Instances of the seal, as the logo had been known, have been removed from the Law Society website, correspondence and printed materials, and where possible, from public spaces at 845 Cambie Street, the location of the Law Society's offices. The work to remove the seal is ongoing.

## Preventing harm and building relationships

14. Benchers establish the Law Society Rules, the *Code of Professional Conduct for British Columbia* and board policies, including governance policies, and frequently interact with law students, articulated students, and the general public as they carry out their responsibilities. In recognition of their leadership role, Benchers attended the September 2023 Bencher meeting wearing orange shirts in support of National Truth and Reconciliation Day aka Orange Shirt Day. Some Benchers also attended the Orange Shirt Day staff event, where Vicki George, Senior Advisor, Indigenous Engagement shared opening remarks and then screened a video featuring Phyllis Webstad, founder of the

Orange Shirt Society, wherein Ms. Webstad shares her incredibly moving story and speaks from the heart about her experiences in residential school and the harm these schools have had on multiple generations of her family.

15. Similarly, Practice Advisors help lawyers and articulated students with practice and ethics advice, and are an important source of information to the legal profession in BC. All members of the Practice Advice team have completed the Indigenous Intercultural course, and further work is being undertaken to ensure that the Practice Advisors are equipped to provide practice support materials, resources, and guidance on intercultural competency and trauma-informed practice. Trauma informed practice training is also ongoing within the Professional Conduct groups.
16. Initiated by the Senior Advisor, Indigenous Engagement, meetings have taken place between senior leadership of the Law Society and various external actors, including Indigenous organizations and groups, Indigenous lawyers, the Allard School of Law at the University of British Columbia, academics and leaders. A key concern has been noted in those discussions that it is important to have information to explain the distinctiveness between Indigenous people and Equity, Diversity and Inclusion (EDI) work.
17. The Senior Advisor, Indigenous Engagement also meets regularly with the Truth and Reconciliation Advisory Committee and the Equity, Diversity and Inclusion Advisory Committee, and worked closely with the Indigenous summer law students the Law Society hired in summer 2023 as part of its work to 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.
18. Appendix A further sets out what actions have been taken, and are anticipated to be taken, to implement the recommendations in the IERM Task Force report.

## Subsequent Steps

19. The Law Society intends to report annually to the Benchers on its work to implement the IERM Task Force recommendations.



# Appendix A

## IERM Implementation Plan <sup>1</sup>

RECOMMENDATION	ACTIONS UNDERTAKEN TO DECEMBER 2023	PLANNED ACTIONS
<b>Recommendation 1.0: The Law Society should decolonize its institution, policies, procedures, and practices.</b>		
<p><b>Recommendation 1.1:</b> 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.</p>	<p>Approximately 2/3rds of Law Society staff have completed the Indigenous Intercultural course as of November 30, 2023.</p> <p>Senior Advisor, Indigenous Engagement has completed meet and greets with staff and departments to explain about the importance of Indigenous Engagement, the IERM Report, and implementation of its recommendations.</p> <p>Senior Advisor, Indigenous Engagement developed <a href="#">Indigenous History Month</a> resources, which were communicated out to staff and the public.</p> <p>Staff wide events have been held to celebrate National Day for Truth &amp; Reconciliation aka Orange Shirt Day Event (September 21) and National Indigenous Veterans Day (November 8).</p> <p>Staff training events, entitled “The Road to the IERM Report”, to teach why the Law</p>	<p>Podcast episode with President and Task Force members to explain about the IERM Report, and implementation of its recommendations.</p> <p>Staff completion rate for Indigenous Intercultural Course is 100%, and all new staff take the training within first three months of hiring.</p> <p>Ongoing staff training, entitled “The Road to the IERM Report”.</p>

<sup>1</sup> In consultation with Senior Advisor, Indigenous Engagement.

	Society is committed to implementing the IERM Task Force Report, about the Indigenous Framework, lawyer treatment of Indigenous people, and building trust in regulatory practices.	
<b>Recommendation 1.2:</b> The Law Society should retain an Indigenous expert to identify and remove unnecessary colonial principles from the Rules, <i>Code</i> , policies, procedures, and practices, and should support the provincial government’s efforts to remove unnecessary colonial principles from the <i>Act</i> .	A staff working group has been established to consider decreasing reliance on adversarial processes.	More detailed examination of Law Society Rules, <i>Professional Code of Conduct</i> , and <i>Legal Profession Act</i> , and policies.
<b>Recommendation 1.3:</b> The Law Society should identify and remove unnecessary adversarial aspects of its processes.		
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.	Research initiated to consider applicability of the <i>Apology Act</i>	Consideration of the <i>Apology Act</i> and development of Apology Guidelines.
The Law Society should support the use of victim impact statements more often in appropriate circumstances.	The Law Society Tribunal has updated their guide on “ <a href="#">Information for Witnesses including Witness Accommodation</a> ”. It sets out the Tribunal’s commitment to ensure an equal opportunity to	

	participate in the hearing processes at the Tribunal.	
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).	The Law Society Tribunal has updated their guide on " <a href="#">Information for Witnesses including Witness Accommodation</a> ". It sets out the Tribunal's commitment to ensure an equal opportunity to participate in the hearing processes at the Tribunal.	
<b>Recommendation 1.4:</b> The Law Society should review its processes and practices with a view to increasing efficiencies in the resolution of complaints.	<p>Several new processes have been implemented to more efficiently address complaints:</p> <ul style="list-style-type: none"> <li>• Consent agreements, which allow complaints to be resolved prior to the issuance of a citation with a resolution that would be in the range expected if the matter went through the hearing process. This process allows for complaints to be concluded far quicker and more cost effectively than a hearing and in a less adversarial process.</li> <li>• Administrative penalties have been introduced to address certain breaches of the Law Society Rules. This allows matters to be concluded more quickly than the former process of investigation and referral to the Discipline Committee.</li> <li>• The Alternative Discipline Process ("ADP") has been implemented to divert complaints about lawyers from the usual professional conduct and discipline processes. ADP is</li> </ul>	

	<p>an option where the lawyers have a health issue that may have contributed to their conduct issue. There are eligibility criteria for entrance into ADP and those admitted who continue to meet the eligibility criteria are able to focus on their health and wellbeing without fear that the Law Society’s usual investigation and discipline processes will apply to them.</p>	
<p><b>Recommendation 1.5:</b> 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.</p>	<p>Latin motto and seal removed from Law Society communication materials.</p> <p>Barrister and Solicitor Oath amended to recognize and affirm the Aboriginal and treaty rights of First Nations, Inuit and Métis peoples.</p> <p>Indigenous art expansion at Law Society Building.</p>	<p>Engage in operational considerations to minimize formalities.</p> <p>Review website for language/cultural safety. Update website and materials with accessible and culturally safe information and resources for Indigenous peoples.</p> <p>Lawyer Directory updates to allow for traditional names, including names using symbols and numbers, along with the pronunciation tool.</p>
<p><b>Recommendation 2.0: The Law Society should Indigenize its institution, policies, procedures, and practices.</b></p>		
<p><b>Recommendation 2.1:</b> The Law Society should apply the Indigenous Framework in its application of the <i>Act</i>, Rules, <i>Code</i>, policies, procedures, and practices.</p>		
<p>The Law Society should ensure that all Law Society representatives receive</p>	<p>Staff training events, entitled “The Road to the IERM Report”, to teach why the Law</p>	<p>Update Bencher orientation.</p> <p>Update Tribunal training.</p>

<p>training on the Indigenous Framework and its application in relation to the <i>Act</i>, <i>Rules</i>, <i>Code</i>, policies, procedures, and practices.</p>	<p>Society is committed to implementing the IERM Task Force Report, about the Indigenous Framework, lawyer treatment of Indigenous people, and building trust in regulatory practices.</p>	<p>Ongoing staff training, entitled “The Road to the IERM Report”.</p>
<p><b>Recommendation 2.2:</b> The Law Society should uphold its prior commitments to increase Indigenous representation throughout the organization, including at the governance, leadership, and staff levels.</p>		
<p>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.</p>	<p>Job Description for Indigenous Navigator role reviewed with a view to inclusivity as a key metric.</p> <p>In May 2023, the Law Society hired a Senior Advisor, Indigenous Engagement.</p> <p>In September 2023 the Law Society hired a Director, Credentials &amp; Licensing.</p> <p>Two Indigenous summer law students were hired in summer 2023.</p> <p>Hired Indigenous Navigator.</p>	<p>Develop communication strategy to promote Indigenous Navigator program.</p>
<p>The Law Society should create an organizational culture that supports the inclusion and success of Indigenous representatives at all levels of the organization.</p>	<p>Job Description for Indigenous Navigator role reviewed with a view to inclusivity as a key metric.</p>	<p>Ongoing work with respect to human resources and organizational culture.</p>

<p><b>Recommendation 2.3:</b> 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.</p>	<p>Engaged with Truth and Reconciliation Advisory Committee (TRAC), CBABC – Aboriginal Lawyers Forum.</p> <p>Ongoing Relationship-building commenced with Indigenous organizations and groups.</p>	
<p><b>Recommendation 2.4:</b> The Law Society should continue adapting its processes to incorporate flexible, culturally relevant, and trauma informed options and resources for Indigenous complainants and witnesses.</p>	<p>Approximately 2/3rds of Law Society staff have completed the Indigenous Intercultural course as of November 30, 2023.</p> <p>Hired Indigenous Navigator.</p> <p>The Law Society Tribunal has developed a new guide, "<a href="#">Indigenous Engagement with the LSBC Tribunal</a>." It outlines their inclusive policies, protocols, and hearing processes which can be tailored to different Indigenous cultures, laws and needs.</p>	<p>Create a resource hub for anyone at the Law Society to see courses that are available on these topics.</p>
<p><b>Recommendation 2.5:</b> 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.</p>	<p>Hired Indigenous Navigator.</p>	<p>Guidance from Indigenous Navigator.</p> <p>Undertake policy work on how to identify and address systemic issues affecting Indigenous clients' legal needs so as to avoid waiting for individuals to make complaints.</p>
<p>Recommendation 3.0: The Law Society should build trust and relationships with Indigenous individuals, organizations, and communities.</p>		
<p><b>Recommendation 3.1:</b> The Law Society should raise awareness throughout the province about the</p>	<p>Ongoing meetings between Executive Director and Senior Advisor, Indigenous Engagement and external actors.</p>	<p>Ongoing meetings between Executive Director and Senior Advisor, Indigenous Engagement and external actors.</p>

Law Society's role and the services it provides, including supports and options available to Indigenous complainants and witnesses.		Create and execute public awareness campaign to highlight the Law Society's reconciliation progress.
The Law Society should ensure that a variety of communications tools are used, such as pamphlets, social media, in-person conversations, and videos.	Professionally printed IERM Task Force reports for external outreach.	Create and distribute printed materials with plain language.  Podcast episode with Law Society President and member of the IERM Task Force.  Plan and execute strategy for public awareness campaign.
The Law Society should provide clear, plain language information about:		
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;	Professional Conduct working with Communications to do a video about the complaints process.  Ongoing work to develop strategy for public awareness campaign.	Create and distribute printed materials with plain language.  Develop professional conduct solution explorer.
how to make a complaint, steps involved, anticipated timelines, and possible outcomes; and	Professional Conduct working with Communications to do a video about the complaints process.  Ongoing work to develop strategy for public awareness campaign.	Create and distribute printed materials with plain language.  Develop professional conduct solution explorer.
all supports that are available for Indigenous complainants and witnesses in the Law Society's processes.	The Law Society Tribunal has updated their guide on " <a href="#">Information for Witnesses including Witness Accommodation</a> ". It sets out the Tribunal's commitment to	Develop strategy for public awareness campaign.  Create and distribute printed materials with plain language.

	ensure an equal opportunity to participate in the hearing processes at the Tribunal.	
<b>Recommendation 3.2:</b> The Law Society should prioritize hiring an Indigenous “navigator” to guide Indigenous complainants and witnesses through the Law Society’s processes.	Role has been posted, circulated and hired.  The Law Society Tribunal has developed a new guide called " <a href="#">Indigenous Engagement with the LSBC Tribunal</a> ".	Onboard Indigenous Navigator.
<b>Recommendation 3.3:</b> The Law Society should create a safe atmosphere for Indigenous individuals, including in the institution’s organizational, physical, and digital spaces.	Where possible the seal has been removed from the Law Society Building at 845 Cambie Street in Vancouver.  Indigenous art expansion at the Law Society Building at 845 Cambie Street in Vancouver.	Identify and create culturally appropriate space at the Law Society Building at 845 Cambie Street in Vancouver.  Provide input/support to ongoing work to update Law Society website.  Review website for language/cultural safety. Update website and materials with accessible and culturally safe information and resources for Indigenous peoples.
<b>Recommendation 3.4:</b> The Law Society should develop connections with support agencies to identify potential resources and opportunities to assist Indigenous complainants and witnesses.	Key connections have been identified and outreach started.  Meetings have taken place with <ul style="list-style-type: none"> <li>• BC Treaty Commission;</li> <li>• First Nations Summit;</li> <li>• Métis Nation of BC; and</li> <li>• Native Courtworker and Counselling Association of British Columbia.</li> </ul>	Ongoing communications strategy.  Connection development will be ongoing.
<b>Recommendation 3.5:</b> Subject to guidance from the Leadership of the Tsilhqot’in Nation, the Law Society should continue its efforts to make amends with the	Considering next steps to approach according to protocol and proper engagement.	Ongoing action and communications strategy.



<p>Tsilhqot'in Survivors for the outcome of the <i>Bronstein</i> 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.</p>		
<p>Recommendation 4.0: The Law Society should be more proactive in the prevention of harm to the public, particularly Indigenous individuals.</p>		
<p><b>Recommendation 4.1:</b> The Law Society should clarify competency requirements in the Law Society's Code of Professional Conduct to specifically include intercultural competence.</p>	<p>Monitoring compliance with Rule 3-28.1 which requires all practising lawyers to complete the Indigenous intercultural course and certify completion before:</p> <ul style="list-style-type: none"> <li>• the lawyer has engaged in the practice of law for two years in total, whether or not continuous, or</li> <li>• January 1, 2024,</li> </ul> <p>whichever is later.</p>	<p>Review Model Code cultural competency provisions when provided by Federation of Law Societies of Canada.</p>
<p><b>Recommendation 4.2:</b> 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.</p>	<p>100% completion of Indigenous Intercultural Competency course amongst team members.</p>	<p>Identification of resources. Training for Equity Advisor.</p>
<p><b>Recommendation 4.3:</b> The Law Society should ensure that lawyers have access to resources, leading practice guides,</p>	<p>Ongoing discussions with external Indigenous lawyers, academics and leaders, who have noted the importance of having information to explain</p>	<p>Provide resources to staff on differences between EDI work and Indigenous people.</p>

<p>and educational opportunities with respect to the provision of inter-culturally competent and trauma informed legal services to Indigenous clients.</p>	<p>the similarities and differences between Equity, Diversity and Inclusion (EDI) work and Indigenous people.</p>	
<p><b>Recommendation 4.4:</b> 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.</p>	<p>Ongoing relationship building with Indigenous organizations.</p> <p>Meetings have taken place with</p> <ul style="list-style-type: none"> <li>• BC Treaty Commission;</li> <li>• First Nations Summit;</li> <li>• Métis Nation of BC; and</li> <li>• Native Courtworker and Counselling Association of British Columbia.</li> </ul>	<p>Ongoing relationship building with Indigenous organizations.</p>
<p>Recommendation 5.0: The Law Society should implement the recommendations.</p>		
<p><b>Recommendation 5.1:</b> Once the Task Force completes its mandate, the Law Society must ensure that there is effective oversight of the implementation of its recommendations.</p>	<p>Monthly meetings with CEO.</p> <p>Periodic updates at Truth and Reconciliation Advisory Committee (TRAC) meetings.</p> <p>First Report to Benchers in December 2023.</p>	<p>Monthly meetings with CEO.</p> <p>Periodic updates at TRAC meetings.</p> <p>Second Report to Benchers no later than December 2024.</p>
<p><b>Recommendation 5.2:</b> 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.</p>	<p>Create implementation plan.</p>	<p>Update implementation plan.</p>
<p>The Law Society should update the implementation plan annually, and track</p>	<p>First Report to Benchers in December 2023.</p>	<p>Second Report to Benchers no later than December 2024.</p>

progress in its annual report.		
<p><b>Recommendation 5.4:</b> The Law Society should annually assess whether revised processes and policies are working well, and make appropriate adjustments as necessary.</p>	Report to Benchers in December 2023.	Second Report to Benchers no later than December 2024.

## **2023 Year-End Reports**

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**Access to Justice Advisory Committee**  
**Ethics and Lawyer Independence Advisory Committee**  
**Equity, Diversity and Inclusion Advisory Committee**  
**Lawyer Development Task Force**  
**Mental Health Task Force**  
**Trust Review Task Force**  
**Truth and Reconciliation Advisory Committee**

**December 8, 2023**

Prepared for: Benchers

Prepared by: Policy and planning staff

Purpose: For information

## Introduction

1. This report is a compilation of the year-end reports of the four Advisory Committees and three Task Forces, and summarizes their work over the second half of the year. Work from the first half of the year can be found in the Mid-Year Updates reported on at the July 14, 2023 Benchers meeting.
2. Of note, the Indigenous Engagement in Regulatory Matters (“IERM”) Task Force Report was issued and approved by Benchers on July 14, 2023. Accordingly, the Task Force completed its work and is not included in this report.

## Access to Justice Advisory Committee

3. The Access to Justice Advisory Committee mainly discussed Alternative Business Structures (“ABS”) and Multi-disciplinary Practices (“MDP”), which are included in this agenda package for consideration. In addition to its analysis of ABS and MDP, the Committee considered data from the Annual Practice Declaration regarding lawyer engagement in pro bono, legal aid, offering lower cost legal services as well as other access to justice activity. The Committee also monitored efforts by staff in regard to advancing Recommendation 2 of its 2021 report to the Benchers on COVID-19 and access to justice regarding maintaining and expanding justice system responses enacted to address the pandemic.

## Ethics and Lawyer Independence Advisory Committee

4. The Ethics and Lawyer Independence Advisory Committee considered various aspects of the *BC Code* in the second half of 2023, including a lawyer’s duty to report themselves or another lawyer to the Law Society, and a lawyer’s duty to inform a client about their official language rights. On-going efforts to improve the *BC Code*, in particular the annotations, were discussed by the Committee.

## Equity, Diversity and Inclusion Advisory Committee

5. The Equity, Diversity and Inclusion Advisory Committee devoted significant time to addressing the impact of Rule 2-89 on lawyers, and particularly women lawyers, seeking to resume practice after an extended period of care-giving related leave. Following a detailed review of various policy options for modifying the current return to practice requirements, the Committee and the Credentials Committee developed a joint

recommendation for the Benchers, approved in November, to amend the Law Society Rules in a manner that better supports equity, diversity and inclusion, while at the same time protecting the public by ensuring that standards of lawyer competence are met.

6. The Committee undertook an in-depth analysis of the *National Study on the Psychological Determinants of Legal Professionals in Canada*, which included a large body of data confirming that legal professionals from equity-seeking groups face significantly elevated risks of experiencing mental health issues as compared to other populations within the profession. A Diversity Action Plan Implementation Report is also included for information in this agenda package, which summarizes the actions taken over the last three years to address the items identified in that plan.

## Lawyer Development Task Force

7. The Benchers approved at their April 28, 2023 meeting the recommendation of the Lawyer Development Task Force to introduce mandatory principal training. This training is currently under development. The Task Force provided feedback on the development of the competency framework for the National Committee on Accreditation Assessment Modernization Committee.
8. The Task Force also provided feedback on the development of a competency framework for lawyer licensing, which is being developed in cooperation between the law societies of British Columbia, Alberta, Saskatchewan, and Manitoba through the work of the Western Canada Competency Profile task force. A first draft of the competency framework was produced by this task force in October and is expected to be finalized in 2024.
9. Establishing a competency framework represents the first stage of a much larger set of potential changes to the system of licensing in BC and the Task Force has also discussed possible alternative pathways to licensing to be explored once the competency framework has been further developed, and potential recommendations regarding minimum pay and maximum hour standards for articled students once those alternative pathways are in place.

## Mental Health Task Force

10. The Mental Health Task Force established a framework categorizing the *National Study* recommendations according to whether they had been fully or partially addressed by the Task Force's previous recommendations, whether they fell outside the Law Society's jurisdiction, or whether they engaged issues that had, to date, received limited attention from the Task Force. Building on this work, the Task Force identified dozens of potential operational and policy initiatives that could be advanced by the Law Society to respond to the *National Study* findings. Priority items were subject to further policy analysis and

subsequently developed into formal recommendations for the Benchers and included in the Task Force’s final report.

11. Additionally, Task Force members have recently participated in a range of events, including the first of a two-part mental health forum co-hosted by the Law Society, the CBA’s national mental health conference and a podcast on the implementation of the Alternative Discipline Process. The Task Force Chair has also worked closely with the EDIAC to examine the *National Study* data respecting the intersections between mental health and the experiences of equity-seeking lawyers.

## **Trust Review Task Force**

12. The Trust Review Task Force has completed its preliminary review of the reports arising from the Cullen Commission of Inquiry into Money Laundering in British Columbia (June 2022). The Task Force has extensively reviewed the trust accounting rules, most recently reporting and compliance, and will soon be in a position to compile its findings. Following that, the remaining work will pertain to anti-money laundering and client identification and verification matters that fall within its mandate. After receiving an extension, the Task Force is targeting to complete its work in mid-2024.

## **Truth and Reconciliation Advisory Committee**

13. The Truth and Reconciliation Advisory Committee’s focus during the second half of the year was the Law Society’s efforts to implement the IERM Task Force report, following a full agenda in the first half of 2023. The Committee has received several updates from the Senior Advisor, Indigenous Engagement, and provided feedback about the Law Society’s efforts to implement the recommendations from the IERM Task Force Report.
14. Additional information about the implementation of the IERM Task Force recommendations, which will continue to be a top priority for the Committee, is contained in this agenda package for information in a report entitled “UPDATE: Implementation of the recommendations from the Indigenous Engagement in Regulatory Matters Task Force Report.”

## **Diversity Action Plan Implementation Report**

### **Equity, Diversity and Inclusion Advisory Committee:**

Cheryl S. D'Sa (Chair)  
Gaynor C.C. Yeung (Vice-Chair)  
Kim Carter  
Brian B. Dybwad  
Natasha Tony  
Gurminder S. Sandhu  
Sarah M. Westwood, KC

Date: December 8, 2023

Prepared by: Policy and Planning Department

Purpose: For Information



## Purpose

1. This report provides an overview of the implementation status of the Law Society’s Diversity Action Plan, approved by the Benchers in September 2020.

## Background

2. The Law Society has a long-standing commitment to supporting equity, diversity and inclusion, as reflected in its public interest mandate,<sup>1</sup> the priorities included in successive strategic plans, and the extensive work undertaken by the Equity, Diversity and Inclusion Advisory Committee (“EDIAC”), which monitors and advises the Benchers on issues affecting equity, diversity, and inclusion in the legal profession and the justice system.<sup>2</sup>
3. Recognizing a need for tangible action and measurable outcomes, in 2020 the Benchers approved the Diversity Action Plan,<sup>3</sup> which sets out ten broad themes, covering thirty discrete items that variously support diversity in the legal profession, identify and remove discriminatory barriers, enhance intercultural competence, improve outreach and collaboration, foster diversity within the Law Society and track and report on progress. Collectively, these measures protect the public interest, which is best served by a diverse bar that is representative of the clients it serves. Access to justice is also facilitated when those seeking legal services have access to lawyers that are reflective of British Columbia’s diverse population.<sup>4</sup>

## Discussion

4. To date, the implementation of the Diversity Action Plan has primarily been tracked in the EDIAC’s mid and year-end reports. To supplement this bi-annual reporting, the material below catalogues the actions taken by the Law Society over the last three years to address the items contained in the Plan.

## Actions items respecting demographic data<sup>5</sup>

5. The Law Society relies on demographic data to inform its policy development, support evidenced-based decision making and track and report on diversity statistics within the

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<sup>1</sup> Section 3(a) of the *Legal Profession Act* (the object and duty of the Society is to uphold and protect the public interest in the administration of justice by, *inter alia*, preserving and protecting the rights and freedoms of all persons).

<sup>2</sup> See the [mandate](#) of the Equity Diversity and Inclusion Advisory Committee.

<sup>3</sup> Law Society of BC [Diversity Action Plan](#) (2020).

<sup>4</sup> *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33 at para. 23.

<sup>5</sup> Diversity Action Plan at: 1.1: Update the existing demographic self-identification survey to obtain additional details; 1.2: Actively encourage lawyers to respond to the self-identification survey; 1.3: Consider whether other methods for obtaining diversity information about lawyers are required; 1.4: Continue to monitor and publicize diversity statistics.

profession. In addition to collecting information about gender, the Law Society encourages licensees to respond to questions that appear after the Annual Practice Declaration (“APD”) that seek to obtain, on a voluntary and anonymous basis, additional information about the demographics of the profession (the “Demographics Questions”). These statistics, which are published in aggregate in the Law Society’s annual reports, confirm that overall, the proportion of lawyers from equity-deserving groups has increased since the introduction of the Diversity Action Plan.

6. A number of steps have been taken to improve the Law Society’s approach to the collection and use of demographic data, including updating the nomenclature in the Demographics Questions and annual reports, and adding questions to Demographics Questions that endeavour to increase the response rate to the therein.<sup>6</sup> To better understand the role of data collection in addressing systemic racism, and to ensure the Law Society’s approach aligns with best practices, last year the EDIAC undertook a comprehensive review of the BC Human Rights Commission’s guidance on disaggregated data collection and provincial anti-racism data legislation.<sup>7</sup>
7. Policy analysis as to whether additional or different demographic information ought to be collected by the Law Society is ongoing. To advance this work, a cross-organizational and cross-jurisdictional scan is underway to improve understandings of how various Law Society departments and different law societies collect and use licensees’ demographic information.

### **Action items regarding fostering diversity within the Law Society<sup>8</sup>**

8. The Law Society continues to strengthen the representation of individuals from equity-deserving communities in its employment and governance structures, and to enhance training opportunities and communications that support equity, diversity and inclusion.

#### **Governance**

9. The core values set out in the Strategic Plan emphasize the Law Society’s commitment to embracing and promoting equity, diversity, inclusion and cultural respect within its leadership and staff.<sup>9</sup> Accordingly, a number of measures remain in place to support the diversity of the

<sup>6</sup> In 2021, a question was added to the APD that required respondents who selected “choose not to answer” in relation to the self-identification questions to select a response on a drop-down list of reasons for not providing this information. “I choose not to answer” received the highest number of responses in the sub-survey.

<sup>7</sup> British Columbia Office of the Human Rights Commissioner, *Disaggregated demographic information collection in British Columbia: The grandmother perspective* (2020) and *Anti-Racism Data Act*, SBC 2022 c. 18.

<sup>8</sup> Diversity Action Plan at 2.1: Consider whether additional calls for applications should include diversity statements; 2.2: Regularly review diversity statements; 2.3: Continue to build and implement a comprehensive strategy to ensure diverse representation within Law Society governance and employment; 2.4: Review existing policies, procedures and practices to determine whether additional measures are required; 2.5: Highlight diversity in Law Society publications.

<sup>9</sup> Law Society BC [Strategic Plan](#) 2021-2025.

Board, Tribunal and external appointments.

10. Statements encouraging diverse lawyers to stand for Benchers election continue to be included in calls for nominations and are regularly updated to ensure they are consistent with best practices. Diversity is also considered in the annual appointment of Benchers to the Law Society's internal committees.
11. With respect to the Tribunal, gender and minority representation, and experience with cultural and ethnic diversity are basic criteria for the appointment of panel and review board members. Valuing diversity and upholding the right to equal treatment throughout the adjudicative process are also explicitly included as key competencies and duties.<sup>10</sup> Appointees are provided with training opportunities on topics including intercultural fluency, Indigenous intercultural competency, trauma informed adjudication, unconscious bias, witness accommodation and gender and cultural awareness in decision writing. Content on cultural competence, diversity and respectful decision writing is also included in the Adjudicator Hearing Manual.
12. Likewise, equity considerations are included in the selection criteria for external appointments.<sup>11</sup> To encourage a diverse applicant pool, requests for expressions of interest are regularly circulated to groups representing diverse lawyers.

### **Employment and staff training**

13. The Law Society is committed to hiring and retaining diverse employees. Job postings continue to include a statement to this effect and have been modified to comply with the *Pay Transparency Act*,<sup>12</sup> new legislation that is designed to eliminate remuneration differences amongst diverse employees and to address systemic discrimination in the workplace. Personnel responsible for hiring decisions have access to resources that provide specific guidance on incorporating equity, diversity and inclusion considerations into interviewing and management practices.
14. Meaningful advances have been made with respect to Indigenous representation within the organization through the creation of two new positions. The Senior Advisor, Indigenous Engagement, plays a key role in advising on reconciliation and relationship building, working across the organization to advance projects and lead on the development, delivery and coordination of Indigenous initiatives linked to the Truth and Reconciliation Action Plan, the Truth and Reconciliation Advisory Committee and the recommendations of the Indigenous Engagement in Regulatory Matters ("IERM") Task Force. The Law Society has also established an Indigenous Navigator, who will support Indigenous complainants and

<sup>10</sup> Law Society Tribunal, [Adjudicator Appointment Criteria and Position Description](#) at p. 2.

<sup>11</sup> See [Law Society Appointments Policy and Process](#), Item 1.5.

<sup>12</sup> [Pay Transparency Act](#), 2023 (Bill 13).

witnesses through the Law Society’s processes.<sup>13</sup> Indigenous lawyers have also been added to the roster of practice reviewers to provide better support to Indigenous lawyers involved in those remedial processes.

15. Staff have access to a comprehensive knowledge repository containing articles, webinars, reports, templates, videos and other resources through the Law Society’s partnership with the Canadian Centre for Diversity and Inclusion.<sup>14</sup> A number of Law Society departments have implemented supplemental diversity training to assist staff in bringing particular skills and perspectives to their interactions with licensees and the public. In addition, all new employees must complete mandatory respectful workplace training and the Law Society’s Indigenous Intercultural Course.

### **Communications**

16. Policy decisions and operational activities that advance equity, diversity and inclusion are regularly communicated to the profession through E-Briefs, Notices to the Profession, the website and social media. The Law Society’s crest and motto, which are included on many forms and publications, have also been replaced with a more contemporary logo to address concerns regarding the previous symbols’ colonial associations.
17. The recent development of internal guidelines and staff training to support gender inclusive communications, particularly in relation to the use of pronouns and honorifics, represents another significant achievement and reflects the Law Society’s commitment to ensuring that best practices are consistently applied across the organization.<sup>15</sup>

### **Action items regarding cultural competence<sup>16</sup>**

18. The Diversity Action Plan identifies the promotion and advancement of intercultural training within the Law Society and throughout the profession as a key priority. As much this work falls within the mandate of the Truth and Reconciliation Advisory Committee (“TRAC”),<sup>17</sup> which provides progress updates through its bi-annual and special reports, the details of

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<sup>13</sup> Indigenous Engagement in Regulatory Matters Task Force (2023) at [Recommendation 3.2](#).

<sup>14</sup> Examples of programming promoted to staff in the last several years include: 2SLGBTQI+ issues, Indigenous inclusion, unconscious bias, content on Black Lives Matters, intersectionality, cultural competence and gender diversity. A CCDI Certificate Program was created encourage staff to dedicate time to these training opportunities.

<sup>15</sup> The changes made by the Law Society are consistent with recent practice directions from the [BC Provincial Court](#), [BC Supreme Court](#) and [BC Court of Appeal](#) on the use of pronouns and addressing court staff and legal professionals.

<sup>16</sup> Diversity Action Plan at 3.1: Provide Law Society representatives with educational opportunities geared toward fostering support for diverse individuals; 3.2: Identify additional methods to promote intercultural competence training within the organization and throughout the legal profession in BC; 3.3: Consider the role of CPD in advancing intercultural education; 3.4: Strategically collaborate to advance intercultural competence education for BC lawyers.

<sup>17</sup> The TRAC Terms of Reference include improving intercultural competence training in British Columbia.

implementation activities pertaining to this aspect of the Plan are limited to a high-level synopsis.

19. In response to the Truth and Reconciliation Commission’s Call to Action 27, which recognizes Indigenous intercultural competence as a key component of lawyer competence, in 2019 the Benchers approved, in principle, mandatory Indigenous intercultural competence training for all practising lawyers in British Columbia.<sup>18</sup> The resulting Indigenous Intercultural Course (“IIC”) was formally introduced in 2022, with the aim of increasing awareness and understanding of Indigenous laws and legal traditions, the history of Indigenous-Crown relations and the history and legacy of colonial laws and policies that sought to eliminate Indigenous rights, resources, languages, cultures and institutions.
20. The Law Society regularly promotes the IIC through its various communications platforms and reminds lawyers about their obligation to complete the course. The approval of the IERM Task Force’s cultural competence-related recommendations further reinforces the Law Society’s commitment to continuing to upholding standards of intercultural competence for lawyers.<sup>19</sup>
21. The Law Society supports cultural competence education in a variety of other ways. In 2021, for example, the Law Society participated in the launch of the BC Federation of Asian Canadian Lawyers’ documentary *But I Look Like a Lawyer*, which shares stories of discrimination experienced by members of the pan-Asian legal community and aims to increase intercultural awareness and competence, as well as promoting *But I was Wearing a Suit II*, a documentary examining the micro-aggressions and discrimination experienced by Indigenous people in the legal system. A wide range of cultural competence programming is also eligible for CPD credit.<sup>20</sup>
22. The Law Society has also contributed to national efforts to improve intercultural competence within the profession, as evidenced by the TRAC’s submissions to the Federation of Law Societies regarding changes to the *Model Code* to establish new professional responsibilities for lawyers in respect of Indigenous intercultural competence. If amendments to the *Model Code* are approved, consideration will subsequently be given to how to incorporate these new standards into the *Code of Professional Conduct for British Columbia* (“BC Code”).

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<sup>18</sup> See [Indigenous intercultural competence education for BC lawyers](#) (2019).

<sup>19</sup> [Report of the Indigenous Engagement in Regulatory Matters Task Force](#) (2023) at recommendations 4.1 to 4.4. For additional detail see the IERM Update Report in the December 2023 Bencher agenda.

<sup>20</sup> Although the IIC is not a CPD requirement it is eligible for up to six hours of CPD credit. Professional development that addresses multicultural, diversity and equity issues that arise within the legal context is also eligible for credit.

## Action items regarding outreach, collaboration, resources and reporting<sup>21</sup>

23. Outreach and collaboration, which are both important elements of the Diversity Action Plan, remain a focus for the Law Society. To this end, Benchers, committee members and staff regularly participate in a range of equity, diversity and inclusion programming within the legal community, including speaking events, workshops, podcasts, summits and forums. The Law Society has also played a key role in developing a number of significant projects in recent years, including a podcast on racism, equity and diversity<sup>22</sup> and the *On the Path to Equity for Women in Law* forum, which provided an opportunity for the legal community to come together to discuss issues surrounding the retention and advancement of women in the profession.<sup>23</sup>
24. The EDI Award was last awarded in 2019, however, in light of commentary in the recent governance review suggesting that the annual presentation of awards to individuals for services to the legal profession falls outside the scope of the role of a professional regulator, it was agreed that the appropriateness of continuing to present this and other service awards required further consideration.<sup>24</sup>
25. The Law Society collaborates with entities across the legal community on equity, diversity and inclusion initiatives, including the Legal Equity and Diversity Roundtable (LEADR), Justicia,<sup>25</sup> the CBA-BC’s Sexual and Gender Diversity Alliance (SAGDA) and Equality and Diversity Committee and the Federation’s Law Societies Equity Network (LSEN). The EDIAC also regularly collaborates with working groups *within* the Law Society to address issues of common concern. In 2023, for example, the EDIAC worked with the Mental Health Task Force to examine the intersectionality of mental health issues and the experiences of

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<sup>21</sup> Diversity Action Plan at 4.1: Develop a comprehensive outreach strategy to highlight the Law Society’s EDI efforts; 4.2: Update and enhance the Law Society’s online EDI resources; 4.3: Compile a calendar of annual EDI events in BC and encourage Law Society representatives to attend; 5.1: Review the EDI section of the law firm regulation self-assessment tool; 5.2: regularly review the EDI section of the self-assessment tool to ensure it is current, relevant and responsive to emerging issues; 6.1: Identify further methods to promote the adoption and implementation of the Law Society’s existing model policies and guides; 6.2: Consider whether additional resources would be beneficial; 6.3: If necessary, develop additional resources; 9.1: Research the EDI recommendations, resources, and initiatives from other law societies, legal organizations, law schools, and professions in order to inform the Law Society’s work, avoid duplication of efforts and identify opportunities for cooperation; 9.2: Strategically collaborate to increase the recruitment, retention, and advancement of diverse lawyers; 10.1: Continually review, evaluate, and renew the Action Plan to ensure that it remains relevant and effective in advancing the Law Society’s objectives; 10.2: Regularly report progress through the Law Society’s existing mechanisms.

<sup>22</sup>Rule of Law Matters Podcast, “[Racism, equity, diversity and the rule of law](#)” (Season 1, Episode 14).

<sup>23</sup> *On the Path to Equity for Women in Law* [Background Paper](#) and [Event Summary](#) (2022).

<sup>24</sup> Harry Cayton, [Governance Review of the Law Society of British Columbia](#) (2021) (“Governance Report”) at 5.3.

<sup>25</sup> LEADR’s purpose is to foster dialogue and initiatives that relate to the advancement of diversity and inclusion in the legal profession in BC and to collaborate and share best practices on issues of common concern. Justicia is a voluntary program for law firms that focuses on the retention and advancement of women in private practice.

legal professionals from equity-deserving groups, developed a joint recommendation with the Credentials Committee to reduce barriers to returning to practice experienced by women that have taken time away to have and raise children, and contributed to the Ethics Committee's recommendation to amend the discrimination and harassment provisions in the *BC Code*.

26. The consolidation and dissemination of practice resources, including those specific to equity, diversity and inclusion issues was enhanced by the re-design of the Practice Resources section of the Law Society's website, as well as the introduction of the Lawyer Well-Being Hub and the Advice Decision Making Assistant, an interactive tool that links users to materials covering issues such as workplace bullying and harassment, mental health, discrimination and harassment, model workplace policies and the services provided by the Equity Advisor.<sup>26</sup>
27. Significant work was also undertaken by staff to create of a comprehensive practice resource for the profession on inclusive language, establishing the Law Society as a leader among legal regulators in this evolving area of resource development.<sup>27</sup> A companion style guide for staff, Benchers, committee and Tribunal members involved in writing decisions and other Law Society materials is currently being finalized. Pursuant to the direction provided in the Diversity Action Plan, resources were also added to the portions of the law firm regulation draft self-assessment tool addressing equity, diversity and inclusion.
28. Building on this work, this year the EDIAC endorsed a process for the review, revision and enhancement of the Law Society's diversity-related practice materials, with particular attention to developing additional resources to address topics identified in the Diversity Action Plan, the IERM Task Force Report and the *National Study on the Psychological Health Determinants of Legal Professionals in Canada*.<sup>28</sup> Opportunities to collaborate with other legal regulators on resource development are also currently being explored.
29. With respect to reporting, the implementation status of the Diversity Action Plan is a standing item on the EDIAC's agendas. Annual priorities are included in the Committee's workplans and updates on progress are provided to the Benchers through the EDIAC's bi-annual reports.

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<sup>26</sup> See the [Practice Resources](#) webpage, the [Lawyer Well-Being Hub](#) and the [Advice Decision-Making Assistant](#).

<sup>27</sup> Law Society of BC, [Inclusive Language Guidelines](#) (2023). Several law societies have subsequently sought permission to adapt this resource for their jurisdictions.

<sup>28</sup> Cadieux, N., et. al. (2022). Targeted Recommendations: Towards a Healthy and Sustainable Practice of Law in Canada. *National Study on the Health and Wellness Determinants of Legal Professionals in Canada, Phase I*, Université de Sherbrooke ("[Recommendations Report](#)") particularly at recommendations at 5.7, 6.1, 6.2 and 10.3. DM4204935

## Action items relating to policies, processes and regulatory measures<sup>29</sup>

30. The Diversity Action Plan calls for a review of the Law Society's policies, processes and regulatory instruments to determine whether any additional measures are required to support equity, diversity and inclusion, both within the profession, and in the Law Society's interactions with the public. Examples of high-level initiatives and specific actions that address this aspect of the Plan are provided below.

### Strategic planning and governance

31. The Strategic Plan, which sets out the Law Society's organizational priorities, identifies equity, diversity, inclusion and cultural respect as core values. Key objectives include promoting greater diversity and inclusion in the profession, the equitable treatment of all individuals interacting with the Law Society and implementing initiatives to advance reconciliation with Indigenous People. The goals identified in the Strategic Plan largely mirror the items in the Diversity Action Plan,<sup>30</sup> and in so doing, formally integrate the latter into the Law Society's strategic vision.
32. The recent governance review assessed the Law Society's progress in this regard, concluding that established standards of good governance were met with respect to considering equality and diversity in Board decision making, and observing that the Law Society's strong commitment to equity, diversity and reconciliation is one of the organization's key strengths. The Law Society has also subsequently addressed many of the report's recommendations pertaining to EDI issues, including demographic data, assessing the impact of new policy initiatives on equity, diversity and inclusion, and revising the title of the Equity Ombudsperson to better reflect the function of the role.<sup>31</sup>
33. Moving forward, the government's intention to create a single legal regulator in British Columbia is likely to result in significant changes to the current governance and regulatory framework. The Law Society has provided detailed feedback on the proposed legislation,

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<sup>29</sup>Diversity Action Plan at 8.1: Contribute to the Law Society of BC's response to the Federation of Law Societies' consultation regarding the discrimination and harassment provisions of the *Model Code*; 8.2: Review the *Legal Profession Act*, the Rules, and the *BC Code* for possible improvements that might help to support diversity in the legal profession; 8.3: Collaborate with the Act and Rules Committee or the Ethics Committee to propose amendments to the Act, Rules, and *BC Code* for consideration by the Benchers.

<sup>30</sup>The Strategic Plan includes the following: Implement and communicate equity, diversity and inclusion work plan; Ensure current and future regulation and policy development adhere to equity, diversity and inclusion principles; Develop and deliver cultural competency training, as well as training addressing implicit and explicit biases in the profession; Revise the language of forms and publications to ensure they conform to current principles of inclusion; Update the demographic data of BC legal professionals to inform policy initiatives; Partner with community organizations to educate youth from diverse and equity-deserving groups about the role of lawyers and to encourage entry into the legal profession; Collaborate to increase the recruitment, retention and advancement of diverse lawyers.

<sup>31</sup> [Governance Report](#) *supra* note 24 (evaluating the Law Society against established standards of good governance).



including in relation to how a modernized statute could encourage diverse legal professionals and advance reconciliation.

### **Reconciliation and Indigenous engagement**

34. In recent years, the Law Society has taken a number of important steps to make the Law Society's processes more equitable and inclusive for Indigenous persons. Examples of this work include the approval of the Indigenous Framework,<sup>32</sup> which sets out key principles to guide Law Society's application of its governing legislation, rules, policies, procedures and practices, and the approval of the IERM Task Force's recommendations, which identify actions to reduce systemic barriers and improve Indigenous access to the Law Society's processes.<sup>33</sup> As discussed in detail in the IERM Implementation Report, significant work is already occurring across the organization to establish and maintain culturally safe and trauma-informed regulatory processes for Indigenous complainants and witnesses, and to reconcile the Law Society's process with Indigenous legal principles.
35. Although there are synergies between these initiatives and a number of items contained in the Diversity Action Plan,<sup>34</sup> it is critical that the work to support Indigenous engagement and reconciliation is recognized as extending beyond equality, diversity and inclusion concerns, more generally, and understood to be a direct response to Indigenous Peoples' distinctive culture, history and lived realities, including and the ongoing effects of genocide and colonialism.<sup>35</sup>

### **Discrimination and harassment**

36. In response to a growing awareness of the prevalence of discrimination and harassment, including sexual harassment, within the legal profession, the Law Society has taken a number of steps to improve regulatory responses to this type of misconduct. Earlier this year, the Benchers approved amendments to the *BC Code* that provide detailed definitions, examples and commentary respecting these behaviours, and that set out lawyers' responsibilities not participate in, condone or be willfully blind to this type conduct.<sup>36</sup>
37. The Professional Regulation department has also implemented a series of measures to make the disciplinary process more accessible, equitable and inclusive in respect discrimination, harassment and sexual misconduct complaints and proceedings, including establishing a

<sup>32</sup> [Indigenous Framework Report](#) (2021). See pp. 25 and 30 and recommendations 7.7.5, 7.4.3 and 7.5.2.

<sup>33</sup> IERM Task Force Report *supra* note 19.

<sup>34</sup> See for example the IERM Task Force recommendations with respect to increasing Indigenous representation in the Law Society, enhancing cultural competency training and resources, and removing colonial principles from the *Act*, *Rules* and *BC Code*, which overlap with aspects of the Diversity Action Plan.

<sup>35</sup> This distinction is highlighted in further detail in the [UBC Indigenous Strategic Plan](#).

<sup>36</sup> *BC Code* at 6.3.

tailored reporting mechanism,<sup>37</sup> developing a Witness Accommodations and Considerations Policy, expanding the use of victim impact statements and providing staff with training and guidance to support a trauma-informed approach.

### **Gender and cultural inclusivity**

38. Recognizing the role that language can play in creating an inclusive regulatory and professional culture, more than one hundred instances of gendered pronouns in the Law Society Rules were recently amended in favour of gender-neutral and non-binary terms. The Law Society’s information management systems have also been modified to enable licensees to enter, update and display their pronouns and title/honorifics on the Member Portal and determine what information is provided to the public through the Lawyer Directory. The next modification nearing completion will allow lawyers who are known by two names (e.g. European name and Indigenous traditional name, or a name in another language) to include an additional name on their member profile and determine how this information is used and shared. Internal record keeping systems have been simultaneously updated to support staff in using appropriate names, pronouns and honorifics in communications with licensees.

### **Return to practice rules**

39. Over the past year, the EDIAC has devoted substantial attention to the Law Society’s return to practice rules, which appear to have a disproportionate impact on individuals, and particularly women, who take time away from practice to raise children. Over the course of 2023, the EDIAC and the Credentials Committee developed a recommendation, approved by the Benchers in November, to amend the current rules in a manner that addresses this concern while also protecting the public by ensuring standards of lawyer competence are met.

## **Conclusion**

40. The Diversity Action Plan reflects the Law Society’s ongoing commitment to improving equity, diversity and inclusion within the Law Society and across the profession. As described in this report, much progress has been made in the three years since the Plan was introduced. It is also evident that there is still more to be done.

41. Although many aspects of the Diversity Action Plan have been addressed through discrete policy decisions and focused operational activities, given the complex, systemic and pervasive nature of the issues at hand, other items will require sustained action for over a longer period of time. In this regard, qualitative reviews of the Law Society’s implementation activities,

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<sup>37</sup> See Law Society of BC “[Complaints about sexual misconduct, harassment or discrimination.](#)” DM4204935

similar to the approach employed in this report, are the preferred method for measuring success, as compared to tabulating the number of “completed” actions in the Plan.

42. The present review also creates an opportunity to reflect on whether the Diversity Action Plan requires amendment and, more significantly, whether it remains the optimal approach for identifying and tracking progress on the Law Society’s equity, diversity and inclusion priorities. These are issues that are beyond the scope of this report, but nevertheless warrant future consideration. With the anticipated introduction of new legislation governing legal professionals next year, and the associated impacts on the Law Society’s operations and governance structures, it may be prudent to await those changes before taking steps to revise the current Plan.

November 24, 2023

**Sent via email**

Josh Paterson  
Executive Director  
Law Foundation of British Columbia  
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Vancouver, BC V6B 5J3

**Christopher  
McPherson, KC**  
*President*

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Dear Josh Paterson:

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

I am pleased to confirm that the Law Society of BC's Executive Committee has appointed Sarah J. Runyon (Nanaimo County) and Zara Suleman, KC (Vancouver County) to the Law Foundation's Board of Governors of BC for three-year terms, effective January 1, 2024.

The Executive Committee has also agreed to defer filling the vacancy on the Law Foundation of BC Board of Governors for Yale County.

I am confident that the Law Foundation and its important work will be well-served by the contributions of these leading members of the BC bar.

Yours truly,



Christopher McPherson, KC  
President, Law Society of BC

c. Mary Childs  
Chair, Law Foundation of BC

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

## 2024 Bencher & Executive Committee Meetings

Executive Committee	Bencher	Other Dates
Thursday, January 18 <b>Virtual</b>	Friday, February 2 <b>Hybrid</b>	Jan 1: New Year's Day Jan 31: New Bencher Orientation Feb 2: Welcome/Farewell Dinner Feb 10: Lunar New Year TBA: CBABC Provincial Council Meeting TBA: CBA Annual General Meeting Feb 19: Family Day
Thursday, February 22 <b>Virtual</b>	Friday, March 8 <b>Virtual</b>	Mar 11 (sundown)-Apr 9 (sundown): Ramadan Mar 18-28: Spring Break Mar 29-Apr 1: Easter Apr 9 (sundown)-10 (sundown) Eid April 13: Vaisakhi
Thursday, May 16 <b>Hybrid</b>	Saturday, June 1 <b>Hybrid</b>	May 20: Victoria Day May 30 to June 1: LSBC Bencher Retreat June 5-8: LSA Retreat
Thursday, June 20 <b>Virtual</b>	Friday, July 5 <b>Virtual</b>	June 21: National Indigenous Peoples Day July 1: Canada Day TBA: Federation Council Meeting Aug 5: BC Day TBA: IILACE Conference
Thursday, September 5 <b>Hybrid</b>	Friday, September 20 <b>Hybrid</b>	Sept 2: Labour Day Sept 24: AGM Sept 30: Truth and Reconciliation Day Oct 2 (sundown)-4 (sundown): Rosh Hashanah Oct 11 (sundown)-12 (sundown): Yom Kippur
Thursday, October 17 <b>Virtual</b>	Friday, November 1 <b>Virtual</b>	Oct 14: Thanksgiving Day Nov 1: Diwali TBA: IBA Annual Conference Nov 11: Remembrance Day Nov 15: Bencher By-Election TBA: Federation Fall Meetings
Thursday, November 21 <b>Hybrid</b>	Friday, December 6 <b>Virtual</b>	Dec 25: Christmas Day Dec 26: Boxing Day Dec 25(sundown)-Jan 2 (sundown): Hanukkah Dec 26-Jan 1: Kwanzaa