
Law Society Notable Updates List (A-3)

Purpose and currency of list

This list sets out notable updates from the Law Society of British Columbia meant to assist lawyers in observing their professional obligations. It is designed to be used with the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist, the CLIENT FILE OPENING & CLOSING (A-2) checklist, as well as the practice area-specific checklists. It is current to September 1, 2023.

Law Society Rules

- *Equity Advisor.* The title of Equity Ombudsperson was changed to Equity Advisor to better align with the scope of the program (definition of “Equity Advisor” and Rules 5-4.6(3) and 10-2.1) (July 2023).
- *Publishing information about suspensions and disbarments.* The Executive Director has more discretion over how and where to publish information about suspensions or disbarments to better reflect current communication norms and adapt to the changing ways the public consumes information (Rule 4-47(1) and (2)); several rule references are updated (Rules 4-15(4), 4-17(3), 5-6.4(2), 10-1(1) and Schedule 4(3) and (5)) (April 2023).
- *Law clerks.* Law clerks may be called and admitted without articling at a law firm (definitions of “clerkship term” and “law clerk” and Rules 2-51(2), 2-59(4), 2-63, 2-72(2) to (7), 2-74(1), (2), (4) and (9), 2-76(1), 2-77(1) to (3) and Schedule 1 D. heading and F. 1.1) (December 2022).
- *Indigenous intercultural course.* The “Indigenous Intercultural Course” is mandatory as of January 1, 2022 (Rules 3-26, 3-28.1 and 3-28.2). Every practising lawyer must complete the course within the required time limits and certify its completion in the prescribed form to the Executive Director. A fee will be imposed for late completion of the course (Rule 3-28.11 and Schedule 1). Failure to complete the course and certify its completion can result in suspension (January 2022).

Code of Professional Conduct for British Columbia

- *Discrimination and harassment.* Amendments to the *BC Code* provisions on discrimination, harassment, and sexual harassment have been approved and adopted. The changes bring the *BC Code* more closely in line with the Federation of Law Societies’ Model Code of Professional Conduct. The amendments consist of expanded definitions and specific examples in s. 6.3 of the *BC Code*, as well as a new rule on reprisals. The commentaries illustrate circumstances that are likely to constitute discrimination, harassment, sexual harassment, bullying and reprisals and provide concrete examples of what these behaviours may look like. (*BC Code* s. 6.3) (July 2023).
- *Ex parte proceedings and single-party communications with a tribunal.* New provisions from the Federation of Law Societies’ model code regarding *ex parte* proceedings have been approved and adopted (*BC Code* rules 5.1-2.2 and 5.1-2.3) (April 2023).
- *Conflicts of interest.* To better reflect Canadian law on conflicts of interest and the Federation of Law Societies’ Model Code, the commentaries to *BC Code* rules 3.4-1 and 3.4-2 have been amended (September 2022).

Discipline Advisories

- *Fixed fee arrangements.* The British Columbia Court of Appeal affirmed a Law Society Tribunal decision that funds received by a lawyer pursuant to fixed or flat fee arrangement for services to be performed were trust funds and should not have been deposited to a general account. Where you have received a fixed or flat fee and have not completed the services for the client, the funds must be deposited into a trust account as soon as practicable and are to be held in trust until the services have been provided, unless there is an express agreement with the client. Review this [advisory](#) for more information about handling funds accepted until a fixed fee (June 2, 2022).
- See the discipline advisories page to see all advisories on conduct that may lead to discipline, with topics including: Rule 10-4 (security of records) reports; self-represented/unrepresented litigants; country/geographic risk; withdrawal under a contingency fee arrangement; securities fraud: micro-cap stocks; private lending; and lawyers are gatekeepers.

Of Note

- *Indigenous Engagement in Regulatory Matters Task Force Report.* Law Society Benchers unanimously approved the Indigenous Engagement in Regulatory Matters report and recommendations. The objective of the report 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 report addresses the Law Society's need and desire to reconcile its processes with Indigenous legal principles. The recommendations 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 Law Society will implement the recommendations of the report while ensuring there is effective oversight to protect the process (July 2023).
 - *Guidance on the use of AI technologies in court.* An increasing level of AI-generated materials are used in court proceedings. The ethical obligation to ensure the accuracy of materials that you submit to court is your responsibility. If you use materials generated using technology such as ChatGPT, it would be prudent to advise the court. See the July 2023 Law Society E-Brief and keep abreast of guidance to the profession from the Law Society on this topic (July 2023).
 - *LTSA retiring COVID-19 remote witnessing measures.* Effective September 30, 2023, the Land Title and Survey Authority of British Columbia's COVID-related remote witnessing measures will be retired. Remote witnessing of Enduring Powers of Attorney was made permanent by s. 17.1 of the *Power of Attorney Act*, R.S.B.C. 1996, c. 370 and remain in effect. Read more at <https://ltsa.ca/retirement-of-covid-measures-effective-september-30/> (June 2023).
 - *Guidance for Lawyers on Using Inclusive Language.* This [new practice resource](#) is intended to support lawyers in their use of inclusive language (March 2023).
 - *Updated Cloud Computing Checklist.* This checklist was updated in January 2023 and is meant to assist with risk management when using cloud technologies. See the resource at www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/checklist-cloud.pdf (January 2023).
 - *Foreign buyers banned from purchasing Canadian property as of January 1, 2023.* The [Prohibition on the Purchase of Residential Property by Non-Canadians Act](#) (the "Act"), in force January 1, 2023, prohibits the purchase of residential property by non-Canadians. Every non-Canadian who contravenes this prohibition and every person or entity that counsels, aids or attempts to counsel or aid a non-Canadian to purchase, directly or indirectly, any residential property is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000 (see s. 6). Note that a charge or fine is not covered under your LIF policy. In addition to the penalties, the Minister may apply to court for an order to sell a property that has been purchased in contravention of the Act. It appears that this prohibition will be in effect for two years, subject to any amendments. Learn more at <https://laws-lois.justice.gc.ca/eng/acts/P-25.2/page-1.html> (January 2023).
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- *Indigenous framework.* Law Society Benchers approved an Indigenous Framework of six principles to guide the Law Society’s application of its governing legislation, Rules, *Code*, policies, procedures, and practices. The principles include ensuring Indigenous engagement in the development of policy proposals or decisions that may affect Indigenous interests as well as a recognition that the Law Society understands credibility requires follow through on its commitments, and that its commitments are ongoing. The principles will provide an assessment tool to ensure the Law Society is meeting its existing commitments to advance reconciliation with Indigenous Peoples (September 2022).
 - *Competence framework.* Law Society Benchers approved the Lawyer Development Task Force’s recommendation to develop a competence-based system for the licensing of legal professionals in British Columbia, beginning with the development of a Competence Framework. This is a significant step towards identifying the knowledge, skills, and other attributes required of a legal professional at the time of entry into the profession, which will help to ensure that both the profession and the public are better informed about entry-level competencies (September 2022).
 - *Cullen Commission of Inquiry into Money Laundering in British Columbia, Final Report, June 2022.* The Cullen Commission publicly released its final report into money laundering on June 15, 2022 after hearing from almost 200 witnesses over a three-year period. The Commissioner found that money laundering is a serious problem in British Columbia and requires attention from government, law enforcement and regulators. While finding that the Law Society Rules limiting cash, client identification and verification, and trust account regulation go a long way to mitigating the risk of money laundering, and recommending against a FINTRAC-style reporting regime for lawyers, the Commissioner made a number of key findings and 13 recommendations directly relevant to the lawyers and the Law Society (Recommendations 53 to 65). The full report can be found at www.lawsociety.bc.ca/about-us/news-and-publications/e-brief/e-brief-july-2022/ (June 2022).
 - *Fraud prevention.* You should maintain an awareness of the scams that commonly target lawyers, including the cheque printing scam, the bad cheque scam, fraudulent changes in payment instructions (e.g., through the client’s email or a similar looking email address), value fraud, and fake law firms and lawyers. Be vigilant about client identification and verification, the source of money when there is a financial transaction, and the restrictions on cash. While criminals may target law firms at any time, keep in mind that cybercriminals like to target law firms during vacation periods. Implement appropriate supervision of your practice while away. For more information, see the *Benchers’ Bulletin* articles [Real estate transactions—know your client primer, summer 2021](#) (p. 12), [Fraud 101 for lawyers, fall 2021](#) (p. 10), [Forming companies and other structures—managing the risk, spring 2021](#) (p. 8), [Don’t let your guard down! Funds transfer frauds continue](#) (June 2023), and the [Client ID & Verification](#) and the [Fraud Prevention](#) webpages on Lawyers Indemnity Fund website.
 - *Cyber-security insurance coverage.* Lawyers Indemnity Fund has arranged and paid for cyber/privacy insurance for British Columbia law firms, subject to each firm maintaining network security that meets the underwriter’s minimum requirements. The cyber coverage, provided by Coalition, Inc. combines state-of-the-art cybersecurity with best-in-class cyber insurance. Coalition’s cybersecurity platform includes 24/7 security monitoring, automated security alerts, employee training, and access to security experts to prevent cyber incidents before they occur. In addition, the coverage protects business value including financial, intangible, and tangible damage with comprehensive cyber insurance. Cyber incidents come in many forms—from ransomware, denial of service attacks, and data breaches, to social engineering, wire fraud, and technology failures. Coalition helps lawyers solve cyber risk before, during and after an incident occurs. See the [LIF Cyber Coverage](#) page on the Lawyers Indemnity Fund website for more information, including how Coalition’s proactive risk management software can monitor a law firm’s cyber risk to inform preventative measures, and alert the firm to any red flags to activate the security incident response team.
 - *Searches of lawyers’ electronic devices at borders.* See [Crossing Borders with Electronic Devices—Canada, the US and Beyond](#), spring 2019 *Benchers’ Bulletin* (pp. 12 to 14) for recommendations to minimize the risks of compromising professional obligations and responsibilities when travelling with electronic devices across borders. Links to correspondence about this topic between the Law Society, the Federation of Law Societies, and the federal government are included.
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Questions

- Feel welcome to contact a Law Society Practice Advisor for ethics and practice management questions. Practice Advisors can be contacted by email at practiceadvice@lsbc.org, by phone at 604.443.5797, or through booking an appointment in [Advice Decision-Making Assistant \(ADMA\)](#). For questions about trust accounting, including cash, contact Trust Assurance at trustaccounting@lsbc.org or 604.697.5810.