



Agenda

Benchers

Date: Friday, September 29, 2017

Time: **7:30 am** Continental breakfast

8:30 am Call to order

Location: Bencher Room, 9th Floor, Law Society Building

Recording: *Benchers, staff and guests should be aware that a digital audio recording is made at each Benchers meeting to ensure an accurate record of the proceedings.*

ITEM	TOPIC	TIME (EST.)	SPEAKER	MATERIALS	ACTION
1	Presentation of Law Society Gold Medal	5	President		Presentation
2	Honourable David Eby, QC Attorney General and Minister responsible for ICBC, Liquor, and Gaming	10			Remarks

CONSENT AGENDA:

The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Renee Collins) prior to the meeting.

3	Consent Agenda <ul style="list-style-type: none"> Minutes of July 7, 2017 meeting (regular session) Minutes of July 7, 2017 meeting (<i>in camera</i> session) Proposed New Rule 3-96.1 – Governing the Use of Juricert passwords Rule 2-76, Practice Management Course (small firm practice course) 	1	President	Tab 3.1 Tab 3.2 Tab 3.3 Tab 3.4	Approval Approval Approval Approval
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Agenda

ITEM	TOPIC	TIME (EST.)	SPEAKER	MATERIALS	ACTION
3 (cont.)	<ul style="list-style-type: none"> Rule 2-87, Former Judges or Masters Returning to Practice 			Tab 3.5	Approval
	<ul style="list-style-type: none"> 2017 QC Appointments Advisory Committee 			Tab 3.6	Approval
	<ul style="list-style-type: none"> Appointed Benchers and Hearing Panelists Per Diem Rates 			Tab 3.7	Approval
DISCUSSION/DECISION					
4	Presentation of 2018 Budget & Fees	30	Miriam Kresivo, QC / Jeanette McPhee	Tab 4	Discussion/ Decision
5	Law Firm Regulation Task Force: Second Interim Report	30	President	Tab 5	Discussion/ Decision
6	Consideration of Strategic Plan Initiatives	30	President / CEO	Tab 6	Discussion
7	Vision Statement for Lawyers' Responsibility to Promote Access to Justice and legal services	15	Martin Finch, QC	Tab 7	Discussion/ Decision
REPORTS					
8	Progress Update from Legal Aid Advisory Committee	5	Nancy Merrill, QC		Briefing
EXECUTIVE REPORTS					
9	President's Report <ul style="list-style-type: none"> TRC Advisory Committee Update 	10	President		Briefing
	<ul style="list-style-type: none"> Benchers Calendar 				Briefing



Agenda

ITEM	TOPIC	TIME (EST.)	SPEAKER	MATERIALS	ACTION
9 (cont.)	<ul style="list-style-type: none"> Briefing by the Law Society's Member of the Federation Council 				Briefing
	<ul style="list-style-type: none"> Report on Outstanding Hearing & Review Decisions 			<i>(To be circulated at the meeting)</i>	Briefing
10	CEO's Report	10	CEO	<i>(To be circulated electronically before the meeting)</i>	Briefing
FOR INFORMATION					
11	Three Month Benchers Calendar – October to December			Tab 11	Information
<i>IN CAMERA</i>					
12	<i>In camera</i> <ul style="list-style-type: none"> Benchers concerns Other business 		President/CEO		Discussion/ Decision



Minutes

Benchers

Date: Friday, July 07, 2017

Present:

Herman Van Ommen, QC, President	Jamie Maclaren
Miriam Kresivo, QC, 1 st Vice-President	Sharon Matthews, QC
Nancy Merrill, QC, 2 nd Vice-President	Steven McKoen
Jasmin Ahmad	Christopher McPherson
Satwinder Bains	Lee Ongman
Jeff Campbell, QC	Greg Petrisor
Pinder Cheema, QC	Claude Richmond
Barbara Cromarty	Phil Riddell
Jeevyn Dhaliwal	Mark Rushton
Thomas Fellhauer	Carolynn Ryan
Martin Finch, QC	Daniel P. Smith
Brook Greenberg	Michelle Stanford
Lisa Hamilton	Sarah Westwood
J.S. (Woody) Hayes, FCPA, FCA	Tony Wilson, QC
Dean P.J. Lawton, QC	

Unable to Attend: Craig Ferris, QC
Elizabeth Rowbotham

Staff Present:

Tim McGee, QC	Michael Lucas
Deborah Armour	Alison Luke
Taylor Ashlie	Jeanette McPhee
Renee Collins	Doug Munro
Su Forbes, QC	Lesley Small
Jeffrey Hoskins, QC	Alan Treleven
Lindsay Jalava	Adam Whitcombe
David Jordan	Vinnie Yuen

Guests:	Dom Bautista	Executive Director, Law Courts Center
	Kensi Gouden	CEO, Courthouse Libraries BC
	Richard Fyfe, QC	Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University
	Michele Ross	Education Chair, BC Paralegal Association
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Bill Veenstra	Vice President, Canadian Bar Association, BC Branch
	Prof. Jeremy Webber	Dean of Law, University of Victoria

1. Presentation of the 2017 Law Society Scholarship

Mr. Van Ommen presented the 2017 Law Society Scholarship to Naomi Minwalla, who is pursuing her Masters at Oxford in International Human Rights Law. In expressing her gratitude, Ms. Minwalla observed that her chosen field of study touches upon many aspects of our daily lives, our communities and our society as a whole.

CONSENT AGENDA

2. Minutes

a. Minutes

The minutes of the meeting held on June 9 were approved as circulated.

The *in camera* minutes of the meeting held on June 9 were approved as circulated

b. Resolutions

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that the Benchers adopt the Mandate and Terms of Reference for the Legal Aid Advisory Committee, appended to the materials of the July 7 Bencher agenda.

BRIEFING/DISCUSSION/DECISION

3. Governance Committee Mid-Year Report

Chair Steve McKoen began his report by thanking committee members and staff for their hard work to date. He noted that the committee has met three times during the year, and has focused on the review of the annual Bencher and Committee survey results, as well as the review of general governance issues; the committee brings three items to the Benchers for consideration.

The first is a recommendation that the policy prohibiting Benchers from being from the same firm be struck. While historically the policy was aimed at avoiding conflict situations, the larger number of Benchers now allows the President to manage conflicts more effectively. The Committee's recommendation is also based on the rationale that members should be allowed to elect their chosen candidates.

The second recommendation is for a continuation of the committee evaluation process through survey. Following its assessment of the quality and review of responses from the survey, the Committee has concluded it remains useful, but review of some of the questions is required. Work on this continues.

The third recommendation is for the Executive Committee to review its Agenda setting process to include consideration of how to foster meaningful discussion around table. One suggestion being recommended by the Governance Committee is for a consideration of whether certain substantial items ought to have first and second readings, to facilitate discussion with the first reading and provide time before the second reading and decision for Benchers to review and further consider. He noted that a motion was not required for this recommendation.

Following these recommendations, Mr. McKoen moved (seconded by Ms. Hamilton) that the unwritten policy that two current Benchers cannot be members of the same law firm be formally abolished. Mr. Van Ommen called for discussion.

In response to the question of whether abolishing this policy may result in a concentration of Benchers from larger, Vancouver-based firms, Mr. McKoen noted that the number of votes needed for election is likely to prevent that occurrence. Others commented on the possibility that removal of the policy could affect the diversity of background around the table, while others noted that the number of Benchers from large Vancouver firms appears to be decreasing, perhaps because of the economic realities attendant with Bencher service.

Following a vote, the motion passed with 28 for, 1 opposed.

Mr. Van Ommen noted that no motion was required for the final two recommendations of the Governance Committee, and then invited discussion. One comment was made welcoming a second reading of substantial matters, given the difficulties inherent in a full discussion involving 31 people. An attending member of the CBABC expressed concern that discussion of substantial matters may occur between readings and outside of the Bencher table, eroding transparency.

With no further comments or concerns, the two additional recommendations were taken as confirmed by Benchers.

4. Financial Report – May YTD 2017

Finance and Audit Committee Chair Miriam Kresivo, QC introduced CFO Jeanette McPhee and the year to date Financial Report. She noted that the Finance and Audit Committee is continuing to work on the budget for 2018 which will be presented to Benchers at the September 27 meeting.

Ms. McPhee reported that the Law Society is ahead of budget to date, with a projection of approximately \$500,000 ahead of budget due to an increase in revenue. Expectations are for additional membership revenue, PLTC registration is at budget with 500 students and an increase of approximately \$160,000 over budget for electronic filing revenues, the latter due mainly to an increase in real estate units sold.

There are also expected savings in operating expenses of approximately \$90,000 achieved largely in the legal and consulting fees in the human resources area. Additionally, external counsel fees, a significant part of the budget, are on track for the year at this time.

Though only based on the first quarter TAF receipts, the Trust Assurance Program appears to be slightly over budget, likely due to real estate transactions; it is likely this trend will continue and we will end the year ahead of budget. The Lawyers Insurance Fund is also slightly ahead; investment returns are at 7.3%, which is very good compared to the benchmark of 4.6%.

REPORTS

5. Strategic Plan Review Process:

- **Proactive Regulation**

CLO Deb Armour introduced the topic, outlining a focus on the diversion program and proactive practice reviews of members.

She began by clarifying that proactive regulation refers to regulatory actions that seek to prevent issues before they happen, and often involves supporting lawyers in their practices; she highlighted that support of lawyers is one of the best ways to protect the public.

This is in contrast to our current forms of regulation which are largely reactive, triggered as response to complaints. While complaints will likely always remain a factor in regulation, our aim is to develop ways to try to prevent the conduct that may require disciplinary action, and hopefully avoid the harm that has invariably occurred along the way.

Some of our most successful programs involve proactive work; in our Trust Assurance program, audits reveal issues that would otherwise remain undetected, and provide opportunity for remedial assistance through our auditors. Our practice advisors and Benchers also provide a way for lawyers to reach out for advice and guidance, and are invaluable resources. Our CPD program, educational outreach and website materials are all examples of proactive and beneficial tools. Conduct meetings and reviews provide remedial opportunities, as does the regular interaction with members by the Professional Conduct teams. The Lawyers Assistance Program is another positive example of proactive impact.

Ms. Armour also noted that other law societies have implemented programs such as mentorship, law office support and new lawyer support programs which have also proven successful in proactively assisting before problems become conduct issues.

Diversion:

An important example of a successful program under consideration is diversion, which refers to the diversion of cases involving mental health issues, including substance use, out of the traditional discipline process and toward treatment and support. The goal of diversion is the treatment of the underlying issue, rather than the discipline of the resulting transgression. As has been reported to Benchers previously, the legal profession experiences a disproportionate level of mental health issues as compared with other professions and the general public. A significant number of the complaints dealt with by our professional conduct staff often involve the effects of mental health issues, such as procrastination, missed commitments, erratic behavior with clients and counsel, poor work quality or failure to respond.

It was queried whether the Law Society has a mental health care professional on retainer for consultation or perhaps attendance at practice reviews. Ms. Armour noted that the Credentials department does have a list of professionals to consult as the need arises but professional conduct does not make regular use of such consults; Bencher Brook Greenberg also noted that it is important to avoid compelled treatment, emphasizing the need for an informed and thoughtful approach in each instance.

Should the program be considered for implementation, the involvement of mental health professionals will be an important consideration. Ms. Armour noted that the Nova Scotia program has a committee that decides which cases will be diverted to the program; this committee includes a mental health professional. She also noted that the misconduct involved in these cases is often minor, and participation is voluntary and consensual.

In addition to Nova Scotia, whose program has had only 15 referrals since its inception in 2011, 27 American States have similar programs, as does the Crown. Ontario is currently considering the possibility.

Proactive Practice Reviews:

As with the trust audit review, the proactive practice review provides lots of opportunity for remedial assistance. Both Ontario and Saskatchewan have proactive practice review programs which are designed to be educational and are separate from the regulatory scheme. Significantly, only 3% of all those reviewed in Ontario are referred for investigation; the focus is on remediation. Reviews are random, but risk-based and therefore often determined by area of practice. Approximately 400 reviews are done in Ontario each year, which is fewer than the number of trust assurance reviews. The aim is to review lawyers within their first 8 years of practice, based on statistical analysis which shows a trend towards difficulties beginning in the 9th year of practice.

Similar to the proposals for law firm regulation, a proactive practice review program will not be ‘one size fits all’ but will be tailored to individual needs. Tools to measure success of any such program remain to be developed. In response to a question, Ms. Armour clarified that diversion and proactive practice reviews are distinct programs. She also noted the importance to both programs of destigmatizing mental health issues, and incorporating the message that we are able to provide help to members beyond just regulating. In response to another question, Ms. Armour noted that there did not appear to be a reduction in complaints since the implementation of the program in Ontario, although the failure of sole practitioners does appear to have declined. One Bencher also noted that the chartered accountants have had practice reviews since the 1970’s which are done by firm, rather than individually. They have been accepted by that profession as part of the necessary educational process and though expensive, have proved successful.

- **Public Confidence in the Administration of Justice and the Rule of Law**

Manager of Policy and Legal Services Michael Lucas provided the Benchers with an overview of the importance of the rule of law to public confidence in the justice system. The rule of law, cited in the preamble to the Charter, is fundamental to our personal rights and freedoms and to our constitutional structure. Though esoteric in nature, it is highly relevant to our day to day lives. He noted its pervasiveness on the news regarding current world events; positive events are examples of robust support for rule of law principles while negative ones tend to be characterized by an erosion of the rule of law. Closer to home, rule of law principles are inextricably tied to the Law Society’s mandate as set out in section 3 of the Legal Profession Act.

Under that section, the Law Society’s mandate and responsibility as regulator is to ensure the public has confidence in the justice system; to do that, we must help people understand it. Surveys taken in 2013 showed that almost half of Canadians did not have confidence in the justice system or our courts. How does this apply to our role as regulator, and to our strategic planning process? Goal 3 of our current strategic plan says the public will have greater confidence in the rule of law and the administration of justice. Working toward that goal, we have undertaken various initiatives to enhance the Law Society’s voice, such as the lecture series and the essay contest. Our planning process moving forward should include questions such as what new initiatives can be developed. How can we work better with other advocates? How can we find new ways to make the public more aware, and hopefully more confident in our system? As a justice system stakeholder, how do we work to see that the rule of law is not taken for granted, and its importance appreciated, well before the public’s lack of confidence causes the ultimate collapse of our system?

Benchers and others expressed thanks for Mr. Lucas’ presentation, and underscored the importance of all justice system stakeholders, both here and abroad, to engage with these issues. It was also noted that, in the context of indigenous peoples’ low confidence with the justice

system, and perceived lack of justice for the aboriginal community, our historical systemic notions of justice must be reexamined if we are to move toward true reconciliation.

Mr. Van Ommen noted that this presentation marked the last of the strategic planning briefings to Benchers in advance of planning sessions in the Fall. A skeleton of a plan will be created using the 5 elements of section 3 of the Legal Profession Act as a guide. It is likely the planning process will require an extra, dedicated meeting.

6. Law Firm Regulation Task Force: Second Interim Report

As Chair of the Task Force, Mr. Van Ommen thanked its hard working members as well as Mr. Lucas, Ms. Armour and Policy staff lawyer Alison Luke for their invaluable guidance and efforts.

This report will provide further details for the proposed program as well as one policy development. Mr. Van Ommen noted that 5 focus groups had been formed based on firm size to provide feedback on the self-assessment tool to ensure its ease of use and effectiveness. The results have been collated and compared with developments in other jurisdictions; a key goal is to develop a self-assessment tool that is similar across the country. Noting that the self-assessment tool remains a work in progress, he invited comment and discussion from Benchers on the policy approach taken.

He then reviewed each of the recommendations and some of the policy considerations behind them.

Regarding firm registration, he noted that, provided we could accurately determine who the firms were together with applicable information about them, a pre-populated form could be sent to a firm representative. Regarding a designated representative, he stressed that no personal liability would rest with that designate; all responsibility will rest with the firm, as will any liability resulting from a failure to report.

The self-assessment process is central to the entire regime. As seen in other jurisdictions, it is the process of assessment itself that tends to change behaviours, providing firms with the opportunity to review its practices and procedures.

Mr. Van Ommen identified one policy change from the first report to Benchers: originally the eight achievable elements did not include a specific equity and diversity element; however, following consultation and review of proposed programs in other provinces, the recommendation now is to include the promotion of diversity and inclusion amongst achievable goals.

The recommended development of model policies is aimed in part at assisting smaller firms, for whom the requirement of firm policies to achieve objectives may represent considerable administrative burden. Also being recommended is a schedule for implementation, which proposes that firms register and appoint designated representatives in early 2018. At this stage, firms will also be required to complete a concise self-assessment exercise. The results of this assessment will assist the Law Society in developing model policies; this will require some consideration of the resources required to do so. The estimate is that it may take up to a year to develop policies and potentially engage with external providers to develop helpful resources for firms to use. Accordingly, by 2019 we aim to be asking firms to fill out a revised self-assessment that will be linked to relevant resources and put in place policies to ensure they are meeting objectives. The intention at these first stages of implementation is to emphasize assistance to firms, rather than focus on compliance; however, consideration should be given to the development of a compliance regime that is consistent nationally.

In response to a question, Mr. Van Ommen clarified that we do not intend to regulate the amount of fees being charged by firms, rather, the intention is to have firms consider what reasonable fees may be.

Some Benchers expressed support for the proposals, particularly with regard to the self-assessment which will encourage firms to think about the way they conduct business. Others expressed concern with the definition of “firm”, querying whether different structures such as a collection of incorporated lawyers constitutes a firm. Mr. Lucas noted that the decision to treat collectives of individuals operating as independent legal entities as a “firm” was based in part on the fact that clients would see it that way, and factors such as a shared trust account. However, if distinctions between lawyers was clear to clients, and the only things being shared were meeting rooms, it is unlikely they would be defined as a “firm”.

Concern was also expressed regarding the administrative burden on small firms, as well as the mandatory nature of the policies. Mr. Van Ommen stressed that the intention was not to create a “one size fits all” program, but to tailor the tools and expectations to the different firm sizes. Concern was also expressed regarding the imposition of social policies on firms, and questions arose regarding the timing of firm audits. Mr. Van Ommen noted that the intention was to create a ‘light touch’ regulation, balancing the benefits of law firm regulation with the knowledge that increased regulation could represent increased burden on firms.

7. Mid-Year Advisory Committee Reports

- **Access to Legal Services Advisory Committee**

Chair Martin Finch, QC reported for the Committee, beginning by thanking its members and staff for their hard work. Given the Benchers’ preference for encouragement of pro bono

activities, rather than mandating such activity, this year's work has focused on the development of mechanisms and processes to advance access to legal services and justice. It was recognized that more information on lawyers' pro bono activities was needed, so the Committee has sought to create a questionnaire to canvass the profession on its pro bono and 'low bono' work, and suggests that a voluntary section be added to the Annual Practice Declaration. The Committee has also worked on a vision statement of goals for the profession regarding the commitment to support access to justice, which should be ready for presentation to Benchers in September.

Additionally, the Committee collaborated with the Law Foundation to administer a 2 year pilot project aimed at providing legal access for children. The new Child Advocate will assist youth coming in contact with the legal system; the Committee is recommending continued funding for that project this year. The Committee intends to meet with managers of medium and large Vancouver firms to learn about processes and mechanisms being used to advance access to justice in a larger firm context. Finally, the Committee continues to work to provide guidance and direction regarding potential strategic planning items for our next Strategic Plan.

- **Equity and Diversity Advisory Committee**

Second Vice-President and Chair Nancy Merrill, QC thanked committee members and staff for their hard work. She reported that the Committee has been reviewing the maternity leave benefit program in an effort to increase its effectiveness, and has also been reviewing mental wellness initiatives. A new Equity Ombudsperson is being hired, and the Law Society is now accepting nominations for the new Diversity and Inclusion Award. The Committee is also reaching out to the National Inquiry into Missing and Murdered Indigenous Women and Girls, and is looking to send a representative to attend the Inquiry's Smithers sitting.

- **Lawyer Education Advisory Committee**

Chair Dean Lawton thanked Committee members and staff for their hard work throughout the year. He reported that the Committee has had engaging discussions regarding recommendations surrounding continuing education; Benchers can expect a report toward the end of the year which may also include a 'minority report' to capture the diverging viewpoints. The report will recognize the need for an evolution in approach to CPD and will also take into account our strategic plan goals. Amongst the recommendations coming forward will be the incorporation of lawyer wellness, as well as a number of statistically relevant issues emerging from the 2016 lawyer education survey. The Committee is also looking to consult with the Truth and Reconciliation Advisory Committee on incorporating educational elements to address the calls to action on reconciliation.

- **Rule of Law and Lawyer Independence Advisory Committee**

Vice-chair Mark Rushton began his report by thanking Committee members and staff for their work and support. The Committee has continued its work to create a public awareness around the rule of law, including holding its second annual essay contest, which garnered over 84 essay applications, as well as hosting its first Lecture Series on the Rule of Law. Additionally, the Committee has been engaged on issues such border searches of electronic devices by Canada Border Services Agency; it has met with other interested groups such as Lawyers Rights Watch and the BC Civil Liberties Association, and prepared a letter for the President to the Minister of Public Safety and the Minister of Justice and Attorney General.

- **Truth and Reconciliation Advisory Committee**

Mr. Van Ommen reported as chair of the Committee, thanking its members and staff. He also noted the recent loss to the Committee of member Len Marchand, now Mr. Justice Marchand, given his appointment to the Bench.

The Committee has continued work on challenging issues, such as recommending the removal of the statue of Matthew Begbie from the Law Society lobby given its negative symbolism for the Indigenous community. One function of the Committee is to encourage Bencher discussion and promote change in uncomfortable areas; discussion of this issue by Benchers produced diverging views but ultimately a result that was consistent with the Committee's recommendation.

The Committee is also working to develop a Fall symposium on Indigenous issues. Once a keynote speaker is chosen, dates can be confirmed and the symposium publicly promoted. As part of this symposium, the Committee is also working with CLE to film short vignettes of interviews with Indigenous lawyers regarding their experiences in the legal system.

Additionally, the Committee continues to work with the Executive Committee to develop and deliver cultural competency training to Benchers, and expects to have an initial session in place for the Fall. Additions have already been made to the PLTC curriculum to incorporate education around Gladue Reports and indigenous child welfare issues.

Mr. Van Ommen also noted that Policy and Legal Services staff lawyer Andrea Hilland has been involved in community outreach, speaking to various organizations on behalf of the Law Society.

8. National Discipline Standards: 2015/16 Implementation Report

Ms. Armour provided highlights of the required annual report which was the result of an in depth review by the Federation of Law Societies of Canada's National Discipline Standards Committee of 2015 and 2016 results. The goal of such reporting is to focus law societies on improvements

that can be made to meet the National Discipline Standards. She noted that while there has been improvement, no law society met all the standards during the reporting period. The Law Society of BC is third highest in the country in 2016, with only the following 3 standards not being met:

- The ability to share disciplinary information with other law societies: The Federation has developed a model policy and we are aiming for a Rule change by the end of the year to bring the Law Society in compliance with this standard;
- Easy accessibility of information in our directory regarding a lawyer's disciplinary history: currently information from 2003 onward is easily accessible, but the large task of posting information before that time remains;
- Delivery of decisions of hearing panels: we have never met the standard of delivering final submissions within 90 days of hearing, 90% of the time. Discussions of ways to improve on this important and challenging standard continue.

On the latter standard, Mr. Van Ommen urged Benchers to commit to timely reasons. Following discussion, it was suggested that reducing the size of review panels could assist. The Law Society of BC has much larger review panels than any other law society.

EXECUTIVE REPORTS

9. President's Report

Mr. Van Ommen briefed the Benchers on various Law Society matters to which he has attended since the last meeting. He noted that recruitment of hearing panels continues, and asked Benchers to encourage strong candidates to apply.

He also noted his attendance at the Law Society of Upper Canada's (LSUC) Convocation and end of term dinner. In his address to Benchers there, he noted the importance of consultation and coordination with other Canadian law societies in determining a solution to the licensing crisis in Ontario, given lawyer mobility.

To conclude his report, he noted to Law Society of BC Benchers that meaningful consultation by LSUC would require serious engagement by all law societies, including our own, and a willingness to review our own licencing program.

- Briefing by the Law Society's Member of the Federation Council

Reporting as the Law Society's Federation Council representative, Mr. Van Ommen briefed Benchers on his attendance at the Federation Council meeting in Iqaluit on National Aboriginal Day (to become known as National Indigenous Peoples Day). Council members spent the

morning with local elders and lawyers discussing legal aid and steps that are being taken in response to a number of problems.

The agenda of business also included a review of the National Committee on Accreditation. A consultant was hired to review all associated processes, given the disparity in success rates between Canadian law school graduates and lawyers coming through the National Accreditation process. The resulting report is available now to Benchers and will be made available to the public shortly.

10. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers. Specifically, he updated Benchers on 5 operational priorities, including:

- Full departmental reviews of key performance measures;
- A comprehensive resourcing analysis to ascertain areas requiring additional support;
- Cultural competency training for staff;
- Outstanding file reduction/counsel resourcing plan

He also noted that a telecommuting pilot project has begun which has been set up in phases; for the first phase, participants will report back after 3 months with feedback on productivity, adequacy of technology, quality of work and impacts on teamwork. Following analysis of this first phase, we will determine if it is feasible to proceed to phases 2 and 3.

Following Mr. McGee's report, Mr. Van Ommen acknowledged this as his last Bencher meeting as CEO, and invited Chief Information and Planning Officer Adam Whitcombe to say some remarks.

Mr. Whitcombe related for Benchers the many accomplishments of Mr. McGee since his assumption of the CEO role 12 years ago, citing innovations such as the successful implementation of the Trust Assurance Program, the CPD program and in house custodianships, to name a few. He also put in place a new management structure, key performance measures, a strategic planning process and a comprehensive governance review in 2012.

He thanked Mr. McGee for his professionalism, creativity and steady hand, and also his warmth and approachability, all qualities integral to a true leader. We are a better organization today as a result of his leadership. He will be missed.

Mr. Van Ommen echoed his thanks, noting that Mr. McGee managed a smooth running organization based on sound fiscal policies and modern management techniques. He also praised Mr. McGee's leadership, as evidenced in part by his stellar leadership team. On behalf of the

Benchers, he expressed his gratitude, noting that the public and the legal profession as a whole owe him a debt of gratitude as well.

Mr. McGee replied with thanks of his own, for the moving words and for the farewell functions he has attended. He left Benchers with the observation that his proudest moments as CEO came with his involvement in Call ceremonies; welcoming new lawyers into the profession, and hearing the words of wisdom of successive presidents underscored the hard work and perseverance that preceded those moments, and the energy and hope for the future embodied by the profession's newest members.

He wished his team, and the Benchers well.

RTC
2017-07-07

REDACTED MATERIALS

REDACTED MATERIALS



Memo

To: Benchers
From: Act and Rules Committee
Date: September 14 2017
Subject: Proposed new rule governing the use of Juricert passwords - **Rule 3-96.1**

1. At the July 2016 meeting, the Benchers reviewed a memo outlining the Professional Conduct department's concerns about the absence of a general rule prohibiting lawyers from disclosing, or allowing others to use their Juricert passwords.¹
2. Despite several existing measures regulating the use of Juricert passwords, including: the Juricert terms and conditions in which all registrants enter into a covenant to prevent others from accessing their passwords, Rule 6.1-5 of the *BC Code*, prohibiting lawyers from allowing other to use their personalized encrypted Juricert access or disclosing their password, and Law Society Rule 3-64(8)(b), requiring lawyers to comply with the Juricert covenant when involved in electronic transfers for the payment of Property Transfer Tax, the Professional Conduct department continues to experience incidents of password misuse in a variety of contexts.
3. To remedy this problem, the Professional Conduct department advocated for a new rule that covers all situations (i.e., not just the payment of Property Transfer Tax) in which there is a risk of fraud in relation to placing digital signatures on documents that are filed electronically with the Land Title Office.²
4. At the July 2016 meeting, the Benchers passed a motion to refer the matter to the Act and Rules Committee to draft a new rule governing Juricert password use.
5. The Act and Rules Committee now proposes Rule 3-96.1 for Bencher consideration and approval.

¹ A lawyer who wishes to file documents electronically in the Land Title Office ("LTO") must register with the Juricert service. The lawyer is provided with a password-protected digital certificate that enables the lawyer to attach the lawyer's personal electronic signature to documents submitted to the LTO.

² Under the *Land Title Act*, password protected digital signatures are required on a number other types of electronic documents. For example, password protected digital signatures are required on Form A transfers and Form C mortgages. These documents are financial in nature despite the fact that they do not involve a transfer of funds out of trust. As a result, Rule 3-64(8)(b) is not sufficiently broad enough to cover all situations where there is a risk of fraud resulting from password misuse.

6. The new rule creates a prohibition on the disclosure or use of a lawyer's Juricert password to gain access to the LTO's electronic filing system. Rule 3-96.1 also prohibits a lawyer from permitting another person, including a non-lawyer employee (e.g., an assistant) to affix the lawyer's electronic signature to any document or gain unauthorized access to the electronic filing system.
7. The language incorporated into the new rule largely mirrors that found in rule 6.1-5 of the *BC Code*, with some minor modifications. The rule also adopts the terminology of the *Land Title Act* in relation to "electronic signatures" and, as suggested by the Benchers in June 2016, uses the phrase "electronic filing system of the land title office" rather than the proprietary term "Juricert".
8. The Committee also recommends against removing 6.1-5 from the *Code* and relying exclusively on Rule 3-96.1 to regulate Juricert password use for two reasons. First, eliminating 6.1-5 from the *Code* would cause the *BC Code* to deviate from the *Model Code* and the codes of professional conduct of other jurisdictions in relation to password security and the electronic registration of documents.³ Second, removing 6.1-5 from the *Code* would result in the loss of valuable commentary on the importance of lawyers ensuring the exclusively personal use of their passwords when registering documents electronically.
9. Notably, Nova Scotia also takes this duplicative approach, in which a prohibition on password sharing is found in both their regulations and their *Code of Professional Conduct*.
10. If adopted by the Benchers, Rule 3-96.1 will address many of the concerns raised by the Professional Conduct department regarding the disclosure and misuse of Juricert passwords and send a strong message to the profession regarding the prohibition on password sharing.
11. Attached are draft rule amendments and a suggested resolution. Included in the draft amendments are some non-substantive corrections to Rule 3-64. These include several changes to lower case and changing Land Title Branch (a very old name) to land title office (a generic term that will not need to be monitored for changes). The Act and Rules Committee recommends adoption of the changes.

³ With the exception of Nunavut and the Barreau du Québec, the codes of professional conduct of other Canadian law societies all contain provisions addressing the electronic registration of documents that are identical, or very similar to 6.1-5 of the *Code* (and the *Model Code*).

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 7 – Trust Accounts and Other Client Property

Withdrawal from trust

- 3-64** (8) A lawyer may make or authorize the withdrawal of funds from a pooled or separate trust account by electronic transfer using the ~~E~~electronic ~~F~~filing ~~S~~system of the ~~L~~and ~~T~~itle ~~B~~ranch ~~o~~ffice for the purpose of the payment of ~~P~~roperty ~~T~~ransfer ~~T~~ax on behalf of a client, provided that the lawyer
- (a) retains in the lawyer's records a copy of
 - (i) all ~~E~~electronic ~~P~~ayment ~~A~~uthorization forms submitted to the ~~E~~electronic ~~F~~filing ~~S~~system,
 - (ii) the ~~P~~roperty ~~T~~ransfer ~~T~~ax return, and
 - (iii) the transaction receipt provided by the ~~E~~electronic ~~F~~filing ~~S~~system,
 - (b) digitally signs the ~~P~~roperty ~~T~~ransfer ~~T~~ax return in accordance with the requirements of the ~~E~~electronic ~~F~~filing ~~S~~system, and
 - (c) verifies that the money was drawn from the trust account as specified in the ~~P~~roperty ~~T~~ransfer ~~T~~ax return.

Division 9 – Real Estate Practice

Definitions

3-95 In this division,

“closing date” means the date upon which the documents to effect a transaction are filed as a pending application in the appropriate land title office;

“discharge of mortgage” means any discharge of mortgage that releases any portion of the land or interest in land charged by the mortgage;

“mortgage” means one of the following registered in a land title office in British Columbia:

- (a) a mortgage of land or an interest in land;
- (b) a debenture or trust deed containing a fixed charge on land or an interest in land;

“mortgagee” includes the holder of a fixed charge under a debenture or trust deed that is a mortgage;

“notary” means a member of the Society of Notaries Public of British Columbia.

LAW SOCIETY RULES

Report of failure to cancel mortgage

3-96 A lawyer must deliver to the Executive Director within 5 business days a report in a form approved by the Executive Committee when

- (a) the lawyer delivers funds to
 - (i) a mortgagee to obtain a registrable discharge of mortgage, or
 - (ii) another lawyer or a notary on the undertaking of the other lawyer or notary to obtain and register a discharge of mortgage, and
- (b) 60 days after the closing date of the transaction giving rise to the delivery of such funds, the lawyer has not received
 - (i) a registrable discharge of mortgage from the mortgagee, or
 - (ii) satisfactory evidence of the filing of a registrable discharge of mortgage as a pending application in the appropriate land title office from the other lawyer or notary.

Electronic submission of documents

3-96.1 A lawyer authorized to access and use the electronic filing system of the land title office for the electronic submission or registration of documents must not

- (a) disclose the lawyer's password associated with an electronic signature to another person, or
- (b) permit another person, including a non-lawyer employee
 - (i) to use the lawyer's password to gain such access, or
 - (ii) to affix an electronic signature to any document or gain access to the electronic filing system unless otherwise authorized to do so.

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 7 – Trust Accounts and Other Client Property

Withdrawal from trust

- 3-64** (8) A lawyer may make or authorize the withdrawal of funds from a pooled or separate trust account by electronic transfer using the electronic filing system of the land title office for the purpose of the payment of property transfer tax on behalf of a client, provided that the lawyer
- (a) retains in the lawyer's records a copy of
 - (i) all electronic payment authorization forms submitted to the electronic filing system,
 - (ii) the property transfer tax return, and
 - (iii) the transaction receipt provided by the electronic filing system,
 - (b) digitally signs the property transfer tax return in accordance with the requirements of the electronic filing system, and
 - (c) verifies that the money was drawn from the trust account as specified in the property transfer tax return.

Division 9 – Real Estate Practice

Definitions

3-95 In this division,

“closing date” means the date upon which the documents to effect a transaction are filed as a pending application in the appropriate land title office;

“discharge of mortgage” means any discharge of mortgage that releases any portion of the land or interest in land charged by the mortgage;

“mortgage” means one of the following registered in a land title office in British Columbia:

- (a) a mortgage of land or an interest in land;
- (b) a debenture or trust deed containing a fixed charge on land or an interest in land;

“mortgagee” includes the holder of a fixed charge under a debenture or trust deed that is a mortgage;

“notary” means a member of the Society of Notaries Public of British Columbia.

LAW SOCIETY RULES

Report of failure to cancel mortgage

3-96 A lawyer must deliver to the Executive Director within 5 business days a report in a form approved by the Executive Committee when

- (a) the lawyer delivers funds to
 - (i) a mortgagee to obtain a registrable discharge of mortgage, or
 - (ii) another lawyer or a notary on the undertaking of the other lawyer or notary to obtain and register a discharge of mortgage, and
- (b) 60 days after the closing date of the transaction giving rise to the delivery of such funds, the lawyer has not received
 - (i) a registrable discharge of mortgage from the mortgagee, or
 - (ii) satisfactory evidence of the filing of a registrable discharge of mortgage as a pending application in the appropriate land title office from the other lawyer or notary.

Electronic submission of documents

3-96.1 A lawyer authorized to access and use the electronic filing system of the land title office for the electronic submission or registration of documents must not

- (a) disclose the lawyer's password associated with an electronic signature to another person, or
- (b) permit another person, including a non-lawyer employee
 - (i) to use the lawyer's password to gain such access, or
 - (ii) to affix an electronic signature to any document or gain access to the electronic filing system unless otherwise authorized to do so.

ELECTRONIC DOCUMENTS

SUGGESTED RESOLUTION:

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

1. In Rule 3-64, by rescinding subrule (8) and substituting the following:

- (8) A lawyer may make or authorize the withdrawal of funds from a pooled or separate trust account by electronic transfer using the electronic filing system of the land title office for the purpose of the payment of property transfer tax on behalf of a client, provided that the lawyer
 - (a) retains in the lawyer's records a copy of
 - (i) all electronic payment authorization forms submitted to the electronic filing system,
 - (ii) the property transfer tax return, and
 - (iii) the transaction receipt provided by the electronic filing system,
 - (b) digitally signs the property transfer tax return in accordance with the requirements of the electronic filing system, and
 - (c) verifies that the money was drawn from the trust account as specified in the property transfer tax return.

2. By adding the following rule:

Electronic submission of documents

- 3-96.1** A lawyer authorized to access and use the electronic filing system of the land title office for the electronic submission or registration of documents must not
- (a) disclose the lawyer's password associated with an electronic signature to another person, or
 - (b) permit another person, including a non-lawyer employee
 - (i) to use the lawyer's password to gain such access, or
 - (ii) to affix an electronic signature to any document or gain access to the electronic filing system unless otherwise authorized to do so.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: Benchers
From: Act and Rules Committee
Date: July 17, 2017
Subject: Rule Amendments: “Practice Management Course”

In late 2015, the Benchers approved recommendations from the Admission Program Review Report. One of those recommendations included a requirement that all articulated students complete an online course, modelled on the Small Firm Practice Course, during the course of the Admission Program.

The Act and Rules Committee was advised that the Lawyer Education Advisory Committee (which had prepared the Review Report) suggested that rather than creating a completely new course, articulated students simply be required to complete the Small Firm Practice Course. The Lawyer Education Advisory Committee recommended that the Small Firm Practice Course be renamed so that it was clear that the course was not just for those who intended to practise in a small firm.

The Act and Rules Committee has reviewed the rules with these recommendations in mind, and draft rule amendments are attached for approval. In general, the amended rules simply rename the Small Firm Practice Course as the “Practice Management Course.” It is proposed to put the definition of “Practice Management Course” in Rule 1 and refer to the course in both Rule 3-28 (in connection with small firms), and in Rule 2-76 (in connection with articulated students). It is also proposed that the requirement for articling students to take the Practice Management Course will apply to students who enroll in the Admission Program after January 1, 2018.

MDL/al

Attachment.

LAW SOCIETY RULES

Definitions

1 In these rules, unless the context indicates otherwise:

“practice management course” means a course of study designated as such and administered by the Society or its agents and includes any assignment, examination or remedial work taken during or after the course of study.

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Call and admission

Call and admission

2-76 (1) To qualify for call and admission, an articulated student must complete the following satisfactorily:

- (a) the articling term;
- (b) the training course;

(b.1) the practice management course;

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

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

PART 3 – PROTECTION OF THE PUBLIC

Division 3 – Education

Definitions

3-26 In this division

~~“small firm course” means a course of study designated as such and administered by the Society or its agents and includes any assignment, examinations and remedial work taken during or after the course of study.~~

LAW SOCIETY RULES

Application

3-27 Rule 3-28 [~~Small firm~~Practice management course] applies to a lawyer when

- (a) the lawyer begins practice in a small firm or, while practising in a small firm, becomes a signatory on a trust account, unless the lawyer has done both of the following in a Canadian jurisdiction for a total of 2 years or more in the preceding 5 years:
 - (i) engaged in the practice of law in a small firm;
 - (ii) been a signatory on a trust account, or
- (b) the Practice Standards Committee, by resolution, so orders.

~~Small firm~~Practice management course

- 3-28 (1) Within 6 months after and not more than 12 months before the date on which this Rule applies to a lawyer, the lawyer must
- (a) successfully complete the ~~small firm~~practice management course, and
 - (b) certify to the Executive Director in a form approved by the Executive Director that the lawyer has successfully completed the practice management~~small firm~~ course.

LAW SOCIETY RULES

Definitions

1 In these rules, unless the context indicates otherwise:

“practice management course” means a course of study designated as such and administered by the Society or its agents and includes any assignment, examination or remedial work taken during or after the course of study.

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Call and admission

Call and admission

2-76 (1) To qualify for call and admission, an articulated student must complete the following satisfactorily:

- (a) the articling term;
- (b) the training course;
- (b.1) the practice management course;
- (c) any other requirements of the Act or these rules imposed by the Credentials Committee or the Benchers.

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

PART 3 – PROTECTION OF THE PUBLIC

Division 3 – Education

Definitions

3-26 In this division

“small firm course” [rescinded]

LAW SOCIETY RULES

Application

3-27 Rule 3-28 [*Practice management course*] applies to a lawyer when

- (a) the lawyer begins practice in a small firm or, while practising in a small firm, becomes a signatory on a trust account, unless the lawyer has done both of the following in a Canadian jurisdiction for a total of 2 years or more in the preceding 5 years:
 - (i) engaged in the practice of law in a small firm;
 - (ii) been a signatory on a trust account, or
- (b) the Practice Standards Committee, by resolution, so orders.

Practice management course

3-28 (1) Within 6 months after and not more than 12 months before the date on which this Rule applies to a lawyer, the lawyer must

- (a) successfully complete the practice management course, and
- (b) certify to the Executive Director in a form approved by the Executive Director that the lawyer has successfully completed the practice management course.

PRACTICE MANAGEMENT COURSE

SUGGESTED RESOLUTION:

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

1. In Rule 1, by inserting the following definition:

“**practice management course**” means a course of study designated as such and administered by the Society or its agents and includes any assignment, examination or remedial work taken during or after the course of study.;

2. By rescinding Rule 2-76 and substituting the following:

Call and admission

2-76 (1) To qualify for call and admission, an articled student must complete the following satisfactorily:

- (a) the articling term;
- (b) the training course;
- (b.1) the practice management course;
- (c) any other requirements of the Act or these rules imposed by the Credentials Committee or the Benchers.

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

3. In Rule 3-26, by rescinding the definition of “small firm course”; and

4. In Rule 3-28,

(a) by rescinding the heading and substituting:

Practice Management Course; and

(b) in subrule (1) (a) and (b), by striking “the small firm course” and substituting “the practice management course”.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: Benchers
From: The Act and Rules Committee
Date: July 11, 2017
Subject: Former Judges or Masters Returning to Practice

Issue

1. As a result of recent applications received by the Credentials department, an issue arose as to the interpretation of the Law Society rules in connection with applicants who are former judges seeking membership in the Law Society. The current rules are narrowly worded, and the issue under consideration is whether to amend the rules to make them more broadly applicable.
2. The issue was considered by the Credentials Committee, who then made recommendations to the Act and Rules Committee. The Credentials Committee was not requesting a change in policy through rule amendments, but rather was seeking clarification as to how the rules should reflect the current policy.

Discussion and Analysis

3. Rule 2-87 is headed “reinstatement of a former judge or master”. The rule specifically references “reinstated lawyers” who were judges or masters and how practice of that reinstated lawyer must be restricted upon reinstatement.
4. This rule, as worded, applies only to judges or masters who had their membership reinstated. Rule 2-85 addresses re-instatement. The rule provides that “former lawyers” may apply for re-instatement in the manner set out in that rule. “Lawyer,” is defined in the rules to mean “member of the Society.” Consequently, a reinstated lawyer is a lawyer who once was a member of the Law Society, but whose membership lapsed and they are now seeking its reinstatement. Judges who were members of the Law Society before their appointment to the Bench will seek reinstatement of their membership upon return to practice, and this rule addresses those applications.

5. There are, however, instances where judges from other provinces have stepped down from the Bench and had their membership reinstated in their home jurisdiction and are now seeking to transfer their membership to British Columbia. Technically, they do not apply under Rule 2-87 because they are not former members of this Law Society seeking to re-instate their membership.
6. While one might logically expect most former judges who were seeking membership in the Law Society, whether through transfer of their membership from another jurisdiction, to honour the restrictions on practice that are set out in Rule 2-87, there is a possibility that an argument could be raised that they are not so bound. The *Code of Professional Conduct* provisions would then apply, but as has been discussed on previous occasions (and as is being addressed currently by the Ethics Committee), the Code is somewhat more permissive on the subject of judges returning to practice than are our current rules.

Rule Amendments

7. The Committee discussed the request from the Credential Committee and proposes revised rules in order to ensure that former judges (and other judicial officials) from other Canadian jurisdictions seeking to return to practice are subject to the same restrictions of practice as are former judges who seek to re-instate their membership in BC.
8. Proposed revisions to this effect are attached, in both red-lined and “clean” versions, together with a suggested resolution to adopt the changes.

MDL/al

Attachments.

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Former judge or master

Reinstatement of ~~f~~Former judge or master

- 2-87** (1) Subject to subrules (2) and (3), a ~~reinstated~~ lawyer who was a judge or a master must restrict his or her practice of law as follows:
- (a) a former judge of a federally ~~appointed~~ court in ~~British Columbia, the Supreme Court of Canada, the Federal Court of Appeal or the Federal Court~~ must not appear as counsel in any court in British Columbia without first obtaining the approval of the Credentials Committee;
 - (b) a former judge of the ~~Pa~~ provincial or territorial ~~Court~~ court of ~~British Columbia in Canada~~ must not appear as counsel in ~~that Court~~ the Provincial Court of British Columbia for 3 years after ceasing to be a judge;
 - (c) a former master of the Supreme Court of British Columbia must not appear as counsel before a master, a registrar, a district registrar or a deputy district registrar of the Supreme Court of British Columbia for 3 years after ceasing to be a master.
- (2) The Credentials Committee may impose conditions or limitations respecting the practice of a former judge when giving approval for that lawyer to appear as counsel under subrule (1) (a).
- (3) The Credentials Committee may at any time relieve a lawyer of a practice restriction referred to in subrule (1) and may impose conditions or limitations respecting the practice of the lawyer concerned.
- (4) A lawyer who has served as a judge or master in any court must not use any judicial title or otherwise allude to the lawyer's former status in any marketing activity.
- (5) Subrule (4) does not preclude a lawyer who has served as a judge or master from referring to the lawyer's former status in
- (a) a public announcement that the lawyer has resumed the practice of law or joined a law firm,
 - (b) a public speaking engagement or publication that does not promote the lawyer's practice or firm,

LAW SOCIETY RULES

- (c) seeking employment, partnership or appointment other than the promotion of the lawyer's practice or firm, or
 - (d) informal conversation or correspondence.
- (6) For the purpose of this rule, it is not the promotion of a lawyer's practice or firm to provide, on request, a curriculum vitae or other statement of experience that refers to the lawyer's former status as a judge or master.
- (7) This rule applies to a lawyer who has served as a master or the equivalent officer of a superior court in Canada as it does to a former master of the Supreme Court of British Columbia.

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Former judge or master

Former judge or master

- 2-87** (1) Subject to subrules (2) and (3), a lawyer who was a judge or a master must restrict his or her practice of law as follows:
- (a) a former judge of a federally-appointed court must not appear as counsel in any court in British Columbia without first obtaining the approval of the Credentials Committee;
 - (b) a former judge of a provincial or territorial court in Canada must not appear as counsel in the Provincial Court of British Columbia for 3 years after ceasing to be a judge;
 - (c) a former master of the Supreme Court of British Columbia must not appear as counsel before a master, a registrar, a district registrar or a deputy district registrar of the Supreme Court of British Columbia for 3 years after ceasing to be a master.
- (2) The Credentials Committee may impose conditions or limitations respecting the practice of a former judge when giving approval for that lawyer to appear as counsel under subrule (1) (a).
- (3) The Credentials Committee may at any time relieve a lawyer of a practice restriction referred to in subrule (1) and may impose conditions or limitations respecting the practice of the lawyer concerned.
- (4) A lawyer who has served as a judge or master in any court must not use any judicial title or otherwise allude to the lawyer's former status in any marketing activity.
- (5) Subrule (4) does not preclude a lawyer who has served as a judge or master from referring to the lawyer's former status in
- (a) a public announcement that the lawyer has resumed the practice of law or joined a law firm,
 - (b) a public speaking engagement or publication that does not promote the lawyer's practice or firm,
 - (c) seeking employment, partnership or appointment other than the promotion of the lawyer's practice or firm, or

LAW SOCIETY RULES

- (d) informal conversation or correspondence.
- (6) For the purpose of this rule, it is not the promotion of a lawyer's practice or firm to provide, on request, a curriculum vitae or other statement of experience that refers to the lawyer's former status as a judge or master.
- (7) This rule applies to a lawyer who has served as a master or the equivalent officer of a superior court in Canada as it does to a former master of the Supreme Court of British Columbia.

FORMER JUDGES AND MASTERS

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend Rule 2-87 of the Law Society Rules as follows:

1. *By striking the heading and substituting “Former judge or master”;*
2. *By rescinding subrule (1) and substituting the following:*
 - (1) Subject to subrules (2) and (3), a lawyer who was a judge or a master must restrict his or her practice of law as follows:
 - (a) a former judge of a federally-appointed court must not appear as counsel in any court in British Columbia without first obtaining the approval of the Credentials Committee;
 - (b) a former judge of a provincial or territorial court in Canada must not appear as counsel in the Provincial Court of British Columbia for 3 years after ceasing to be a judge;
 - (c) a former master of the Supreme Court of British Columbia must not appear as counsel before a master, a registrar, a district registrar or a deputy district registrar of the Supreme Court of British Columbia for 3 years after ceasing to be a master.
3. *By adding the following subrule:*
 - (7) This rule applies to a lawyer who has served as a master or the equivalent officer of a superior court in Canada as it does to a former master of the Supreme Court of British Columbia.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: Benchers
From: Executive Committee
Date: September 29, 2017
Subject: Law Society Representation on the 2017 QC Appointments Advisory Committee

1. Background

Historically, each Fall two members of the Law Society appointed by the Benchers participate in an advisory committee that reviews all applications for appointment of Queen's Counsel, and recommends deserving candidates to the Attorney General. The Benchers' usual practice, on the recommendation of the Executive Committee, is to appoint the President and First Vice-President to represent the Law Society.

The other members of the QC Appointments Advisory Committee are the Chief Justices, the Chief Judge, the Deputy Attorney General and the CBABC President.

2. Recommendation

The Executive Committee recommends that the Benchers appoint President Herman Van Ommen, QC and First Vice-President Miriam Kresivo, QC as the Law Society's representatives on the 2017 QC Appointments Advisory Committee.



To The Benchers
From The Executive Committee
Date September 12, 2017
Subject **Appointed Benchers/Hearing Panelist Per Diem Rates**

Background

In 2009, a special Benchers committee reviewed the remuneration policy for Appointed Benchers, which included a survey of rates paid by other similar organizations. This led to the implementation of the current Appointed Benchers per diem rates. When non-lawyer Hearing Panelists were instituted, the same per diem rates were applied to this group of volunteers. Staff has now updated the survey for current rates paid by other Law Societies and similar organizations.

Survey Results

The Law Society currently pays per diems to Appointed Benchers and non-lawyer Hearing Panelists of \$250 for every day—or portion thereof—during which they attend any meeting, hearing or other event at the request of the Law Society, inclusive of preparation and travel. Additionally, Appointed Benchers and Hearing Panelists are eligible to receive \$125 for every day—or portion thereof—when circumstances require them to travel for the purpose of attending a Law Society Event prior to or following the day of the event.

A survey has been conducted of several other Law Societies, and other similar organizations (as attached). It should also be noted that portions of the per diems paid to Lay Benchers for the Law Society of Upper Canada (“LSUC”) and the Law Society of Alberta (“LSA”), are paid by the provincial government, not by the Law Society.

Other policy considerations from the 2009 report are: 1) some organizations pay per diems for time spent on meeting preparation, but this was not recommended as preparation time was considered a personal and subjective matter, 2) Some organizations have two rates, half day (4 hours or less), and full day (more than 4 hours), but this was not recommended at that time, although it was recognized that this would have the effect of providing a premium level for those days when Appointed Benchers devote less than four hours of time.

The 2009 report supported the view expressed in the 2005 report that “The amounts suggested are not intended to directly reflect the value of Appointed Benchers’ time or contributions. The proposed remuneration is not intended to be an income replacement, but like the President’s honorarium, is intended to soften the financial impact of their service and make it possible for a wide range of people to accept the appointment.”

Participation of Appointed Benchers

The Executive Committee had a discussion of whether Appointed Benchers should either 1) participate in the discussion, or 2) vote on the resolution, and decided that the Appointed Benchers can provide input to the discussion, but should not vote on the resolution. It is also noted that Satwinder Bains, Appointed Benchers, who is a member of the Executive Committee, provided input to this discussion but did not vote on the recommendations.

Recommendations

1. The Executive Committee agreed with the previous considerations, except for the consideration of having two rates, one for a half day meeting and one for a full day rate. The Executive Committee recommends that there be two per diem rates, a half day rate (4 hours or less) and a full day rate (more than 4 hours), in recognition of the time spent in shorter versus longer meetings.
2. In recognition of the travel time that may be incurred for any out-of-town Appointed Benchers or Hearing Panelists who need to travel for an extended period, it was recognized that the travel per diem may apply if the travel to and from their place of residence occurs the same day as the Event.
3. Based on the updated survey, the average rate of other similar organizations is \$315 per day, and it is recommended that the per diem rates be increased to \$350 for a full day meeting or hearing day (more than 4 hours), and \$200 for a half day meeting or hearing day (4 hours or less), and \$150 for a travel per diem. The \$350 rate would be slightly above the average full day rate from the survey, and this would set the full day per diem rate at the 62nd percentile of surveyed organizations. In 2009, the full day per diem rate set was also set at the 62nd percentile.

Over the past five years, the total cost of per diems paid to Appointed Benchers and Hearing Panelists has averaged approximately \$60,000 per year. With the rate increasing and other changes, the 2018 budget has been increased to \$84,000 per year. The new rates would be effective January 1, 2018.

It is also recommended that a survey of similar organizations Appointed Benchers per diem rates be conducted every five years.

Resolution

The following Executive Committee resolution is proposed for Benchers approval:

BE IT RESOLVED THAT:

The Law Society's current policy for per diem rates for Appointed Benchers and Non-Lawyer Hearing Panelists shall be replaced by the following per diem rates, effective January 1, 2018.

- **Appointed Benchers and Non-Lawyer Hearing Panelists Full Day Event Per Diem – \$350**

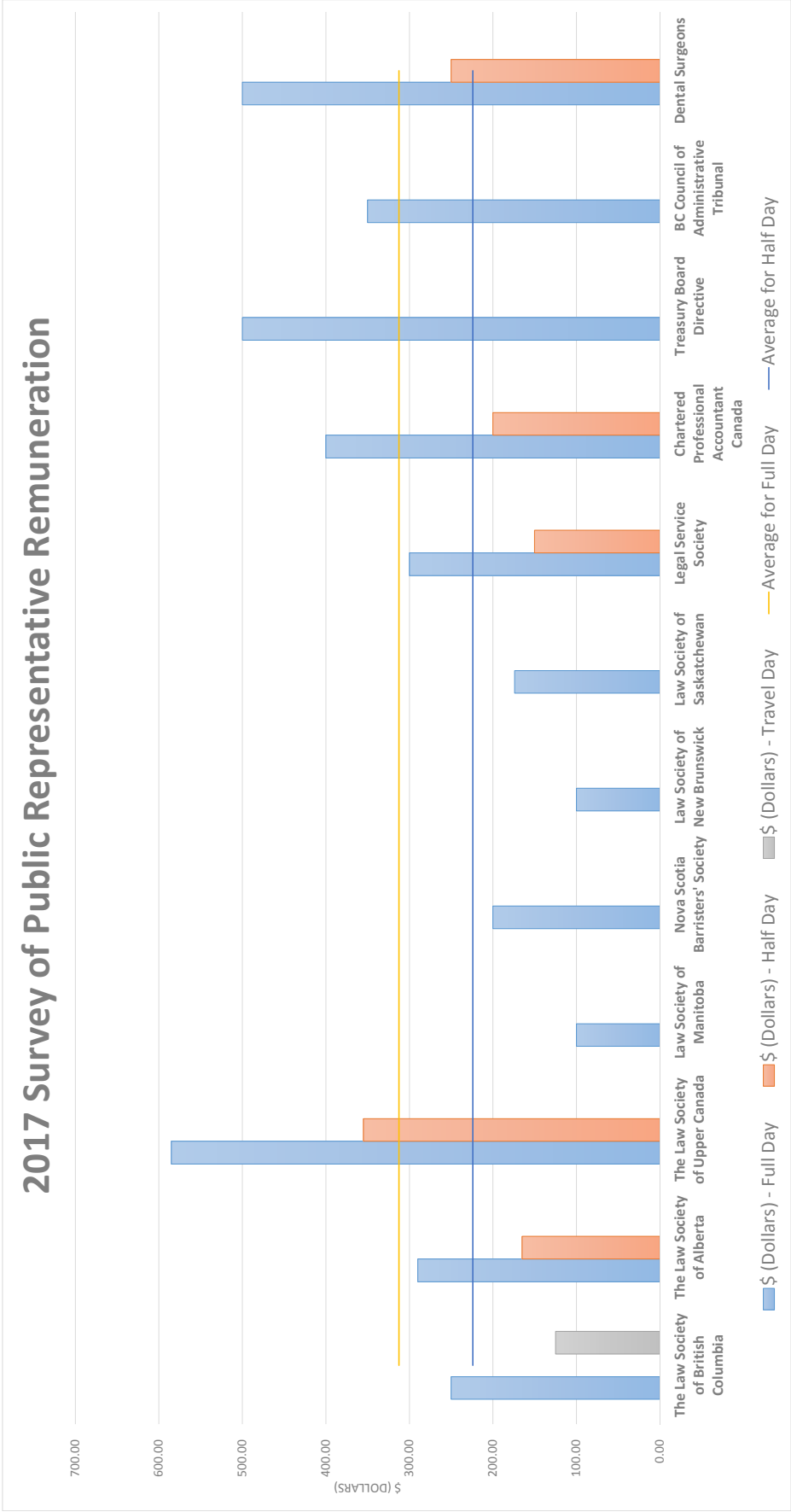
All Appointed Benchers and Non-Lawyer Hearing Panelists are eligible to receive \$350 for every full day (more than 4 hours) during which they attend any meeting, hearing or other event, at the request of the Law Society, inclusive of preparation ("Law Society Full Day Event").

- **Appointed Benchers and Non-Lawyer Hearing Panelists Half Day Event Per Diem - \$200**

All Appointed Benchers and Non-Lawyer Hearing Panelists are eligible to receive \$200 for every half day (4 hours or less) during which they attend any meeting, hearing or other event, at the request of the Law Society, inclusive of preparation ("Law Society Half Day Event").

- **Appointed Benchers and Non-Lawyer Hearing Panelists Travel Event Per Diem – \$150**

In addition, any out-of-town Appointed Benchers and Non-Lawyer Hearing Panelists are eligible to receive \$150 when they must travel for an extended period of time, from their residence to the Law Society, or from the Law Society to their residence, for the purpose of attending a Full Day Event or Half Day Event ("Law Society Travel Event").



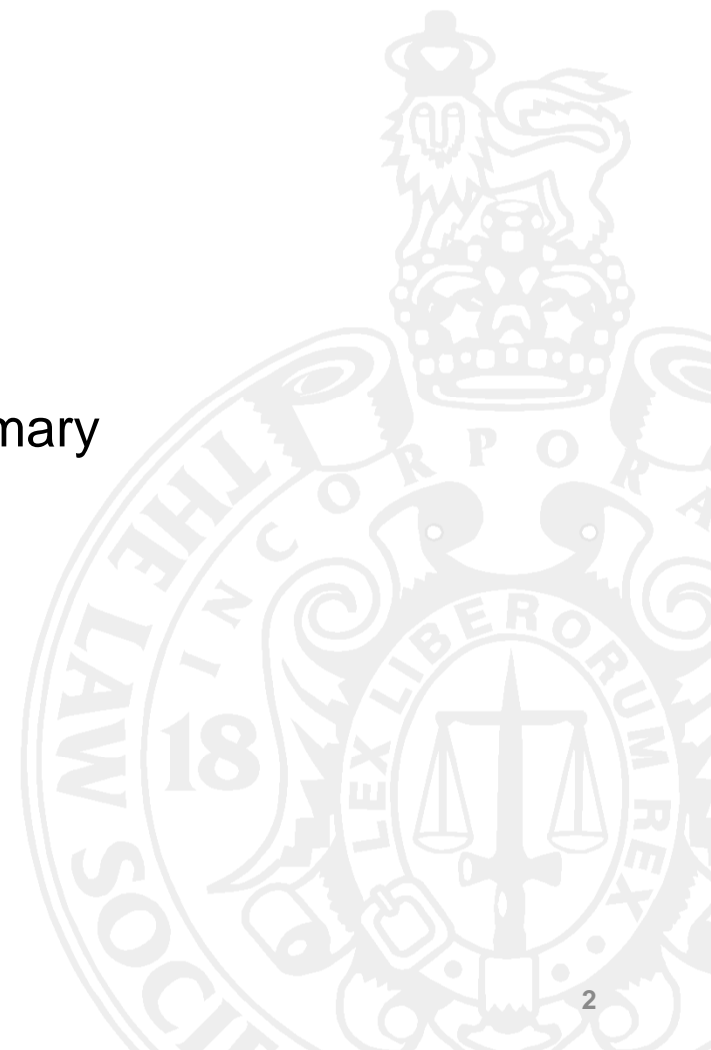


2018 Fees and Budgets

Presentation to:
The Benchers
September 29, 2017

2018 Fees and Budgets

1. 2018 Practice Fee Recommendation
2. General Fund Budget Overview
3. Capital Plan
4. Trust Program & Funding
5. General Fund Operating Budget Summary
6. External Funding
7. Lawyers Insurance Fund Overview
8. 2018 Total Fee Recommendation
9. Key Practice Fee Comparisons
10. Benchers Resolutions



General Fund



2018 Practice Fee Recommendation

The Law Society of BC 2018 Fee Recommendation

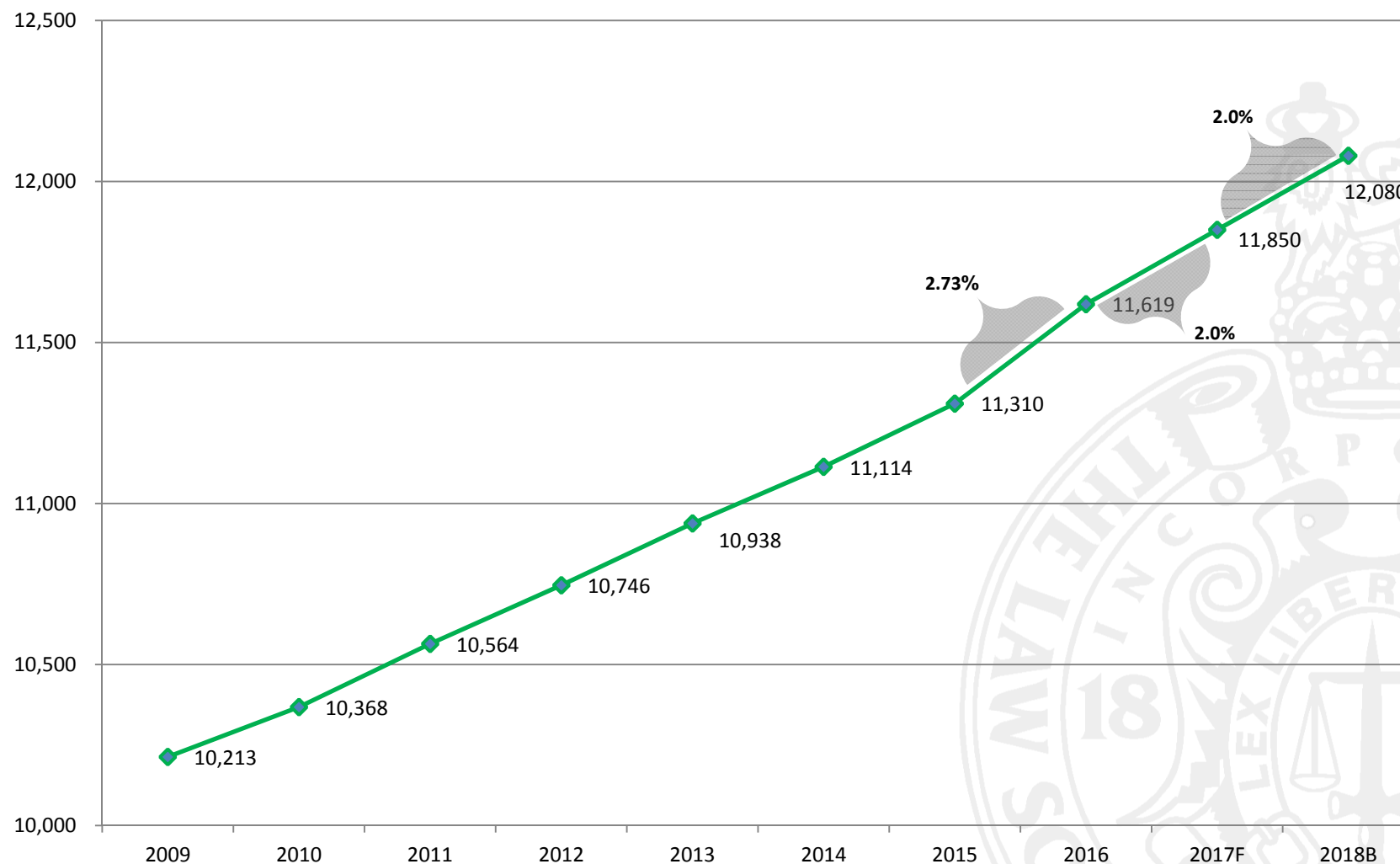
	Funding (in 000's)				Per Lawyer			
	2018	2017	Change (\$)	Change (%)	2018	2017	Change (\$)	Change (%)
Law Society Operating Expenses	\$ 24,683	\$ 23,758	925	3.9%	\$ 1,754.00	\$ 1,745.55	\$ 8.45	0.5%
Federation of Law Societies*	335	328	7	2.0%	28.12	28.12	-	0.0%
CanLII*	473	464	9	2.0%	39.24	39.24	-	0.0%
CLBC*	2,356	2,183	173	8.0%	195.00	185.00	10.00	5.4%
The Advocate*	405	397	8	2.0%	27.50	27.50	-	0.0%
LAP**	792	792	-	0.0%	65.60	67.00	(1.40)	-2.1%
Pro bono/Access**	340	340	-	0.0%	28.15	28.91	(0.76)	-2.6%
REAL**	25	50	(25)	-50.0%	2.11	4.25	(2.14)	-50.4%
Annual Practice Fee					\$ 2,139.72	\$ 2,125.57	\$ 14.15	0.7%

*These 2018 funding amounts are estimates based on the requested per lawyer fee and the projected number of lawyers.

**The per lawyer fee for these organizations is based on total funding amount requested divided by the projected number of lawyers.

General Fund Revenue

Practising Membership Projection



2018 full fee paying equivalent members projected at 12,080

General Fund Overview

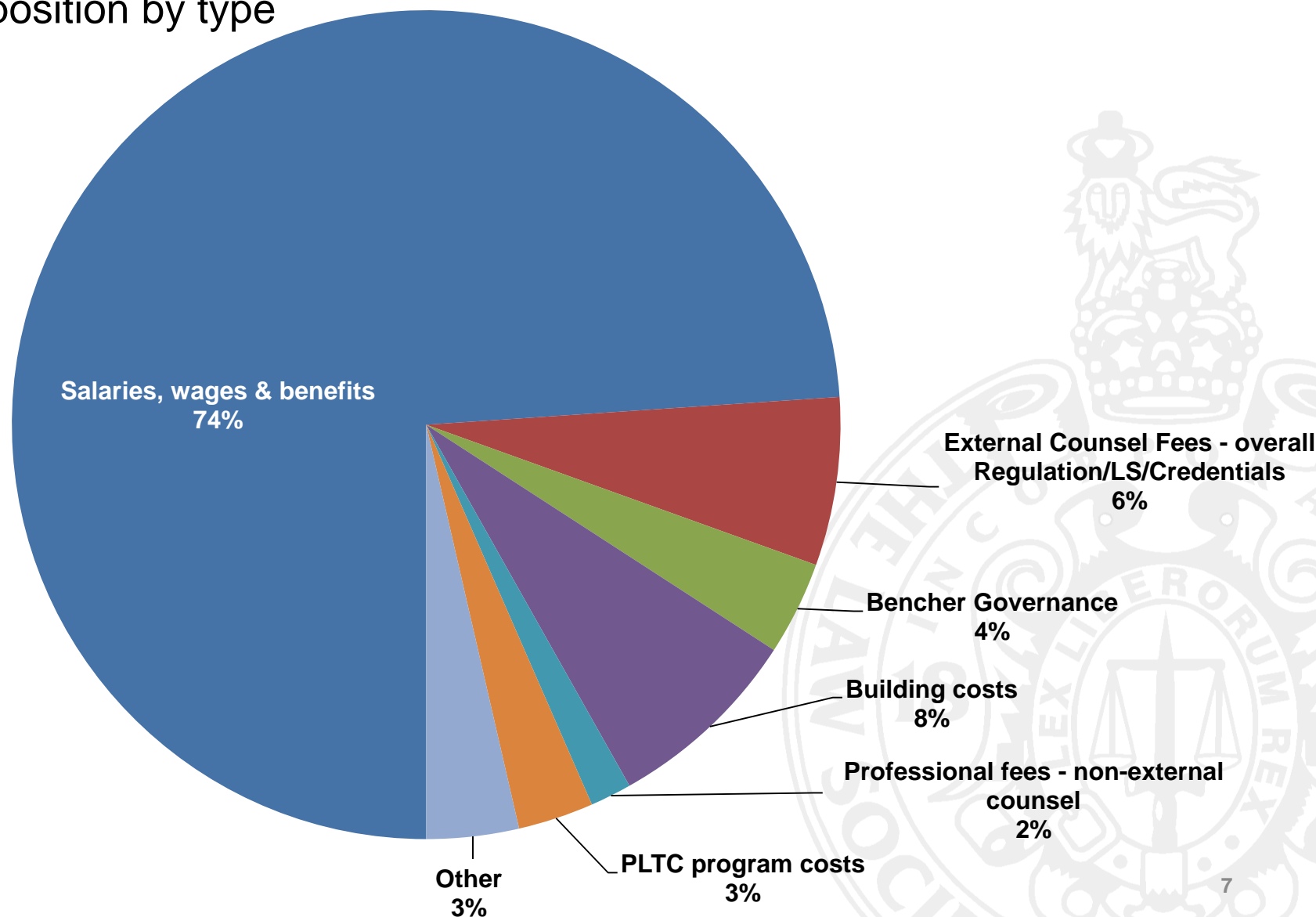
Proposed Increased Expenses

Increase of \$925,000 (3.9%) over 2017 budget, primarily comprised of:

- Resources in Governance Support area for meetings, retreat, per diems, Legal Aid Colloquium, Rule of Law Lecture Series and three new law society awards. \$167,000
- Market based staff compensation adjustments \$440,000
- Additional staff resources: 5.5 new positions relating to law firm regulation, a PLTC Instructor (P/T to F/T), Regulation, Administrative support and IS support \$353,000
- Decrease in legal and consulting fees (\$ 80,000)
- External and internal counsel resource budgets are expected to stabilize in 2018

2018 General Fund Operating Expenses

Composition by type



General Fund Overview

Proposed Increased Revenues

- Increase of \$925,000 (3.9%) over 2017 budget
- Increased revenues through membership fees, electronic filing fees, and PLTC fees
- Of the increase in membership revenue, \$500,000 related to an increase in membership numbers and \$100,000 resulting from the \$8.45 recommended increase in the practice fee for Law Society operations
- Expected increase in Electronic Filing fee revenue of \$156,000 resulting from a higher number of projected real estate unit sales from 2016 levels, based on the Real Estate Board forecast for 2018 activity

General Fund Overview

Proposed Increased Revenues

- Recommend increasing the PLTC student training fee from \$2,500 to \$2,600 and the PLTC retake fee from \$3,900 to \$4,000, to fund new exam software, effective May, 1, 2018.
- This additional PLTC revenue of \$56,000 will be used to cover the annual costs of new exam software.
- The exam software will enable the creation of test banks and help facilitate building balanced exams. It will also allow students to write exams electronically in a controlled environment.

Capital Plans

- Capital plan is funded by \$176 capital allocation, included in the Practice Fee, no change
- Capital funding includes annual 845 Cambie building loan repayment of \$500,000 to LIF
- 2018 major capital expenditures are noted below:

	<u>2018</u>	<u>2017</u>
Computer hardware – MFPs*/Network Server/Virtual Desktop	\$ 400,000	\$ 192,000
Computer software	\$ 89,000	\$ 72,000
Case Management Litigation Software	\$ 160,000	\$ 0
Computer upgrades – LSIS/LEX upgrades	\$ 185,000	\$ 115,000
Equipment, furniture and fixtures replacement	\$ 135,000	\$ 195,000
Building projects – Building Envelope/Balconies/Lobby	<u>\$ 755,000</u>	<u>\$ 868,000</u>
Total	\$1,723,000	\$1,442,000

*MFP's are multi-function printers incorporating email, fax, photocopier, printer and scanner.

Trust Program and Funding

TAF Projections

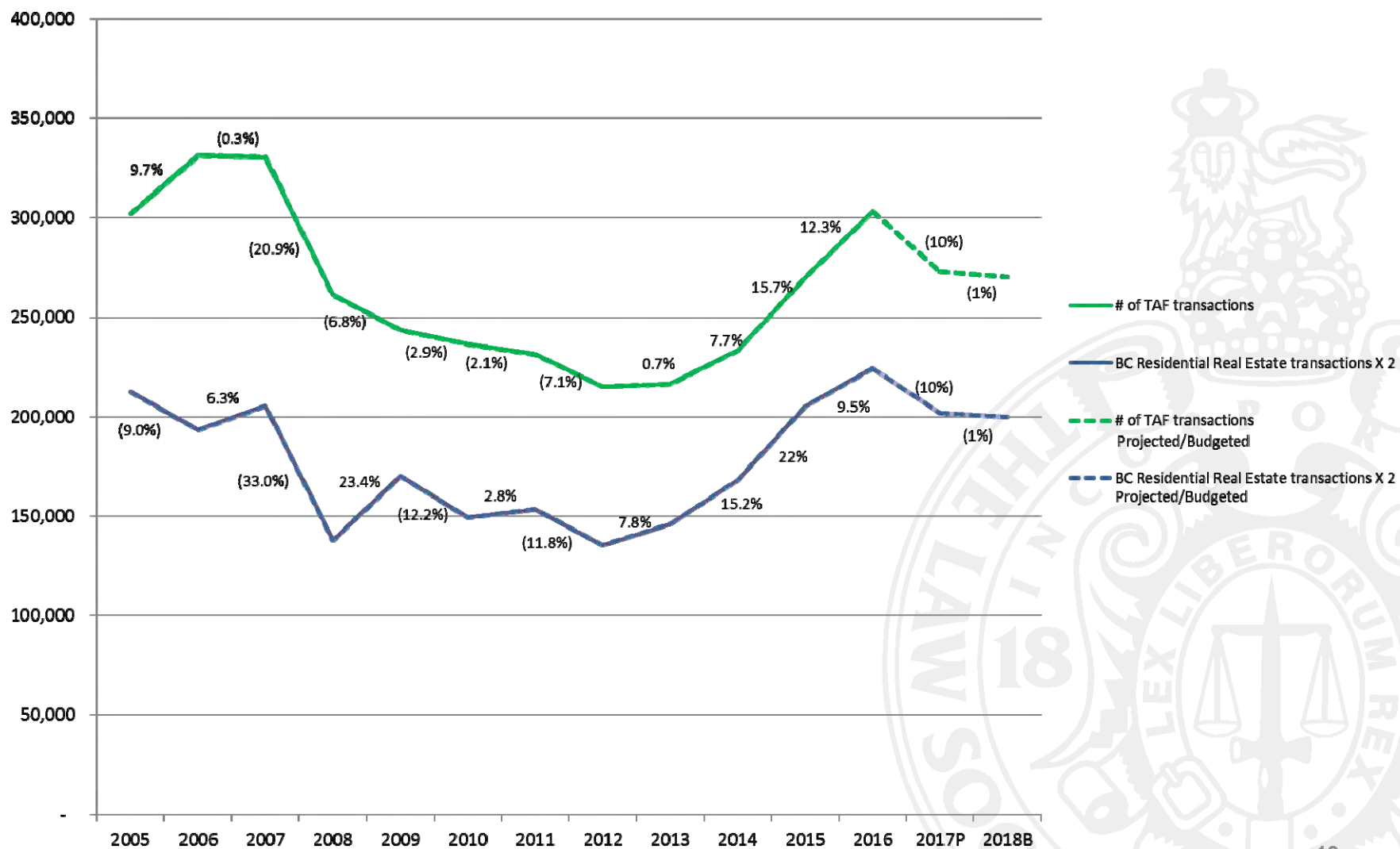
	Total TAF Revenue	Total Expense	Net Income/ (Deficit)	Transfer to LIF
2017 Projections	\$ 4,093,241	\$ 2,591,935	\$ 1,501,306	\$ (1,700,000)
2018 Budget	\$ 4,052,308	\$ 2,978,362	\$ 1,073,946	\$ (1,500,000)

- Increased workload, due to increasing number of trust accounts, increased audit scope, more complex files and referrals and improved documentation
- Additional resources required to complete the six year audit cycles, reinstatement of previous program coordinator role, an additional auditor, and a trust program supervisor to research, design and implement audit program improvements and data analytics

Trust Program and Funding

- TAF revenue has increased in recent years due to increasing real estate unit sales
- Real estate units sales projected to decrease 10% in 2017, and another 1% in 2018
- Executive Limitation regarding TAF reserve levels recommends the TAF reserve level be up to twelve months of operating expenses (\$3.0 million), and any additional revenue beyond this level will be allocated to Part B insurance funding

Comparison of TAF transactions and Real Estate Unit Sales



THE LAW SOCIETY OF BRITISH COLUMBIA
OPERATING BUDGET (excluding capital/depreciation)
For the Year ended December 31, 2018
GENERAL FUND SUMMARY

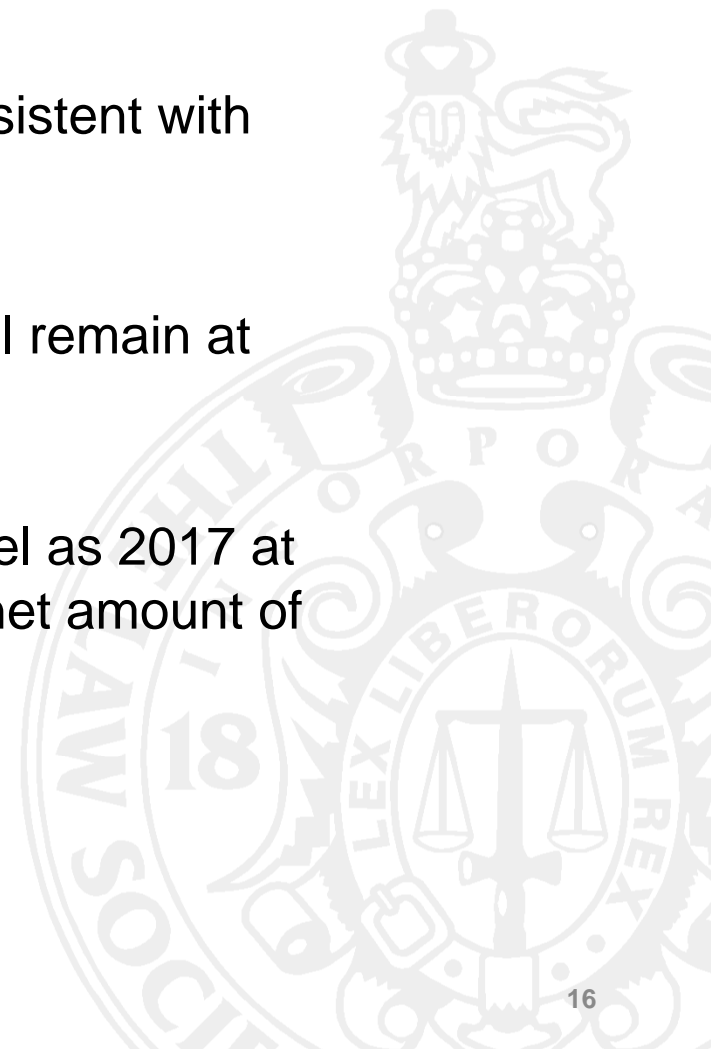
	2018 Budget	2017 Budget	2016 Actual	2018B vs 2017B Variance	%	2018B vs 2016A Variance	%
GENERAL FUND REVENUES							
Membership fees	19,618,201	18,984,517	17,849,490				
PLTC and enrolment fees	1,438,000	1,380,000	1,313,734				
Electronic filing revenue	856,000	700,000	975,923				
Interest income	335,000	350,000	434,793				
Credentials and membership services	581,750	561,500	565,087				
Fines, penalties & recoveries	402,210	426,810	552,959				
Other revenue	187,970	187,470	263,558				
Building revenue and recoveries	1,263,745	1,167,652	1,162,915				
TOTAL GENERAL FUND REVENUES	24,682,876	23,757,949	23,118,459	924,927	3.9%	1,564,417	6.8%
GENERAL FUND EXPENSES							
Benchers Governance	901,817	731,204	782,733				
Corporate Services	3,212,781	3,222,908	2,740,626				
Education & Practice	4,302,696	3,959,751	3,620,316				
Executive Services	2,300,612	2,168,375	2,122,018				
Policy and Legal Services	2,458,415	2,536,334	2,250,783				
Regulation	9,609,283	9,255,969	8,111,807				
Building costs	1,897,272	1,883,408	1,848,682				
TOTAL GENERAL FUND EXPENSES	24,682,876	23,757,949	21,476,966	924,927	3.9%	3,205,910	14.9%
GENERAL FUND NET CONTRIBUTION	-	-	1,641,493			(1,641,493)	
Trust Assurance Program							
Trust Administration Fee Revenue	4,052,310	3,500,250	4,548,052				
Trust Administration Department	2,978,362	2,591,935	2,431,956				
Net Trust Assurance Program	1,073,948	908,315	2,116,096	165,633		(1,042,148)	
TOTAL NET GENERAL FUND & TAP CONTRIBUTION	1,073,948	908,315	3,757,589	165,633		(2,683,641)	

2018 External Funding

- Federation of Law Societies funding is to remain the same as 2017 at 28.12 per lawyer.
- CanLII funding is to remain the same as 2017 at \$39.24 per lawyer.
- CLBC funding will be \$195 per lawyer, an increase of \$10 over 2017. This will result in approximately \$2.36 million in funding vs. \$2.18 million in 2017.
- The Advocate per lawyer fee will remain the same as 2017 at \$27.50. This will result in approximately \$405,000 in funding vs. \$397,000 in 2017.

2018 External Funding

- LAP has requested funding of \$792,440, consistent with 2017 funding.
- Pro bono/Access to legal services funding will remain at \$340,000, consistent with 2017 funding.
- REAL has requested funding at the same level as 2017 at \$50,000, offset by a surplus from 2016. The net amount of funding is \$25,491.



Lawyers Insurance Fund



2018 Lawyers Insurance Fund

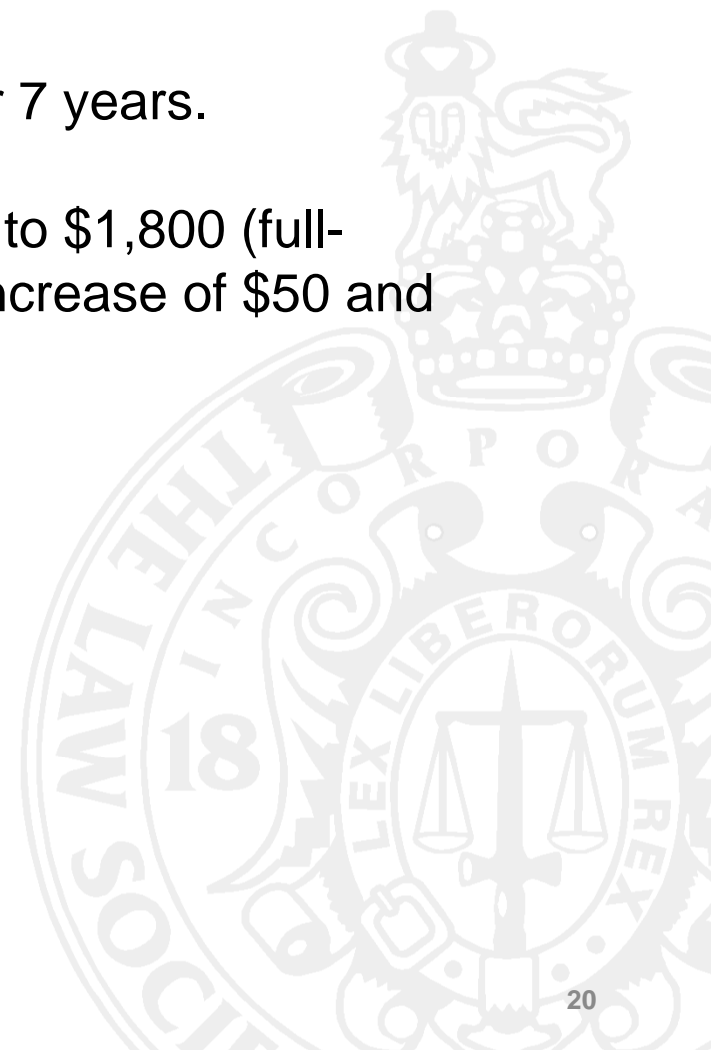
- LIF net assets at 2016 year-end were \$70.4M
- Funds from SCF wind-up and TAF net assets of \$1.36M and \$1.7M, respectively will be transferred in 2017.
- Actuarial analysis indicates existing net assets are adequate.
- Investment returns in 2016, at 7.1%, were higher than the benchmark of 6%. Assume a return of 5.2% and 5.8% for 2017 and 2018, respectively, based on actuarial projections

2018 Lawyers Insurance Fund

- Number of insurance reports has increased from 2016 levels (expect a frequency of 13%).
- Annual payments also continue to trend up from an average of \$10M in 2004-2008 to \$12.8M in 2009-2014. 2017 projected to come in at about these amounts.
- Expanded coverage under Part C will result in additional claims.
- New significant losses are expected to be paid under Part B.

2018 Lawyers Insurance Fund

- Insurance fees have not been increased for 7 years.
- Recommend increasing the insurance fees to \$1,800 (full-time) and to \$900 (part-time) for 2018, an increase of \$50 and \$25 respectively or 2.9%.



THE LAW SOCIETY OF BRITISH COLUMBIA
Lawyers Insurance Fund
For the year ended December 31, 2018
CONSOLIDATED STATEMENT OF REVENUE AND EXPENSE

	2018 Budget	2017 Budget	Variance	%
REVENUE				
Annual Assessment	15,303,200	14,613,780		
Investment Income	8,334,529	6,520,648		
Other Income	60,000	60,000		
TOTAL REVENUE	23,697,729	21,194,428	2,503,301	11.8%
INSURANCE EXPENSE				
Professional Services	1,632,000	932,425		
Allocated office rent	323,834	291,272		
Contribution to program and administrative costs of General Fund	1,391,075	1,340,913		
Insurance	470,172	460,675		
Office	209,740	289,266		
Premium taxes	9,007	8,520		
Provision for settlement of claims	17,079,000	15,476,000		
Salaries, wages and benefits	3,223,296	3,098,898		
	24,338,124	21,897,969	2,440,155	11.14%
LOSS PREVENTION EXPENSE				
Contribution to co-sponsored program costs of General Fund	907,605	907,699		
TOTAL EXPENSE	25,245,729	22,805,668	2,440,061	10.70%
Net Contribution	(1,548,000)	(1,611,240)	63,240	

2018 Fee Recommendation

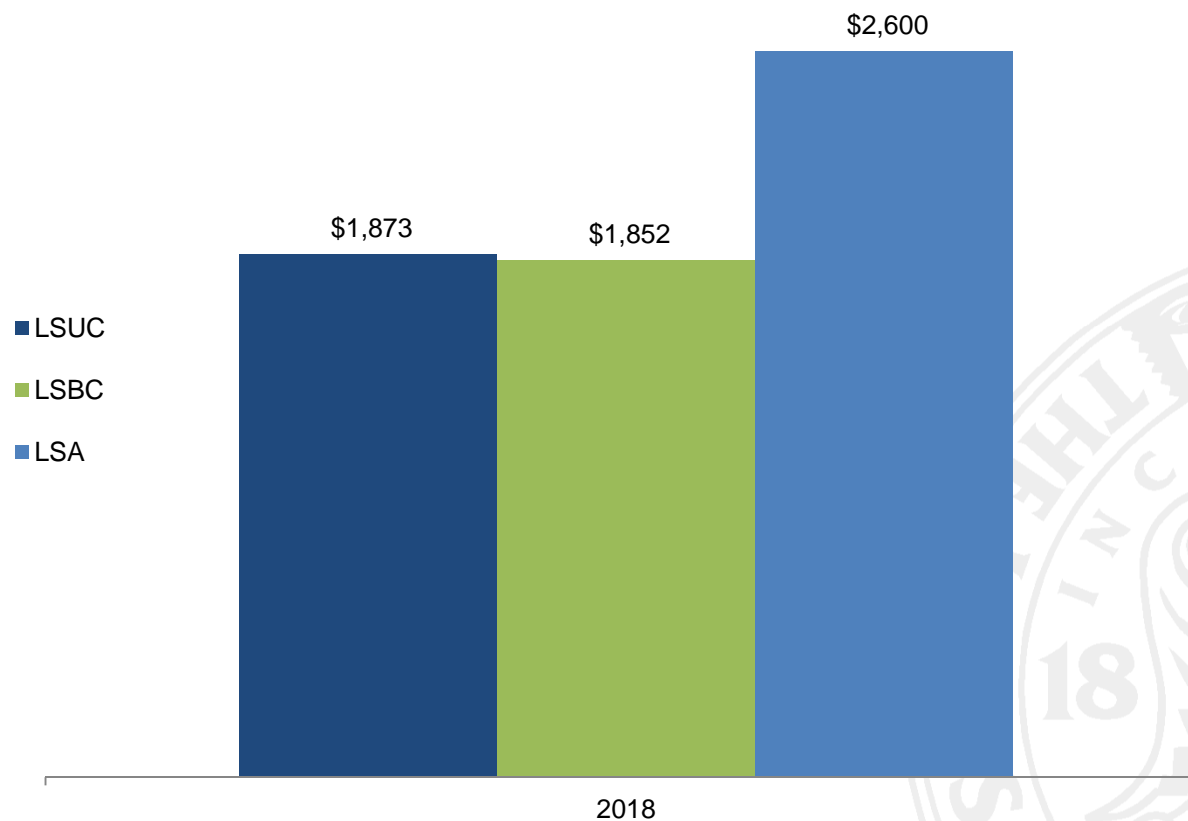
The Law Society of BC 2018 Fee Recommendation

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LAP**	792	792	-	0.0%	65.60	67.00	(1.40)	-2.1%
Pro bono/Access**	340	340	-	0.0%	28.15	28.91	(0.76)	-2.6%
REAL**	25	50	(25)	-50.0%	2.11	4.25	(2.14)	-50.4%
Annual Practice Fee					\$ 2,139.72	\$ 2,125.57	\$ 14.15	0.7%
Insurance Assessment					\$ 1,800.00	\$ 1,750.00	\$ 50.00	2.9%
Total Mandatory Fee					\$ 3,939.72	\$ 3,875.57	\$ 64.15	1.7%

*These 2018 funding amounts are estimates based on the requested per lawyer fee and the projected number of lawyers.

**The per lawyer fee for these organizations is based on total funding amount requested divided by the projected number of lawyers.

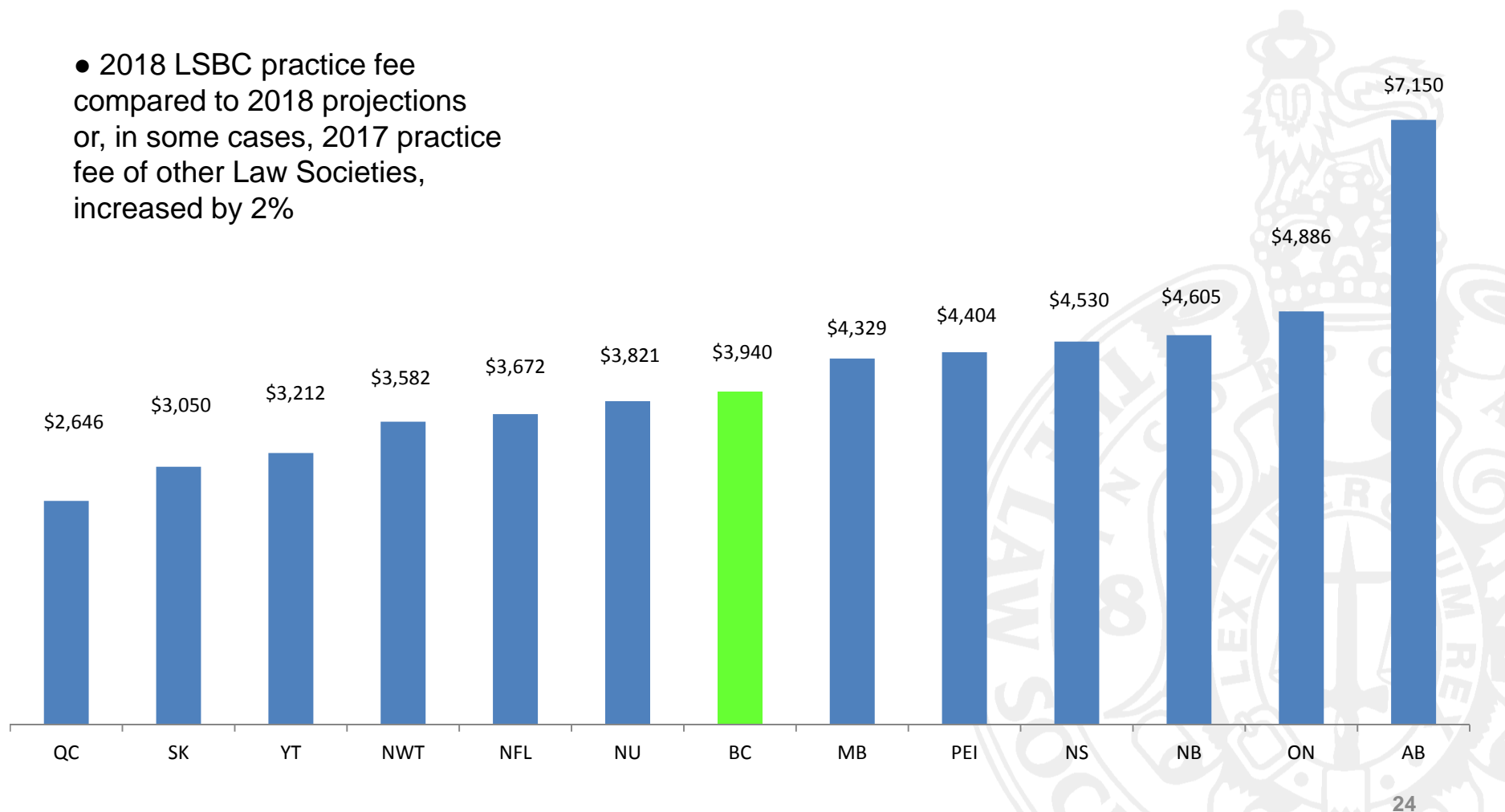
Key Practice Fee Comparisons



*Fees do not include library, LAP, Advocate, if applicable, but includes capital fund

Mandatory Fee Comparison (Full Time Practising Insured Lawyer)

- 2018 LSBC practice fee compared to 2018 projections or, in some cases, 2017 practice fee of other Law Societies, increased by 2%



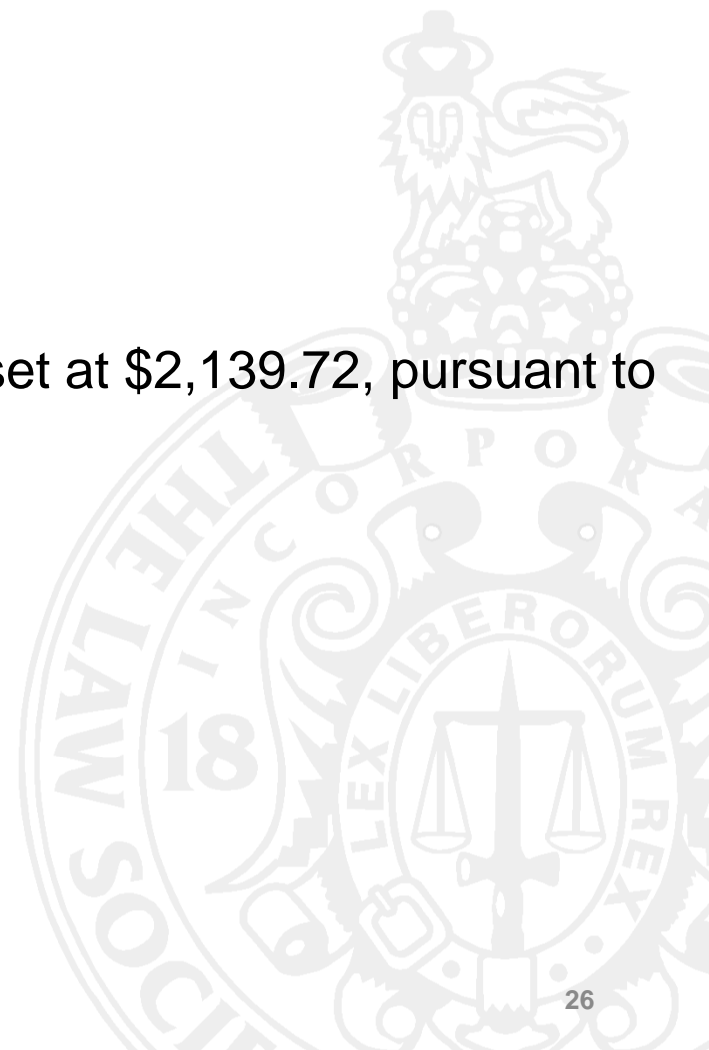
BENCHER RESOLUTIONS



General Fund

Be it resolved that:

- Effective January 1, 2018, the practice fee be set at \$2,139.72, pursuant to section 23(1)(a) of the *Legal Profession Act*.



General Fund

Be it resolved that:

- Effective May 1, 2018, the training course registration fee be set at \$2,600, pursuant to Rule 2-72(4)(a).
- Effective May 1, 2018, the registration fee for repeating the training course be set at \$4,000, pursuant to Rule 2-72(4)(a).

Lawyers Insurance Fund

Be it resolved that:

- The insurance fee for 2018 pursuant to section 30(3) of the *Legal Profession Act* be set at \$1,800;
- The part-time insurance fee for 2018 pursuant to Rule 3-40(2) be set at \$900; and
- The insurance surcharge for 2018 pursuant to Rule 3-44(2) be set at \$1,000.

The Law Society

of British Columbia



The Law Society of British Columbia 2018 Fees and Budgets Report

THE LAW SOCIETY OF BRITISH COLUMBIA
2018 Fees and Budgets Report

Contents

LAW SOCIETY OVERVIEW	4
GENERAL PRACTICE FEE	4
GENERAL FUND - LAW SOCIETY OPERATIONS	4
<i>Overview</i>	4
<i>Budget Risks</i>	5
2018 OPERATING REVENUE SUMMARY	6
2018 OPERATING EXPENSE SUMMARY	6
<i>Staffing</i>	6
<i>Staff Compensation Costs</i>	6
<i>External Counsel Fees</i>	7
<i>Governance Expenses</i>	7
<i>Operating Expense Reductions</i>	7
GENERAL FUND NET ASSETS	7
CAPITAL PLAN	7
2018 PRACTICE FEE	8
2018 OPERATING REVENUE	8
2018 OPERATING EXPENSES	9
DEPARTMENTAL SUMMARIES	10
BENCHER GOVERNANCE	10
CORPORATE SERVICES	10
EDUCATION & PRACTICE	10
EXECUTIVE SERVICES	11
POLICY & LEGAL SERVICES	12
REGULATION	12
BUILDING COSTS	13
FUNDING OF EXTERNAL PROGRAMS	14
TRUST ASSURANCE FEE AND PROGRAM	15
SPECIAL COMPENSATION FUND	15
LAWYERS INSURANCE FUND	16
OVERVIEW	16
FREQUENCY AND SEVERITY OF CLAIMS	16
FUTURE PRACTICE RISKS	17
INVESTMENT RETURNS	19
MINIMUM CAPITAL (NET ASSETS) LEVELS	19
REVENUE	20
EXPENSES	20
OTHER ASSETS	20
2018 INSURANCE FEES	20
APPENDIX A	21
APPENDIX B	22
APPENDIX B-2	23

APPENDIX C	24
APPENDIX D	25
APPENDIX E	26
APPENDIX F	27

Law Society Overview

The 2018 Law Society Budget results in an annual practice fee of \$2,139.72, and an insurance assessment of \$1,800. This is a \$64.15 (1.7%) increase over the 2017 annual mandatory fees.

The components of the 2018 mandatory fees for insured, practicing lawyers are as follows:

The Law Society of BC 2018 Fee Recommendation

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	2018	2017	Change (\$)	Change (%)	2018	2017	Change (\$)	Change (%)
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Total Mandatory Fee					\$ 3,939.72	\$ 3,875.57	\$ 64.15	1.7%

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General Practice Fee

General Fund - Law Society Operations

Overview

The Benchers have set the 2018 fees pursuant to the Legal Profession Act, following their review of the Finance and Audit Committee's recommendations at the September 29th Benchers meeting. The Finance and Audit Committee, with input and consultation from management, has based its recommendations on a thorough review of the Law Society's finances, statutory mandate and strategic plan.

The focus of this budget, in addition to delivering the core regulatory programs and meeting the established Key Performance Measures, is to support the continuing initiatives under the Law Society's strategic plan and mandate, and in particular, supporting the delivery of timely and efficient regulation to ensure that the Law Society remains an effective professional regulatory body.

The key assumptions and factors underlying the 2018 budget are:

- 2.0% growth projected in full-time equivalent practicing lawyers, to 12,080
- 500 PLTC students
- An increase in electronic filing revenues based on historical trends
- Market based staff compensation adjustments
- Stability of internal and external counsel resources budgets with the implementation of the Counsel Resource Plan in 2017
- Additional funding for governance, including meetings, travel, retreat, and the three new Law Society awards
- Additional staff resources to deliver core regulatory functions
- Reduced operating expenses where possible
- Reserve levels in line with the Executive Limitations, no short-term borrowing to fund operations during the year

Budget Risks

- **External Counsel Fees** – External counsel fees represent a significant portion of the overall budget (6%). While these costs are analyzed, managed and tracked rigorously, they can also be unpredictable in nature. These costs are typically driven by three factors, conflicts, work load and the requirement of special skills. The complexity of new cases cannot be anticipated, which can have an impact on costs and demand. In recent years, the increase in the complexity and difficulty of cases, is reflected in an increase in the number of reviews and hearing days.
- **Staff Vacancy Savings** – In order to anticipate vacancies in staff positions during the year, and reduce practice fee requirements, a staff vacancy savings budget is estimated each year based on historical trends. As the amount of staff vacancy savings depends on the total amount of staff vacancies in any given year, there may be more or less savings than budgeted. If there are lower vacancies than estimated in the vacancy budget, operating savings will be overestimated, resulting in budget pressure.
- **Membership Numbers** – The revenue received from the practice fee and other membership fees serves to offset 80% of the budgeted costs. As such, a significant short-term reduction in members could result in a need to draw on net assets. To mitigate this risk, we closely track member numbers and monitor the demographics of our membership base to anticipate any potential reductions in our member numbers. We also apply an estimate of membership numbers based on historical membership growth.
- **Inflation** – Staff salaries comprise approximately 74% of the total expense budget, so rising inflation and related salary market levels may put pressure on compensation costs. Rising inflation may also cause an increase in other operating expenses.

- Electronic Filing Revenues and Trust Administration Fees – These fees correlate very closely with the number of real estate unit sales in BC. These fee budgets have been set based on the forecasts of the Real Estate Association and actual results could vary from these forecasts.

2018 Operating Revenue Summary

General Fund revenues to provide for operations in 2018 are projected to be \$24.7 million, \$925,000 (3.9%) over the 2017 budget, due to higher membership numbers and additional electronic filing revenues, an increase in the PLTC student fee, plus an increase in the practice fee to provide for a balanced budget. The budgeted revenue is based on estimates of 12,080 full-time equivalent practicing members, 500 PLTC students, electronic filing revenues increase based on 2017 real estate market projections and other revenues are projected at similar levels to 2017.

2018 Operating Expense Summary

General Fund operational expenses are also projected to be \$24.7 million, \$925,000 (3.9%) over the 2017 budget. This year-over-year budget increase reflects market based staff salary adjustments, additional governance resources and additional staff resources to deal with increased demand and new programs.

A summary of the significant changes to operating expenses are noted below:

Staffing

Staffing levels have been reviewed in detail and the budget provides for 5.5 additional staff positions to support new programs and the increased demands of existing programs. One position has been funded through existing general fund funding.

Staff Compensation Costs

The Law Society is a service organization, with salaries and benefits comprising over 74% of the total costs of the operation. The Law Society staff compensation policies require that staff compensation is consistent with the market and maintains staff compensation at the 50th percentile (P50) for comparable positions, and market based wage adjustments are made each year based on bi-annual external independent benchmarking. In addition, wage adjustments for union employees are made each year according to the Professional Employees Association collective agreement. The current three-year collective agreement runs until the end of 2018. In addition, the staff vacancy savings budget is estimated at \$700,000 for 2018.

External Counsel Fees

External counsel fees in the areas of Regulation, Legal Defense and Credentials make up a significant portion of the annual budgets, totaling \$1.6 million, or 6% of the 2018 operating expense budget. In 2017, the Counsel Resource Plan was established to provide internal and external resources for current file loads. The 2018 budget has remained relatively stable to 2017 levels. The file loads and timelines will continue to be closely monitored during the year to ensure that files are being dealt with in a timely manner.

Governance Expenses

The Benchers and committees perform a significant amount of work for the Law Society and provide support towards the Benchers strategic plan. There are a number of new initiatives being implemented in 2018 to support the strategic plan, including three Law Society public events.

Operating Expense Reductions

Offsetting some of the increases in the operating budgets, there has been a reduction of \$143,000 in other operating expenses in 2018, mainly in the area of general operations legal and consulting fees.

General Fund Net Assets

Overall, the General Fund remains financially sound, with \$15 million in net assets at the end of 2016 (excluding the TAF net assets). The net assets consist of capital assets, primarily the 845 Cambie Street building, the capital plan, along with a working capital reserve of \$1.4 million. This level of net assets ensures that no short-term borrowing is required to fund General Fund operations.

Capital Plan

The Law Society maintains a 10 year capital plan to ensure that capital funding is available for capital projects required to maintain the 845 Cambie building and to provide capital for operational requirements, including computer hardware and software, furniture and workspace improvements. In addition, the capital plan funds the annual \$500,000 debt service payment on the 845 Cambie building loan from LIF.

The annual capital allocation levy is included in the annual practice fee, and remains unchanged at \$176 per member. In the 2018 capital plan, \$1.7 million is budgeted for capital projects (Appendix C). Projects include base building maintenance, including building envelope work and a lobby update. In addition, operational capital includes replacing computer hardware and software, furniture, and renovation of office workspaces.

2018 Practice Fee

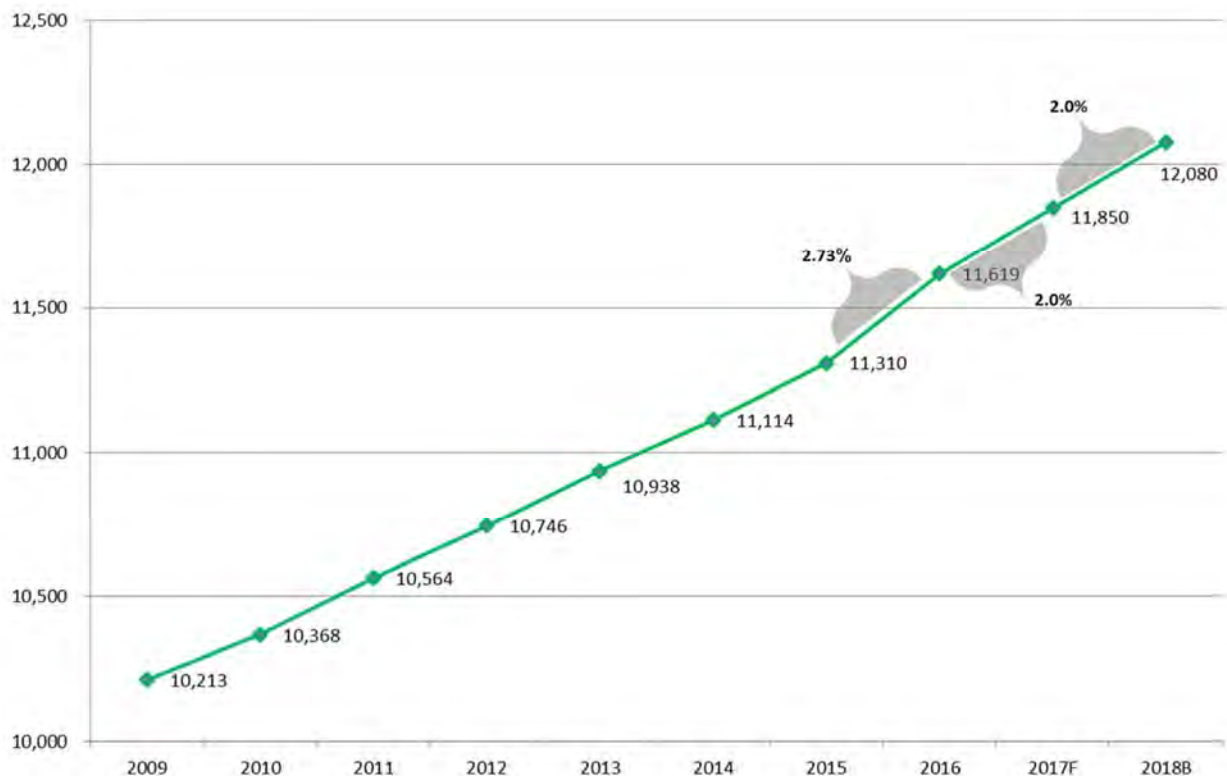
Taking all of the above into account, \$1,754.00 of the 2018 annual practice fee funds the Law Society operations, an increase of \$8.45 (0.5%) over 2017.

2018 Operating Revenue

Total revenues, excluding the capital allocation levy, are budgeted at \$24.7 million, an increase of \$925,000 (3.9%) over the 2017 budget (Appendix A).

Membership revenues are budgeted at \$19.6 million, a 3.3% increase over the 2017 budget due to the projected growth in the number of practising lawyers and an increase in the annual practice fee. Based on the average growth in membership over the last few years, budgeted full-time equivalent practicing membership is projected to increase to 12,080 members, 2.0% over the 2017 membership projection. Other categories of membership are assumed to remain consistent with previous years.

Practicing Membership Projection



PLTC revenues are budgeted at \$1.4 million, based on 500 students, the same number of students as the 2017 budget. Effective May 1, 2018, the PLTC student fee, and the PLTC student retake fee, will be increased by \$100 to \$2,600, or \$4,000 respectively, per student to fund the implementation of ExamSoft software. This software will allow students to write exams on-line, improve exam creation and enhance skills and grading

assessments. Even with this increase, the PLTC fee remains one of the lowest bar admission training program fees in Canada.

Electronic filing revenues are budgeted at \$856,000, an increase of \$156,000 from the 2017 budget, in line with recent trends.

Other revenues, which include credentials and incorporation fees, fines, penalties and cost recoveries, and interest income are budgeted at \$1.5 million, similar to 2017.

Building revenue and recoveries are budgeted at \$1.3 million in 2018. The Law Society owns the 845/835 Cambie building, and occupies the majority of space, and the space that is not occupied by the Law Society is leased out to external tenants. In 2018, external lease revenues are budgeted at \$720,000, similar to 2017. Also included in lease revenues is an inter-fund market rent allocation of \$500,000 charged by the General Fund for space occupied at 845 Cambie by the Lawyers Insurance Fund and the Trust Assurance Program.

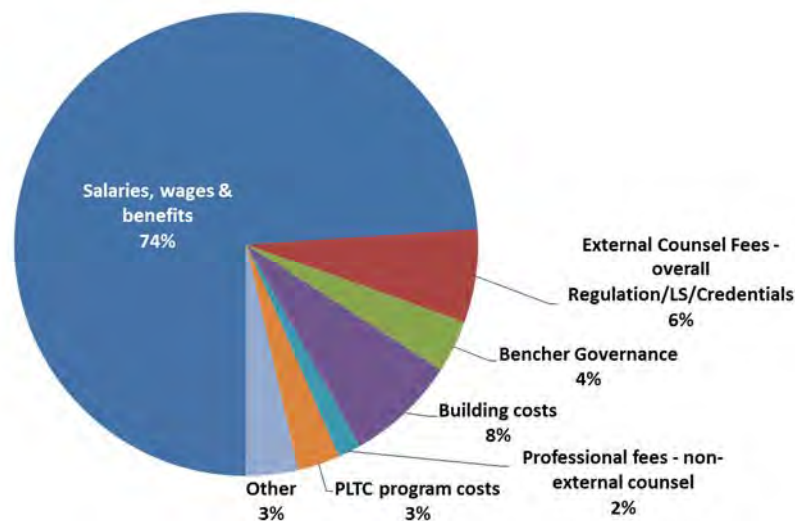
2018 Operating Expenses

The total operating expense budget has increased by \$925,000 (3.9%) (Appendix A). A large portion of the increase is due to changes market based staff salary adjustments, additional staff positions, and additional governance funding, offset by other savings.

The majority of operating expenses (74%) are related to staffing costs to provide the programs and services to both the public and members.

The chart below provides information on the type of operating expenses within the General Fund.

Operating Expenses - Composition by type



Departmental Summaries

Bencher Governance

The Bencher Governance area includes the costs of the Bencher and committee meetings, including travel and meeting costs, which are required to govern the Law Society, as well as the costs of any new initiatives related to the Bencher Strategic Plan.

The 2018 Bencher Governance operating expense budget is \$901,000, an increase of \$170,000 from the 2017 budget. Additional funding has been provided for meetings, retreat and travel costs. In addition, the per diems paid to Appointed Benchers and Hearing Panelists will be increased to reflect market rates. Also, there will be the delivery of three new programs for the public community, a Legal Aid Colloquium, a Truth and Reconciliation Symposium, and a Rule of Law lecture series.

Corporate Services

The departments that are included in Corporate Services are; General Administration, Office of the CEO, Finance, Human Resources, and Records Management.

General Administration includes the Office of the CEO, who leads the Law Society operations and reports directly to the Benchers. General administration also includes the Operations department which provides general administrative services, such as reception and office services, and office renovation services.

Finance provides oversight over all the financial affairs of the Law Society, including financial reporting, operating and capital budgeting, audit, payroll and benefits administration, cash and investment management, and internal controls.

Human Resources develops and maintains the human resource policies and procedures, and provides services related to recruiting, compensation, performance management, employee and labor relations, and training.

Records Management is responsible for the records management, library and archives program, including the oversight of the electronic document management system.

The 2018 Corporate Services operating expense budget is \$3.2 million, a decrease \$10,000 from the 2017 budget, with a number of cost reductions in legal and consulting fees offsetting market based salary adjustments.

Education & Practice

The departments included in Education and Practice are; Member Services, Credentials, PLTC and Education, Practice Standards and Practice Advice.

Member Services provides services to members, including member status changes, fee billings, unclaimed trust funds, Juricert registration, and the Call Ceremonies. This department also administers the annual continuing professional development program for all lawyers.

Credentials ensures new and transferring lawyers are properly qualified to practice law in BC by preparing and assessing applicants for call and admission to the Law Society, and licensing them to practice.

PLTC & Education helps articulated students make the transition from law school to legal practice. Taught by experienced lawyers, PLTC uses case files and model transactions that replicate as closely as possible what students will experience during articles and when practicing. Successful completion of the intensive, 10-week course is one of the conditions law school graduates must meet to practice law in British Columbia.

Practice Standards addresses issues of lawyer competency with online lawyer support courses, practice management support and other resources. The program is a remedial program that assists lawyers who have difficulty in meeting core competencies and who exhibit practice concerns, which may include issues of client management, office management, personal matters, and substantive law. The Practice Standards department conducts practice reviews of lawyers whose competence is in question, and recommends and monitors remedial programs.

Practice Advice helps lawyers serve the public effectively by providing advice and assistance on ethical, practice and office management issues.

The total 2018 Education & Practice operating expense budget is \$4.3 million, an increase of \$343,000 (8.7%) from the 2017 budget. Much of the increase relates to market based salary adjustments. In addition, with the implementation of Law Firm Regulation, there is the addition of a Member Services Representative to provide support for this function. In PLTC, ExamSoft software will be implemented plus a part-time PLTC instructor will be converted to full-time to provide additional academic support for students and curriculum development.

Executive Services

The departments that are included in Executive Services are Communications, Information Services and Executive Services.

Communications is responsible for all member, government and public relations and provides strategic communication advice to all areas of the Law Society. The department also manages and maintains the Law Society website, electronic communications and produces our regular publications such as the Benchers Bulletin, the E-Brief and the Annual Review. In addition, this department has taken on the responsibility to review and implement the Knowledge Management initiatives.

Information Services is responsible for all technical services relating to computer business systems and databases, networks, websites and data storage and communication technology.

Executive Services coordinates and organizes the Benchers and Executive meetings, coordinates external appointments, and plans and provides administrative and logistical support for the annual general meeting and Benchers elections.

The 2018 Executive Services operating expense budget is \$2.3 million, an increase of \$132,000 (6%). In Information Services, there are increases relating to software maintenance, computer supplies, along with IT network security testing. There are also market based salary adjustments, and an additional IS technical support position. Also, the communications and government relations budget has been increased to provide more support to this function.

Policy & Legal Services

Policy & Legal Services includes a number of functions including policy, legal services, external litigation and interventions, ethics, tribunals and legislation, information and privacy, and unauthorized practice.

Policy and Legal Services assists the Law Society with policy development, legal research and legislative drafting, and monitoring developments involving professional regulation, independence of the Bar and Judiciary, access to justice, and equity and diversity in the legal profession, and provides advice for ethical consideration and supports the Ethics Committee. In addition, includes external counsel fees providing services for legal defense cases and interventions on behalf of the Law Society.

Tribunals and Legislation supports the work of Law Society hearing and review tribunals and drafts new rules and proposed amendments to the *Legal Profession Act*.

Information & Privacy handles requests made of the Law Society and maintains compliance of the Law Society data and training under the Freedom of Information and Protection of Privacy Act (FOIPPA).

Unauthorized Practice (UAP) investigates complaints of unauthorized practice of law by unregulated, uninsured non-lawyers.

The 2018 Policy and Legal Services operating expense budget is \$2.5 million, a decrease of \$78,000 (4%) from the 2017 budget. This reduction is due to a decrease in legal defense counsel fees, offsetting market based salary adjustments.

Regulation

There are four areas that are included in Regulation; Professional Conduct, Discipline, Forensic Accounting and Custodianships.

Professional Conduct includes the Intake and Early Resolution and the Investigations, Monitoring and Enforcement groups, which investigate complaints about lawyers' conduct and recommend disciplinary action where appropriate.

Discipline manages the conduct meeting and conduct review processes, represents the Law Society at discipline hearings and provides legal advice on investigations.

Forensic Accounting provides forensic investigation services to support the regulatory process.

Custodianships provides for the arrangement of locum agreements or custodians to manage and, where appropriate, wind-up legal practices when members cannot continue to practice due to illness, death, or disciplinary actions.

The 2018 Regulation operating expense budget is \$9.6 million, an increase of \$354,000 (3.8%) from the 2017 budget. There has been the addition of three administrative positions to provide support to the Professional Conduct, Custodianship and Chief Legal Officer departments, along with market based salary adjustments. The external counsel fee budgets have remained stable to 2017 budget levels.

Building Costs

The Law Society owns the 845 Cambie Street building and occupies 80% of the available space. The cost of occupying and maintaining the building is partially offset by lease revenues from tenants, which are recorded in the revenue section.

The property management department provides services in relation to tenant relations, leasing, building maintenance and preservation, fire and safety, energy management, and minor and major capital project management.

The 2018 building operating expense budget is \$1.9 million, a slight increase of \$14,000 (0.7%) over the 2017 budget.

Funding of External Programs

The Law Society collects a number of fees for external programs, which are included in the annual practice fee:

Federation of Law Societies – The Federation fee will remain the same as the 2017 fee of \$28.12 per lawyer. The Federation of Law Societies of Canada provides a national voice for provincial and territorial law societies on important national and international issues.

CanLII – The CanLII fee will remain the same as the current 2017 fee of \$39.24 per lawyer. CanLII is a not-for-profit organization initiated by the Federation of Law Societies of Canada. CanLII's goal is to make primary sources of Canadian Law accessible for free on its website at www.canlii.org. All provincial and territorial law societies have committed to provide funding to CanLII.

Courthouse Libraries of B.C. (CLBC) – CLBC provides lawyers and the public in BC with access to legal information, as well as training and support in finding and using legal information. Through its expanding digital collections, website content and training, and 30 physical locations, the library provides practice support for lawyers across the province; and for the public. The CLBC funding for 2018 will be set at \$195 per lawyer, an increase of \$10 over 2017. This will result in approximately \$2.36 million in funding versus \$2.18 million in 2017. These additional resources will be used to increase library opening hours in Kamloops, Nanaimo and New Westminster from part time to full time as well as to maintain and upgrade programs such as Clicklaw, Clicklaw Wikibooks and the Online Community Platform.

The Advocate – The Advocate subscription fee remains the same, at \$27.50 per member. The Advocate publication is distributed bi-monthly to all BC lawyers.

Lawyer's Assistance Program (LAP) –LAP provides confidential outreach, education, support and referrals to lawyers and other members of British Columbia's legal community. LAP has requested funding of \$792,440 which is consistent with 2017 funding. This is estimated at \$65.60 per lawyer.

Pro bono and access to justice funding – The Finance and Audit Committee recommended the contribution to pro bono and access to legal services funding which is sent to the Law Foundation for distribution continue to be set at \$340,000 for the 2018 year. This is estimated at \$28.15 per lawyer.

REAL initiative – The Rural Education and Access to Lawyers (REAL) initiative is funded by the Law Society and the Law Foundation, with in-kind support from the Canadian Bar Association, BC Branch. The REAL initiative is a set of programs is intended to address current and future projected shortages of legal services in small

communities and rural areas of the province, and improve access to justice. REAL has requested funding at the same level as 2017- \$50,000. This funding will be offset by a surplus that occurred in 2016. The net amount of the 2018 funding is \$25,491, resulting in an estimated per lawyer fee of \$2.11.

Trust Assurance Fee and Program

The goal of the Trust Assurance program is to ensure that law firms comply with the rules regarding proper handling of clients' trust funds and trust accounting records. This is achieved by conducting trust accounting compliance audits at law firms, reviewing annual trust reports, and providing member advice and resources. The compliance audit program ensures that all firms are audited at least once within a six year cycle.

The Trust Administration Fee (TAF) is currently set at \$15 per transaction, and will remain the same for 2018. Assuming current TAF transactions levels, 2018 TAF revenue is budgeted at \$4.0 million, a 1% decrease over the 2017 projected level of \$4.1 million. The Trust Assurance operating expense budget is \$2.9 million, an increase of \$386,000 from the 2017 budget. Additional resources include the reinstatement of one previous program coordinator position and two additional positions, a supervisor to design and implement data analytics and provide improvements to the audit program, and an auditor to ensure completion of the audits required in second cycle of the trust assurance program.

The TAF reserve at December 31, 2016 was \$4.7 million. The Benchers recommended TAF reserve is up to 12 months of operating expenses, with any excess transferred to Part B insurance funding. During 2017, \$1.7 million will be transferred to Part B insurance funding. The level of TAF reserve will continue to be monitored by the Finance and Audit Committee.

Special Compensation Fund

The Special Compensation Fund was maintained pursuant to Section 31 of the Legal Profession Act, was financed by members' annual assessments, and claims were recorded net of recoveries when they had been approved for payment. Since 2004, the Lawyers Insurance Fund has been providing coverage for dishonest appropriation of funds by lawyers.

During 2012, the Legal Profession Amendment Act, 2012 repealed section 31 of the Legal Profession Act. In addition, Section 23 of the Legal Profession Act was amended to remove the requirement that practicing lawyers pay the Special Compensation Fund assessment, which meant that, effective 2013 and onwards, there is no fee assessed for the Special Compensation Fund.

Section 50 of the Legal Profession Amendment Act, 2012 provides for the transfer of unused reserves that remain within the Special Compensation Fund to the Lawyers

Insurance Fund for the purposes of the insurance program. Work is continuing on the collection of potential recoveries. The remaining Special Compensation Fund unused reserves will be transferred during 2017.

Lawyers Insurance Fund

Overview

The goal of the Lawyers Insurance Fund (LIF) is to maintain a professional liability insurance program for BC lawyers that provides reasonable limits of coverage for the protection of both lawyers and their clients and exceptional service, at a reasonable cost to lawyers. This is within an overarching objective of maintaining a financially stable program over the long term, in the interest of the public and the profession.

Overall, there are a number of factors that influence the financial stability of our insurance program.

Frequency and Severity of Claims

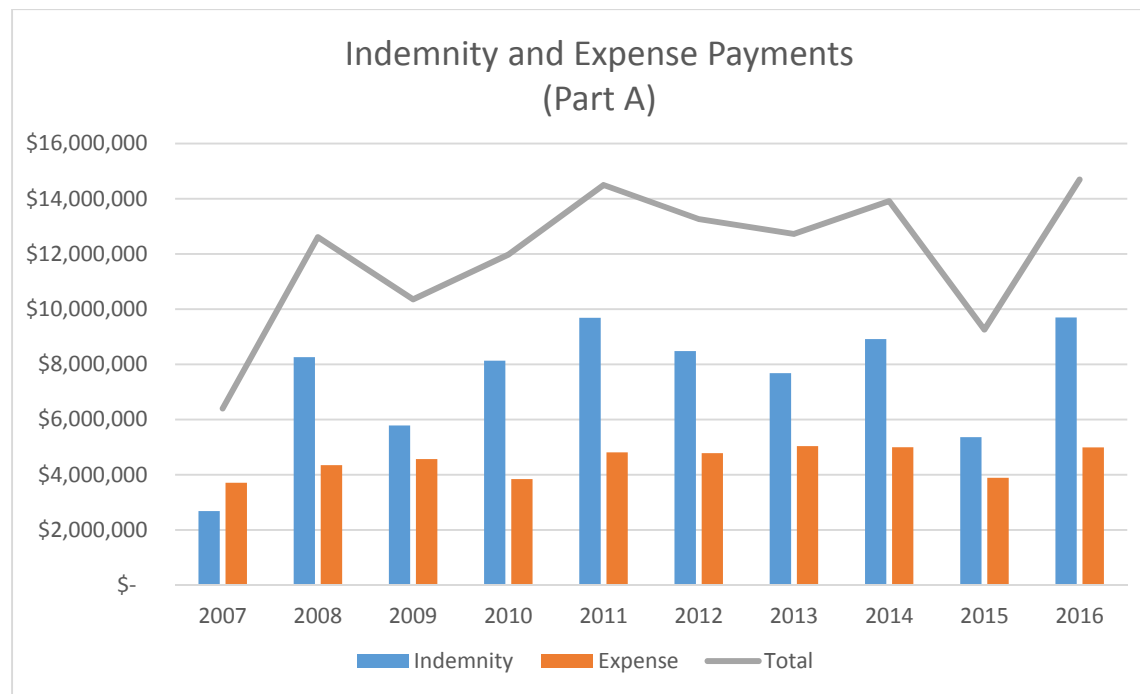
The first factor is the total incidence of claims and potential claims, or “reports” under Part A. The number of reports appears to be increasing from recent levels. In the 5 year period from 2004 to and including 2008, the average number of reports annually was 945. The 4 years that followed, 2009 to 2012, reflected the impact of the recession on claims and generated an annual average of 1,032 reports. In 2013, the number of reports fell to 978, and in 2014, increased to 1,014. In 2015, the number of reports again increased to 1,124 and in 2016, it dropped slightly to 1,092. For 2017, projecting to the end of the year, we expect the number of reports and frequency to increase and return to 2015 levels.

This increase is reflected in the report frequencies (number of reports divided by the number of insured lawyers) for the year-to-date (May 30) compared with the past 7 years:

2010	2011	2012	2013	2014	2015	2016	2017
13.3%	14.0%	12.5%	12.0%	12.3%	13.4%	12.8%	13.5% (~14% projected)

The second factor is the amount paid to defend and resolve claims. As depicted in the graph below, the severity (the dollar value) of claim payments on a calendar year basis is gradually increasing overall – with the exception of a dip in payments as seen in the 2015 results. In the 5 year period from 2004 to 2008, the average annual payments were \$10M. The 6 years that followed, 2009 to 2014, generated average annual payments of \$12.8M. Largely due to the timing of payments, 2015 was unusually low at \$9.3M. Total payments increased in 2016 to \$14.7M. Payments to date in 2017 are

lower than at this point in 2016, but it is too early to predict total payments with any reliability.



With respect to trust protection coverage under Part B of the policy, these same factors apply but because of the small number of claims and potential claims, the year-over-year experience is more volatile. For example, 2016 closed out the year with 29 reports. This is the second highest in the history of the program and exceeds the annual average of 18 reports. We've received 8 reports so far in 2017, which is consistent with the average. As to severity, total annual payments are trending higher than the annual average of \$85,384. In 2015 and 2016, total payments were \$125,000, and \$94,000, respectively, and we expect to pay significantly higher amounts either this year or next.

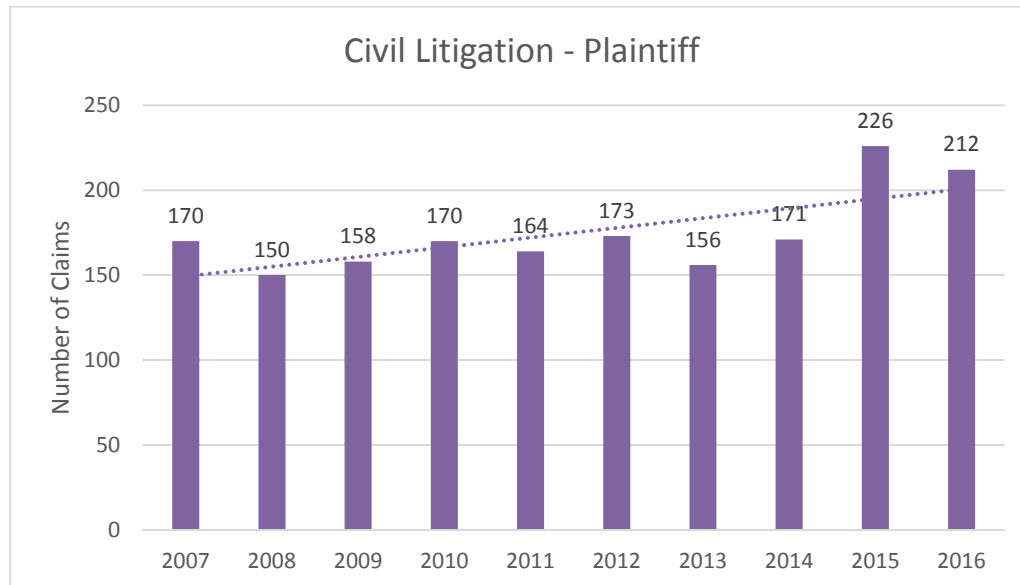
Future Practice Risks

The third factor is the risk of increased future claims.

The expanded coverage under Part C for trust shortages caused by social engineering scams that was in effect as of January 1, 2017 is likely to give rise to increased claims, and the experience at this early stage is in line with projections. We predicted an average of 2 claims per year and we received a \$1.8M claim in January, but no claims since.

In the real estate area, REDMA claims now account for \$4.7 of payments and a projected exposure of \$6.2 million including amounts paid. Fortunately, the risk of reports and payments has abated in recent years. The BC government's move to levy a

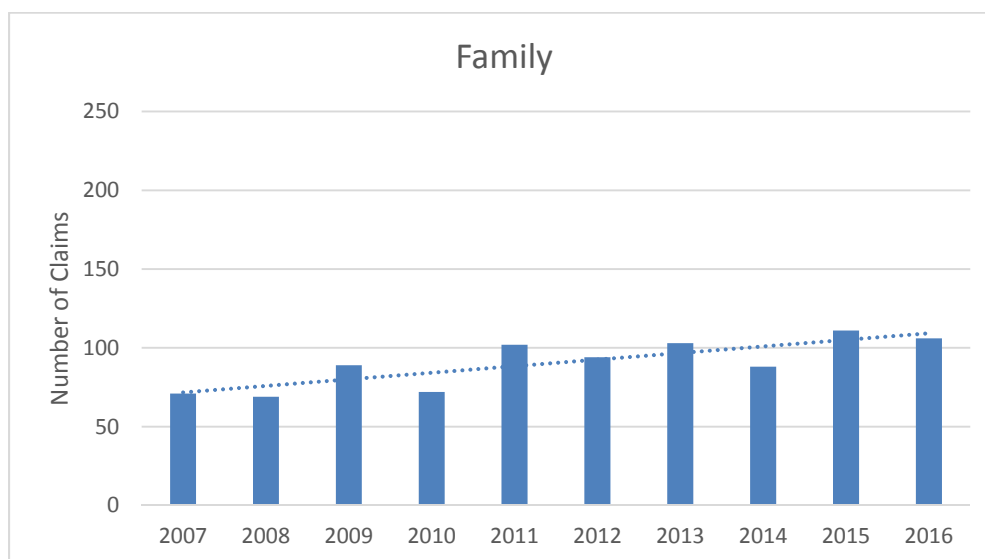
15% tax on foreign purchases of Vancouver real estate has, to date, given rise to 5 claims against lawyers, with a total incurred (reserves and payments) of \$795,000. Civil litigation on the plaintiff side continues to be a significant and growing cause of claims and potential claims – almost 20% of reports in all areas of practice, as demonstrated by the graph below.



The relatively new *Limitation Act*, *Family Law Act*, and *Wills, Estates and Succession Act* and probate rules were expected to usher in additional exposures to the Fund.

The shortened limitation periods in the *Limitation Act* that took effect in June, 2015 caught some lawyers unawares, and we have thus far received 8 reports of claims.

The *Family Law Act* resulted in two large potential claims that fortunately were closed with no payment. Further significant claims are unlikely as family practitioners have become familiar with the new regime, although the graph below indicates frequency generally trending up.



WESA came into effect in March, 2014 and will likely give rise to claims against lawyers for failing to adequately satisfy themselves and document that the will reflects the testator's true intentions, free from undue influence. We foresee the wills and estates practice area generating increasing numbers of future claims as the population ages and passes on significant wealth to beneficiaries.

Apart from the risks noted above, we are not aware of significant new insured areas of exposure for lawyers.

Investment Returns

The fourth factor is the return on investments available to fund the insurance program. The 2016 return on LIF long-term investments - at 7.1% - was above the benchmark return of 6.0%. The LIF net assets as at December 31, 2016 were \$70.4 million, including \$17.5 million set aside for trust protection claims under Part B. The unrestricted net asset position of the fund at year-end was therefore \$52.9 million, \$5.5 million lower than the previous year at \$58.4 million.

Minimum Capital (Net Assets) Levels

In addition to the investment return, there is a need to maintain a certain amount of the fund for contingencies and adverse developments. Applying the Minimum Capital Test (MCT) – an industry-wide solvency benchmark for insurers – the Fund's actuary analyzed LIF's future risks relative to its net assets and advised on an appropriate level of capital funding. This year, the actuary included the \$17.5 million, which is internally restricted for Part B, as part of the net assets available to support the financial risks of the Fund. His view was that as of year-end 2016, LIF's MCT ratio – using the second year of a three year phase-in to new, stricter MCT requirements – was 224.1%, and the program was adequately funded based on an internal target capital ratio of 205%, at a

minimum. The actuary noted that if LIF's MCT ratio is calculated without the benefit of the phase-in, the MCT ratio would be 216%. This would result in net assets of \$4.4 million above the level required to meet the non-phase-in indicated target ratio of 203% using the new formula.

Revenue

Total Lawyers Insurance Fund assessment revenues are budgeted at \$15.3 million, which is based on 7,764 full-time and 1,217 part-time insured lawyers. Investment income is budgeted at \$8.3 million, based on an estimated investment return of 5.8% (AppendixD).

Expenses

Operating expenses, excluding the provision for claim payments, are \$8.2 million, an increase of \$837,000 (11%) over the 2017 budget (Appendix D). The increase is due to increased fees for investment management, consulting and actuarial services, and legal fees, along with market-based salary adjustments.

Other Assets

A factor partially off-setting the reduced unrestricted net asset position (by \$5.5 million) of the fund at year-end 2016 is the funds anticipated from the wind-up of the Special Compensation Fund of \$1.364 million and the transfer of \$1.7 million of the Trust Assurance net assets from the General Fund to the Lawyers Insurance Fund.

2018 Insurance Fees

The annual insurance fee has been maintained at \$1,750 for the last seven years. Taking all factors into account, the insurance fee is set at \$1,800 (full-time) and \$900 (part-time) for 2018.

APPENDIX A

THE LAW SOCIETY OF BRITISH COLUMBIA
OPERATING BUDGET (excluding capital/depreciation)
For the Year ended December 31, 2018
GENERAL FUND SUMMARY

	2018 Budget	2017 Budget	2016 Actual	2018B vs 2017B Variance	%	2018B vs 2016A Variance	%
GENERAL FUND REVENUES							
Membership fees	19,618,201	18,984,517	17,849,490				
PLTC and enrolment fees	1,438,000	1,380,000	1,313,734				
Electronic filing revenue	856,000	700,000	975,923				
Interest income	335,000	350,000	434,793				
Credentials and membership services	581,750	561,500	565,087				
Fines, penalties & recoveries	402,210	426,810	552,959				
Other revenue	187,970	187,470	263,558				
Building revenue and recoveries	1,263,745	1,167,652	1,162,915				
TOTAL GENERAL FUND REVENUES	24,682,876	23,757,949	23,118,459	924,927	3.9%	1,564,417	6.8%
GENERAL FUND EXPENSES							
Benchers Governance	901,817	731,204	782,733				
Corporate Services	3,212,781	3,222,908	2,740,626				
Education & Practice	4,302,696	3,959,751	3,620,316				
Executive Services	2,300,612	2,168,375	2,122,018				
Policy and Legal Services	2,458,415	2,536,334	2,250,783				
Regulation	9,609,283	9,255,969	8,111,807				
Building costs	1,897,272	1,883,408	1,848,682				
TOTAL GENERAL FUND EXPENSES	24,682,876	23,757,949	21,476,966	924,927	3.9%	3,205,910	14.9%
GENERAL FUND NET CONTRIBUTION	-	-	1,641,493			(1,641,493)	
Trust Assurance Program							
Trust Administration Fee Revenue	4,052,310	3,500,250	4,548,052				
Trust Administration Department	2,978,362	2,591,935	2,431,956				
Net Trust Assurance Program	1,073,948	908,315	2,116,096	165,633		(1,042,148)	
TOTAL NET GENERAL FUND & TAP CONTRIBUTION	1,073,948	908,315	3,757,589	165,633		(2,683,641)	

APPENDIX B

THE LAW SOCIETY OF BRITISH COLUMBIA
Operating Budget (excluding capital/depreciation)
For the Year ended December 31, 2018
GENERAL FUND SUMMARY OF REVENUE AND EXPENSES

	2018 Budget	2017 Budget	2016 Actual	2018 v 2017 Budget Var	2018 v 2016 Actual Var
GENERAL FUND REVENUES					
<i>Fee and Assessment Revenues</i>					
Membership Fees	\$19,618,201	\$18,984,517	\$17,849,490	\$633,684	\$1,768,711
PLTC Fees	1,438,000	1,380,000	1,313,734	58,000	124,266
Other Credentials Fees	384,000	388,875	377,280	(4,875)	6,720
GLA, LLP, FLC and Law Corporation Fees	120,750	95,625	114,650	25,125	6,100
Authentications and Certificates of Standing	77,000	77,000	73,157	0	3,843
Electronic Filing Revenue	856,000	700,000	975,923	156,000	(119,923)
Interest Income	335,000	350,000	434,793	(15,000)	(99,793)
Other Income	7,000	6,500	42,588	500	(35,588)
Law Foundation Grant Revenue	180,970	180,970	220,970	0	(40,000)
<i>Fines, Penalties and Recoveries</i>					
Trust Reporting Penalties	35,000	36,000	51,673	(1,000)	(16,673)
Professional Development Reporting Penalties	90,000	80,000	94,500	10,000	(4,500)
Discipline and Citation Fines and Recoveries	135,000	173,000	138,389	(38,000)	(3,389)
Program Cost Recoveries	93,500	80,000	172,837	13,500	(79,337)
Other Cost Recoveries	48,710	57,810	95,559	(9,100)	(46,849)
<i>Building Revenue and Recoveries</i>					
LF and Trust Administration Program	503,101	415,079	415,079	88,022	88,022
Outside Tenants including Recoveries	691,544	686,113	675,664	5,431	15,880
Other	69,100	66,460	72,172	2,640	(3,072)
TOTAL GENERAL FUND REVENUES	\$24,682,876	\$23,757,949	\$23,118,459	\$924,927	\$1,564,417
PROGRAM AREA EXPENSES					
<i>Benchers and Governance Committees</i>					
Benchers Meetings	288,510	211,560	289,605	76,950	(1,095)
Office of the President	216,000	200,000	191,558	16,000	24,442
Benchers Retreat	130,000	88,000	120,646	42,000	9,354
Life Benchers Dinner	30,650	23,050	35,468	7,600	(4,818)
Certificate Luncheon	8,300	5,235	8,355	3,065	(55)
LS Award/Bench and Bar Dinner	0	1,880	9,209	(1,880)	(9,209)
Federation of Law Societies Meetings	149,245	122,618	129,568	26,627	19,677
General Meetings	68,600	67,850	53,708	750	14,892
QC Reception	7,950	8,270	7,983	(320)	(33)
Welcome/Farewell Dinner	18,500	18,250	18,699	250	(199)
Volunteer Gifts	13,000	9,300	11,557	3,700	1,443
Gold Medal Award	2,100	7,075	1,950	(4,975)	150
Executive Committee	17,920	17,920	20,204	0	(2,284)
Finance and Audit Committee	5,700	10,200	5,671	(4,500)	29
Equity and Diversity Advisory Committee	5,000	5,000	5,089	0	(89)
Access to Legal Services Advisory Committee	5,000	5,000	5,179	0	(179)
Rule of Law & Lawyer Independence Advisory Committee	21,500	5,000	6,305	16,500	15,195
Acts and Rules Subcommittee	3,600	3,600	3,753	0	(153)
Governance Review Committee	5,000	5,000	3,051	0	1,949
REAL - Law Foundation	0	0	(4,036)	0	4,036
Law Firm Regulation Task Force	0	2,500	15,649	(2,500)	(15,649)
Qualifications Working Group	0	0	16	0	(16)
Legal Aid Task Force	20,000	2,500	31,461	17,500	(11,461)
Truth and Reconciliation Steering Committee	20,000	10,000	3,002	10,000	16,998
Budget Contingency	75,000	75,000	0	0	75,000
Total Benchers and Governance Committees	1,111,575	904,808	973,649	206,767	137,926
Interfund Cost Recovery	(209,758)	(173,604)	(190,916)	(36,154)	(18,842)
Total Bencher Governance	\$901,817	\$731,204	\$782,733	\$170,613	\$119,084
<i>Corporate Services</i>					
General Office and Administration	1,598,087	1,573,959	1,489,016	24,128	109,071
Records Management	305,023	301,761	280,237	3,262	24,787
Finance Department	1,140,236	1,085,621	1,002,955	54,616	137,281
Human Resources	843,013	976,674	522,479	(133,661)	320,534
Staff Vacancies	(80,719)	(102,586)	-	21,867	(80,719)
Interfund Cost Recovery	(592,860)	(612,521)	(554,061)	19,661	(38,799)
Total Corporate Services	\$3,212,781	\$3,222,908	\$2,740,626	(\$10,127)	\$472,155

APPENDIX B-2

Education and Practice

Credentials	571,635	549,956	401,974	21,679	169,662
Credentials - External Counsel Files	250,000	258,400	105,138	(8,400)	144,862
Member Services	855,995	783,358	780,135	72,637	75,860
Professional Legal Training Course and Education	2,170,361	1,934,169	1,737,835	236,193	432,526
Practice Standards	620,484	630,767	647,772	(10,284)	(27,288)
Practice Advice Department	674,142	671,699	623,935	2,443	50,207
Assistance Program	236,000	236,000	238,750	0	(2,750)
Ombudsperson	81,209	71,000	78,735	10,209	2,474
Staff Vacancies	(118,668)	(144,111)	0	25,443	(118,668)
Interfund Cost Recovery	(129,732)	(123,788)	(128,789)	(5,944)	(943)
Interfund Program Recovery	(908,730)	(907,699)	(865,169)	(1,032)	(43,562)
Education and Practice	\$4,302,696	\$3,959,751	\$3,620,316	\$342,945	\$682,380

Executive Services

Communications	725,689	749,398	789,175	(23,709)	(63,486)
Executive Support Department	391,222	388,779	345,806	2,443	45,416
MIS Management	1,668,823	1,509,606	1,384,297	159,217	284,525
Staff Vacancies	(65,727)	(85,936)	0	20,209	(65,727)
Interfund Cost Recovery	(419,395)	(393,472)	(397,260)	(25,923)	(22,135)
Executive Services	\$2,300,612	\$2,168,375	\$2,122,018	\$132,237	\$178,593

Policy and Legal Services

Ethics	8,000	8,000	9,157	0	(1,157)
Policy and Tribunal	1,904,561	1,858,512	1,705,125	46,049	199,436
External Litigation and Interventions	505,000	639,500	477,440	(134,500)	27,560
Unauthorized Practice	370,701	367,442	300,506	3,259	70,195
Staff Vacancies	(63,589)	(76,039)	0	12,450	(63,589)
Interfund Cost Recovery	(266,258)	(261,081)	(241,445)	(5,177)	(24,813)
Policy and Legal Services	\$2,458,415	\$2,536,334	\$2,250,783	(\$77,919)	\$207,632

Regulation

Professional Conduct - Intake and Investigations	5,216,795	5,112,894	4,005,718	103,901	1,211,078
Professional Conduct - External Files	152,300	93,300	471,448	59,000	(319,148)
Discipline Department	1,475,720	1,445,223	1,097,345	30,497	378,376
Discipline External Files	415,800	318,000	421,772	97,800	(5,972)
Forensic Accounting	1,007,713	1,047,569	648,993	(39,856)	358,719
Custodianship Department	1,612,252	1,530,311	1,466,532	81,941	145,720
Staff Vacancies	(271,297)	(291,328)	0	20,031	(271,297)
Regulation	\$9,609,283	\$9,255,969	\$8,111,807	\$353,314	\$1,497,476

Building Costs

Property Taxes	555,000	570,030	501,877	(15,030)	53,123
Financing Costs	34,400	52,500	54,902	(18,100)	(20,502)
Building Operating Costs	1,307,872	1,260,879	1,291,903	46,993	15,969
Building Costs	\$1,897,272	\$1,883,408	\$1,848,682	\$13,864	\$48,590

TOTAL PROGRAM EXPENSES

\$24,682,877	\$23,757,949	\$21,476,966	\$924,927	\$3,205,910
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GENERAL FUND CONTRIBUTION before TAP

\$ -	\$ -	\$ 1,641,493	\$ -	\$ (1,641,493)
-------------	-------------	---------------------	-------------	-------------------------

Trust Administration Program

Trust Administration Fee Revenue	4,052,310	3,500,250	4,548,052	552,060	(495,742)
Total Trust Assurance Program Expenses	2,978,362	2,591,935	2,431,956	386,427	546,406
Net Trust Assurance Program	\$1,073,948	\$908,315	\$2,116,096	\$165,633	(\$1,042,148)

TOTAL GENERAL FUND CONTRIBUTION

\$1,073,948	\$908,315	\$3,757,589	\$165,633	(\$2,683,641)
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APPENDIX C

Capital Plans:

	<u>2018</u>	<u>2017</u>
Computer hardware – MFPs*/Network Server/Virtual Desktop	\$ 400,000	\$ 192,000
Computer software	\$ 89,000	\$ 72,000
Case Management Litigation Software	\$ 160,000	\$ 0
Computer upgrades – LSIS/LEX upgrades	\$ 185,000	\$ 115,000
Equipment, furniture and fixtures replacement	\$ 135,000	\$ 195,000
Building projects – Building Envelope/Balconies/Lobby	<u>\$ 755,000</u>	<u>\$ 868,000</u>
Total	\$1,723,000	\$1,442,000

*MFP's are multi-function printers incorporating email, fax, photocopier, printer and scanner.

APPENDIX D

THE LAW SOCIETY OF BRITISH COLUMBIA
Lawyers Insurance Fund
For the year ended December 31, 2018
CONSOLIDATED STATEMENT OF REVENUE AND EXPENSE

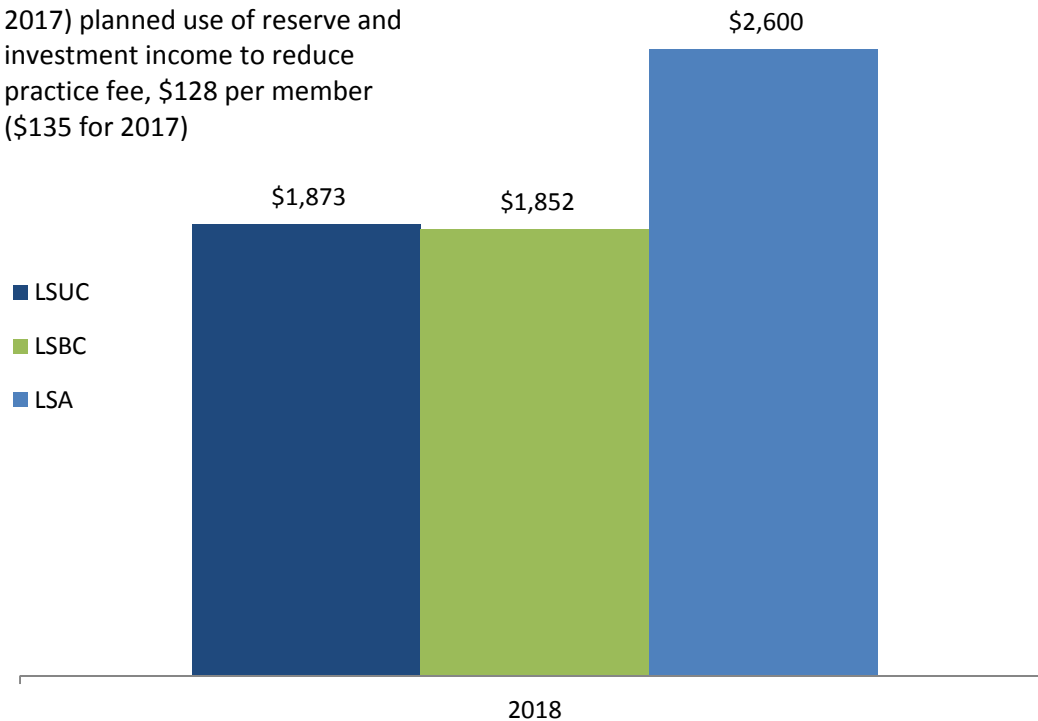
	2018 Budget	2017 Budget	Variance	%
REVENUE				
Annual Assessment	15,303,200	14,613,780		
Investment Income	8,334,529	6,520,648		
Other Income	60,000	60,000		
TOTAL REVENUE	23,697,729	21,194,428	2,503,301	11.8%
INSURANCE EXPENSE				
Professional Services	1,632,000	932,425		
Allocated office rent	323,834	291,272		
Contribution to program and administrative costs of General Fund	1,391,075	1,340,913		
Insurance	470,172	460,675		
Office	209,740	289,266		
Premium taxes	9,007	8,520		
Provision for settlement of claims	17,079,000	15,476,000		
Salaries, wages and benefits	3,223,296	3,098,898		
	24,338,124	21,897,969	2,440,155	11.14%
LOSS PREVENTION EXPENSE				
Contribution to co-sponsored program costs of General Fund	907,605	907,699		
TOTAL EXPENSE	25,245,729	22,805,668	2,440,061	10.70%
Net Contribution	(1,548,000)	(1,611,240)	63,240	

APPENDIX E

Other Law Societies' Practice Fees

The Law Society of B.C.'s 2018 practice fee, including the Federation of Law Societies contribution, the CanLII contribution, and the Pro Bono contribution; and excluding CLBC, the Lawyers Assistance Program (LAP) and the Advocate is \$1,852. For comparative purposes, The Law Society of Upper Canada's ("LSUC") 2018 projected practice fee is \$1,873 and the Law Society of Alberta's ("LSA") 2016 practice fee, increased by 2%, has been included at \$2,600, as 2017 has not been set.

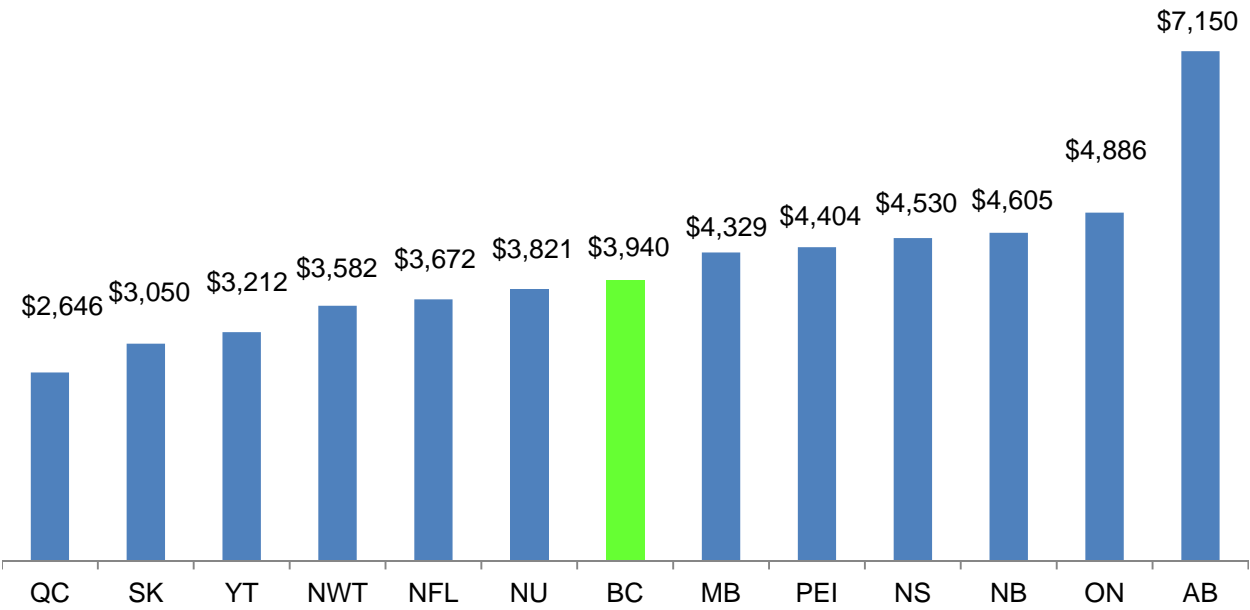
- 2018 LSUC practice fee increased to reflect \$5.25 M (\$1.35 M for 2017) planned use of reserve and investment income to reduce practice fee, \$128 per member (\$135 for 2017)



APPENDIX F

Mandatory Fee Comparison - 2018 (Full Time Practicing Insured Lawyers)

- 2018 LSBC practice fee compared to 2018 projections or, in some cases, 2017 practice fee of other Law Societies, increased by 2%





Second Interim Report of the Law Firm Regulation Task Force

Herman Van Ommen, QC (Chair)
Martin Finch, QC
Sharon Matthews, QC
Peter Lloyd, FCPA, FCA (Life Bencher)
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Lori Mathison
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Henry Wood, QC

June 29, 2017

Prepared for: Benchers

Prepared by: Alison Luke and Michael Lucas
Policy and Legal Services Department

Purpose: Decision

Table of Contents

I. Executive Summary.....	4
II. Introduction.....	5
III. Background	5
Task Force meetings	6
Focus group consultation.....	6
Engagement with other jurisdictions.....	7
IV. Purpose	8
V. Registration	8
VI. Designated Representatives	10
Nomination by the firm	10
Information sharing in relation to complaints.....	11
Liability issues	13
VII. Self-Assessment.....	14
Rationale for the self-assessment process	14
The structure and content of the self-assessment tool.....	16
Procedural aspects of the self-assessment tool	25
Role of self-assessment in compliance and enforcement	27
Future work on the self-assessment tool	27
VIII. Model Policies and Resources.....	28
Model policies.....	28
Other resources	31
IX. Implementation of Law Firm Regulation.....	32
X. Rule Development	35
<i>Legal Profession Act</i> amendments.....	35
Drafting rules	36
XI. Resource Implications	38
XII. Summary of Recommendations.....	39
XIII. Next Steps.....	41
Registration.....	41
Self-assessment	42
Resource development.....	42
Rule development.....	43
Communication and education	43

XIV. Conclusion.....44

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Executive Summary

1. The introduction of law firm regulation represents a significant shift in the regulatory environment within BC, and in turn, the role of the Law Society in overseeing the work of the legal profession. Rather than focusing exclusively on lawyers, this new approach to regulation addresses the conduct of firms, recognizing that organizational cultures affect the manner in which legal services are provided. The proposed regulatory model also establishes a strong role for the Law Society in encouraging and supporting firms in achieving high standards of professional, ethical practice.
2. This second Interim Report, and its associated recommendations, provides a summary of the recent work of the Law Firm Regulation Task Force and builds on the recommendations adopted by the Benchers in the October 2016 Interim Report.
3. Features of the regulatory scheme that are addressed in this report include:
 - firm registration;
 - the role of the designated representatives;
 - the self-assessment process, including both substantive content and procedural aspects of the tool;
 - the development of model policies and other resources;
 - rule development ; and
 - a schedule for the implementation of law firm regulation
4. The report concludes by outlining a series of proposed next steps which will put the Law Society in strong position to introduce law firm regulation to the profession in 2018.

Introduction

5. Over the last three years, the Law Firm Regulation Task Force has engaged in the complex task of designing a proactive, outcomes-based regulatory model that will support and govern the conduct of firms.
6. In its first Interim Report (the “2016 Interim Report”), the Task Force sketched out the basic parameters for the regulatory framework, an exercise that led to the identification of eight key areas – the Professional Infrastructure Elements – in which firms are responsible for implementing policies and processes that support and encourage high standards of professional, ethical firm conduct. A series of high-level recommendations were included in this Report, and were adopted by the Benchers in October 2016.
7. This second Interim Report (the “Report”) delves deeper into the specific features of the regulatory design, fleshing out many of the Task Force’s initial recommendations in greater detail and developing several new proposals.
8. This work has included defining a process for firm registration and the role of the designated representative; developing the content of, and procedures in relation to, the self-assessment process; examining various approaches to resource and model policy development; proposing a schedule for implementation; identifying areas where rule drafting is necessary; and estimating the budgetary implications of the program. Analysis of each of these issues is described throughout the body of the Report, and the Task Force’s suggested approaches are distilled into 17 formal recommendations.
9. If adopted by the Benchers, these recommendations will provide the necessary direction to advance the project toward the final phases of regulatory development, and in so doing, demonstrates to both to the profession and the public that the Law Society is committed to implementing an innovative, proactive model of law firm regulation in BC.

Background

10. In October 2016, the Benchers were presented with the 2016 Interim Report, which proposed a proactive, outcomes-based model to regulate the conduct of law firms in BC. The 2016 Report contained numerous rationale for introducing law firm regulation and included ten key recommendations that were adopted by the Benchers (**Appendix A**).
11. The proposed proactive model is premised on the theory that the public is best served by a regulatory scheme that prevents problems in the first place, rather than one that focuses on taking punitive action once problems have occurred. As such, BC’s law firm regulation will involve the Law Society setting target standards for ethical, professional firm practice

— the Professional Infrastructure Elements — that will establish *what* firms are expected to do. However, there will not be prescriptive rules that tell firms *how* to specifically satisfy these Elements and achieve compliance. This “light-touch” approach to regulation aims to encourage both accountability and innovation in firms as they work toward establishing a robust professional infrastructure.

12. A self-assessment process will be the key means of evaluating the extent to which firms have met these new standards. The self-assessment will also provide a significant education, learning and support function by providing firms with resources that will assist them in satisfying the Professional Infrastructure Elements.
13. Building on the recommendations contained in the 2016 Interim Report, the Task Force has made considerable progress in advancing its vision of law firm regulation over the last eight months, and is now positioned to make an additional 17 recommendations. These recommendations flow from intensive, issue-by-issue analysis during numerous Task Force meetings, consultations with the profession (in the form of focus group sessions) and regular engagement with other provinces advancing law firm regulation initiatives, as described below.

Task Force meetings

14. Over the course of a series of four meetings, the Task Force has undertaken a detailed analysis of a wide range of issues in an effort to create a regulatory scheme that both protects the public interest and provides maximum benefits to the Law Society and firms.
15. This work has included refining the Professional Infrastructure Elements and their associated objectives; developing a draft self-assessment tool; establishing a process for firm registration; clarifying the role of the designated representative; exploring options for the development of model policies and other resources to support firms in meeting the new standards; and reviewing those aspects of the scheme which may require additional rule development.
16. Additionally, the Task Force has given consideration to a timeline and sequencing for the implementation of the regulatory scheme. Discussion of these issues, and the Task Force’s associated recommendations, comprise the balance of this Report.

Focus group consultation

17. In February and March of 2017, the Law Society established five focus groups, namely: solo and space sharing practitioners; small firms (2 to 10 lawyers); medium firms (11 to 25 lawyers); large firms (26+ lawyers) and a group comprising members of the BC Legal

Management Association. Participants, which were selected from across the province, met with members of the Task Force and Law Society staff for the focus group sessions in Vancouver.

18. The primary goal of the focus group sessions was to obtain detailed feedback from the profession about the Task Force's draft self-assessment tool and to explore its potential role in law firm regulation. Participants were provided with a range of materials to contextualize the self-assessment process within the broader regulatory framework, and were guided through a series of questions in relation to both the substantive and procedural aspects of the self-assessment.
19. The focus groups provided thoughtful and constructive feedback, much of which was integrated into a revised draft of the self-assessment (see **Appendix B**). In general, focus group participants were positive about the clarity, comprehensiveness and utility of the self-assessment tool and supported its use as a key feature of law firm regulation in BC. Aspects of the feedback provided by the focus groups are referenced at various junctures throughout the Report.

Engagement with other jurisdictions

20. The Law Society of BC is not alone in exploring a proactive approach to law firm regulation, with similar models of entity regulation currently being developed simultaneously across Canada.
21. In March 2017, the Law Society participated in a meeting convened by the Federation of Law Societies that brought participants together to discuss the emerging regulatory schemes in BC, Nova Scotia, Ontario, Alberta, Saskatchewan and Manitoba. These exchanges revealed considerable consistency across the provinces with respect to the areas of firm practice that would be targeted for regulation, the adoption of a self-assessment process as a central part of the regulatory scheme and commitment to developing resources to assist firms in achieving compliance.
22. These regional discussions also explored the potential to develop cross-jurisdictional synergies, for example, through collaborative resource development, establishing consistent compliance responses and applying a common evaluative framework for measuring the success of law firm regulation.
23. The Law Society has also engaged in ongoing dialogue with the Nova Scotia Barristers' Society, which is at the leading edge of entity regulation in Canada.¹ In particular, Nova

¹ Nova Scotia has recently completed a 50-firm pilot project on their self-assessment tool. Following the presentation of the final pilot project report to council in May, the law society has received endorsement to move ahead with an implementation plan, aiming for a 'launch' in January 2018.

Scotia's self-assessment tool and workbook, and the associated feedback provided in the course of the self-assessment pilot project, have served as important resources for BC in developing its own self-assessment. Both regulators have observed the mutual benefits of exchanging ideas, experiences and encouragement along the road to implementation.

Purpose

24. The purpose of this Report is to provide the Benchers with an update of the Task Force's work over the last eight months and to present 17 key recommendations related to the design of the law firm regulation framework.
25. Many of these recommendations build on those made by the Task Force in the 2016 Interim Report and formulate more detailed proposals in relation to particular aspects of the regulatory design. Other recommendations explore new issues and features.
26. If adopted by the Benchers, the recommendations contained in this Report will serve as the blueprint for the next stage of the Task Force's work, in which many aspects of the design phase of law firm regulation will approach completion. Once the regulatory framework is solidly established, the Law Society will be in a position to introduce the first components of the scheme to the profession, ideally by mid-2018.²

Registration

27. As a preliminary matter, the Law Society must clearly establish who, precisely, is subject to law firm regulation.
28. The 2016 Interim Report addressed this issue in a general sense, recommending the scheme include traditional law firms of all sizes, as well as sole practitioners and lawyers in space-sharing arrangements, while initially excluding pro bono and non-profit legal organizations, government lawyers and in-house counsel.³
29. The 2016 Interim Report also reviewed the merits of two different approaches to creating a registry of regulated firms: a licensing model, involving a detailed authorization system in which a firm is essentially applying for permission to offer legal services, or a simple registration process that requires firms to submit basic contact information to the regulator.⁴ The Task Force ultimately recommended registration, citing that it could

² A final Task Force report will be presented to the Benchers in advance of formally introducing the first elements of law firm regulation to the profession.

³ See the 2016 Interim Report at pp. 9-12 at Appendix A.

⁴ See the 2016 Interim Report at pp. 18-19 at Appendix A.

provide useful information to the Law Society while consuming less organizational resources than a licensing program.

30. In its recent work, the Task Force considered the operational aspects of registration in greater detail, examining the type of information that could be collected from firms as part of the registration process. In consultation with Law Society staff, it was determined that each firm must provide the Law Society with the following: the name of the firm, the firm's business address or addresses, as appropriate, the names of all lawyers and articling students practicing at the firm, and the name and contact information for the designated representative.⁵
31. Consideration was also given to the appropriate method for obtaining and updating this information. It was observed that, with the exception of information related to the designated representative, the Law Society already collects much of this data from individual lawyers and currently maintains a basic electronic database of firms.
32. In an effort to simplify the registration process for firms, the Task Force recommends that at the commencement of the registration period, each firm in the existing database is sent a registration form that is pre-populated with the information the Law Society already has on file (e.g. name of firm, address, lawyers working in the firm). Firms are required to verify the accuracy of the information and update it, as necessary.
33. The registration form will also require the firm to provide the name and contact information of one or more designated representatives. This, and any other new or updated information in relation to the firm, will be added to the Law Society's electronic database when the registration form is submitted. All firms will also be provided with a registration identifier.⁶

Recommendation 1: The Law Society will provide each firm with a pre-populated registration form and will require firms to verify the accuracy of its contents and update or add information, including the name of the designated representative, as necessary.

34. In order to ensure the Law Society has an accurate firm registry at all times, the Task Force recommends that firms must immediately notify the Law Society if there are any changes to the information provided at the time of registration, including any changes that

⁵ The role of this individual is explored in greater detail in the next section of the Report.

⁶ Additional resources will be necessary to expand the functionality of the existing IT system to accommodate the registration process. The budgetary implications of increased IT demands are discussed in the final section of the Report.

pertain to the designated representative. Additionally, firms will be required to renew their registration on an annual basis.

Recommendation 2: Firms must immediately notify the Law Society of any changes to their registration information, including the name and contact information of the designated representatives. Firms will also be required to renew their registration on an annual basis.

35. As firms are not currently required to register with the Law Society under the *Legal Profession Act* or the Rules, new rules must be developed to this effect. A penalty will be imposed on a firm for a failure to register. Rule development is explored in more detail later in this Report.

Designated Representatives

Nomination by the firm

36. In an effort to facilitate and support strong communication between firms and the Law Society, the 2016 Interim Report recommended the inclusion of a designated contact role as part of the regulatory scheme.⁷ This individual would act as the point person for information sharing between the firm and the Law Society, including communications related to administrative matters and complaints.⁸ In the most recent phase of its work, the Task Force focused on defining the precise role of what will be referred to in BC as the “designated representative,” and has made a number of recommendations in this regard.
37. As noted above, as part of the registration process, firms will be required to identify at least one designated representative who will be readily available to receive and respond to communications from the Law Society on behalf of the firm. The Task Force suggests that firms are encouraged to nominate additional, alternate designated representatives to guard against gaps or oversights in communications between the firm and the Law

⁷ See the 2016 Interim Report at pp. 19-23 at Appendix A.

⁸ Nova Scotia, the Prairie provinces (Alberta, Saskatchewan, Manitoba) and Ontario have all recommended the inclusion of such a position as part of the regulatory scheme. Notably, both Both Alberta and Nova Scotia’s Rules already included a requirement for firms to identify a “responsible lawyer” (Alberta Rule 119.3(4)) or “designated lawyer” (Nova Scotia, Regulation 7.2.1) prior to the introduction of law firm regulation. Because this role is already integrated and understood, Nova Scotia has proposed extending this person’s responsibilities to include the new requirements under law firm regulation.

Society. Both the primary and alternate designated representatives must be BC lawyers that are practicing at the firm.⁹

38. The Task Force recommends that the scope of the designated representatives' responsibilities should be restricted to receiving official communications from the Law Society, including but not limited to: general administrative matters, the self-assessment process, registration and complaints and investigations.

Recommendation 3: Firms must identify at least one designated representative, and may identify additional, alternate designated representatives, who will be readily available for receiving and responding to official communications from the Law Society, including but not limited to: general administrative matters, the self-assessment process, registration and conduct issues. The designated representative must be a lawyer at the firm and have practicing status in BC.

Information sharing in relation to complaints

39. The Task Force has spent significant time discussing the extent to which information sharing between the Law Society and the designated representative should occur in relation to complaints against, or investigations into one of the firm's lawyers. The question of whether the Law Society should have discretion in sharing, or conversely, not sharing this information with the lawyer's firm has been controversial.
40. Both Task Force and focus group discussions on this issue have been animated by a keen awareness of the need to balance the privacy rights of the individual subject to the complaint or investigation and the public interest in informing a firm about the potential misconduct of one of its lawyers¹⁰. Law Society staff have also reminded the Task Force that outside the context of law firm regulation, the Professional Conduct department already exercises a great deal of discretion as part of their existing complaints process against lawyers.¹¹

⁹ The Task Force considered whether including two designated representatives on the registration should be required or optional. The recommendation for the latter is based on the fact that a significant percentage of "firms" in BC are sole practitioners, and as such, there would not be another lawyer at the firm who could serve as the designated representative.

¹⁰ This public interest aspect is linked to the notion that if informed, a firm may be in the best position to support the lawyer in navigating personal or professional issues related to the complaint, as to mitigate or resolve the problem, or the issues underlying it.

¹¹ In 2016, the Law Society closed 1,142 complaints. Of these, 294 complaints were closed as unsubstantiated and the subject lawyer *would not have been notified*. The unsubstantiated complaints that were closed represent 25.7% of all

41. After carefully considering the varied perspectives and experiences of focus group participants and staff in the Professional Conduct department, the Task Force recommends that the Rules provide discretion to the Law Society, to be exercised consonant with the principles of proactive regulation, to share information about a lawyer with the firm's designated representative when there is concern about the lawyer's conduct within the firm. Such a discretion would permit the Law Society to withhold this information if its disclosure is not consonant with the principles of proactive regulation and/or there are other compelling reasons to withhold it. For example, there may be no merit in sharing a complaint against a lawyer with the lawyer's firm in instances where the complaint has been deemed to be unsubstantiated or outside the jurisdiction of the Law Society.
42. Another example illustrates the merits of this discretionary approach: a complaint is made against a lawyer, in the course of which the Law Society becomes aware of the lawyer's medical issues. These issues are relevant to the complaint, but highly personal in nature. In the absence of any discretionary power, the Law Society would inform the firm about the complaint and, in so doing, reveal this medical information in a manner that may be contrary to privacy and/or human rights legislation.

Recommendation 4: The Law Society is authorized to share information about a lawyer with the firm's designated representative when there is concern about the lawyer's conduct within the firm. The Law Society will exercise this discretion in a manner that is consonant with the principles of proactive regulation.

43. As detailed later in the Report, the Rules must be amended to permit this type of information sharing between the Law Society and the designated representative.¹²
44. All practicing lawyers have a duty to cooperate fully with any Law Society investigation under the existing Rules. An additional rule will be developed to put a similar obligation on the firm itself, such that firms are required to respond fully and substantively to the Law Society in respect of a complaint against the firm, or a complaint against one of its lawyer, of which the firm has been made aware by the Law Society.

Recommendation 5: In addition to any similar obligation on individual lawyers under the existing rules, firms are required to respond fully and substantively to the Law

closed complaints. In 2016, 219 complaints were closed without an investigation. This represents 19.2% of all closed complaints. The subject lawyer is notified of the complaint in these circumstances.

¹² Rule 3-3 prohibits this degree of information sharing.

Society with respect to any complaints or investigations against the firm or one of the firm's lawyers.

Liability issues

45. The Task Force has also explored the particulars of its general recommendation in the 2016 Interim Report that designated representatives are not personally liable for firm non-compliance.
46. Although firms may organize themselves internally such that a designated representative is tasked with completing the registration process or completing or submitting the self-assessment, the Task Force recommends that from a regulatory perspective, these are clearly established as *firm* responsibilities.
47. As such, firms, not the designated representative,¹³ will be subject to penalties for non-compliance with registration and self-assessment requirements.¹⁴ Only in the rare instance that the Law Society becomes aware that the designated representative has knowingly or recklessly provided false information as part of the registration or self-assessment process will the Law Society consider pursuing disciplinary action against this individual.

Recommendation 6: Fulfilling the duties of the designated representative is ultimately the responsibility of the firm and the designated representative is not personally responsible or liable for the firm's failure to fulfill those duties.

¹³ If the "firm" is a sole practitioner, that individual will be responsible for completing registration and the self-assessment process, but not in their capacity as the designated representative.

¹⁴ This aligns with the approach taken by law societies in Nova Scotia and the Prairie provinces, who have indicated it is unlikely that this individual will be subject to any personal liability in their capacity as the designated contact for the firm.

Self-Assessment

48. The 2016 Interim Report recommended the development of a self-assessment tool as a key element of BC's model of law firm regulation.¹⁵ Many other law societies developing similar regulatory models have also included self-assessment as a core design feature.¹⁶
49. Accordingly, the Task Force has spent considerable time exploring the role of the self-assessment process in the regulation of firms. This issue was also the focal point of the recent consultations with the profession.
50. This section of the Report reflects the detailed work of the Task Force on this issue, including the rationale for including a self-assessment process as a central aspect of the regulatory scheme, the structure and content of the self-assessment tool and the procedural aspects of the self-assessment process. The future work that is necessary to ready the self-assessment for implementation is also briefly discussed.

Rationale for the self-assessment process

51. The primary rationale for including a self-assessment process as part of law firm regulation is to encourage firms to turn their minds to each of the Professional Infrastructure Elements in a systematic and considered way, regularly evaluating the extent to which the firm's policies and processes achieve the objectives of these Elements. As such, the self-assessment is predominantly intended to act as an educational learning tool for firms.
52. Other jurisdictions with experience regulating law firms have demonstrated that the self-assessment process can play an important role in facilitating firms' critical evaluation of the extent to which they have made progress toward, or achieved, the standards set by the regulator.
53. Studies based on the experiences of New South Wales¹⁷ and Queensland, Australia, where self-assessment has been an integral part of law firm regulation, highlight some of the benefits associated with firms engaging in a self-evaluative process, including:

¹⁵ See the 2016 Interim Report at p. 23 at Appendix A.

¹⁶ Nova Scotia has developed a comprehensive self-assessment tool, which is currently being revised following a pilot project that tested its performance "in the field." Self-assessment is also being recommended for inclusion as part of entity regulation in Alberta, Saskatchewan, Manitoba and Ontario. The Canadian Bar Association has also endorsed self-assessment through the development of its Ethical Practices Self-Evaluation Tool.

¹⁷ The *Legal Profession Act*, 2004 was replaced by the *Legal Profession Uniform Law Application Law Act*, 2014 under which there appears to be no legislated requirement to complete a self-assessment process.

- on average, the complaint rate for each incorporated legal practice (“ILP”) after self-assessment was one third the complaint rate of the same practices before self-assessment, and one third the complaint rate of firms that were not incorporated and thus never required to self-assess¹⁸
- a vast majority of ILPs (71%) reported that they revised firm policies or procedures relating to the delivery of legal services and many (47%) reported that they adopted new procedures in connection with the self-assessment¹⁹
- a majority of ILPs reported that the self-assessment process was a learning exercise that helped them improve client service²⁰
- over 60% of ILPs assessed themselves to be in compliance on all ten objectives when they completed their initial self-assessments, and of the remaining 38%, about half became compliant within three months of their initial self-assessment²¹

54. Given these compelling educational benefits, the Task Force recommends that at this stage of regulatory development, the Law Society ensures that the primary goal of instituting a self-assessment process is to provide firms with educational tools and resources that will assist firms in satisfying the Professional Infrastructure Elements, rather than serving as a mechanism for the Law Society to evaluate firms’ compliance with the new standards.²²

¹⁸ Christine Parker, Tahlia Gordon, and Steve Mark "Regulating Law Firm Ethics Management: An Empirical Assessment of an Innovation in Regulation of the Legal Profession in New South Wales" (2010) 37(3) Journal of Law and Society 446 at 493. Online at: https://www.researchgate.net/publication/228192433_Regulating_Law_Firm_Ethics_Management_An_Empirical_Assessment_of_the_Regulation_of_Incorporated_Legal_Practices_in_NSW

¹⁹ Susan Fortney and Tahlia Gordon, "Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation". Online at: <http://ir.stthomas.edu/cgi/viewcontent.cgi?article=1298&context=ustlj>

²⁰ *Ibid.* Notably, there was no statistically significant difference related to firm size and the respondents’ opinions on the learning value of the self-assessment, suggesting that regardless of firm size, the majority of the respondents recognized the educational value of completing the self-assessment process.

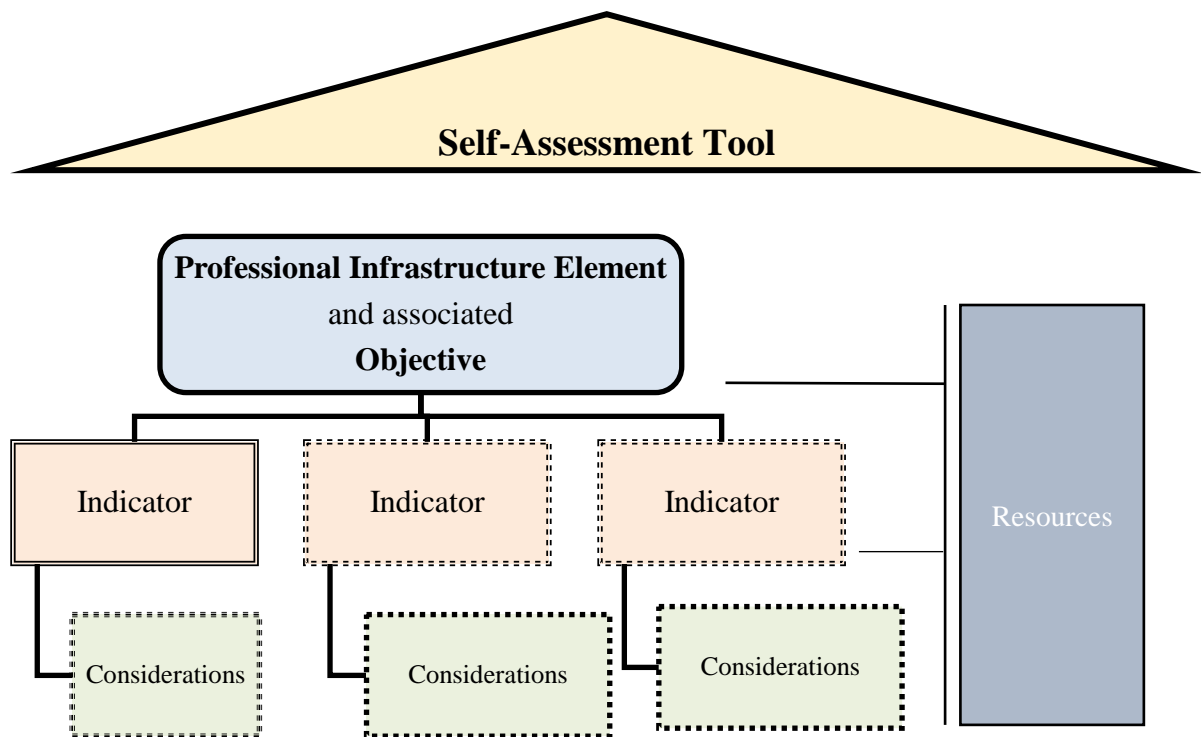
²¹ Christine Parker, Tahlia Gordon, and Steve Mark "Regulating Law Firm Ethics Management: An Empirical Assessment of an Innovation in Regulation of the Legal Profession in New South Wales" (2010) 37(3) Journal of Law and Society 446 at 493. Online at: https://www.researchgate.net/publication/228192433_Regulating_Law_Firm_Ethics_Management_An_Empirical_Assessment_of_the_Regulation_of_Incorporated_Legal_Practices_in_NSW

²² The 2016 Interim Report recommended the adoption of the self-assessment process to monitor compliance. The Task Force’s views have evolved since this recommendation was made, and the focus has shifted to ensuring that the tool is developed in manner that reflects its primary purpose as a learning tool in relation to the development and maintenance of a firm’s professional infrastructure.

Recommendation 7: The primary objective of the self-assessment tool is to provide firms with educational tools and resources that will assist firms in meeting the standards set by the Professional Infrastructure Elements.

The structure and content of the self-assessment tool

55. In early 2017, the Task Force began work on developing the self-assessment tool. A draft of its most recent iteration is included at Appendix B.
56. The tool is composed of four hierarchical components: Professional Infrastructure Elements, their Objectives, Indicators and Considerations. The self-assessment also includes a rating scale, an area for comments and a list of resources for firms.
57. Each aspect of the tool is described in more detail, below.



Professional Infrastructure Elements and Objectives

58. The *Professional Infrastructure Elements* and their associated *Objectives* lie at the core of the new regulatory model, and consequently, are foundational pieces of the draft self-assessment tool.
59. As discussed in the 2016 Interim Report, the Task Force has identified eight specific areas – the Professional Infrastructure Elements – that correlate to core professional and ethical duties of firms.²³ These areas have been selected as a regulatory focus on the basis that they are widely recognized as representing the cornerstones of firm practice.
60. It is important to underscore that firms will not be subject to prescriptive rules that dictate how these new standards must be achieved. How a firm addresses each of the Professional Infrastructure Elements is up to them. As such, the regulatory scheme provides firms significant latitude to create and implement the types of policies and processes that are best suited to the nature, size and scope of their practice.
61. The language associated with each of the Professional Elements in the draft self-assessment is largely unchanged from that found in the 2016 Interim Report,²⁴ with one notable exception, Element 8, now entitled “Equity, Diversity and Inclusion.” The rationale for reconsidering the title and content of this Element is explored in greater detail later in the Report.
62. The self-assessment pairs each Professional Infrastructure Element with an Objective, which is a clear statement of the specific result or outcome the particular Element aims to achieve.²⁵ Together, the Elements and their Objectives are the metrics against which firms should evaluate whether they have met the standards imposed by law firm regulation.

²³ These areas were developed in consultation with the Law Society membership, a review of the regulatory frameworks of other jurisdictions and a review of the *Legal Profession Act*, Law Society Rules and Code of Professional Conduct. Although nomenclature and categorization differs slightly, there is considerable consistency across the provinces engaging in law firm regulation as to which aspects of practice will be regulated.

²⁴ The wording of the Professional Infrastructure Elements may evolve if, across Canada, there are coordinated efforts to establish consistency in relation to the core aspects of firm practice subject to regulation.

²⁵ The Objectives were developed by the Task Force in consultation with both Law Society staff and focus group participants.



Professional Infrastructure Elements

Element 1: Developing competent practices and effective management

Objective: *Ensure the delivery of quality and timely legal services by persons with appropriate skills and competence*

Element 2: Sustaining effective and respectful client relations

Objective: *Provide clear, timely and courteous communications with clients in the delivery of legal services so that clients understand the status of their matter through the duration of the retainer and are in a position to make informed choices*

Element 3: Protecting confidentiality

Objective: *Ensure client information, documents and communications are kept confidential and free from access, use, disclosure or disposal unless the client consents or it is required or permitted by law and that solicitor-client privilege is appropriately safeguarded*

Element 4: Avoiding and addressing conflicts of interest

Objective: *Ensure conflicts of interest are avoided from the outset, and where not avoided, they are resolved in a timely fashion*

Element 5: Maintaining appropriate file and records management systems

Objective: *Provide appropriate file and records management systems to ensure that issues and tasks on file are handled in an appropriate and timely manner and that client information and documents are safeguarded*

Element 6: Charging appropriate fees and disbursements

Objective: *Ensure clients are charged fees and disbursements that are transparent and reasonable and are disclosed in a timely fashion*

Element 7: Ensuring responsible financial management

Objective: *Establish mechanisms to minimize the risk of fraud and procedures that ensure compliance with Law Society accounting rules*

Element 8: Equity, Diversity and Inclusion

Objective: *Commitment to improving equity, diversity and inclusion and ensuring freedom from discrimination in the workplace and in the delivery of legal services*

63. Over time, firms are expected to put in place policies and processes that adequately address these Objectives. Where referred to in the self-assessment, “policies” requires a written document. In contrast, “processes” are not required to be in writing. However, there should be evidence that such processes are followed as part of the normal course of the firm’s operations.
64. For example, to satisfy Professional Infrastructure Element 3, “Protecting Confidentiality,” the firm must implement policies and processes that fulfil the stated objective of ensuring client information, documents and communications are kept confidential and free from access, use, disclosure or disposal unless the client consents or it is required or permitted by law.
65. The self-assessment tool asks firms to evaluate the degree to which they have satisfied the Objective of each of the Professional Infrastructure Elements using a numeric rating. This quantitative measure will provide both firms and the Law Society insight into the degree to which firms feel they have met the new standards, and may also serve as a reference point for improvement in subsequent self-assessment cycles.
66. Additionally, the self-assessment provides an opportunity for firms to include comments regarding their successes, challenges and any other relevant information in relation to the firm’s satisfaction of the Professional Infrastructure Elements.²⁶

Indicators and Considerations

67. To assist firms in developing and evaluating their professional infrastructure, the self-assessment includes a series of *Indicators*, which represent aspects of practice that firms may wish to examine when assessing whether the Objective of the Professional Infrastructure Element has been achieved.
68. Each Indicator is paired with a more detailed list of *Considerations*, which illustrates the types of policies, practices, procedures, processes, methods, steps and systems that a prudent law firm might employ to support the professional and ethical delivery of legal services.²⁷

²⁶ In other jurisdictions developing law firm regulation, consideration is being given to removing the numeric rating scale and requiring firms to list a minimum number of areas where they will focus on improving firm practices. Prior to implementation, the Task Force will re-visit the nature of the information sought in the comments section, particularly during the first self-assessment cycle, and whether this section should also (or alternatively) elicit information from firms about target “areas of improvement.”

²⁷ The Indicators and Considerations provided in the draft self-assessment were developed by undertaking a comprehensive review of self-assessment tools in Australia, Nova Scotia, the Prairie provinces and drafted by the

69. Neither the Indicators nor the Considerations are prescriptive, and both should be approached as suggestions or guidelines for firms rather than mandatory checklists or legal requirements. Indicators and Considerations are simply intended to prompt firms to reflect on their practices and to consider how they may improve them.
70. Further, Indicators and Considerations are designed to be relatively general, or “high level” to enable the self-assessment to be flexible and applicable across various practice contexts and sizes.
71. For example, in relation to the Professional Infrastructure Element “Protecting Confidentiality,” the following Indicators and Considerations are provided in the self-assessment tool:

Indicator 1: Are confidentiality and privacy policies in place?

Considerations:

- ☐ A written confidentiality policy or agreement is in place and is signed by all staff
- ☐ Confidentiality requirements are established for any third parties (e.g. contractors, computer service providers, interns, cleaners) who may access the firms’ physical space or technology
- ☐ A privacy policy is in place and is communicated to all lawyers and staff
- ☐ Processes are in place to ensure the firm supports its lawyers in complying with Law Society Rules and the *Code of Professional Conduct*

Indicator 2: Is training provided pertaining to preserving the duties of confidentiality, solicitor-client privilege, privacy and the consequences of privacy breaches?

- ☐ Lawyers and staff are provided with up-to-date technology training relating to issues of confidentiality and privacy pertaining to electronic data, including specific training on the importance of password protection
- ☐ Lawyers and staff receive education and training regarding the principle of solicitor-client privilege, including:
 - ☐ in relation to electronic communications (email, texting, e-documents)
 - ☐ when a common interest or joint retainer extends the solicitor-client privilege to third parties
- ☐ A policy is in place to ensure that solicitor-client privilege is clearly explained to clients by lawyers
- ☐ Processes are in place for dealing with situations where exceptions to duties of confidentiality and solicitor-client privilege may apply.
- ☐ Lawyers and staff are provided with training on the requirements of privacy legislation
- ☐ Internal processes are in place to deal with privacy breaches, including processes for reporting breaches to the client, the Law Society and any other appropriate authorities

CBA. Input into the Indicators and Considerations was also provided by participants of the focus group sessions and Law Society staff.

Indicator 3: Is physical data protected by appropriate security measures?

Considerations:

- ☐ Office security systems are in place to protect confidential information, including taking steps to ensure:
 - ☐ third parties cannot overhear confidential conversations lawyers and staff have both within and outside the physical office
 - ☐ client files and other confidential material are not left in publically accessible areas
 - ☐ client confidentiality is guarded when visitors enter private areas (e.g. lawyer or staff offices)
 - ☐ copiers, fax machines and mail services are located such that confidential information cannot be seen by persons not employed by or associated with the firm
- ☐ Processes are in place that ensure reasonable security measures are taken when removing physical records or technological devices from the office
- ☐ Processes are in place to ensure that closed files and other documents stored off-site are kept secure and confidential

Indicator 4: Is electronic data protected by appropriate security measures?

Considerations:

- ☐ Data security measures (e.g. encryption software and passwords) are in place to protect confidential information on all computers, laptops, tablets, smartphones, thumb drives and other technological devices
- ☐ Processes are in place to protect electronic data from being compromised by viruses, including ransomware
- ☐ Processes are in place to safeguard against the security risks arising from downloading to phones, flash drives and other portable devices
- ☐ Processes are in place to protect confidentiality when using cloud-based technologies, including email
- ☐ Processes are in place to protect confidentiality when using social media
- ☐ Electronic data is regularly backed up and stored at a secure off-site location
- ☐ Processes are in place to ensure that third parties with access to computers for maintenance and technical support protect the confidentiality of client information
- ☐ Electronic data security measures are reviewed
- ☐ Processes are in place to safeguard electronic data and maintain solicitor-client privilege as pertaining to electronic files when crossing borders (e.g. United States)

72. Finally, the self-assessment includes a selection of resources which provide firms with a “starting place” for developing their own policies and processes in relation to each of the Professional Infrastructure Elements. The existing resources found in the tool will be significantly expanded following the first self-assessment cycle. Detailed discussion of the proposed approach to model policy and resource development is explored later in the Report.

73. Although considerable work has been done on the self-assessment, the Task Force will continue to refine the tool, seeking further input from relevant Law Society departments and monitoring the evolution of self-assessment tools in other jurisdictions.

Recommendation 8: Continue to refine the substantive content of the self-assessment tool.

Equity, diversity, inclusion and cultural competency content

74. As noted above, the most significant change to the Professional Infrastructure Elements since the 2016 Interim Report is the re-drafting of Element 8: Equity, Diversity and Inclusion. This reflects the Task Force’s recommendation that equity, diversity, inclusion and cultural competency materials clearly fall under a discrete Professional Infrastructure Element within the self-assessment tool.

Recommendation 9: Include material in the self-assessment tool related to equity, diversity, inclusion and cultural competency under a discrete Professional Infrastructure Element.

75. This proposal represents a shift away from of the Task Force’s 2016 recommendation that BC’s law firm regulation should not include a Professional Infrastructure Element expressly devoted to equity, diversity and cultural competency. This recommendation was made on the basis that equity and diversity have an “aspirational” quality that differs from the more operational aspects of firm practice reflected in the other Professional Infrastructure Elements - for example, conflicts or record management ²⁸
76. As a result, the Task Force previously recommended that Element 8 impose a less direct duty on firms to “support compliance with obligations related to a safe and respectful workplace.” Essentially, this simply reinforced that firms must comply with existing legal

²⁸ Other arguments articulated for not including equity and diversity as one of the Professional Infrastructure Elements include: the view that these issues occupy a domain that is largely about personal attitudes and values, rather than firm responsibilities, such that the Law Society should not be “imposing values.” Others have noted that there may be significant challenges in measuring progress towards equity and diversity standards in a meaningful fashion.

obligations under the *Human Rights Code* and the *Workers Compensation Act*, but did not clearly direct firms to develop policies or processes specifically related to equity, diversity, inclusion and cultural competency.

77. In contrast, other Canadian law societies have included equity, diversity and inclusion as a foundational “element” (Nova Scotia) or “principle” (Prairies, Ontario) of their regulatory frameworks. These jurisdictions also address a much wider range of equity, diversity, access, inclusion and cultural competency issues throughout their draft self-assessments.
78. The Task Force recognizes that the lack of a Professional Infrastructure Element committed to equity, diversity and inclusion puts BC out of step” with other provinces developing a framework for firm regulation.
79. The Task Force also observes that in a variety of contexts, the Law Society has already suggested that equity and diversity issues are not merely aspirational matters, but rather, are an important issues in relation to the profession and the public interest more broadly.
80. For example, the Law Society’s 2012 report *Towards a more Representative Legal Profession: Better practices, better workplace, better results*, suggests that the change in the demographics of the legal profession demands a response to bias and discrimination within firms:

In the face of an aging of the legal profession, firms are recruiting from a generation of young lawyers who are more diverse and have different expectations regarding the practice of law, including equal opportunities for advancement. The demographics of the legal profession, however, do not reflect these changes. While overt discrimination based on race and gender is arguably less prevalent today than 30 years ago, it still occurs and demands an appropriate response. Women, visible minority lawyers and Aboriginal lawyers continue to face systemic barriers in the profession created by unconscious bias, resulting in insidious, albeit unintended forms of discrimination.²⁹

81. The report goes on to directly link equity and diversity principles with the public interest, and highlights the role firms can play in shifting attitudes and practices:

The Law Society of BC is committed to the principles of equity and diversity and believes the public is best served by a more inclusive and representative profession

[...]

²⁹ The Law Society of British Columbia, *Towards a More Representative Legal Profession: Better practices, better workplaces, better results* (June 2012), online at: www.lawsociety.bc.ca/docs/publications/reports/Diversity_2012.pdf

We hope our report will form the foundation to get the legal community working together to create effective solutions. As the regulator we're only one piece of the puzzle, so we can't fix this on our own. As a profession, we can do better. Not just because it's the right thing to do, but because everyone benefits from it. We all have an interest in ensuring the legal profession continues its long-held tradition of striving to serve the public the best way it can. I encourage you to read this report and consider how your firm can develop and implement solutions to advance diversity in the legal profession. [Emphasis Added].³⁰

82. The Law Society's commitment to advancing equity and diversity issues at the firm level is also demonstrated by the role it has played in the Justicia Project, which was created in response to the disproportionate number of women leaving the legal profession. Specifically, in recognizing that firms' attitudes and behaviours bear some responsibility for this concerning trend, the Law Society has overseen the development of model policies and best practices for firms with respect to retaining and advancing women lawyers in private practice.
83. The Task Force is in the early stages of developing the content of this Professional Infrastructure Element, including its associated Indicators and Considerations. This work will continue if the recommendation to include equity, diversity and inclusion as one of the Professional Infrastructure Elements is approved by the Benchers. Consultation with the Equity and Diversity Committee prior to finalizing the content of this Element may also be advisable.
84. The Task Force also continues to discuss how to address the Truth and Reconciliation Commissions Call to Action #27, which highlights the need for lawyers to receive skills based training in intercultural competency, conflict resolution, human rights, and anti-racism:

We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal– Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.³¹

85. Other Canadian jurisdictions have incorporated Call to Action #27 into their Elements and Principles addressing equity and diversity. For example, Nova Scotia includes an indicator in its self-assessment that states: "you provide staff and lawyers training in cultural

³⁰ *Ibid* at p. 2.

³¹ Truth and Reconciliation Commission Calls to Action, online at: http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf

competent legal services and delivery.” The Prairie provinces’ draft-self assessment explicitly highlights TRC Call to Action #27 in the preamble to its equity, diversity and inclusion Principle, and provides that: “All members of the firm receive education and training on...cultural competence.” Similarly, the Law Society of Upper Canada has included “cultural competency in the delivery of legal services as part of its proposed equity, diversity and inclusion principle.

86. In the next stage of its work, the Task Force will work with the Truth and Reconciliation Commission Advisory Committee to determine how law firm regulation could act as a mechanism to support firms in providing their lawyers with opportunities to receive appropriate cultural competency training.

Procedural aspects of the self-assessment tool

87. In addition to developing the content of the self-assessment tool, the Task Force has addressed a number of process-related matters, including: determining who will be responsible for completing the self-assessment; establishing whether, and by whom, the self-assessment is submitted to the Law Society; and developing options for formatting and administering the self-assessment. These issues were explored in detail during Task Force meetings, focus group sessions and in discussions with other jurisdictions developing law firm regulation.
88. Given the benefits the aforementioned Australian studies have attributed to firms engaging in a self-evaluation process, the Task Force recommends that all firms covered by law firm regulation, including sole practitioners, lawyers in space sharing arrangements and lawyers in small, medium and large firms, complete the self-assessment tool and submit it to the Law Society.³²

Recommendation 10: All firms are required to complete a self-assessment and submit it to the Law Society.

89. The Rules will not mandate who at the firm must, or may, contribute to the self-assessment. As such, firms will have considerable flexibility in developing their own

³² The focus group sessions revealed a strong preference for the Law Society creating a uniform self-assessment that would cover all firm types. This was viewed as necessary for creating a common standard for firm practice across the profession. The Task Force will continue to consider how the self-assessment tool should be developed to reflect the particular circumstances of sole practitioners, including, for example, guidance that identifies those portions of the self-assessment that may be less relevant to this practice type.

methods for working through the tool. The Law Society expects that the manner in which firms complete the self-assessment will vary; some may be completed by a single lawyer at the firm while larger firms may bring together personnel to facilitate discussion or circulate the tool electronically and encourage collaborative completion of the document.

90. Regardless of the approach adopted by the firm, ensuring the self-assessment is completed and submitted to the Law Society is ultimately a *firm* responsibility. Firms that fail to submit a self-assessment will be subject to a penalty.
91. As noted above, the primary objective of the self-assessment is to support learning and organizational change. Accordingly, the Task Force has explored different options for maximizing the utility of the self-assessment tool for its users. Discussions with the Nova Scotia Barristers' Society, which recently concluded a pilot project of its self-assessment tool, have been instrumental in assisting the Task Force work through this issue.³³
92. Nova Scotia has taken a two-pronged approach to the self-assessment tool, comprising a primary, short, "formal" self-assessment, which is submitted to the regulator, and a secondary, more detailed self-assessment "workbook" that provides firms with additional guidance, resources and support, which is *not* submitted to the regulator (see **Appendix C**). The workbook's sole purpose is to provide firms with a confidential learning tool that expands on many of the issues identified in the shorter self-assessment.³⁴
93. Feedback from Nova Scotia's pilot project indicated strong support for this two-pronged approach. Similarly, participants in BC's recent focus group sessions were also supportive of the development of both a shorter self-assessment and a longer workbook.

Recommendation 11: Adopt a two-pronged approach to the self-assessment entailing the development of a short, formal self-assessment tool that firms must submit to the Law Society, and a longer, more detailed confidential workbook that will enable firms to work through the self-assessment material in more detail. Both of these tools will be available online.

94. Accordingly, the Task Force recommends that BC follows Nova Scotia's approach and develop two formats for the self-assessment tool: a shorter document that is submitted to the Law Society and requires firms to undertake a high-level evaluation of the extent to which they are satisfying the Professional Infrastructure Elements, and a longer, more

³³ For further details on the NSBS pilot project, see : <http://nsbs.org/mselp-self-assessment-pilot-project>

³⁴ Anecdotally, Nova reported that during the pilot project, small firms took approximately half an hour to complete the shorter, formal self-assessment (with many reporting they planned to return to the more lengthy workbook to reflect on their practices more thoroughly), while larger firms reported taking three hours to complete the assessment.

detailed workbook that will not be viewed by the Law Society, but will enable firms to work through the self-assessment material at a more granular level.

95. The Task Force feels the proposed approach will provide firms with a relatively quick and efficient route to self-evaluation through the shorter, mandatory self-assessment, while encouraging more considered and reflective analysis through engagement with the detailed workbook.
96. The Task Force also recommends that both the shorter, formal self-assessment and the longer workbook are developed as online tools.

Role of self-assessment in compliance and enforcement

97. The Task Force has spent considerable time discussing the relationship between the self-assessment and potential compliance and enforcement action against firms.
98. Given the aim of proactive regulation is to support and encourage firms in building a robust professional infrastructure rather than penalizing them for failing to have one in place, the Task Force proposes that at this stage of regulatory development, the only legal requirements will be for firms to register with the Law Society and to complete and file a self-assessment.
99. The information provided in the initial self-assessment tool will not be utilized by the Law Society for any disciplinary purposes.

Future work on the self-assessment tool

100. Although the draft self-assessment appended to this Report has undergone significant revisions following the focus group sessions, internal consultations with Law Society staff and discussions at the Task Force level, its current iteration represents a work-in-progress.
101. Further internal review is required to ensure that all relevant Law Society departments have an opportunity to provide input.³⁵ The tool will also be subject to rigorous review by the Task Force to ensure the appropriate and consistent use of terminology. Changes to the content and format of the self-assessment are also expected to flow from regional discussions with other law societies that are currently developing self-assessment tools as part of law firm regulation. The Task Force will continue to keep abreast of developments in Nova Scotia, the Prairie province and Ontario, and adjust and adapt BC's self-

³⁵ For example, feedback has not yet been sought from the Lawyers Insurance Fund.

assessment to the extent that such modification improves the clarity and utility of the tool. The goal is to complete this work by late 2017, leaving time to create and test an electronic version of the tool.

102. Significant work is required to re-format the draft assessment into both a shorter, formal self-assessment tool and a workbook, and to put in place the necessary IT resources to ensure the self-assessment process can be completed and submitted electronically.
103. The self-assessment will also be populated by a robust set of model policies and resources that are designed to support firms in developing and maintaining policies and processes that address the Professional Infrastructure Elements. Initial work will begin on this task prior to the introduction of the tool, and may include, for example, the addition of resources developed by, or in collaboration with, other law societies. The bulk of the resource development work will occur following firms' registration and filing of their first self-assessment. The proposed approach to resource development and implementation are outlined in the next sections of the Report.
104. In the next phase of its work, the Task Force will explore mechanisms for building a feedback loop into the self-assessment process – for example, seeking input from users with respect to their experience utilizing the tool – to ensure the self-assessment remains useful and relevant to firms and the Law Society over time.

Model Policies and Resources

105. Over the course of several meetings, the Task Force has examined the Law Society's potential role in developing model policies and other practice resources designed to support firms in meeting the new standards imposed by law firm regulation. Key themes of these discussions are captured below.

Model policies

106. As a preliminary matter, the Task Force contemplated whether the Law Society should include model policies as part of the self-assessment tool. Initially, the Task Force was concerned that providing firms with model policies could erode the self-reflective nature of the self-assessment exercise in circumstances where firms indiscriminately adopt templates rather than critically evaluating and developing policies that are appropriate for their practice size and type.
107. However, input obtained during the focus groups sessions revealed that firms of all sizes were strongly in favour of the Law Society developing model policies in relation to each of the Professional Infrastructure Elements. The feedback mirrored that provided to the

Nova Scotia Barristers' Society through their self-assessment pilot project, in which there was widespread support for the regulator taking a lead role in developing practice resources.³⁶

108. Based on this feedback, the Task Force recommends that the Law Society provide firms with model policies in relation to each of the Professional Infrastructure Elements as part of the self-assessment tool. This approach is aimed at providing firms with a high level of support as they work toward establishing and maintaining a professional infrastructure.

Recommendation 12: The Law Society will develop model policies and resources in relation to each of the Professional Infrastructure Elements for inclusion in the self-assessment.

109. To mitigate the risk of firms adopting model policies in an unconsidered, haphazard manner, the Task Force recommends providing firms with a number of model policies for each Professional Infrastructure Element. As a result, at a minimum, firms will be required to choose between competing model policies, taking into account the characteristics of their practice type (e.g. a sole practitioner may only require a simple model policy, whereas a large law firm should choose a more complex model policy). Each policy will include a caveat indicating that it is not sufficient for firms to adopt a model policy without consideration of its suitability, emphasizing that modifications may be necessary.
110. The Task Force also recommends that the Law Society promote additional mechanisms that encourage firms to engage in policy development. Possible approaches could include the Law Society providing lawyers with CPD credit for designing firm policies, facilitating webinars on policy development and supporting the development of a resource portal through which firms can access and share policies.

Recommendation 13: The Law Society will provide firms with a variety of model policies in relation to each Professional Infrastructure Element and endorse the development of additional mechanisms to encourage policy development within firms.

³⁶ NSBS observed that “they [firms] will take any help the Society can give to direct them to quality resources and tools that will save them time and effort in improving their [management systems]. See Nova Scotia Barristers' Society, Legal Services Support Pilot Project Preliminary Report (February 17, 2017). Online at: http://nsbs.org/sites/default/files/ftp/RptsCouncil/2017-02-17_LSSPilotProject.pdf. As a result, Nova Scotia is undertaking intensive resource development prior to the full-scale implementation of their law firm regulation.

111. The Task Force examined three options for the operational aspects of policy development. Under the first option, model policies would be collected from external sources (e.g. firms, other law societies) and, where appropriate policies do not exist, the Law Society would task external bodies with developing these resources. Although leveraging the expertise of other organizations was seen to have numerous benefits, the Task Force also identified a number of significant concerns with this approach, including reduced opportunities for quality control and uncertainty about the capacity of other organizations to develop or contribute model policies.
112. The second option would require the Law Society to develop all model policies in-house. Although this approach would enable the Law Society to retain maximum control over the quality and format of model policies, it would also put substantial, immediate pressure on the Law Society to dedicate significant resources to drafting policies.³⁷ Concerns were also raised with respect to drafting all policies through a single perspective — that of the regulator — at the cost of diversity amongst policies and the potential to overlook many high-quality, externally produced policies.
113. Accordingly, the Task Force recommends a hybrid option, through which the Law Society will undertake a “gap analysis” to determine where high-quality, externally produced model policies already exist, where they do not, and consequently, where it is necessary to employ Law Society resources to create additional policies to fill the gap.³⁸ This approach will maximize efficiencies and encourage policy diversity while enabling the Law Society to maintain significant control over content and timing.
114. As discussed later in the Report, although a select set of initial resources will be provide to firms at the outset, the majority of model policy development will occur once the Law Society has received feedback from firms in the first self-assessment cycle as to the areas of practice in which firms feel the greatest need for model policies.

³⁷ A review of existing Law Society resources indicates that the pool of internal model policies is limited, and where they do exist, they frequently require updating.

³⁸ This is the approach endorsed by the Nova Scotia Barristers’ Society, which is currently engaged in an intensive period of collecting publically available resources and contacting educational providers and firms to encourage them to contribute policies and other resources to the regulator. Only in circumstances where there are no sufficient externally available resources will NSBS develop these in-house.

Other resources

115. The Task Force has also explored possible approaches to creating or collecting other resources, in addition to model policies. Three complimentary approaches are recommended.
116. First, the Task Force recommends the Law Society take on the role of “resource curator,” seeking out and, where necessary, developing resources for the self-assessment tool. In the next phase of its work, the Task Force expects to give additional consideration to how to source these materials.³⁹
117. Second, the Task Force recommends the Law Society develop a separate resource portal to house a larger collection of resources than is directly linked to the self-assessment tool itself. This will prevent the self-assessment document from becoming overwhelmed with practice support materials. Additionally, firms will have direct access to a complete body of resources regardless of whether they are actively engaged in completing the self-assessment.⁴⁰
118. Third, the Task Force recommends the Law Society seek ways to support resource sharing between firms. This could include endorsing or establishing a collaborative, online space for lawyers and firms to share resources and policies, encouraging mentorship arrangements and supporting educational opportunities that bring lawyers together to share best practices.⁴¹

Recommendation 14: The Law Society will act as a curator of a variety of resources for the self-assessment tool, develop an independent resource portal and encourage the sharing of resources and best practices.

³⁹ In addition to drawing on existing Law Society resources, possible sources include: resources linked to the self-assessments being developed by other provinces; materials from the LSUC Practice Management Review program; resources provided or created by legal-education organizations (e.g. CLE-BC); resources provided to the Law Society by firms and practitioners; and other publically available resources.

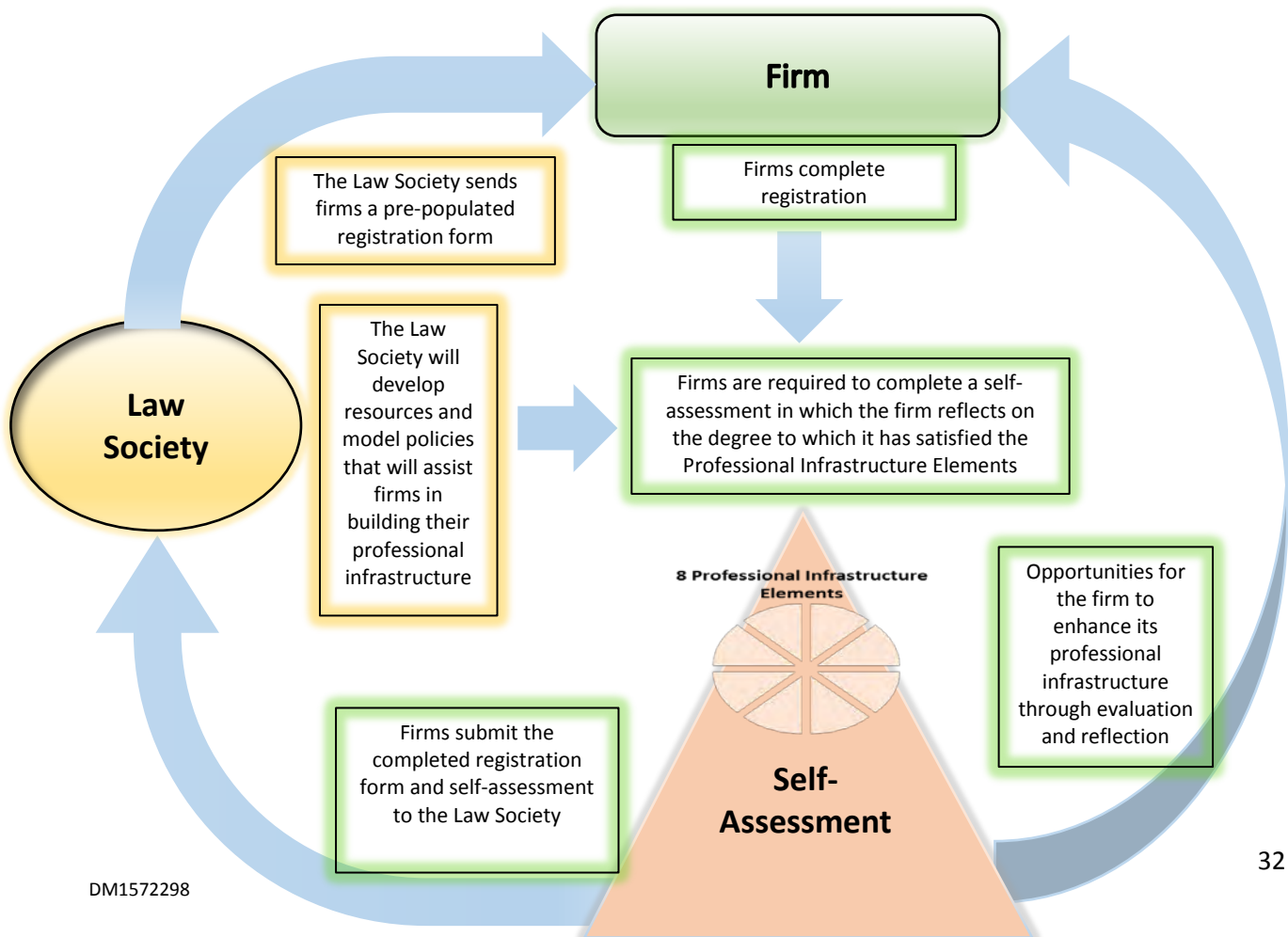
⁴⁰ Nova Scotia is currently developing an online resource portal. Early feedback from the pilot project indicated strong support for the continued development of a centralized location where resources could be accessed.

⁴¹ Another strong theme of Nova Scotia's pilot project was a desire for a platform that would enable firms to share resources amongst themselves.

Implementation of Law Firm Regulation

119. In addition to establishing the independent features of law firm regulation (e.g. the Professional Infrastructure Elements, the registration process, the designated representative and the self-evaluation tool and associated resources) the Task Force has considered how the scheme will function as a unified whole and has deliberated over the optimal schedule for implementation.
120. The overall functioning of the scheme is perhaps best communicated through an illustrative diagram, which demonstrates the linkages and feedback loops between the various “pieces” of law firm regulation. Essentially, once registered with the Law Society, firms are required to complete the self-assessment tool, which is built around the Professional Infrastructure Elements and contains a set of model policies and other resources developed by the Law Society. These tools will assist firms in putting policies and processes in place that promote professional, ethical firm conduct.

Key Elements of Law Firm Regulation



121. For the reasons described below, the Task Force recommends a particular sequencing to implementing each of these elements of the regulatory scheme.
122. The Task Force’s goal is to “launch” law firm regulation by early to mid-2018, commencing with the requirement for all firms to register with the Law Society (this process includes the appointment of a designated representative). At the time of registration, firms will also be provided with an initial self-assessment, which is likely to be similar (from a content perspective) to the current draft self-assessment provided at Appendix B.
123. The first self-assessment will require firms to make a relatively quick evaluation of the extent to which they are *currently* addressing each of the Professional Infrastructure Elements in their practice. Firms will also be asked to identify areas where they feel they would benefit from the Law Society providing additional model policies and other resources to assist them in improving their ethical infrastructures.
124. This inquiry is key to implementation, as it will enable the Law Society to prioritize the development of resources in areas where firms have expressed a strong desire for assistance, and inasmuch, maximize the provision of support to firms.⁴² Ultimately, the objective of the first self-assessment is to generate a clear picture of how firms are meeting, or challenged by the standards set by the Professional Infrastructure Elements so that the Law Society can target those practice areas in which firms require additional model policies and resources.
125. Firms will have a period of no more than four months to complete this first self-assessment and submit it to the Law Society.
126. Importantly, the Law Society will *not* expect firms to immediately develop policies and processes in relation to each of the Professional Infrastructure Elements in advance of, or in response to this first self-assessment cycle. Rather, firms are expected to operate in a business-as-usual fashion and to communicate their perceived strengths and weaknesses through the self-assessment tool in a manner that will assist the Law Society in responding to firms’ needs.
127. Following an analysis of the results of this first self-assessment cycle, the Law Society will engage in a period of intensive resource development, with the aim of creating a

⁴² This approach will also enable the Law Society to get a sense of the general baseline of firm practice against which improvements in professional infrastructures could later be measured, providing the Law Society with the opportunity to evaluate whether the regulatory scheme is “making a difference” to firm practice over time.

comprehensive set of model policies and other resources that correlate to those areas that firms have expressly indicated, or otherwise demonstrated, a need for additional support.

128. This resource development phase will be approximately six months in duration. At the conclusion of this period, a revised self-assessment tool will be developed, populated with the new model policies and resources.
129. No earlier than a year after the completion of the first self-assessment, a second assessment cycle will commence. Firms will be given eight months to complete the revised, resource-rich self-assessment. During this second self-assessment cycle, firms *are* expected to develop, update and implement policies and processes in relation to each of the Professional Infrastructure Elements.

Schedule for the Implementation of Law Firm Regulation⁴³

Early-Mid 2018	Mid 2018	Mid 2019	Late 2019	2020
Registration and first self-assessment cycle	Resource development	Second self-assessment cycle	Evaluation of results	Further regulatory development, as necessary

130. At the conclusion of the second assessment cycle, the Law Society will undertake further analysis to determine how frequently future self-assessments should be administered and whether any additional compliance and enforcement measures should be incorporated into the scheme moving forward.

Recommendation 15: The implementation of law firm regulation will commence with registration and the completion of a concise self-assessment tool that will enable the Law Society to identify those areas where additional resources are required. Following a period in which the Law Society will engage in intensive resource development, a second assessment cycle will commence, in which firms will complete and submit a revised, resource-rich assessment tool. During this second assessment cycle, firms are expected to

⁴³ Note that the above dates may change depending on a several factors, including the pace of rule development, the capacity of IT to put in place the required systems for registration and the self-assessment and the adoption and execution of an appropriate communications strategy.

implement policies and processes in relation to each of the Professional Infrastructure Elements.

131. The proposed implementation schedule provides a number of significant benefits to both the Law Society and the profession. Most importantly, it will enable the Law Society to engage in a focused period of resource development driven by the needs of firms (as indicated in results of the first self-assessment cycle.) Opportunities for collaborating with other law societies on resource development may also arise. The suggested timeframes will also enable the Law Society to put in place the necessary human and financial resources to support this work. Budgetary considerations in this regard are discussed at the end of this Report.

Rule Development

132. Although the Task Force has worked diligently to establish a proactive, outcomes-based, “light-touch” approach to law firm regulation, the Law Society will nevertheless be required to develop a limited set of rules in relation to key aspects of the new regulatory scheme. The first step in this regard will be to bring the relevant provisions of the *Legal Profession Act* (the “LPA”) into force.

***Legal Profession Act* amendments**

133. In 2012, legislative amendments to the *LPA* provided the Law Society with the authority to regulate law firms of any size and organizational structure. Some of the amendments are proclaimed, such as those giving the Benchers authority to make rules governing law firms, but are, as yet, unused. Other amendments are not yet in force, and have been awaiting the Law Society’s determination of how to exercise this new authority. Many of those determinations have now been made, in the form of the recommendations found in the two recent Interim Reports.
134. Adequate time must be allowed for the proclamation of those portions of the *LPA* that are necessary for the functioning of the regulatory framework. Accordingly, the Task Force recommends the Law Society begin the process of working with the government’s legislative counsel to bring the appropriate law-firm related provisions in the *LPA* into force.

Recommendation 16: Unproclaimed amendments to the *Legal Profession Act* that are necessary for the functioning of the regulatory framework should be brought into force.

Drafting rules

135. The Task Force is committed to minimizing law firm regulation's reliance on more traditional, reactive compliance measures, including rules and sanctions.⁴⁴ However, a limited number of new rules will be required to address some of the core aspects of the regulatory scheme.⁴⁵

Recommendation 17: New rules are developed in relation to firm registration, designated representatives, information sharing and the self-assessment tool. Existing rules must be reviewed for clarity and consistency.

Registration and designated representatives

136. In order to gain a clear sense of who is being regulated, a new rule will require each firm to complete a prescribed registration form and submit this form to the Law Society on an annual basis. Firms will also be required to immediately notify the Law Society of any changes to their registration information.⁴⁶
137. As part of the registration process, firms must also provide the Law Society with the name and contact information of its designated representative. At least one designated representative at the firm must be readily available to receive and respond to communications from the Law Society. New rules will delineate the role of this individual and facilitate information sharing between the Law Society and the designated representative in relation to conduct issues and administrative matters.
138. An additional rule will be developed to ensure that firms are required to respond fully and substantively to the Law Society in respect of a complaint against the firm, or a complaint against one of its lawyers of which the firm has been made aware by the Law Society.⁴⁷

⁴⁴ For example, rather than creating a rule that requires firms to have specific policies in place in relation to the Professional Infrastructure Elements, and penalizing firms for failing to do so, the Task Force has recommended shifting the focus to proactively supporting firms in meeting the new standards through providing resources and support as part of the self-assessment process.

⁴⁵ Section 11 of the *LPA* provides the Benchers with the authority to make rules for governing law firms of any size.

⁴⁶ This requirement would be similar in nature to the current requirement under the Rules 2-10 and 2-11 for all lawyers to immediately notify the Executive Director of a change in the lawyer's place of practice or their contact information.

⁴⁷ This is similar to the duty placed on individual lawyers under Rule 3-5(6): a lawyer must cooperate fully in an

139. Although the designated representative will not be liable for firm misconduct, a new rule will establish that this individual must not knowingly or recklessly provide false information as part of the registration process. A similar rule will apply to firms.
140. The rules will also impose a penalty for a firm's failure to register with the Law Society. Given the simplicity of the recommended registration process, it is expected most firms will register. Prior to any enforcement action being taken, Law Society staff would work with firms to assist with any questions about the registration process and send reminders of the need to submit the registration form.

Self-assessment

141. A new rule will be drafted to require firms to complete the self-assessment form and submit it to the Law Society. Firms that fail to do so will be subject to a penalty.
142. Again, although the designated representative will not be liable for firm misconduct, a new rule will establish that this individual must not knowingly or recklessly provide false information in the self-assessment form. A similar rule will apply to firms.

Amendments to existing rules

143. A number of amendments to existing rules will be required. For example, drafters must standardize the use of the term "firm" and "law firm" throughout the Rules and ensure the use of language is consistent with that of the *LPA*.⁴⁸ The definition of "firm" in the Rules will have to be modified to reflect that, at this stage of regulatory development, in-house counsel, pro-bono and non-profit legal organizations and government lawyers are not included in the scheme.
144. In an effort to reduce the likelihood of "double regulation," the next phase of the Task Force's work will include efforts to identify those areas within the Rules where it may be more appropriate to move responsibility away from individual lawyers and to place it entirely on firms (e.g. trust reporting provisions).

investigation by all available means including, but not limited to, responding fully and substantively, in the form specified by the Executive Director (a) to the complaint, and (b) to all requests made by the Executive Director in the course of an investigation.

⁴⁸ Under the *LPA*, "law firm" is defined very broadly "a legal entity or combination of legal entities carrying on the practice of law."

Resource Implications

145. The Task Force does not propose charging firms a registration, or renewal of registration, fee and as a result, there would be no registration revenue.
146. While it is always difficult to estimate budgetary requirements before specific content for the self-assessment tools and workbook has been finalized as well as the development of model policies and resources, the following assumptions can be reasonably made relating to the implementation schedule noted in paragraph 129 and Recommendation 15:
 1. Following Benchers approval, the Member Services and IS department would embark on developing an on-line form of registration. This would also include IS resources in expanding the Law Society's current database to accommodate the registration process and collection of the additional information.
 2. The IS department would also develop an on-line version of the initial self-assessment tool designed to elicit feedback from the firms to assist the Law Society in prioritizing the additional model policies and other resources to support firms in improving their ethical infrastructures.
 3. Following an analysis of the results of the first self-assessment cycle, model policies and other resources will be created and developed.
 4. The Law Society will develop an independent resource portal to house resources linked to the self-assessment tool.
 5. Following the analysis of the information gathered as a result of the first assessment cycle, the self-assessment tool will be refined and will be linked with the new model policies and resources that have been developed.
 6. At the conclusion of the second assessment cycle, a further analysis will be undertaken with a view to determine the ongoing frequency of future self-assessment and whether to incorporate any additional compliance and enforcement measures.
147. It is anticipated that the overall cost associated with the implementation is \$225,000.00, broken down as follows:
 - IS Resources of approximately \$35,000 to develop the on-line registration form, expand the current database, develop an on-line version of the initial self-assessment and a reporting tool to analyze the results, and create an independent resource portal.

- A FTE position added to the Member Services Department (\$60,000) to provide ongoing assistance and support to firms regarding registration and annual renewals, completion of the initial self-assessment, work with the IS department on developing the on-line forms, and to assist with the analysis of the results.
 - \$130,000 to research, consult and develop model policies and other resources. While this figure is premised on a lawyer's salary for one year, it is not suggested that this be a permanent FTE position and would instead be contracted out.
148. It is also probable that prior to the completion of the revised second self-assessment, the Practice Advice Department will receiving an influx in calls. There will also be ongoing resources and support and, at this time, would offer the following as assumptions on an annual basis:
- IS resources for revisions and maintenance of \$5,000, assuming no major changes.
 - Updates and revisions to the model policies and resources of approximately \$10,000.
149. As noted, these are estimates only at this time and will ultimately depend on the finalization of the self-assessment tools and model policies and resources. In addition, these estimates do not include any further analysis following the conclusion of the second assessment cycle relating to the frequency of self-assessments and any additional compliance or enforcement measures, including increased investigatory and discipline resources to respond to firm conduct.

Summary of Recommendations

150. A summary of the 17 recommendations contained in the second Interim Report is as follows:

Recommendation 1: The Law Society will provide each firm with a pre-populated registration form and will require firms to verify the accuracy of its contents and update or add information, including the name of the designated representative, as necessary.

Recommendation 2: Firms must immediately notify the Law Society of any changes to their registration information, including the name and contact information of the designated representatives. Firms will also be required to renew their registration on an annual basis.

Recommendation 3: Firms must identify at least one designated representative, and may identify additional, alternate designated representatives, who will be readily available for receiving and responding to official communications from the Law Society, including but not limited to: general administrative matters, the self-assessment process, registration and conduct issues. The designated representative must be a lawyer at the firm and have practicing status in BC.

Recommendation 4: The Law Society is authorized to share information about a lawyer with the firm's designated representative when there is concern about the lawyer's conduct within the firm. The Law Society will exercise this discretion in a manner that is consonant with the principles of proactive regulation.

Recommendation 5: In addition to any similar obligation on individual lawyers under the existing rules, firms are required to respond fully and substantively to the Law Society with respect to any complaints or investigations against the firm or one of the firm's lawyers.

Recommendation 6: Fulfilling the duties of the designated representative is ultimately the responsibility of the firm and the designated representative is not personally responsible or liable for the firm's failure to fulfill those duties.

Recommendation 7: The primary objective of the self-assessment tool is to provide firms with educational tools and resources that will assist firms in meeting the standards set by the Professional Infrastructure Elements.

Recommendation 8: Continue to refine the substantive content of the self-assessment tool.

Recommendation 9: Include material in the self-assessment tool related to equity, diversity, inclusion and cultural competency under a discrete Professional Infrastructure Element.

Recommendation 10: All firms are required to complete a self-assessment and submit it to the Law Society.

Recommendation 11: Adopt a two-pronged approach to the self-assessment entailing the development of a short, formal self-assessment tool that firms must submit to the Law Society, and a longer, more detailed confidential workbook that will enable firms to work through the self-assessment material in more detail. Both of these tools will be available online.

Recommendation 12: The Law Society will develop model policies and resources in relation to each of the Professional Infrastructure Elements for inclusion in the self-assessment.

Recommendation 13: The Law Society will provide firms with a variety of model policies in relation to each Professional Infrastructure Element and endorse the development of additional mechanisms to encourage policy development within firms.

Recommendation 14: The Law Society will act as a curator of a variety of resources for the self-assessment tool, develop an independent resource portal and encourage the sharing of resources and best practices.

Recommendation 15: The implementation of law firm regulation will commence with registration and the completion of a concise self-assessment tool that will enable the Law Society to identify those areas where additional resources are required. Following a period in which the Law Society will engage in intensive resource development, a second assessment cycle will commence, in which firms will complete and submit a revised, resource-rich assessment tool. During this second assessment cycle, firms are expected to implement policies and processes in relation to each of the Professional Infrastructure Elements.

Recommendation 16: Unproclaimed amendments to the *Legal Profession Act* that are necessary for the functioning of the regulatory framework should be brought into force.

Recommendation 17: New rules are developed in relation to firm registration, designated representatives, information sharing and the self-assessment tool. Existing rules must be reviewed for clarity and consistency.

Next Steps

151. The second Interim Report represents a significant step forward in finalizing the design of law firm regulation in BC. A number of the Report's recommendations resolve key issues – for example, the responsibilities of the designated representative, the mechanisms associated with firm registration, the framework of the self-assessment and the Law Society's role in the development of model policies and other resources. Other aspects of the regulatory framework will continue to require additional work to ready the scheme for implementation, ideally in 2018.
152. Many of the “next steps” described below are operational in nature and as a result, the balance of work is likely to shift from the Task Force to Law Society staff. Once law firm regulation is implemented, the Benchers may wish to consider the Task Force's ongoing role, if any.

Registration

153. The proposed registration procedures must be discussed in detail with the Law Society's IT department to clearly establish what capabilities and resources are necessary to create a

functioning registration system, and whether this work can be done in-house. A prescribed registration form must also be developed and pre-populated with existing information for each firm in BC, including sole practitioners.

154. Additional Law Society staff may also need to be put in place to respond to inquiries from the profession about the registration and self-assessment process.⁴⁹

Self-assessment

155. The content of the self-assessment will continue to be refined in the coming months, with further consideration being given to the lists of Indicators and Considerations provided in the current draft. The Task Force endeavors to keep abreast of developments in Nova Scotia and the Prairie provinces as they roll out their self-assessments to the profession, and expects to learn from their experiences and challenges. Attention will also be given to improving the equity, diversity and cultural competency content of the self-assessment.
156. The self-assessment will also be substantially reconfigured as to create a shorter “formal” self-assessment tool that will be submitted to the Law Society, and a longer workbook that will enable firms to work through the Professional Infrastructure Elements in more detail. Both tools must be converted into an online format, and systems must be established for collecting and storing the information provided by the self-assessment. Discussions with the IT department on these issues are therefore essential.

Resource development

157. Significant work will be required to develop model policies and additional resources for the self-assessment tool. The list of existing resources will be revised later this year. However, as described in the Report, the majority of work on resource development will occur following the completion of the first self-assessment cycle. An appraisal of what this work will entail will occur once sufficient human resources are in place to support this aspect of the regulatory program.
158. Other areas of resource development that will require further consideration include the creation of an independent online resource-portal and exploring the creation of a collaborative space in which lawyers can exchange policies and best practices.
159. The matter of whether, and how, lawyers might obtain CPD credit for developing firm policies or attending workshops should be discussed by the Lawyer Education Advisory

⁴⁹ Anecdotally, when CPD was introduced to the profession, an additional full-time staff position was required to manage the surge in questions and concerns from the membership regarding the new scheme. It is anticipated the launch of law firm regulation will similarly result in an increase in member contact.

Committee as part of their current review of the CPD program. The Law Society would also benefit from liaising with CPD providers to discuss opportunities for the development of practice resources and model policies.

Rule development

160. Following the adoption of the recommendations in this Report, the Act and Rules Committee will prioritize drafting a basic set of rules, as outlined in this Report. Amendments to the existing rules are also required.
161. Importantly, the requisite sections of the *LPA* must be brought into force, and the new Rules approved by the Benchers prior to the commencement of the registration process.
162. At a later stage of regulatory development, the Task Force may wish to consider the areas of the Rules in which particular obligations and duties are shifted away from the lawyer and placed directly on the firm.

Communication and education

163. In the next phase of its work, the Task Force must address the educational and communications-related aspects of launching law firm regulation to the profession. Developing a communications strategy will be essential in this regard.
164. These communications should address not only the new obligations being placed on firms, but also, the highlight the merits of the proactive approach to regulation, the objectives of self-assessment and the support and resources that will be available for firms to assist them in meeting the new standards.
165. This messaging will be essential for the successful implementation of the regulatory scheme.
166. As a starting place, the Law Society must raise the profile of law firm regulation using a variety of media, including the Law Society website, the *Benchers' Bulletin*, the *Advocate*, other legal publications and social media. As noted above, the Law Society and external providers may wish to develop CPD courses and other educational initiatives that address various aspects of law firm regulation.
167. Within the Law Society, affected departments (e.g. Member Services, Policy) will require additional education, training and resourcing. A training session for Benchers prior to implementation, is also advisable.

Conclusion

168. Over the last three years, the Law Firm Regulation Task Force has undertaken the tremendous task of designing a proactive, outcomes-based regulatory model for governing the conduct of law firms in British Columbia.
169. The second Interim Report represents the latest and most productive stage of regulatory development, during which the Task Force has made critical decisions with respect to firm registration, the designated representative, the self-assessment process and resource and rule development. The Report also proposes an approach to, and schedule for the implementation of law firm regulation.
170. Together, these components create a regulatory scheme that will encourage and support the establishment of strong professional infrastructures within law firms of all sizes in BC, resulting in new opportunities and new responsibilities that will improve the provision of legal services to the public.
171. If adopted by the Benchers, the 17 recommendations contained in this Report also signal a turning point in the Task Force's work, shifting the focus from regulatory design toward operational implementation.
172. The Benchers will be provided with a final report in advance of the official launch of law firm regulation to the profession, which is anticipated to occur in early 2018.



Interim Report of the Law Firm Regulation Task Force

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Purpose: Decision

Table of Contents

Table of Contents	2
Executive Summary	3
Introduction.....	3
Background	4
Purpose	6
Regulatory Goals.....	6
Proposed Application of Law Firm Regulation.....	7
Nature of law firm regulation	8
Scope of law firm regulation.....	9
Regulatory Framework Foundation: “Professional Infrastructure Elements”	12
Proposed Professional Infrastructure Elements	14
Additional Aspects of the Regulatory Framework.....	18
Firm registration	18
Designated contact individual.....	19
Compliance and Enforcement	23
Tools for monitoring compliance	23
Enforcement.....	26
Resource Implications	29
Summary of Recommendations	30
Next Steps.....	30
Conclusion.....	31

Executive Summary

1. Recognizing that law firms exercise a significant amount of power in the legal profession and have considerable impact on, and influence over, professional values and conduct of lawyers practising in the firm, there has been a steady expansion of the number of legal regulators engaging in the regulation of entities providing legal services.
2. Following legislative amendments to the *Legal Profession Act* in 2012, the Law Society established a Law Firm Regulation Task Force, mandated with recommending a framework for regulating law firms in BC. This interim report provides the Benchers with a detailed review of the Task Force's work-to-date and includes ten recommendations pertaining to various aspects of the regulatory design.
3. Elements considered in this report include:
 - defining regulatory goals and objectives;
 - the nature and scope of law firm regulation;
 - the adoption of a set of “professional infrastructure elements”;
 - the development of several ancillary aspects of the framework, including firm contacts and registration processes; and
 - a number of compliance and enforcement related issues, including self-assessment, compliance reviews and potential disciplinary action.
4. The report concludes by outlining the Task Force's proposed next steps in developing a model of regulation that will improve the quality and effectiveness of the provision and regulation of legal services and enhance the protection of the public interest in the administration of justice.

Introduction

5. Historically, legal regulators have restricted their regulatory ambit to individual lawyers, a mode of regulation that was both desirable and practical in the context of a profession dominated by sole practitioners or small firms.
6. However, over the last several decades the landscape of the legal profession has changed dramatically. Although there are still a significant number of lawyers acting as sole practitioners, the majority of lawyers now practise in firms, some containing many hundreds of members. In larger firms, it is not uncommon for legal services to be provided by teams of

lawyers under the management or direction of a lead lawyer, and many aspects of the provision of legal services, including conflicts, accounting, training and supervision are carried out at the firm level. Even in small and middle sized firms, billing and other administrative aspects of practice are often handled by the firm itself. Despite these significant changes, the regulatory approach has, until recently, remained largely the same – focused on the individual.

7. Increasingly, there is also a recognition that firms tend to develop distinct organizational cultures that affect the manner in which legal services are provided. Accordingly, firms have become relevant actors in terms of their impact on, and influence over, professional values and conduct, and exercise a significant amount of power in the legal profession.¹
8. In response, many jurisdictions are adopting new regulatory models designed to address the conduct of law firms. This interim report outlines work of the Law Society's Law Firm Regulation Task Force, which has spearheaded the development of a law firm regulation framework for BC.

Background

9. Over the last decade, there has been a steady expansion of the number of regulatory regimes that have introduced aspects of regulation that specifically address entities that provide legal services. Regulators of the legal profession in England and Wales, and several Australian states have adopted regulatory models that address professional conduct at the firm level. Many Canadian provinces have followed suit, with numerous law societies broadening their regulatory focus, shifting from a model that exclusively focuses on individual lawyers to one that also includes the collective lawyers work in. Nova Scotia, Quebec, Ontario, Alberta, Saskatchewan and Manitoba are all at various stages of developing their own frameworks for entity regulation.²
10. In 2011, the Benchers decided there was merit in exploring the extent to which the Law Society could directly regulate law firms in BC.³ Recognizing that firms are now a dominant

¹ Adam Dodek, "Regulating Law Firms in Canada" (2012) 90:2 Canadian Bar Review. Dodek argues that law firm culture needs to be the focus of regulation. Rationale presented to support this new regulatory approach, include: the impact of firms' cultures on the provision of legal services and associated professional conduct; public perception that members of large firms receive favourable treatment from regulators, undermining confidence in the self-regulation of the profession; and the recognition that most other professions regulate entities. Online at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1984635 . See also Amy Saltzyn "What If We Didn't Wait?: Canadian Law Societies and the Promotion of Effective Ethical Infrastructure in Law Practices" (2014) Ottawa Faculty of Law Working Paper No. 2015-15. Online at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2533229

² These jurisdictions are considering regulating non-legal entities as well. As such, their focus has been "entity" regulation rather than "law firm" regulation. At this stage, BC is only considering the regulation of law firms.

³ The Law Society's last two Strategic Plans have both contained initiatives addressing law firm regulation. Most recently, initiative 2-2(b) of the 2015-2017 Strategic Plan directs the continuation of the work of the Task Force in

– but as yet, unregulated – feature of the legal environment, firm regulation was seen as a means of improving the quality and effectiveness of the provision and regulation of legal services across the province.

11. In 2012, legislative amendments to the *Legal Profession Act* (“LPA”) provided the Law Society with the authority to regulate law firms of any size and organizational structure. Some of these amendments are not yet in force, as they await the Law Society’s determination about how to exercise this new authority.⁴
12. Following these legislative changes, the Executive Committee created a staff working group to gather information about law firm regulation in other jurisdictions and possible models for regulation, including the advantages and disadvantages of various approaches. In July 2014, the Law Firm Regulation Task Force was established. The Task Force, which is composed of both Benchers and non-Bencher members of the profession and is supported by a team of Law Society staff, was given the mandate of recommending a framework for regulating law firms.
13. The Task Force is guided by four primary objectives:
 - a. to enhance the regulation of the legal profession by expanding the regulatory horizon beyond individual lawyers to include entities that provide legal services;
 - b. to enhance regulation by identifying areas of responsibility for law firms that reflect the importance of their role and by identifying opportunities for the development of standards for centralized functions that support the delivery of legal services, such as conflicts management and accounting;
 - c. to engage law firms in ensuring compliance with regulatory requirements and efforts to maintain and, if necessary, to improve the professional standards and competence of lawyers who practise in the firm; and
 - d. to establish responsibilities for communication, both within law firms and between firms and the Law Society, to ensure appropriate attention is brought to all matters involving regulatory standards and professional obligations.
14. The Task Force has met on eight occasions, during which it has considered a wide breadth of topics. These include: the value of establishing regulatory goals and outcomes; the nature and scope of law firm regulation, with a particular focus on the implications for sole

developing a framework for the regulation of law firms. Online at: www.lawsociety.bc.ca/docs/about/StrategicPlan_2015-17.pdf.

⁴ To see the Bill at 3rd reading, see www.bclaws.ca/civix/document/id/bills/billsprevious/4th39th:gov40-3. Some amendments are proclaimed, such as the giving the Benchers the authority to make rules governing law firms, but are as yet, unused.

practitioners; the creation of a set of “professional infrastructure elements” that will serve as the foundation of the regulatory framework; and the development of several ancillary aspects of the framework, including firm contact persons and registration processes. The Task Force has also discussed compliance and enforcement related issues, including self-assessment, compliance reviews and potential disciplinary action. Earlier this year, the Task Force also conducted a province-wide consultation canvassing lawyers on their views on many of these issues. Feedback from that consultation has been discussed by the Task Force and has aided in developing the recommendations below.

Purpose

15. At this juncture, the Task Force wishes to present the Benchers with an interim report. The purpose of this report is to provide a detailed summary of the Task Force’s work-to-date and reasoning, as well as to outline a series of recommendations that the Task Force has settled on.
16. The Task Force hopes that the report will elicit discussion around the recommendations presented below. As noted throughout this report, some aspects of the overall scheme are still under consideration, and feedback from the Benchers will assist the Task Force in continuing to develop some of the more detailed aspects of the regulatory framework.

Regulatory Goals

17. In the early stages of its work, the Task Force identified a number of rationales for pursuing law firm regulation. A central goal is to ensure fair and effective regulation that recognizes some issues and concerns transcend the work of any individual lawyer and are more akin to ‘firm’ responsibilities. Equally importantly, the new regulatory framework aims to aid the profession in delivering high quality legal services to clients through fostering a supportive, non-adversarial firm-regulator relationship. An additional regulatory goal of adopting a proactive approach to regulation is to reduce the types of behaviours that lead to incidents of misconduct, complaints and investigations. In so doing, the regulation should enhance the protection of the public interest in the administration of justice, as well as improving the Law Society’s effectiveness as a regulator. These broad goals have informed much of the Task Force’s work in developing the proposed regulatory model presented in this report.
18. Some jurisdictions have gone further than identifying a general set of rationale for law firm regulation and have established a set of specific “regulatory outcomes” – or the desired ends of the regulatory regime. These outcomes tend to be high-level and aspirational in nature and serve three major purposes: first, they help shape the regulatory scheme itself; second, they

can assist in clarifying the purpose of the regulation for both the profession and the public; and third, they can assist in measuring the success of the scheme, once implemented.

19. For example, the Nova Scotia Barristers' Society has developed six specific regulatory outcomes as part of its regulatory reform, which focus on lawyers and legal entities: providing competent legal services; providing ethical legal services; safeguarding client trust money and property; providing legal services in a manner that respects and promotes diversity, inclusion, substantive equality and freedom from discrimination; and providing enhanced access to legal services.⁵
20. At this stage, the Task Force is of the view that it is not essential to establish an exhaustive list of regulatory outcomes for BC. Rather, the Task Force recommends focusing on adopting a comprehensive set of "professional infrastructure elements," which represent key areas for which law firms bear some responsibility for the professional conduct of their lawyers. These elements, as further described at page 12 of this report, act as the backbone of the regulatory framework and are the *means* of achieving the goals of law firm regulation, rather than the end goals (regulatory outcomes) themselves. Many jurisdictions rely on similar types of elements or principles to define and guide the overall purpose of the regulation, rather than establishing a separate list of high-level, aspirational regulatory outcomes, as Nova Scotia has done.

Recommendation 1 - Focus on the development of professional infrastructure elements as a means of achieving the desired outcomes of law firm regulation

21. Once the regulatory framework has been established, the Task Force may reconsider whether there is merit in developing regulatory outcomes, particularly as it relates to measuring the success of law firm regulation.

Proposed Application of Law Firm Regulation

22. The nature and scope of law firm regulation are key issues for the Task Force, with the question of 'how' and 'who' to regulate being fundamental to the overall design of the new regulatory framework.

⁵Regulatory outcomes for Nova Scotia are currently in draft form. See online at: <http://nsbs.org/mselp-outcomes> Nova Scotia is also undertaking a broad exploration of changes to the entire regulatory model, for which it has identified defined regulatory "objectives" that set out the purpose and parameters of legal services regulation, more generally. See online at: <http://nsbs.org/nsbs-regulatory-objectives>

Nature of law firm regulation

23. The Task Force has engaged in considerable discussion regarding the merits of adopting a “proactive” regulatory approach. Proactive regulation refers to steps taken by the regulator, or aspects built in to the structure of the regulation, that attempt to address or eliminate potential problems before they arise, including misconduct that may or may not result in complaints to the regulator. Accordingly, the emphasis is on assisting firms to comply, rather than punishing them for non-compliance. This model is premised on the theory that the public is best served by a regulatory regime that prevents problems in the first place, rather than one that focuses on taking punitive action once they have occurred.
24. Proactive regulation is also typically “outcomes-based,” involving the setting of target standards or principles with which law firm compliance is encouraged. These principles are established and articulated by the regulator such that firms are told *what* they are expected to do, but there are no rules that tell firms *how* to specifically satisfy the principles and achieve compliance. This approach encourages both accountability and innovation in meeting professional and ethical duties.
25. In contrast, “reactive” regulation focuses on establishing specific prohibitions through prescriptive legal requirements (rules) and instituting disciplinary action when rules are violated. This is the approach law societies have traditionally taken when regulating lawyers: complaints are addressed individually in response to past misconduct.
26. A major criticism of this rules-based, complaints-driven model of regulation is that rather than taking steps to prevent the conduct from occurring in the first place, the regulator intervenes after the fact, and then only to sanction the lawyer for conduct that has already occurred. This creates little, if any, latitude for regulators to proactively manage behaviours of concern before they escalate.

Recommendation 2 – Emphasize a proactive, outcomes-based regulatory approach

27. Following a review of a substantial body of academic literature as well as existing and developing models of law firm regulation,⁶ the Task Force proposes a hybrid approach that

⁶ The Solicitors Regulation Authority in England and Wales and a number of Australian jurisdictions all take a proactive, principles-based regulatory approach. Alberta, Saskatchewan, Manitoba and Ontario are all considering adopting proactive compliance-based regulation for law firms, while Nova Scotia is currently in the process of implementing what is referred to as “proactive management based regulation.” The Canadian Bar Association also supports the proactive, compliance-based regulation of law firms.

emphasizes a proactive, principled, outcomes-based regulatory structure that is supported by a limited number of prescriptive elements designed to strengthen compliance.

28. As compared to more traditional modes of regulation, this “light touch” regulatory approach — which has informed many aspects of the regulatory design recommended by the Task Force in this report — is one in which the enforcement of rules plays a secondary and supporting role in achieving desired outcomes. The primary focus is on providing transparency about the objectives to be achieved, and placing greater accountability on both the regulator and the regulated in working together to ensure the proactive prevention of harms.
29. Under this approach, firms would implement internal policies and procedures addressing high-level principles established by the Law Society (“professional infrastructure elements”). The focus would be on outcomes, working in partnership with firms to support them in developing and implementing these policies to create a robust infrastructure that promotes the professional, ethical behaviour of their lawyers.
30. New rules would be designed to make firms’ development of, and adherence to these policies and procedures a regulatory requirement. Compliance may be monitored through self-assessment or compliance reviews, as further detailed later in this report. By creating obligations to implement policies that promote professional conduct, the Law Society and law firms become engaged in a joint effort to prevent the occurrence of the type of behaviours that result in harm to clients and the public, and which may result in complaints and subsequent regulatory intervention.

Scope of law firm regulation

31. Under the *Legal Profession Act*, the Law Society has the authority to regulate law firms, which are defined broadly as “a legal entity or combination of legal entities carrying on the practice of law.” As a result, all lawyers, including sole practitioners, *could* be recognized as practising within law firms and fall within the ambit of law firm regulation. However, whether all lawyers *should* be subject to law firm regulation, or subject to the same degree of regulation, must be considered. In this vein, the Task Force has discussed the merits of extending law firm regulation to non-standard law firms, including sole practitioners, individual lawyers in space-sharing arrangements, pro-bono and non-profit legal organizations, government lawyers and in-house counsel.

Recommendation 3 – Include traditional law firms and sole practitioners within law firm regulation, while considering the inclusion of pro bono and non-profit legal organizations, government lawyers and in-house counsel at a later stage of regulatory development.

Traditional law firms

32. In BC, over 70% of lawyers now practise in law firms comprising two or more lawyers. Of these, 35% practise in small firms (2-10 lawyers), 13.7% practise in medium-sized firms (11-20 lawyers) and 24.2 % practise in large firms of 20 lawyers or more. The remaining 27% are sole practitioners.⁷
33. In order to design a comprehensive regulatory scheme, the Task Force recommends that all law firms should be subject to some form of law firm regulation, without distinction based on size. However, the Task Force is aware that the particular sensitivities associated with firm size should be recognized throughout the regulatory development process. Care must be taken not to add burdensome layers of regulation on top of the duties and obligations that existing rules already place on individual lawyers.

Sole Practitioners

34. The prevailing view of the Task Force is that sole practitioners should not be excluded from all aspects of law firm regulation, given this type of practice structure provides a sizable portion of the legal services delivered in BC. This position is also informed by the concern that such an exclusion may encourage some lawyers to pursue sole proprietorship to avoid being subject to the new regulatory scheme. However, the Task Force recognizes that, as the only lawyer in the firm, any ‘law firm’ responsibilities to meet regulatory requirements effectively fall to this individual. Given the broad goal of improving the regulatory process, creating additional burdens or costs for sole practitioners, or worse, double-regulation (as both an individual and a firm) should be avoided. Further, there may be some aspects of law firm regulation that have limited practical application when the firm consists of only one lawyer.
35. For example, if law firm regulation introduced a requirement that each firm must have policies and procedures in place to ensure conflicts of interest are avoided, consideration must be given to how this requirement should be tailored to the circumstances of sole practitioners, who, as individual lawyers, already have an independent professional responsibility to avoid conflicts of interests.
36. The Task Force recognizes that the nature and complexity of such policies will also vary based on whether the practice comprises one lawyer or hundreds, and the regulatory framework must recognize that a one-size-fits-all approach will be insufficient.

⁷ These statistics were compiled on September 15, 2016.

37. The Canadian Bar Association (“CBA”) has also highlighted the importance of ensuring that regulations are designed with a view to the unique practice circumstances of sole practitioners, including considering exemptions, as required, to avoid undue burden.⁸
38. The Task Force recommends that sole practitioners be engaged throughout the consultation process and provided with additional support as new regulations are rolled out, including guidance on the new regulatory requirements and access to model policies, specially-tailored education, training and mentorship programs.

Lawyers in space-sharing arrangements

39. The Task Force also recommends that sole practitioners in space-sharing arrangements be considered a regulated entity for some aspects of law firm regulation. These small collectives frequently develop creative, pragmatic and mutually-beneficial ways of supporting each other in practice, a mode of cooperation that the new regulatory scheme will actively encourage. Accordingly, rather than each lawyer being individually responsible for every aspect of compliance, space-sharing lawyers will be able to find ways to exploit efficiencies by meeting particular compliance obligations together.
40. Again, it is important that the unique practice circumstances of these groups are supported, not burdened, by the overarching regulatory design. In the next phase of its work, the Task Force will continue to consider how facilitating group compliance for space-sharing lawyers may best be achieved.

Pro bono and non-profit legal organizations

41. The Task Force recognizes that organizations which exclusively provide pro bono or non-profit legal services play a unique role in the provision of legal services within BC. Accordingly, the Task Force recommends undertaking a detailed analysis of the merits of their inclusion or exclusion from law firm regulation as part of the next phase of regulatory development, once critical design elements are in place.

Government lawyers and in-house counsel

42. As a collective, lawyers working within government and as in-house counsel operate in a very different context than private law firms, particularly given that they are not providing legal advice directly to the public. Consequently, some of the principles that underpin the

⁸ See CBA Resolution 16-19-A “Entity Regulation and Unique Circumstances of Small and Sole Practitioners”. Online at: <https://www.cba.org/getattachment/Our-Work/Resolutions/Resolutions/2016/Entity-Regulation-and-Unique-Circumstances-of-Smal/16-19-A-ct.pdf>

new regulatory framework may not be as relevant or applicable as they are to those in private practice.

43. On this basis, the Task Force recommends that government lawyers and in-house counsel not be included in the scope of law firm regulation at this stage. This position aligns with that of the CBA, which also supports more study and consultation before law firm regulation is extended to these groups of lawyers.⁹ The Law Society of Upper Canada also suggests an incremental approach to the application of law firm regulation to government lawyers, corporate and other in-house counsel.¹⁰
44. Accordingly, the inclusion of these ‘firms’ into the regulatory scheme will be reconsidered at a later date.

Alternative business structures

45. The question of whether to allow non-lawyer controlling ownership of legal service providers is a distinct issue from the matter of law firm regulation. Consequently, when determining what type of regulatory framework is most suitable for law firm regulation, and establishing the associated regulatory elements, the Task Force will not address whether the Law Society should be engaged in the regulation of other kinds of entities.
46. Notwithstanding the proposed inclusions and exclusions detailed above, the Task Force envisages a multi-phased introduction of the new regulatory program such that some, if not all, of the practice structures initially identified as falling outside the ambit of law firm regulation may be subject to new regulatory requirements at a later date. Throughout the implementation process, the Task Force will continue to reflect on the appropriateness of the framework’s application to pro bono and non-profit legal organizations, as well as government and in-house counsel.

Regulatory Framework Foundation: “Professional Infrastructure Elements”

47. Much of the Task Force’s work-to-date has focused on determining where injecting aspects of regulation that specifically target firms would support or supplement the existing regulatory system. This includes areas where it may be more appropriate to entirely shift responsibility away from the individual lawyer and place it on the firm.

⁹Letter from the Canadian Bar Association to the Federation of Law Societies and the Law Society of Upper Canada (February 26, 2016).

¹⁰ Law Society of Upper Canada, “Promoting Better Legal Practices” (2016). Online at : <https://www.lsuc.on.ca/with.aspx?id=2147502111>

48. Aided by consultation with the Law Society membership, a review of regulatory frameworks of other jurisdictions implementing law firm regulation, and a review of the *Legal Profession Act*, Law Society Rules and Code of Professional Conduct, the Task Force has identified eight specific areas where it is appropriate for firms to take responsibility to implement policies and procedures that support and encourage appropriate standards of professional conduct and competence.
49. These eight elements, which the Task Force has called “professional infrastructure elements,” correlate to core professional and ethical duties of firms. They are designed to be sufficiently high level and flexible to be adapted to different forms of practice, yet concrete enough to establish clear, basic standards for firm conduct.
50. Under the new framework, firms would be required to put in place – if they have not done so already – policies and procedures in relation to each of the professional infrastructure elements. Firms would be left to determine how to most effectively create and implement these policies rather than being subject to prescriptive rules. The expectation is that firms will use these professional infrastructure elements to guide best practices and to evaluate their compliance with the overarching regulatory requirements.

<p>Recommendation 4 – Adopt a set of professional infrastructure elements</p>
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51. The Task Force recommends adopting the set of eight professional infrastructure elements set out below. These elements reflect a refinement of the Task Force’s considerable work on this issue and represent the key areas for which law firms bear some responsibility for the professional conduct of their lawyers. The proposed elements will be accompanied by associated guidance questions that will assist firms in determining how to interpret and satisfy each particular principle.
52. Firms may design their own policies and procedures addressing these elements. The Law Society will also aim to develop model policies in key areas that firms may choose to adopt or modify, which may be of particular benefit to small firms and sole practitioners who do not already have policies in place or do not have sufficient resources to develop them on their own.
53. Regardless of how policies are created or implemented, it is ultimately a firm’s responsibility to decide how to comply with the professional infrastructure elements, taking into account the nature, scope, size and characteristics of their practice.

Proposed Professional Infrastructure Elements

	Element	Description	Rationale
1.	Competence and effective management of the practice and staff	<p>Ensuring the firm provides for the delivery of quality and timely legal services by persons with appropriate skills and competence. This includes ensuring that:</p> <ul style="list-style-type: none"> • issues or concerns about competence are handled in a constructive and ethically appropriate fashion, • the delivery, review and follow up of legal services are provided in a manner that avoids delay, • the firm enables lawyers to comply with their individual professional obligations, and • the firm provides effective oversight of the practice, including succession planning. 	<p>Issues relating to competence give rise to significant risks for the public and clients, including exposing law firms and lawyers to negligence claims and complaints. These issues can result from poor oversight of work products and the practice more generally.</p>
2.	Client relations	<p>Providing for clear, timely and courteous communication with clients, client relations and delivery of legal services so that clients understand the status of their matter throughout the retainer and are in a position to make informed choices. This includes having an effective internal complaints process available to clients in the event</p>	<p>Of the complaints received by the Law Society, many stem from a lack of appropriate communication with the client or delay resulting in the client feeling neglected. Many complaints are closed at the Law Society staff level, which means they are not serious enough to be referred to a regulatory committee; however, they account for a significant proportion of complaints. Law firms are well</p>

		of a breakdown in the relationship.	positioned to influence lawyer behaviour in a positive manner and prevent these types of complaints from occurring in the first place.
3.	Confidentiality	Ensuring client information, documents and communications are kept confidential and free from access, use, disclosure or disposal unless the client consents or it is required or permitted by law.	<p>Solicitor-client privilege and confidentiality are principles of fundamental justice and civil rights of supreme importance in Canadian law.¹¹ One of a lawyer's most important ethical obligations is to uphold and protect these principles. Failure to do so is to violate significant professional obligations. Further, law firms in BC are subject to privacy legislation which sets out a series of obligations concerning the collection, storage and use of personal information.</p> <p>Nevertheless, the Law Society receives a number of errors and omissions claims and complaints relating to lost or missing documents.¹² Lawyers are also required to report lost or improperly accessed records, or records that have not been destroyed in accordance with instructions, to the Law Society under Rule 10-4. Given the vast amount of personal information about clients in the possession of law firms, the potential for human error in this regard is high.</p>

¹¹ *Lavallee, Rackell and Heintz v. Canada (Attorney General)*, [2002] 3 S.C.R. 209

¹² The Law Society of British Columbia, Practice Material: Practice Management (February 2013) at p. 24. Online at: <http://www.lawsociety.bc.ca/page.cfm?cid=300>

4.	Avoiding conflicts of interest	Ensuring conflicts of interest are avoided from the outset and, where not avoided, ensuring they are resolved in a timely fashion.	Law firms have an important role to play in educating lawyers and non-legal staff about recognizing conflicts of interest and related issues. Conflict allegations accounted for about 8% of new complaints received by the Law Society in 2015. In some cases, the conflict could have been avoided had the firm had an appropriate system for performing a conflicts check.
5.	Maintaining appropriate file and records management systems	Providing appropriate file and records management systems to ensure that issues and other tasks on a file are noted and handled appropriately and in a timely manner. This includes providing for the appropriate storage and handling of client information to minimize the likelihood of information loss, or unauthorized access, use, disclosure or destruction of client information.	Requiring firms to maintain appropriate file and records management systems will reduce the risk of negligence claims for missed dates and lost file materials and the number of client dissatisfaction complaints.
6.	Charging appropriate fees and disbursements	Clients are charged fees and disbursements that are fair and reasonable and that are disclosed in a timely fashion.	A significant number of complaints received by the Law Society stem from dissatisfaction with fees. Much of the dissatisfaction could be avoided with clear written communication about fees at the outset and ongoing updates as to costs as the matter proceeds.
7.	Financial management	Ensuring compliance with accounting requirements and	Clients must have confidence that lawyers will handle their trust

		procedures, including the provision of appropriate billing practices.	funds in strict compliance with the rules. Mishandling of trust funds poses a complaints and claims risk and undermines the confidence the public should have in lawyers.
8.	Compliance with legal obligations relating to safe and respectful workplace	The firm provides a workplace that complies with legal obligations under the <i>BC Human Rights Code</i> , <i>Workers Compensation Act</i> and regulations made under that Act relating to freedom from discrimination and protection against bullying and harassment.	It is not intended that law firm regulation duplicate existing legislative requirements in relation to maintenance of a healthy law firm culture for lawyers and staff. However, recognizing the importance of these legal obligations, law firms should be required to have policies in place to ensure compliance with these obligations. Often there are red flags in a law firm or when lawyers or staff need help, and if issues are caught and addressed early, complaints and claims could be avoided and the public would be better protected.

Recommendation 5 – Develop mechanisms to establish compliance with professional infrastructure elements as a regulatory requirement

54. In order to ensure that firms take responsibility for their role in law firm regulation, the Task Force also recommends developing new rules that *require* firms to have adequate policies and procedures in place to address each of the professional infrastructure elements.¹³ New rules should also require the policies and procedures to be in writing and kept at firm's place of business. This will provide clarity about the nature and scope of firm policies, ensure they

¹³ Amendments to the *Legal Profession Act* (s. 11) permit the Benchers to make rules for the governing of law firms.

are readily available to staff at the firm and that they can be easily be provided to the Law Society, upon request. Further commentary on the enforcement of new regulatory requirements, including the requirement to have policies and procedures in place that satisfy the professional infrastructure elements, are detailed in the last portion of this report.

55. The Task Force recognizes that a transitional period will likely be required so that firms have sufficient time to understand the new rules and to develop and implement firm policies and procedures addressing the professional infrastructure elements. The Task Force will establish timelines for rolling out the new regulatory scheme in the next phases of its work.

Additional Aspects of the Regulatory Framework

Firm registration

56. It is essential that the Law Society is able to establish precisely who falls under the new regulatory framework. In considering how to achieve this, the Task Force has analyzed two different approaches: one requiring firms to complete a detailed authorization process (akin to licensing) administered by the regulator, the other simply requiring firms to register with the regulator.
57. The former process is requirements-based, such that the firm is essentially applying for permission to offer legal services. This is the approach taken in the England and Wales, where the Solicitors Regulation Authority looks carefully at the entity and its proposed activities as part of the process for determining whether the firm will be granted a Certificate of Authorization and thus, can provide legal services. This approach appears to be fairly onerous and requires considerable resources on the part of the regulatory body to administer.
58. In contrast, registration is largely informational in nature. This is the approach taken in some Australian jurisdictions, where law practices are required to provide the regulator with basic information, including a firm name, address and a list of lawyers, so that a register of law practices can be maintained. Firms must also notify the regulator when commencing or ceasing the practice of law, or when lawyers join or leave firms.
59. Given the administrative burden and costs associated with authorization, and the fact that there is already a licensing process at the individual lawyer level,¹⁴ the Task Force recommends that initially, firms not be required to go through a formal process in order to obtain a license to provide legal services. At this stage of regulatory development, registration will suffice.¹⁵ Information collected through the registration process would

¹⁴Requiring licensing of law firms could result in the double regulation of sole practitioners, essentially requiring them to license twice: once, as an individual lawyer and a second time, as a firm.

¹⁵ The registration approach is also being favoured by Alberta, Saskatchewan and Manitoba as part of the development

include the details of the firm address, contact person(s), names of partners and staff lawyers and areas of practice. Mechanisms should be in place to ensure this information is regularly updated.

Recommendation 6 – Establish a registration process for law firms

60. In addition to enabling the Law Society to clearly establish who is being regulated, information collected during the registration process may also be used for a variety of other purposes, including compiling statistics for the annual report, providing data to aid with future identification of risk and obtaining the details of the designated contact persons at the firm.
61. As neither the *Legal Profession Act* nor the Law Society Rules currently require firms to register with the Law Society, new rules will need to be developed outlining the registration process. Rules should detail the type of information firms should provide to the Law Society, the frequency and manner in which registration information is provided or updated and the extent to which this information can be shared.
62. During the next phase of its work, the Task Force will further refine what registration information should be collected, as well as considering the most appropriate method for obtaining, updating and sharing this information.

Designated contact individual

63. Most jurisdictions regulating law firms include a requirement to designate a person with responsibility for certain activities of the firm or its lawyers. The extent of the responsibilities of these contact persons vary widely, from substantial obligations to significantly less onerous roles.
64. At one end of the spectrum, law firms in England and Wales are required to appoint two compliance officers: one who is responsible for the oversight of legal practice, and the other for the firm's finance and administration. Persons occupying these positions have ultimate

of their law firm regulation. See "Innovating Regulation: A Collaboration of the Prairie Law Societies" Discussion Paper (November 2015) at p. 41. Online at: <https://www.lawsociety.sk.ca/media/127107/INNOVATINGREGULATION.pdf>. Nova Scotia requires all law firms to file an annual report that details names of lawyers and the nature of their role within the firm, as well as the location and particulars of the firm's trust accounts. All LLPs must register with the Executive Director. See Regulations made pursuant to the *Legal Profession Act*, S.N.S. 2004, c. 28 at 7.2.1 and 7.4 Online at: <http://nsbs.org/sites/default/files/cms/menu-pdf/currentregs.pdf>

- responsibility for any firm misconduct. The SRA intends to retain these roles, notwithstanding other significant anticipated changes to their regulation of law firms.¹⁶
65. Until the recent implementation of the new *Legal Profession Uniform Law*¹⁷, incorporated legal practices in some Australian jurisdictions were required to appoint a legal practitioner director who was responsible for the implementation of “appropriate management systems” (the equivalent of the professional infrastructure elements), for taking reasonable action to ensure that breaches of professional obligations do not occur and to ensure that, if breaches do occur, appropriate remedial action is taken. The legal practitioner director was liable for disciplinary action if these obligations were not met.¹⁸
 66. Even in the absence of full-scale law firm regulation, Nova Scotia requires law firms to designate a contact person to receive official communications from the regulatory body, including complaints against the firm.¹⁹ Alberta requires law firms to designate a lawyer who is “accountable” for controls in relation to trust accounts as well as the accuracy of all filing and reporting requirements.²⁰ Ontario is also considering a designated contact as part of their evolving law firm regulation. It is expected that this individual will be tasked with receiving notice of complaints and taking steps to address a firm’s failure to meet its regulatory responsibilities.²¹
 67. In the context of a regulatory scheme that seeks to establish a regulatory partnership between the Law Society and firms, and the resulting increase in interactions between the two bodies, the Task Force recommends that firms be required to nominate one or more of their lawyers as a designated contact person.

¹⁶ The SRA is currently undertaking a comprehensive review of its regulatory approach. See Solicitors Regulation Authority, “Consultation, Looking to the Future – Flexibility and Public Protection” (June 2016). Online at: <https://www.sra.org.uk/sra/consultations/code-conduct-consultation.page> at p. 19.

¹⁷ In July 2015 the *Legal Profession Act*, 2004 was replaced by the *Legal Profession Uniform Law Application Act*, 2014, which will govern both New South Wales and Victoria.

¹⁸ Christine Parker, “Law Firms Incorporated: How Incorporation Could and Should Make Firms More Ethically Responsible” (2004) 23:2 University of Queensland Law Journal 347 at 371 and 373. Online at: <http://www.austlii.edu.au/au/journals/UQLawJl/2004/27.pdf>

¹⁹ This individual has no personal responsibility for the activities of the firm or the conduct of lawyers associated with it. See Regulations made pursuant to the *Legal Profession Act*, *supra* note 15.

²⁰ The Rule of the Law Society of Alberta at 119.1. Online at: <http://www.lawsociety.ab.ca/docs/default-source/regulations/rules698a08ad53956b1d9ea9ff0000251143.pdf?sfvrsn=2>

²¹ Law Society of Upper Canada, Professional Regulation Committee Report “Convocation, Professional Regulation Committee Report” (April 2015) at para 52. Online at: [http://www.lsuc.on.ca/uploadedFiles/For the Public/About the Law Society/Convocation Decisions/2015/convocation-april-2015-professional-regulation.pdf](http://www.lsuc.on.ca/uploadedFiles/For%20the%20Public/About%20the%20Law%20Society/Convocation%20Decisions/2015/convocation-april-2015-professional-regulation.pdf)

Recommendation 7 – Establish a role for the designated contact person that includes responsibilities related to general communications, reporting and complaints.

68. The Task Force proposes that the designated contacts’ responsibilities should fall on the “less onerous” end of the spectrum; that is, the contact should not be held responsible for creating policies or ensuring a firm meets other regulatory obligations, nor should they be subject to personal liability for firm non-compliance. The Task Force suggests four possible areas of responsibility for the designated contacts, as detailed below:

Acting as the primary administrative liaison between the Law Society and the firm

69. The designated contacts’ responsibilities would include ensuring that firms have registered and that the Law Society is apprised of any material changes in registration information. Designated contacts would also receive official correspondence from the Law Society.

Reporting on compliance with the professional infrastructure elements

70. The designated contacts’ reporting responsibilities could include documenting whether firms have policies and procedures in place that address the professional infrastructure elements and providing evaluations as to the extent these policies and procedures have been followed.²² The Task Force does not suggest making the designated contacts personally responsible for the accuracy of the reports submitted on the firms’ behalf. Rather, the designated contacts would be expected to provide the relevant information to the Law Society in a timely fashion, if requested, with the ultimate responsibility for compliance falling to the firm.

Receiving notice of, and responding to complaints against the firm or lawyers at the firm

71. The role of the designated contacts with respect to the complaints process has generated considerable discussion. The Task Force recommends that these persons should be required to cooperate with the Law Society in the investigation of complaints about their firms and the firms’ lawyers by coordinating responses that respond fully and substantially to the complaint. However, the process surrounding the *reporting* of complaints — both by the

²² This could be done by way of the completion of self-assessment on behalf of the firm, as detailed later in this report.

designated contact to the Law Society and by the Law Society to the designated contact — is still under consideration.

72. With respect to complaints against the firm itself, the Task Force is considering the level of discretion designated contacts should have in reporting complaints of which they become aware to the Law Society. Similarly, when a complaint is made about a specific lawyer within the firm, the Task Force is also evaluating the extent of the designated contacts' discretion in reporting this to Law Society and the timing and informational content of any such reports.
73. Conversely, the Task Force also continues to discuss the degree of discretion the Law Society should exercise in reporting complaints or investigations against lawyers to firms' designated contacts (e.g. whether all complaints received by the Law Society against a particular lawyer should be reported, or only those that meet a certain threshold), as well as the amount of information provided to a firm by the Law Society in the wake of a complaint or investigation against one of its lawyers.
74. The principles by which this discretion will be exercised will be further refined in the next stage of the Task Force's work. In carefully examining these issues, the Task Force recognizes the benefits associated with information sharing, as well as the need to balance the privacy rights of the individual with the public interest in informing firms of the misconduct of one of its lawyers, such that the firms could take steps to remedy the behaviour before it escalates or recurs. The Task Force is also cognizant of the discretion already exercised by the Professional Conduct department as part of their existing complaints process involving individual lawyers.
75. The *Legal Profession Act* does not contain a general requirement for law firms to nominate a designated contact for the purposes of communicating with the Law Society on administrative or other matters. Accordingly, a new rule is needed to require law firms to nominate one or more practising lawyers as a designated contact for the firm. The rules would also need to clearly set out the responsibilities of these person(s), as recommended above.
76. Unproclaimed amendments of the *Legal Profession Act* also refer to a "representative of a law firm or respondent law firm" for the purposes of appearing in front of a hearing panel on a discipline matter.²³ The legislative amendments therefore contemplate the designation of a law firm representative for the purposes of disciplinary action. Rules regarding the designated contacts' responsibilities related to disciplinary action may therefore be advisable.

²³ Section 41(2) *Legal Profession Act* (unproclaimed).

77. Further, if a decision is made to permit the Law Society to disclose complaints against lawyers to the firm's designated contact, new rules to this effect will also be necessary. Currently, the rules prohibit information sharing of this type.

Compliance and Enforcement

Tools for monitoring compliance

78. The purpose of the principled, outcomes-based regulatory approach is to ensure that firms implement policies and procedures such that the principles identified by the professional infrastructure elements are satisfied. While firms are given significant autonomy and flexibility in how they meet their obligations, a method for reviewing and evaluating progress towards these outcomes is necessary in order to determine whether compliance is being achieved.
79. Other jurisdictions engaged in law firm regulation have also seen value in assessing and monitoring compliance and have focused two main tools to do so: self-assessment and compliance reviews.

Self-assessment

80. Self-assessment, completed by an individual at the firm on behalf of the firm, can range from a requirement to fill out an online form rating basic compliance with established regulatory principles²⁴ (e.g. professional infrastructure elements) through to providing the regulator with a detailed informational report that includes documentation of all material breaches of regulatory principles.²⁵
81. Australian studies have suggested that the effects of self-assessment may be beneficial, with the requirement for firms to assess their own compliance with their implementation of "appropriate management systems" resulting in a statistically significant drop in complaints.²⁶ Additionally, the self-assessment process acts as an education tool by requiring

²⁴ This was the approach taken by the Office of the Legal Services Commissioner in New South Wales, in which a legal practitioner director was required to rate the firm's compliance with each of the ten established objectives of the regulatory scheme, using a scale ranging from "non-compliant" to "fully compliant plus". In July 2015, the *Legal Profession Act, 2004* was replaced with the *Legal Profession Uniform Law Application Act, 2014*, under which there appears to be no requirement to complete a self-assessment process. Nova Scotia's proposed self-assessment asks regulated entities to assess themselves as: "not-applicable," "non-compliant," "partially compliant" or "fully compliant" with the management systems set by the regulator. Online at: <http://nsbs.org/draft-self-assessment-process-legal-entities>

²⁵ This is the responsibility of firms' compliance officers in England and Wales, who must report to the Solicitors Regulation Authority.

²⁶ The authors of the study contributed this to the learning and changes prompted by the self-assessment process rather than to the actual (self-assessed) level of implementation of management systems. See Tahlia Gordon, Steve Mark and

firms to review and revise their policies, a learning exercise that improves client services.²⁷

Self-assessment can also be used to measure the success of law firm regulation; for example, statistics generated from responses obtained through self-reporting may help identify areas of the regulatory scheme that are functioning well or need improvement.

82. Self-assessments have been recommended for inclusion as part of developing law firm regulation in Ontario²⁸, Saskatchewan, Manitoba and Alberta²⁹. As a part of their implementation of law firm regulation, Nova Scotia is currently launching a pilot project evaluating the self-assessment tool they have developed to measure firms' compliance with their "management systems for ethical legal practice."³⁰
83. The Task Force is generally in favour of the use of self-assessment and recommends its incorporation into the law firm regulation framework.³¹ The primary goal of the assessment exercise is to ensure that firms turn their minds to the policies and procedures that address the professional infrastructure elements and to regularly evaluate the extent to which they are being followed. The effectiveness of the self-reporting scheme should be assessed after a period of time to determine whether it is meeting the goals or whether a more robust scheme is necessary.

Recommendation 8 – Adopt the use of self-assessment to monitor compliance

84. For example, the self-assessment form could set out the eight professional infrastructure elements and require firms to evaluate whether they are fully, partially compliant or non-compliant with a policy that supports these elements. If a firm indicates it is only partially or non-compliant, it must explain why this is the case as part of the assessment. The Law Society could also use self-assessment as a tool to determine which firms are at risk of

Christine Parker "Regulating Law Firms Ethics Management: An Empirical Assessment of the Regulation of Incorporated Legal Practices in NSW" (2010) *Journal of Law and Society*. Online at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1527315

²⁷ Canadian Bar Association, "Assessing Ethical Infrastructure in Your Law Firm: A Practical Guide" (2013). Online at: <http://www.cba.org/CBA/activities/pdf/ethicalinfrastructureguide-e.pdf>

²⁸ See Law Society of Upper Canada, Compliance Based Entity Regulation Task Force "Report to Convocation" (May 2016) at p. 4. Online at: http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2016/convocation_may_2016_cber.pdf

²⁹ See "Innovating Regulation: A Collaboration of the Prairie Law Societies" Discussion Paper (November 2015) at p. 40. Online at: <https://www.lawsociety.sk.ca/media/127107/INNOVATINGREGULATION.pdf>

³⁰ See Nova Scotia Barristers Society, "Draft Self-Assessment Process for Legal Entities" *supra* note 24. Two derivatives versions of this self-assessment tool are also expected to specifically address the work of sole practitioners and small firms, and in-house counsel.

³¹ This position is aligned with that of the Canadian Bar Association. See the CBA Committee's Ethical Best Practices Self Evaluation Tool. Online at: <http://www.lians.ca/sites/default/files/documents/00077358.pdf>

misconduct and to initiate dialogue with firms that are failing to meet the regulatory requirements, in an effort to help them achieve full compliance.

85. The Task Force has not decided on the precise mode or frequency of self-assessment. In the next phase of its work, the Task Force intends to explore who should be required to complete self-assessments and how frequently they should be undertaken (e.g. all firms at regular intervals, on an ad-hoc basis in response to complaints against particular firms, at reduced frequency for firms that demonstrate consistent compliance). The Task Force will also consider how self-assessments should be administered; for example, whether they should be included as part of an annual practice declaration or trust report or as a stand-alone process, and whether assessments should be filed on paper or through an on-line portal.
86. Rules may be necessary to further guide the administration of the self-assessment process.

Compliance reviews

87. The Task Force has also discussed the extent to which compliance reviews may assist in monitoring compliance with the new regulatory framework. These audit-type processes would be designed to emphasize compliance by helping firms to identify areas requiring improvement rather than serving as a mechanism for penalizing for non-compliance.
88. Compliance reviews are currently being considered for inclusion as part of law firm regulation in Ontario,³² Alberta, Saskatchewan and Manitoba,³³ and are supported by the Canadian Bar Association.³⁴ Australian jurisdictions also conduct compliance audits if there are reasonable grounds to do so based on conduct or complaints relating to either the law practice or one or more of its associates.

<p>Recommendation 9 – Consider adopting the use of compliance reviews to monitor compliance</p>
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89. The Task Force is considering utilizing compliance reviews to assist in monitoring firms' compliance with the new regulatory framework. Components of the review could include confirming that policies and procedures relating to each of the professional infrastructure elements are in place, identifying areas where the implementation or maintenance of these policies or procedures is inadequate and providing guidance as to how these inadequacies can be remedied.

³² *Supra* note 28

³³ *Supra* note 15.

³⁴ *Supra* note 9.

90. The Task Force is also considering when a compliance review might be triggered. Possibilities include: routine reviews at defined intervals; a review resulting from a firm failing to complete the self-assessment process or providing inadequate or inaccurate information; a review following a self-assessment that indicates a firm is only partially compliant or non-compliant; a review in response to a complaint against the firm; or a review deemed necessary due to other indications that appropriate policies and procedures are not being implemented or maintained (e.g., a concern about accounting arises in the context of a trust audit).
91. The Task Force will undertake further analysis before recommending how, and by whom, compliance reviews would be conducted. Particular attention will be given to the potential financial and resource implications for the Law Society of including a compliance review component in the regulatory framework.

Enforcement

92. The Task Force has not discussed enforcement in any degree of detail. Further analysis on how the disciplinary process should unfold in relation to firm misconduct is necessary with the assistance of staff in the Professional Conduct and Discipline departments who have detailed knowledge of how disciplinary action does, and could, work. However, for the purposes of this report, it is sufficient to provide a few high-level statements with respect to the anticipated enforcement strategy.
93. As discussed throughout this report, the model of law firm regulation recommended by the Task Force will primarily be a proactive, principled and outcomes-based framework that focuses on compliance. This light-touch approach emphasizes prevention over punishment such that discipline against firms is not anticipated to be pursued frequently. However, unless the framework includes enforcement capabilities in the form of disciplinary action or sanctions, there is no ability to ensure compliance with regulatory obligations. Consequently, determining what situations might warrant disciplinary action and developing a suite of enforcement tools will also be necessary.³⁵

Recommendation 10 – Continue to develop policies and rules to address non-compliance with new regulatory requirements

³⁵ The Solicitors Regulation Authority has also emphasized the need to develop a defined enforcement strategy in addition to new rules as part of its phased review of their regulatory approach to regulating both lawyers and firms. Further consultations on that enforcement policy will occur later this year. *Supra* note 16 at pp. 10 and 13. Notably, the SRA has proposed two separate Codes of Conduct – one for solicitors and one for firms – which are intended to provide greater clarity to firms as to the systems and controls they need to provide good legal services for consumers and the public, and greater clarity to individual lawyers with respect to their personal obligations and responsibilities.

Situations that may warrant disciplinary action

94. There are two types of situations whereby firms may find themselves subject to disciplinary measures. First, a firm may be found to be non-compliant with new regulatory requirements. For example, if there is a requirement to have policies and procedures in place that address the professional infrastructure elements and a firm fails to implement such policies or procedures, the Law Society may undertake disciplinary action to address this non-compliance. Similarly, if there is a new rule requiring firms to register, a firm that fails to register could be subject to a sanction.
95. Second, the law firm may be subject to a specific complaint that may warrant some form of disciplinary action. Amendments to the *LPA* include the addition of a definition of “conduct unbecoming the profession,” which is broad enough to capture the conduct of firms as well as individual lawyers.³⁶

Focus of disciplinary action

96. The Task Force discussed the need to develop guidance around when regulatory intervention should be focused at the firm level, when the focus is more appropriately placed on individual lawyers, and when both the lawyer and the firm should be subject to some form of disciplinary action.
97. In some cases, it will be clear where regulatory efforts should be directed. For example, if the Law Society received a complaint about a conflict of interest and, upon conducting an investigation, found that a firm had failed to develop policies and procedures on conflicts, the firm could be subject to disciplinary action. Conversely, if a compliance review revealed that the firm had strong policies and procedures regarding conflicts, but a lawyer failed to disclose all relevant facts to the firm or failed to raise pertinent information with the firm’s conflicts committee, and was subsequently found to be in a conflict of interest, it may be that the lawyer, but not the firm, becomes the subject of disciplinary action. A third situation may arise in which the firm is found to have a conflicts policies and procedures in place, but upon review by the Law Society, the policies and procedures are determined to be inadequate. A lawyer has nevertheless followed the policies and procedures and is found to be in a conflict of interest. It is possible that disciplinary action would only be pursued against the firm and not the lawyer.

³⁶“Conduct unbecoming the profession” includes a matter, conduct or thing that is considered, in the judgment of the benchers, a panel or a review board a) to be contrary to the best interest of the public or of the legal profession, or b) to harm the standing of the legal profession. Section 38 of the *LPA* has also been amended to include references to “conduct unbecoming the profession”. See sections 1(b) and 27 of the *Legal Profession Amendment Act, 2012*. Neither of these amendments are in force.

98. This example highlights the need to develop some general parameters and policies around when the Law Society should pursue matters with individual lawyers, with firms, or both.
99. As previously noted, the Task Force is also continuing to evaluate the extent to which information regarding disciplinary action against a lawyer by the Law Society should be shared with the lawyer's firm. Open communication has the benefit of facilitating the involvement of firms early in the process of addressing problems with its lawyers; even if not the ultimate 'resolver' of the complaint, the firm may be able to play a role in finding a solution. Finding non-disciplinary outcomes for low level complaints is one area where law firms may be particularly well-suited. However, this approach must be balanced against the privacy interests of individual lawyers.

Type of enforcement responses

100. Although law firm regulation is primarily proactive and outcomes-based, it will be necessary to incorporate prescriptive rules and associated sanctions to address those situations where firms fail to comply with certain aspects of the regulatory framework.³⁷
101. The Task Force is considering a wide spectrum of disciplinary options in the event of a lack of compliance with one or more regulatory requirements. Early responses to non-compliance could include those that are "remedial" in nature; for example, contacting the firm to discuss the reason for non-compliance or undertaking a compliance review to assist the firm ensuring it has implemented policies and procedures that address the professional infrastructure elements.
102. However, there may be instances where misconduct is so severe or widespread that some form of disciplinary action may be more appropriate; for example, non-compliance with the professional infrastructure elements after repeated remedial intervention by the Law Society, or systemic behaviour that presents a substantial risk to the public and that cannot otherwise be mitigated may warrant sanctions.³⁸ This is consistent with the approach taken today with regulation of individual lawyers.
103. Amendments to the *Legal Profession Act* provide the Benchers with the authority to make rules that could encompass a wide range of disciplinary measures, including examinations or investigations of firms' books, records and accounts; producing records, evidence and

³⁷ Note that the Law Society Rules have provide for the discipline of law corporations since 1988.

³⁸ The SRA take a similar approach of incremental supervision and enforcement. They may engage with firms in response to particular events (e.g. a complaint); use "desk-based supervision" and "visit-based supervision" involving telephone or in-person contact with regulatory officials to firms; participate in "constructive engagement" with the aim of assisting firms in tackling risks and improving standards; and finally, if there is a serious non-compliance with SRA principles or a risk to the public exists that cannot be mitigated, enforcement action will be taken, which may include warnings, fines, revoking or suspending the authorization of the firm, or an intervention in which the SRA takes possessions of the client documents and funds.

providing explanations in the course of an investigation; requiring a firm to appear before a hearing panel or a Committee to discuss firm conduct; or issuing citations. Amendments also provide that, if a hearing panel finds a firm has engaged in conduct unbecoming the profession, as defined in the *LPA*,³⁹ a firm may be reprimanded, conditions or limitations may be placed on the firms' practice or fines of up to \$50,000 may be issued.⁴⁰

104. In the next phase of its work, the Task Force intends to explore how the particulars of the disciplinary process and its associated rules may need to be adapted to accommodate the regulation of law firms.

Resource Implications

105. At this early stage of development, a detailed analysis of the potential resource implications for the Law Society of the new regulatory scheme has not yet been undertaken. However, the Task Force is aware that in order to establish an regulatory framework that supports the Law Society, the profession and the public interest more generally, additional financial and human resources must be provided throughout both the development and implementation phases of the project. Costs associated with completing and launching the new regulation will include: the development of model policies, self-assessment tools and rules; consultation and communication with the profession; designing specially tailored education, training and mentorship programs for target groups (e.g. sole practitioners); and increasing the regulatory functions of the law society.
106. Once law firm regulation is implemented, it is expected that the Professional Conduct and Discipline departments will initially see an increase in work load, as both firms and the Law Society navigate the new regulatory scheme. For example, investigations into complaints against firms will add to the work the Law Society does with respect to regulating individual lawyers. Compliance reviews, to the extent that they become part of the final regulatory design, will also require additional resources. However, over the longer term, the regulatory program will strive to become cost-neutral, as regulatory efficiencies are enhanced and complaints decrease as a consequence of firms becoming increasingly engaged in governing the professional and ethical behaviours of their lawyers
107. Additional analysis on the resources implications of law firm regulation will be part of the next phase of the Task Force's work.

³⁹ *Supra* note 35 (not yet in force).

⁴⁰ *Legal Profession Amendment Act 2012* at s. 24 and s. 27. These provisions are not yet in force.

Summary of Recommendations

108. A summary of the recommendations contained in this interim report is provided below:

Recommendations

1. Focus on the development of professional infrastructure elements as a means of achieving the desired outcomes of law firm regulation;
2. Emphasize a proactive, outcomes-based regulatory approach;
3. Include traditional law firms and sole practitioners within law firm regulation, while considering the inclusion of pro bono and non-profit legal organizations, government lawyers and in-house counsel at a later stage of regulatory development.
4. Adopt a set of professional infrastructure elements;
5. Establishing compliance with professional infrastructure elements as a regulatory requirement;
6. Establish a registration process for law firms;
7. Establish a role for the designated contact person that includes responsibilities related to general communications, reporting and complaints;
8. Adopt the use of self-assessment to monitor compliance;
9. Consider adopting the use of compliance reviews to monitor compliance;
10. Continue to develop policies and rules to address non-compliance with new regulatory requirements.

Next Steps

109. The proposed next step is for the Task Force to conduct a second round of consultation with the legal profession on the proposed framework for regulating law firms. In addition to seeking input from across the province, consultation will also include focus groups designed to elicit feedback from specific types of practice structures, such as sole practitioners and space-sharing lawyers.

110. The Task Force will undertake internal consultations with relevant departments at the Law Society concerning the proposed changes and how to develop model policies addressing the professional infrastructure elements.
111. The Law Firm Regulation Task Force aims to present a final report to Benchers once these steps have been completed. That report will include final recommendations of the Task Force, discussion of the results of the second round of consultation with the legal profession, a timeline for implementing the proposed law firm regulation framework and discussion of resource implications for the Law Society. Time must also be allowed for the proclamation of amendments in the *Legal Profession Act* which are currently not in force and are necessary for the full functioning of the regulatory framework.
112. It is envisaged that law firm regulation will be implemented in two phases. The first phase would be a ‘soft’ implementation, which will include the requirement for law firms to register with the Law Society and appoint a designated contact person. It is not anticipated that compliance and enforcement elements would be introduced at this stage. This approach will provide law firms with sufficient time to understand the new requirements and implement the required policies and procedures prior to them being enforced.
113. The second phase will bring the compliance and enforcement elements of law firm regulation into effect. While the timeline for implementation has not yet been determined, it is expected that the second phase will be launched no earlier than a year after the beginning of the first phase to allow sufficient time for the education and transitional components of the framework to be completed.

Conclusion

114. The introduction of law firm regulation represents a significant shift to the regulatory environment within BC, and in turn, the role of the Law Society in supporting and overseeing the work of the profession. The conduct of firms of all sizes will now be regulated, resulting in both new responsibilities and new opportunities that will serve to improve the provision of legal services across the province.
115. The Law Society is dedicated to working collaboratively with firms in implementing the proposed regulatory framework and assisting them in achieving compliance. As the framework continues to evolve, the Law Society will also be engaged in monitoring and fine-tuning elements of the regulatory design to ensure that the move toward this new mode of regulation is progressive, considered and reflective in nature.
116. Law firm regulation is an important, if not essential step into a more fair and efficient regulatory landscape, one that will address the conduct of some of the most influential actors

in the profession – law firms – and in so doing, enhance both the protection of the public interest and the Law Society’s effectiveness as a regulator.



PROFESSIONAL INFRASTRUCTURE SELF-ASSESSMENT TOOL

i. Professional Infrastructure

Under the new provisions of the Law Society Rules addressing the regulation of law firms, firms of all sizes will be required to have appropriate written policies and unwritten processes in place to support a set of eight “Professional Infrastructure Elements.” The elements capture prominent concerns and risk in relation to the practice of law firms.

The eight Professional Infrastructure Elements are as follows:

Professional Infrastructure Elements

Element 1: Developing competent practices and effective management

Element 2: Sustaining effective and respectful client relations

Element 3: Protecting confidentiality

Element 4: Avoiding and addressing conflicts of interest

Element 5: Maintaining appropriate file and records management systems

Element 6: Charging appropriate fees and disbursements

Element 7: Ensuring responsible financial management

Element 8: Equity, Diversity and Inclusion

These areas have been selected as a regulatory focus on the basis that they are widely viewed as representing the foundation of a firm’s professional, ethical legal practice.¹ They are designed to be sufficiently high-level to be adapted to different forms of practice, yet concrete enough to establish clear, basic standards for firm conduct.

¹ These and related topics have been identified by other bodies promoting the regulation of law firms, including Queensland’s Legal Services Commission (Australia), New South Wales Office of the Legal Services Commissioner (Australia), the Nova Scotia Barristers’ Society and the Canadian Bar Association.

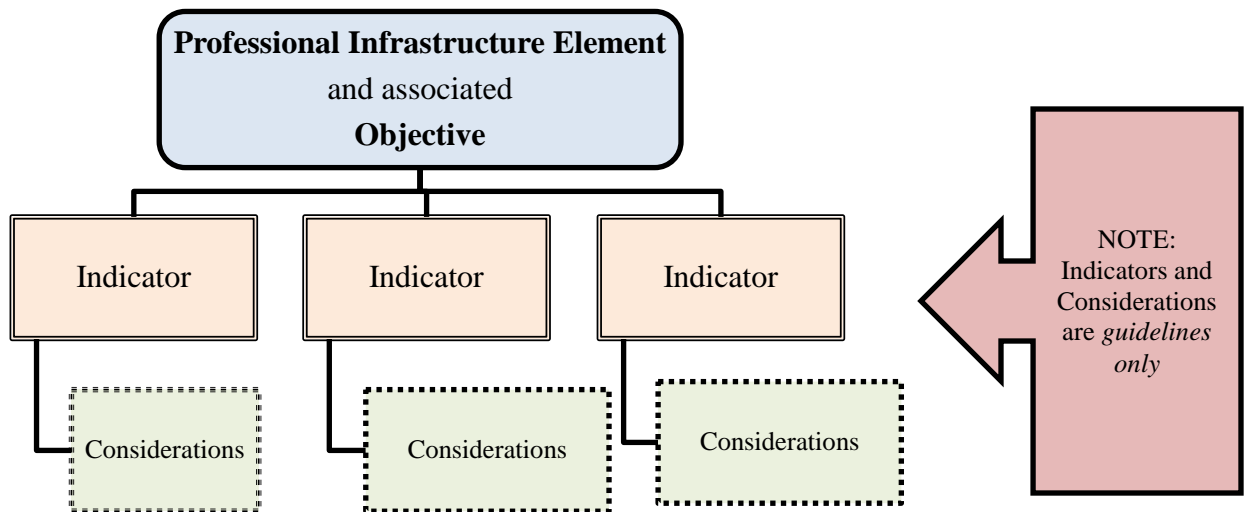
Under the new regulatory model, the expectation is that firms will develop and implement appropriate policies and processes that address each of the Professional Infrastructure Elements. Importantly, throughout the self-assessment these terms are used to specifically identify where *written* materials – in the form of policies - are required, and where *unwritten* processes that guide the firm’s conduct should be in place.

How a firm addresses the Professional Infrastructure Elements will be up to them; firms are not subject to prescriptive rules that dictate how compliance must be achieved. As such, firms have significant latitude to create and implement a variety of policies and processes that take into account the nature, scope, size and characteristics of their practice.

It should be noted that the eight Professional Infrastructure Elements establish a *minimum standard* for professional, ethical practice. Firms may choose – and are encouraged – to enhance their professional infrastructure by addressing additional areas that are not explicitly covered by the Professional Infrastructure Elements listed above.

ii. Self-assessment tool

To support law firms in successfully navigating the new regulatory framework, the Law Society has created a Self-assessment tool, which is designed to help firms measure their progress towards establishing, maintaining and enhancing their professional infrastructure. The general structure of the Self-assessment tool is as follows:



The cornerstones of the Self-Assessment tool are the **Professional Infrastructure Elements** and their associated **Objectives**. These should be viewed as compulsory aspects of the regulatory scheme.

Professional Infrastructure Elements: Firms will be expected to develop and implement policies and processes that adequately address each of the Professional Infrastructure Elements.

Objective: Each Professional Infrastructure Element is paired with an Objective, which represents a clear statement of the specific result or outcome the particular Element aims to achieve. The Objective should be viewed as the yardstick by which the satisfaction of the Professional Infrastructure Element is achieved.

For example, to satisfy Professional Infrastructure Element 3, “Protecting Confidentiality,” the firm must have appropriate policies and processes in place that will fulfil the stated objective of ensuring client information, documents and communications are kept confidential and free from access, use, disclosure or disposal unless the client consents or it is required or permitted by law.

How a firm addresses each of the Professional Infrastructure Elements is up to them. However, to assist firms in evaluating their level of compliance, the Self-assessment provides a series of **Indicators** and associated **Considerations** that a firm may choose to reflect on or adopt as they work toward satisfying the Professional Infrastructure Elements.

Neither the Indicators nor the Considerations are prescriptive, and should be approached as suggestions or guidelines for firms rather than a legal requirement. Ultimately, both Considerations and Indicators are designed to cause firms’ to reflect on their practices and to consider how they may improve them, as necessary.

Indicators: indicia that represent fundamental aspects of practice which law firms should examine in assessing the extent to which the objective of the Professional Infrastructure Element has been achieved. The Indicators are not exhaustive and are intended to serve as a guide only. Firms are encouraged to engage in thoughtful reflection and discussion to determine the degree to which these indicators, or other indicators, demonstrate progress toward achieving the Objective of the specific Professional Infrastructure Element.

Considerations: each indicator is paired with an illustrative list of the types of policies, procedures, processes, methods, steps, and systems that a prudent law firm might employ to support the professional and ethical delivery of legal services. These considerations are not exhaustive or mandatory, and their applicability will vary depending on the size and type of law firm being evaluated.

The Indicators and the Considerations are designed to be relatively general, or “high level” to enable the Self-Assessment to be flexible and applicable across various practice contexts and size. Individual firms will have unique circumstances to which the Law Society and the firm itself needs to be attentive.

The self-assessment also includes a selection of Resources², which represent a starting place for firms to seek additional support as they work towards satisfying each of the Professional Infrastructure Elements. This set of resources will be expanded in subsequent self-assessment cycles.

Assessment Scale

The self-assessment asks firms to assess themselves on a scale of one to four in relation to the extent that they have achieved the objective of each of the Professional Infrastructure Elements. The scale operates as follows:

1. Policies and processes addressing the Professional Infrastructure Element have **not** been developed.
2. Policies and processes addressing the Professional Infrastructure Element are under development, but are **not fully functional**.
3. Policies and processes addressing the Professional Infrastructure Element **are functional**.
4. Policies and processes addressing the Professional Infrastructure Element are **fully functional and regularly assessed and updated**.

The scale will provide firms with a quantitative measure of their progress towards implementing a robust professional infrastructure.

The **Comments** box provides an opportunity for firms to also include a qualitative assessment of their successes and challenges in relation to each Professional Infrastructure Element, and to add any further information or explanation that may assist the firm and the Law Society in understanding the assessment. If a rating of one or two is given for any of the Professional Infrastructure Elements, the firm must outline action it will take to address gaps or shortcomings in relation to achieving the particular objective.

² Due to technical problems relating to the new Law Society website, some of the hyperlinked Rule and Code provisions are temporarily inoperable. The Law Society’s Information Services Department is working to resolve this issue.

Method for Completing the Self-Assessment

The Rules do not mandate who must contribute to, or complete the self-assessment, however *submitting* the self-assessment is a firm responsibility. Further, those completing the self-assessment are not personally responsible or liable for ensuring that adequate policies and processes are in place in relation to each of the Professional Infrastructure Element; meeting the standards set by law firm regulation is, again, a *firm* responsibility.

As such, firms will have the flexibility to develop their own methods for working through the tool and should adopt techniques that best suit their practice. For example, sole practitioners or principals of small firms may undertake the self-assessment themselves. Larger firms might call a meeting to bring together key lawyers and staff to have an inclusive discussion about how the firm is working towards implementing or maintaining policies and processes that support the Professional Infrastructure Elements. Other firms may choose to circulate the assessment and collaboratively complete the document.

Regardless of the approach your firm develops, keep in mind that the overarching goal of law firm regulation is to support and promote ethical practice and professional standards within law firms. Given that self-evaluation is a key aspect of this effort, you are encouraged to adopt processes that foster thoughtful reflection on the ways in which your firm is working towards actualizing each of the Professional Infrastructure Elements.

Definitions

“Firm” means a legal entity or combination of legal entities carrying on the practice of law

“Lawyer” means a member of the Law Society and articling students employed by the firm.

“Staff” includes any non-lawyer employee at the firm who assists in or provides legal services to clients

“Policies” refers to written documentation of the approach the firm employs to address a particular practice issue or area. Policies may include written guidelines, written protocols or written procedures.

“Processes” include a wide scope of unwritten practices, systems, methods, steps, principles and other measures formulated or adopted by the firm that are intended to influence and determine decisions and actions in a manner that facilitates the achievement of the firm’s goals.

Self-Assessment Tool

ELEMENT 1 - DEVELOPING COMPETENT PRACTICES AND EFFECTIVE MANAGEMENT

OBJECTIVE

Ensure the delivery of quality and timely legal services by persons with appropriate skills and competence

RATING	Policies and processes have not been developed. 1 <input type="checkbox"/>	Policies and processes are under development but are not functional. 2 <input type="checkbox"/>	Policies and processes are functional. 3 <input type="checkbox"/>	Policies and processes are fully functional and regularly assessed and updated. 4 <input type="checkbox"/>
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For a rating of 1 or 2, you must outline the action the firm will take to address challenges and shortcomings in addressing the Professional Infrastructure Element

Comments:

Note: The Indicators and Considerations listed below are not prescriptive, and the guidance provided therein should be approached as suggestions rather than mandates

INDICATOR 1: Do lawyers and staff have sufficient training, experience and knowledge to perform their duties?

Considerations

- ☐ Adequate due diligence is conducted on candidates before a final hiring decision is made (e.g. as permissible, review of disciplinary records and reference and credentials checks)
- ☐ Initial and ongoing training is provided for lawyers and staff, including in the following areas, as appropriate:
 - ☐ identification of conflicts
 - ☐ use of trust accounts
 - ☐ confidentiality and privacy
 - ☐ technology use and security
 - ☐ ethics
 - ☐ file management processes
 - ☐ billing practices
 - ☐ appropriate communications with clients
 - ☐ diversity and cultural competency
- ☐ Additional training is provided when major procedural and organizational changes occur
- ☐ Initial and ongoing mentorship is provided to new and junior lawyers and staff by more experienced lawyers and staff
- ☐ Firm policy and procedures manuals are comprehensive, accessible and updated and reviewed with lawyers and staff
- ☐ Continuing educational efforts are recorded and considered in the context of lawyer and staff performance reviews
- ☐ Processes are in place to ensure that lawyers have professional development plans that are relevant to their area of practice
- ☐ Processes are in place for identifying performance objectives and to evaluate progress towards those objectives
- ☐ Policies and appropriate resources are in place to ensure lawyers and staff have, or have the capacity to develop knowledge of applicable substantive and procedural law (e.g. electronic updates, lunch and learns, regular meetings)
- ☐ Processes are in place to ensure that lawyers and staff stay current on the appropriate technology
- ☐ Lawyers are supported in complying with their individual professional obligations under the Law Society Rule and the *Code*

RESOURCES:

- [Practice Resource: Guidelines for recruiting, interviewing and hiring practices](#) (December 2006)
- [The Trust Accounting Handbook](#) (August 2015)

- [Practice Resource: Retainer Agreement](#) (December 2016)
- [Practice Resource: Workplace Equality](#) (Updated July 2007)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [[Chapter 2.1](#): Canons of Legal Ethics; [Chapter 3.1](#): Competence; [Chapter 3.2](#): Quality of Service; [Chapter 3.3](#): Confidentiality; [Chapter 3.4](#): Conflicts; [Chapter 3.6](#): Fees and Disbursements; [Chapter 6.1](#): Supervision; [Chapter 6.2](#) : Students]
- [Law Society Rules 2015](#) [[Part 3 - Division 7](#): Trust Accounts and Other Client Property; [Part 8](#): Lawyers' Fees; [Rule 10-4](#): Security of Records]

INDICATOR 2: Are concerns about competence dealt with in an efficient, constructive and ethically appropriate fashion?

Considerations

- ☐ Policies are in place to review complaints made to the firm and those made to the Law Society (e.g. establishing a complaint line or email for the firm)
- ☐ Steps are taken to ensure all communications with the Law Society pertaining to lawyer or firm competence are professional and prompt
- ☐ Opportunities are provided for lawyer and staff performance reviews
- ☐ Processes are in place to encourage and monitor lawyer and staff wellbeing, including promotion of the Lawyer Assistance Program and other mental health support relevant to the legal profession
- ☐ Processes are in place to ensure the firm supports its lawyers in complying with Law Society Rules and the *Code of Professional Conduct*

RESOURCES:

- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [[Chapter 2.1](#): Canons of Legal Ethics; [Chapter 3.1](#): Competence; [Chapter 7.1](#): Responsibility to the Society and the Profession Generally]
- [Law Society Rules 2015](#) [[Part 3 - Division 1](#): Complaints]
- [Lawyers Assistance Program](#)

INDICATOR 3: Are the delivery, review and follow up of legal services are provided in a manner that avoids delay?

Considerations

- ☐ Retainers are only taken if the firm feels, at the time the retainer is taken, that it has the necessary skills and resources to carry out the client's instructions in a reasonable period of time

- ☐ Processes are in place to ensure lawyers and staff are informed about priorities and deadlines
- ☐ Policies are in place to ensure lawyers and staff comply with applicable deadlines and limitation periods
- ☐ Reviews are conducted with lawyers and staff to evaluate the appropriateness of their workload and issues are addressed
- ☐ Processes are in place to ensure the effective use of bring forward systems and calendars to keep track of key dates (e.g. limitation periods, court and tribunal appearances, filing deadlines, closing dates)
- ☐ Firm systems are in place to ensure there is adequate coverage for lawyers and staff during their absence for vacation or leave and that permanent vacancies are filled in a reasonable period of time
- ☐ Firm systems are in place to ensure that open files are reviewed on a scheduled basis and next steps are diarized
- ☐ Processes are in place to ensure that files of departing lawyers are promptly re-assigned
- ☐ Calendars are easily accessible, including lawyers and staff calendar access and the provision of remote calendar access
- ☐ Checklists by matter type are used, where appropriate
- ☐ Processes are in place regarding appropriate timing of interim and final reports
- ☐ Policies are in place to track undertakings and to ensure undertakings are fulfilled in a timely fashion

RESOURCES:

- [Missed Limitations and Deadlines: Beat the Clock](#)
- [Practice Resource: Loss prevention planning checklist](#) (November 2002)
- [Practice Resource: Using Microsoft Outlook to Manage Limitation \(and other important\) Dates](#) (June 2013)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [Chapter 3.1: Competence; Chapter 3.2: Quality of Service; Chapter 3.6: Fees and Disbursements]
- [Law Society Rules 2015](#) [Part 8: Lawyers' Fees]

INDICATOR 4: Are lawyers and staff adequately supervised and managed in their delivery of legal services?

Considerations

- ☐ Specific education and training opportunities are provided on the supervision and management of lawyers and staff
- ☐ Policies are in place that ensure lawyers understand what work may be delegated to staff and what may not
- ☐ Processes are in place to ensure the appropriate delegation of the authority for developing policies, practices and systems that address the Professional Infrastructure Elements
- ☐ Processes are in place to ensure lawyers and staff know the contact information of their supervisor
- ☐ Consideration is given to experience and qualifications when assigning work
- ☐ Supervisors ensure that lawyers and staff receive clear and complete instructions regarding work assigned and the end product required
- ☐ Employee meetings are regularly scheduled for lawyers and staff
- ☐ Processes are in place to ensure lawyers and staff receive timely, and confidential feedback on work product (e.g. formal performance reviews and informal meetings)
- ☐ Processes are in place to encourage the use of mentors in training lawyers and staff for leadership positions
- ☐ Professional development plans are reviewed by senior colleagues and considered in the context of performance reviews

RESOURCES:

- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [Chapter 6.1: Supervision; Chapter 6.2 : Students]
- [Law Society Rules 2015](#) [Part 2 - Division 1: Practice of Law (Supervision of Limited Number of Paralegals)]

INDICATOR 5: Has consideration been given to putting in place plans for the departure of lawyers from the firm?

Considerations

- ☐ The firm has a succession plan in place for its lawyers
- ☐ Processes are in place to address client, lawyer and firm-related issues arising from the departure of lawyers and from the firm.
- ☐ Lawyers and staff know who to contact and the steps to take in order to address the interests of clients in the event of an unforeseen accident, illness or death
- ☐ The firm carries adequate insurance for the practice, including excess professional liability coverage and key person insurance

RESOURCES:

- [Succession Planning: Tools, Documents and Resources:](#)
 - [Checklist – Practice and Planning Considerations](#)
 - [Law Firm Inventory Checklist](#)
 - [Law Office Contacts and Basic Information](#)
 - [Model letter to client: Termination of Employment](#)
 - [Withdrawal from the Practice of Law: sample newspaper notice and letter to clients \(June 2002\)](#)
- [Precedent letters: Lawyer leaving law firm](#)
- [Practice Resource: Winding Up a Sole Practice: A Checklist](#) (Updated November 2016)
- [Code of Professional Conduct for British Columbia \[Chapter 3.7: Withdrawal from Representation\]](#)
- [Lawyers Insurance Fund](#)
- [Law Society Rules 2015 \[Part 3 - Division 5: Insurance\]](#)

ELEMENT 2 – SUSTAINING EFFECTIVE AND RESPECTFUL CLIENT RELATIONS

OBJECTIVE
Provide clear, timely and courteous communications with clients in the delivery of legal services so that clients understand the status of their matter through the duration of the retainer and are in a position to make informed choices

RATING	Policies and processes have not been developed. 1 □	Policies and processes are under development but are not functional. 2 □	Policies and processes are functional. 3 □	Policies and processes are fully functional and regularly assessed and updated. 4 □
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For a rating of 1 or 2, you must outline the action the firm will take to address challenges and shortcomings in addressing the Professional Infrastructure Element

Comments:
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Note: The Indicators and Considerations listed below are not prescriptive and the guidance provided therein should be approached as suggestions rather than mandates

INDICATOR 1: Are policies and processes in place in relation to communication with clients?

Considerations

- ☐ Policies are established with respect to:
 - ☐ informing and updating clients about their matter
 - ☐ appropriate forms and frequency of communication with clients (email/phone/text)
 - ☐ compliance with privacy and anti-spam legislation
 - ☐ confidentiality
 - ☐ ensuring non-lawyer communications are understood as such
 - ☐ timing of reports and final accounts
- ☐ Processes are in place to monitor and reinforce adherence to communication policies
- ☐ Communication policies are reviewed and updated and are accessible to all lawyers and staff

- ☐ Lawyers and staff receive specific and ongoing education and training relating to client communications and relations
- ☐ Processes are in place to ensure the firm supports its lawyers in complying with Law Society Rules and the *Code of Professional Conduct*

RESOURCES:

- [Communication Toolkit \(Online Learning Centre\)](#)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [Chapter 3.1: Competence; Chapter 3.2: Quality of Service; Chapter 3.3: Confidentiality; Chapter 3.5: Preservation of Clients' Property; Chapter 3.6: Fees and Disbursements; Chapter 6.1: Supervision; Chapter 6.2 : Students]
- [Truth and Reconciliation Commission of Canada: Calls to Action](#) (2015)

INDICATOR 2: Does each client understand the retainer agreement?

Considerations

- ☐ When appropriate, policies are in place for the use of written retainer agreements and non-engagement letters
- ☐ The ambit of the retainer is described to the client, including:
 - a list of services covered by the retainer
 - communication policies
 - billing policies, including anticipated fees and disbursements
 - anticipated time frames
 - the termination of legal services
- ☐ Processes are in place to ensure that if the scope of services change, the retainer is amended accordingly.
- ☐ Processes are in place to ensure that appropriate clients are accepted based on factors such as the firms' areas of expertise, the ability to provide timely communication, the client's file and history, and engagements are terminated, if necessary.
- ☐ Processes are in place to ensure that when unbundled legal services are provided, the retainer explicitly indicates what will be provided and won't be provided
- ☐ **[add something joint retainers]**

RESOURCES:

- [Practice Resource: Retainer Agreement](#) (Updated December 2016)
- [Practice Resource: Joint Retainer](#) (November 2013)
- [Model Non-Engagement Letters](#) (February 2002)
- [Professionalism: Practice Management](#) (September 2016)

- [Code of Professional Conduct for British Columbia](#) [Chapter 3.2: Quality of Service; Chapter 3.6: Fees and Disbursements]
- [Law Society Rules 2015](#) [Part 3 - Division 7: Trust Accounts and Other Client Property; Part 8: Lawyers' Fees]

INDICATOR 3: Are communications with clients conducted in a professional manner?

Considerations

- ☐ Communications with clients are conducted in a timely and efficient manner
- ☐ Communications with clients are conducted in a courteous and respectful manner
- ☐ Communications with clients are conducted in a manner that protects privacy and confidentiality
- ☐ Policies are in place to ensure the recording of communications with clients, as appropriate (e.g. archiving emails, creating notes of client meets and phone calls)
- ☐ Policies are in place to ensure that client instructions are confirmed in writing, where appropriate
- ☐ Clients are advised of the methods by which they may communicate with their lawyers and staff and the appropriate frequency of communications
- ☐ Policies are in place to ensure client information is verified and kept up-to-date
- ☐ Processes are in place to solicit and receive client feedback
- ☐ Internal processes are available to clients for resolving disputes or complaints with their lawyer or the firm and clients are informed about these processes
- ☐ Key information about the firm is accurate and publically available, including information about the range of services provided, practice areas, lawyers and contact information

RESOURCES:

- [Discipline Advisory 'Lack of civility can lead to discipline'](#) (June 2011)
- [Practice Resource: Client Survey](#) (April 2009)
- [Practice Checklist: Client Identification and Verification Procedure](#) (July 2015)
- [Communication Toolkit](#) (Online Learning Centre)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [Chapter 3.1: Competence; Chapter 3.2: Quality of Service; Chapter 3.3: Confidentiality]

INDICATOR 4: Are clients regularly informed about the progress of their matter?

Considerations

- ☐ Policies are in place that ensure clients are regularly informed about:

- the status of their matter, including being informed about material changes in the scope of the retainer, costs and timelines
- deadlines, limitations, hearing dates and other important dates
- potential and projected outcomes
- Processes are in place to ensure clients are copied on key correspondence and receive key communications and documents in a timely manner
- Clients are provided with an opportunity to make timely appointments with their lawyer at the times and, if necessary, locations convenient to the client
- Practices encourage informing clients of possible options for pursuing a matter once a lawyer ceases to act for the client

RESOURCES:

- [Precedent Letter: Reporting Letter to Client – Closing a File](#) (Updated January 2007)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [[Chapter 3.1](#): Competence; [Chapter 3.2](#): Quality of Service; [Chapter 3.6](#): Fees and Disbursements; [Chapter 3.7](#): Withdrawal from Representation]

RESOURCES:

- [Practice Resource: Guidelines for Respectful Language](#) (May 2007)
- [Practice Watch: Acting for a client with dementia](#) (Spring 2015)
- [Code of Professional Conduct for British Columbia](#) [[Chapter 3.2](#): Quality of Service (Clients with Diminished Capacity); [Chapter 6.3](#): Harassment and Discrimination]

ELEMENT 3 – PROTECTING CONFIDENTIALITY

OBJECTIVE

Ensure client information, documents and communications are kept confidential and free from access, use, disclosure or disposal unless the client consents or it is required or permitted by law and that solicitor-client privilege is appropriately safeguarded

RATING	Policies and processes have not been developed. 1 <input type="checkbox"/>	Policies and processes are under development but are not functional. 2 <input type="checkbox"/>	Policies and processes are functional. 3 <input type="checkbox"/>	Policies and processes are fully functional and regularly assessed and updated. 4 <input type="checkbox"/>
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For a rating of 1 or 2, you must outline the action the firm will take to address challenges and shortcomings in addressing the Professional Infrastructure Element

Comments:

Note: The Indicators and Considerations listed below are not prescriptive and the guidance provided therein should be approached as suggestions rather than mandates

INDICATOR 1: Are confidentiality and privacy policies and processes in place?

Considerations

- ☐ A written confidentiality policy or agreement is in place and is signed by all staff
- ☐ Confidentiality requirements are established for any third parties (e.g. contractors, computer service providers, interns, cleaners) who may access the firms' physical space or technology
- ☐ A privacy policy is in place and is communicated to all lawyers and staff
- ☐ Processes are in place to ensure the firm supports its lawyers in complying with Law Society Rules and the *Code of Professional Conduct*

RESOURCES:

- [Practice Resource: Model Privacy Policy](#) (December 2003)
- [FAQs about solicitor-client privilege and confidentiality](#) (CBA)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [Chapter 3.3: Confidentiality; Chapter 6.1: Supervision; Chapter 6.2 : Students]

INDICATOR 2: Is training provided pertaining to preserving the duties of confidentiality, solicitor-client privilege, privacy and the consequences of privacy breaches?

- ☐ Lawyers and staff are provided with up-to-date technology training relating to issues of confidentiality and privacy pertaining to electronic data, including specific training on the importance of password protection
- ☐ Lawyers and staff receive education and training regarding the principle of solicitor-client privilege, including:
 - in relation to electronic communications (email, texting, e-documents)
 - when a common interest or joint retainer extends the solicitor-client privilege to third parties
- ☐ Solicitor-client privilege is clearly explained to clients by lawyers
- ☐ Processes are in place for dealing with situations where exceptions to duties of confidentiality and solicitor-client privilege may apply.
- ☐ Lawyers and staff are provided with training on the requirements of privacy legislation
- ☐ Internal processes are in place to deal with privacy breaches, including processes for reporting breaches to the client, the Law Society and any other appropriate authorities

RESOURCES:

- [Privacy Breaches: Tools and Resources](#) (OIPC)
- [Overview of Privilege and Confidentiality](#) (CLE)
- [Code of Professional Conduct for British Columbia](#) [Chapter 3.3: Confidentiality; Chapter 6.1: Supervision; Chapter 6.2 : Students]
- [Law Society Rules 2015](#) [Rule 10-3: Records; Rule 10-4: Security of Records]

INDICATOR 3: Is physical data protected by appropriate security measures?

Considerations

- ☐ Office security systems are in place to protect confidential information, including processes to ensure:
 - third parties cannot overhear confidential conversations lawyers and staff have both within and outside the physical office
 - client files and other confidential material are not left in publically accessible areas
 - client confidentiality is guarded when visitors enter private areas (e.g. lawyer or staff offices)
 - copiers, fax machines and mail services are located such that confidential information cannot be seen by persons not employed by or associated with the firm
- ☐ Processes are in place that ensure reasonable security measures are taken when removing physical records or technological devices from the office
- ☐ Processes are in place to ensure that closed files and other documents stored off-site are kept secure and confidential

RESOURCES:

- [Securing Personal Information: A Self-Assessment Tool for Organizations](#) (OIPC)
- [Guidelines for Practising Ethically with New Information Technologies](#) (CBA)
- [Practice Resource: Cloud computing due diligence guidelines](#) (January 2012)
- [Practice Resource: Cloud computing checklist](#) (January 2013)
- [Privacy Breaches: Tools and Resources](#) (OIPC)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [Chapter 3.3: Confidentiality; Chapter 3.5: Preservation of Clients' Property; Chapter 6.1: Supervision; Chapter 6.2 : Students]
- [Law Society Rules 2015](#) [Rule 10-3: Records; Rule 10-4: Security of Records]

INDICATOR 4: Is electronic data protected by appropriate security measures?

Considerations

- ☐ Data security measures (e.g. encryption software and passwords) are in place to protect confidential information on all computers, laptops, tablets, smartphones, thumb drives and other technological devices
- ☐ Systems are in place to protect electronic data from being compromised by viruses, including ransomware
- ☐ Processes are in place to safeguard against the security risks arising from downloading to phones, flash drives and other portable devices

- ☐ Processes are in place to protect confidentiality when using cloud-based technologies, including email
- ☐ Processes are in place to protect confidentiality when using social media
- ☐ Electronic data is regularly backed up and stored at a secure off-site location
- ☐ Processes are in place to ensure that third parties with access to computers for maintenance and technical support protect the confidentiality of client information
- ☐ Electronic data security procedures are reviewed
- ☐ Processes are in place to safeguard electronic data and maintain solicitor-client privilege as pertaining to electronic files when crossing borders (e.g. United States)

RESOURCES:

- [Guidelines for Practising Ethically with New Information Technologies](#) (CBA)
- [Practice Resource: Cloud computing due diligence guidelines](#) (January 2012)
- [Practice Resource: Cloud computing checklist](#) (January 2013)
- [Securing Personal Information: A Self-Assessment Tool for Organizations](#) (OIPC)
[Code of Professional Conduct for British Columbia](#) [Chapter 3.3: Confidentiality; Chapter 3.5: Preservation of Clients' Property]
- [Law Society Rules 2015](#) [Rule 10-3: Records; Rule 10-4: Security of Records]

INDICATOR 5: Are specially tailored procedures employed to protect confidentiality and privacy in the context of space-sharing arrangements?

Considerations

- ☐ Processes are in place to clearly distinguish the other entities or professionals with whom space is shared to prevent confusion by clients (e.g. signage, letterhead)
- ☐ Trust accounts and banking arrangements are not shared
- ☐ Where staff are shared (e.g. paralegals), adequate steps have been taken to protect client confidentiality
- ☐ Where office equipment is shared, adequate steps have been taken to protect client confidentiality
- ☐ The firm has disclosed the nature of the space-sharing arrangement and any foreseeable limits of their ability to maintain confidentiality to their clients

RESOURCES:

- [Practice Resource: Lawyers Sharing Space](#) (Updated December 2016)
- [Sharing Office Space: Tips for Solo Practitioners](#) (CBA)
- [Professionalism: Practice Management](#) (September 2016)

- [Code of Professional Conduct for British Columbia](#) [Chapter 3.3: Confidentiality; Chapter 3.4; Conflicts (Space-Sharing Arrangements)]
- [Law Society Rules 2015](#) [Part 3 - Division 7: Trust Accounts and Other Client Property]

ELEMENT 4 – AVOIDING AND ADDRESSING CONFLICTS OF INTEREST

OBJECTIVE
Ensure conflicts of interest are avoided from the outset, and where not avoided, they are resolved in a timely fashion

RATING	Policies and processes have not been developed. 1 <input type="checkbox"/>	Policies and processes are under development but are not functional. 2 <input type="checkbox"/>	Policies and processes are functional. 3 <input type="checkbox"/>	Policies and processes are fully functional and regularly assessed and updated. 4 <input type="checkbox"/>
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For a rating of 1 or 2, you must outline the action the firm will take to address challenges and shortcomings in addressing the Professional Infrastructure Element

Comments:
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Note: The Indicators and Considerations listed below are not prescriptive and the guidance provided therein should be approached as suggestions rather than mandates

INDICATOR 1: Is a conflicts policy in place?

Considerations

- ☐ A conflicts policy is in place
- ☐ The conflicts policy is communicated to all lawyers and staff and is reviewed and updated

- ☐ Processes are in place to monitor and reinforce lawyers and staff adherence to the conflicts policy
- ☐ Lawyers and staff are provided with opportunities for education and training with respect to identifying potential conflicts, the avoidance of conflicts, the potential consequences of a conflict and how to deal with situations where conflicts arise

RESOURCES:

- [Developing a conflict checking system for your law firm](#) (CBA)
- [Conflicts of Interest – Toolkit](#) (CBA)
- [Practice Resource: Model conflicts of interest checklist](#) (July 2013)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [Chapter 3.4; Conflicts; Chapter 6.1: Supervision; Chapter 6.2 : Students]

INDICATOR 2: Are policies in place to identify and address potential and actual conflicts of interest?

Considerations

- ☐ A master list or database of current and former clients is maintained
- ☐ Policies are in place to check for and evaluate conflicts at each of the following junctures:
 - prior to engaging in any substantive discussions with a potential new client
 - prior to accepting a new retainer
 - when a new party becomes involved in a matter
 - upon hiring a new individual at the firm
 - before receiving a confidential disclosure
 - when acting for multiple parties and there is a possibility that their interests could diverge
 - when a lawyer is considering accepting a directorship position or engaging in a business venture with a client
 - when a lawyer's interpersonal relationship creates possible conflicts
- ☐ Processes are in place requiring a lawyer to bring any potential conflicts to the attention of a senior lawyer or committee at the firm, where appropriate, for consideration and recommendation
- ☐ Lawyers and staff understand the steps to take when a potential or actual conflict is identified
- ☐ After full disclosure has been made, signed waivers are obtained from a client if representation is agreed to after a permissible conflict has been identified
- ☐ Processes are in place to ensure the firm supports its lawyers in complying with Law Society Rules and the *Code of Professional Conduct*

RESOURCES:

- [Developing a conflict checking system for your law firm \(CBA\)](#)
- [Conflicts of Interest – Toolkit \(CBA\)](#)
- [Practice Resource: Model conflicts of interest checklist \(July 2013\)](#)
- [Professionalism: Practice Management \(September 2016\)](#)
- [Code of Professional Conduct for British Columbia \[Chapter 3.4; Conflicts; Chapter 6.1: Supervision; Chapter 6.2 : Students\]](#)

ELEMENT 5 – MAINTAINING APPROPRIATE FILE AND RECORDS MANAGEMENT SYSTEMS

OBJECTIVE

Provide appropriate file and records management systems to ensure that issues and tasks on file are handled in an appropriate and timely manner and that client information and documents are safeguarded

RATING	Policies and processes have not been developed. 1 □	Policies and processes are under development but are not functional. 2 □	Policies and processes are functional. 3 □	Policies and processes are fully functional and regularly assessed and updated. 4 □
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For a rating of 1 or 2, you must outline the action the firm will take to address challenges and shortcomings in addressing the Professional Infrastructure Element

Comments:

Note: The Indicators and Considerations listed below are not prescriptive and the guidance provided therein should be approached as suggestions rather than mandates

INDICATOR 1: Is there an information management policy in place?

Considerations

- ☐ An information management policy is in place which includes:
 - file opening and closing procedures
 - procedures for checking in and out physical and electronic files
 - procedures for transferring active and closed files
 - procedures for tracking files
 - record retention requirements
 - document destruction requirements
 - disaster recovery contingencies
- ☐ The information management policy is communicated to all appropriate lawyers and staff and is reviewed and updated

- ☐ Processes are in place to monitor and reinforce adherence to information management policy
- ☐ Lawyers and staff are provided ongoing training on the firms' file and record management systems
- ☐ Processes are in place to ensure that written policies addressing the Professional Infrastructure Elements are adequately maintained and stored and can be retrieved by all lawyers and staff

RESOURCES:

- [Practice Resource: Closed Files – Retention and Disposition](#) (July 2015)
- [Practice Resource: Ownership of Documents in a Client's File](#) (July 2015)
- [File Management Practice Management Guideline](#) (Law Society of Upper Canada)
- [File Opening Checklist](#) (Law Society of Upper Canada)
- [Closed Files: Retention and Disposition](#) (July 2015)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [[Chapter 6.1](#): Supervision; [Chapter 6.2](#) : Students]
- [Law Society Rules 2015](#) [[Part 2 - Division 1](#): Practice of Law (Supervision of Limited Number of Paralegals); [Part 3 - Division 7](#): Trust Accounts and Other Client Property; [Part 3 - Division 11](#): Client Identification and Verification; [Rule 10-3](#): Records; [Rule 10-4](#): Security of Records]

INDICATOR 2: Does the storage and handling of client information minimize the likelihood of its loss or unauthorized access, use, disclosure or destruction?

Considerations

- ☐ Data security measures addressing how electronic records are maintained, secured, stored and retrieved are in place
- ☐ Processes are in place to ensure electronic documents are regularly backed up
- ☐ Paper documents are stored in a fashion that ensures they are adequately preserved and protected (e.g. the use of fireproof cabinets or storage at an appropriate offsite location)
- ☐ Processes are in place to track the physical location of a file and its associated documents at all times
- ☐ Processes are in place to ensure client identification and verification requirements are fulfilled.
- ☐ Processes are in place to ensure records are kept regarding implied and express consent provided by clients
- ☐ Processes are in place to ensure client property is appropriately identified and recorded upon receipt

- ☐ Processes are in place to obtain and document the receipt or delivery of original documents to a third person or client
- ☐ File closing processes are in place, including informing clients when their file has been closed
- ☐ Processes are in place to ensure that providers of cloud based systems maintain the required level of service and that relevant data protection legislation is complied with
- ☐ Processes are in place ensure the return of original documents to clients at the end of a retainer
- ☐ Consideration has been given to appropriate disaster recovery plans, including offsite back up.
- ☐ Clients are advised when their files are anticipated to be destroyed after closing their matter or alternate arrangements for dealing with the files are made
- ☐ Processes are in place to ensure the firm supports its lawyers in complying with Law Society Rules and the *Code of Professional Conduct*

RESOURCES:

- [Practice Resource: Loss prevention planning checklist](#) (November 2002)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [[Chapter 3.5](#): Preservation of Clients' Property]
- [Law Society Rules 2015](#) [[Part 3 - Division 7](#): Trust Accounts and Other Client Property; [Part 3 - Division 11](#): Client Identification and Verification; [Rule 10-3](#): Records; [Rule 10-4](#): Security of Records]

ELEMENT 6 – CHARGING APPROPRIATE FEES AND DISBURSEMENTS

OBJECTIVE
Ensure clients are charged fees and disbursements that are transparent and reasonable and are disclosed in a timely fashion

RATING	Policies and processes have not been developed. 1 <input type="checkbox"/>	Policies and processes are under development but are not functional. 2 <input type="checkbox"/>	Policies and processes are functional. 3 <input type="checkbox"/>	Policies and processes are fully functional and regularly assessed and updated. 4 <input type="checkbox"/>
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For a rating of 1 or 2, you must outline the action the firm will take to address challenges and shortcomings in addressing the Professional Infrastructure Element

Comments:
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Note: The Indicators and Considerations listed below are not prescriptive and the guidance provided therein should be approached as suggestions rather than mandates

INDICATOR 1: Is a policy pertaining to appropriate billing practices in place?

Considerations

- ☐ A policy regarding billing procedures is in place
- ☐ The billing policy is communicated to all lawyers and staff and is reviewed and updated
- ☐ Educational measures are in place to ensure that lawyers and staff are aware of firm policies regarding billing practices and have a clear understanding of what constitutes unethical billing practices
- ☐ Processes are in place that ensure accurate, timely and complete time records are kept
- ☐ Processes are in place to ensure the firm supports its lawyers in complying with Law Society Rules and the *Code of Professional Conduct*

RESOURCES:

- [‘Practice Watch – Fees, Disbursements and Interest’ *Benchers’ Bulletin*](#) (2012)
- [Practice Resource: Solicitors’ Liens and Charging Orders – Your Fees and Your Clients](#) (July 2013)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [Chapter 3.6: Fees and Disbursements; Chapter 6.1: Supervision; Chapter 6.2 : Students]
- [Law Society Rules 2015](#) [Part 2 - Division 1: Practice of Law (Supervision of Limited Number of Paralegals); Part 3 - Division 7: Trust Accounts and Other Client Property; Part 8: Lawyers’ Fees]

INDICATOR 2: Do retainer agreements contain sufficient information about fees and billing?**Considerations**

- ☐ With respect to billing and fees, all retainers specify:
 - the billing process, cycle and timing of accounts
 - the timing on payment of accounts, the interest to be paid on unpaid bills and the consequences of non-payment
 - who will work on the file and at what rate
 - the amount of the retainer and how it will be replenished
 - limitations on the scope of service
 - the right to have the account reviewed by a taxing authority
 - the possibility of a solicitor’s lien on the file
- ☐ If a retainer is being funded by a third party, the retainer specifies the nature of the third parties relationship to the firm/lawyer

RESOURCES:

- [Practice Resource: Retainer Agreement](#) (Updated December 2016)
- [Practice Resource: Joint Retainer](#) (November 2013)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [Chapter 3.2: Quality of Service; Chapter 3.6: Fees and Disbursements; Chapter 3.7: Withdrawal from Representation]
- [Law Society Rules 2015](#) [Part 3 - Division 7: Trust Accounts and Other Client Property; Part 8: Lawyers’ Fees]

INDICATOR 3: Are fees fair and reasonable?

Considerations

- ☐ Processes are in place to ensure the billing practices are clearly explained to clients at the beginning of the retainer
- ☐ All billing arrangements are confirmed in writing and any further substantive discussions with clients about fees are also documented in writing
- ☐ Where practicable, an estimate of anticipated fees and disbursements is provided to clients
- ☐ Processes are in place that ensure clients are regularly updated and provided appropriate notice of any change in fee or disbursement charges as the matter progresses
- ☐ Disbursements and other charges are regularly posted to client files
- ☐ Processes are in place to encourage the review of bills to ensure they reflect fees that are commensurate with the value of work provided
- ☐ Processes are in place to ensure clients are billed on a timely basis
- ☐ Where practicable, firm managers periodically conduct random audits of bills
- ☐ Processes are in place to address client's non-payment of fees and client complaints in relation to fees

RESOURCES:

- [Disputes involving fees and the Law Society Fee Mediation Program](#)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [Chapter 3.2: Quality of Service; Chapter 3.6: Fees and Disbursements]
- [Law Society Rules 2015](#) [Part 3 - Division 7: Trust Accounts and Other Client Property; Part 8: Lawyers' Fees]

ELEMENT 7 – ENSURING RESPONSIBLE FINANCIAL MANAGEMENT

OBJECTIVE
Establish mechanisms to minimize the risk of fraud and procedures that ensure compliance with Law Society accounting rules

RATING	Policies and processes have not been developed. 1 <input type="checkbox"/>	Policies and processes are under development but are not functional. 2 <input type="checkbox"/>	Policies and processes are functional. 3 <input type="checkbox"/>	Policies and processes are fully functional and regularly assessed and updated. 4 <input type="checkbox"/>
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For a rating of 1 or 2, you must outline the action the firm will take to address challenges and shortcomings in addressing the Professional Infrastructure Element

Comments:
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Note: The Indicators and Considerations listed below are not prescriptive, and the guidance provided therein should be approached as suggestions rather than mandates

INDICATOR 1: Are policies and processes in place that ensure that client funds received in, and withdrawn from trust properly handled?

Considerations

- ☐ An appropriate accounting system is used to track trust funds
- ☐ Policies are in place to ensure all accounting records are accurate and up to date
- ☐ Appropriate internal controls are in place with respect to financial transactions, including electronic transfer of funds
- ☐ Adequate internal controls are in place to minimize risk of fraud committed by employees of the firm
- ☐ Lawyers and staff are provided with education and training in relation to the rules pertaining to trust accounts
- ☐ Lawyers and staff are provided with training to assist in spotting possible fraudulent trust account activity
- ☐ Policies are in place to ensure trust funds are not withdrawn from trust, including to pay an account, except in compliance with the Law Society Rules

RESOURCES:

- [The Trust Accounting Handbook](#) (August 2015)
- [Practice Resource: Sample Checklist of Internal Controls](#) (updated July 2012)
- [Practice Resource: Garnishment of Lawyers' Trust Accounts](#) (February 2014)
- [Practice Resource: Business plan outline](#) (December 2003)
- [Practice Resource: Trust Accounting Checklist](#)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [[Chapter 3.5](#): Preservation of Clients' Property; [Chapter 6.1](#): Supervision; [Chapter 6.2](#) : Students]
- [Law Society Rules 2015](#) [[Part 2 - Division 1](#): Practice of Law (Supervision of Limited Number of Paralegals); [Part 3 - Division 7](#): Trust Accounts and Other Client Property; [Part 8](#): Lawyers' Fees]

INDICATOR 2: Does the firm have appropriate and adequate insurance?

- Adequate insurance coverage is in place, including employee theft, excess, cyber liability and social engineering insurance, as appropriate.

RESOURCES:

- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [[Chapter 7.1](#): Responsibility to the Society and the Profession Generally (Meeting Financial Obligations)]
- [Law Society Rules 2015](#) [[Part 3 - Division 5](#): Insurance; [Part 3 - Division 6](#): Financial Responsibility; [Part 3 - Division 7](#): Trust Accounts and Other Client Property]

INDICATOR 3: Are policies and processes in place to ensure the firm operates in a financially responsible fashion?**Considerations**

- ☐ Policies are in place to ensure that minimum standards of financial responsibility are met, including satisfying monetary judgements, avoiding insolvency, producing appropriate books, records and accounts, completing trust reports and payment of the trust administration fee
- ☐ Processes are in place to ensure taxation authorities and creditors of the firm are paid in a timely manner including the payment of GST, PST, payroll and payroll remittances

RESOURCES:

- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [[Chapter 7.1](#): Responsibility to the Society and the Profession Generally (Meeting Financial Obligations)]
- [Law Society Rules 2015](#) [[Chapter 3 - Division 6](#): Financial Responsibility; [Part 3 - Division 7](#): Trust Accounts and Other Client Property]

ELEMENT 8 – EQUITY, DIVERSITY AND INCLUSION

OBJECTIVE
Commitment to improving equity, diversity and inclusion and ensuring freedom from discrimination in the workplace and in the delivery of legal services.

RATING	Policies and processes have not been developed. 1 <input type="checkbox"/>	Policies and processes are under development but are not functional. 2 <input type="checkbox"/>	Policies and processes are functional. 3 <input type="checkbox"/>	Policies and processes are fully functional and regularly assessed and updated. 4 <input type="checkbox"/>
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For a rating of 1 or 2, you must outline the action the firm will take to address challenges and shortcomings in addressing the Professional Infrastructure Element

Comments:
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Note: The Indicators and Considerations listed below are not prescriptive, and the guidance provided therein should be approached as suggestions rather than mandates

INDICATOR 1: Are policies and processes in place to ensure that all lawyers and staff experience a fair and safe working environment?

Considerations

- ☐ Policies and processes are in place that encourage diversity, inclusion, substantive equality, accommodation, as well as ensuring freedom from discrimination in management and advancement of lawyers and staff
- ☐ Hiring policies and processes are free of bias and discrimination, including interview questions
- ☐ Policies are reviewed, updated and are communicated to all lawyers and staff
- ☐ Lawyers and staff are provided with education and training on issues relating to discrimination, harassment and bullying, including legal obligations under the *Human Rights Code* and the *Workers Compensation Act*
- ☐ Maternity and paternity leave policies are in place
- ☐ Flexible work schedules are an option for those who have child-care or other caregiver responsibilities
- ☐ Accommodation policies are in place for employees with disabilities

- ☐ Internal complaints mechanisms are in place to address concerns and allegations of discrimination and harassment in the workplace
- ☐ All lawyers and staff receive skills-based training in intercultural competency, conflict resolution, human rights and anti-racism in response to Truth and Reconciliation Commission Call to Action #27

RESOURCES:

- [Practice Resource: Promoting a respectful workplace: A guide for developing effective policies](#)
- [Model Policy: Flexible Work Arrangements](#) (Updated December 2014)
- [Model Policy: Workplace Equality](#) (July 2007)
- [Model Policy: Workplace Accommodation](#) (March 2007)
- [Model Policy: Pregnancy and Parental Leave Policy for Associates](#) (Updated December 2014)
- [Model Policy: Pregnancy and Parental Leave Policy for Partners](#) (Updated December 2014)
- [Practice Resource: Workplace Equality](#) (Updated July 2007)
- [Code of Professional Conduct for British Columbia \[Chapter 6.3: Harassment and Discrimination\]](#)

INDICATOR 2: Are policies and processes in place that ensure that lawyers have adequate knowledge and training to provide legal services in a manner consonant with principles of equity, diversity, inclusion and cultural competency?

Considerations

- ☐ The firm treats all clients in a manner consistent with best practices in human rights law
- ☐ Language used in communicating with clients is appropriate to the individual receiving the communication and reflects cultural competency and freedom from discrimination
- ☐ Processes are in place to address language barriers, cultural issues, including cultural competency and issues of mental capacity
- ☐ Lawyers and staff have adequate knowledge and training to ensure that clients with disabilities and other equality seeking groups receive competent legal services
- ☐ All lawyers and staff receive skills-based training in intercultural competency, conflict resolution, human rights and anti-racism in response to Truth and Reconciliation Commission Call to Action #27
- ☐ The firm has considered legal requirements relating to accessibility and where accessibility may be an issue, lawyers meet clients in other appropriate settings



NOVA SCOTIA BARRISTERS' SOCIETY

MANAGEMENT SYSTEM FOR ETHICAL LEGAL PRACTICE (MSELP)

Self-assessment tool

This **self-assessment tool** is designed to ensure that your legal entity has an effective Management System for Ethical Legal Practice, which comprises ten elements:

- **ELEMENT 1 — DEVELOPING COMPETENT PRACTICES**
- **ELEMENT 2 — COMMUNICATING IN AN EFFECTIVE, TIMELY AND CIVIL MANNER**
- **ELEMENT 3 — ENSURING CONFIDENTIALITY**
- **ELEMENT 4 — AVOIDING CONFLICTS OF INTEREST**
- **ELEMENT 5 — MAINTAINING APPROPRIATE FILE AND RECORDS MANAGEMENT SYSTEMS**
- **ELEMENT 6 — ENSURING EFFECTIVE MANAGEMENT OF THE LEGAL ENTITY AND STAFF**
- **ELEMENT 7 — CHARGING APPROPRIATE FEES AND DISBURSEMENTS**
- **ELEMENT 8 — SUSTAINING EFFECTIVE AND RESPECTFUL RELATIONSHIPS WITH CLIENTS, COLLEAGUES, COURTS, REGULATORS AND THE COMMUNITY**
- **ELEMENT 9 — WORKING TO IMPROVE DIVERSITY, INCLUSION AND SUBSTANTIVE EQUALITY**
- **ELEMENT 10 — WORKING TO IMPROVE THE ADMINISTRATION OF JUSTICE AND ACCESS TO LEGAL SERVICES**

By creating the requirement that all lawyers practise in entities that have an MSELP, the expectation is that you have in place appropriate policies, practices and systems to support all the elements that apply to your legal entity, and that you demonstrate commitment to those elements.

Throughout the self-assessment, “you” and “your” is used and is intended to refer to your specific legal entity, including sole practitioners and all sizes of law firms.

You are asked to assess yourself on a scale of 1 to 5 in relation to each element. There are no correct answers. The tool is designed to cause you to think about and reflect upon the means by which your entity demonstrates commitment to each element through its policies, procedures and systems. Each entity will actualize these elements through different systems and tools, depending on their practice areas and resources.

To assist you in completing this assessment, each element contains a list of **THINGS TO THINK ABOUT** when considering the elements. The list of things to think about under each element is not exhaustive. Though none of these are mandatory, they provide illustrations of the policies, methods, processes and systems that a prudent legal entity should have in place, dependent upon the type or area of practice.

In the **COMMENT** box under each element, you may add any additional information or explanation that you think will assist in understanding your assessment.

Please note that the **RESOURCES** links are there to assist you in both assessing the robustness of your entity’s management systems in relation to each element, and in undertaking any improvements you determine you need.

You can work on the Self Assessment Tool in stages. Please **save the email you were sent** with a link to your firm’s unique self assessment tool. Through this link, you can return to the tool multiple times, where your most recent work will be saved. You must provide a 1-5 ranking for each element before you can move to the next page. However, you can go back to edit these responses before **clicking “SUBMIT”** on the bottom right side of last page.

Once you've clicked "Submit", the tool cannot be edited, and cannot be submitted a second time by you or someone else in your firm.

MSELP Workbook

The **MSELP Workbook** – a downloadable and printable document – is a tool developed to help you work through your self assessment of each element before completing and submitting your online tool. The Workbook is relevant to all lawyers, but was designed with the services and practice systems of small firms and sole practitioners in mind. Smaller practices are strongly encouraged to use the Workbook as a resource. It is similar in its function to the CRA's Income Tax and Benefits Guide: a tool to help you work through your tax return and calculations, before you submit the return form online.

Definitions

- **"Legal entity"** refers to a lawyer – or a group that carries out work supervised by a lawyer, whether the work is done by a lawyer or a non-lawyer – including but not limited to law firms, in-house counsel and department/team, government lawyer and department/team, and Legal Aid.
- **"Guideline"** is a statement that determines a course of action by streamlining particular processes according to a set routine or sound practice, and may include your policy that governs the matter. Where referred to, guidelines are preferably in writing.
- **"Staff"** includes lawyers, in-house paralegals, legal assistants and any other employee who assists in or provides legal services to clients. 'Staff' in this self assessment refers to all or all relevant staff members.

For each element you are asked to consider the systems, methods and processes you use in relation to each element. Some of the language under **THINGS TO THINK ABOUT** is precise, to assist you in considering your own entity's particular management system:

- **"Processes"** refers to a series of actions or steps taken in order to achieve a particular end, where the 'end' is internally focused (i.e., processes relating to the business of your entity and its internal management).
- **"Means"** refers to a method, action or system by which a result is brought about, where the result is externally focused (e.g., methods for delivering client services and communications).
- **"How you"** leaves open the question of what means, methods and processes you use to achieve an outcome or result.

ELEMENT 1 – DEVELOPING COMPETENT PRACTICES

Your legal entity delivers legal services with appropriate skill and competence.

RATING	Almost never	Usually not	Occasionally	Frequently	Almost always
	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

THINGS TO THINK ABOUT

- The requirements for competence in **3.1 of the Code of Professional Conduct**
- The processes and policies you use to hire and employ competent staff
- The processes you use to supervise staff
- The processes you use to assign work to staff with the experience and qualifications to provide a competent level of service
- The nature of your office policy and procedures manual, and how it is updated and made accessible to staff
- Whether you only take a retainer for services when you have or can obtain the necessary skills and resources to carry out the client's instructions
- Your understanding of the need for performance objectives to deliver quality legal services
- The processes you use for identifying performance objectives, and staff performance reviews
- The processes you use to review complaints, both internal and those made to the Nova Scotia Barristers' Society, as well as claims reported to LIANS
- The processes you use to provide staff with ongoing education and training
- The processes you use to ensure that professional staff have professional development plans that are relevant to their areas of practice
- How you and your staff stay current on the use of appropriate technology for your practice

COMMENT:

RESOURCES

- Nova Scotia Barristers' Society / **Code of Professional Conduct** [Chapter 3.1: Competence; Chapter 3.2: Quality of Service; Chapter 6: Relationship to Students, Employees and Others]
- Nova Scotia Barristers' Society / Family Law Standards / **Standard #3: Lawyers' Competence**
- **CBA Ethical Practices Self-Evaluation Tool**
- American Bar Association / **10 Concrete Ways to Measure Law Performance**
- Association of Corporate Council / **Law Firm Evaluation**

ELEMENT 2 – COMMUNICATING IN AN EFFECTIVE, TIMELY AND CIVIL MANNER

Your entity has regular and clear communications with clients, so they understand their position throughout the life of a retainer and are in a position to make informed decisions about the services they need, how their matter will be handled, and the options available to them.

RATING	Almost never	Usually not	Occasionally	Frequently	Almost always
	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

THINGS TO THINK ABOUT

- The requirements relating to **Quality of Service in 3.2-1 of the Code of Professional Conduct** and in particular Commentary 5
- The guidelines you have in relation to communications that are disseminated to staff and regularly reviewed
- The steps taken to ensure you:
 - listen to clients
 - acknowledge clients' instructions and give them appropriate consideration
 - manage clients' expectations
 - keep current contact information for them
 - provide information and material to them in a timely manner
- The processes you use for receiving client feedback
- The means you use to make key information about your legal entity publicly available to clients and the means you use to ensure your promotional materials, including those on your website, are true, verifiable and factual
- The means you use to give clear information to potential clients about the services available and how fees will be charged
- The means you use to provide an opportunity for clients to make timely appointments with their lawyer or other staff at times and, if necessary, locations convenient for the client
- The means you use to ensure initial appointments are long enough to allow clients to receive a good quality of service
- The processes you use for written retainer agreements, confirmation of retainer, and declination letters where appropriate
- The means by which you inform clients about how disputes or complaints that may arise will be resolved, including fee disputes
- The means by which you address clients' complaints
- How, where appropriate, you provide unbundled legal services that allow the client to take the responsibility for some of the work, and you provide the client with a clear explanation of the potential consequences if that work is taken out of the scope of the retainer
- If you have to cease acting for a client, the means you use to explain the possible options for pursuing their matter
- The means you use for taking instructions when you need to address your clients' language barriers, mental capacity or other vulnerabilities
- The means you use to inform clients about how they can communicate with their lawyer and other staff, and about the manner in which you communicate with them and how often
- The means you use to ensure you are advised of a client's change of address
- The means you use to inform clients regularly and, where appropriate, in writing, about the progress of their matters including cost

THINGS TO THINK ABOUT

- The means you use to ensure courtesy and civility in all communications

COMMENT:

RESOURCES

- Nova Scotia Barristers' Society / **Code of Professional Conduct** [Chapter 3.2: Quality of Service; Chapter 5.1: The Lawyer as Advocate; Chapter 7.2: Responsibility to Lawyers and Others; Chapter 6.3: Equality, Harassment and Discrimination]
- Lawyers' Insurance Association of Nova Scotia / **Client service**
- Lawyers' Insurance Association of Nova Scotia / **Documenting/Effective Communication**
- Lawyers' Insurance Association of Nova Scotia / **Retainer Agreements and Engagement Letters**
- Law Society of British Columbia / **Communications Toolkit**
- Law Society of Upper Canada / **Client Service and Communication Practice Management Guideline**

ELEMENT 3 – ENSURING CONFIDENTIALITY

Your legal entity keeps information regarding the affairs of clients confidential unless disclosure is required or permitted by law, or the client consents.

RATING	Almost never 1 <input type="checkbox"/>	Usually not 2 <input type="checkbox"/>	Occasionally 3 <input type="checkbox"/>	Frequently 4 <input type="checkbox"/>	Almost always 5 <input type="checkbox"/>
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THINGS TO THINK ABOUT

- The requirements of confidentiality in **3.3-2 of the Code of Professional Conduct**
- How confidentiality and privacy guidelines are disseminated to staff and regularly reviewed, and the effectiveness of employee confidentiality agreements
- How you provide education to staff on the importance of confidentiality, including the consequences of breaches
- How you explain confidentiality to clients and ensure they understand their confidentiality rights
- How you ensure:
 - client files or other confidential materials are not left in any public places
 - in your reception area, visitors cannot hear confidential conversations
 - your receptionist protects the confidentiality of client names and matters when talking with others in person or on the telephone
 - client confidentiality is guarded when visitors enter private areas
- Your data security measures
- How you ensure that third parties with access to your computers, such as for maintenance and technical support, will protect the confidentiality of any and all client information
- How you ensure that the outsourcing providers have in place security measures to maintain confidentiality
- How when using social media and/or cloud computing services, you ensure appropriate access settings to prevent inadvertent access or disclosure of confidential client information
- How you protect confidentiality and prevent unauthorized access when using mobile devices, thumb drives and laptops
- If confidential information has been lost, what processes you have for reporting that to the client and appropriate authorities, including your regulator
- If sharing office space, how you take steps to ensure confidentiality with respect to others with whom the space is shared

COMMENT:

RESOURCES

- Nova Scotia Barristers' Society / **Code of Professional Conduct** [Chapter 3.3: Confidentiality]
- Lawyers' Insurance Association of Nova Scotia / **Confidentiality Agreement – General**
- Lawyers' Insurance Association of Nova Scotia / **Confidentiality Agreement – Service Provider**

ELEMENT 4 – AVOIDING CONFLICTS OF INTEREST

Your legal entity does not act, or continue to act, where there is a conflict of interest, except as permitted by the *Code of Professional Conduct*.

RATING	Almost never 1 <input type="checkbox"/>	Usually not 2 <input type="checkbox"/>	Occasionally 3 <input type="checkbox"/>	Frequently 4 <input type="checkbox"/>	Almost always 5 <input type="checkbox"/>
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THINGS TO THINK ABOUT

- The requirements regarding conflicts of interest in **3.4 of the Code of Professional Conduct** and any applicable professional standards
- The processes you use to ensure the Rules and your own guidelines in relation to conflicts of interests are disseminated to all staff and regularly reviewed
- How lawyers are trained on the avoidance of conflicts, the consequences of a conflict and how to deal with a situation when a conflict arises
- How you:
 - identify potential conflicts, whether through a master list or database of present and former clients or otherwise and by considering the names of all adverse parties
 - obtain information on names of corporate personnel and other or former names, as part of your conflicts check
 - check for and evaluate conflicts prior to accepting a new matter and before receiving confidential disclosure
 - check for and evaluate conflicts when a new party is added
 - check for and evaluate conflicts when a new employee is hired
 - check for and evaluate conflicts that may result from prior employment, volunteer work, business interests or personal interests of staff and others associated with the entity
- How, after a conflict has been identified and continued representation is permitted, you discuss the matter with the client and obtain a signed waiver from the client if representation is to continue
- How you address and avoid practices that are common conflicts traps, such as having a financial interest in a client matter; representing adverse parties; engaging in business with a client; taking equity in lieu of fees; or holding office or board memberships that may give rise to conflicts

COMMENT:

RESOURCES

- Nova Scotia Barristers' Society / **Code of Professional Conduct** [Chapter 3: Relationship to Client; Chapter 3.4: Conflicts; Chapter 5.2: Lawyer as Witness]
- Nova Scotia Barristers' Society / Family Law Standards / **Standard #1: Conflict of Interest**
- Lawyers' Insurance Association of Nova Scotia / RPM Conference presentation / **Conflict of Interest** (December 2014)
- PracticePRO / **Managing Conflict of Interest Situations**
- Canadian Bar Association / **Task Force on Conflicts of Interest Toolkit** (2008)
- The Law Society [UK] / **Practice Notes: Conflict of interests** (March 2015)

ELEMENT 5 – MAINTAINING APPROPRIATE FILE AND RECORDS MANAGEMENT SYSTEMS

Your legal entity uses appropriate file and records management systems.

RATING	Almost never	Usually not	Occasionally	Frequently	Almost always
	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

THINGS TO THINK ABOUT

- The requirements of **3.5 of the Code of Professional Conduct** and any applicable professional standards
- The processes you use to ensure the Rules, Standards and your own guidelines on record retention are disseminated to staff and regularly reviewed
- The effectiveness of the calendar and tickler systems used to remind of scheduled events and deadlines such as:
 - *relevant statutes of limitations*
 - *appointments*
 - *discovery or specific filing deadlines*
 - *court appearances*
 - *review dates*
- Your file opening and closing procedures for each matter
- Your guidelines for data security and how they address:
 - *how electronic records are maintained*
 - *how electronic material is stored*
 - *how electronic material is secure*
 - *how data can be retrieved from legacy/archived systems*
- Your backup systems and how they are regularly backed up and stored in a fireproof cabinet or at an appropriate offsite location
- The means you use to obtain and document the receipt or delivery of original documents to or from a client or third person
- How you track the physical location of a file at all times
- How you track when a document is removed from a file and where it is currently located
- If you use cloud-based systems, you are confident the provider maintains the required level of service and that relevant data protection legislation is complied with
- How you review all open files (including files stored in the Cloud) on a scheduled basis, and diarize next steps or activity
- Your fire prevention, disaster recovery and business continuity policies
- Where you keep valuable documents and materials to avoid damage in the event of fire or other disaster
- Whether your insurance is adequate for all risks
- The means you use to advise clients when you anticipate destroying their file after closing their matter and obtain their agreement, or make other arrangements
- Whether any external service providers, including cloud-based services, are subject to contractual arrangements that enable the Nova Scotia Barristers' Society, or its agent, to obtain information, inspect all records or enter the premises of the third party in relation to their outsourced activities for your legal entity
- Whether you have succession plans in place to address clients' open and closed files

COMMENT:

RESOURCES

- Nova Scotia Barristers' Society / **Code of Professional Conduct** [Chapter 3.5: Preservation of Client's Property]
- Nova Scotia Barristers' Society / Law Office Management Standards / **Standard #1 Record Retention**
- Lawyers' Insurance Association of Nova Scotia / **Risk Management / Intake Procedures**
- Lawyers' Insurance Association of Nova Scotia / Practice Management / **Time Management Missed Limitations**
- Law Society of British Columbia / **Closed Files: Retention and disposition** (June 2013)
- Law Society of Saskatchewan / **File Management for Legal Assistants** (June 2004)
- Law Society of Upper Canada / **File Management Practice Management Guideline**
- The Law Society [UK] / **Practice Notes: File Closure Management** (June 2014)

ELEMENT 6 – ENSURING EFFECTIVE MANAGEMENT OF THE LEGAL ENTITY AND STAFF

Your legal entity adequately supervises, supports and manages staff in their delivery of legal services.

RATING	Almost never	Usually not	Occasionally	Frequently	Almost always
	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

THINGS TO THINK ABOUT

- The requirements of **Chapter 6 of the Code of Professional Conduct**
- Whether your office policy and procedures manual is comprehensive, up to date, readily accessible and regularly reviewed by staff
- The nature and frequency of staff meetings, including meetings for support staff
- How you ensure that staff receives clear and complete instructions regarding work assigned and the end product required, including sufficient background information
- How senior lawyers and management personnel set good examples for staff by providing and faithfully using dependable management guidelines and systems including, but not limited to, conflicts of interest checks, work allocation, file management, non-discrimination, documentation and communication
- How you use mentors and ethical role models, and encourage and train staff for leadership
- How you identify, address and inform staff about the importance of wellness for all and especially mental health support relevant to the legal profession, including the Nova Scotia Lawyers Assistance Program
- Whether you fairly and appropriately select staff that have supervisory responsibilities and the nature of the training provided in relation to supervision and management of staff, and oversight of outsourcing providers
- The fairness and effectiveness of your performance management
- How you maintain a respectful workplace that encourages equality of opportunity, promotes diversity in recruitment and appropriately accommodates disabilities
- If you share space with other lawyers or professionals who are not members of your legal entity (including business centres), how you have documented the nature of the arrangement

COMMENT:

RESOURCES

- Nova Scotia Barristers' Society / **Code of Professional Conduct** [Chapter 6: Relationship to Students, Employees and Others]
- Nova Scotia Barristers' Society / Law Office Management Standards / **Standard #4 Maintenance and Backup Electronic Data**
- Nova Scotia Barristers' Society / Law Office Management Standards / **Standard #6 Cloud Computing**
- Lawyers' Insurance Association of Nova Scotia / Practice Management / **Human Resources Staff Management**
- Lawyers' Insurance Association of Nova Scotia / Practice Management / **Succession Planning**
- Nova Scotia Lawyers Assistance Program / www.nslap.ca
- Law Society of British Columbia / **Lawyers Sharing Space**

- Law Society of British Columbia / **Promoting a Respectful Workplace: A Guide for Developing Effective Policies** (December 2014)
- The Law Society [UK] / **Practice Notes: Supervision** (October 2011)
- LAWPRO / **Supervision of employees: The buck stops with you** (2009)
- PracticePRO / **Delegating responsibly and effectively** (Summer 2007) *LawPRO Magazine*
- PracticePRO / **A systematic approach to law firm risk management** (Spring 2010) *LawPRO Magazine*

ELEMENT 7 – CHARGING APPROPRIATE FEES AND DISBURSEMENTS

Your legal entity charges clients fair and reasonable fees, which are fully disclosed.

RATING	Almost never	Usually not	Occasionally	Frequently	Almost always
	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

THINGS TO THINK ABOUT

- The requirements of **3.6 of the Code of Professional Conduct**
- The processes you use to ensure guidelines in relation to billing practices are disseminated to all staff and regularly reviewed
- The requirements for written retainer agreements, especially for new clients
- Whether your entity's written retainer agreements specify
 - the billing process, cycle and timing of accounts
 - the timing for payment of accounts and interest to be paid on unpaid bills
 - who will work on the file and at what rate
 - the amount of the retainer and how it is replenished
 - the consequences of non-payment of an account
 - terms for withdrawal as counsel
 - the possibility of a solicitor's lien on the file
 - the distinction between fees and disbursements
 - consequences of not paying accounts when due
 - any limitations on scope of service
 - whether the retainer is being funded by a third party and if so, the nature of their relationship with you
 - the right to have the account reviewed by a taxing authority
- The means you use to explain the billing process to clients at the time of retainer and any changes as their matter progresses, and confirm the arrangements in writing
- How you ensure accurate and complete time records, which are recoded as tasks are completed when time recording is used as a management or billing tool
- How you ensure that disbursements are accurate and recoded in a timely manner
- How you keep track of time and effort, even if time is not the basis for billing
- How bills are approved before they are sent to a client
- How you ensure funds are not withdrawn from trust to pay an account except in compliance with the Trust Account Regulations

COMMENT:

RESOURCES

- Nova Scotia Barristers' Society / **Code of Professional Conduct** [Chapter 3.6: Fees and Disbursements]
- Nova Scotia Barristers' Society / Law Office Management Standards / **Standard #5 Retention and Billing**
- Lawyers' Insurance Association of Nova Scotia / Practice Management / **Financial Management**
- Law Society of British Columbia / **Fees, Disbursements and Interest** (2012)
- Law Society of Upper Canada / **Bookkeeping Guide for Lawyers** / (October 2014)
- Scott, Todd C. / **Nine Rules for Billing Ethically and Getting Paid on Time** (November 2011)

ELEMENT 8 – SUSTAINING EFFECTIVE AND RESPECTFUL RELATIONSHIPS WITH CLIENTS, COLLEAGUES, COURTS, REGULATORS AND THE COMMUNITY

Your legal entity's dealings with clients and other third parties are conducted in a fair, effective and respectful way.

RATING	Almost never	Usually not	Occasionally	Frequently	Almost always
	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

THINGS TO THINK ABOUT

- The requirements of **Chapter 7 of the Code of Professional Conduct**
- How you ensure that communications with clients, colleagues, the judiciary, the community and the Society are carried out in a timely, respectful and courteous manner
- The processes you use to ensure your guidelines in relation to client communication are disseminated to all staff and regularly reviewed
- The processes you use to ensure your guidelines in relation to communications with colleagues the judiciary, the community and the Society are disseminated to all staff and regularly reviewed

COMMENT:

RESOURCES

- Nova Scotia Barristers' Society / **Code of Professional Conduct** (current to May 2016) [**Rule 2.1-1**: Integrity; **Rule 3.2-2**: Honesty and Candour; **Chapter 5**: Relationship to the Administration of Justice; **Chapter 7**: Relationship to the Society and Other Lawyers; **Rule 7.2-11**: Undertakings and Trust Conditions; **Rule 7.3-1**: Maintaining Professional Integrity and Judgment]
- Lawyers' Insurance Association of Nova Scotia / Practice Management / **Social Media in the Workplace**
- Law Society of British Columbia / **Communications with the Law Society**
- QBE Europe Professional Indemnity Risk Management / **Solicitors: A Guide to Undertakings** (January 2013)
- Shields, Allison C. / **Managing Your Reputation in an Online World** (July/August 2014) ABA Law Practice Magazine

ELEMENT 9 – WORKING TO IMPROVE DIVERSITY, INCLUSION AND SUBSTANTIVE EQUALITY

Your legal entity is committed to improving diversity, inclusion and substantive equality and ensuring freedom from discrimination in the delivery of legal services and the justice system.

RATING	Almost never	Usually not	Occasionally	Frequently	Almost always
	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

THINGS TO THINK ABOUT

- The requirements of **6.3 of the Code of Professional Conduct**
- The means you use to ensure that your legal entity recognizes the importance of and delivers culturally competent legal services, including but not limited to education about culturally competent legal service delivery
- The processes you use to identify skills, knowledge and attributes related to cultural competence and diversity as factors in advancement and qualities needed for leadership positions
- The opportunities you provide for staff to practise inclusion enough that they transition from conscious cultural competence to unconscious cultural competence
- How you integrate inclusive behaviours as part of hard professional skills, rather than as optional soft skills
- How you ensure language used is appropriate to the individual receiving your communications and reflects cultural competency, equity and freedom from discrimination
- The nature of your policies and practices that encourage substantive equality and respect for diversity in all areas of recruitment and in the workplace including:
 - encouragement for diversity and cultural knowledge
 - accommodation of disabilities
 - assignment and evaluation of work free of bias
- The nature of your policies that address non discrimination, cultural competency and accommodation relating to both the delivery of legal services and hiring and advancement of staff of the legal entity
- How you develop workplace teams that actively support and encourage diversity in the workplace
- The nature and effectiveness of your internal complaint mechanisms that address concerns or allegations of discrimination and harassment in the workplace
- Your commitment and ability to keep detailed statistics on diversity including information related to recruitment, retention and advancement, if required to do so by the Society

COMMENT:

RESOURCES

- Nova Scotia Barristers' Society / **Code of Professional Conduct** (current to September 2014) [Chapter 3.2: Quality of Service; Chapter 5.1: The Lawyer as Advocate; Chapter 7.2: Responsibility to Lawyers and Others; Chapter 6.3: Equality, Harassment and Discrimination]
- Nova Scotia Barristers' Society / **The Equity Portal**
- Nova Scotia Barristers' Society / Law Office Management Standards / **Standard #8 Equity and Diversity**

ELEMENT 10 – WORKING TO IMPROVE THE ADMINISTRATION OF JUSTICE AND ACCESS TO LEGAL SERVICES

Your legal entity encourages public respect for and tries to improve the administration of justice and enhance access to legal services.

RATING	Almost never	Usually not	Occasionally	Frequently	Almost always
	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

THINGS TO THINK ABOUT

- The requirements of **5.6 of the Code of Professional Conduct**
- Whether you have *pro bono* guidelines and encourage staff to participate in *pro bono* services and activities
- Whether you provide:
 - legal services in a rural community
 - legal services an underserved area
 - legal services pursuant to certificates issued by Nova Scotia Legal Aid
- Whether you encourage staff to take part in volunteering activities that offer legal services
- The means by which you offer clients alternatives to litigation where appropriate
- The processes you use to enable better case management of files and other means to increase efficiencies and reduce costs of legal services
- Whether you take steps to provide lower cost legal services to clients, including offering alternative fee arrangements and unbundled legal services
- The processes you use to prepare and train your staff to engage with self-represented parties and communicate with them professionally at all times
- Whether you provide staff education and training in relation to cultural competence, client-centred thinking and the use of plain language
- The means by which you encourage innovation in legal services delivery, and whether you invite staff to suggest measures to increase the efficiency and effectiveness of your legal entity
- Whether you encourage staff to suggest measures to improve the administration of justice and have a means for communicating suggestions to those with authority to address suggestions for change

COMMENT:

RESOURCES

- Nova Scotia Barristers' Society / **Code of Professional Conduct** [Chapter 5.6: The Lawyer and the Administration of Justice]
- Nova Scotia Barristers' Society / Law Office Management Standards / **Standard #5: Retention and Billing**
- Nova Scotia Barristers' Society / Family Law Standards / **Standard #7: Unrepresented Party**
- Lawyers' Insurance Association of Nova Scotia / Practice Management / Practice Tools / **Limited Scope Retainer Resources**

- ABA Standing Committee on Pro Bono & Public Service and the Centre for Pro Bono / **Resources for Law Firms**
- Canadian Bar Association / **The ABCs of Creating a Pro Bono Policy for Your Law Firm**
- Harvard Law School / **Pro Bono Guide: An Introduction to Pro Bono Opportunities in the Law Firm Setting**
- MacLaughlin, Paul / **Managing Pro Bono** (Law Society of Alberta)

MANAGEMENT SYSTEM FOR ETHICAL LEGAL PRACTICE (MSELP) WORKBOOK

The Workbook

The MSELF Self-Assessment Tool is an instrument designed to ensure your legal entity has an effective Management System for Ethical Legal Practice (MSELF), comprising 10 elements that need to be present for legal services to be effectively and ethically provided to clients. It is intended to help you reflect upon and improve your processes and the systems that impact the quality of your legal services delivery.

Law firms and lawyers are required to have in place each of the 10 elements that apply to their specific legal entity, and to demonstrate commitment to them.

In the self-assessment tool, there is no one right answer. Each entity will have different systems and tools to support these elements, depending on their practice areas and resources.

This workbook will assist you in self assessing each of the 10 MSELF elements. It will help you work through each element before you complete and submit your online MSELF Self-Assessment Tool to the Society.

A list of 'indicators' of each element is provided for your consideration, together with a 1-5 scale for self-identifying your relative strength in each. Taken together, your 'scoring' of these indicators may help you to self assess each MSELF element. The indicators are relevant to all lawyers in private practice. The workbook was designed with the services and practice systems of small firms and sole practitioners in mind. Throughout, "you" and "your" is used and is intended to include sole practitioners and law firms of all sizes.

There are, of course, other matters relevant to each element, which you may also wish to reflect upon as you complete your self-assessment. Other considerations are outlined in the MSELF Self-Assessment Tool.

'Resource' links are provided for each element to assist you in reflecting and improving.

Please do not submit this workbook. Keep it as a record and as a tool from which you can continue to work to enhance your MSELF.

Assessment scale

To assist you in self assessing the strength of your management systems as they relate to each element, indicators of that element are provided, together with a rating scale of 1-5. Listed under each indicator are examples of the processes, policies and other systems you might employ to support the delivery of ethical legal services.

You are asked to consider the likelihood that these systems are consistently employed in your practice. For example, under **Element 1 – Developing Competent Practices**, you are asked to consider various statements that indicate the likelihood of you and your staff having sufficient training and experience to perform your duties. The first indicator is: "You conduct background and reference checks and review resumés on hiring", to which you might respond:

- 1 – In my practice, I/we **almost always** conduct background and reference checks and review resumés on hiring.
- 2 – I/we **usually** conduct background and reference checks and review resumés on hiring.
- 3 – I/we **occasionally** conduct background and reference checks and review resumés on hiring.
- 4 – I/we **usually do not** conduct background and reference checks and review resumés on hiring.
- 5 – I/we **almost never** conduct background and reference checks and review resumés on hiring.
- N/A** – This is not relevant to my practice (e.g., I have no employees).

The '**Notes**' field at the end of each element provides space for you to record further reflection on your current systems and/or ideas for their improvements.

Again, there are no right answers. The intention is to provide you an opportunity to identify where more robust processes and systems can be developed in your practice.

ELEMENT 1: DEVELOPING COMPETENT PRACTICES

Your staff delivers the legal services your entity is engaged to provide with appropriate skill, expertise and in an ethical manner.

INDICATOR – You and your staff have sufficient training and experience to perform your duties.

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
You conduct background and reference checks and review resumes on hiring	1	2	3	4	5		CBA Ethical Practices Self-Evaluation Tool LIANS / Sample interview questions Nova Scotia Barristers' Society / Professional development Nova Scotia Barristers' Society / Hiring Practices for Equity in Employment: Interviewing Guide Law Society of Alberta / Top 10 Things to Include in Your Law Office Manual Suffolk University Law School / Legal Tech Assessment Nova Scotia Barristers' Library / The 2015 solo and small firm legal technology guide : critical decisions made simple
You train when first hired and when major procedural changes occur	1	2	3	4	5		
You offer ongoing educational opportunities	1	2	3	4	5		
You have a policy and procedures manual for staff	1	2	3	4	5		
You review the use of technology and technology training with staff and lawyers on a regular basis	1	2	3	4	5		

INDICATOR – You and your staff are provided with education and training in the following areas:

Identification of conflicts	1	2	3	4	5		Nova Scotia Barristers' Society / Code of Professional Conduct [Chapter 3.1: Competence; Chapter 3.2: Quality of Service; Chapter 6: Relationship to Students, Employees and Others] NSBS Family Law Standards / Standard #3: Lawyers' Competence
Use of trust accounts	1	2	3	4	5		
Password confidentiality	1	2	3	4	5		
Technology security	1	2	3	4	5		
Ethics	1	2	3	4	5		
Billing practices	1	2	3	4	5		
Appropriate communications with clients	1	2	3	4	5		
Physical security	1	2	3	4	5		
Health and wellness	1	2	3	4	5		
Clients' unique cultural circumstances	1	2	3	4	5		



Notes:

ELEMENT 2: COMMUNICATING IN AN EFFECTIVE, TIMELY AND CIVIL MANNER

Communications with your clients are clear and clients are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them.

INDICATOR – You have written guidelines in relation to communication with clients and a process for ensuring the guidelines are effectively disseminated to all staff.

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
Confidentiality	1	2	3	4	5		Law Society of British Columbia / “Communications Toolkit” Law Society of Upper Canada / “Client Service and Communication Practice Management Guideline” Lawyers' Insurance Association of Nova Scotia / Client service LIANS / “Retainer Agreements and Engagement Letters” PracticePRO / Precedent documents and retainers
Retainers	1	2	3	4	5		
Use of email / telephone / text and other forms of communication	1	2	3	4	5		
How clients are informed/updated about their matters	1	2	3	4	5		
Compliance with privacy and anti-spam legislation	1	2	3	4	5		
Requirements in relation to non-lawyer communications to ensure clarity and that they are not holding themselves out as a lawyer	1	2	3	4	5		

INDICATOR – You have a process to ensure that the communication guidelines are regularly reviewed.

You discuss the guidelines with staff to reinforce and ensure being followed	1	2	3	4	5		LIANS / Communication Slaw / Obtaining and Acting on Client Feedback PracticePRO / Post-Matter Client Service Survey Precedent
Guidelines are regularly reviewed to ensure currency and compliance with applicable ethical standards	1	2	3	4	5		
Compliance with guidelines is part of performance reviews	1	2	3	4	5		
You have a process to regularly obtain client feedback	1	2	3	4	5		

INDICATOR – You provide clients with information and communication guidelines as appropriate.

Communications are addressed in retainer letters	1	2	3	4	5		Nova Scotia Barristers' Society / Code of Professional Conduct [Chapter 3.2: Quality of Service; Chapter 5.1: The Lawyer as Advocate; Chapter 7.2: Responsibility to Lawyers and Others; Chapter 6.3: Equality, Harassment and Discrimination]
You take reasonable steps to keep client contact information up to date	1	2	3	4	5		
You explain to clients the importance of making sure you are advised of any change in their contact information	1	2	3	4	5		
Clients are advised how to find information about your entity	1	2	3	4	5		

**INDICATOR – You have information about your legal entity available publicly.**

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
Range of services	1	2	3	4	5		
Staff and lawyers working for entity	1	2	3	4	5		
Practice hours	1	2	3	4	5		
Contact information	1	2	3	4	5		
After-hours contact information	1	2	3	4	5		

INDICATOR – You communicate in a manner that is respectful of clients and their needs.

Communications are in the manner most comfortable for the client	1	2	3	4	5		NSBS Family Law Standards / Standard #2: Client Competence American Bar Association / Representing Clients with Limited English Proficiency Law Society of British Columbia / Respectful Language Guideline The Law Society (UK) / Practice notes: Meeting the Needs of Vulnerable Clients
Communications are done in a timely and efficient manner	1	2	3	4	5		
Clients are advised of the methods of in which they may communicate with their lawyers, and the expected and appropriate frequency of communications	1	2	3	4	5		
You reasonably attempt to accommodate clients on short notice and make referrals to others where appropriate	1	2	3	4	5		
Communications are conducted in a manner that is professional, and ensures privacy and confidentiality	1	2	3	4	5		
You have processes for addressing language barriers	1	2	3	4	5		
You have processes to ensure that communications with clients are reflective of cultural competence, equity and diversity	1	2	3	4	5		

INDICATOR – You have processes in place to ensure timely review of all matters and to inform clients about their matter's progress.

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
Clients are regularly informed of the status of their matter	1	2	3	4	5		LIANS / Financial Management Nova Scotia Barristers' Library / How to Draft Bills Clients Rush to Pay American Bar Association / Managing Client Expectations PracticePRO / Managing the Lawyer-Client Relationship
Clients are provided with projected/possible outcomes, including anticipated timelines	1	2	3	4	5		
Clients are informed of anticipated costs and any material changes to the anticipated costs	1	2	3	4	5		
Material changes in the scope of the retainer, costs or timelines are communicated to the client in a timely manner and confirmed in writing where appropriate.	1	2	3	4	5		
Copies of key documents and communications are provided to the client in a timely manner.	1	2	3	4	5		
Deadlines, limitations, hearing dates and other important dates are communicated to the client.	1	2	3	4	5		

Notes:

ELEMENT 3: ENSURING CONFIDENTIALITY

You keep the affairs of clients confidential unless disclosure is required or permitted by law, or the client consents.

INDICATOR – You have a confidentiality and privacy policy.

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
You provide education on the importance of confidentiality	1	2	3	4	5		Nova Scotia Barristers' Society / Code of Professional Conduct [Chapter 3.3: Confidentiality] NSBS Law Office Management Standards / Standard #4: Maintenance and Backup NSBS Law Office Management Standards / Standard #6: Cloud Computing LIANS / Sample Confidentiality Agreement LIANS / Service Provider Confidentiality Policy LIANS / Practising Remotely LIANS / Office Space/Location/Confidentiality LIANS / Data Security PracticePRO / Model Technology Usage Policy Law Society of British Columbia / Cloud Computing Checklist PracticePRO / Social Media Pitfalls to Avoid
You provide education on the potential consequences of a breach of confidentiality	1	2	3	4	5		
Employees sign a confidentiality letter or agreement	1	2	3	4	5		
You have confidentiality requirements (including agreements) for third parties (such as landlords, contractors, bookkeepers, computer service providers, cleaners, interns, volunteers, family members) who may access physical space or computers, tablets and smart phones	1	2	3	4	5		
You ensure that all third parties who may access physical space or computers, tablets and smart phones protect confidentiality of information obtained	1	2	3	4	5		
You protect confidentiality in office areas entered by persons not employed by or associated with the entity	1	2	3	4	5		
You take steps to ensure that others cannot overhear confidential conversations staff and others associated with the entity have both within and outside the physical office (i.e., on phone in reception/common area or call taken/made offsite)	1	2	3	4	5		
You take steps to ensure that client files and other confidential material are not left in any publicly accessible places	1	2	3	4	5		
You locate copiers, fax machines, mail, etc. so that confidential information cannot be seen by persons not employed by or associated with the entity	1	2	3	4	5		



You have appropriate office security for confidential information – including electronic information	1	2	3	4	5		
You take steps to protect confidential information on all computers, laptops, tablets, smart phones, thumb drives and other technological devices (i.e., passwords)	1	2	3	4	5		
You take steps to protect confidentiality when using social media or cloud-based services	1	2	3	4	5		
You are familiar with the requirements of privacy legislation	1	2	3	4	5		
You are familiar with situations where disclosure of confidential information is permissible under or required by law	1	2	3	4	5		
If sharing office space, you take steps to ensure confidentiality with respect to others with whom the space is shared	1	2	3	4	5		
Notes:							

ELEMENT 4: AVOIDING CONFLICTS OF INTEREST

You never act where there is a conflict, or a significant risk of conflict, between you and your client.

INDICATOR – You have a written conflict policy

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
You check for and evaluate conflicts prior to accepting a new matter and before receiving confidential disclosure	1	2	3	4	5		Nova Scotia Barristers' Society / Code of Professional Conduct [Chapter 3.4: Conflicts; Chapter 5.2: Lawyer as Witness] NSBS Family Law Standards / Standard #1: Conflict of Interest LIANS / Conflict of Interest Canadian Bar Association / Task Force on Conflicts of Interest Toolkit (2008) The Law Society (UK) / Practice notes: Conflict of interests (March 2015) PracticePRO / Managing Conflict of Interest Situations LIANS / Conflict of Interest Checklist CBA / Developing a Conflict Checking System for Your Law Firm PracticePRO / Sitting on a non-profit board: A risk management checklist PracticePRO / Managing the Practice of Investing in Clients
You check for and evaluate conflicts when a new party is added	1	2	3	4	5		
You check for and evaluate conflicts when a new person is hired	1	2	3	4	5		
You check for and evaluate conflicts that may result from prior employment, volunteer work, business interests or personal interests of staff and others associated with the entity	1	2	3	4	5		
You provide education on the avoidance of conflicts and the consequences of a conflict	1	2	3	4	5		
Your policy is periodically reviewed and updated	1	2	3	4	5		
You maintain an effective master list or database of current and former clients	1	2	3	4	5		
You request information regarding names of corporate officers and directors in the course of completing conflict checks	1	2	3	4	5		
You request information regarding other names (maiden names, previous names, etc.) in the course of completing conflict checks	1	2	3	4	5		
You request information regarding all adverse parties in the course of completing conflict checks	1	2	3	4	5		
You avoid having a financial interest in a client matter	1	2	3	4	5		
You avoid engaging in business with a client	1	2	3	4	5		
You avoid representing adverse parties	1	2	3	4	5		
You obtain a signed waiver from a client if representation is requested and agreed to after a conflict has been discussed	1	2	3	4	5		

Notes:

ELEMENT 5: MAINTAINING APROPRIATE FILE AND RECORDS MANAGEMENT SYSTEMS

Your entity maintains accurate and up to date records using an appropriate file management system that safeguards clients' documents and information.

INDICATOR – You have a record retention policy

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
You have a centralized filing system (including cloud based systems)	1	2	3	4	5		Nova Scotia Barristers' Society / Code of Professional Conduct (Chapter 3.5: Preservation of Client's Property) NSBS Law Office Management Standards / Standard #1: Record Retention LIANS / Disaster Planning Law Society of Upper Canada / The Contingency Planning Guide for Lawyers Law Society of Upper Canada / File Management Practice Management Guideline
You have a supervisor appointed to manage that system	1	2	3	4	5		
You have a standardized arrangement for naming of your electronic files (e.g., last name, first name, subject matter/area of law, file number)	1	2	3	4	5		
You store files in a secure area and safe from water and vermin damage	1	2	3	4	5		
You set file destruction dates	1	2	3	4	5		

INDICATOR – You have a file opening procedure for each new matter

You perform "conflict of interest" checks	1	2	3	4	5		LIANS / Intake Procedures LIANS / Engagement Letters Law Society of Upper Canada / File opening checklist
You send an engagement letter	1	2	3	4	5		
You use a retainer agreement	1	2	3	4	5		
You use checklists	1	2	3	4	5		

INDICATOR – You use a tickler system for deadlines

Statute of limitations	1	2	3	4	5		Legal Aid Ontario / Tickler Guidelines and Procedure Tennessee Bar Association / Tickler and Calendar Systems
Appointments	1	2	3	4	5		
Discovery or specific filing deadlines	1	2	3	4	5		
Court appearances	1	2	3	4	5		
Review dates	1	2	3	4	5		
Remote calendar access	1	2	3	4	5		
Staff calendar access	1	2	3	4	5		
Check out procedures for physical files	1	2	3	4	5		

**INDICATOR – You have a closing procedure for each file**

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
You return original documents to clients	1	2	3	4	5		LIANS / Guidelines for File Closure, Retention and Destruction
You send closing letters at the end of the retainer / matter	1	2	3	4	5		The Law Society (UK) / Practice notes: File closure management [3: File closure policy and checklist]

Notes:

ELEMENT 6: ENSURING EFFECTIVE MANAGEMENT OF THE LEGAL ENTITY AND STAFF

Staff are adequately supervised, supported and managed in their delivery of legal services to clients.

INDICATOR – You share space with other lawyers or professionals who are not members of your legal entity (including business centres) in an appropriate manner

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
You have taken steps to clearly distinguish your entity to prevent confusion by clients and the general public (entryway, letterhead and other written materials)	1	2	3	4	5		Nova Scotia Barristers' Society / Code of Professional Conduct [Chapter 6: Relationship to Students, Employees and Others] Canadian Bar Association / Sharing Space: Tips for Solo Practitioners Law Society of British Columbia / "Lawyers Sharing Space"
You do not share a trust account or any banking arrangements	1	2	3	4	5		
If you share staff, e.g., receptionists or paralegals, you have taken appropriate steps to ensure confidentiality of client materials and/or disclose to clients the limits of your ability to maintain confidentiality	1	2	3	4	5		
If you share office equipment (fax machines, servers, etc.) you have addressed confidentiality issues, made proper disclosure to clients and clarified ownership of the shared equipment	1	2	3	4	5		

INDICATOR – Your office is accessible to all members of the public

	1	2	3	4	5		
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INDICATOR – You have an information management policy

	1	2	3	4	5		Legal Files / Case Management: Why Doesn't Every Law Firm Use It? American Bar Association / Practice/Case Management Software Comparison Chart for Solo/Small Firm
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INDICATOR – You back up your electronic documents and store your paper documents appropriately (including testing of the backup)

You use cloud services, including online dictation or remote receptionists	1	2	3	4	5		NSBS Law Office Management Standards / Standard #4: Maintenance and Backup of Electronic Data
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INDICATOR – You provide training

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
Staff	1	2	3	4	5		LAWPRO / Supervision of employees: The buck stops with you (2009) The Law Society (UK) / Practice notes: Supervision (October 2011) The Law Society of British Columbia / “Promoting a Respectful Workplace: A Guide for Developing Effective Policies” (December 2014) PracticePRO / “Delegating responsibly and effectively” (Summer 2007) LawPRO Magazine Nova Scotia Lawyers Assistance Program
Lawyers	1	2	3	4	5		
On how and what to delegate	1	2	3	4	5		
On effective and appropriate supervision	1	2	3	4	5		
On cultural diversity	1	2	3	4	5		
On consumers of Mental Health Services	1	2	3	4	5		
You monitor and encourage staff and lawyer well-being	1	2	3	4	5		
You promote the Nova Scotia Lawyers Assistance Program	1	2	3	4	5		

INDICATOR – You have guidelines to encourage equality of opportunity and respect for diversity in hiring

You encourage diversity and cultural knowledge	1	2	3	4	5		NSBS / Hiring Practices for Equity in Employment: Interviewing Guide NSBS / The Equity Portal Nova Scotia Human Rights Commission / A guide for drafting job application forms and interview questions
You accommodate disabilities	1	2	3	4	5		
You assign and evaluate work free of bias	1	2	3	4	5		
You have a clear mechanism for staff to raise employment issues, including discrimination and harassment	1	2	3	4	5		

INDICATOR – You provide staff with clear and complete instructions

Staff are informed of priorities and deadlines	1	2	3	4	5		The Management Center / You Probably Need to Give More Feedback! Here's How.
Staff are instructed on appropriate file management processes	1	2	3	4	5		
Staff are provided with appropriate, timely and confidential feedback	1	2	3	4	5		
Staff know the whereabouts of their direct supervisor or person in authority	1	2	3	4	5		


INDICATOR – You have a comprehensive, up-to-date office policy and procedure manual and it is regularly reviewed with staff

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
You have written job descriptions	1	2	3	4	5		LIANS / Succession Planning LIANS / Human Resources/Staff Management Law Society of Alberta / Top 10 Things to Include in Your Law Office Manual
You have written termination procedures	1	2	3	4	5		
You have provision for overtime, sick leave and medical insurance	1	2	3	4	5		
Confidentiality agreements have been signed	1	2	3	4	5		
You conduct appropriate background checks before hiring key staff	1	2	3	4	5		
Non-arms length staff are also bound by the policy	1	2	3	4	5		
Clients are aware of non-arms-length staff	1	2	3	4	5		
There are clear lines of authority	1	2	3	4	5		
You have a succession plan	1	2	3	4	5		
In the event of unforeseen accident, illness or death, staff are aware of your succession plan, who to contact and the steps to take in order to address the interests of your clients	1	2	3	4	5		
You carry adequate insurance for your practice, including excess professional liability coverage and Outside Directors Liability coverage	1	2	3	4	5		

Notes:

ELEMENT 7: CHARGING APPROPRIATE FEES AND DISBURSEMENTS

Clients are charged fees appropriately and are clear about the costs, or likely costs incurred during their legal transaction.

INDICATOR – You use a written retainer agreement

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
The agreement explains the billing process	1	2	3	4	5		NSBS Law Office Management Standards / Standard #5: Retention and Billing PracticePRO / Precedent Documents and Retainers
All new and returning clients sign the retainer agreement	1	2	3	4	5		
Interest on unpaid bills is clearly laid out	1	2	3	4	5		
The agreement sets out who will work on the file and at what rate	1	2	3	4	5		
The agreement sets out terms for withdrawal as counsel	1	2	3	4	5		
The amount of a retainer and how it is replenished	1	2	3	4	5		
Fees are distinguished from disbursements	1	2	3	4	5		
Any limitations on scope of service are clearly identified	1	2	3	4	5		
Timing of bills	1	2	3	4	5		

INDICATOR – Your fees are fair and reasonable

You provide clients with notice in advance of a change of fee or disbursement charges	1	2	3	4	5		Law Society of British Columbia / Fees, Disbursements and Interest (2012) Scott, Todd C / “ Nine Rules for Billing Ethically and Getting Paid on Time ” (November 2011)
You keep time on all files, even those for which a fixed fee or contingency charged	1	2	3	4	5		
Disbursements and other charges posted to client files regularly	1	2	3	4	5		
Bills are reviewed and approved before they are sent to the client on a regular basis	1	2	3	4	5		

INDICATOR – You understand what constitutes unethical billing practices

	1	2	3	4	5		Nova Scotia Barristers' Society / Code of Professional Conduct [Chapter 3.6: Fees and Disbursements]
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Notes:

**ELEMENT 8: SUSTAINING EFFECTIVE AND RESPECTFUL RELATIONSHIPS
WITH CLIENTS, COLLEAGUES, COURTS, REGULATORS AND
THE COMMUNITY**

Your dealings with clients and other third parties will be conducted in a fair, open, effective and respectful way that respects diversity.

INDICATOR – You have a policy with respect to responding to client communications

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
Turnaround times for phone calls	1	2	3	4	5		Nova Scotia Barristers' Society / Code of Professional Conduct (current to May 2016) [Rule 2.1-1 : Integrity; Rule 3.2-2 : Honesty and Candour; Chapter 5 : Relationship to the Administration of Justice; Chapter 7 : Relationship to the Society and Other Lawyers; Rule 7.2-11 : Undertakings and Trust Conditions; Rule 7.3-1 : Maintaining Professional Integrity and Judgment]
Manner of communication (phone, mail, email)	1	2	3	4	5		
Timing of interim reports	1	2	3	4	5		
Copying client on correspondence	1	2	3	4	5		
Timing of final reports and final accounts	1	2	3	4	5		

INDICATOR – You have a policy ensuring each client receives a retainer letter setting out:

Anticipated fees and disbursements	1	2	3	4	5		PracticePRO / Precedent Documents and Retainers
Billing policies	1	2	3	4	5		
Services covered by the retainer	1	2	3	4	5		
A statement that there is no guarantee of a specific outcome	1	2	3	4	5		
Termination of legal services	1	2	3	4	5		

INDICATOR – All client instructions are confirmed in writing

	1	2	3	4	5		
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INDICATOR – You maintain an active case list

	1	2	3	4	5		
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INDICATOR – Client matters are completed in a timely fashion

	1	2	3	4	5		
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INDICATOR – You respond to communications from lawyers in a timely fashion

	1	2	3	4	5		
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INDICATOR – You have a written guideline in relation to undertakings

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
Tracking undertakings	1	2	3	4	5		Law Society of Upper Canada / Undertakings and Trust Conditions QBE Europe Professional Indemnity Risk Management / Solicitors: A Guide to Undertakings (January 2013)
Ensuring undertakings are fulfilled in a timely fashion	1	2	3	4	5		

INDICATOR – You have a written guideline in relation to communicating with the Court

	1	2	3	4	5		
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INDICATOR – You have a guideline with respect to public statements

Comments regarding judicial decisions and the administration of justice	1	2	3	4	5		LIANS / Social Media in the Workplace Shields, Allison C / " Managing Your Reputation in an Online World " (July/August 2014) ABA Law Practice Magazine
Encouraging respect for the administration of justice	1	2	3	4	5		
Media inquiries	1	2	3	4	5		
Use of social media	1	2	3	4	5		
Advertising is true and accurate	1	2	3	4	5		

INDICATOR – You effectively use your calendar

You calendar court appearances	1	2	3	4	5		
You set reminders of scheduled court appearances	1	2	3	4	5		
You ensure you are not double booked	1	2	3	4	5		
You use a tickler system	1	2	3	4	5		

INDICATOR – You have a written guideline in relation to communicating with the Nova Scotia Barristers' Society

You respond to the Society in a timely fashion	1	2	3	4	5		
You act in a manner consistent with the NSBS Standards	1	2	3	4	5		

INDICATOR – You have a guideline to prevent discrimination and harassment

	1	2	3	4	5		NSBS / The Equity Portal
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INDICATOR – You provide training to lawyers and staff on issues relating to discrimination and cultural competence

	1	2	3	4	5		NSBS / The Equity Portal
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Notes:

ELEMENT 9: WORKING TO IMPROVE DIVERSITY, INCLUSION AND SUBSTANTIVE EQUALITY

You are committed to improving diversity, inclusion and substantive equality and ensuring freedom from discrimination in the delivery of legal services and the justice system.

INDICATOR – You have a workplace equity policy

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
Your entity treats all persons in a manner consistent with best practices in human rights law and the <i>Code of Professional Conduct</i>	1	2	3	4	5		Nova Scotia Barristers' Society / Code of Professional Conduct (current to September 2014) [Chapter 3.2 : Quality of Service; Chapter 5.1 : The Lawyer as Advocate; Chapter 7.2 : Responsibility to Lawyers and Others; Chapter 6.3 : Equality, Harassment and Discrimination] NSBS / Equity & access NSBS Law Office Management Standards / Standard #8: Equity and Diversity
Policy encourages equality and respect for diversity in all areas of recruitment, retention, and advancement	1	2	3	4	5		
It prohibits harassment	1	2	3	4	5		
It prohibits discriminatory practices	1	2	3	4	5		
It addresses accommodation for persons with disabilities	1	2	3	4	5		
It is communicated to all current and prospective staff	1	2	3	4	5		
It is published online or otherwise made available to those outside of your practice	1	2	3	4	5		

INDICATOR – You have a process to enforce your equity policy

	1	2	3	4	5		
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INDICATOR – You have a process to ensure language used is appropriate to the individual receiving your communications and reflects cultural competency, equity and freedom from discrimination

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INDICATOR – You provide staff and lawyers training in culturally competent legal service delivery

	1	2	3	4	5		
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Notes:

ELEMENT 10: WORKING TO IMPROVE THE ADMINISTRATION OF JUSTICE AND ACCESS TO LEGAL SERVICES

Your entity plays a role in improving access to legal services and the administration of justice.

INDICATOR – You have a *pro bono* guideline or policy

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
You are required to participate in <i>pro bono</i> work	1	2	3	4	5		ABA Standing Committee on Pro Bono & Public Service and the Center for Pro Bono / Resources for Law Firms
Your entity encourages <i>pro bono</i> work	1	2	3	4	5		Canadian Bar Association / The ABCs of Creating a Pro Bono Policy for Your Law Firm
<i>Pro bono</i> hours 'count' toward billable hour targets	1	2	3	4	5		Harvard Law School / Pro Bono Guide: An Introduction to Pro Bono Opportunities in the Law Firm Setting
You spend the appropriate amount of time with the client and are empathetic	1	2	3	4	5		MacLaughlin, Paul / Managing Pro Bono (Law Society of Alberta)

INDICATOR – You use limited scope retainers

	1	2	3	4	5		NSBS Law Office Management Standards / Standard #7: Limited Scope Retainers LIANS / Limited Scope Retainer Resources
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INDICATOR – You use alternative fee arrangements

	1	2	3	4	5		LegalTrek / Alternative Fee Arrangements: a Comprehensive Guide for Law Firms
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INDICATOR – Lawyers and staff receive training on how to deal with self-represented litigants

	1	2	3	4	5		NSBS Family Law Standards / Standard #7: Unrepresented Party LawPRO Magazine / Self-Represented Litigants: A survival guide Slaw / Providing Legal Services in a Coaching Model: The What, Why and How
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Notes:

Memo

To: Benchers
From: Policy and Legal Services staff
Date: September 18 2017
Subject: Professional Infrastructure Element 8 – Equity, Diversity and Inclusion

Purpose

1. This memo provides the Benchers with an overview of the Law Firm Regulation Task Force’s rationale for, and approach to recommending “equity, diversity and inclusion” as one law firm regulation’s eight Professional Infrastructure Elements.

Background

2. At the July 2017 meeting, a number of Benchers voiced strong support for the inclusion of Element 8 – “Equity, Diversity and Inclusion” in the self-assessment tool. Others, however, have expressed concern about requiring firms to address policies and practices in this area as part of law firm regulation.
3. The Task Force similarly struggled with achieving consensus as to whether a Professional Infrastructure Element dedicated to equity, diversity and inclusion should be included in the self-assessment.
4. At various junctures, the Task Force debated whether equity and diversity had an “aspirational” quality that differs from many of the other more practical and operational aspects of firm practice reflected in the other Elements. Other concerns included the regulatory challenge of evaluating how this Professional Infrastructure Element would be met, as well as the imposition of what some viewed as “social values” on firms.
5. Despite these initial concerns, following lengthy discussion and consideration of the rationales set out below, the Task Force ultimately concluded that the self-assessment should include Element 8.

Discussion

6. The Task Force's recommendation to adopt Element 8 in the self-assessment tool is primarily informed by four policy considerations, as set out below.

Equity, diversity and inclusion are important aspects of competent, ethical practice

7. Increasingly, legal organizations and regulators are highlighting the important role equity and diversity issues play in the competent, ethical and professional delivery of legal services.
8. As the Law Society of BC recognizes in its 2012 *Report Towards a More Representative Legal Profession: Better practices, better workplaces, better results* (the "LSBC Report"), overt discrimination based on race and gender still occurs throughout the profession. Women, visible minority lawyers and Aboriginal lawyers also continue to face systemic barriers created by unconscious bias, resulting in discrimination that, while perhaps unintended, is no less real.¹
9. The LSBC Report specifically identifies equity and diversity in the legal profession as being in the public interest. The Report also underscores the importance of involving firms in shifting attitudes and practices in a manner that advances diversity in the legal profession:

As the regulator we're only one piece of the puzzle, so we can't fix this on our own. As a profession, we can do better. Not just because it's the right thing to do, but because everyone benefits from it. We all have an interest in ensuring the legal profession continues its long-held tradition of striving to serve the public the best way it can. I encourage you to read this report and consider how your firm can develop and implement solutions to advance diversity in the legal profession.²

10. The Canadian Bar Association (the "CBA") advocates that firms take a leadership role in promoting equity and diversity in the profession and, accordingly, includes equity and diversity considerations in its model law firm self-evaluation tool.³
11. The CBA also examines the relevance of equity and diversity to the future delivery of legal services in its 2014 Report *Futures: Transforming the Delivery of Legal Service in Canada* (the "Futures Report").⁴

¹ Law Society of BC, "*Report Towards a More Representative Legal Profession: Better practices, better workplaces, better results*" (June 2012), online at:

www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/Diversity_2012.pdf

² Introduction to the LSBC Report by Thelma O'Grady, Chair of the Equity and Diversity Committee. Ibid at p. 2.

³ Canadian Bar Association, "Ethical Practices Self-Evaluation Tool", online at :

<http://www.lians.ca/sites/default/files/documents/00077358.pdf>

⁴ Canadian Bar Association, "Futures: Transforming the Delivery of Legal Services in Canada" (August 2014), online at: www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf?ga=2.220699608.1516323571.1505840769-1793269536.1505840769

12. In addition to supporting entity (law firm) regulation, the CBA's Futures Report's findings emphasize that a "commitment to diversity in the Canadian legal profession" should be "embedded within the entities delivering legal services to Canadians."⁵
13. The Report identifies diversity as a key driver for creating a successful strategy for managing future legal needs in Canada:

Diversity will become the context within which changes discussed in the report can be effectuated, both within and around our profession. Reform will not reach its full potential unless we change the very fibre of our profession and become more inclusive to the communities within and around us.⁶
14. The CBA observes that a significant barrier to change is the limited access to, and advancement of members of diverse and equity-seeking groups within the legal profession. Law firms can be instrumental in eliminating such barriers by demonstrating commitment to improving diversity and equality in their working environments.
15. The Futures Report also details numerous linkages between diversity in the legal profession and improved client service. Increasingly, clients have an expectation that the legal profession will become more diverse as to better provide for the needs of the different communities and constituencies it services. It also observes that it is not in the public's interest to receive legal services from a team comprised of lawyers whose life perspectives are homogenous.⁷
16. Collectively, the views expressed by LSBC and the CBA challenge the notion that equity, diversity and inclusion are merely aspirational aspects of firm practice. Rather, the reports suggest that these issues are integral to the competent and ethical delivery legal services and an essential component of developing successful strategies for managing Canada's future legal needs.

Consultation feedback supporting the recognition of equity and diversity

17. During the provide-wide consultation on law firm regulation in 2016, the Task Force received feedback from lawyers that attention to equity and diversity issues was an important aspect of the regulation law firms. Junior lawyers, in particular, cited a prevalence of poor treatment and supported the inclusion of these considerations in the emerging regulatory scheme.

⁵ Ibid at p. 6.

⁶ Ibid at p. 15.

⁷ Ibid at p. 20.

18. In the 2017 consultations, a number of participants in the five different focus groups that were consulted also supported the inclusion of equity and diversity in the draft self-assessment.

Consistency with other law firm regulation self-assessment tools

19. Currently, Nova Scotia, Alberta, Saskatchewan, Manitoba and Ontario are all considering including equity and diversity as one of the core regulatory objectives of their evolving law firm regulation schemes. Nova Scotia and the Prairie provinces explicitly identify “equity, diversity and inclusion” as one of the key elements in their draft self-assessments.
20. While no two schemes will be identical, there are numerous advantages to creating consistency in approaches to law firm regulation across the country, particularly for national firms.
21. The Task Force therefore observed that a decision not to include Element 8 in the self-assessment would result in BC being an outlier with respect to failing to recognize equity and diversity as part of its approach to regulating law firms. Given the emphasis that LSBC has historically placed on equity and diversity issues within the legal profession (as evidenced, for example, through the *Justicia* project), the absence of equity and diversity considerations in the self-assessment challenges LSBC’s commitment to advancing these issues.

Proactive regulation is well-suited to addressing equity, diversity and inclusion

22. Law firm regulation is rooted in a proactive, outcomes-based approach that is designed to promote and support professional and ethical firm behaviour, rather than to impose sanctions for failure to achieve particular standards.
23. As such, the inclusion of Element 8 is not about whether LSBC should regulate equity and diversity in the traditional, reactive sense by imposing rules and sanctions. Rather, the issue is whether LSBC should, through a regulatory approach, *encourage and support* firms to achieve basic standards of practice in the areas of equity, diversity and inclusion by requiring law firms to develop policies and procedures to address these issues.
24. To be clear, including Element 8 in the self-assessment tool will not impose strict standards on firms or require them to develop or adopt specific equity and diversity policies. Nor will it demand that firms meet diversity quotas or introduce particular hiring practices.
25. The only requirement Element 8 places on firms is to satisfy the broad objective of “commitment to improving equity, diversity and inclusion and ensuring freedom from discrimination in the workplace and the delivery of legal services.” The Task Force believes that this is not an onerous standard.

26. In keeping with law firm regulation’s “light touch” approach, firms may choose to meet this objective in a variety of different ways. The self-assessment tool provides examples of the types of policies and processes that firms *may* adopt to address Element 8 in the form of a list of Indicators and Considerations.
27. Again, these are not prescriptive requirements or mandates for firms; rather, they are *suggestions* as to how a firm might work toward fulfilling the objective of Element 8. Some examples of measures law firms *may* take include:
- Reviewing interview questions to ensure they are free of bias and discrimination
 - Providing staff with training on issues related to workplace bullying and harassment, including their legal obligations under the *Workers Compensation Act*
 - Creating an internal complaints mechanism to address allegations of discrimination and harassment in the workplace
 - Ensuring processes are in place to accommodate clients with mental or physical disabilities
 - Developing firm maternity and paternity policies
28. A full list of the Indicators and Considerations for Element 8 are found at **Appendix A** (p.6).
29. Although the self-assessment asks firms to rate the extent to which they have satisfied Element 8, a low rating will not directly lead to disciplinary action. Instead, it signals to the Law Society that the firm requires further support in this area.
30. In this vein, the Law Society already has a robust set of resources in place to assist firms in achieving equity and diversity goals, including numerous model policies and best practice guides – more than in any other area being considered for law firm regulation.⁸

Conclusion

31. As part of the discussion of the Law Firm Regulation Task Force’s Second Interim Report there has been some resistance to the recommendation to include equity, diversity and inclusion as one of law firm regulation’s Professional Infrastructure Elements.
32. Historically these types of issues have received limited attention from the legal profession, including firms. Increasingly, however, equity, diversity and inclusion are recognized as important components of competent and ethical legal practice. Given firms’ role in, and

⁸ See LSBC *Justicia* Resources online at: <https://www.lawsociety.bc.ca/our-initiatives/equity-and-diversity/supporting-women-lawyers-in-bc/>

influence over the practice of law, they should be encouraged and supported by the regulator to develop policies and processes that address these issues in the workplace and in the profession more generally.

33. Accordingly, the Task Force recommends the adoption of Element 8 – “Equity, Diversity and Inclusion” as part of law firm regulation’s self-assessment tool.

APPENDIX A

ELEMENT 8 – EQUITY, DIVERSITY AND INCLUSION

OBJECTIVE
Commitment to improving equity, diversity and inclusion and ensuring freedom from discrimination in the workplace and in the delivery of legal services.

RATING	Policies and processes have not been developed. 1 p	Policies and processes are under development but are not functional. 2 p	Policies and processes are functional. 3 p	Policies and processes are fully functional and regularly assessed and updated. 4 p
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For a rating of 1 or 2, you must outline the action the firm will take to address challenges and shortcomings in addressing the Professional Infrastructure Element

Comments:
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Note: The Indicators and Considerations listed below are not prescriptive, and the guidance provided therein should be approached as suggestions rather than mandates

INDICATOR 1: Are policies and processes in place to ensure that all lawyers and staff experience a fair and safe working environment?

Considerations

- Policies and processes are in place that encourage diversity, inclusion, substantive equality, accommodation, as well as ensuring freedom from discrimination in management and advancement of lawyers and staff
- Hiring policies and processes are free of bias and discrimination, including interview questions
- Policies are reviewed, updated and are communicated to all lawyers and staff
- Lawyers and staff are provided with education and training on issues relating to discrimination, harassment and bullying, including legal obligations under the *Human Rights Code* and the *Workers Compensation Act*
- Maternity and paternity leave policies are in place

- Flexible work schedules are an option for those who have child-care or other caregiver responsibilities
- Accommodation policies are in place for employees with disabilities
- Internal complaints mechanisms are in place to address concerns and allegations of discrimination and harassment in the workplace

RESOURCES:

- [Practice Resource: Promoting a respectful workplace: A guide for developing effective policies](#)
- [Model Policy: Flexible Work Arrangements](#) (Updated December 2014)
- [Model Policy: Workplace Equality](#) (July 2007)
- [Model Policy: Workplace Accommodation](#) (March 2007)
- [Model Policy: Pregnancy and Parental Leave Policy for Associates](#) (Updated December 2014)
- [Model Policy: Pregnancy and Parental Leave Policy for Partners](#) (Updated December 2014)
- [Practice Resource: Workplace Equality](#) (Updated July 2007)
- [Code of Professional Conduct for British Columbia \[Chapter 6.3: Harassment and Discrimination\]](#)

INDICATOR 2: Are policies and processes in place that ensure that lawyers have adequate knowledge and training to provide legal services in a manner consonant with principles of equity, diversity, inclusion and cultural competency?

Considerations

- The firm treats all clients in a manner consistent with best practices in human rights law
- Language used in communicating with clients is appropriate to the individual receiving the communication and reflects cultural competency and freedom from discrimination
- Processes are in place to address language barriers, cultural issues, including cultural competency and issues of mental capacity
- Lawyers and staff have adequate knowledge and training to ensure that clients with disabilities and other equality seeking groups receive competent legal services
- All lawyers and staff receive skills-based training in intercultural competency, conflict resolution, human rights and anti-racism in response to Truth and Reconciliation Commission Call to Action #27
- The firm has considered legal requirements relating to accessibility and where accessibility may be an issue, lawyers meet clients in other appropriate settings

RESOURCES:

- [Working in a Diverse Society: The Need for Cultural Competency](#) (Winter 2016 Benchers' Bulletin)
- [Code of Professional Conduct for British Columbia \[Chapter 2.1: Canons of Legal Ethics; Chapter 3.1: Competence; Chapter 3.2: Quality of Service; Chapter 6.1: Supervision; Chapter 6.2 : Students; Chapter 6.3: Harassment and Discrimination; Chapter 7.2: Responsibility to Lawyers and Others\]](#)



Memo

To: Benchers
From: Executive Committee
Date: September 12, 2017
Subject: Strategic Planning

Introduction

This memorandum describes the Strategic Planning process generally, what has occurred to date, and what next steps are required. The material is presented to the Committee for consideration and discussion as a framework for discussion at the September Bencher meeting.

The Strategic Planning Process

Introduction: What Strategic Planning Aims to Achieve

Over the past nine years, the Benchers have established successive three-year Strategic Plans. Through these plans, the Benchers have established the strategic direction for the Law Society in a structured and informed way, eschewing what was previously an *ad hoc* process of identifying initiatives to deal with issues in a reactive manner.

Unlike many organizations, the Law Society does not need to identify its purpose or duties. Those are set out in the *Legal Profession Act*. But identifying in a strategic plan the specific outcomes the Law Society will seek to achieve and the means it will use to do so is key to ensuring the organization is focused on what the Benchers consider important and working to accomplish those outcomes. The result of that work will also reflect how the Law Society will be viewed by the public who it serves.

The strategic planning process therefore aims to engage Benchers directly in identifying the policy outcomes they consider most important, and the strategies and initiatives they believe will achieve those outcomes.

The Process to Date

This marks the fourth time that the Benchers have undertaken a strategic planning process. In previous efforts, Benchers have observed that not enough time has been allocated for a thoughtful consideration of the issues.

This year, the Benchers were given the opportunity to engage with the issues earlier and more fully than has been the case in the past. Over the course of the last four Bencher meetings, staff and Benchers have made presentations that were designed to provide an overview of various issues that have surfaced both domestically and internationally that ought to be considered by the Benchers. Those issues were:

- Access to Justice and Legal Services
- Admissions Program (Articling) Reform
- Mental Health Issues
- Economics of the Legal Marketplace
- Disclosure and Privacy
- Public Confidence in the Administration of Justice and the Rule of Law
- Proactive regulation

The Benchers were also asked to give some thought on their own as to whether there were any other issues that should be considered.

The Next Stage of the Process

That first phase of the process is now complete. The next part of the process now comes into focus.

Over the course of the meetings in the fall, the Benchers will engage in an examination of the issues that might reasonably be addressed strategically in the coming years, consider the relative prioritization of those issues and suggest what initiatives can be undertaken to address the issues, in order to create a workable strategic plan on which the Law Society can focus its resources.

Strategic Plans and the Law Society

When creating a Strategic Plan for the Law Society, a number of particular factors need to be kept in mind:

1. The Law Society's purpose is set by statute, so what it is meant to accomplish is already identified.
2. Because the Law Society does not operate in a competitive environment, strategic issues are therefore not focused on how to remain competitive, but rather how to achieve the statutory mandate.
3. The risks that the Law Society faces are different from those in the corporate world. Law Society risks arise from regulatory failures or ill-conceived policy initiatives instead of competition or loss of market share.
4. The Law Society's focus is on the general public good, not on production or profit. The effectiveness of outcomes or initiatives is less susceptible to an empirical analysis.

Consequently, the ultimate strategic plan needs to identify how the Law Society will make meaningful contributions to discharging its statutory object and duty in protecting the public interest in the administration of justice, and to be able to explain those efforts. The Strategic Plan and the process leading to it is thus an integral element in determining how the Law Society will discharge its mandate. It will also result in a significant communications tool to explain policy development that is consistent with the Law Society mandate.

Format

The considerations listed above invite a review of how best to lay out the Strategic Plan.

In the past, the Strategic Plan has identified goals toward which the Law Society is working. These goals have been refined somewhat over the years, but some care was taken when drafting them initially to ensure that the goals that the Law Society focused on were consistent with the legislation and that they were the sorts of things that one might expect the Law Society would always be focused on doing.

Working on initiatives with these goals in mind may require a national or in some cases even international focus. In the result, some of the initiatives that are eventually undertaken in the plan could involve Law Society participation in, or even leadership of, work undertaken by external organizations such as the Federation of Law Societies of Canada.

While the goals have been useful guideposts, they are not what is set out in the *Legal Profession Act* as the object and duty of the Law Society. Section 3 is really the more appropriate starting point for a consideration of what the Law Society should be attempting to accomplish.

Consequently, it makes sense to cast the strategic plan so that the initiatives and outcomes are stated in reference to the various subsections of s. 3 of the *Legal Profession Act* in order to make the next strategic plan more clearly connected with the legislative duty given to the Law Society. Doing so would also allow the Law Society to be able to communicate more directly to lawyers,

the public, the government and other interested justice system “stakeholders” how the Law Society is doing what the statute says is our purpose.

Therefore, the Committee recommends that the next strategic plan be formatted so that the expected outcomes and initiatives address the five subsections of s. 3.

Outcomes and Initiatives

The key part of the Strategic Plan is to identify the outcomes that the organization seeks and the initiatives it will use to achieve the outcomes. The work to be undertaken now requires the Benchers to settle on the outcomes that they wish to achieve and to identify initiatives that can be undertaken to achieve them.

As mentioned above, over the past months the Benchers have received information about a number of high level issues that have a broad policy focus to them. Some possible initiatives have been identified from those presentations, but others may have yet to present themselves. There are also a number of initiatives and outcomes that have been commenced under the current plan that have yet to be completed or have, such as legal aid, spawned new initiatives that are still underway. And finally, there may be other ideas that Benchers may have identified that have not been part of a presentation but that should be considered for planning purposes.

A **preliminary draft** Strategic Plan is attached that categorizes outcomes and initiatives, both currently underway and potentially for future implementation, in relation to the five subsections of s. 3 of the *Legal Profession Act*.

The draft plan attached to this Memorandum is prepared for the purposes of discussion, not approval. Items on the draft plan may not ultimately be included in the final plan. Conversely, there may be initiatives that Benchers can identify that are not in the draft that should be included. The Law Society does not have the resources to do everything on the plan, but the Benchers need to know what items could be undertaken as strategic initiatives in order to be able to make informed decisions about what the Plan should look like.

Building Flexibility into the Plan

One of the challenges with strategic planning is that the future is uncertain. Sometimes, things will come up during the course of the plan that were not anticipated when the plan was created, but nevertheless, for one reason or another, cannot be ignored. Therefore, some “slack space” in connection with resources should be factored into what is included on the final Plan or the Benchers should be prepared remove something from the plan if an issue not on the plan arises.

Prioritizing Initiatives

To date, the work undertaken has been focused on hearing about the sorts of broad policy issues that are on or just over the horizon that should be considered for strategic planning purposes. The next step requires focusing these broad issues into particular outcomes consistent with the *Legal Profession Act* and identifying initiatives to achieve the outcomes.

In a world of unlimited time and resources, everything could and would be done. Time and resources are, however, limited and it is unlikely that all of the potential outcomes and possible initiatives that have been identified can be included in the final plan. In the result, when finalizing what goes into the plan, a prioritization exercise taking into account the following considerations must be undertaken:

1. Resources: how much will the initiative take up in the way of resources?
2. Time: how long might it take to achieve the initiative?
3. Agency: Is the anticipated outcome something that the Law Society can do (through regulatory amendments or through the development of a program, for example) or is it something that the Law Society would have to engage another organization (such as government) to undertake or assist?
4. Result: How significant would the outcome be?

These considerations are not to be read in any particular order, and the amount of weight attached to each is not fixed. However, when considering which matters to include in a Strategic Plan, balancing these factors for each outcome and initiative is critically important to ensure that the Plan will be successful.

It is also important to remember that not all initiatives are alike. Some may be of short duration while others will be complicated initiatives that require other actors to be involved in order to achieve success. Both types of initiatives should be considered for inclusion on the final plan if they advance the Law Society's object and duties. However, the complexity of some issues will not always mean that the initiative will be completed by the Plan's end, nor should it mean that the initiative will necessarily be completed by the end of a given year.

Next Steps

September Benchers Meeting

At the September meeting, the Benchers will have a general discussion on the attached draft plan, to engage in some preliminary thinking on the sort of outcomes and initiatives should be included. Perhaps some of those listed can be removed, and others may be identified. No final decisions will be made.

October

Following the September meeting, the Benchers will give further consideration to the draft plan. There will be an opportunity to identify and add further outcomes or initiatives that are not identified on the current draft. Advisory or other Committee input on these issues will also be welcome. Staff is to be notified of additional matters by October 13.

October Bencher Meeting

At the October Bencher meeting, the draft plan, as revised over the previous weeks, will come back to the Benchers for preliminary approval. This will involve reaching an agreement on the primary issues that the Bencher deem of strategic importance to the Law Society for inclusion over the period of the Plan.

November

Pursuant to its role described in Rule 1-51 (h), the Executive Committee will, in November, discuss the consensus that has been agreed to by the Benchers with a specific consideration to resources available and prioritization of issues given the available resources. The executive Committee will revise the draft plan to fit within the available resources

December

The draft plan as completed by the Executive Committee will be placed on the Benchers' December Meeting Agenda for discussion and approval.

Conclusion

The preparatory work for constructing a strategic plan has been completed. Now, the process focuses the Benchers' attention on settling what outcomes the Law Society needs to work toward from the broad issues that have been presented to date, and to give thought to the ways that the outcomes can be achieved through particular initiatives. This will require the Benchers to think carefully about what they have heard, and will give them the opportunity, as the planning moves forward, to add to the debate with outcomes or initiatives that can be considered.

The Law Society

of British Columbia



Strategic Plan 2018 - 2020

Mandate

Section 3 of the *Legal Profession Act* establishes the mandate of the Law Society

It is the object and duty of the society to uphold and protect the public interest in the administration of justice by

- (a) preserving and protecting the rights and freedoms of all persons,*
- (b) ensuring the independence, integrity, honour and competence of lawyers,*
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,*
- (d) regulating the practice of law, and*
- (e) supporting and assisting lawyers, articulated students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.*

The Law Society fulfills its mandate and implements its vision through its day-to-day operations and through its strategic initiatives.

Law Society Vision

The Law Society of British Columbia protects the public interest in the administration of justice. It does this by ensuring the public is well served by legal professionals who are honourable and competent, and brings a voice to issues affecting the justice system and the delivery of legal services.

Our Strategic Plan

This draft plan is prepared for the purposes of discussion, not approval. Items on the list may not ultimately be included in the final plan. Conversely, there may be initiatives that can be identified that are not on this list that should be included. The Law Society does not have enough resources to do everything on this draft plan.

The initiatives identified in this Plan are intended to advance the mandate of the Law Society. They represent opportunities to initiate or improve Law Society policies, visions or positions on various issues of importance facing the justice system and the legal profession.

1. Preserving and Protecting the Rights and Freedoms of All Persons

The Law Society's duty to preserve and protect the rights and freedoms of all people recognizes the Law Society's role extends beyond ensuring that individuals are well served by their lawyers. The Law Society has an obligation to speak out on issues affecting the administration of justice and to champion the rule of the law and the rights and freedoms of Canadians generally.

One of the most significant challenges in Canadian society today is ensuring that the public has adequate access to legal advice and services. In preserving and protecting the rights and freedoms of all people, the Law Society must work to find ways to make accessing legal advice more affordable and more generally available.

For too long, the justice system has been viewed as a colonial system promoting assimilation. The Law Society has to obligation to work towards the reconciliation of Indigenous societies with the Canadian justice system.

The rule of law, supported by an effective justice system, is essential to preserving and protecting the rights and freedoms of all people. The Law Society has an obligation to maintain public confidence in both the rule of law and the administration of justice by educating the public about the rule of law, the role of the Law Society and the legal profession in the justice system and the fundamental importance of the administration of justice.

In order to fulfill these obligations, the Law Society will

- Enhance **Access to Justice** and improvements to **legal aid**.

Initiatives:

- Licensing of alternate legal service providers (and obtaining the necessary legislative amendments to do so).
- Legal Aid Advisory Committee initiatives to follow up on the Law Society Vision on legal aid.

- Identifying issues within the justice system, such as document disclosure, mega trials, and advocacy skills and training that could be addressed to improve the delivery of legal services.
- Identifying alternative models through which legal services could be delivered.
- Develop initiatives concerning the **economic analysis** necessary to evaluate the cost of accessing justice and considerations relating to the cost of providing legal services.

Initiatives:

- Survey profession on cost of providing legal services
- Identify and implement **Calls to Action** relating to the legal profession from the Report of the Truth and Reconciliation Commission

Initiatives

- Truth and Reconciliation Advisory Committee work on implementing Calls to Action
- Symposium “From Truth to Reconciliation: Transforming the Law from a Tool of Assimilation into a Tool of Reconciliation” scheduled for November 23, 2017.
- Improve **public confidence in the rule of law and justice system** (including public education)

Initiatives

- Engage the Ministry of Education on high school core curriculum to include substantive education on the justice system (The Justice Education Society is doing work on this)
- Identify opportunities for publication or public education on these topics
- Strategic Litigation (Interventions and other) and government engagement.

2. Ensuring the Independence, Integrity, Honour and Competence of Lawyers

The Law Society's obligation to ensure the independence, integrity, honour and competence of lawyers is essential to the effective provision of legal advice and service.

Without independence, the public cannot be assured that lawyers are acting only in their clients' interests.

Without integrity and honour, the public cannot be assured that lawyers are discharging their role in the justice system with time-honored values of probity, honesty, and diligence.

Without competence, the public cannot be assured that the services provided by lawyers will meet clients' needs or provide value. Moreover, public confidence in the justice system would falter if the Law Society could not establish professional standards of competence for lawyers.

In order to fulfill these obligations, the Law Society will

- Set standards for effective operation of law firms and the practice of law within the firms

Initiatives

- Implement recommendations of the Law Firm Regulation Task Force

- Maintain **Effective Professional Education** programs.

Initiatives:

- Review of Continuing Professional Development requirements
- Development of particular programs aimed at reducing prevalent ethical or misconduct concerns.

- Maintain **Effective Practice Standards** and **Practice Advice** Programs

Initiatives

- These are operational programs, but could be included as examples of what the Law Society is doing to discharge this mandate item.

- Identify ways to educate the public and the profession about the **benefits of the public's right to an independent legal profession.**

Initiatives

- Enhanced communication strategy on subjects of rule of law and lawyer independence.

3. Establishing Standards and Programs for the Education, Professional responsibility and Competence of Lawyers and of Applicants for Call and Admission

We recognize that the public expects and deserves effective regulation of the legal profession. Proper regulation of the legal profession requires setting effective standards and enforcement mechanisms to ensure applicants are properly qualified, and those who practise law do so competently, professionally and ethically. To meet that expectation, we will seek out and encourage innovation in all of our practices and processes in order to continue to be an effective professional regulatory body.

In order to fulfill these obligations, the Law Society will

- Ensure the **Admission Program** remains appropriate and relevant.

Initiatives

- Examination of availability of Articling and developing a Policy and proposals on access to Articling positions and remuneration
- Examination of the effectiveness of Articling and developing proposals for the enhancement of Articling as a student training and evaluation program
- Examination of Alternatives to Articling
- Engage with universities to address **legal education needs for applicants.**

Initiatives

- Engagement with Federation of Law Societies or directly with Universities over curricula requirements for a law degree.
- Ensure lawyers receive appropriate cultural competency training (**Implementing TRC Call to Action 27**).

Initiatives:

- Establishment of TRC Advisory Committee involving recommendations to effect cultural competency training for Benchers and lawyers
- Review on cultural competency training at PLTC.

4. Regulating the Practice of Law

The regulation of the practice of law is a key function of the Law Society and reflects how the public interest in the administration of justice is protected through setting standards for the competence and conduct of lawyers. Handling of concerns and complaints made about lawyers in British Columbia, together with the operation of a fair disciplinary process for adjudicating matters and meting out, where necessary, sanctions for conduct that does not meet the standards that have been set, is an integral operational function that will continue to be met by Law Society staff and by the Hearing Panels appointed under the *Legal Profession Act* and Law Society Rules.

Beyond the operational function, however, lies important policy considerations about the nature of the standards, how and to whom are they applied and whether any new policy approaches to regulation need, as a matter of principle to be adopted and implemented through Rule changes or changes to the *Code for Professional Conduct*.

In order to fulfill these obligations, the Law Society will

- Implement **Law Firm Regulation**.

Initiatives

- Implement recommendations of the Law Firm Regulation Task Force

- Identify **regulatory initiatives to mitigate risk and prevent misconduct** and to **improve effective regulatory outcomes**

Initiatives:

- Development of a Diversion program for mental health issues
- Development of Practice Audits/Reviews
- Examination of other pro-active or outcomes focused methods of regulation

- Develop **innovation in legal services delivery** (including MDPs and ABSs and other legal service providers).

Initiatives

- Consider whether to permit ABSs and, if so, to propose a framework for regulation
- (see pro-active/outcomes focused regulation, above)
- Review 5. processes to balance **Disclosure and Privacy**

Initiatives

- Undertake an examination of Disclosure and Privacy issues relating to Law Society core functions and consider recommendations to update current practices.

5. Supporting and Assisting Lawyers, Articled Students, and Lawyers of other Jurisdictions who are Permitted to Practise Law In British Columbia in Fulfilling their Duties in the Practice of Law.

While the public interest is the focus of the work of the Law Society, the public interest is best served where, as relevant, the Law Society can support assist students and lawyers to meet the standards the Law Society has established. Disciplining those who fail in meeting standards will always be important, but such processes address after-the fact results. On the other hand, providing resources to assist lawyers and students in meeting the standards can lead to better and healthier lawyers and reduce the likelihood of incidents that will lead to a regulatory outcome.

In order to fulfill these obligations, the Law Society will

- Develop **initiatives to improve Mental Health** in the legal profession

Initiative

- Develop an integrated mental health issues review concerning regulatory approaches to discipline and admissions.
- Develop **initiatives to improve the retention rate of lawyers** in the profession, including in particular Indigenous and women lawyers.

(Past Initiatives

- Establishment of Indigenous Lawyer Mentoring Program

- Establishment of Justicia Project

DRAFT



Memo

To: Benchers
From: Access to Legal Services Advisory Committee
Date: August 21, 2017
Subject: The Law Society of British Columbia's vision for how lawyers can advance access to justice and legal services

Purpose of Memorandum

The Access to Legal Services Advisory Committee (the “Committee”) seeks Benchers approval of the appended vision for how lawyers can advance access to justice and legal services (**Appendix**). The purpose of the vision is to provide an aspirational vision for the profession to encourage a culture in which all lawyers strive to make their services available to those in need, and promote improved access to justice in our society.

Background

On November 4, 2016 the Benchers discussed whether lawyers have a professional responsibility to promote access to legal services and access to justice. The conversation arose out of a referral from the Committee, which had been discussing the topic throughout 2016. The Committee was of the view that it was important for the Benchers to consider whether there exists a collective obligation for lawyers to make their services accessible and available, and if so, what if anything are lawyers required to do to make this happen. The referral also highlighted the importance of fostering access to justice in broader terms, and not simply focus on lawyers undertaking pro bono work.

The Benchers held a wide-ranging discussion. There was general consensus that lawyers have a collective obligation to provide access to legal services and promote access to justice, but that the Law Society ought to use moral authority rather than regulatory authority to help foster a culture where lawyers advance these purposes. While a range of concepts were discussed – such as pro bono, acting as parenting coordinators, undertaking legislative and rule reform work, providing unbundled legal services, etc. – the purpose of the discussion

was not to codify what would or would not constitute providing access to legal services and promoting access to justice.

In 2017 the Committee continued its exploration of this topic, guided by the Benchers discussion. The Committee divided its work into two, complimentary projects. The first project was to develop recommendations for the Executive Committee to amend the Annual Practice Declaration so the Law Society can get better data on what pro bono, legal aid, low-bono and other work lawyers do to foster access to justice. The Committee referred its findings to the Executive Committee earlier this month. The second project involved developing a vision statement for how lawyers can advance access to justice and legal services.

Discussion

The Committee is of the view that creating a vision statement is essential if the Law Society is to engage in the moral suasion the Benchers identified in their November 2016 discussion.

Over the course of several meetings the Committee discussed the nature and substance of the responsibility lawyers have to provide access to legal services and promote access to justice. Providing access to legal services is a relatively straightforward concept. To the extent many people struggle to access the traditional services of a lawyer – legal advice, legal information, and representation / advocacy – providing access to those services requires lawyers to identify the barrier to their services and find ways to reduce or eliminate those barriers to allow for greater access.

Promoting access to justice is more difficult to pin down. A lawyer who finds ways to improve access to his or her legal services is in most, if not all case, promoting access to justice. However, access to justice is a broader concept than access to legal services. Law is the lifeblood for how we govern societal relationships. Access to justice connotes access to the law and the legal services that effectuate the law, but it goes further to include access to the numerous forms by which the law and rules that govern our relationships with individuals, entities and the state may be created, tested and redefined.

...justice means more than simply applying the law without regard to the underlying social, economic, and psychological factors, as we have become increasingly aware in recent years. New ideas have entered the discourse, widening the scope of the concept and affecting the way we think about justice – and of access to justice. It is not enough to treat access as solely a matter of courts and formal legal proceedings.¹

¹ Department of Justice Canada, “Expanding Horizons: Rethinking Access to Justice in Canada” (2002) at p. i.

The Committee prefers a broad view of what access to justice entails, but does not attempt to reduce it to a definition with fixed borders; recognizing, “as in every other human institutional endeavor, justice is an ongoing process. It is never done, never fully achieved.”²

The Committee spent some time discussing whether to frame the vision as a “professional responsibility” and concluded it is not desirable to do so. From the perspective of the Law Society as regulator, professional responsibilities are not optional. Framing the discussion as an aspirational professional responsibility would be oxymoronic. The Committee prefers framing the discussion as a vision for how lawyers can advance access to legal services and access to justice.

The appended vision follows the approach taken in the Law Society’s vision for Publicly Funded Legal Aid. Some of the concepts and recitals are the same, and the Committee is of the view that it is appropriate to mirror the language for consistency.

It is the Committee’s hope, the in adopting the vision the Law Society will be better situated to encourage lawyers to undertaking the important work of improving access to legal services and access to justice.

Recommendation

The Committee recommends that the Benchers adopt the appended vision for how lawyers can advance access to justice and legal services.

/DM

/Appendix

² The Honourable Chief Justice Beverly McLachlin, P.C., Speech to the Empire Club of Canada (March 8, 2007).

Appendix – The Law Society of British Columbia’s vision for how lawyers can advance access to justice and legal services

Through its policy development, rule reform and strategic planning, the Law Society of British Columbia demonstrates a commitment to finding ways to enhance access to justice and legal services. This work requires lawyers to be committed to the goal of a more just society. In recognition of this, the Law Society of British Columbia adopts the following vision for how lawyers can advance access to justice and legal services:

Access to justice is a fundamental human right, and:

- (a) Our democratic society cannot exist without the rule of law, and the rule of law depends on all people having meaningful and effective access to justice,
- (b) not all people in society have the ability or means to access justice,
- (c) Indigenous people are uniquely and historically disadvantaged in their access to the legal system and legal aid, and
- (d) Lawyers, through provision of legal services, have always played an essential role in helping people achieve access to justice and must continue to do so.

A democratic society, subject to the rule of law, requires all people to have access to justice. The *Legal Profession Act* restricts the practice of law, almost exclusively, to lawyers. This privilege carries with it a duty to society for lawyers to find ways to make their services accessible and to promote access to justice.

Some barriers to access to justice arise from systemic inequalities in our society. Formal systems of justice can reinforce systemic inequalities, and in the process place equal treatment under the law beyond the reach of many in society. As stewards of the justice system, lawyers have played - and must continue to play - a leading role in promoting access to justice. This work starts with lawyers providing their services in a manner that is sensitive to cultural and socio-economic factors that impede access to justice.

As professionals, lawyers must remember that the practice of law is more than a money-making business, it is a branch of the administration of justice (Canons of Legal Ethics, 2.1-3(j)). Access to justice is best achieved with the help of a lawyer. When lawyers champion policies and law reform, access to justice is enhanced. The Law Society encourages lawyers to find ways to make their services accessible to advance access to justice.