The Law Society of British Columbia

Agenda

Benchers

Date: Friday, December 8, 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.***

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.

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1	Consent Agenda	1	President		
	• Minutes of October 27, 2017 meeting (regular session)			Tab 1.1	Approval
	• Minutes of October 27, 2017 meeting (*in camera* session)			Tab 1.2	Approval
	• Rule 3-64(7): Electronic Funds Transfer Rules			Tab 1.3	Approval
	• Rule 1-22: Bencher Election Rules			Tab 1.4	Approval
	• Code of Professional and Ethical Responsibilities for Tribunal Adjudicators			Tab 1.5	Approval
	• External Appointments: Legal Services Society & Land Title and Survey Authority			Tab 1.6	Approval

The Law Society of British Columbia

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ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
GUEST PRESENTATION					
2	Remarks from President of Canadian Bar Association (National)	10	Kerry Simmons, QC		Presentation
DISCUSSION/DECISION					
3	Approval of Strategic Plan Initiatives	15	President / CEO	Tab 3	Discussion/ Decision
4	Law Firm Regulation Task Force: Second Interim Report	10	President	Tab 4	Discussion/ Decision
5	CPD Final Review Report	20	Dean Lawton, QC	Tab 5	Discussion/ Decision
6	Early Intervention Working Group Final Report	5	Craig Ferris, QC	Tab 6	Decision
REPORTS					
7	Year-End Advisory Committee Reports				Briefing
	• Access to Legal Services Advisory Committee	5	Martin Finch, QC	Tab 7.1	
	• Equity and Diversity Advisory Committee	5	Nancy Merrill, QC	Tab 7.2	
	• Lawyer Education Advisory Committee	5	Dean Lawton, QC	Tab 7.3	
	• Legal Aid Advisory Committee	5	Nancy Merrill, QC	Tab 7.4	
	• Rule of Law and Lawyer Independence Advisory Committee	5	Craig Ferris, QC	Tab 7.5	

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ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
7 (cont.)	• Recruitment and Nominating Advisory Committee	5	President	Tab 7.6	
EXECUTIVE REPORTS					
8	President's Report • TRC Advisory Committee Report	10	President	Tab 8	Briefing
	• Bencher Calendar				Briefing
	• Briefing by the Law Society's Member of the Federation Council				Briefing
	• Report on Outstanding Hearing & Review Decisions			(*To be circulated at the meeting*)	Briefing
9	CEO's Report	10	CEO	Tab 9	Briefing
FOR INFORMATION					
10	• Thank You Card from TAPS – Donation made in lieu of welcoming gift to guests of Federation of Law Societies of Canada 2017 Annual Conference			Tab 10.1	Information
	• Three Month Bencher Calendar – December to February			Tab 10.2	Information

The Law Society of British Columbia

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ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
IN CAMERA					
11	*In camera* • Bencher concerns • Other business		President/CEO		Discussion/ Decision

The Law Society of British Columbia

Minutes

Benchers

Date: Friday, October 27, 2017

Present:

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

Unable to Attend:

Satwinder Bains
Pinder Cheema, QC
Craig Ferris, QC
Martin Finch, QC
Christopher McPherson

Staff Present:

Adam Whitcombe
Deborah Armour
Renee Collins
Su Forbes, QC
Andrea Hilland
Jeffrey Hoskins, QC
Michael Lucas
Alison Luke
Jeanette McPhee
Doug Munro
Lesley Small
Alan Treleaven
Vinnie Yuen

Guests:	Dom Bautista	Executive Director, Law Courts Center
	Michelle Casavant	Member, Aboriginal Lawyers Forum
	Kensi Gounden	CEO, Courthouse Libraries BC
	Alden Habacon	Diversity and Inclusion Strategist & Senior Advisor, Intercultural Understanding, UBC
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University
	Caroline Nevin	Executive Director, Canadian Bar Association, BC Branch
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Michele Ross	Education Chair, BC Paralegal Association
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Stephanie Spiers	Director of Regulatory Affairs, Federation of Law Societies
	Bill Veenstra	President, Canadian Bar Association, BC Branch
	Prof. Jeremy Webber	Dean of Law, University of Victoria

CONSENT AGENDA

1. Minutes & Resolutions

a. Minutes

The minutes of the meeting held on September 29, 2017 were approved as circulated.

The *in camera* minutes of the meeting held on September 29, 2017 were approved as circulated.

b. Resolutions

The following resolution was passed unanimously and by consent.

Temporary Articled Students and Prehearing Conferences

BE IT RESOLVED to amend Rule 2-71(2) of the Law Society Rules by rescinding the preamble and substituting the following:

(2) A person enrolled in temporary articles is not permitted under any circumstances to do any of the following in a Supreme Court proceeding:.

Ombudsperson Rule

BE IT RESOLVED to amend the definition of "Ombudsperson" in Rule 1 of the Law Society Rules by striking "anyone employed by the Ombudsperson to assist in that capacity" and substituting "anyone employed to assist the Ombudsperson in that capacity".

2018 Fee Schedules

BE IT RESOLVED to amend the Law Society Rules, effective January 1, 2018, as follows:

1. In Schedule 1,

(a) by striking "$2,125.57" at the end of item A 1 and substituting "$2,139.72",
(b) by striking "$1,750.00" at the end of item A 2(a) and substituting "$1,800.00",
(c) by striking "$875.00" at the end of item A 2(b) and substituting "$900.00", and
(d) by rescinding items D 4 and 5 and substituting the following:

4. Training course registration (Rule 2-72 (4) (a) [Training course])
until April 30, 2018 ..... 2,500.00
effective May 1, 2018 ..... 2,600.00

5. Remedial work (Rule 2-74 (8) [Review by Credentials Committee]):

(a) for each piece of work 50.00
(b) for repeating the training course
until April 30, 2018 ..... 3,900.00
effective May 1, 2018 ..... 4,000.00;

2. In Schedule 2, by revising the prorated figures in each column accordingly; and

3. In the headings of schedules 1, 2 and 3, by striking the year "2017" and substituting "2018".

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

Federation National Law Degree Requirement Amendment

BE IT RESOLVED that:

The Law Society of British Columbia approves the following recommendations as set out in the NRRC's final report:

i. The National Requirement be amended as follows effective January 1, 2018 by:

a. deleting the reference to "legal and fiduciary concepts in commercial relationships" from the list of required private law principles set out in paragraph 3.3(b) of Section B. Competency Requirements; and

b. remove the words "presumptively", from paragraph 1.1 of section C Academic Program.

ii. Council of the Federation should confirm that the mandate of the Approval Committee gives it control over its own process, including the timing of the review cycle, and the power to make such recommendations to Council, including changes to the National Requirement, as it deems appropriate.

GUEST PRESENTATION

2. Introductions:

President Van Ommen introduced new Director of Communications Jason Kuzminski, the newest member of the Executive Support team Sydney Snape, Michelle Casavant who will be a regular Bencher meeting guest from the Aboriginal Lawyers Forum, and Stephanie Spiers,

Director of Regulatory of Affairs at the Federation of Law Societies who is visiting to observe Law Society of BC regulatory processes.

3. Intercultural Fluency: The Need for Cultural Literacy for BC Lawyers

Diversity and Inclusion Strategist & Senior Advisor, Intercultural Understanding at UBC Alden Habacon presented to Benchers on cultural fluency.

Mr. Habacon began his presentation with an acknowledgement of the unceded territories of the Coast Salish peoples, noting the legacy of this land and the presence of multiculturalism amongst First Nations peoples even before European arrivals. He also provided his thanks to Benchers for the invitation to present today.

Mr. Habacon's presentation focused on the profound impact culture has on the lens through which we see world. Even when we practice empathy, we do so through our own lens which results in complexity and difficulty working across cultural difference.

He provided examples of cultural conflicts in our society, and noted that intercultural struggles occur when we internationalize faster than the time it takes to develop the resources required to adapt a changing environment. Ideally we need to take time to understand what a path of diversity looks like with the goal of developing an intercultural mindset.

Typically the first stage on the path is denial (there is no other culture); the second is defense (I know I can't deny the change but don't like it). Our aim is to move to adaptation, which involves not fully understanding but respecting each other nonetheless, and acceptance, which involves a degree of integration so complete people are unaware of any challenge.

Mr. Habacon noted that exposure to diversity does not necessarily result in understanding. A set of intercultural attitudes is required, which include aspirational empathy, conscientiousness of bias, tolerance of ambiguity, curiosity and the ability to suspend judgment. He also spoke of the need for cultural literacy regarding 'below surface' cultural attributes like attitudes towards elders, the role of the family, and the impact of oppression and abuse. With specific regard to First Nations peoples, a literacy of the residential schools experience is required to help us begin to understand.

Mr. Van Ommen and others thanked Mr. Habacon for his engaging and highly informative presentation.

DISCUSSION/DECISION

4. Consideration of Strategic Plan Initiatives

Mr. Van Ommen reviewed with Benchers the various options presented in the strategic planning session held the previous night. He noted that comments and suggestions would be incorporated into a final draft to be considered by the Executive Committee and then presented to Benchers for decision at the December meeting. He invited Benchers to provide any additional comments.

With regard to the articling program, it was suggested that priority of focus should be given to collecting data on the BC experience, rather than what is happening in Ontario. Also, approval was expressed of an earlier suggestion that the plan be framed around the people we are serving, which should include lawyers. It was also noted that the plan should continue to include a focus on cultural competence.

5. Continuing Professional Development (CPD) Review Final Report

Chair Dean Lawton, QC began by thanking members of this year's committee and last, and staff, with particular mention of Alison Luke, Annie Rochette, Lesley Small, and Alan Treleaven.

He noted that this report was being brought to Benchers for information and consideration only at this meeting, to allow Benchers time to reflect before any motions are presented for decision in December. He summarized the report as a timely consideration of the liberalization and expansion of the CPD regime that contains recommendations for change that focus on maintaining and enhancing lawyers' ability to effectively serve the public.

The recommendation that the CPD requirement continue, as well as specific recommendations regarding what the program should include, are based on findings from research from other professions and jurisdictions as well as our own, a statistically relevant survey of the profession, and extensive consultations with legal organizations. Given the plethora of issues concerning mental health and wellness and lawyers' disproportionate exposure to the challenges of mental illness and substance abuse, one of the recommendations is to include a focus on professional wellness. Also included are recommendations allowing credit for educational programs from other disciplines that may relate to a lawyer's area of practice, as well as programs with a focus on multicultural and diversity issues.

Included as well is a recommendation for expanding credit for mentoring practices, training for principals and governance training. Also recommended is an expansion of learning methods, including allowance for solo viewing of educational recordings.

The Committee considered but is recommending against revising reporting requirements to allow for a cumulative, 3 year model, opting for a continuation of the 12 hour per year model.

However, it also recommending an allowance for some carry-over of credits to the following year.

The report contains a total of 26 recommendations for Benchers' review and consideration; Mr. Lawton invited comment and discussion.

Comment was made that the Committee's recommendations do not appear to reconcile with the report's observation that there is little empirical evidence that mandatory CPD improves the competence of lawyers. Queried also was rejection of a "rolling average" of credits over a 3 year period. In response, Mr. Lawton noted that the Committee concluded intuitively there is value to providing lawyers with continuing professional education; with the continuation of the 12 hours per year, it was the Committee's intention to avoid potentially lengthy breaks between study as could be the case with a "rolling average".

The possibility of including pro bono and legal work for some portion of CPD credit was raised, with the observation that such work provides unique and valuable learning experiences, and can be compared to the mentoring or teaching experience. However, it was also noted that, in the context of legal aid work, this could result in lawyers receiving compensation for their CPD efforts.

Caps on the number of hours of credit received for wellness, or potentially pro bono work, was discussed. The arguments for a cap included ensuring a high standard of competency and professionalism by encouraging a wider range of learning topics; the arguments against included the recognition that a cap could suggest a 'second tier' topic which in turn could perpetuate existing stigmas, and further, that lawyers should be permitted to focus learning as and where it is needed throughout the different stages of their careers, and that wellness and competency go hand in hand.

Mr. Lawton suggested that, on the return of this matter to Benchers for decision in December, motions on Recommendations 22A and B regarding caps on credit-hours for particular subject areas be bifurcated so that potential disagreement on this recommendation would not be fatal to approval of the recommendations package as a whole. It was suggested that the Committee also consider bifurcating Recommendation 10 regarding the exclusion of pro bono or legal aid work.

6. Governance Committee: Approval of Revised Annual Bencher Survey

Chair Steve McKoen briefed Benchers on the Committee's review and revision of the annual Bencher and committee survey questions. With last year's feedback in mind, the Committee discussed which questions should continue to be included, as well as how best to elicit helpful information. The revised questions are presented in the materials for Bencher consideration.

Mr. Campbell moved (seconded by Mr. Fellhauer) that the Bencher and Committee survey questions be approved as revised by the Governance Committee.

Ms. Hamilton then suggested a friendly amendment of a typographical error in the materials. Following this friendly amendment, the motion was approved unanimously.

7. Financial Matters:

- Financial Report - September YTD 2017

Chief Financial Officer Jeanette McPhee briefed Benchers on the financial results to September which are positive, and are projected to be positive to budget to the end of the year. Revenue is projected to be approximately 3% over budget to the end of the year due in part to an increase in electronic filings with the strong real estate market, despite projections of a decrease in the market in the second half of the year. Membership and PLTC enrollment are also up slightly, resulting in increased revenue, as is interest income due to the higher cash balances being held.

Operating expenses will have an approximately 2% variance, with savings in areas such as salary costs and HR consulting, as well external counsel fees and investigation costs due to the timing of files being worked on. With only the first 6 months of the year to review, TAF revenue appears ahead largely due to the strong real estate market, however we are approximately 5% behind last year.

LIF results are similar, with revenue over budget by approximately 3%, and expenses approximately 3% under budget. Investment returns are 6.2% which is ahead of the benchmark of 3.5%.

- Accountability Policy for External Funding

Chair of the Finance and Audit Committee Miriam Kresivo, QC briefed Benchers on the development of an accountability policy for funding of external organizations. She noted that, though the Law Society is not a funding organization per se, there are some externally operated organizations that are partially funded through the general practice fee. Currently, excluding funding for CANLII and the Federation of Law Societies, approximately 10% of the annual practice fee is allocated for these organizations.

As this funding is provided for in the annual practice fee, the Committee is making recommendations to Benchers to clarify how that funding is provided to ensure these external organizations are accountable. Specific principles recommended, which are modeled on Law Foundation funding requirements, include that the funds must be used for an intended purpose and in the manner proposed and approved on an annual basis, that the funds must be handled in a

manner that meets the standard acceptable to the Committee, and that all surplus funds must be returned unless otherwise approved.

In response to a question, Ms. Kresivo clarified that each group receiving funding for 2018 appeared before the Committee during the budgeting process, and each was made aware of this policy development with the assurance that they would be provided with details on requirements and guidelines as early as possible for next year.

The question was asked whether any thought was given to allowing a certain percentage of variance for potential surpluses, given that some organizations run a small deficit one year that may be balanced by a small surplus the next. Ms. Kresivo noted that the policy contemplates return of surplus unless otherwise approved by the Law Society, which provides opportunity for consideration of situations such as this.

Kensi Gounden, CEO of Courthouse Libraries BC thanked the Chair and Committee for their work on this policy, and commented on the return of surplus issue, querying whether the policy could incorporate the ability of an organization to meet the principled approach but retain potential surpluses if operational efficiencies can be shown. Ms. Kresivo agreed that, to add more clarity, they would add "or unless otherwise approved by the Law Society" to Condition #2 of the policy.

Ms. Kresivo then moved (seconded by Mr. Fellhauer) approval of the policy and guidelines, with the language amendment discussed above. The motion was approved unanimously.

EXECUTIVE REPORTS

8. President's Report

Mr. Van Ommen briefed the Benchers on various Law Society matters, including:

- TRC Advisory Committee Update

  He noted the symposium planned for November 23 and encouraged all Benchers to make themselves available for this important educational opportunity. A focus will be what the Law Society can be doing regarding the TRC recommendations and reconciliation generally. The symposium will be co-chaired by himself and Grand Chief Ed John, with former Lieutenant Governor Judge Steven Point providing the key note speech.

- Bencher Calendar

  Mr. Van Ommen reminded Benchers of the numerous events in the coming weeks, including the Bench and Bar Dinner November 7, the Aboriginal Forum dinner

December 1, and the Recognition Dinner December 8. He also noted the retirement dinner for Chief Justice MacLachlin being held in Ottawa on December 14, noting that a local dinner will be held in Vancouver in the spring as well.

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

  As the Law Society's Council member, Mr. Van Ommen reported on the Federation conference held recently in Victoria, the focus of which was the National Committee on Accreditation (NCA). The NCA assesses the credentials of approximately 900 foreign trained lawyers each year; given anecdotal evidence questioning the strength of applicants being admitted, a review and reform of the program focused on improving the assessment regime is underway. The NCA Review Report has been posted to Bencher Resources and the Federation website. Federation consultation with Law Societies and law schools across the country will continue.

- Meeting with Government Caucuses

  Mr. Van Ommen briefed Benchers on recent meetings with both the NDP and Liberal caucuses. He encouraged continuation of such meetings on an annual basis, to help facilitate regular communication and build on government relations.

- Report on Outstanding Hearing & Review Decisions

  Pleased to report no decisions outstanding, Mr. Van Ommen thanked Benchers for their diligent work.

9. CEO's Report

Mr. Whitcombe provided highlights of his monthly written report, including a briefing on the CEO Forum held at the recent Federation conference, discussion at which included how better to facilitate participation of smaller law societies with few staff. There was also discussion regarding block chain technology, and given the relatively limited understanding of this potentially pivotal issue, there was agreement that further discussion was warranted. Finally, the issue of 'mining existing data' amongst law societies was raised, to help evaluate programs and provide better proactive support for members.

He reiterated the positive results for the third quarter financial report, noting that while we do plan for a balanced budget, we attempt to make adjustments in the following year's budget to reflect variances as we are able.

He also echoed Mr. Van Ommen's comments on the government caucus meetings, thanking Benchers Dean Lawton, QC, Pinder Cheema, QC, and Woody Hayes, FCPA, FCA, in addition to

President Van Ommen and First Vice-President Kresivo for their attendance, as well as Lindsay Jalava for her organization of the event.

Mr. Whitcombe also noted the completion of the 2017 Annual General Meeting, making reference to the online experience and noting that the source of initial difficulties was ascertained and we are optimistic will not be a factor next year.

Finally, he noted we are working with the Legal Services Society on gathering data and information around the economics of legal practice. While, the survey circulated by Price Waterhouse Coopers has not received a good response rate thus far, they remain confident they will still be able to draw conclusions.

RTC
2017-10-20

REDACTED MATERIALS

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The Law Society of British Columbia

Memo

To: Benchers
From: Policy and Legal Services staff on behalf of the Act and Rules Committee
Date: November 22 2017
Subject: **Electronic (online) transfer of trust funds – proposed Rules 3-64.1 and 3-64.2**

Purpose

1. This memo outlines the provisions that constitute Rules 3-64.1 and 3-64.2, which address the online transfer of trust funds. These new rules were drafted by the Act and Rules Committee in response to the Benchers' decision in April 2017 to approve, in principle, a rule that would enable lawyers to electronically transfer trust funds using an online banking platform from: a) the lawyer's trust account to third parties; b) the lawyer's trust account to the lawyer's general account; and c) between the lawyer's trust accounts.

Background

2. Over the last six months, the Act and Rules Committee (the "Committee") has engaged in the complex task of drafting rules to regulate the online transfer of trust funds. These rules are now before the Benchers for approval.

3. Rule 3-64.1 *[Electronic transfers from trust]* will replace Rule 3-64(7), which currently permits lawyers to transfer trust funds by way of a wire transfer that is manually processed by the bank but prohibits lawyers from performing trust withdrawals themselves using online banking. Rule 3-64 (6), which stipulates that lawyers may only transfer trust funds to their general account using a cheque, will be rescinded and moved to Rule 3-65(1.1), which deals with payment of fees from trust. The new provision will also allow the option of paying fees from trust by electronic transfer.

4. Rule 3-64.2 is a new rule that will govern electronic *deposits* into trust.

5. The rationale for permitting lawyers to use online banking to transfer trust funds from and between trust accounts was outlined in a memo circulated to the Benchers in April

2017 (see **Appendix A**). These include: providing an efficient and flexible means for lawyers to move trust funds, reducing opportunities for fraud and keeping pace with technological changes in the banking sector.

6. Half a dozen Canadian law societies already have rules in place that permit the online transfer of trust funds, including Ontario, Alberta and the Maritime provinces. In an effort to achieve consistency between BC's rules and those of other provinces — none of which have reported any significant issues with permitting online transfers — the Committee reviewed the electronic transfer provisions of other provinces and adopted a similar approach, where appropriate.

7. The Committee also identified several areas where BC may benefit from having more stringent rules, for example, in relation to password protection.

8. In addition to this regulatory review, the Committee participated in an educational session on online business banking hosted by CIBC to learn about the operational and security features of such systems. The Committee also sought additional feedback on specific aspects of the new rules from advisors at several other major financial institutions.

Discussion

9. To assist the Benchers in understanding the operation of Rule 3-64.1 and 3-64.2, the following elements of the new rules are detailed below.

    - terminology
    - who can withdraw trust funds online
    - password protection
    - the role of the requisition form
    - requirements pertaining to the confirmation produced by online transfers
    - client identification and verification requirements
    - requirements pertaining to *receiving* funds into trust via an online transfer

10. The memo also outlines several minor amendments to other rules impacted by the introduction of Rules 3-64.1 and 3-64.2.

Terminology for the system used to transfer trust funds online

11. To ensure consistent use of terminology, the Committee considered the appropriate generic term for the online banking systems that lawyers will use to electronically

transfer trust funds. Following a review of the terms used by other jurisdictions, the Committee selected the term "electronic funds transfer system."

Who can withdraw trust funds online: 3-64.1(2) and 3-64.1(3)?

12. Rule 3-64.1(2) requires two people to complete an electronic (online) transfer of funds from trust, one of whom must be the lawyer. Both people involved in the transfer must have an individual password to gain access to the electronic funds transfer system.

13. The rule requires that a person other than the lawyer (this could be another lawyer, an assistant, a bookkeeper) must *enter data* into the electronic funds transfer system describing the details of the transfer. However, the final step of *authorizing* the bank to complete the transfer must be done by the lawyer.

14. Rule 3-64.1(2) is modelled on the approach taken in Ontario and Nova Scotia, both of which require two people to complete an online transfers from trust.[1]

15. The Committee is of the view that the involvement of a second person in the transfer process builds in additional checks and balances that may reduce the risk of unauthorized withdrawals from trust.

16. Notably, the Committee decided against requiring two *lawyers* to complete an online fund transfer on the basis that this would make the new rule unnecessarily burdensome. The Committee observed that the current rules permit a single lawyer to authorize a wire transfer through the bank and only required one lawyer to sign a trust cheque to withdraw funds.[2] Further, no other law society requires two lawyers to complete an online transfer from trust.

17. An exception to the requirements described above has been created for sole practitioners with no non-lawyer staff. Under Rule 3-64.1(3), these lawyers are permitted to execute both the data entry step *and* the authorization step of the transfer under the condition that they use different passwords for each stage of the transaction.[3] That is, the lawyer must use one password to access the online system to enter the data describing the details of the transfer before using a second password to access the system to perform the

[1]Alberta, Prince Edward Island, Newfoundland and New Brunswick only require one lawyer to withdraw trust funds online.

[2] The Committee recommends requiring two people to be involved in an online withdrawal from trust under Rule 3-64.1(2) (as compared to only requiring one lawyer to sign a trust cheque) on the basis that cheques have a lengthy clearing period in which stop-payment orders can be issued, whereas electronic transfers occur in the span of seconds and are irrevocable.

[3] Ontario also has a separate electronic transfer rule for sole practitioners that allows the lawyer to complete both the data entry and authorization step on their own. The proposed rule for BC is more stringent than Ontario's rule in that it requires the sole practitioner to use of different passwords for each step of the transaction. Ontario has no such requirement.

authorization step of the transfer. Breaking the transfer into two discrete steps (albeit by the same lawyer) is designed to reduce instances of error and fraud.

18. This exception was created due to concerns that lawyers who practise alone and have no non-lawyer staff would be unable to compete an electronic transfer under Rule 3-96.1(2) as they have no other person available to undertake the data entry step required under 3-96(2)(a)(i). As a result, these lawyers would only be permitted to withdraw trust funds by cheque, providing them with fewer options to transfer trust funds than the rest of the profession and no means of transferring funds electronically.[4] Lawyers in remote areas or small communities may be disproportionately affected.

Password protection: 3-64.1(2)(b)

19. The use of an electronic funds transfer system is only permitted if a password or code is required to gain access.

20. The Committee also recommends including a *specific* provision requiring lawyers to protect their passwords. Other jurisdictions do not have such provisions in place and have reported problems with password sharing. Accordingly, Rule 3-64.1(2)(b) creates a prohibition on password sharing that is similar to the new rule addressing the protection of Juricert passwords.

Completing a requisition form prior to sending an online transfer: 3-64.1(2)(e), (f) and (g)

21. Lawyers will be required to complete and sign a requisition form before performing an online transfer from trust. Ontario and several of the Maritime provinces have similar requirements under their rules.

22. This requirement is akin to the existing requirement under Rule 3-64(7)(b) that a lawyer complete a requisition in advance of transferring trust funds by way of wire transfer through a bank.[5] However, under the new rule the requisition is retained in the lawyer's records and is not filed with the financial institution.

23. Once a confirmation is produced by the financial institution, the lawyer must compare the confirmation with the signed requisition to verify that the money was withdrawn from the trust account as specified in the signed requisition.[6]

24. This additional documentation demands that the lawyer "double check" to ensure the withdrawal was done correctly and helps to preserve the audit trail.

[4] Previously, sole practitioners could complete a wire transfer that was manually processed by a financial institution using a paper requisition under Rule 3-64(7). This rule is being rescinded with the introduction of Rule 3-64.1.
[5] Under the new rule, the Discipline Committee will be tasked with approving the requisition form, as they are currently under the existing Rule 3-64(7).
[6] See proposed Rule 3-64.1(4)(b).

Requirements associated with the confirmation produced by the electronic funds transfer system: 3-64.1(2)(c) and (d) and 3-64.1(4)

25. Rule 3-64.1(2)(c) requires that the electronic funds transfer system must produce a confirmation from the financial institution confirming that the data describing the details of the transfer and authorizing the transfer to be carried out were received. The confirmation must be produced no later than the day after the transfer of funds is authorized by the lawyer.

26. The confirmation must include *all* of the information currently required under Rule 3-64(7) (for wire transfers completed through the bank) as well as additional information specific to online transfers. This information is necessary to preserve the audit trail and should be included in the automatically generated confirmation provided by the financial institution following the completion of the transfer.

27. Rule 3-64.1(4) requires the lawyer to take further steps one day after receiving the confirmation, including:

    - printing the confirmation
    - comparing the printed copy with the signed requisition
    - adding the client name, file number and subject matter on the printed confirmation
    - signing and dating the printed copy of the confirmation

28. These requirements are designed to preserve the audit trail. Similar provisions are found in Ontario, New Brunswick, Prince Edward Island and Newfoundland's electronic trust fund transfer rules.

29. All copies of documentation in relation to the confirmation are subject to the existing record keeping requirements under the Rules.

Application of client verification and identification rules: 3-64.1(5)

30. Under Part 3, Division 11 of the Rules, if a lawyer is retained by a client to perform legal services, the lawyer must comply with a series of client identification and verification rules (the "CIV rules").[7]

31. Importantly, if there is a "financial transaction," the lawyer must verify the client's identity unless an exemption applies under Rule 3-101.[8]

[7] These rule are based on the Federation of Law Societies model rule pertaining to client identification and verification and have been adopted by the majority of law societies in Canada.

[8] If a lawyer is *receiving* funds into trust electronically, Rule 3-101 exempts the lawyer from verifying the client's identity in some circumstances, for example, if the money is received as a retainer or to pay the lawyer's professional fees, disbursements or expenses. However, if the lawyer receives funds electronically from a client who transferred money to the lawyer by personally sending the funds through an online banking platform (e.g. to

32. One such exemption, at Rule 3-101(c), is when *all* the funds involved are transferred by electronic transmission and three other conditions are met: 1) the transfer occurs between financial institutions that are members of FATF; 2) neither the sending nor the receiving account holders handle or transfer the funds, and; 3) the record of transmission contains certain enumerated information.

> **Exemptions**
>
> **3-101** Rules 3-102 to 3-106 do not apply
>
> […]
>
> (c) *to a transaction in which all funds involved are transferred by electronic transmiss*ion, provided
>
> (i) the transfer occurs between financial institutions or financial entities headquartered in and operating in countries that are members of the Financial Action Task Force,
>
> (ii) *neither the sending nor the receiving account holders handle or transfer the funds, and*
>
> (iii) the transmission record contains
>
> (A) a reference number,
> (B) the date,
> (C) the transfer amount,
> (D) the currency, and
> (E) the names of the sending and receiving account holders and the sending and receiving entities.

[emphasis added]

33. Although electronically transmitted funds are exempt from the verification requirements in circumstances where they meet the conditions above, the exemption does *not* apply to lawyers who are performing an online transfer of trust funds. This is because the lawyer authorizing the online transfer on their personal computer becomes "the sending account holder" who "handles" or "transfers" the funds. Accordingly, pursuant to Rule 3-101(c)(ii) – the exemption from the CIV rules does not apply.

34. This is in contrast to a situation where a lawyer withdraws money from trust by having the financial institution manually process a wire transfer. In that situation, the lawyer is not "transferring" or "handling" the funds as they are not personally activating the transfer from their trust account through their computer.[9]

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purchase of a house) without the financial institution acting as the principal, the lawyer is not exempt from the client verification rules as the condition under 3-101(c)(ii) that the sending or receiving account holder cannot handle or transfer the funds has not been met.

[9] Even when wire transfers are sent through the bank, lawyers are still not necessarily exempt from CIV rules. The other conditions in 3-101(c) must also be met. For example, *all* the clients funds must sent by electronic

35. Although the electronic transfer rules in other provinces do not make specific reference to the applicability of CIV rules to online transfers, the Committee concluded it was advisable to do so in BC given: a) the applicability of the CIV rules to electronic transfers is not abundantly clear from reading Division 11;[10] and b) the important role client identification and verification plays in reducing the risk of money laundering and other fraudulent activities.

Receiving money into trust by means of electronic transfer: 3-64.2

36. Although there are already general rules in place that address record keeping relating to trust transactions, staff in the Trust Department are of the view that new rule should be created to specifically address electronic (online) deposits received into trust.

37. Accordingly, Rule 3-64.2 establishes that electronic deposits into trust must be accompanied by a confirmation providing details of the transfer and must generate sufficient documentation for the lawyer to meet their record keeping requirements under the rules.[11]

Exceptions for electronic transfers through the Juricert system: 3-64.1(6)

38. Currently, Rule 3-64(8) governs the online withdrawal of trust funds using the electronic filing system of the land title office (Juricert) for the purpose of the payment of property transfer tax.

39. This rule will remain unchanged, but has been moved to subsection 3-64.1(6), as it is a "type" of electronic transfer and properly belongs in that section under the new rule.

Payment of fees from trust: 3-65

40. Two minor changes were also made to Rule 3-65. First, a subrule was added to clarify the two ways that lawyers may withdraw trust funds for the payment of fees: using a cheque payable to the lawyer's general account (as they were previously permitted to do under Rule 3-64(6)) or by way of electronic transfer in accordance with Rule 3-64.1.

41. Second, at the request of the Trust Department, a minor amendment was made to 3-65(1) to clarify that "fees" under Rule 3-65(1) includes charges, disbursements and taxes on those fees, charges and disbursements.

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transmission. If some funds are transferred by electronic transmission, but other funds are transferred by trust cheque or via online banking technology, the lawyer would still have to verify the client's identity. The sending and receiving banks must also be members of FATF and the transaction record must be adequate.

[10] For example, there could be confusion as to whether a lawyer sitting at her computer executing an online trust transfer is, in fact, simply "authorizing" the financial institution to execute the transfer and is not actually "handling" or "transferring" the funds themselves (and is therefore exempt from client verification requirements).

[11] This is similar to the approach taken by Alberta, New Brunswick, Prince Edward Island and Newfoundland in their rules. In contrast, Ontario has left this to supporting guidance material. See Law Society of Upper Canada, "Trust Deposits, Transfers, Withdrawals," online at: http://www.lsuc.on.ca/TrustDepositsTransfersWithdrawals/

42. The Committee is of the view that these minor changes are not policy decisions requiring independent review or advance approval by the Benchers.

Conclusion

43. Rules 3-64.1 and 3-64.2 are designed to implement the Benchers' April 2017 policy decision to permit lawyers to transfer funds electronically from their trust accounts using online banking. The proposed rules are similar to those found in other provinces, with some additional features to enhance the security and fraud reduction measures.

44. The Committee recommends that the Benchers approve the proposed rules, which would come in to force in mid-2018. The Committee proposes July 1, 2018 as an appropriate effective date. In advance of bringing the rules into force, the Law Society would educate the profession on the change to the rules, develop additional guidance material to assist lawyers in understanding the new regulatory requirements and update the existing electronic trust funds requisition to ensure consistency with the new rule.

The Law Society of British Columbia

Memo

To: Benchers
From: Policy and Legal Services Staff
Date: March 28 2017
Subject: Rule 3-64(7) Permitting the Use of Online Banking Systems for the Electronic Withdrawal of Trust Funds

Purpose

1. This memo addresses the question of whether the Law Society Rules (the "Rules") should be amended to allow lawyers to make electronic withdrawals of trust funds using financial institutions' online banking systems. This includes online withdrawals from trust accounts for transfers to clients and third parties (e.g. online wire transfers), online transfers between lawyers' trust accounts (e.g. from a one pooled account to another pooled account, or from a pooled to a separate trust account) and online transfers from a trust account to a general account (e.g. for the payment of fees). These types of online transactions are currently prohibited by the Rules.

2. Part 1 of this memo summarizes the rationale for adopting a rule change. Part 2 addresses some of the potential concerns with permitting the online withdrawal of trust funds.

3. Following a review of the material below, the Benchers are asked to make a decision in principle as to whether the Rules should be amended to allow lawyers to carry out online withdrawals of trust funds.

Background

4. Broadly defined, electronic fund transfer is an electronic transmission of funds from one account to another, either within a single financial institution or across multiple institutions, through a computer based system.[1] This can include a variety of modes of

[1] There is currently no definition for electronic fund transfer in the Rules.

payment, including electronic wire transfers that are manually processed by the bank, wire transfers that are carried out through an online system and other forms of internet banking, such as the movement of funds from one account to another through a financial institution's online platform.

5. Electronic withdrawals of trust funds are predominantly governed by Rule 3-64(7),[2] which was specifically designed to enable lawyers to carry out a certain type of electronic transfer: wire transfers that are manually processed at a financial institution.[3] The Rule defines the conditions under which these transfers can occur.

> (7) A lawyer may make or authorize the withdrawal of funds from a pooled or separate trust account by electronic transfer, provided all of the following conditions are met:
>
> (a) the transfer system is one that will produce, not later than the next banking day, a confirmation form from the financial institution confirming the details of the transfer, which should include the following:
>
> (i) the date of the transfer;
> (ii) source trust account information, including account name, financial institution and account number;
> (iii) destination account information, including account name, financial institution, financial institution address and account number;
> (iv) the name of the person authorizing the transfer;
> (v) amount of the transfer;
>
> (b) the lawyer must
>
> (i) complete and personally sign a requisition for the transfer in a form approved by the Discipline Committee,
> (ii) submit the original requisition to the appropriate financial institution,
> (iii) retain a copy of the requisition in the lawyer's records,
> (iv) obtain the confirmation referred to in paragraph (a) from the financial institution,
> (v) retain a hard copy of the confirmation in the lawyer's records, and
> (vi) immediately on receipt of the confirmation, verify that the money was drawn from the trust account as specified in the requisition.

[2] Electronic transfer of trust funds is also permitted for the payment of property transfer tax using the Electronic Filing System of the Land Title Branch under Rule 3-64(8).

[3] A rule permitting lawyers to electronically withdraw funds from trust accounts was first introduced in 2003 to bring the Law Society in compliance with the requirement by the Canadian Payment Association that all payments over $25 million must be made by electronic transfer rather than by traditional paper based payment instruments. In 2009, the Rules were amended to allow electronic transfers (in the form of a wire transfer) of any amount.

6. Under the rule, a lawyer wishing to send a wire transfer must complete the Law Society's electronic fund transfer form (the "EFT") [4] to requisition the transfer, submit the EFT to the financial institution for processing and retain a hard copy. In processing the EFT, the financial institution manually inputs the information on the form into the payment system, debits the funds from the sender's account and activates the transfer to the receiving bank. Once the transfer is complete, the lawyer must obtain and retain a next-day confirmation from the financial institution and verify that the appropriate amount of money was withdrawn from the trust account.

7. In requiring lawyers to submit the original EFT to the financial institution to complete the transfer, the rule implicitly prevents lawyers from entering information into an online banking platform and activating the fund withdrawal remotely. This prohibition is made explicit in both the EFT and the Trust Accounting Handbook, which explains that lawyers may set up online banking, but the access must be "view only", as to restrict the ability to conduct internet transfers out of the trust account.[5]

8. Additionally, electronic fund transfers from a trust account to a general account for the payment of fees are prohibited under Rule 3-64(6), which prescribes that these funds can *only* be withdrawn by cheque.

> (6) A lawyer who withdraws or authorizes the withdrawal of trust funds for the payment of fees must withdraw the funds with a cheque payable to the lawyer's general account.

9. The Rules currently do not place any restrictions on the method by which a lawyer can receive money into trust.[6]

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[4] The EFT was created because financial institutions offering electronic wire transfer services did not consistently include all of the information the Law Society required to create an adequate audit trail.

[5] See The Trust Accounting Handbook online at p. 23: www.lawsociety.bc.ca/docs/trust/Trust-Accounting-Handbook.pdf. The EFT clearly states: "Online payments from the trust account via the web are NOT PERMITTED under this Rule."

[6] Alberta, New Brunswick, Newfoundland and PEI have rules specifically authorizing electronic *deposits* into trust. LSUC's rules do not explicitly prohibit lawyers from allowing funds to be deposited by internet banking, however the guidance does outline various considerations for lawyers, including whether the deposit will generate the documents required to fulfill record keeping requirements.

Discussion

Part 1: Rationale for adopting a rule change

10. There are numerous rationale for amending the Rules to permit the online withdrawal of trust funds. These include: providing an efficient and flexible means for lawyers to move trust funds, maximizing the security measures associated with electronic fund transfers and reducing opportunities for fraud, recognizing technological changes within the banking sector and aligning with rule developments in other provinces. Each of these rationale is explored in further detail below.

i. Flexibility and efficiency

11. The Trust Assurance department has received feedback from lawyers that the complexities associated with the current electronic transfer process makes for an administratively inefficient and costly method for withdrawing funds from trust accounts.

12. Lawyers' primary concern with the existing rule is that it only permits one type of electronic transfer, namely, wire transfers, initiated by providing an EFT to a financial institution each time they wish to withdraw funds from trust electronically.[7] In addition to the time and cost associated with the lawyer delivering the EFT, reliance on bank staff to manually key the transfer information into the system can result in a delay in the transmission of funds based on the financial institutions' internal processing timelines. Further, fees for outgoing wire transfers processed at a financial institution can cost up to $195 per transaction.

13. In contrast, many financial institutions now enable clients (e.g. lawyers) to utilize an online system to carry out wire transfers through the internet without any manual intervention by the financial institution. Rather than delivering a requisition to the bank, authorized users can log into the online system and personally enter data describing the details of the transfer. Payment is approved online by the required number of authorized users and the transfer is processed almost immediately. A unique payment reference is generated by the system once the transaction is complete.

[7]Acceptable modes of delivery vary across institutions. For example, RBC will allow firms that are commercial banking clients to courier the paperwork, but non-commercial clients must visit the branch in person. CIBC no longer accepts wire instructions by email or fax. Other institutions may still permit faxed or emailed instructions.

14. Developing a new rule that would enable lawyers to set-up, approve and release payments at any time, from any location would provide lawyers with the opportunity to efficiently and flexibly manage their financial obligations remotely and to maintain maximum control over time-sensitive transfers. Costs are also reduced, with online wire transfers ranging from $10-$50 per transaction.[8]

15. Developing rules that would allow for the online transfer of funds from a lawyer's trust account to their general account (e.g. for the payment of fees) and the online transfer of funds between trust accounts (e.g. to move a client's funds from a pooled trust account to a separate trust account) would also improve efficiency and flexibility by eliminating the need for lawyers to physically take trust cheques to their financial institution for processing. The clearing period associated with paper-based instruments, which can range from two to ten days[9], would also be significantly reduced if online transfers were permitted.[10]

16. The flexibility of online banking has another aspect: most systems have highly adaptable administration and approval options that enable users to customize access controls and authorization processes, and to define monetary limits for both online wire transfers and online fund transfers between accounts. This would enable the Law Society to establish clear but general rules governing the online withdrawal of trust funds that could apply across different proprietary online banking systems (e.g. CIBC, RBC, etc.) and to different types of transactions (e.g. for online wire transfers to clients and third parties and the transfer of trust funds between different accounts).

ii. Security features and fraud reduction

17. Online banking systems use a range of advanced security measures to keep transactions secure, providing the financial institutions and their clients with new opportunities to bolster fraud protection. Features of some of the online banking systems available for business clients[11] at several of the major financial institutions operating in BC may include:

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[8]There may be additional one-time costs associated with setting up accounts and obtaining authentication devices.
[9]This includes clearing periods associated with cheques and bank drafts. For example, the Law Society has recently discovered that RBC no longer guarantees funds on presentation of a bank draft; there is a four to five day waiting period after deposit, which can cause problems in relation to conveyances, undertakings and other matters.
[10]Electronic fund transfers are processed by financial institutions once per day. If the transaction is processed by 2pm MST, the funds will be received the same day.
[11] This represents a summary of the types of features of RBC, CIBC and CWB's commercial systems, and is not exhaustive list of the types of security features that may be available. These features apply to both online wire transfers and fund transfers between different accounts. These features may not all be available as part of a financial institution's personal banking platform.

- encryption of all data passed between a website and a browser to ensure information remains private;
- use of firewalls to shield the system from computer hackers;
- separate log-ins for each user to build a clear audit trail;
- two-factor authentication requiring two pieces of evidence to assert and confirm a person's identity to digitally sign transactions (e.g. RSA SecureID token code and an individual password);
- ability for users to define and customize particular authorization processes, including establishing multiple signing authorities;
- ability for users to define transaction and daily transfer limits;
- transaction and session monitoring, including monitoring unusual sign-on activity;
- opportunities to review, update and verify information associated with the transfer; and
- ability to track the movement of funds in real-time and produce detailed activity reports and confirmations.

18. In addition to the security features of financial institutions' proprietary online systems, the "payment system" used for sending and receiving domestic wire transfers —the Large Value Transfer Systems ("LVTS") — is the same, regardless of whether the wire transfer is initiated by the lawyer delivering instructions to the financial institution or by executing the transfer online.[12] LVTS is supported by a strong legal framework in which all completed transactions are guaranteed by the Bank of Canada, and are irrevocable and final once received by the beneficiary's financial institution.[13] All international wire

[12] LVTS is the payment system used for sending and receiving wire payments between most Canadian financial institutions transacting in both international and Canadian dollar payments. Wire transfers from smaller banks and credit unions are not processed through LVTS, and therefore do not automatically attract the same benefits.Wire transfers between customers at the same financial institution are also excluded from LVTS. However, the majority of major financial institutions have adopted voluntary best practices that ensure they will treat these wire payments in a similar manner as LVTS wire transfers. See Payments Canada, "Businesses: Straight-through processing guidelines for wire transfers" online at https://payments.ca/wp-content/uploads/2016/06/Businesses-Wire-En.pdf . Also see slides from the CIBC presentation to the Law Society of BC, July 25, 2016.

[13] LawPro Magazine, "Show me the money" (Summer 2008). online at http://www.practicepro.ca/lawpromag/Wire_Transfer_Benefits.pdf. Irrevocability and finality provides the certainty to the beneficiary that they can use the funds the moment they become available and payment will not be reversed or returned.

transfers, whether initiated by a requisition at the bank or online by the lawyer, are routed through the SWIFT network. These payments are also irrevocable and final.

19. Permitting lawyers to withdraw trust funds online would also have the benefit of reducing lawyers' reliance on cheques, which is likely to decrease instances of fraud resulting from personal banking information being obtained from a lost or stolen cheque and used illicitly. Financial institutions and Payments Canada advise that one of the most effective fraud management strategies clients can adopt is to reduce the number of cheques they write.

20. Providing lawyers with an online banking option for withdrawing trust funds is also likely to result in a decrease in the number of wire transfers initiated by lawyers delivering a written requisition (EFT) to their financial institution. Although wire transfers are a more secure method of moving funds than cheques, they are nevertheless vulnerable to fraud if a financial institution receives a fax or emailed EFT from someone who has seized account information and coopted the client's email account. Financial institutions are increasingly concerned about this risk, with signature fraud and other operational risks being the primary rationale for CIBC no longer accepting faxed or emailed wire transfer instructions.[14] This fraud risk is minimized by the above-noted security features of online systems.

21. In addition to protecting lawyers from fraud, the security controls associated with online banking systems will help to ensure that clients' funds are maximally safeguarded, supporting the Law Society in fulfilling its mandate of protecting the public interest.

iii. Technological changes in the banking industry

22. The transition to a digital economy is well underway. As part of this shift, financial institutions are moving away from the manual, paper-based processing of transactions and are continually improving the capabilities of their online banking programs.

23. Virtually all financial institutions now offer clients the option of transferring funds from one account to another online. The majority of large banks and several credit unions also have systems in place that enable lawyers to initiate online wire transfers. For example, if permitted by the Rules, lawyers could use CIBC's Cash Management Online, RBC's Express Wire Payments or Canadian Western Bank's Wire Service to login-in, input

[14] Operational risks include human error resulting from the use of old templates, keying errors and poor internal controls associated with faxing or emailing instructions.

information, set-up authorizations, approve and release wire payments themselves, without any intervention from the financial institution.[15]

24. Lawyers in BC are expressing frustration that the Rules do not allow them to utilize these services. Permitting lawyers to take advantage of online banking technologies sends a signal to both the profession and the public that the Law Society is striving to be an innovative regulatory body, in accordance with its Strategic Plan.[16]

25. Over the past year, the Law Society has also received reports that some institutions will no longer process wire transfers using the EFT, and are asking lawyers to transfer their funds online instead. For example, the Law Society has been informed that CIBC no longer accepts emailed or faxed instructions for wire transfers, including the Law Society's EFT. Instead, it is recommended that lawyers who wish to send a wire transfer remotely use CIBC's Cash Management Online system. Given the existing rules preclude lawyers from doing so, those who want to continue to bank with CIBC will largely rely on the use trust cheques (with their associated vulnerabilities to fraud) to withdraw money from trust.[17]

iv. Adoption of rules permitting online transfers by other law societies

26. Most Canadian law societies already have rules in place that permit lawyers to withdraw trust funds using online banking systems, including Alberta, Ontario, Newfoundland, Prince Edward Island, New Brunswick, Nova Scotia, Quebec and Yukon. The relevant provisions are included at **Appendix A.**

27. Alberta's rules permit the online withdrawal of trust funds to make payments to clients or third parties, as well as the online transfer of funds from trust to general accounts or between a lawyer's trust accounts provided the system requires lawyers to have a password or access code to authorize the online withdrawal. Written instructions must also be obtained from the payee prior to the withdrawal and a "non-cheque withdrawal

[15] Other major financial institutions operating in BC that provide online wire transfer services include Bank of Montreal, TD Canada Trust, HSBC, Scotia Bank, Vancity and Prospera Credit Union.
[16] See Goal 2 of the 2015-2017 Strategic Plan.
[17] CIBC will still accept the EFT for wire payments done over the counter in a branch, or as a contingency only through fax if the fax agreement is signed on an exceptional basis.

form" must be completed. Confirmation of the transfer must be obtained and maintained as part of the firm's financial records.[18]

28. Newfoundland, Prince Edward Island and New Brunswick have identical rules addressing the electronic transfer of funds from trust. These rules permit the online withdraw of trust funds to transfer funds to clients or third parties (e.g. online wire transfers) and the online movement of funds from trust to general accounts, or between trust accounts, provided the system meets the following regulatory requirements:

    - users must be provided with an individual password or access code that is retained by the lawyer, and is used to authorize the withdrawal
    - the system must produce a next-day confirmation that the data describing and authorizing the transfer were received
    - the confirmation generated by the system must contain specific information, including: names of the payee and recipients; their trust account number and financial institution information; and the time and date the instructions to carry out the transfer were received by the financial institution and the confirmation was sent.

29. There are also obligations on lawyers to complete an electronic funds transfer requisition (prescribed by the law society) prior to the transfer being initiated, which must be maintained for the lawyer's records. Lawyers must also print, review, sign and date the confirmation of the transfer produced by the online system.[19]

30. Ontario's rules permit the use of online banking to withdraw trust funds for payments to clients or third parties, to transfer funds between trust accounts and to transfer funds between a trust and general account, provided the lawyer complies with the requirements set out in section 12 of By-Law 19.[20] These regulatory requirements closely mirror those of the Maritime provinces, as detailed above, with the added security measure of requiring one person, using a password, to enter the data describing the details of the transfer into the system, and another person, using a different password, to authorize the

[18] Rule 119.42(1), online at http://www.lawsociety.ab.ca/docs/default-source/regulations/rules698a08ad53956b1d9ea9ff0000251143.pdf?sfvrsn=2 .
[19] For New Brunswick, see Rule 4(8) of the Uniform Trust Account Rules, online at: http://lawsociety-barreau.nb.ca/uploads/forms/Uniform_Trust_Account_Rules_-_Regles_uniformes_sur_les_comptes_en_fiducie.pdf. Excerpt at Appendix A. For Newfoundland, see Rule 5.04(6) http://lawsociety.nf.ca/lawyers/lawyer-regulation/law-society-rules/part-v/ For Prince Edward Island, see Rule 74(8), online at http://lawsocietypei.ca/media/for-lawyers/regulation/REGULATIONS%20%20as%20of%20July%202%202016.pdf
[20] Communications with Leslie Greenfield, Manager, Practice Audits, Law Society of Upper Canada (September 27, 2016).

transfer.[21] Lawyers are required to complete and retain an electronic funds transfer requisition prior to the transfer being initiated and keep this on record, and to print, review, sign and date the confirmation produced by the system.[22]

31. Although Nova Scotia permits all types of online withdrawals from trust (e.g. to clients and third parties, between trust accounts and between trust and general accounts), there are no rules *specifically* designed to regulate electronic transfers. Instead, Nova Scotia relies on a broader rule that governs all types of trust withdrawals (e.g. wire transfers at the bank, cheques, internet banking).[23] Consequently, Nova Scotia's rules are significantly less detailed than the rules pertaining to electronic withdrawals in Alberta, Ontario and the other Maritime provinces.

32. Most notably, Nova Scotia requires that all trust withdrawals — including online withdrawals — are made by two persons, one of whom must be a lawyer.[24] Staff in Nova Scotia remark that implicitly, the rules require that online trust withdrawals must not be executed without the use of two different passwords held in confidence by two different people. This is not explicit in the rule, however.

33. Quebec permits the online electronic withdrawals from trust. However, as is the case in Nova Scotia, there are no rules that specifically address electronic transfers, including online withdrawals from trust.[25]

34. The Yukon permits online banking to move funds from trust to a client or a third party or to move funds from a trust account to a general account, but not to transfer funds between trust accounts. There are no law society rules that specifically address electronic

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[21] See By-law 9 at 12, online at: https://www.lsuc.on.ca/uploadedFiles/By-Law-9-Financial-Transactions-Records-October-19-2015.pdf . Excerpt at Appendix A. Separate rules apply to sole practitioners and to closing real estate transactions, for which only one person is required to carry out the transfer.

[22] General observations from auditors are that the number of lawyers using online banking in Ontario is on the increase, although many still use cheques. *Supra* note 20.

[23] See 10.3.5 of the Regulations made pursuant to the *Legal Profession Act*, S.N.S. 2004, c. 28 online at http://nsbs.org/sites/default/files/cms/menu-pdf/currentregs.pdf . Excerpt at Appendix A. Supporting guidance material provides some specific details on the parameters of online trust withdrawals, including a requirement for password protection. See Nova Scotia Barristers' Society, "Trust Account Regulations FAQ", online at: http://www.nsbs.org/faqs-trust-account-regulations.

[24] Withdrawals can be made by only one person if the lawyer is a sole practitioner.

[25] Section 30 of the *Regulation respecting accounting and standards of professional practice of advocates* states that "transfers of money by electronic means are subject to the provisions of this regulation." There are no further specific references to any form of electronic transfers, including online transfers, in the regulation. Division VII, s. 48 sets out the general parameters for withdrawing money from trust. See https://www.barreau.qc.ca/pdf/avis/reglement-comptabilite_en.pdf. Excerpt at Appendix A.

transfers. Instead, this authority is found in a general provision in the governing statute relating to trust withdrawals.[26]

35. In contrast, in BC the withdrawal of trust funds via "electronic transfers" is restricted to wire transfers carried out by a financial institution once they have received the EFT. Both implicitly (text of Rule 3-64(7)) and explicitly (Law Society guidance material), the use of online systems to withdraw or transfer funds using internet banking is not allowed.[27]

Part 2: Concerns

36. Despite the many advantages associated with withdrawing trust funds online, there may be weaknesses or inconstancies in the protocols, procedures and protections associated with different online transfer systems. Lawyers may also fail to take adequate steps to safeguard online transactions if the rules are unclear or otherwise insufficiently address key security measures. Some issues that may arise are detailed below.

i. Record keeping and audit capability

37. Online trust transactions should only be permitted if it is possible to create a comprehensive and accurate paper trail that allows both lawyers and auditors to easily trace and verify the movement of funds.

38. Sufficiently documented payment details are essential to provide lawyers with certainty of funds and to prevent trust funds from being over-drawn. Similarly, the Law Society's capacity to identify how funds were handled and whether misappropriation or other misconduct occurred will be diminished if the audit trail is not well persevered. Accordingly, all transaction records must be adequately detailed and easily accessible. The retention period of electronic data stored by the online system must also be sufficient.

39. Research suggests that several of the major online banking systems strive to address these audit capability concerns. For example, CIBC's Cash Management Online system provides immediate payment confirmation and details and enables records to be produced with respect to the date, time and identification of users at each step of the transaction. Records are available online for 13 months and are stored by CIBC for seven years.

[26]Communications with Law Society of Yukon, March 2, 2017. See the *Legal Profession Act*, s. 61(11) online at http://www.lawsocietyyukon.com/act/lpa_dec2004.pdf . Excerpt at Appendix A.

[27] Other jurisdictions that do not permit online electronic transfers from trust: Manitoba (although they are currently exploring permitting an e-transfer model for the sole purpose of registering documents with the Property Registry, Northwest Territories and Saskatchewan.

40. Rules could be drafted in a manner that ensures that lawyers are not permitted to withdraw trust funds online unless the system being utilized is capable of generating an audit trail that provides an adequate level of assurance for lawyers and auditors. For example, the electronic transfer rules of many other law societies preserve the audit trail by including provisions that address the timing, content and record keeping requirements of the confirmation generated by the online system (for example, see Ontario's rules at Appendix A). If the system used to make an online transfer does not meet these regulatory parameters, its use is not permitted.

41. Many jurisdictions also require lawyers to complete an electronic funds transfer form — similar to BC's EFT — containing key information about the transfer, and to store this for record keeping and auditing purposes. This form is not delivered to, or signed by, the financial institution. If this approach were adopted in BC, rule amendments could ensure that the information currently required by the EFT to initiate wire transfer (e.g. payee name, source account, destination account, names and signatures of authorization lawyers, dates) would also be required to initiate an electronic fund transfer using an online system. This information could be recorded in a form similar to the EFT, but would not have to be delivered to the financial institution.

ii. Irrevocability

42. As is the case with electronic wire transfers done through the bank, online wire transfers from trust are "irrevocable" in nature. As such, if a lawyer subsequently realizes the funds were transferred to the incorrect beneficiary (for example, through fraud) the transaction cannot be revoked. This is in contrast trust cheques, which have a lengthy clearing period in which stop-payment orders can be issued.

43. In permitting electronic wire transfers through the bank under existing Rule 3-64(7), however, the Law Society has already accepted the risk associated with the irrevocable nature of some types of trust withdrawals.

iii. Security controls

44. Online banking systems are proprietary in nature, and accordingly, security measures will vary. Although several of the major financial institutions reviewed for the purposes of this memo appear to have a comprehensive set of controls associated with the online withdrawal or transfer of funds, this may not be true of all institutions.

45. To meet this challenge, staff could establish what security features the Law Society views as necessary to safeguard the electronic transmission of trust funds, and amendments would be drafted in a manner that ensures that online transactions can only be completed using a system with these features.

46. For example, the new rule could adopt the approach taken in Ontario, in which one user, using one password, must set up the transfer on the online banking system, while another user, with another password, must authorize it.[28] Another option is a requirement for "two-factor" authentication, such that two pieces of evidence to assert and confirm a lawyer's identity are necessary to digitally sign transactions (e.g. a password and a security token). The use of online systems without this level of authorization security would not be permitted. Lawyers could then decide where to bank on the basis of whether their financial institution's online system meets the new regulatory requirements.

47. The rule could also be designed to ensure that *only* lawyers can authorize the transfer of trust funds, by requiring any non-lawyer accessing the account to have "read-only" access, or by requiring that only a lawyer can authorize the transfer. A rule prohibiting passwords sharing could also be developed. These features would also address concerns raised by Nova Scotia and Ontario, as detailed below.

48. To address risks associated with client identification, the new rule could also incorporate a provision emphasizing that lawyers must ensure the client's identification is verified prior to the online transfer of funds, pursuant to existing Rule 3-102.

49. Note that the Act and Rule Committee, in consultation with the Trust Assurance department and experts in the banking sector, would consider all the relevant security aspects during the drafting process. The Benchers will have an opportunity to review the finalized rule before its adoption to ensure they are satisfied it adequately addresses the above noted concerns.

iv. Feedback from other jurisdictions

50. In the course of preparing this memo, all of the law societies permitting online withdrawals from trust were contacted and asked whether they had experienced problems with permitting online transactions. Apart from one case highlighted by the Chambre des notaries du Quebec, there were no reports of any significant concerns about lawyers being permitted to use online banking to withdraw and transfer trust funds.

51. The law societies that provided feedback did, however, identify a number of issues:

    a. **Nova Scotia:** Recent spot-audits revealed that some lawyers improperly provided assistants with passwords that enabled them to access internet banking websites and transfer trust funds. In two cases, a lawyer independently transferred funds using internet banking when access should have (under the rules) been under the control of two persons. Nova Scotia also noted that a number of lawyers failed to

[28] *Supra* note 21. Separate rules are in place for sole practitioners which permit them to authorize online transfers without another person.

obtain written confirmation of the transfer in the form of a print-out of the online banking screen showing the receipt of funds.[29] Despite these issues, risk-management staff articulated that they did not feel that permitting lawyers to transfer trust funds online had increased the risk of fraudulent trust account activity.[30]

As previously noted, Nova Scotia relies on a general rule to regulate all types of withdrawals from trust.[31] As such, their rules do not clearly prescribe a number of the safeguards that have been built into the electronic transfer rules in other provinces, including establishing a clear requirement that users of an electronic transfer system be provided with, and keep in confidence, individual passwords or access codes.[32]

b. **Ontario**: Two concerns were raised in relation to the online withdrawal of trust funds. The first relates to record keeping: some lawyers fail to complete the electronic transfer form (Form 9A) for each electronic trust transfer and the confirmations of the transactions are not always signed and dated and can lack all the required details. Second, staff noted that in addition to the lawyer, a non-lawyer (e.g. bookkeeper, staff) might have full access to the trust account electronically, and is therefore be able to transfer funds.[33]

c. **Quebec:** The Chambre des notaires du Quebec identified a case where a notary transferred a large amount of money from their trust account to their credit card as a payment through Interac/electronic banking. This case is currently under investigation.

52. In sum, two key messages emerge from the experiences of these jurisdictions. First, of the provinces currently permitting the use of online banking systems to withdraw funds from trust accounts, only Quebec — which lacks detailed rules addressing the electronic transfer of funds — has experienced a significant issue related to permitting this mode transaction. Second, putting in place detailed rules regarding account and password use, as well as measures to preserve the audit-trail, appear to be key to ensuring trust funds are effectively safeguarded. Based on Quebec's experience, an additional rule specifically

[29] Report of Graham Dennis, CPA who undertook 38 trust account audits in 2015-2016 on behalf of the Nova Scotia Barristers' Society. The auditor notes that when breaches of protocol were brought to the lawyers' attention, they generally took steps to immediately remedy the problem (e.g. change the password or to limit access of the assistant to "viewing only").
[30] Telephone conversation on March 1, 2017 with Mhairi McInnis, Administrator, Professional Responsibility who oversees risk assessment and analysis and the analysis of trust account reporting.
[31] See Rule 10.3.5, *supra* note 23.
[32] See Appendix A to compare the rules of the various jurisdictions that permit the use of online banking systems to withdraw and transfer trust funds.
[33] Conversation with Leslie Greenfield, Manager, Practice Audits, *supra* note 20.

prohibiting the electronic withdrawal of trust funds by way of credit card, debit card or email transfer may also be advisable.

Conclusion

53. Permitting lawyers to utilize online systems to withdraw trust funds has the potential to improve the administrative efficiency and flexibility of trust transactions, reduce fraud and enable the Law Society to demonstrate it has kept in stride with technological innovation in the banking industry and rule developments in other jurisdictions.

54. On this basis, staff recommend that the Rules are amended to permit the online transfer of trust funds, including the transfer of funds from a trust account to a client or third party, the transfer of funds from trust to a lawyer's general account and the transfer of funds between trust accounts.

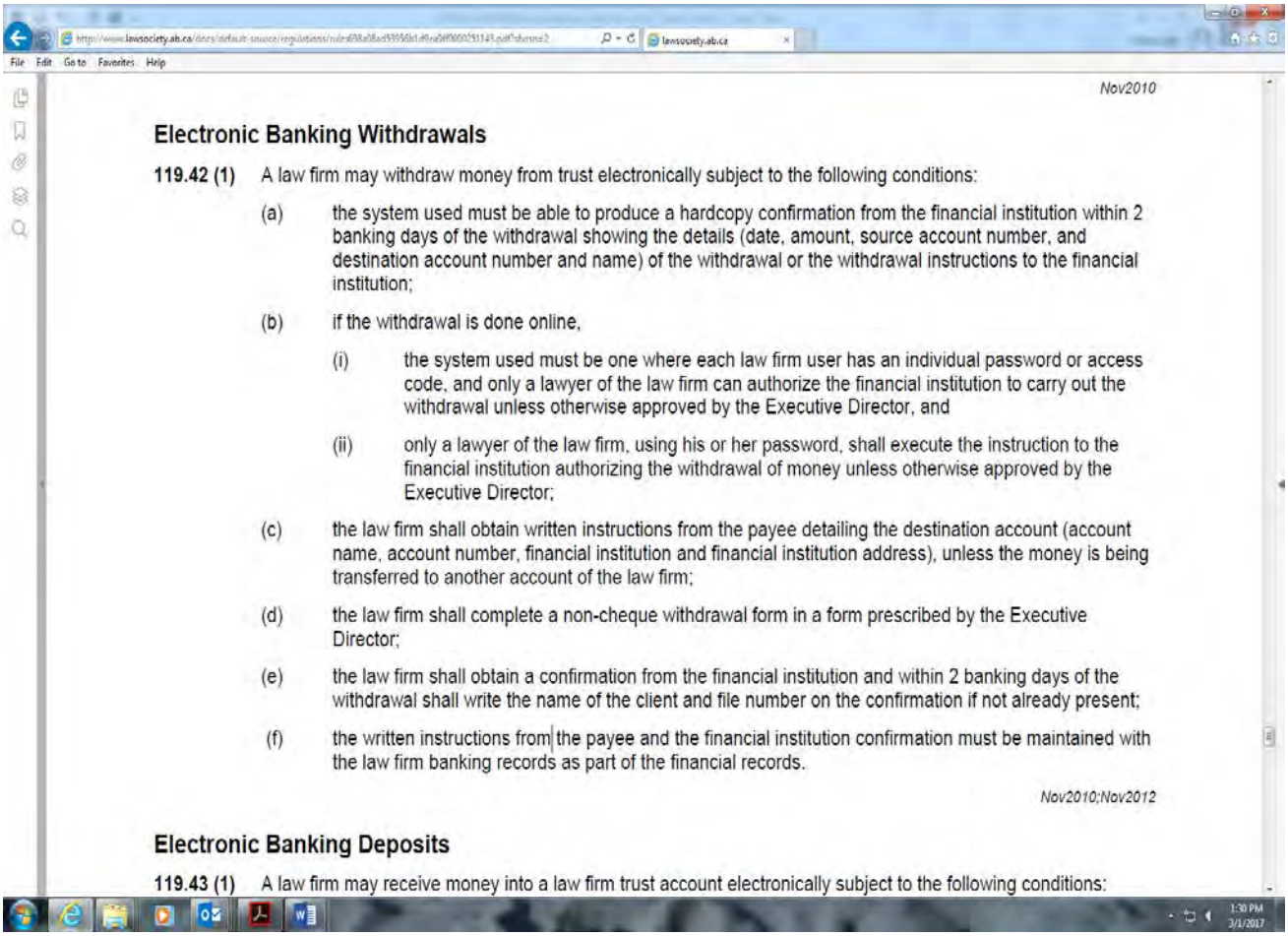
55. Note that the proposed rule would provide an *additional* method by which lawyers can withdraw trust funds, and will not replace existing means of transferring funds, including trust cheques and wire transfers initiated by delivering a written requisition to the financial institutions still accepting the EFT. Accordingly, the amendments would only impact those lawyers who choose to utilize online banking and would not alter the process for withdrawing trust funds for those who decide not to exercise the online option created by the rule amendments.

Next steps

56. Following a review of the analysis above, the Benchers are asked to make a decision in principle as to whether or not to proceed with a rule change. If the Benchers support an amendment, the matter will be referred to the Act and Rules Committee to draft a rule for approval by the Benchers at a later date.

APPENDIX A

Alberta



Nov2010

Electronic Banking Withdrawals

119.42 (1) A law firm may withdraw money from trust electronically subject to the following conditions:

(a) the system used must be able to produce a hardcopy confirmation from the financial institution within 2 banking days of the withdrawal showing the details (date, amount, source account number, and destination account number and name) of the withdrawal or the withdrawal instructions to the financial institution;

(b) if the withdrawal is done online,

(i) the system used must be one where each law firm user has an individual password or access code, and only a lawyer of the law firm can authorize the financial institution to carry out the withdrawal unless otherwise approved by the Executive Director, and

(ii) only a lawyer of the law firm, using his or her password, shall execute the instruction to the financial institution authorizing the withdrawal of money unless otherwise approved by the Executive Director;

(c) the law firm shall obtain written instructions from the payee detailing the destination account (account name, account number, financial institution and financial institution address), unless the money is being transferred to another account of the law firm;

(d) the law firm shall complete a non-cheque withdrawal form in a form prescribed by the Executive Director;

(e) the law firm shall obtain a confirmation from the financial institution and within 2 banking days of the withdrawal shall write the name of the client and file number on the confirmation if not already present;

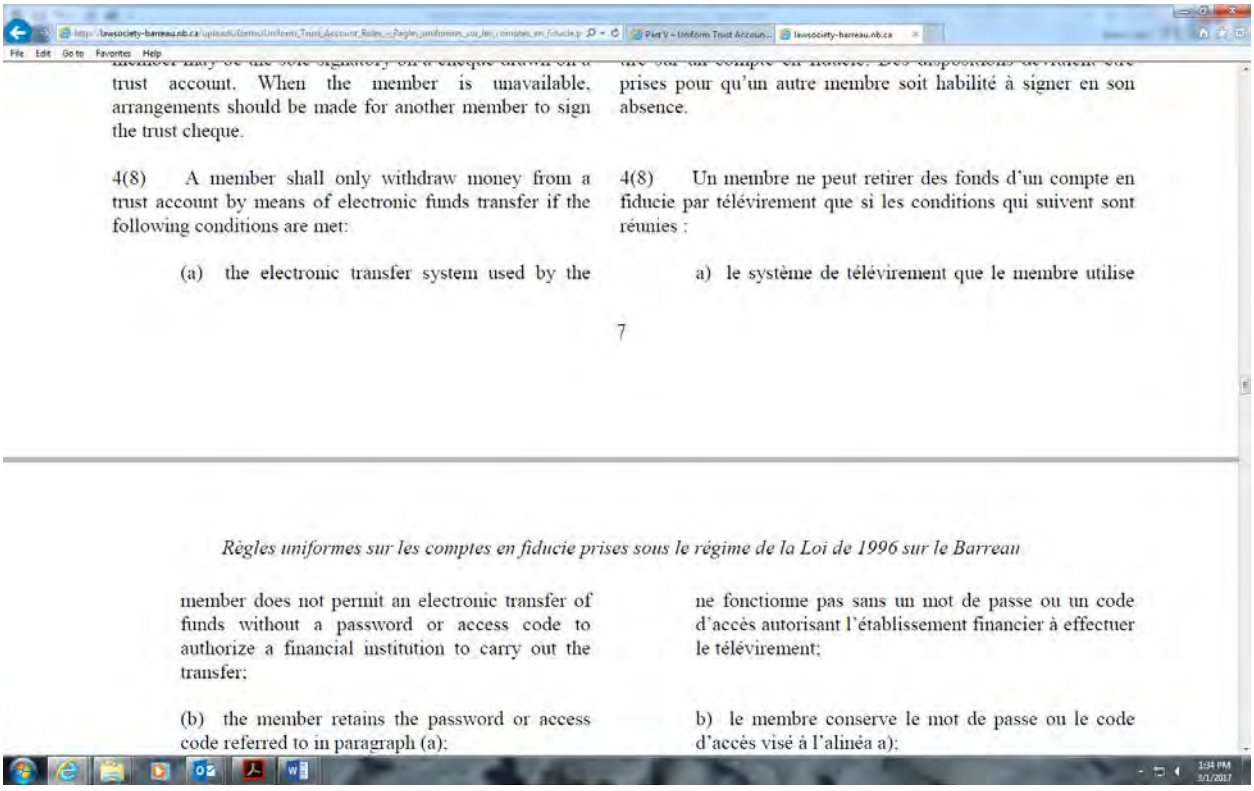
(f) the written instructions from the payee and the financial institution confirmation must be maintained with the law firm banking records as part of the financial records.

Nov2010;Nov2012

Electronic Banking Deposits

119.43 (1) A law firm may receive money into a law firm trust account electronically subject to the following conditions:

New Brunswick (Newfoundland and PEI have the same provisions incorporated into their rules)



trust account. When the member is unavailable, arrangements should be made for another member to sign the trust cheque.

prises pour qu'un autre membre soit habilité à signer en son absence.

4(8) A member shall only withdraw money from a trust account by means of electronic funds transfer if the following conditions are met:

4(8) Un membre ne peut retirer des fonds d'un compte en fiducie par télévirement que si les conditions qui suivent sont réunies :

(a) the electronic transfer system used by the

a) le système de télévirement que le membre utilise

7

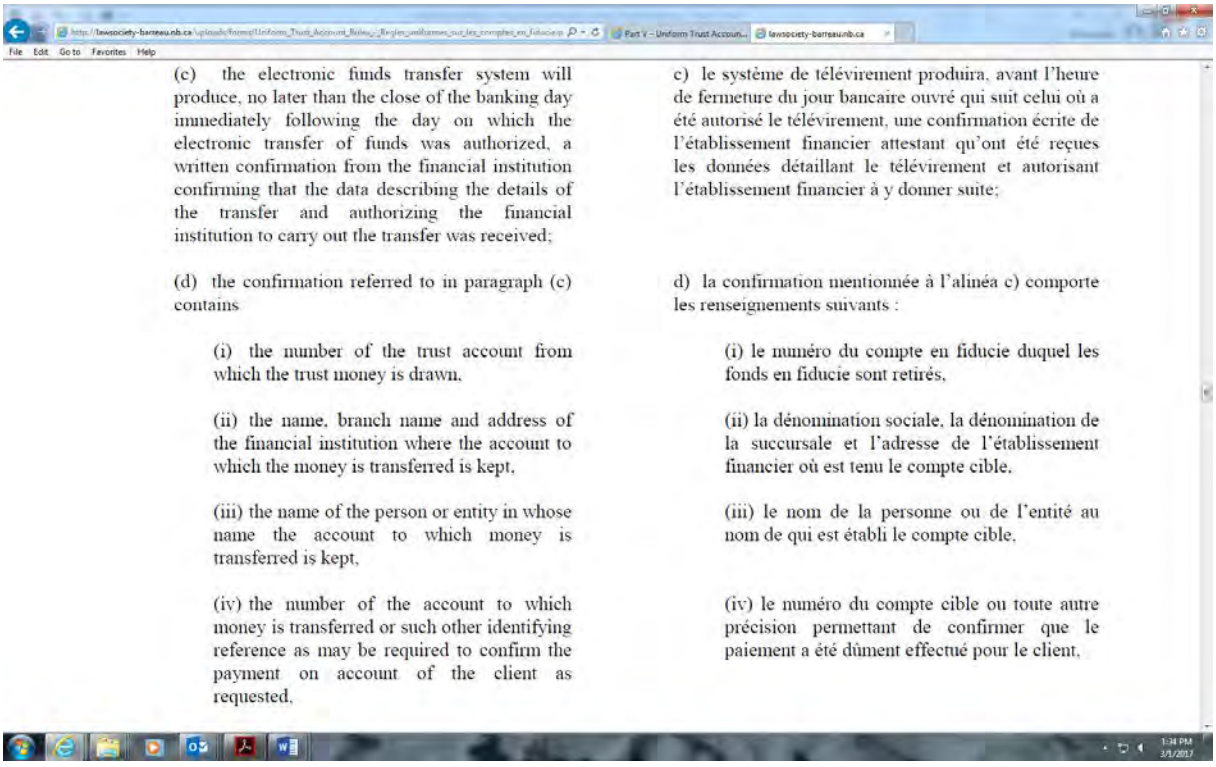
Règles uniformes sur les comptes en fiducie prises sous le régime de la Loi de 1996 sur le Barreau

member does not permit an electronic transfer of funds without a password or access code to authorize a financial institution to carry out the transfer;

ne fonctionne pas sans un mot de passe ou un code d'accès autorisant l'établissement financier à effectuer le télévirement;

(b) the member retains the password or access code referred to in paragraph (a);

b) le membre conserve le mot de passe ou le code d'accès visé à l'alinéa a);



(c) the electronic funds transfer system will produce, no later than the close of the banking day immediately following the day on which the electronic transfer of funds was authorized, a written confirmation from the financial institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer was received;

c) le système de télévirement produira, avant l'heure de fermeture du jour bancaire ouvré qui suit celui où a été autorisé le télévirement, une confirmation écrite de l'établissement financier attestant qu'ont été reçues les données détaillant le télévirement et autorisant l'établissement financier à y donner suite;

(d) the confirmation referred to in paragraph (c) contains

d) la confirmation mentionnée à l'alinéa c) comporte les renseignements suivants :

(i) the number of the trust account from which the trust money is drawn,

(i) le numéro du compte en fiducie duquel les fonds en fiducie sont retirés,

(ii) the name, branch name and address of the financial institution where the account to which the money is transferred is kept,

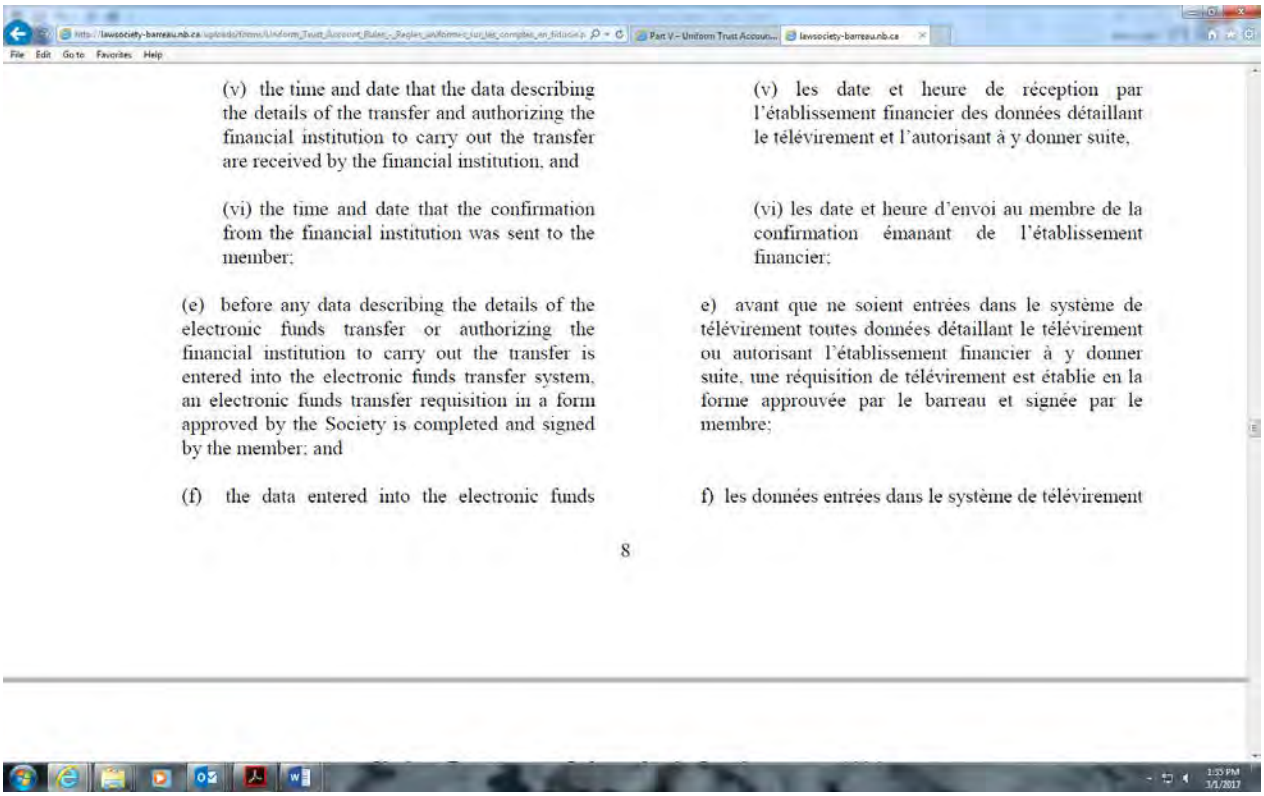
(ii) la dénomination sociale, la dénomination de la succursale et l'adresse de l'établissement financier où est tenu le compte cible,

(iii) the name of the person or entity in whose name the account to which money is transferred is kept,

(iii) le nom de la personne ou de l'entité au nom de qui est établi le compte cible,

(iv) the number of the account to which money is transferred or such other identifying reference as may be required to confirm the payment on account of the client as requested,

(iv) le numéro du compte cible ou toute autre précision permettant de confirmer que le paiement a été dûment effectué pour le client,



(v) the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution, and

(vi) the time and date that the confirmation from the financial institution was sent to the member;

(e) before any data describing the details of the electronic funds transfer or authorizing the financial institution to carry out the transfer is entered into the electronic funds transfer system, an electronic funds transfer requisition in a form approved by the Society is completed and signed by the member; and

(f) the data entered into the electronic funds

(v) les date et heure de réception par l'établissement financier des données détaillant le télévirement et l'autorisant à y donner suite,

(vi) les date et heure d'envoi au membre de la confirmation émanant de l'établissement financier;

e) avant que ne soient entrées dans le système de télévirement toutes données détaillant le télévirement ou autorisant l'établissement financier à y donner suite, une réquisition de télévirement est établie en la forme approuvée par le barreau et signée par le membre;

f) les données entrées dans le système de télévirement

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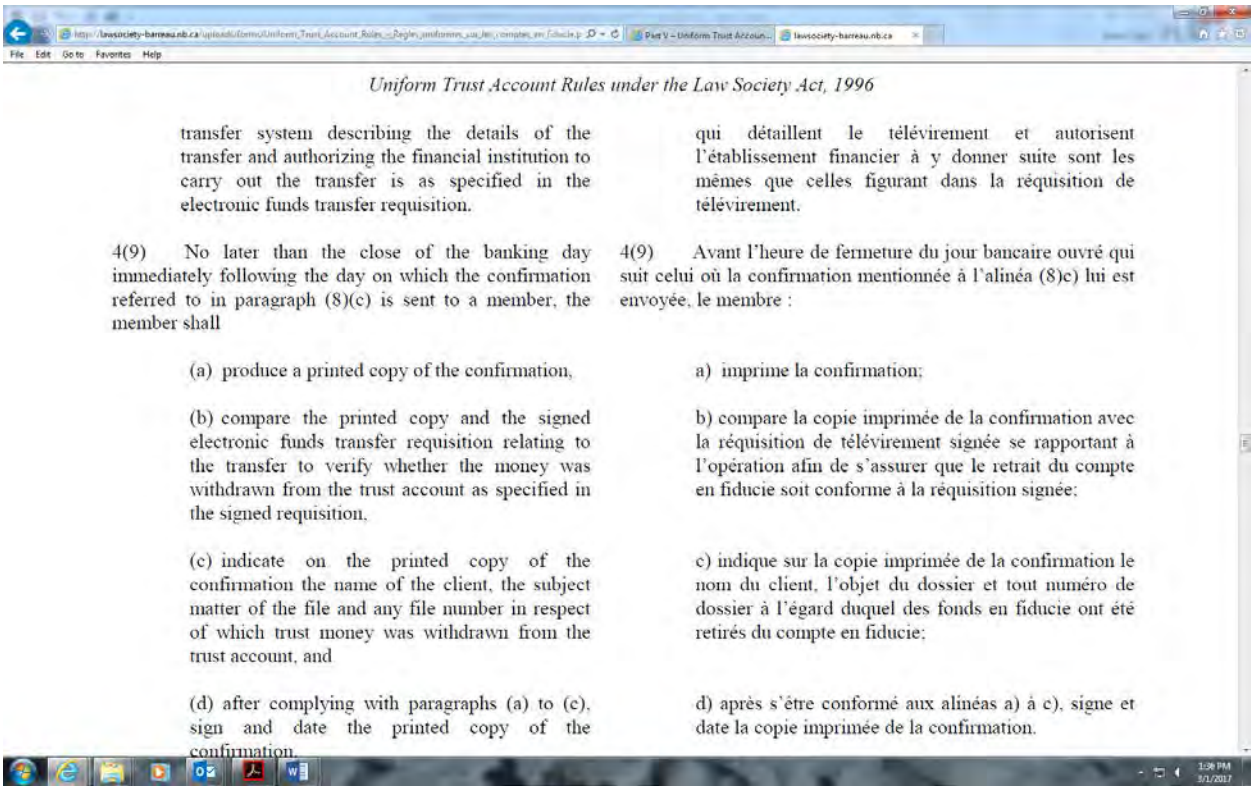


Uniform Trust Account Rules under the Law Society Act, 1996

transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer is as specified in the electronic funds transfer requisition.

4(9) No later than the close of the banking day immediately following the day on which the confirmation referred to in paragraph (8)(c) is sent to a member, the member shall

(a) produce a printed copy of the confirmation,

(b) compare the printed copy and the signed electronic funds transfer requisition relating to the transfer to verify whether the money was withdrawn from the trust account as specified in the signed requisition,

(c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which trust money was withdrawn from the trust account, and

(d) after complying with paragraphs (a) to (c), sign and date the printed copy of the confirmation.

qui détaillent le télévirement et autorisent l'établissement financier à y donner suite sont les mêmes que celles figurant dans la réquisition de télévirement.

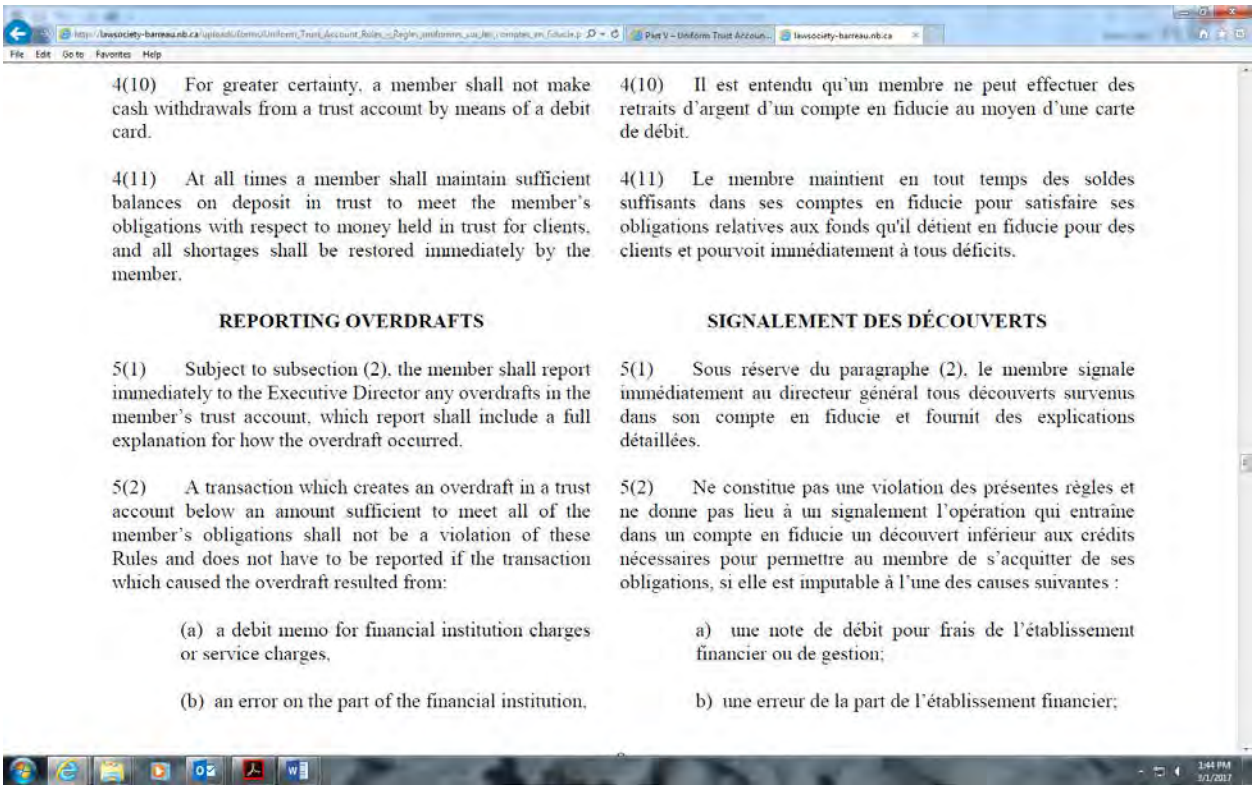
4(9) Avant l'heure de fermeture du jour bancaire ouvré qui suit celui où la confirmation mentionnée à l'alinéa (8)c) lui est envoyée, le membre :

a) imprime la confirmation;

b) compare la copie imprimée de la confirmation avec la réquisition de télévirement signée se rapportant à l'opération afin de s'assurer que le retrait du compte en fiducie soit conforme à la réquisition signée;

c) indique sur la copie imprimée de la confirmation le nom du client, l'objet du dossier et tout numéro de dossier à l'égard duquel des fonds en fiducie ont été retirés du compte en fiducie;

d) après s'être conformé aux alinéas a) à c), signe et date la copie imprimée de la confirmation.



4(10) For greater certainty, a member shall not make cash withdrawals from a trust account by means of a debit card.

4(10) Il est entendu qu'un membre ne peut effectuer des retraits d'argent d'un compte en fiducie au moyen d'une carte de débit.

4(11) At all times a member shall maintain sufficient balances on deposit in trust to meet the member's obligations with respect to money held in trust for clients, and all shortages shall be restored immediately by the member.

4(11) Le membre maintient en tout temps des soldes suffisants dans ses comptes en fiducie pour satisfaire ses obligations relatives aux fonds qu'il détient en fiducie pour des clients et pourvoit immédiatement à tous déficits.

REPORTING OVERDRAFTS

SIGNALEMENT DES DÉCOUVERTS

5(1) Subject to subsection (2), the member shall report immediately to the Executive Director any overdrafts in the member's trust account, which report shall include a full explanation for how the overdraft occurred.

5(1) Sous réserve du paragraphe (2), le membre signale immédiatement au directeur général tous découverts survenus dans son compte en fiducie et fournit des explications détaillées.

5(2) A transaction which creates an overdraft in a trust account below an amount sufficient to meet all of the member's obligations shall not be a violation of these Rules and does not have to be reported if the transaction which caused the overdraft resulted from:

5(2) Ne constitue pas une violation des présentes règles et ne donne pas lieu à un signalement l'opération qui entraîne dans un compte en fiducie un découvert inférieur aux crédits nécessaires pour permettre au membre de s'acquitter de ses obligations, si elle est imputable à l'une des causes suivantes :

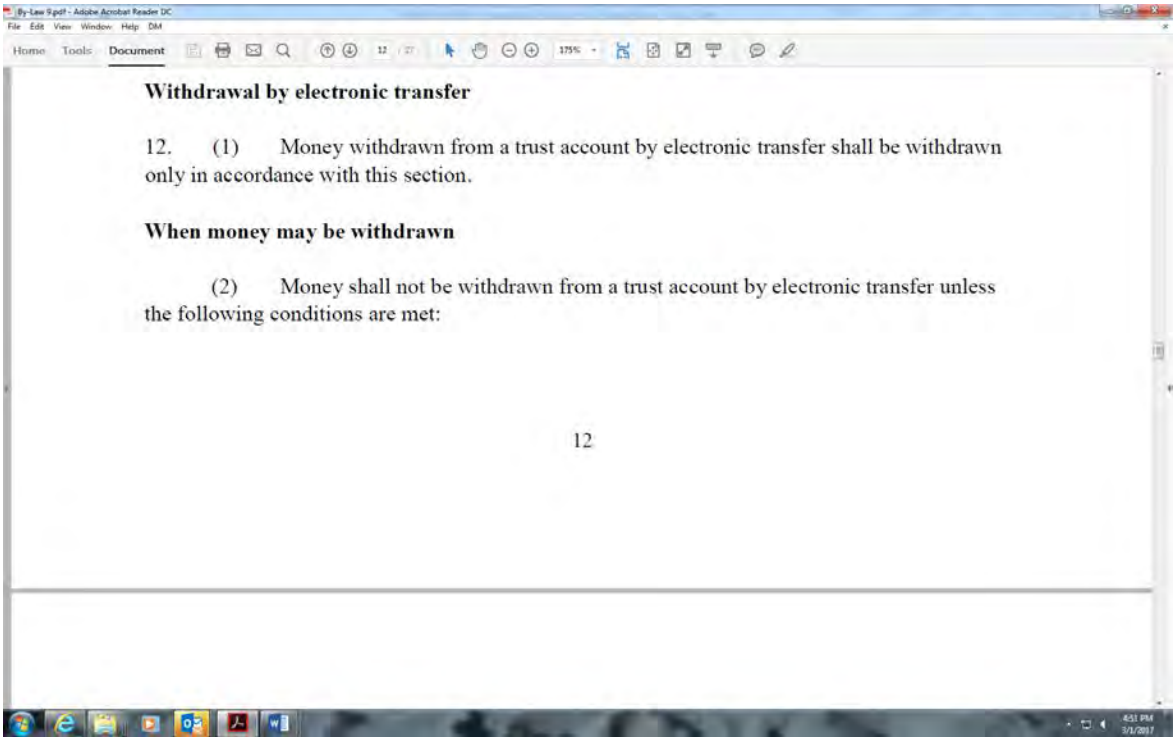
(a) a debit memo for financial institution charges or service charges,

a) une note de débit pour frais de l'établissement financier ou de gestion;

(b) an error on the part of the financial institution,

b) une erreur de la part de l'établissement financier;

Ontario



Withdrawal by electronic transfer

12. (1) Money withdrawn from a trust account by electronic transfer shall be withdrawn only in accordance with this section.

When money may be withdrawn

(2) Money shall not be withdrawn from a trust account by electronic transfer unless the following conditions are met:

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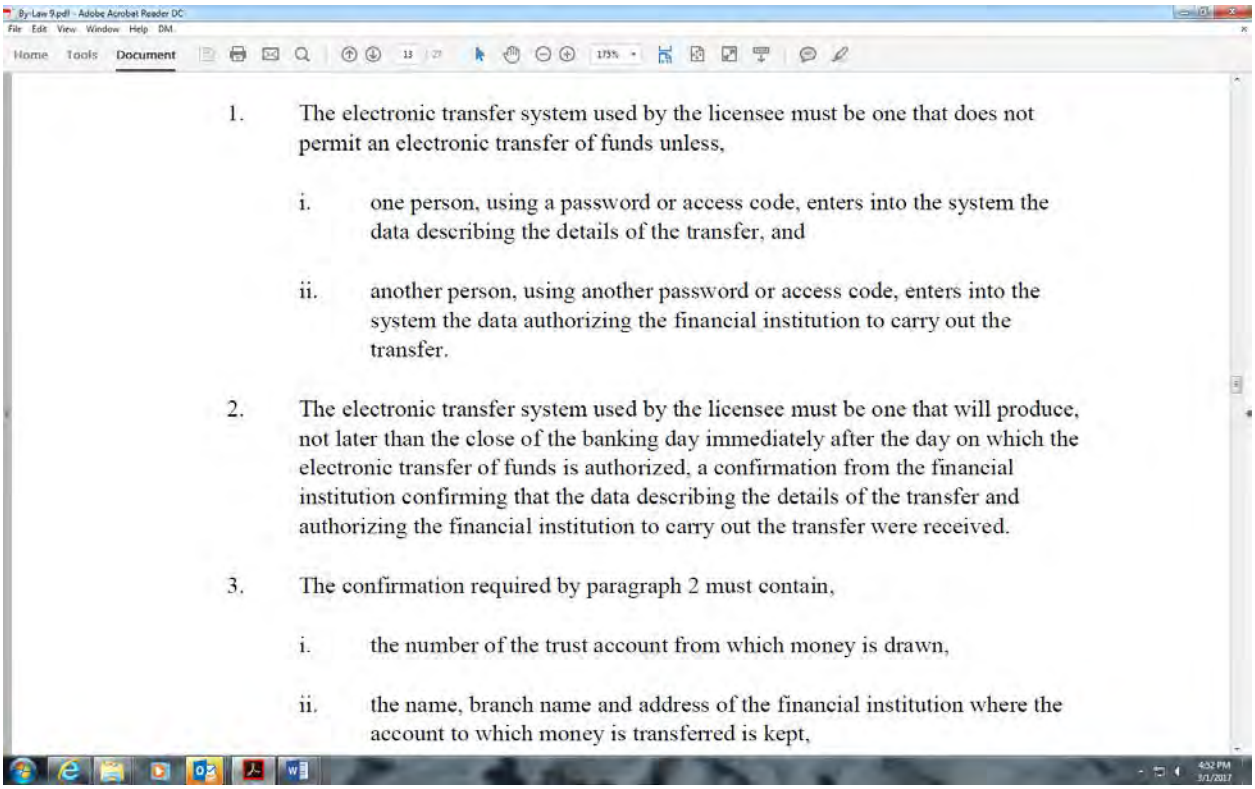


1. The electronic transfer system used by the licensee must be one that does not permit an electronic transfer of funds unless,

   i. one person, using a password or access code, enters into the system the data describing the details of the transfer, and

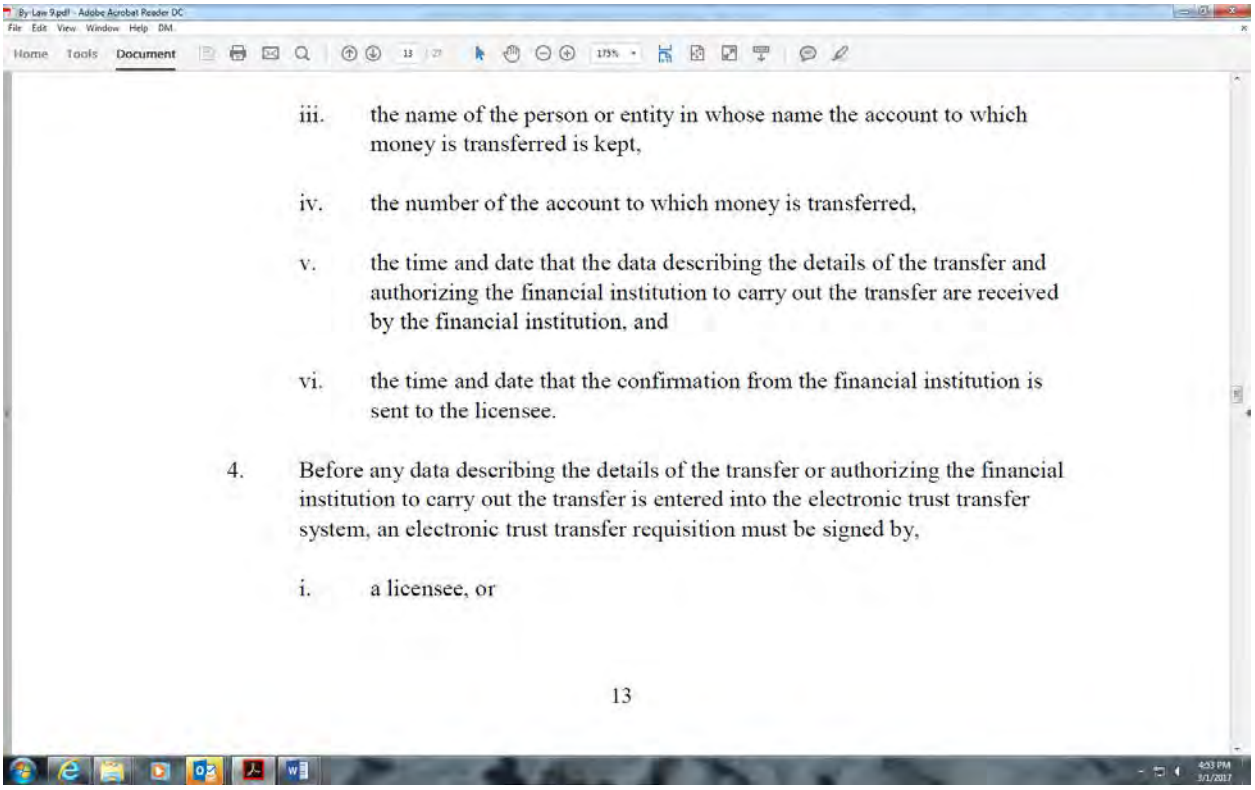
   ii. another person, using another password or access code, enters into the system the data authorizing the financial institution to carry out the transfer.

2. The electronic transfer system used by the licensee must be one that will produce, not later than the close of the banking day immediately after the day on which the electronic transfer of funds is authorized, a confirmation from the financial institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer were received.

3. The confirmation required by paragraph 2 must contain,

   i. the number of the trust account from which money is drawn,

   ii. the name, branch name and address of the financial institution where the account to which money is transferred is kept,



   iii. the name of the person or entity in whose name the account to which money is transferred is kept,

   iv. the number of the account to which money is transferred,

   v. the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution, and

   vi. the time and date that the confirmation from the financial institution is sent to the licensee.

4. Before any data describing the details of the transfer or authorizing the financial institution to carry out the transfer is entered into the electronic trust transfer system, an electronic trust transfer requisition must be signed by,

   i. a licensee, or

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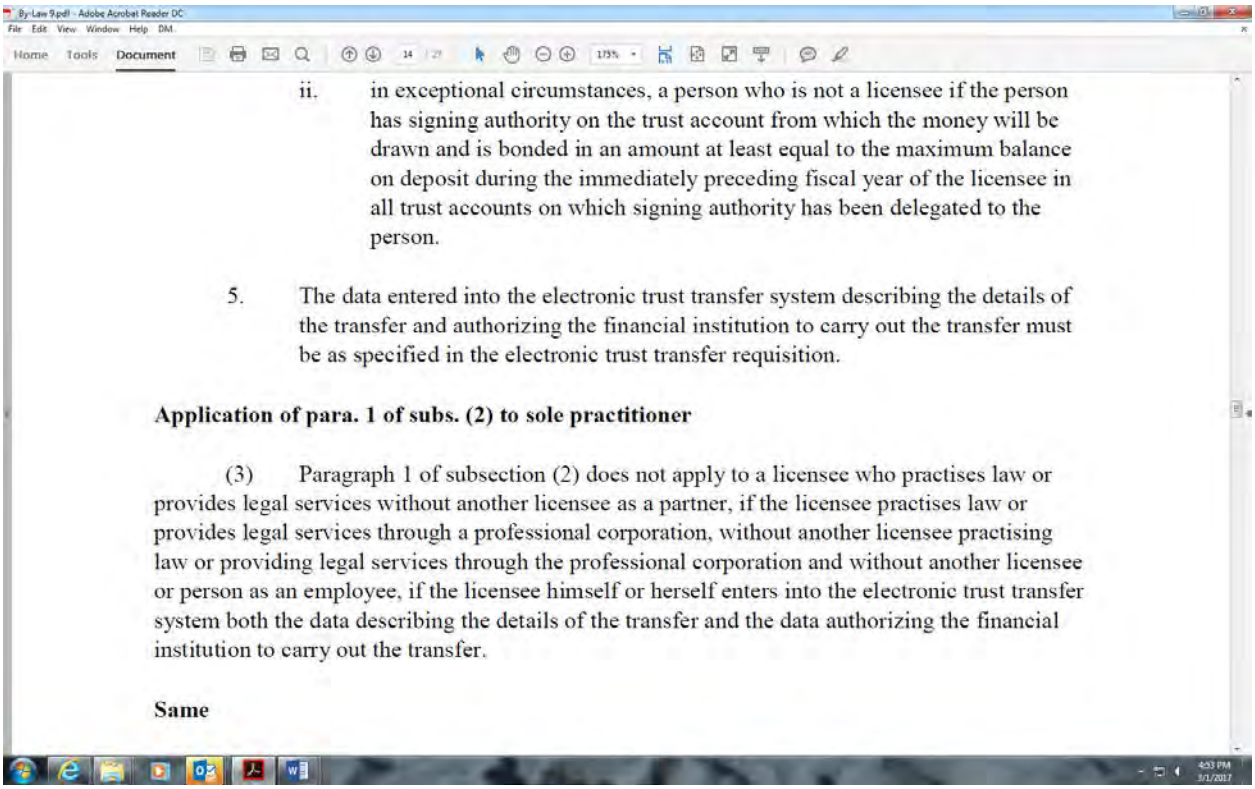


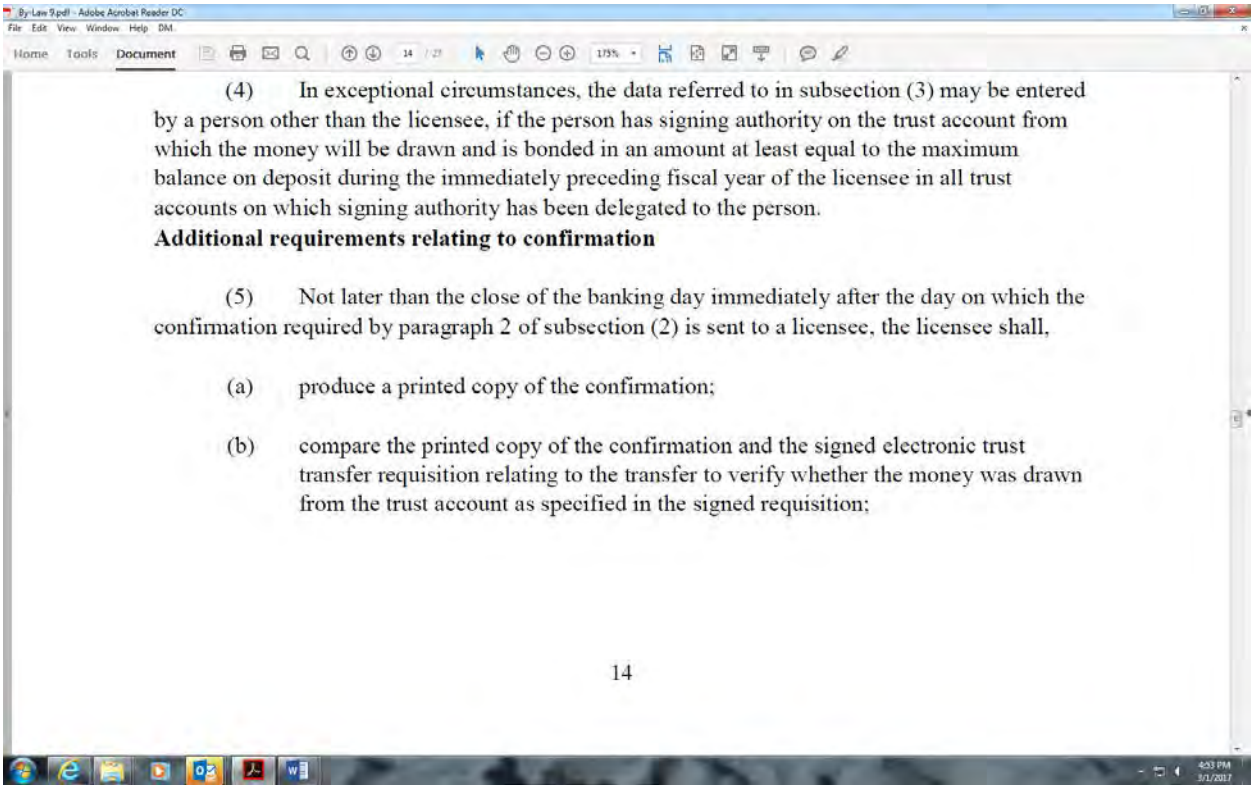
ii. in exceptional circumstances, a person who is not a licensee if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.

5. The data entered into the electronic trust transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer must be as specified in the electronic trust transfer requisition.

Application of para. 1 of subs. (2) to sole practitioner

(3) Paragraph 1 of subsection (2) does not apply to a licensee who practises law or provides legal services without another licensee as a partner, if the licensee practises law or provides legal services through a professional corporation, without another licensee practising law or providing legal services through the professional corporation and without another licensee or person as an employee, if the licensee himself or herself enters into the electronic trust transfer system both the data describing the details of the transfer and the data authorizing the financial institution to carry out the transfer.

Same



(4) In exceptional circumstances, the data referred to in subsection (3) may be entered by a person other than the licensee, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.

Additional requirements relating to confirmation

(5) Not later than the close of the banking day immediately after the day on which the confirmation required by paragraph 2 of subsection (2) is sent to a licensee, the licensee shall,

(a) produce a printed copy of the confirmation;

(b) compare the printed copy of the confirmation and the signed electronic trust transfer requisition relating to the transfer to verify whether the money was drawn from the trust account as specified in the signed requisition;

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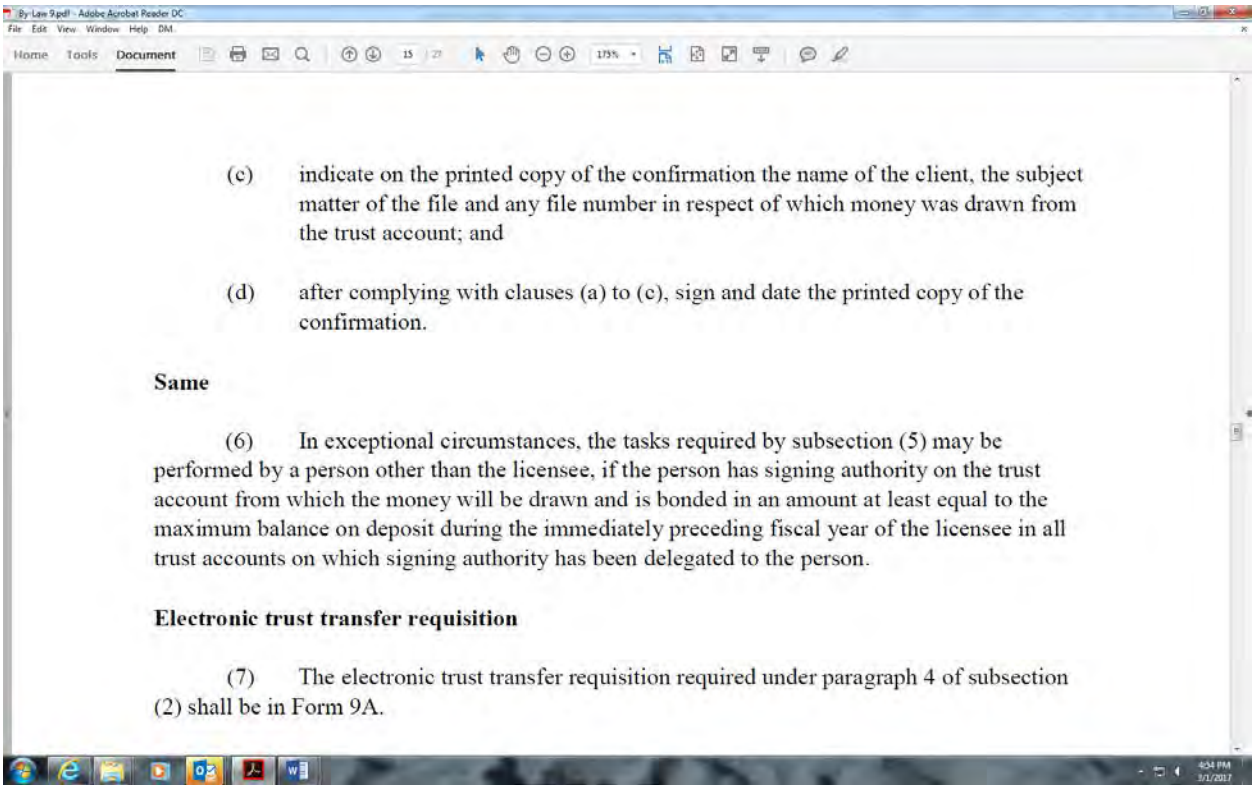


(c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which money was drawn from the trust account; and

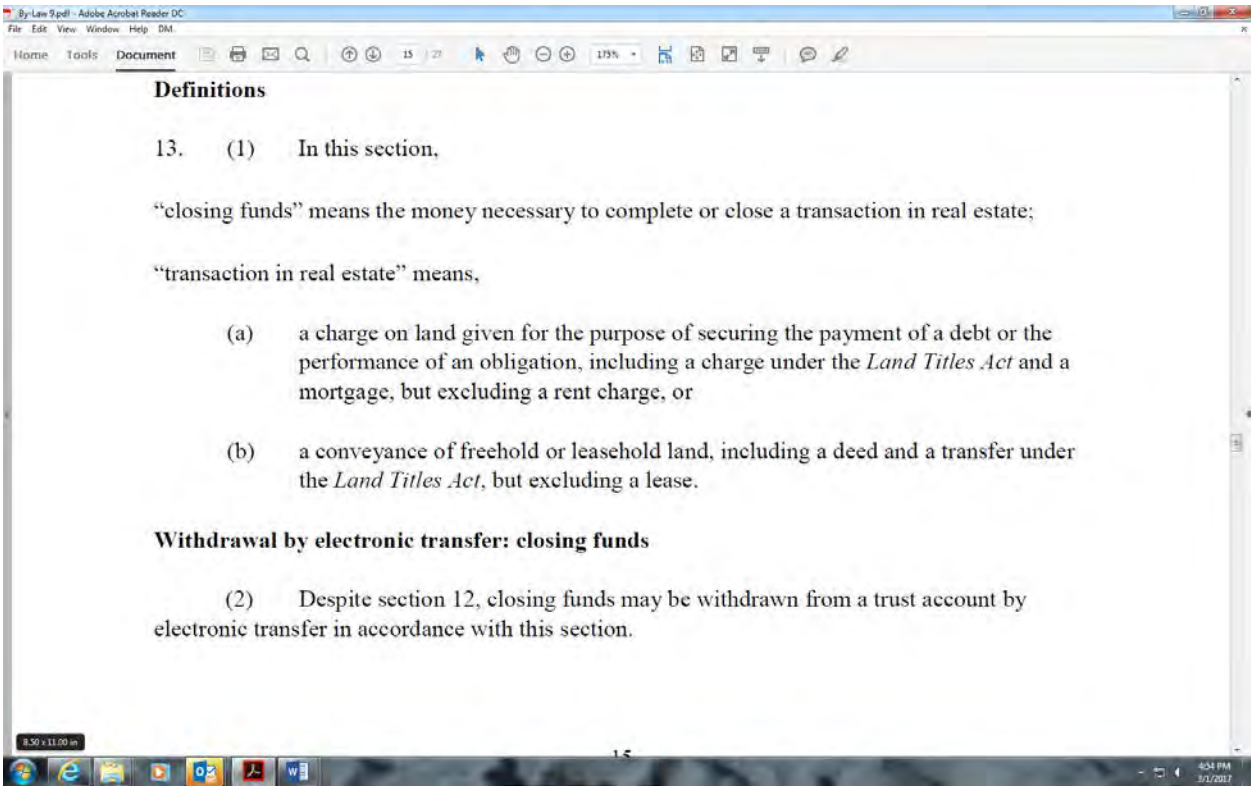
(d) after complying with clauses (a) to (c), sign and date the printed copy of the confirmation.

Same

(6) In exceptional circumstances, the tasks required by subsection (5) may be performed by a person other than the licensee, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.

Electronic trust transfer requisition

(7) The electronic trust transfer requisition required under paragraph 4 of subsection (2) shall be in Form 9A.



Definitions

13. (1) In this section,

"closing funds" means the money necessary to complete or close a transaction in real estate;

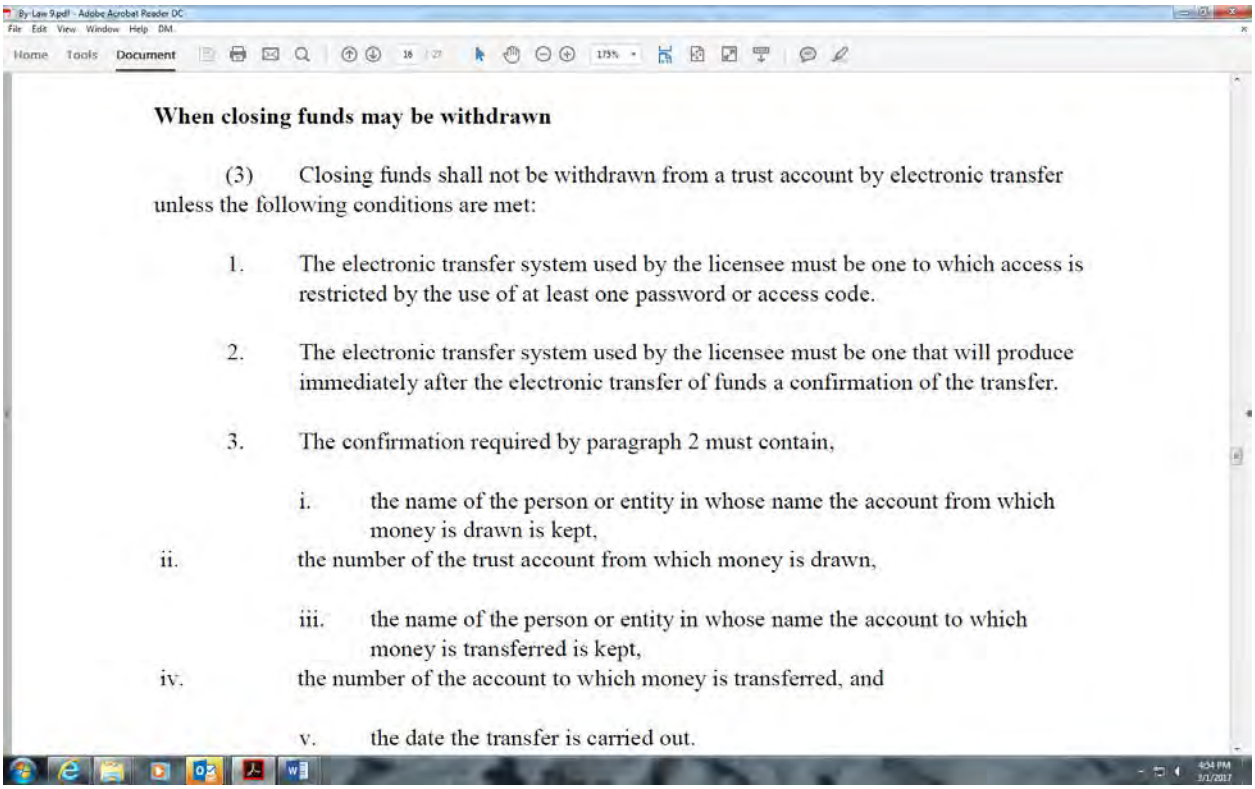
"transaction in real estate" means,

(a) a charge on land given for the purpose of securing the payment of a debt or the performance of an obligation, including a charge under the *Land Titles Act* and a mortgage, but excluding a rent charge, or

(b) a conveyance of freehold or leasehold land, including a deed and a transfer under the *Land Titles Act*, but excluding a lease.

Withdrawal by electronic transfer: closing funds

(2) Despite section 12, closing funds may be withdrawn from a trust account by electronic transfer in accordance with this section.



When closing funds may be withdrawn

(3) Closing funds shall not be withdrawn from a trust account by electronic transfer unless the following conditions are met:

1. The electronic transfer system used by the licensee must be one to which access is restricted by the use of at least one password or access code.

2. The electronic transfer system used by the licensee must be one that will produce immediately after the electronic transfer of funds a confirmation of the transfer.

3. The confirmation required by paragraph 2 must contain,

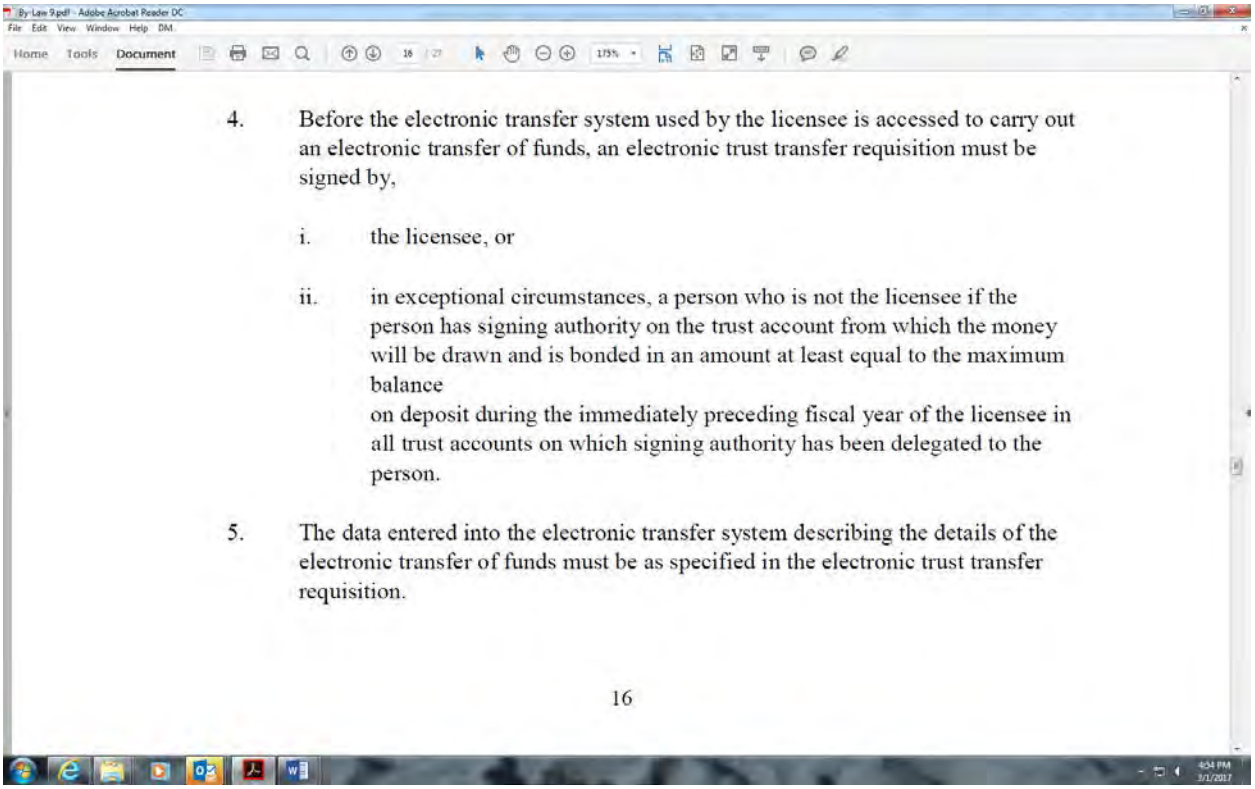
i. the name of the person or entity in whose name the account from which money is drawn is kept,

ii. the number of the trust account from which money is drawn,

iii. the name of the person or entity in whose name the account to which money is transferred is kept,

iv. the number of the account to which money is transferred, and

v. the date the transfer is carried out.



4. Before the electronic transfer system used by the licensee is accessed to carry out an electronic transfer of funds, an electronic trust transfer requisition must be signed by,

i. the licensee, or

ii. in exceptional circumstances, a person who is not the licensee if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance
on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.

5. The data entered into the electronic transfer system describing the details of the electronic transfer of funds must be as specified in the electronic trust transfer requisition.

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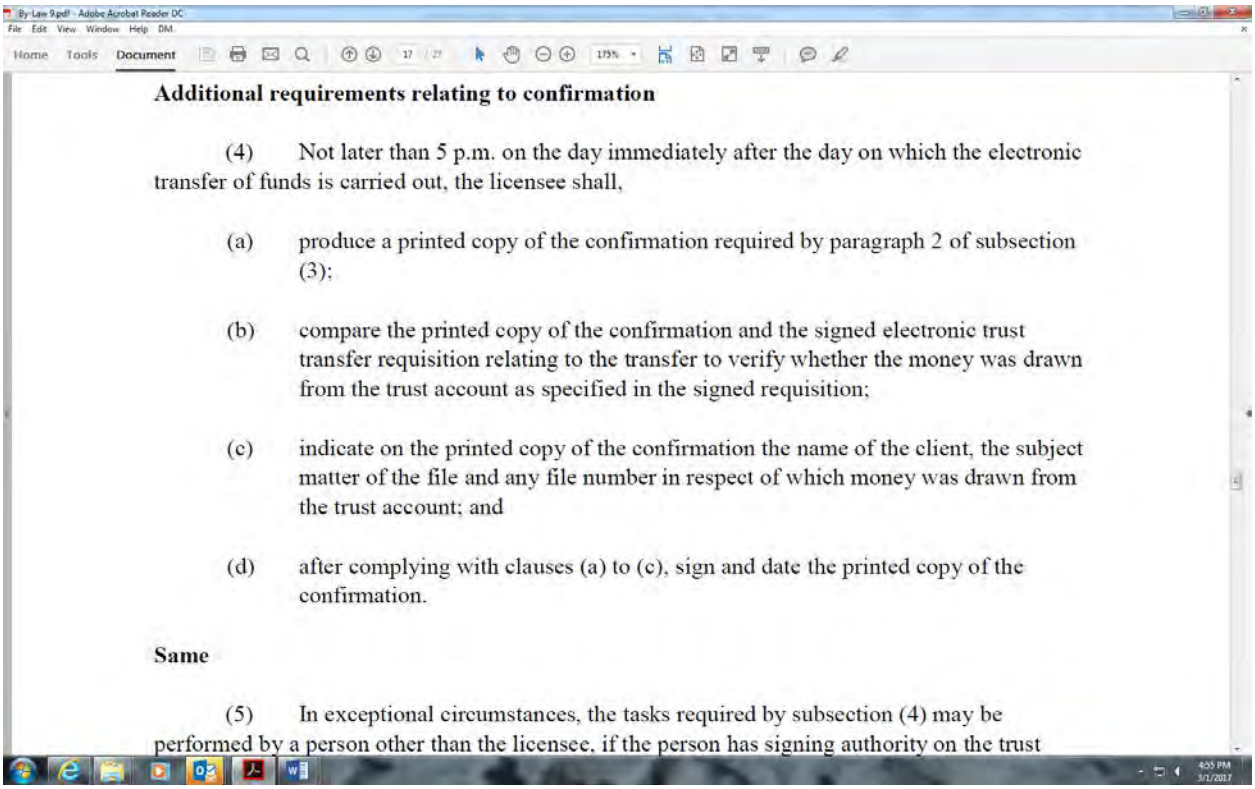


Additional requirements relating to confirmation

(4) Not later than 5 p.m. on the day immediately after the day on which the electronic transfer of funds is carried out, the licensee shall,

(a) produce a printed copy of the confirmation required by paragraph 2 of subsection (3);

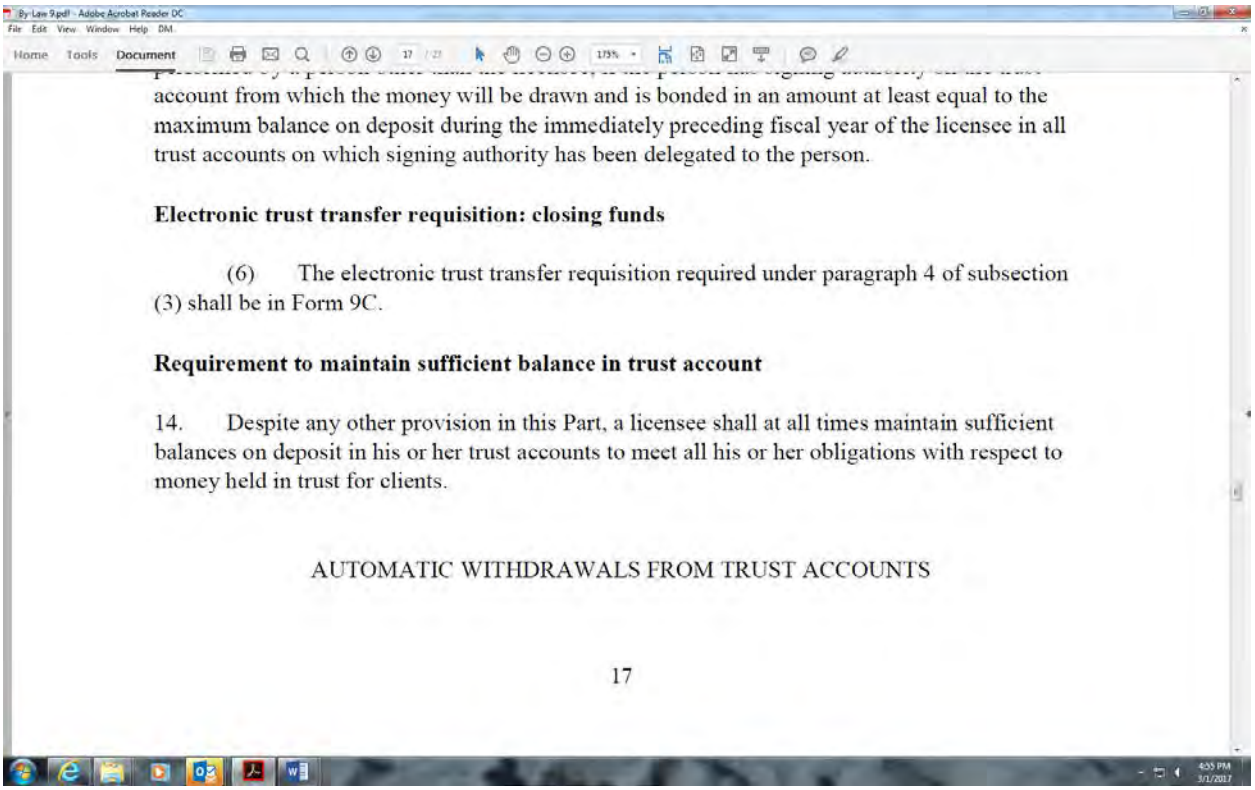
(b) compare the printed copy of the confirmation and the signed electronic trust transfer requisition relating to the transfer to verify whether the money was drawn from the trust account as specified in the signed requisition;

(c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which money was drawn from the trust account; and

(d) after complying with clauses (a) to (c), sign and date the printed copy of the confirmation.

Same

(5) In exceptional circumstances, the tasks required by subsection (4) may be performed by a person other than the licensee, if the person has signing authority on the trust



account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.

Electronic trust transfer requisition: closing funds

(6) The electronic trust transfer requisition required under paragraph 4 of subsection (3) shall be in Form 9C.

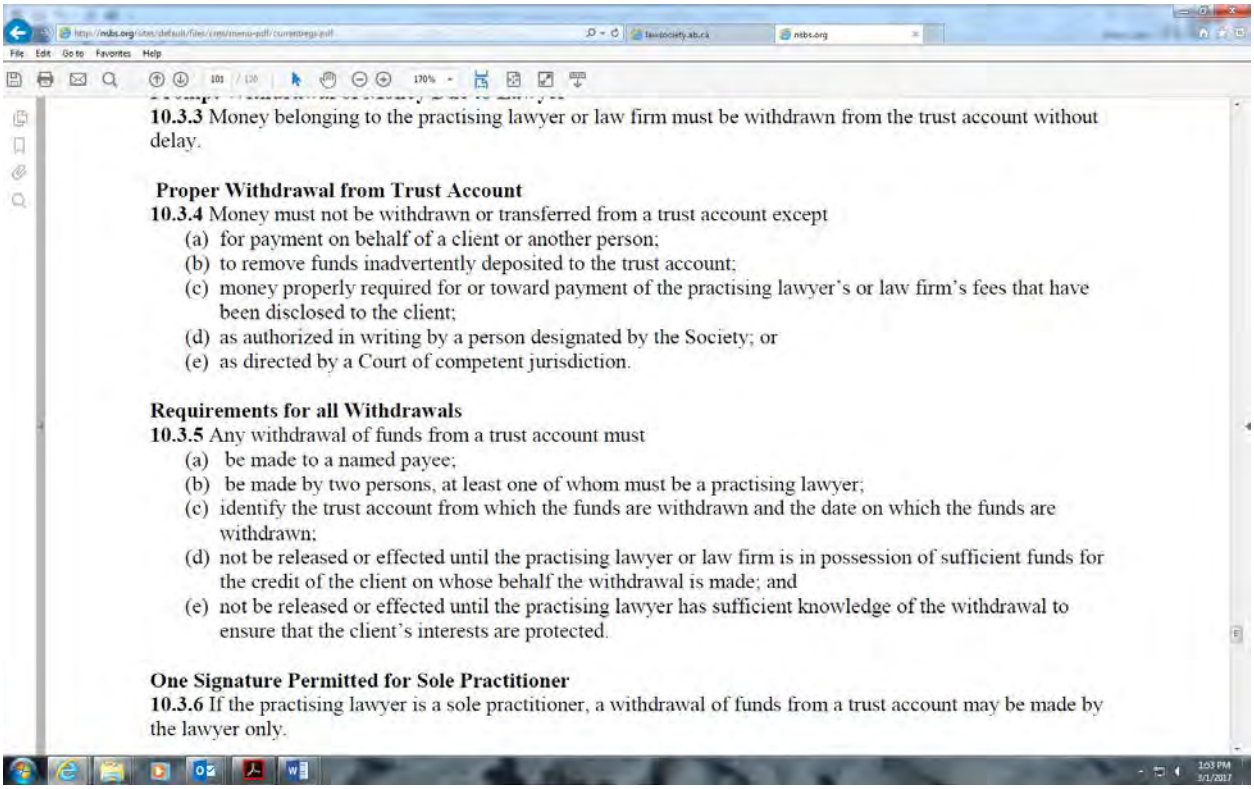
Requirement to maintain sufficient balance in trust account

14. Despite any other provision in this Part, a licensee shall at all times maintain sufficient balances on deposit in his or her trust accounts to meet all his or her obligations with respect to money held in trust for clients.

AUTOMATIC WITHDRAWALS FROM TRUST ACCOUNTS

17

Nova Scotia



10.3.3 Money belonging to the practising lawyer or law firm must be withdrawn from the trust account without delay.

Proper Withdrawal from Trust Account

10.3.4 Money must not be withdrawn or transferred from a trust account except

(a) for payment on behalf of a client or another person;
(b) to remove funds inadvertently deposited to the trust account;
(c) money properly required for or toward payment of the practising lawyer's or law firm's fees that have been disclosed to the client;
(d) as authorized in writing by a person designated by the Society; or
(e) as directed by a Court of competent jurisdiction.

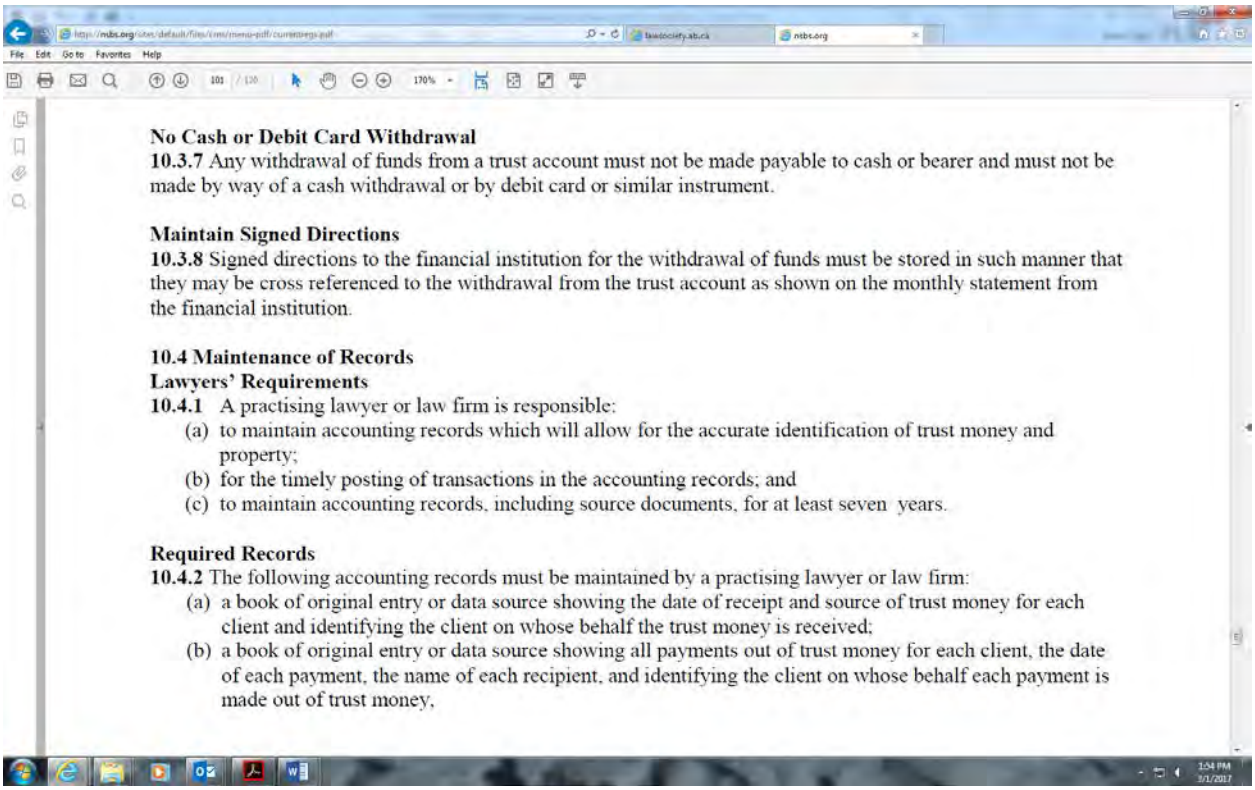
Requirements for all Withdrawals

10.3.5 Any withdrawal of funds from a trust account must

(a) be made to a named payee;
(b) be made by two persons, at least one of whom must be a practising lawyer;
(c) identify the trust account from which the funds are withdrawn and the date on which the funds are withdrawn;
(d) not be released or effected until the practising lawyer or law firm is in possession of sufficient funds for the credit of the client on whose behalf the withdrawal is made; and
(e) not be released or effected until the practising lawyer has sufficient knowledge of the withdrawal to ensure that the client's interests are protected.

One Signature Permitted for Sole Practitioner

10.3.6 If the practising lawyer is a sole practitioner, a withdrawal of funds from a trust account may be made by the lawyer only.



No Cash or Debit Card Withdrawal

10.3.7 Any withdrawal of funds from a trust account must not be made payable to cash or bearer and must not be made by way of a cash withdrawal or by debit card or similar instrument.

Maintain Signed Directions

10.3.8 Signed directions to the financial institution for the withdrawal of funds must be stored in such manner that they may be cross referenced to the withdrawal from the trust account as shown on the monthly statement from the financial institution.

10.4 Maintenance of Records

Lawyers' Requirements

10.4.1 A practising lawyer or law firm is responsible:

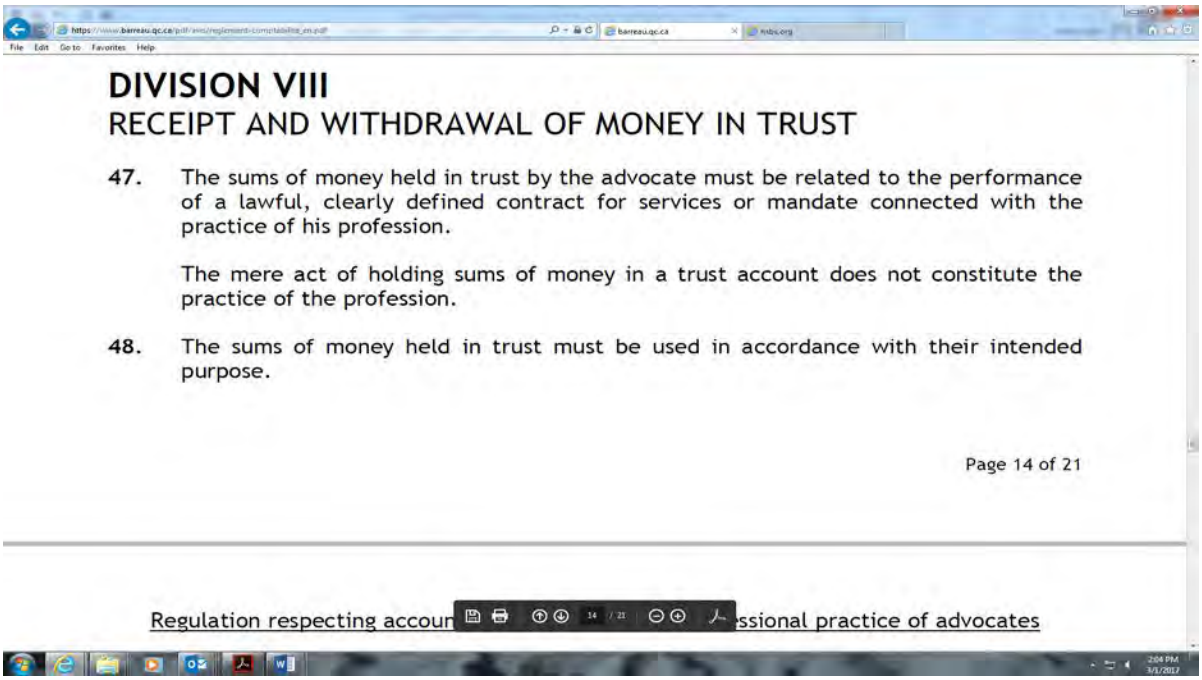
(a) to maintain accounting records which will allow for the accurate identification of trust money and property;
(b) for the timely posting of transactions in the accounting records; and
(c) to maintain accounting records, including source documents, for at least seven years.

Required Records

10.4.2 The following accounting records must be maintained by a practising lawyer or law firm:

(a) a book of original entry or data source showing the date of receipt and source of trust money for each client and identifying the client on whose behalf the trust money is received;
(b) a book of original entry or data source showing all payments out of trust money for each client, the date of each payment, the name of each recipient, and identifying the client on whose behalf each payment is made out of trust money,

Quebec



DIVISION VIII
RECEIPT AND WITHDRAWAL OF MONEY IN TRUST

47. The sums of money held in trust by the advocate must be related to the performance of a lawful, clearly defined contract for services or mandate connected with the practice of his profession.

The mere act of holding sums of money in a trust account does not constitute the practice of the profession.

48. The sums of money held in trust must be used in accordance with their intended purpose.

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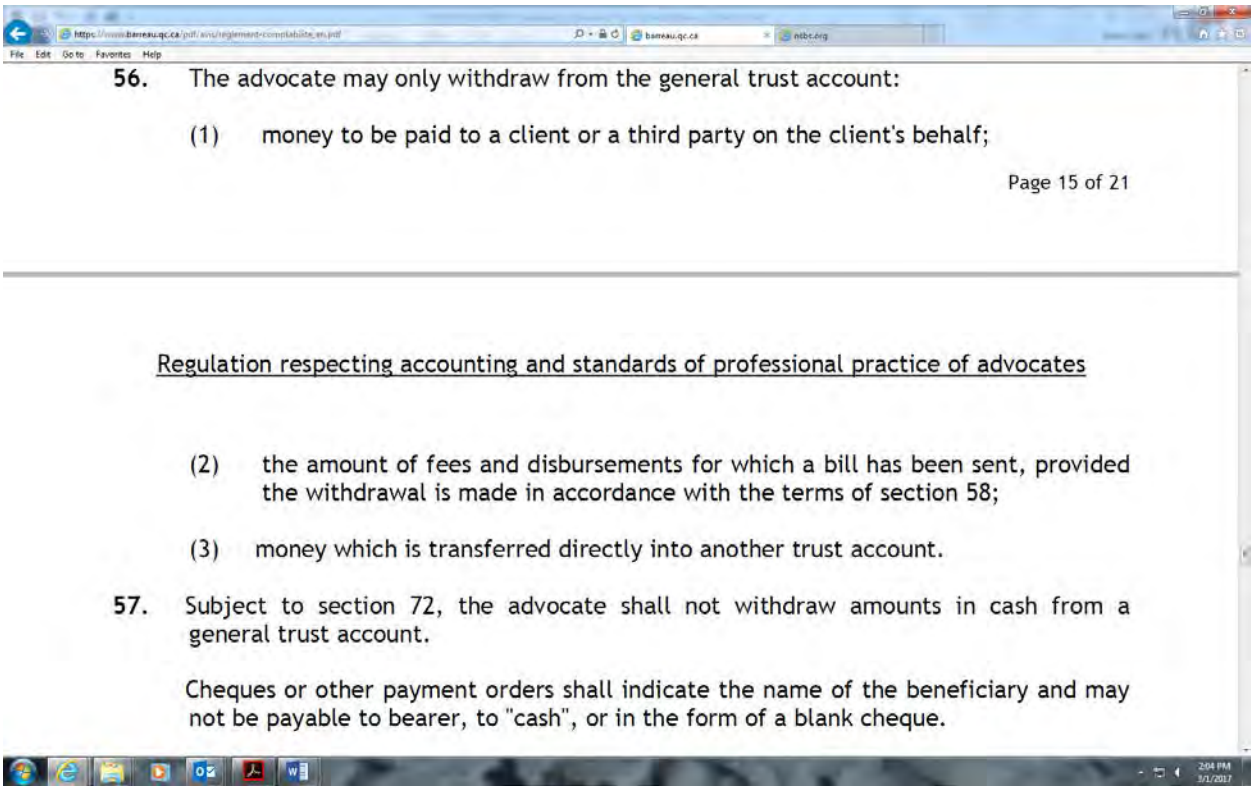
Regulation respecting accoun ssional practice of advocates



56. The advocate may only withdraw from the general trust account:

(1) money to be paid to a client or a third party on the client's behalf;

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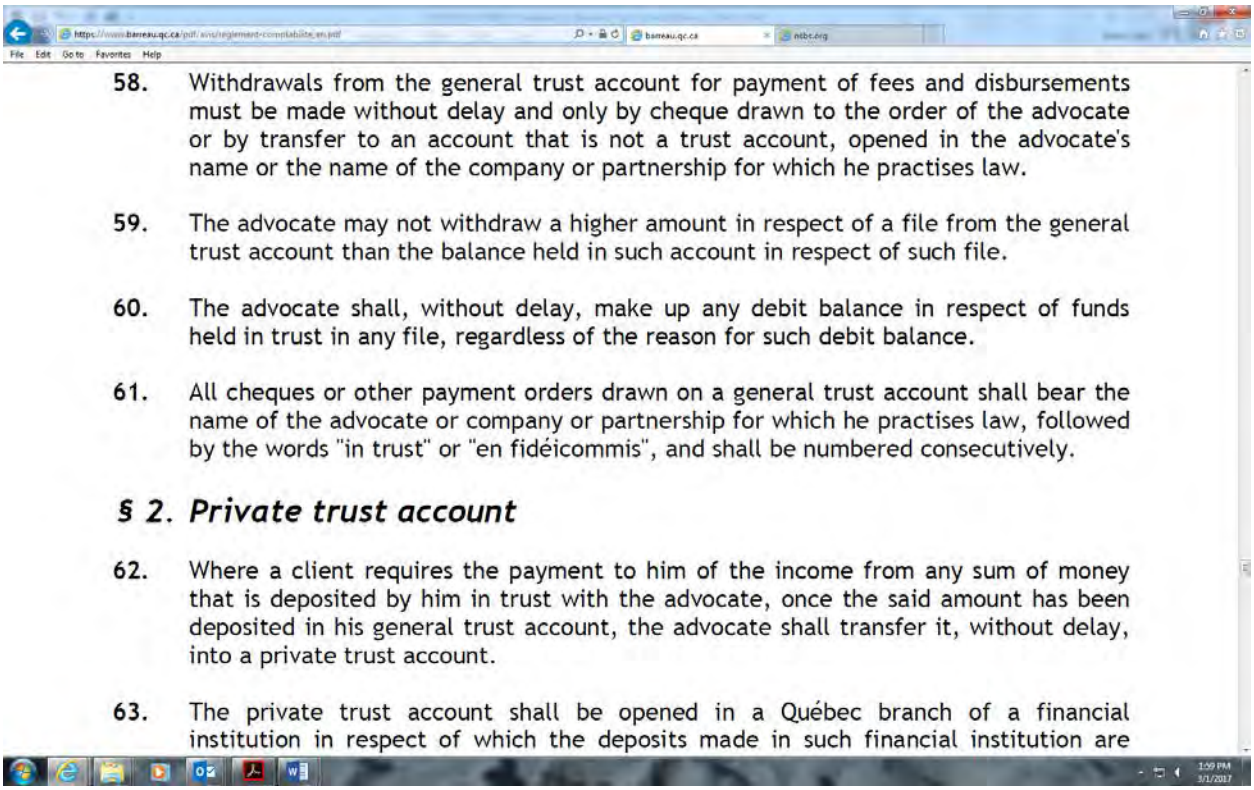
Regulation respecting accounting and standards of professional practice of advocates

(2) the amount of fees and disbursements for which a bill has been sent, provided the withdrawal is made in accordance with the terms of section 58;

(3) money which is transferred directly into another trust account.

57. Subject to section 72, the advocate shall not withdraw amounts in cash from a general trust account.

Cheques or other payment orders shall indicate the name of the beneficiary and may not be payable to bearer, to "cash", or in the form of a blank cheque.



58. Withdrawals from the general trust account for payment of fees and disbursements must be made without delay and only by cheque drawn to the order of the advocate or by transfer to an account that is not a trust account, opened in the advocate's name or the name of the company or partnership for which he practises law.

59. The advocate may not withdraw a higher amount in respect of a file from the general trust account than the balance held in such account in respect of such file.

60. The advocate shall, without delay, make up any debit balance in respect of funds held in trust in any file, regardless of the reason for such debit balance.

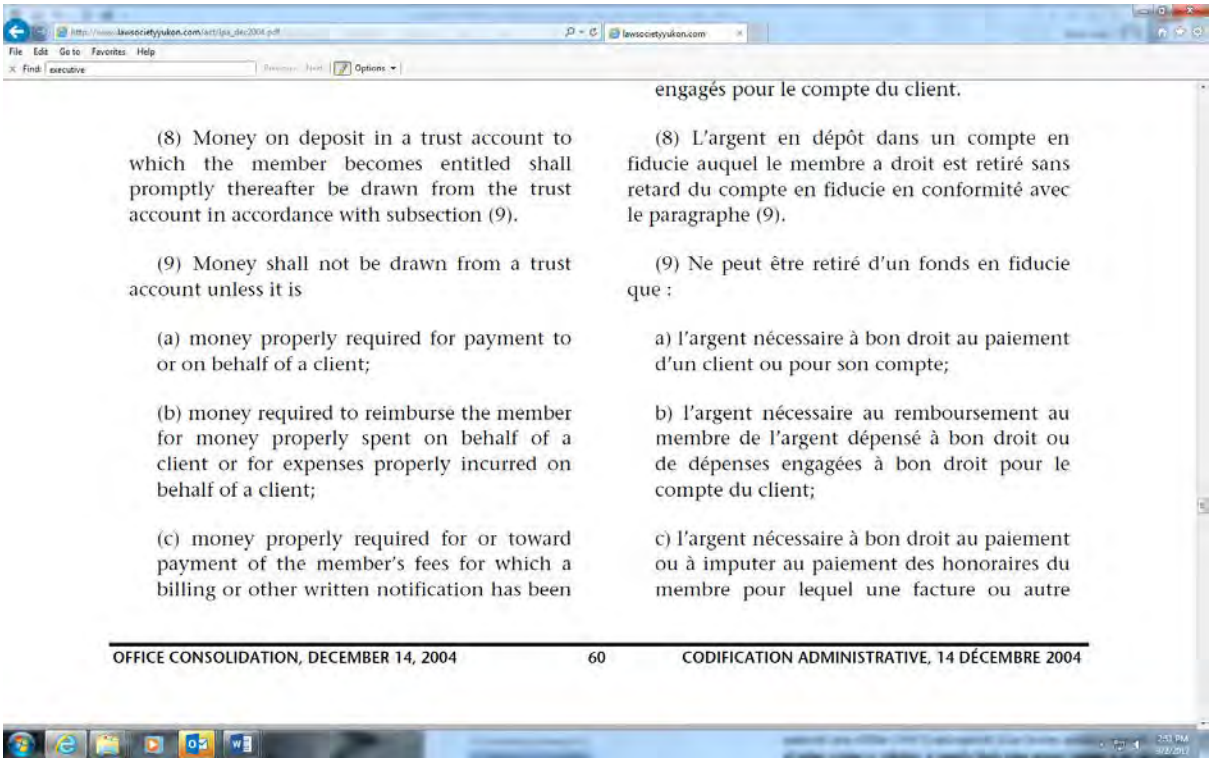
61. All cheques or other payment orders drawn on a general trust account shall bear the name of the advocate or company or partnership for which he practises law, followed by the words "in trust" or "en fidéicommis", and shall be numbered consecutively.

§ 2. *Private trust account*

62. Where a client requires the payment to him of the income from any sum of money that is deposited by him in trust with the advocate, once the said amount has been deposited in his general trust account, the advocate shall transfer it, without delay, into a private trust account.

63. The private trust account shall be opened in a Québec branch of a financial institution in respect of which the deposits made in such financial institution are

Yukon



engagés pour le compte du client.

(8) Money on deposit in a trust account to which the member becomes entitled shall promptly thereafter be drawn from the trust account in accordance with subsection (9).

(8) L'argent en dépôt dans un compte en fiducie auquel le membre a droit est retiré sans retard du compte en fiducie en conformité avec le paragraphe (9).

(9) Money shall not be drawn from a trust account unless it is

(9) Ne peut être retiré d'un fonds en fiducie que :

(a) money properly required for payment to or on behalf of a client;

a) l'argent nécessaire à bon droit au paiement d'un client ou pour son compte;

(b) money required to reimburse the member for money properly spent on behalf of a client or for expenses properly incurred on behalf of a client;

b) l'argent nécessaire au remboursement au membre de l'argent dépensé à bon droit ou de dépenses engagées à bon droit pour le compte du client;

(c) money properly required for or toward payment of the member's fees for which a billing or other written notification has been

c) l'argent nécessaire à bon droit au paiement ou à imputer au paiement des honoraires du membre pour lequel une facture ou autre

OFFICE CONSOLIDATION, DECEMBER 14, 2004 60 CODIFICATION ADMINISTRATIVE, 14 DÉCEMBRE 2004

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 7 – Trust Accounts and Other Client Property

Withdrawal from trust

3-64 (1) A lawyer must not withdraw or authorize the withdrawal of any trust funds unless the funds are

(a) properly required for payment to or on behalf of a client or to satisfy a court order,

(b) the property of the lawyer,

(c) in the account as the result of a mistake,

(d) paid to the lawyer to pay a debt of that client to the lawyer,

(e) transferred between trust accounts,

(f) due to the Foundation under section 62 (2) (b) *[Interest on trust accounts]*, or

(g) unclaimed trust funds remitted to the Society under Division 8 *[Unclaimed Trust Money]*.

(2) The Executive Director may authorize a lawyer to withdraw trust funds for a purpose not specified in subrule (1).

(3) No payment from trust funds may be made unless

(a) trust accounting records are current, and

(b) there are sufficient funds held to the credit of the client on whose behalf the funds are to be paid.

(4) A lawyer must not make or authorize the withdrawal of funds from a pooled or separate trust account, except

(a) by cheque as permitted by subrule (5) or (6),

(b) by electronic transfer as permitted by ~~subrule (7) or (8)~~Rule 3-64.1 *[Electronic transfers from trust]*,

(c) by instruction to a savings institution as permitted by subrule (9), or

(d) in cash if required under Rule 3-59 (5) or (6) *[Cash transactions]*.

(5) A lawyer who makes or authorizes the withdrawal of funds from a pooled or separate trust account by cheque must

(a) withdraw the funds with a cheque marked "Trust,"

(b) not make the cheque payable to "Cash" or "Bearer," and

LAW SOCIETY RULES

(c) ensure that the cheque is signed by a practising lawyer.

(6) **[rescinded]** ~~A lawyer who withdraws or authorizes the withdrawal of trust funds for the payment of fees must withdraw the funds with a cheque payable to the lawyer's general account.~~

(7) **[rescinded]** ~~A lawyer may make or authorize the withdrawal of funds from a pooled or separate trust account by electronic transfer, provided all of the following conditions are met:~~

~~(a) the transfer system is one that will produce, not later than the next banking day, a confirmation form from the financial institution confirming the details of the transfer, which should include the following:~~

~~(i) the date of the transfer;~~

~~(ii) source trust account information, including account name, financial institution and account number;~~

~~(iii) destination account information, including account name, financial institution, financial institution address and account number;~~

~~(iv) the name of the person authorizing the transfer;~~

~~(v) amount of the transfer;~~

~~(b) the lawyer must~~

~~(i) complete and personally sign a requisition for the transfer in a form approved by the Discipline Committee,~~

~~(ii) submit the original requisition to the appropriate financial institution,~~

~~(iii) retain a copy of the requisition in the lawyer's records,~~

~~(iv) obtain the confirmation referred to in paragraph (a) from the financial institution,~~

~~(v) retain a hard copy of the confirmation in the lawyer's records, and~~

~~(vi) immediately on receipt of the confirmation, verify that the money was drawn from the trust account as specified in the requisition.~~

(8) **[rescinded]** ~~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 Branch 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.~~

(9) A lawyer may instruct a savings institution to pay to the Foundation under Rule 3-60 *[Pooled trust account]* the net interest earned on a pooled trust account.

(10) A transfer of funds from a pooled trust account to a separate trust account must be authorized by the client and approved in writing signed by a lawyer.

Electronic transfers from trust

3-64.1 (1) In this rule, **"requisition"** means an electronic transfer of trust funds requisition, in a form approved by the Discipline Committee.

(2) A lawyer may withdraw funds from a pooled or separate trust account by electronic transfer, provided all of the following conditions are met:

(a) the electronic funds transfer system used by the lawyer must not permit an electronic transfer of funds unless,

(i) a person other than the lawyer, using a password or access code, enters data into the electronic funds transfer system describing the details of the transfer, and

(ii) the lawyer, using another password or access code, enters data into the electronic funds transfer system authorizing the financial institution to carry out the transfer;

(b) the lawyer using an electronic funds transfer system to withdraw trust funds must not

(i) disclose the lawyer's password or access code associated with the electronic funds transfer system to another person, or

(ii) permit another person, including a non-lawyer employee, to use the lawyer's password or access code to gain such access;

(c) the electronic funds transfer system used by the lawyer must produce, no later than the close of the banking day immediately after the day on which the electronic transfer of funds is authorized, a confirmation in writing from the financial institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer were received;

LAW SOCIETY RULES

(d) the confirmation required in paragraph (c) must contain all of the following:

(i) the name of the person authorizing the transfer;

(ii) the amount of the transfer;

(iii) the trust account name, trust account number and name of the financial institution from which the money is drawn;

(iv) the name, branch name and address of the financial institution where the account to which money is transferred is kept;

(v) the name of the person or entity in whose name the account to which money is transferred is kept;

(vi) the number of the account to which money is transferred;

(vii) the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution;

(viii) the time and date that the confirmation in writing from the financial institution was sent to the lawyer authorizing the transfer;

(e) before any data describing the details of the transfer or authorizing the financial institution to carry out the transfer is entered into the electronic funds transfer system, the lawyer must complete and sign a requisition authorizing the transfer;

(f) the data entered into the electronic funds transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer must be as specified in the requisition;

(g) the lawyer must retain in the lawyer's records a copy of

(i) the requisition

(ii) the confirmation required in paragraph (c).

(3) Despite subrule (2) (a), a lawyer who practises law as the only lawyer in a law firm and who has no non-lawyer staff may transfer funds electronically if the lawyer personally uses

(a) one password or access code to enter data into the electronic funds transfer system describing the details of the transfer, and

(b) a different password or access code to enter data into the electronic funds transfer system authorizing the financial institution to carry out the transfer.

(4) No later than the close of the banking day immediately after the day on which the confirmation required in subsection (2) (c) is sent to a lawyer, the lawyer must

(a) produce a printed copy of the confirmation,

(b) compare the printed copy of the confirmation and the signed requisition relating to the transfer to verify that the money was drawn from the trust account as specified in the signed requisition,

(c) indicate on the printed copy of the confirmation

(i) the name of the client,

(ii) the subject matter of the file, and

(iii) any file number

in respect of which the money was drawn from the trust account, and

(d) after complying with paragraphs (a) to (c), sign, date and retain the printed copy of the confirmation.

(5) A transaction in which a lawyer personally uses an electronic funds transfer system to authorize a financial institution to carry out a transfer of trust funds is not exempted under Rule 3-101 (c) (ii) *[Exemptions]* from the client identification and verification requirements under Rules 3-102 to 3-106.

(6) Despite subrules (2) to (4), a lawyer may withdraw 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.

Electronic deposits into trust

3-64.2 A lawyer must not receive money into a trust account by means of electronic transfer unless the following conditions are met:

(a) the lawyer must obtain a confirmation in writing providing details of the transfer from the financial institution or the remitter of the funds within 2 banking days of the deposit;

LAW SOCIETY RULES

(b) the deposit must generate sufficient documentation to enable the lawyer to meet the record-keeping requirements under this division.

Payment of fees from trust

3-65 (1) In this rule, **"fees"** means fees for services performed by a lawyer or a non-lawyer member of the lawyer's MDP, charges, disbursements and taxes on those fees, charges and disbursements.

(1.1) A lawyer who withdraws or authorizes the withdrawal of trust funds for the payment of the lawyer's fees must withdraw the funds

(a) with a cheque payable to the lawyer's general account, or

(b) by electronic transfer in accordance with Rule 3-64.1 *[Electronic transfers from trust]* to the lawyer's general account.

(2) A lawyer who withdraws or authorizes the withdrawal of trust funds under ~~Rule 3-64 *[Withdrawal from trust]*~~subrule (1.1) in payment for the lawyer's fees must first prepare a bill for those fees and immediately deliver the bill to the client.

Withdrawal from separate trust account

3-66 (1) A lawyer who makes or authorizes the withdrawal of funds from a separate trust account in respect of which cancelled cheques and bank statements are not received from the savings institution monthly and kept in the lawyer's records must first transfer the funds into his or her pooled trust account.

(2) Rules 3-64 ~~*[Withdrawal from trust]* and~~ to 3-65 ~~*[Payment of fees from trust]*~~ apply to funds that have been transferred into a pooled trust account in accordance with subrule (1).

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 7 – Trust Accounts and Other Client Property

Withdrawal from trust

3-64 (1) A lawyer must not withdraw or authorize the withdrawal of any trust funds unless the funds are

(a) properly required for payment to or on behalf of a client or to satisfy a court order,

(b) the property of the lawyer,

(c) in the account as the result of a mistake,

(d) paid to the lawyer to pay a debt of that client to the lawyer,

(e) transferred between trust accounts,

(f) due to the Foundation under section 62 (2) (b) *[Interest on trust accounts]*, or

(g) unclaimed trust funds remitted to the Society under Division 8 *[Unclaimed Trust Money]*.

(2) The Executive Director may authorize a lawyer to withdraw trust funds for a purpose not specified in subrule (1).

(3) No payment from trust funds may be made unless

(a) trust accounting records are current, and

(b) there are sufficient funds held to the credit of the client on whose behalf the funds are to be paid.

(4) A lawyer must not make or authorize the withdrawal of funds from a pooled or separate trust account, except

(a) by cheque as permitted by subrule (5) or (6),

(b) by electronic transfer as permitted by Rule 3-64.1 *[Electronic transfers from trust]*,

(c) by instruction to a savings institution as permitted by subrule (9), or

(d) in cash if required under Rule 3-59 (5) or (6) *[Cash transactions]*.

(5) A lawyer who makes or authorizes the withdrawal of funds from a pooled or separate trust account by cheque must

(a) withdraw the funds with a cheque marked "Trust,"

(b) not make the cheque payable to "Cash" or "Bearer," and

(c) ensure that the cheque is signed by a practising lawyer.

(6) **[rescinded]**

(7) **[rescinded]**

(8) **[rescinded]**

(9) A lawyer may instruct a savings institution to pay to the Foundation under Rule 3-60 *[Pooled trust account]* the net interest earned on a pooled trust account.

(10) A transfer of funds from a pooled trust account to a separate trust account must be authorized by the client and approved in writing signed by a lawyer.

Electronic transfers from trust

3-64.1 (1) In this rule, **"requisition"** means an electronic transfer of trust funds requisition, in a form approved by the Discipline Committee.

(2) A lawyer may withdraw funds from a pooled or separate trust account by electronic transfer, provided all of the following conditions are met:

(a) the electronic funds transfer system used by the lawyer must not permit an electronic transfer of funds unless,

(i) a person other than the lawyer, using a password or access code, enters data into the electronic funds transfer system describing the details of the transfer, and

(ii) the lawyer, using another password or access code, enters data into the electronic funds transfer system authorizing the financial institution to carry out the transfer;

(b) the lawyer using an electronic funds transfer system to withdraw trust funds must not

(i) disclose the lawyer's password or access code associated with the electronic funds transfer system to another person, or

(ii) permit another person, including a non-lawyer employee, to use the lawyer's password or access code to gain such access;

(c) the electronic funds transfer system used by the lawyer must produce, no later than the close of the banking day immediately after the day on which the electronic transfer of funds is authorized, a confirmation in writing from the financial institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer were received;

(d) the confirmation required in paragraph (c) must contain all of the following:

(i) the name of the person authorizing the transfer;

LAW SOCIETY RULES

(ii) the amount of the transfer;

(iii) the trust account name, trust account number and name of the financial institution from which the money is drawn;

(iv) the name, branch name and address of the financial institution where the account to which money is transferred is kept;

(v) the name of the person or entity in whose name the account to which money is transferred is kept;

(vi) the number of the account to which money is transferred;

(vii) the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution;

(viii) the time and date that the confirmation in writing from the financial institution was sent to the lawyer authorizing the transfer;

(e) before any data describing the details of the transfer or authorizing the financial institution to carry out the transfer is entered into the electronic funds transfer system, the lawyer must complete and sign a requisition authorizing the transfer;

(f) the data entered into the electronic funds transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer must be as specified in the requisition;

(g) the lawyer must retain in the lawyer's records a copy of

(i) the requisition

(ii) the confirmation required in paragraph (c).

(3) Despite subrule (2) (a), a lawyer who practises law as the only lawyer in a law firm and who has no non-lawyer staff may transfer funds electronically if the lawyer personally uses

(a) one password or access code to enter data into the electronic funds transfer system describing the details of the transfer, and

(b) a different password or access code to enter data into the electronic funds transfer system authorizing the financial institution to carry out the transfer.

(4) No later than the close of the banking day immediately after the day on which the confirmation required in subsection (2) (c) is sent to a lawyer, the lawyer must

(a) produce a printed copy of the confirmation,

(b) compare the printed copy of the confirmation and the signed requisition relating to the transfer to verify that the money was drawn from the trust account as specified in the signed requisition,

(c) indicate on the printed copy of the confirmation

(i) the name of the client,

(ii) the subject matter of the file, and

(iii) any file number

in respect of which the money was drawn from the trust account, and

(d) after complying with paragraphs (a) to (c), sign, date and retain the printed copy of the confirmation.

(5) A transaction in which a lawyer personally uses an electronic funds transfer system to authorize a financial institution to carry out a transfer of trust funds is not exempted under Rule 3-101 (c) (ii) *[Exemptions]* from the client identification and verification requirements under Rules 3-102 to 3-106.

(6) Despite subrules (2) to (4), a lawyer may withdraw 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.

Electronic deposits into trust

3-64.2 A lawyer must not receive money into a trust account by means of electronic transfer unless the following conditions are met:

(a) the lawyer must obtain a confirmation in writing providing details of the transfer from the financial institution or the remitter of the funds within 2 banking days of the deposit;

(b) the deposit must generate sufficient documentation to enable the lawyer to meet the record-keeping requirements under this division.

Payment of fees from trust

3-65 (1) In this rule, **"fees"** means fees for services performed by a lawyer or a non-lawyer member of the lawyer's MDP, charges, disbursements and taxes on those fees, charges and disbursements.

(1.1) A lawyer who withdraws or authorizes the withdrawal of trust funds for the payment of the lawyer's fees must withdraw the funds

(a) with a cheque payable to the lawyer's general account, or

(b) by electronic transfer in accordance with Rule 3-64.1 *[Electronic transfers from trust]* to the lawyer's general account.

(2) A lawyer who withdraws or authorizes the withdrawal of trust funds under subrule (1.1) in payment for the lawyer's fees must first prepare a bill for those fees and immediately deliver the bill to the client.

Withdrawal from separate trust account

3-66 (1) A lawyer who makes or authorizes the withdrawal of funds from a separate trust account in respect of which cancelled cheques and bank statements are not received from the savings institution monthly and kept in the lawyer's records must first transfer the funds into his or her pooled trust account.

(2) Rules 3-64 to 3-65 apply to funds that have been transferred into a pooled trust account in accordance with subrule (1).

ELECTRONIC TRUST FUND TRANSFERS

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules effective July 1, 2018 as follows:

1. In Rule 3-64:

(a) by rescinding subrule (4) (b) and substituting the following:

(b) by electronic transfer as permitted by Rule 3-64.1 *[Electronic transfers from trust]*,***; and***

(b) by rescinding subrules (6) to (8);

2. By rescinding Rule 3-65 and substituting the following:

Electronic transfers from trust

3-64.1 (1) In this rule, **"requisition"** means an electronic transfer of trust funds requisition, in a form approved by the Discipline Committee.

(2) A lawyer may withdraw funds from a pooled or separate trust account by electronic transfer, provided all of the following conditions are met:

(a) the electronic funds transfer system used by the lawyer must not permit an electronic transfer of funds unless,

(i) a person other than the lawyer, using a password or access code, enters data into the electronic funds transfer system describing the details of the transfer, and

(ii) the lawyer, using another password or access code, enters data into the electronic funds transfer system authorizing the financial institution to carry out the transfer;

(b) the lawyer using an electronic funds transfer system to withdraw trust funds must not

(i) disclose the lawyer's password or access code associated with the electronic funds transfer system to another person, or

(ii) permit another person, including a non-lawyer employee, to use the lawyer's password or access code to gain such access;

(c) the electronic funds transfer system used by the lawyer must produce, no later than the close of the banking day immediately after the day on which the electronic transfer of funds is authorized, a confirmation in writing from the financial

institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer were received;

(d) the confirmation required in paragraph (c) must contain all of the following:

(i) the name of the person authorizing the transfer;

(ii) the amount of the transfer;

(iii) the trust account name, trust account number and name of the financial institution from which the money is drawn;

(iv) the name, branch name and address of the financial institution where the account to which money is transferred is kept;

(v) the name of the person or entity in whose name the account to which money is transferred is kept;

(vi) the number of the account to which money is transferred;

(vii) the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution;

(viii) the time and date that the confirmation in writing from the financial institution was sent to the lawyer authorizing the transfer;

(e) before any data describing the details of the transfer or authorizing the financial institution to carry out the transfer is entered into the electronic funds transfer system, the lawyer must complete and sign a requisition authorizing the transfer;

(f) the data entered into the electronic funds transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer must be as specified in the requisition;

(g) the lawyer must retain in the lawyer's records a copy of

(i) the requisition

(ii) the confirmation required in paragraph (c).

(3) Despite subrule (2) (a), a lawyer who practises law as the only lawyer in a law firm and who has no non-lawyer staff may transfer funds electronically if the lawyer personally uses

(a) one password or access code to enter data into the electronic funds transfer system describing the details of the transfer, and

(b) a different password or access code to enter data into the electronic funds transfer system authorizing the financial institution to carry out the transfer.

(4) No later than the close of the banking day immediately after the day on which the confirmation required in subsection (2) (c) is sent to a lawyer, the lawyer must

(a) produce a printed copy of the confirmation,

(b) compare the printed copy of the confirmation and the signed requisition relating to the transfer to verify that the money was drawn from the trust account as specified in the signed requisition,

(c) indicate on the printed copy of the confirmation

(i) the name of the client,

(ii) the subject matter of the file, and

(iii) any file number

in respect of which the money was drawn from the trust account, and

(d) after complying with paragraphs (a) to (c), sign, date and retain the printed copy of the confirmation.

(5) A transaction in which a lawyer personally uses an electronic funds transfer system to authorize a financial institution to carry out a transfer of trust funds is not exempted under Rule 3-101 (c) (ii) *[Exemptions]* from the client identification and verification requirements under Rules 3-102 to 3-106.

(6) Despite subrules (2) to (4), a lawyer may withdraw 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.

Electronic deposits into trust

3-64.2 A lawyer must not receive money into a trust account by means of electronic transfer unless the following conditions are met:

(a) the lawyer must obtain a confirmation in writing providing details of the transfer from the financial institution or the remitter of the funds within 2 banking days of the deposit;

(b) the deposit must generate sufficient documentation to enable the lawyer to meet the record-keeping requirements under this division.

Payment of fees from trust

3-65 (1) In this rule, "fees" means fees for services performed by a lawyer or a non-lawyer member of the lawyer's MDP, charges, disbursements and taxes on those fees, charges and disbursements.

(1.1) A lawyer who withdraws or authorizes the withdrawal of trust funds for the payment of the lawyer's fees must withdraw the funds

(a) with a cheque payable to the lawyer's general account, or

(b) by electronic transfer in accordance with Rule 3-64.1 *[Electronic transfers from trust]* to the lawyer's general account.

(2) A lawyer who withdraws or authorizes the withdrawal of trust funds under subrule (1.1) in payment for the lawyer's fees must first prepare a bill for those fees and immediately deliver the bill to the client.***; and***

3. In Rule 3-66 (2), by striking "Rules 3-64 and 3-65 apply***" and substituting "***Rules 3-64 to 3-65 apply***".***

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC on behalf of Act and Rules Committee
Date: November 3, 2017
Subject: **Bencher election rules—Rule 1-22**

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1. Following a recommendation of the Equity and Diversity Advisory Committee, in December of 2016, the Benchers voted to recommend the removal of the requirement that lawyers have at least seven years of call to the bar before qualifying to be a candidate in a Bencher election. Removal of that requirement was intended to facilitate the participation of newly called lawyers in Law Society governance and to improve Bencher diversity.

2. At the Annual General Meeting of the Law Society on October 3, members present voted 75 to 36 in favour of this resolution, which was proposed and recommended by the Benchers:

   WHEREAS Rule 1-22(1)(b) requires that a candidate for elected Bencher must have been a member of the Law Society in good standing for at least seven years;

   AND WHEREAS the Equity and Diversity Advisory Committee has reported to the Benchers that that provision acts as a systemic barrier to a large number of lawyers in the province;

   AND WHEREAS the Benchers resolved to recommend to the members at the Annual General Meeting that that provision should be removed;

   THEREFORE BE IT RESOLVED that the Benchers are authorized to rescind Rule 1-22(1)(b).

3. In order to give effect to that resolution, the Benchers will now have to adopt a resolution rescinding the relevant provision. The Committee recommends the following resolution for adoption by the Benchers:

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 1-22 (1) (b).

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

JGH

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC
Date: November 29, 2017
Subject: **Code of Professional and Ethical Responsibilities for Tribunal Adjudicators**

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1. I attach the Code of Professional and Ethical Responsibilities for Tribunal Adjudicators. This Code was developed by a working group of the Law Society Tribunal chaired by President Herman Van Ommen, QC. The other members of the working group were Benchers Jasmin Ahmad, Dean Lawton, QC, and Woody Hayes, together with senior counsel Jean Whittow, QC. Staff support was provided by Hearing Administrator Michelle Robertson and myself.

2. The working group considered the current Bencher Code of Conduct, codes of conduct of other organizations such as the Law Society of Ontario and model codes of conduct. This Code was constructed from the best of the codes considered and reworked to fit the LSBC situation.

3. At the annual refresher course in September, Mr. Van Ommen circulated and spoke to the penultimate draft. That was followed up with a copy of the draft sent to all adjudicators and a request for comments by mid-October.

4. The working group received and considered a number of comments and suggestions from adjudicators, including Benchers. Several suggestions, but not all, were incorporated in the final draft.

Attachment: Code of Professional and Ethical Responsibilities for Tribunal Adjudicators

JGH

The Law Society of British Columbia

Code of Professional and Ethical Responsibilities for Tribunal Adjudicators

2017
THE LAW SOCIETY OF BC

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Purpose of Code

1. The purpose of this Code is to establish rules of conduct governing the professional and ethical responsibilities of tribunal adjudicators. The rules cover the primary areas of responsibility of adjudicators, both as members of a hearing panel or review board, that is, the conduct of hearings and decision-making, as well as the institutional responsibilities of adjudicators to colleagues, to the President or the President's designate as head of the tribunal, and to the tribunal itself.

2. The Code has been developed in recognition of the fundamental and over-riding responsibility of all tribunal adjudicators to maintain the integrity, competence and effectiveness of the tribunal as a whole. The rules are intended to assist adjudicators by establishing appropriate standards of conduct in typical administrative justice circumstances. It is recognized, however, that the Code cannot anticipate all possible fact situations in which adjudicators may be called upon to exercise judgment as to the appropriate standard of conduct. Some circumstances will require that the rules in the Code be adjusted to reflect a different standard of conduct, whether more or less onerous. In each case, it remains the responsibility of each individual adjudicator to consider the appropriate standard and to act in an ethical and professional manner.

Application of Code

3. The rules in this Code apply to all tribunal adjudicators: Benchers, public representative members, and non-Bencher lawyers. For simplicity, the term **"adjudicator"** is used to include all panel members unless otherwise specifically differentiated. Similarly, the term **"panel"** is used to include all types of hearing panels and review boards. Where certain responsibilities of the President have been delegated to a designate, the term **"President"** in this Code should be taken to include such designates. **"Tribunal"** refers collectively to all types of hearing panels and review boards.

4. The Code governs the conduct of adjudicators from the commencement of the term of appointment or, in the case of lawyer-Benchers, election. Also included are the continuing responsibilities of adjudicator after completion of their terms.

5. The Code may be amended from time to time to reflect the developing experience of the tribunal.

Conflict of Interest

Definitions

6. A **"conflict of interest"** is any interest, relationship, association or activity that is incompatible with an adjudicator's obligation of impartial adjudication. A conflict of interest is defined for the purpose of this Code to include both pecuniary and non-pecuniary conflicts.

7. When the circumstances surrounding a proceeding raise a possible conflict of interest, the test as to whether the adjudicator should be disqualified is whether the facts could give rise to a reasonable apprehension of bias in the mind of a reasonable and informed person. That should be determined with reference to the applicable common law.

Avoid conflicts and reasonable apprehension of bias

8. An adjudicator must not adjudicate in any proceeding, or participate in tribunal discussions of any matter, if the adjudicator has a conflict of interest.

9. By way of examples, an adjudicator must not participate in any proceeding, or participate in tribunal discussions of any matter, in any of the following circumstances:

    (a) the adjudicator or his or her family member or close associate has a financial interest in the outcome of the matter;
    (b) the adjudicator or a family member or close associate has had any prior involvement in the proceeding;

(c) the adjudicator believes that his or her impartiality may be affected or appear to be affected by a personal interest or by a relationship with one of the parties or a representative;

(d) the hearing involves a party or representative with whom the adjudicator was formerly in a significant professional relationship until a period of three years has elapsed from the termination of the relationship. A significant professional relationship includes employment, solicitor/client or partnership/association in a law firm.

(e) The hearing involves a party or representative with whom the adjudicator has a close personal relationship. For example, an adjudicator should consider withdrawing from a hearing if counsel for one of the parties is a close friend. The appropriate response varies depending on the facts, but in every case, the particular circumstances of the relationship and the position of the other parties should be considered carefully.

10. An adjudicator must refrain from publicly taking a substantive position in respect of an issue currently under consideration in any proceeding before the tribunal.

11. An adjudicator must not accept money, awards or gifts from persons who may become, or have been, affected by a tribunal decision. When a gift is, or may be perceived to be, offered because of membership in the tribunal, the President must be advised forthwith. An adjudicator is normally allowed to accept a small token gift offered as an honorarium for a speaking engagement. Other gifts should be returned immediately or delivered to the President for prompt action.

12. An adjudicator must not appear as an expert witness or character witness or as an agent or representative for a party before the tribunal or in court in an appeal or review of a tribunal decision.

13. An adjudicator must not act as a professional or legal consultant in the preparation of a case before the tribunal or in any matter relating to the work of the tribunal, including an appeal or review of a tribunal decision.

14. An adjudicator must not take improper advantage of information obtained through official duties and not generally available to the public, to obtain a personal benefit. This does not, in most cases, include contributions to professional educational activities, such as public conferences.

Procedure for potential or alleged conflict or bias

15. It is the responsibility of each adjudicator to consider and actively inquire into any circumstance that might suggest a possible conflict of interest or raise a reasonable apprehension of bias in respect of any of his or her responsibilities. The adjudicator may be the only person in a position to recognize a possible conflict or an issue of bias. As soon as a potential conflict, or grounds for a reasonable apprehension of bias, is identified, an adjudicator should immediately take appropriate steps as outlined below.

16. When an adjudicator has a potential conflict of interest in respect of a matter before the tribunal but not assigned to the member for adjudication, the adjudicator must refrain from participation in any discussion of the matter and must not be present for such discussions.

17. An adjudicator who becomes aware, prior to accepting an appointment to adjudicate a particular matter or prior to commencing the hearing, that circumstances exist that suggest a possible conflict of interest on the part of the adjudicator, or that may raise a reasonable apprehension of bias, must immediately inform the President. If the President determines that the circumstances are insignificant, the adjudicator may continue with the hearing unless he or she decides that the issue should be placed before the parties for submissions at the commencement of the hearing.

18. When an allegation of conflict of interest or reasonable apprehension of bias is raised by a party during a hearing, the adjudicator concerned should consult the other members of the panel and may:

(a) withdraw from the proceeding at once if he or she considers this to be appropriate, given the nature and circumstances of the alleged conflict (for example, when the adjudicator recognizes an actual pecuniary conflict);
(b) hear submissions from the parties with respect to the alleged conflict and reserve to consider the submissions; or
(c) schedule a time for submissions on the allegation of conflict.

19. When an adjudicator becomes aware during a hearing of a possible conflict of interest, or of facts that may give rise to a reasonable apprehension of bias, and the related circumstances are unknown to the parties, the adjudicator must advise the other members of the panel and may:

(a) advise the parties without delay of the possible conflict and hear submissions on the issue; or
(b) recess the hearing to consider whether the possible conflict is serious and whether it is appropriate to inform the parties of the circumstances and hear submissions.

20. Circumstances that may raise a conflict of interest, or a reasonable apprehension of bias, should be disclosed to parties and representatives as soon as they are known unless the adjudicator determines, upon reflection, that the potential issue is trivial and of no significance. An adjudicator may wish to consult tribunal counsel or the President before making this determination.

21. While it is essential that an adjudicator not participate in a proceeding when there is a conflict of interest or a reasonable apprehension of bias, it is equally important that an adjudicator not recuse himself or herself unless there are valid grounds for doing so.

22. Determinations on issues of conflict of interest or reasonable apprehension of bias are for the adjudicator to make. However, given that allegations of conflict and bias affect the credibility and integrity of the tribunal as a whole, when an adjudicator's neutrality is challenged, the panel should inform the President of the nature of the allegations made.

23. When a party before the tribunal has made submissions challenging the neutrality of an adjudicator, it is advisable in most cases for the adjudicator to issue a written decision on the allegation of reasonable apprehension of bias or conflict of interest.

Potential or alleged conflict or bias affecting the President

24. If the President becomes aware of a possible conflict of interest or of facts that may give rise to a reasonable apprehension of bias with respect to a matter that the President is adjudicating, the procedural protocol established in this Code for adjudicators must be followed with appropriate adjustments.

25. If the President determines that he or she has a possible conflict of interest or a potential bias in respect of a matter that is before the tribunal but that the President is not adjudicating, the President must instruct tribunal staff that all communications regarding the matter are to be directed to another designated Bencher. The file must be marked “No Access to President.” All decisions regarding the choice of panel, the scheduling and conduct of the hearing, and the release of the decision must be made without the participation of the President.

Conduct of the Hearing

26. An adjudicator must approach every hearing with an open mind with respect to every issue, and must avoid doing or saying anything that could cause any person to think otherwise.

27. An adjudicator must show respect for the parties, representatives and witnesses and for the hearing process itself, through demeanour, timeliness, dress and conduct throughout the proceeding.

28. An adjudicator must not, in the course of a hearing, have significant social interaction with a party, representative or witness, except if all parties and representatives are present and there is no discussion with respect to the subject matter of the hearing.

29. An adjudicator must not communicate directly or indirectly with any party, witness or representative in respect of a proceeding, except in the presence of all parties and their representatives. Telephone calls to the adjudicator should be referred to the hearing administrator or tribunal counsel. Correspondence to or from a party or counsel should be handled by the hearing administrator or tribunal counsel and forwarded to all parties and representatives not already copied.

30. An adjudicator must listen carefully and with respect to the views and submissions of the parties and their representatives.

33. An adjudicator must demonstrate a high degree of sensitivity to issues of gender, ability, race, language, culture and religion that may affect the hearing process. Such issues may, for example, affect the affirmation or swearing of witnesses, the scheduling and time of the hearing or the attire of the participants, among other things. In considering the demeanour of a witness in the context of an assessment of credibility, an adjudicator should recognize that he or she may not be familiar with cultural norms affecting the manner of the witness.

34. An adjudicator must endeavour, in accordance with the Law Society Rules and policies, to ensure that the hearing room and process is accessible and barrier-free for all parties, representatives and witnesses.

35. An adjudicator must endeavour to conduct all hearings expeditiously, preventing unnecessary delay while ensuring that all parties have a fair opportunity to present their case.

36. An adjudicator must avoid undue interruption and interference in the examination and cross-examination of witnesses. It is permissible for an adjudicator to question a witness in order to clarify the evidence, but unnecessary leading questions should be avoided. An adjudicator must not show undue impatience or a negative attitude towards a witness.

37. An adjudicator should avoid unnecessary interruptions in the submissions of a party or representative. Interruptions may be necessary to clarify a submission or to ensure the relevance of a particular argument.

38. An adjudicator must attempt to ensure that parties who are unrepresented are not unduly disadvantaged at the hearing. While an adjudicator cannot act as counsel to an unrepresented party, it is appropriate to explain clearly the procedure to be followed in the hearing. In the course of the hearing, the adjudicator may, in clear and simple language, outline for the party relevant evidentiary and procedural rules that have a bearing on the conduct of the proceeding.

39. An adjudicator must treat as strictly confidential all information and documents received in the course of a hearing, including the panel's deliberations. There should be no discussion of the matter outside of the panel itself, except to seek appropriate assistance from the hearing administrator, tribunal counsel or the President or in compliance with para. 64.

40. An adjudicator must not make public comment, orally or in writing, on any aspect of a matter before the tribunal. An adjudicator must not discuss with anyone outside the tribunal, even in private, any aspect of a matter before the tribunal.

Decision-Making Responsibilities

41. An adjudicator must make each decision on the true merits and justice of the case, based on the law and the evidence.

42. An adjudicator must apply the law to the evidence in good faith and to the best of his or her ability. The prospect of disapproval from any person, institution or community must not deter an adjudicator from making the decision that he or she believes is correct based on the law and the evidence.

43. All members of a panel are responsible for ensuring that decisions are rendered promptly. Written reasons should be prepared without undue delay. In most

cases, the decision of the panel should be in the hands of the hearing administrator within 60 days of the end of the oral hearing or the receipt of final written submissions.

44. An adjudicator must not ignore relevant tribunal decisions on a question at issue before the adjudicator. When previous decisions are relevant and are not followed, the adjudicator must explain the reasons for the departure clearly and respectfully in written reasons. Due weight must be given to previous tribunal jurisprudence and the need for a degree of consistency in the interpretation of the law.

45. An adjudicator is responsible for ensuring that decisions are prepared in accordance with tribunal guidelines on form and language and meet tribunal standards with respect to the quality of written decisions.

46. An adjudicator must endeavour to use clear language and avoid legal or other jargon in decision-writing.

47. An adjudicator must never communicate with the media regarding any decision of the tribunal. All inquiries from the media must be referred to the President or to the parties.

Collegial Responsibilities

To Colleagues

48. An adjudicator must, through his or her conduct, endeavour to promote collegiality among adjudicators and with tribunal staff.

49. An adjudicator must be available on a timely basis for consultation or caucus discussions initiated by a member on any policy, legal or procedural issue.

50. In discussions and consultations with other tribunal members, an adjudicator must demonstrate respect for the views and opinions of colleagues.

51. An adjudicator must not comment publicly on a decision of a colleague, or the conduct of another tribunal member during a hearing.

When Sitting as a Panel

52. When sitting as a panel, adjudicators must comply with the Law Society Rules governing the respective roles of the chair and the other panel members in the conduct of a hearing and in making interim rulings on procedural and substantive questions. With respect to matters not dealt with in the Rules, members of a panel should discuss the appropriate approach in advance of taking any steps. In many cases, it will be appropriate to give the parties the opportunity to make submissions before the panel makes a final decision.

53. When, during a hearing, a panel chair becomes aware of a difference of opinion among members of the panel on a procedural or substantive issue affecting the conduct of the hearing, the chair should call a recess to allow the panel to discuss the issue and reach a decision on how to proceed. Again, in many cases, the panel should invite submissions from the parties before making a final decision.

54. All members of a panel must be available on a timely basis for discussions with their panel colleagues on the conduct of the proceeding and on the substance of the determinations to be made. When a draft decision is provided to a panel member for comments, he or she should respond at the earliest opportunity.

55. A member of a panel should consider carefully the reasons of colleagues where there is a difference in their proposed determinations on an interim or final decision. However, an adjudicator should not abandon firmly-held views on an issue of substance, either for the sake of panel unanimity or in exchange for agreement on any other point.

56. When a member of a hearing panel is unable, after discussion and careful consideration, to agree with the proposed decision of a majority of the panel, he or she must prepare, in a timely fashion, a reasoned dissent.

To the President

57. Each adjudicator is responsible to the President for adherence to this Code. The interpretation and enforcement of the Code are matters within the authority of the President. Failure to comply may result in the President recommending against re-appointment of an adjudicator.

58. If an adjudicator becomes aware of conduct of a colleague that may threaten the integrity of the tribunal or its processes, the adjudicator must advise the President of the circumstances as soon as practicable.

59. An adjudicator must immediately inform the President of any change of circumstance that may affect the adjudicator's ability or availability to participate in the work of the tribunal.

To the tribunal

60. An adjudicator must make every effort to attend training sessions required by the tribunal at the earliest opportunity.

61. An adjudicator must make every effort to comply with the policies, procedures and standards established for the tribunal. This includes, for example, rules regarding permissible expenditures, documentation of expenses, travel and accommodation, as well as procedural rules and practice directions governing the conduct of proceedings.

62. Where an adjudicator questions the appropriateness of any policy, procedure or standard, he or she should raise that issue with colleagues and the President in the appropriate forum.

63. An adjudicator must not publicly criticize the decisions, procedures or structures of the tribunal, except as may be required in a Bencher's role as a policy decision-maker.

64. An adjudicator must not divulge confidential information unless legally required to do so, or appropriately authorized to release the information.

65. An adjudicator must not engage in conduct that exploits his or her position of authority.

Post-Term Responsibilities

66. An adjudicator must not appear before the tribunal as a representative, expert witness or character witness or consultant until three years after ceasing to be a member of the tribunal or after the release of any outstanding decisions, whichever is later.

67. An adjudicator whose appointment has expired but continues to participate in an unfinished matter continues to be bound by the restrictions and obligations of this Code, including the responsibility of maintaining confidentiality.

68. An adjudicator must not take improper advantage of past office after ceasing to be a member of the tribunal.

The Law Society of British Columbia

Memo

To: Benchers
From: Recruitment and Nominating Advisory Committee
Date: November 30, 2017
Subject: Legal Services Society (LSS) and Land Title & Survey Authority (LTSA)

This memo provides background and advice on two matters for consideration:

1. Legal Services Society (LSS): requires one re-appointment by the Benchers, after consulting with CBABC.

2. Land Title & Survey Authority: requires 3 nominees by Benchers to the LTSA Board of Directors.

1. Legal Services Society

Law Society member, appointed by: Benchers, after consulting with CBABC

Current Appointments	Term Allowance	Number of Terms Already Served	Date First Appointed	Expiry Date
Alison MacPhail	3 years, maximum of 3 terms	1	1/1/2014	12/31/2019
Jean Whittow, QC	3 years, maximum of 3 terms	0	9/7/2015	09/06/2018
Dinyar Marzban, QC	3 years, maximum of 2 terms	0	1/1/2015	12/31/2017
Philip A. Riddell	3 years, maximum of 2 terms	0	5/1/2017	4/30/2020

Background

The objects of the Legal Services Society (LSS) are to assist individuals with their legal problems and facilitate their access to justice, administer an efficient and effective system for providing legal aid to BC individuals, and to provide advice to the Attorney General respecting legal aid and access to justice for individuals in BC. Under the terms of the *LSS Act*, the Law Society appointments are subject to consultation with the CBABC.

Re-appointment

Mr. Marzban is eligible for re-appointment having come to the completion of his first term. In her letter of October 23, 2017, LSS Board Chair Celeste Haldane confirms their request for Mr. Marzban's reappointment and his willingness to continue to serve **(Appendix 1)**. The CBABC Executive has confirmed their agreement to reappoint Mr. Marzban.

After consideration this Committee recommends to Benchers the reappointment of Mr. Marzban for a second three-year term commencing January 1, 2018.

2. Land Title & Survey Authority (LTSA)

Law Society member, appointed by: Benchers nomination

Current Appointments	Term Allowance	Number of Terms Already Served	Date First Appointed	Expiry Date
Scott Smythe	3 years, maximum of 3 terms	0	4/1/2017	3/31/2020
William Cottick	3 years, maximum of 3 terms	1	4/1/2012	3/31/2018

Current appointee William Cottick has reached the maximum number of terms under our Appointments Policy and is therefore not being recommended for reappointment. The LTSA requires 3 nominees for a new appointment to be approved by Benchers at their December meeting.

After lengthy consideration of several qualified candidates, this Committee recommends the nomination of the following candidates for consideration by the LTSA Board for an appointment for a three year term to begin April 1, 2018:

Kenneth Jacques

Mr. Jacques was called in 1976 and was part of the BC Land Title System for more than 20 years, during which he served at the Registrar of every Land Title Office in British Columbia and, for four years, as Director of Land Titles. Under his term as Director electronic filing of instruments was introduced to the BC system. He co-authored the first edition of the Land Title Practice Manual and the first edition of what is known in BC as the Green Book. He has lectured at or instructed numerous courses on real estate and the land title system and was a member of the Board of Governors for the BC Land Surveyors Foundation, among other volunteer posts. His application and resume are at **Appendix 2**.

Patrick Julian

Mr. Julian was called in 1979 and is the senior partner of the Real Estate Group at Koffman Kalef working chiefly in the area of commercial real estate; in his practice he deals daily with the Land Title Office and requirements and issues. He is a co-author of Financing Real Estate Joint Ventures, a member of the Editorial Board for BC Commercial Leasing – Annotated Precedents and the BC air space subdivision task force. His application and resume are at **Appendix 3**.

Lorena Staples, QC

Ms. Staples, who practices in Victoria, is a highly qualified municipal lawyer with decades of experience in property acquisitions, zoning by-laws, official plans, subdivision appeals, leases and land use planning. She has served in local government, in the Ontario Ministry of Housing, on hearing panels, on the Ontario Municipal Board tribunal panel and as managing partner of her own firm with a primarily commercial law practice. Currently she is also corporate counsel to the Building Officials Association of BC, serves on the Saanich Police Board and has served on the Board of the United Way. Her application form and CV are at **Appendix 4**.

Legal Services Society

Providing legal aid in British Columbia since 1979

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Executive Office

October 23, 2017

Herman Van Ommen, QC
President
THE LAW SOCIETY OF BRITISH COLUMBIA
845 Cambie Street
Vancouver, BC V6B 4Z9

Dear Mr. Ommen:

Re: Renewal of Dinyar Marzban, QC, appointment for a further three-year term to the Legal Services Society ("LSS") Board of Directors

As you may be aware, Dinyar Marzban's appointment as a member of the board of the Legal Services Society ("LSS") is up for renewal on December 31, 2017. I have spoken to Mr. Marzban and he has advised me that he is prepared to accept a further three-year appointment to the LSS Board. I am pleased to recommend that Mr. Marzban's appointment be renewed.

Mr. Marzban is an active member of the board, member of the Stakeholder Engagement Committee, liaison director to the Law Foundation and led the 2017 board strategic planning session. Mr. Marzban previously served on the Finance Committee.

Mr. Marzban has a keen interest in legal aid, family law issues, access to justice and justice reform issues. Mr. Marzban has demonstrated the commitment and has the experience necessary for the Society's success.

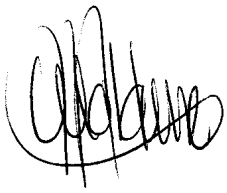
As you know the Legal Services Society continues its evolution with several innovative services underway, is involved and working collaboratively with a number of partners on justice reform, and faces challenges with demand for increased services with the prospect for increased government funding to meet these challenges. The LSS board needs strong leadership and continuity in membership. In these circumstances, the board feels that the reappointment of Mr. Marzban would add an element of continuity that will support the board's commitment to effective governance of the Legal Services Society.

Attached is a current CV of Dinyar Marzban, QC and the current LSS board competency matrix.

I would be pleased to discuss this request with you further and trust that Law Society officials will not hesitate to contact me directly at chaldane@bctreaty.ca ; cell phone: [redacted] or Mark Benton at mark.benton@lss.bc.ca; phone: 604.601.6137 with any questions they might have.

Thank you for your ongoing support.

Yours truly,



Celeste Haldane, LLM
Chair, LSS Board of Directors

Attachments: Dinyar Marzban CV
LSS Board competency matrix

Cc: Adam Whitcombe, Acting Executive Director/Chief Executive Officer, The Law Society of BC
Caroline Nevin, Executive Director, CBA, BC
Mark Benton, Chief Executive Officer
Renee Collins, Manager, Executive Support, The Law Society of BC
Gulnar Nanjijuma, Corporate Secretary

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The Law Society of British Columbia

Memo

To: The Benchers
From: Executive Committee
Date: November 24, 2017
Subject: Strategic Plan 2018 – 2020

Background

On the evening of October 26, 2017, the Benchers met to review goals, initiatives and items that could be considered and included on the 2018 – 2020 Strategic Plan. A draft document was prepared for the Benchers for that meeting that contained lists of possible goals, initiatives and items that were arranged under the various headings of s. 3 of the *Legal Profession Act*. The Benchers were asked to identify which of these, in their consideration, were the crucial items to include and address in the next three-year period.

What followed was a considered discussion during which most Benchers debated what they deemed to be of primary importance for the next three-year period. The Benchers who spoke gave their general reasons for why they considered these initiatives to be the most important. From the themes identified, and points raised a revised draft plan was prepared by staff for review by the Executive Committee at its meeting of November 23.

The Committee discussed and commented on the revised draft and made some further revisions. A copy of the final draft is attached to this memorandum for consideration and approval by the Benchers.

Discussion

The fact that issues under discussion by benchers earlier this year may not been included in the Plan attached doesn't mean that those issues are not important; only that the *focus* of what the Law Society addresses will be on the items in the Plan.

The Committee did agree to recommend that the final plan include three items that did not receive much discussion at the October 26 meeting:

- Review of disclosure and privacy policies. It has been a decade or more since the last comprehensive review of our disclosure and privacy policies and realistically the Committee expects that as an operational requirement, policies should be reviewed over the next three years to ensure that Law Society processes remaining compliant with current laws. It identifies this subject more as an operational than as a policy matter, but as the Plan identifies some operational issues, the Committee concluded this topic was worthwhile including on the Plan.

- Economic analysis. The Committee concluded that this item was a necessary part of the discussion on access to justice and legal aid and is part of the current work being undertaken by the Legal Aid Advisory Committee While it might simply be subsumed into that policy initiative as a method through which to obtain necessary data from which to make recommendations the Committee considered it worthwhile to include as an initiative to explain publicly what steps the Law Society was taking on advancing access and legal aid.

- Implementation of law firm regulation. The Committee concluded that as law firm regulation is on on-going initiative, it needs to be implemented during the course of the Plan.

Resources

The Committee recognizes that the Plan is ambitious. The Law Society has a broad mandate and that necessarily requires consideration of many initiatives. There are not enough Law Society resources to undertake all these initiatives at the same time, but the Committee expected that over a three year period resources do exist that will be sufficient to "move the needle" toward achieving positive outcomes in the identified areas. Provided the Benchers approve the attached Plan, the Committee will as it is required to do, monitor the Plan and identify which topics need to be addressed first.

MDL/al
Attachment.

The Law Society of British Columbia

Strategic Plan 2018 - 2020

Our Strategic Plan

The initiatives identified in this Plan are intended to advance the objects and duties 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.

Mandate

The Law Society fulfills its mandate and implements its vision through its day-to-day operations and through its strategic initiatives. Our Strategic Plan identifies Law Society goals under each of these statutory objects and duties.

The Mandate of the Law Society is contained in section 3 of the *Legal Profession Act*:

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, 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.

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.

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. It also requires that we ensure the public has access to justice and has confidence in the rule of law and the administration of justice.

We will ensure the public has better access to justice by

- Pursuing our Vision for Publicly Funded Legal Services adopted by the Benchers in March 2017.
- Pursuing our initiative to license alternate legal service providers and work with government to obtain the necessary legislative amendments to do so.
- Collaborating with other justice system organizations to identify 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.
- Examining the underlying economic costs of the provision of legal services and the cost of accessing justice.
- Reviewing regulatory requirements to ensure that they do not hamper innovation regarding or hinder cost-effective delivery of legal services.

We will ensure the public has greater confidence in the Rule of Law and the Administration of Justice by

- Identifying opportunities for public discussion about the meanings of these topics and about their importance to Canadian society.
- Developing educational materials about the role of a lawyer in the justice system and how lawyers advance the cause of justice.

We will identify and implement appropriate responses to the Calls to Action from the Report of the Truth and Reconciliation Commission by

- Seeking opportunities to collaborate with Aboriginal groups and other organizations to further examine the Recommendations and identify strategic priorities.
- Embarking upon the development of an action plan to facilitate the implementation of relevant Recommendations.
- Encouraging all lawyers in British Columbia to take education and training in areas relating to Aboriginal law (the Law Society's mandatory continuing professional development program recognizes and gives credit for education and training in areas relating to Aboriginal issues).

- Urging all lawyers in British Columbia to act on the TRC Report and to consider how they can better serve the Indigenous people of British Columbia.

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.

We will maintain and improve our standards for effective professional education, practice standards and practice advice by

- Identifying opportunities to educate the public and the profession about the benefits of the public's right to an independent legal profession.

- Continuously examining the standards of lawyer competence requirements to ensure they maintain public confidence in the excellence of the delivery of legal services.

Establishing Standards and Programs for the Education, Professional Responsibility and Competence of Lawyers and of Applicants for Call and Admission

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.

We will ensure, bearing in mind the mobility of lawyers within Canada, that the Admission Program remains appropriate and relevant by

- Examining the availability of Articling positions and develop a Policy and proposals on access to Articling positions and remuneration.
- Examining the effectiveness of Articling and develop proposals for the enhancement of Articling as a student training and evaluation program.
- Examining alternatives to Articling.

We will ensure that appropriate standards are maintained for ethical and professionally responsible practice of law by

- Reviewing standards to ensure they are effective to reduce the likelihood of the laundering of money through the use of legal professionals.

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. Law Society investigations and hearings must continue to ensure that processes are fair and transparent.
The Goals that the Benchers have identified relating to this subsection of the Act are:

We will maintain a fair and transparent process through which concerns about lawyers' professional conduct can be investigated and, where appropriate, sanctioned by

- Continuously examining our regulatory processes to ensure they are fair and transparent and that they work to protect the public interest.

We will enhance our regulatory oversight of law firms by

- Implementing the recommendations of the Law Firm Regulation Task Force.

We will mitigate risk and prevent misconduct and improve regulatory outcomes by

- Examining “pro-active” or “outcomes focused” methods of regulation to complement the disciplinary process.

We will review our disclosure processes to balance transparency and privacy by

- Undertaking an examination of disclosure and privacy issues relating to Law Society core functions and recommend updates to our current practices.

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 also served where, as relevant, the Law Society can support and 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.

We will improve the mental health of the legal profession by

- Identifying ways to reduce the stigma of mental health issues.

- Developing an integrated mental health review concerning regulatory approaches to discipline and admissions.

We will develop initiatives to improve the retention rate of lawyers in the profession, including in particular Indigenous and women lawyers by

- Promoting initiatives to improve the equity and diversity of the legal profession.

The Law Society of British Columbia

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)
Jan Christiansen
Lori Mathison
Angela Westmacott, QC
Henry Wood, QC

June 29, 2017

Prepared for:	Benchers
Prepared by:	Alison Luke and Michael Lucas Policy and Legal Services Department
Purpose:	Decision

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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 Bencher's 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 lawyers[10]. 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 Wales[17] 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-assess[18]

- 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-assessment[19]

- a majority of ILPs reported that the self-assessment process was a learning exercise that helped them improve client service[20]

- 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-assessment[21]

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]

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[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_Assessmenof_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.

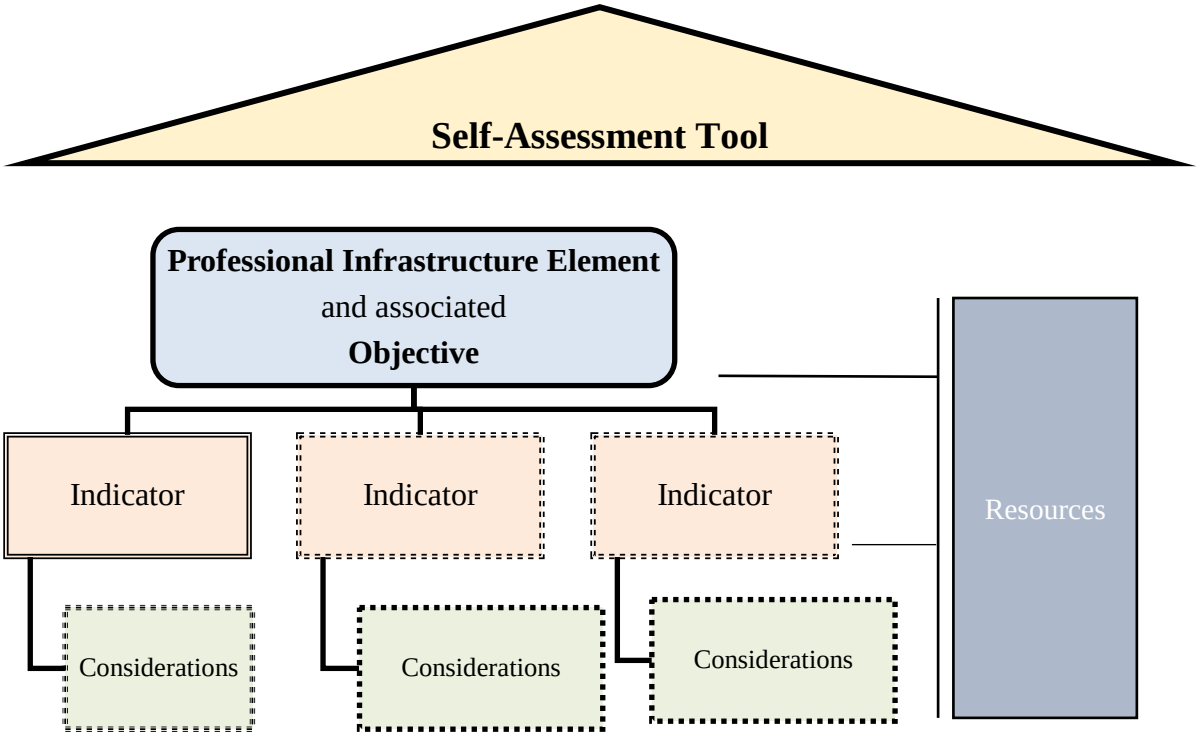
Recommendation 7: The primary objective of the self-assessment tool is to provide firms with educational tools and resources that will assist firms in meeting the standards set by the Professional Infrastructure Elements.

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

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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 polices 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.

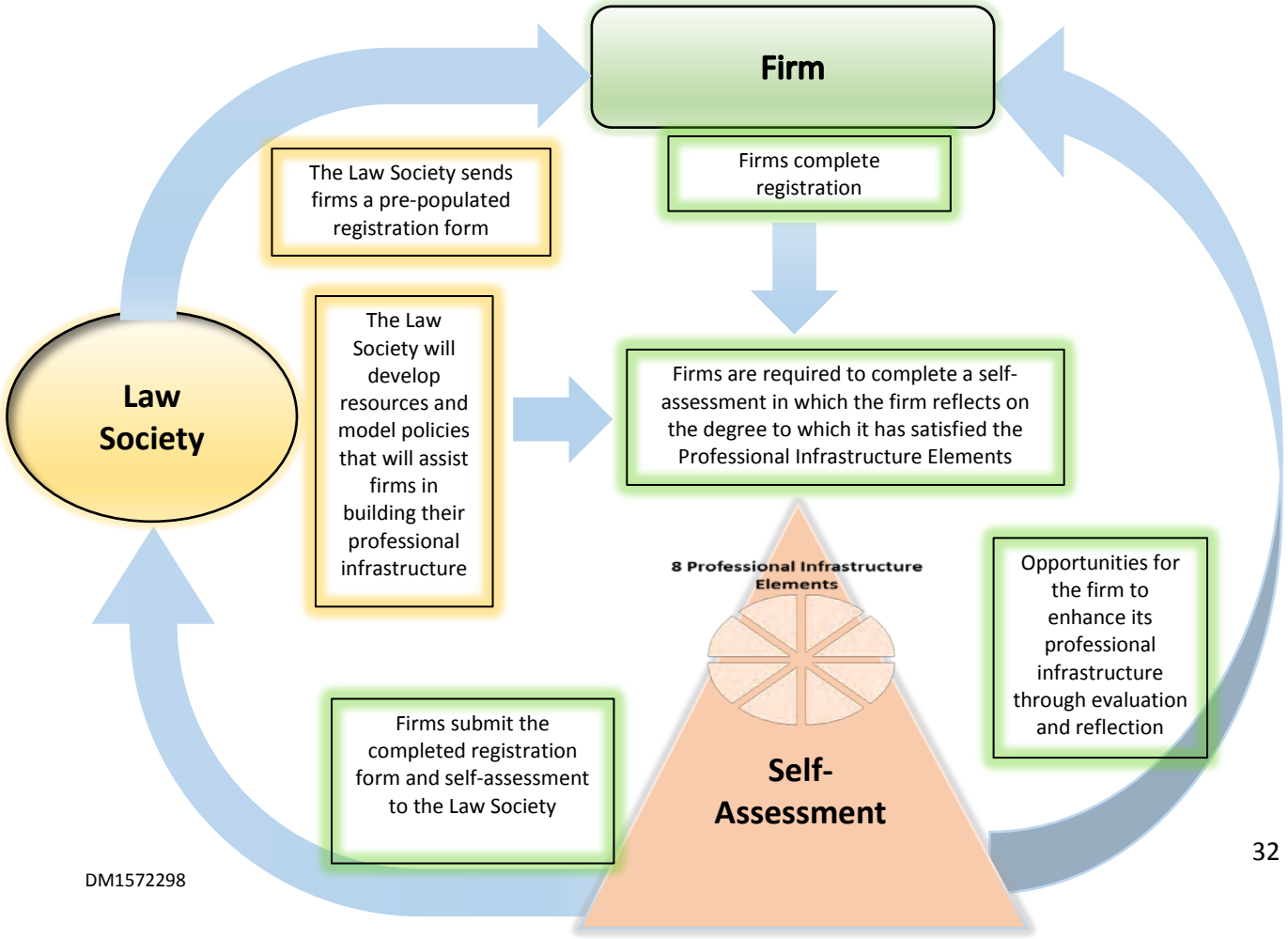
[39] In addition to drawing on existing Law Society resources, possible sources include: resources linked to the self-assessments being developed by other provinces; materials from the LSUC Practice Management Review program; resources provided or created by legal-education organizations (e.g. CLE-BC); 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' 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 polices 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 Regulation[43]

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]

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[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 place 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 Bencher 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 follow:

    - 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.

The Law Society of British Columbia

Interim Report of the Law Firm Regulation Task Force

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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.

[5]Regulatory 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.

[9]Letter 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.

> **Recommendation 4 –** Adopt a set of professional infrastructure elements

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**	Ensuring the firm provides for the delivery of quality and timely legal services by persons with appropriate skills and competence. This includes ensuring that: • 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.	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.
2.	**Client relations**	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	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

		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.	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. 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.

[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 *BC Human Rights Code*, *Workers Compensation Act* 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

[14]Requiring 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.

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[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

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 principles[24] (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 Ontario[28], Saskatchewan, Manitoba and Alberta[29]. 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

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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.

> **Recommendation 9 –** Consider adopting the use of compliance reviews to monitor compliance

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 a 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 or 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.

The Law Society of British Columbia

LAW FIRM PRACTICE MANAGEMENT SELF-ASSESSMENT

WORKBOOK

Overview of the self-assessment exercise

The Law Firm Practice Management Self-Assessment Tool (the "**Assessment Tool**") and this associated **Workbook** are designed to help law firms identify gaps in policies and processes to improve practice management and manage risk.

The online Assessment Tool, linked **HERE**, is submitted to the Law Society of BC. This Workbook is an *optional*, additional resource designed to help your firm engage more fully in the assessment process. The Workbook is **not** submitted to the Law Society of BC.

The goal of the self-assessment exercise is twofold. First, it aims to help your firm reflect upon and improve the policies and processes that impact the quality of your delivery of legal services. Second, it aims to assist the Law Society of BC in identifying and prioritizing the development of resources that will support firms improving their "professional infrastructure."

Following your review of the material set out in the online Assessment Tool —and, if you choose, the Workbook— you will be asked to evaluate your firm's performance in relation to a set of 8 **Professional Infrastructure Elements** (the **"Elements"**), described below. The Elements address core areas of professional, ethical firm practice. You will also be asked to identify areas in which you feel your firm would benefit from additional practice resources.

The Assessment Tool and the Workbook also contain an extensive collection of guidance, suggestions and resources for firms, which you will have the option to consider as you work through the self-assessment exercise. The only *requirement*, however, is that you rate the extent to which you have policies and processes in place in relation to each Element and submit the completed online Assessment Tool.

Your law firm is responsible for ensuring the online Assessment Tool is completed and submitted to the Law Society by May 1, 2018.

The information you provide in the Assessment Tool will not be used for any disciplinary purposes; this is solely an educational exercise.

Format: the online Assessment Tool and the Workbook

The self-assessment exercise has been developed in two formats, an online Assessment Tool, which *must* be completed and submitted to the Law Society of BC, and this **optional** Workbook that is designed to assist your firm work through the assessment process in more detail. The two formats are described below.

Online Assessment Tool

The online Assessment Tool leads you through the assessment exercise step-by-step and provides you with options as to how deeply to engage with the assessment process. You will have the choice to skip over material or, alternatively, delve more deeply into a particular aspect of the assessment before evaluating your firm's performance in relation to the each of the Elements.

Your firm's assessment **must be submitted through the online Assessment Tool, linked above, by May 1, 2018.**

The Assessment Tool will enable you to:

- work through the Assessment Tool in stages
- return to the Assessment Tool an unlimited number of times
- go back and edit the responses before submitting the Assessment Tool
- enable multiple users to view and add content to your assessment

However, once you click "SUBMIT" on the last page of the assessment, your responses will be sent to the Law Society of BC and cannot be edited or submitted again by you or someone else in your firm.

Workbook

The Workbook – a downloadable and printable document - is a supplemental guide that contains all the information provided in the online Assessment Tool in a single document. The Workbook also includes additional resources and opportunities to identify your firm's strengths and those practice management areas that require further attention.

In addition to helping you maximize your engagement with the assessment exercise before you complete the online Assessment Tool, the Workbook may also act as a record and an ongoing resource for your firm as it works toward enhancing its professional infrastructure. **Please do not submit this Workbook.**

The Law Society recognizes that approaches to, and the time spent on the assessment exercise will vary between firms. For example, some firms may task their designated representative with completing the assessment. Other firms may circulate the Assessment Tool and work through the exercise collaboratively by bringing together lawyers and staff to discuss how the firm is performing in relation to the Elements, while sole practitioners will likely undertake the self-assessment exercise on their own. Some firms will rely heavily on the Workbook and others will submit their assessment without referencing the Workbook or the optional guidance and resources embedded in the online Assessment Tool.

Whatever process you adopt, you are encouraged to engage in thoughtful reflection on the ways that your firm is addressing each Element. There are many possible approaches to the self-assessment exercise and no correct responses to the questions posed

Mandatory aspects of the Assessment Tool

Professional Infrastructure Elements and Objectives

The cornerstones of the Assessment Tool are the 8 **"Professional Infrastructure Elements" (**the **"Elements")**, which represent core areas of professional, ethical legal practice. These Elements 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.

Each **Element** is paired with an "**Objective",** which is a statement of the specific outcome that firms will strive for in order to satisfy the Element. The Law Society

believes that prudent law firms should have appropriate policies and processes in place to ensure that legal services are provided in accordance with these Objectives.

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

Rating scale

The Assessment Tool requires you to rate your firm's **current performance** in relation to each Element on a four-point scale.

You are also asked to indicate if there are any areas in which your firm would benefit from additional practice resources or if your firm has any additional information. This information will provide the Law Society of BC with a more informed view of how firms are addressing the Elements and where additional support may be necessary.

In completing the assessment exercise, your firm is **NOT REQUIRED** to develop or implement policies or processes where none are already in place. You are simply asked to report out on the **current state of your firm's approach** to each of the Elements, and to think about the areas where your firm is doing well and those areas where more robust policies and procedures could be developed in the future.

The extent to which firms currently have policies and processes in place that address the **Elements** will vary. In particular, the Law Society of BC recognizes that smaller firms have fewer resources at their disposal and the measures they employ will likely differ from those used in larger firms.

Optional aspects of the Assessment Tool

Indicators and Considerations

To assist your firm in assessing the strength of your policies and processes in relation to the Elements, the Assessment Tool includes a list of "**Indicators**" and "**Considerations**" for each Element.

Indicators represent key aspects of firm practice which support the Objective of the particular Element.

Considerations are a more detailed list of the types of policies, procedures, processes, methods, steps and systems that a prudent law firm might employ to satisfy the Objective of the Element.

Although your firm is encouraged to reflect on this set of Indicators and Considerations, these lists are not exhaustive. There may be other matters relevant to each Element which you may also wish to reflect on as you complete the assessment exercise.

The Indicators and Considerations are **guidelines only,** and should be viewed as examples and suggestions that will assist your firm assessing your performance in relation to the Elements. **Your firm is NOT REQUIRED to address all the Indicators or put all the Considerations into practice.**

However, firms are encouraged to put some of these measures in place in order to satisfy the Objective of the Element. The size and nature of your firm is one important factor when considering the robustness of your firm's policies and processes in relation to each Element.

Resources

Each Indicator is linked to a set of **Resources** which may help your firm reflect on, establish or improve your policies and processes. Some of these resources have been developed by the Law Society of BC, while others have been created by third parties. The Law Society will strive to keep this list up-to-date, however as some resources are hosted on external websites they become unavailable.

The Law Society of BC will build on the available resources based on the feedback provided by firms through the self-assessment process.

Information provided in the Assessment Tool

The Assessment Tool and the associated Workbook are educational exercises, not a disciplinary devices. There are no correct responses and there are **no disciplinary implications for the feedback you provide in your self-assessment**. Each firm will have different measures in place to support the Elements depending on their size, structure, practice area and available resources.

The information your firm provides in the Assessment Tool will not be used by the Law Society for any purpose other than identifying, prioritizing and developing resources to enhance the practice management support the Law Society of BC makes available to firms in the future.

As such, you are encouraged to be honest and transparent when completing the Assessment Tool and the Workbook. Candid responses will improve both your firm's awareness of its strengths and weaknesses and the Law Society of BC's understanding of where additional practice management support is necessary.

Terminology

Throughout the Assessment Tool, **"you"** and **"your"** is used, and is intended to refer to your specific law firm, not your practice as an individual lawyer (unless you are a sole practitioner). The following words are also frequently used and are defined as follows:

"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 documentation of the approach the firm employs to address a particular practice issue or area. Policies may include guidelines, protocols or procedures. Policies should be in writing, where possible

“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 the decisions and actions of the firm

LAW FIRM PRACTICE MANAGEMENT SELF-ASSESSMENT
WORKBOOK

As you work through the Workbook, you will have the opportunity to reflect on each of the **8 Professional Infrastructure Elements,** their **Objectives** and an associated list of key **Indicators** and **Considerations.** A limited selection of **Resources** provide further guidance as to the measures a prudent law firm might have in place to satisfy each Element.

Your firm is not expected to address all the Indicators and Considerations; they are suggestions, not mandatory requirements. The only requirement is that you evaluate your firm's performance in relation to each Element on the 4-point scale, and submit your responses to the Law Society of BC through the online Assessment Tool.

Providing optional feedback on the areas in which your firm would benefit from additional practice management resources is encouraged.

The self-assessment exercise is for educational purposes only. The Workbook is **not submitted** to the Law Society of BC, and should be considered as a working copy of your assessment and a resource for your firm.

The responses you provide to the Law Society of BC in the online Assessment Tool will not be used in any disciplinary context. Honest and accurate reporting will improve your firm's understanding of its current strengths and weakness and assist the Law Society of BC in prioritizing practice resource development for the profession moving forward.

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

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)
- Lawyers and staff participate in ongoing training, 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
- 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 reviewed by lawyers and staff, if any
- Continuing educational efforts are recorded and considered in the context of lawyer and staff performance reviews
- 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

- Appropriate resources are in place to ensure lawyers 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, if any, stay current on the appropriate technology
- Processes are in place to ensure lawyers are supported in complying with their individual professional obligations under the Law Society Rules and the *BC 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)
- Tech Security for Lawyers (Spring 2012 Benchers' Bulletin)
- Code of Professional Conduct for British Columbia [Chapter 2.1: Cannons 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 or processes are in place to review complaints made to the firm and 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
- Internal processes are available to clients for resolving disputes or complaints with their lawyer or the firm and clients are informed about these processes
- 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 Lawyers Assistance Program and other mental health support relevant to the legal profession

RESOURCES:

- Professionalism: Practice Management (September 2016)
- How to Recognize and Cope with Stress (Spring 2013 Benchers' Bulletin)
- *Code of Professional Conduct for British Columbia* [Chapter 2.1: Cannons 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, if any, are informed about priorities and deadlines
- Policies are in place to ensure lawyers and staff, if any, 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 appearances, filing deadlines, closing dates)
- 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
- 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 are used, where appropriate

- Policies or processes 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

- ☐ A succession plan is in place
- ☐ 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
- Ethical Considerations when a lawyer leaves a law firm https://www.lawsociety.bc.ca/Website/media/Shared/docs/bulletin/BB_2017-02-Summer.pdf#practice
- 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]

Rating

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 ELEMENT 1	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 ☐

What does your firm do well?

How could your firm improve?

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

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 communications with clients?

Considerations

- Communication policies or processes 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
  - 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, if any, receive specific and ongoing education and training relating to client communications and relations
- Processes are in place to ensure lawyers are supported in complying with their individual professional obligations under the Law Society Rules and the *BC Code*

RESOURCES:

- Communication Toolkit (Online Learning Centre)
- Professionalism: Practice Management (September 2016)
- Making Your E-Communications Secure (Fall 2014 Benchers' Bulletin)
- 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]

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 services will be provided and won't be provided

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 or processes are in place to ensure the recording of communications with clients, as appropriate (e.g. archiving emails, creating notes of client meetings and phone calls)
- Policies or processes 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 lawyers and staff, if any, 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
- 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 or processes 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 (Clients with Diminished Capacity); Chapter 3.6: Fees and Disbursements; Chapter 3.7: Withdrawal from Representation]
- Practice Resource: Guidelines for Respectful Language (May 2007)
- Practice Watch: Acting for a client with dementia (Spring 2015)

Rating

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 ELEMENT 2	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 ☐

What does your firm do well?

How could your firm improve?

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

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 confidentiality policy or agreement is in place and is signed by all lawyers and 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 lawyers are supported in complying with their individual professional obligations under the Law Society Rules and the *BC Code*

RESOURCES:

- Practice Resource: Model Privacy Policy (December 2003)
- FAQs about solicitor-client privilege and confidentiality (CBA)
- Professionalism: Practice Management (September 2016)
- Tech Security for Lawyers (Spring 2012 Benchers' Bulletin)
- 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?

Considerations

- ☐ Lawyers and staff are provided with up-to-date technology training relating to issues of confidentiality and privacy pertaining to electronic data, including training on the importance of password protection
- ☐ Lawyers and staff receive education and training regarding the principle of solicitor-client privilege, including:
  - o in relation to electronic communications (email, texting, e-documents)
  - o 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
- ☐ 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)
- Scams Against Lawyers - What Are They and What Can You Do About Them (Fall 2014 Benchers' Bulletin)
- Making Your E-Communications Secure (Fall 2014 Benchers' Bulletin)
- Tech Security for Lawyers (Spring 2012 Benchers' Bulletin)
- 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:
  - o third parties cannot overhear confidential conversations lawyers and staff have both within and outside the physical office
  - o 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)
- Tech Security for Lawyers (Spring 2012 Benchers' Bulletin)
- 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)
- Scams Against Lawyers - What Are They and What Can You Do About Them (Fall 2016 Benchers' Bulletin)
- BC Lawyers and Cloud Computing (Winter 2016 Benchers' Bulletin)
- Making Your E-Communications Secure (Fall 2014 Benchers' Bulletin)
- Security Practice Tips (Summer 2014 Benchers' Bulletin)
- Tech Security for Lawyers (Spring 2012 Benchers' Bulletin)
- 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)
- ☐ Processes are in place to ensure 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]

Rating

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 ELEMENT 3	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 ☐

What does your firm do well?

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

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 adhere to the conflicts policy
- Lawyers and staff pursue 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 processes 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
- Processes 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 lawyers are supported in complying with their individual professional obligations under the Law Society Rules and the *BC Code*

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]

Rating

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 ELEMENT 4	Policies and processes have not been developed.	Policies and processes are under development but are not functional.	Policies and processes are functional.	Policies and processes are fully functional and regularly assessed and updated.
	1 ☐	2 ☐	3 ☐	4 ☐

What does your firm do well?

How could your firm improve?

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

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)
- Time For Robust Backups (Spring 2014 Benchers' Bulletin)
- 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 lawyers are supported in complying with their individual professional obligations under the Law Society Rules and the *BC Code*

RESOURCES:

- Practice Resource: Loss prevention planning checklist (November 2002)
- Scams Against Lawyers - What Are They and What Can You Do About Them (Fall 2016 Benchers' Bulletin)
- Professionalism: Practice Management (September 2016)
- Time For Robust Backups (Spring 2014 Benchers' Bulletin)
- 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]

Rating

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 ELEMENT 5	Policies and processes have not been developed.	Policies and processes are under development but are not functional.	Policies and processes are functional.	Policies and processes are fully functional and regularly assessed and updated.

	1 ☐	2 ☐	3 ☐	4 ☐

What does your firm do well?

How could your firm improve?

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

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 lawyers are supported in complying with their individual professional obligations under the Law Society Rules and the *BC Code*

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)
- E-Billing, E-Signatures and Paperless Offices (Summer 2012 Benchers' Bulletin)
- 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)
- E-Billing, E-Signatures and Paperless Offices (Summer 2012 Benchers' Bulletin)
- 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)
- E-Billing, E-Signatures and Paperless Offices (Summer 2012 Benchers' Bulletin)
- 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]

Rating

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 ELEMENT 6	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 ☐

What does your firm do well?

How could your firm improve?

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

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 accounts are 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 lawyers or staff in the firm
- Lawyers and staff are provided with education and training in relation to the rules pertaining to trust accounts
- Lawyers and staff are encouraged to pursue training opportunities to assist in spotting possible fraudulent trust account activity
- Processes 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)
- Scams Against Lawyers - What Are They and What Can You Do About Them (Fall 2016 Benchers' Bulletin)
- 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?

Considerations

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

RESOURCES:

- Professionalism: Practice Management (September 2016)
- Scams Against Lawyers - What Are They and What Can You Do About Them (Fall 2016 Benchers' Bulletin)
- 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]

Rating

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 ELEMENT 7	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 ☐

What does your firm do well?

How could your firm improve?

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

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 or 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
- You and your staff, if any, participate in 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 for staff, if any
- Flexible work schedules are an option for those who have child-care or other caregiver responsibilities
- Accommodation policies are in place for staff, if any, 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)
- 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 you have adequate knowledge and training to provide legal services in a manner consonant with principles of equity, diversity, inclusion and cultural competency?

Considerations

- You treat 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
- You and yours staff, if any, have adequate knowledge and training to ensure that clients with disabilities and other equality seeking groups receive competent legal services
- You and your staff, if any, participate in skills-based training in intercultural competency, conflict resolution, human rights and anti-racism in response to Truth and Reconciliation Commission Call to Action #27
- You have considered legal requirements relating to accessibility and where accessibility may be an issue, you meet with 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: Cannons 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]
- Truth and Reconciliation Commission of Canada: Calls to Action (2015)

Rating

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 ELEMENT 8	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 ☐

What does your firm do well?

How could your firm improve?

The Law Society of British Columbia

LAW FIRM PRACTICE MANAGEMENT SELF-ASSESSMENT

WORKBOOK FOR SOLE PRACTIONERS

Overview of the self-assessment exercise

The Law Firm Practice Management Self-Assessment Tool (the "**Assessment Tool**") and its associated **Workbook** are designed to help law firms identify gaps in policies and processes to improve practice management and manage risk.

The online Assessment Tool, linked **HERE,** is submitted to the Law Society of BC. This Workbook is an *optional,* additional resource designed to help your firm engage more fully in the assessment process. The Workbook is **not** submitted to the Law Society.

The goal of the self-assessment exercise is twofold. First, it aims to help your firm reflect upon and improve the policies and processes that impact the quality of your delivery of legal services. Second, it aims to assist the Law Society of BC in identifying and prioritizing the development of resources that will support firms improving their "professional infrastructure."

Following your review of the material set out in the online Assessment Tool —and, if you choose, the Workbook— you will be asked to evaluate your firm's performance in relation to a set of 8 **Professional Infrastructure Elements** (the **"Elements"**), described below. The Elements address core areas of professional, ethical firm practice. You will also be asked to identify areas in which you feel your firm would benefit from additional practice resources.

The Assessment Tool and the Workbook also contain an extensive collection of guidance, suggestions and resources for firms, which you will have the option to consider as you work through the self-assessment exercise. The only *requirement*, however, is that you rate the extent to which you have policies and processes in place in relation to each Element and submit the completed online Assessment Tool.

Your law firm is responsible for ensuring the online Assessment Tool is completed and submitted to the Law Society by May 1, 2018.

The information you provide in the Assessment Tool will not be used for any disciplinary purposes; this is solely an educational exercise.

Format: the online Assessment Tool and the Workbook

The self-assessment exercise has been developed in two formats, an online Assessment Tool, which *must* be completed and submitted to the Law Society of BC, and this **optional** Workbook, which is designed to assist your firm work through the assessment process in more detail. The two formats are described below.

Online Assessment Tool

The online Assessment Tool leads you through the assessment exercise step-by-step and provides you with options as to how deeply to engage with the assessment process. You will have the choice to skip over material or, alternatively, delve more deeply into a particular aspect of the assessment before evaluating your firm's performance in relation to the each of the Elements.

Your firm's assessment **must be submitted through the online Assessment Tool, linked above, by May 1, 2018.**

The Assessment Tool will enable you to:

- work through the Assessment Tool in stages
- return to the Assessment Tool an unlimited number of times
- go back and edit the responses before submitting the Assessment Tool
- enable multiple users to view and add content to your assessment

However, once you click "SUBMIT" on the last page of the assessment, your responses will be sent to the Law Society of BC and cannot be edited or submitted again by you or someone else in your firm.

Workbook

The Workbook – a downloadable and printable document - is a supplemental guide that contains all the information provided in the online Assessment Tool in a single document. The Workbook also includes additional resources and opportunities to identify your firm's strengths and those practice management areas that require further attention.

In addition to helping you maximize your engagement with the assessment exercise before you complete the online Assessment Tool, the Workbook may also act as a record and an ongoing resource for your firm as it works toward enhancing its professional infrastructure. **Please do not submit this Workbook.**

The Law Society recognizes that approaches to, and the time spent on the assessment exercise will vary between firms. For example, some firms may task their designated representative with completing the assessment. Other firms may circulate the Assessment Tool and work through the exercise collaboratively by bringing together lawyers and staff to discuss how the firm is performing in relation to the Elements, while sole practitioners will likely undertake the self-assessment exercise on their own. Some firms will rely heavily on the Workbook and others will submit their assessment without referencing the Workbook or the optional guidance and resources embedded in the online Assessment Tool.

Whatever process you adopt, you are encouraged to engage in thoughtful reflection on the ways that your firm is addressing each Element. There are many possible approaches to the self-assessment exercise and no correct responses to the questions posed

Mandatory aspects of the Assessment Tool

Professional Infrastructure Elements and Objectives

The cornerstones of the Assessment Tool are the 8 **"Professional Infrastructure Elements" (**the **"Elements")**, which represent core areas of professional, ethical legal practice. These Elements 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.

Each **Element** is paired with an "**Objective",** which is a statement of the specific outcome that firms will strive for in order to satisfy the Element. The Law Society

believes that prudent law firms should have appropriate policies and processes in place to ensure that legal services are provided in accordance with these Objectives.

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

Rating scale

You are require to rate your firm's **current performance** in relation to each Element on a four-point scale.

You are also asked to indicate if there are any areas in which your firm would benefit from additional practice resources or if your firm has any additional information. This information will provide the Law Society of BC with a more informed view of how firms are addressing the Elements and where additional support may be necessary.

In completing the assessment exercise, your firm is **NOT REQUIRED** to develop or implement policies or processes where none are already in place. You are simply asked to report out on the **current state of your firm's approach** to each of the Elements, and to think about the areas where your firm is doing well and those areas where more robust policies and procedures could be developed in the future.

The extent to which firms currently have policies and processes in place that address the **Elements** will vary. In particular, the Law Society of BC recognizes that smaller firms have fewer resources at their disposal and the measures they employ will likely differ from those used in larger firms.

Optional aspects of the Assessment Tool

Indicators and Considerations

To assist your firm in assessing the strength of your policies and processes in relation to the Elements, a list of "**Indicators**" and "**Considerations**" are provided for each Element.

Indicators represent key aspects of firm practice which support the Objective of the particular Element.

Considerations are a more detailed list of the types of policies, procedures, processes, methods, steps and systems that a prudent law firm might employ to satisfy the Objective of the Element.

Although your firm is encouraged to reflect this set of Indicators and Considerations, these lists are not exhaustive. There may be other matters relevant to each Element which you may also wish to reflect on as you complete the assessment exercise.

The Indicators and Considerations are **guidelines only,** and should be viewed as examples and suggestions that will assist your firm assessing your performance in relation to the Elements. **Your firm is NOT REQUIRED to address all the Indicators or put all the Considerations into practice.**

However, firms are encouraged to put some of these measures in place in order to satisfy the Objective of the Element. The size and nature of your firm is one important factor when considering the robustness of your firm's policies and processes in relation to each Element.

Resources

Each Indicator is linked to a set of **Resources** which may help your firm reflect on, establish or improve your policies and processes. Some of these resources have been developed by the Law Society of BC, while others have been created by third parties. The Law Society will strive to keep this list up-to-date, however as some resources are hosted on external websites they become unavailable.

The Law Society of BC will build on the available resources based on the feedback provided by firms through the self-assessment process.

Information provided in the Assessment Tool

The Assessment Tool and the associated Workbook are educational exercises, not a disciplinary devices. There are no correct responses and there are **no disciplinary implications for the feedback you provide in your self-assessment**. Each firm will have different measures in place to support the Elements depending on their size, structure, practice area and available resources.

The information your firm provides in the Assessment Tool will not be used by the Law Society for any purpose other than identifying, prioritizing and developing resources to enhance the practice management support the Law Society of BC makes available to firms in the future.

As such, you are encouraged to be honest and transparent when completing the Assessment Tool and the Workbook. Candid responses will improve both your firm's awareness of its strengths and weaknesses and the Law Society of BC's understanding of where additional practice management support is necessary.

Terminology

Throughout the Assessment Tool, **"you"** and **"your"** is used, and is intended to refer to your specific law firm, not your practice as an individual lawyer (unless you are a sole practitioner). The following words are also frequently used and are defined as follows:

"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 documentation of the approach the firm employs to address a particular practice issue or area. Policies may include guidelines, protocols or procedures. Policies should be in writing, where possible

“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 the decisions and actions of the firm

LAW FIRM PRACTICE MANAGEMENT SELF-ASSESSMENT

WORKBOOK FOR SOLE PRACITITONERS

As you work through the Workbook, you will have the opportunity to reflect on each of the **8 Professional Infrastructure Elements,** their **Objectives** and an associated list of key **Indicators** and **Considerations.** A limited selection of **Resources** provide further guidance as to the measures a prudent law firm might have in place to satisfy each Element.

Your firm is not expected to address all the Indicators and Considerations; they are suggestions, not mandatory requirements. The only requirement is that you evaluate your firm's performance in relation to each Element on the 4-point scale, and submit your responses to the Law Society of BC through the online Assessment Tool.

Providing optional feedback on the areas in which your firm would benefit from additional practice management resources is encouraged.

The self-assessment exercise is for educational purposes only. The Workbook is **not submitted** to the Law Society of BC, and should be considered as a working copy of your assessment and a resource for your firm.

The responses you provide to the Law Society of BC in the online Assessment Tool will not be used in any disciplinary context. Honest and accurate reporting will improve your firm's understanding of its current strengths and weakness and assist the Law Society of BC in prioritizing practice resource development for the profession moving forward.

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

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 you and your staff, if any, have sufficient training, experience and knowledge to perform your duties?

Considerations

- ☐ You and your staff, if any, participate in ongoing training, 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
- ☐ You and your staff, if any, engage in additional training if any major procedural or organizational changes occur
- ☐ You have a professional development plan that is relevant to your area of practice
- ☐ Appropriate resources are in place to ensure you develop knowledge of applicable substantive and procedural law
- ☐ Processes are in place to ensure that you and your staff, if any, stay current on the appropriate technology
- ☐ Processes are in place to ensure you are complying with your individual professional obligations under the Law Society Rules and the *BC Code*

RESOURCES:

- The Trust Accounting Handbook (August 2015)
- Practice Resource: Retainer Agreement (December 2016)

- Professionalism: Practice Management (September 2016)
- Tech Security for Lawyers (Spring 2012 Benchers' Bulletin)
- *Code of Professional Conduct for British Columbia* [Chapter 2.1: Cannons 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 your competence dealt with in an efficient, constructive and ethically appropriate fashion?

Considerations

- ☐ Policies or processes are in place to review complaints made to the firm and to the Law Society
- ☐ Steps are taken to ensure all communications with the Law Society pertaining to your competence are professional and prompt
- ☐ You are aware of initiatives that promote lawyer and staff wellbeing, including the Lawyers Assistance Program and other mental health support relevant to the legal profession

RESOURCES:

- Professionalism: Practice Management (September 2016)
- How to Recognize and Cope with Stress (Spring 2013 Benchers' Bulletin)
- *Code of Professional Conduct for British Columbia* [Chapter 2.1: Cannons 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 provided in a manner that avoids delay?

Considerations

- Retainers are only taken if you feel, at the time the retainer is taken, that you have the necessary skills and resources to carry out the client's instructions in a reasonable period of time
- Processes are in place to ensure you and your staff, if any, are informed about priorities and deadlines
- Processes are in place to ensure you and your staff, if any, comply with applicable deadlines and limitation periods
- Reviews are conducted with staff, if any, 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 appearances, filing deadlines, closing dates)
- Systems are in place to ensure that open files are reviewed on a scheduled basis and next steps are diarized
- Checklists are used, where appropriate
- Policies or processes 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 staff, if any, adequately supervised and managed in their delivery of legal services?

Considerations

- You understand what work may be delegated to staff and what may not
- Consideration is given to experience and qualifications when assigning work to staff, if any

- You ensure that staff, if any, receive clear and complete instructions regarding work assigned and the end product required
- Processes are in place to ensure staff, if any, receive timely, and confidential feedback on work product (e.g. formal performance reviews and informal meetings)

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 your departure from the firm?

Considerations

- A succession plan is in place
- 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)
- Ethical Considerations when a lawyer leaves a 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]

Rating

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 ELEMENT 1	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 ☐

What does your firm do well?

How could your firm improve?

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

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 communications with clients?

Considerations

- Communication policies or processes 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
  - timing of reports and final accounts
- Communication policies are reviewed and updated
- You and your staff, if any, participate in ongoing education and training relating to client communications and relations
- Processes are in place to ensure you are complying with your individual professional obligations under the Law Society Rules and the *BC Code*

RESOURCES:

- Communication Toolkit (Online Learning Centre)
- Professionalism: Practice Management (September 2016)
- Making Your E-Communications Secure (Fall 2014 Benchers' Bulletin)
- *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]

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 your 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 services will be provided and won't be provided

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 or processes are in place to ensure the recording of communications with clients, as appropriate (e.g. archiving emails, creating notes of client meetings and phone calls)
- Policies or processes 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 you and your staff, if any, 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
- Key information about the firm is accurate and publically available, including information about the range of services provided, practice areas 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 or processes 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 at the times and, if necessary, locations convenient to the client
- ☐ Practices encourage informing clients of possible options for pursuing a matter once you cease 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 (Clients with Diminished Capacity); Chapter 3.6: Fees and Disbursements; Chapter 3.7: Withdrawal from Representation]
- Practice Resource: Guidelines for Respectful Language (May 2007)
- Practice Watch: Acting for a client with dementia (Spring 2015)

Rating

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 ELEMENT 2	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 ☐

What does your firm do well?

How could your firm improve?

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

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 confidentiality policy is in place and is communicated to your staff, if any
- ☐ Confidentiality requirements are established for any third parties (e.g. contractors, computer service providers, interns, cleaners) who may access the firm's physical space or technology
- ☐ A privacy policy is in place and is communicated to your staff, if any
- ☐ Processes are in place to ensure you are complying with your individual professional obligations under the Law Society Rules and the *BC Code*

RESOURCES:

- Practice Resource: Model Privacy Policy (December 2003)
- FAQs about solicitor-client privilege and confidentiality (CBA)
- Professionalism: Practice Management (September 2016)
- Tech Security for Lawyers (Spring 2012 Benchers' Bulletin)
- *Code of Professional Conduct for British Columbia* [Chapter 3.3: Confidentiality; Chapter 6.1: Supervision; Chapter 6.2 : Students]

Indicator 2: Do you participate in education and training in relation to preserving the duties of confidentiality, solicitor-client privilege, privacy and the consequences of privacy breaches?

Considerations

- ☐ You and your staff, if any, participate in technology training relating to issues of confidentiality and privacy pertaining to electronic data, including training on the importance of password protection
- ☐ You and your staff, if any, participate in 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
- ☐ You clearly explain solicitor-client privilege to your clients
- ☐ Processes are in place for dealing with situations where exceptions to duties of confidentiality and solicitor-client privilege may apply
- ☐ You participate in training on the requirements of privacy legislation
- ☐ 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)
- Scams Against Lawyers - What Are They and What Can You Do About Them (Fall 2014 Benchers' Bulletin)
- Making Your E-Communications Secure (Fall 2014 Benchers' Bulletin)
- Tech Security for Lawyers (Spring 2012 Benchers' Bulletin)
- *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 you and your staff, if any 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 your office

- 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)
- Tech Security for Lawyers (Spring 2012 Benchers' Bulletin)
- *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)
- Scams Against Lawyers - What Are They and What Can You Do About Them (Fall 2016 Benchers' Bulletin)
- BC Lawyers and Cloud Computing (Winter 2016 Benchers' Bulletin)
- Making Your E-Communications Secure (Fall 2014 Benchers' Bulletin)
- Security Practice Tips (Summer 2014 Benchers' Bulletin)
- Tech Security for Lawyers (Spring 2012 Benchers' Bulletin)
- 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)
- ☐ Processes are in place to ensure 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
- ☐ You have disclosed the nature of the space-sharing arrangement and any foreseeable limits of your ability to maintain confidentiality to your 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]

Rating

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 ELEMENT 3	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 ☐

What does your firm do well?

How could your firm improve?

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

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 staff, if any, and reviewed and updated
- Processes are in place to monitor and reinforce staff adherence to the conflicts policy
- You and your staff, if any, participate in 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 processes 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
- Processes 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 you are considering accepting a directorship position or engaging in a business venture with a client
  - when your interpersonal relationship creates possible conflicts
- ☐ You and your staff, if any, 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 you are complying with your individual professional obligations under the Law Society Rules and the *BC Code*

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]

Rating

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 ELEMENT 4	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 ☐

What does your firm do well?

How could your firm improve?

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

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 staff, if any, and is reviewed and updated
- You and your staff, if any, participate in 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 you and your staff, if any

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)
- Time For Robust Backups (Spring 2014 Benchers' Bulletin)
- *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 you are complying with your individual professional obligations under the Law Society Rules and the *BC Code*

RESOURCES:

- Practice Resource: Loss prevention planning checklist (November 2002)
- Scams Against Lawyers - What Are They and What Can You Do About Them (Fall 2016 Benchers' Bulletin)
- Professionalism: Practice Management (September 2016)
- Time For Robust Backups (Spring 2014 Benchers' Bulletin)
- *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]

Rating

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 ELEMENT 5	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 ☐

What does your firm do well?

How could your firm improve?

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

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 staff, if any, and is reviewed and updated
- ☐ You 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 you are complying with your individual professional obligations under the Law Society Rules and the *BC Code*

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)
- E-Billing, E-Signatures and Paperless Offices (Summer 2012 Benchers' Bulletin)
- *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 you

RESOURCES:

- Practice Resource: Retainer Agreement (Updated December 2016)
- Practice Resource: Joint Retainer (November 2013)
- Professionalism: Practice Management (September 2016)
- E-Billing, E-Signatures and Paperless Offices (Summer 2012 Benchers' Bulletin)
- *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
- 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)
- E-Billing, E-Signatures and Paperless Offices (Summer 2012 Benchers' Bulletin)
- *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]

Rating

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 ELEMENT 6	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 ☐

What does your firm do well?

How could your firm improve?

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

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 accounts are 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 staff, if any
- You and your staff, if any, participate in training in relation to the rules pertaining to trust accounts
- You and your staff, if any, participate in training opportunities to assist in spotting possible fraudulent trust account activity
- Processes 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)
- Scams Against Lawyers - What Are They and What Can You Do About Them (Fall 2016 Benchers' Bulletin)
- *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?

Considerations

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

RESOURCES:

- Professionalism: Practice Management (September 2016)
- Scams Against Lawyers - What Are They and What Can You Do About Them (Fall 2016 Benchers' Bulletin)
- *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]

Rating

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 ELEMENT 7	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 ☐

What does your firm do well?

How could your firm improve?

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

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 your staff, if any, experience a fair and safe working environment?

Considerations

- Policies or processes are in place that encourage diversity, inclusion, substantive equality, accommodation, as well as ensuring freedom from discrimination in management and advancement of staff, if any
- Hiring processes, if any, are free of bias and discrimination, including interview questions
- Policies are reviewed, updated and are communicated to staff, if any
- You and your staff, if any, participate in 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 for staff, if any
- Flexible work schedules are an option for those who have child-care or other caregiver responsibilities
- Accommodation policies are in place for staff with disabilities
- Staff, if any, have access to internal complaints mechanisms 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)
- 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 you 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
- You and your staff, if any, have adequate knowledge and training to ensure that clients with disabilities and other equality seeking groups receive competent legal services
- You and your staff, if any, participate in skills-based training in intercultural competency, conflict resolution, human rights and anti-racism in response to Truth and Reconciliation Commission Call to Action #27
- You have considered legal requirements relating to accessibility and where accessibility may be an issue, you 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: Cannons 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]
- Truth and Reconciliation Commission of Canada: Calls to Action (2015)

Rating

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 ELEMENT 8	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 ☐

What does your firm do well?

How could your firm improve?

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 t**o** 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 ❑	2 ❑	3 ❑	4 ❑	5 ❑

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 ❑	2 ❑	3 ❑	4 ❑	5 ❑

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	Usually not	Occasionally	Frequently	Almost always
	1 ❑	2 ❑	3 ❑	4 ❑	5 ❑

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	Usually not	Occasionally	Frequently	Almost always
	1 ❑	2 ❑	3 ❑	4 ❑	5 ❑

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 ❑	2 ❑	3 ❑	4 ❑	5 ❑

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 ❑	2 ❑	3 ❑	4 ❑	5 ❑

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 ❑	2 ❑	3 ❑	4 ❑	5 ❑

THINGS TO THINK AB0UT

- 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 ❑	2 ❑	3 ❑	4 ❑	5 ❑

THINGS TO THINK AB0UT

- 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 ❑	2 ❑	3 ❑	4 ❑	5 ❑

THINGS TO THINK AB0UT

- 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 ❑	2 ❑	3 ❑	4 ❑	5 ❑

THINGS TO THINK AB0UT

- 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 underserviced 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)

NOVA SCOTIA
BARRISTERS' SOCIETY

MANAGEMENT SYSTEM FOR ETHICAL LEGAL PRACTICE (MSELP)

WORKBOOK

The Workbook

The MSELP Self-Assessment Tool is an instrument designed to ensure your legal entity has an effective Management System for Ethical Legal Practice (MSELP), 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 MSELP elements. It will help you work through each element before you complete and submit your online MSELP 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 MSELP 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 MSELP 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 MSELP.

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 The Law Society (UK) / Practice notes: File closure management [3: File closure policy and checklist]
You send closing letters at the end of the retainer / matter	**1**	**2**	**3**	**4**	**5**		
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**		

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

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

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]

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.

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	***Resources***
INDICATOR – You have a policy with respect to responding to client communications							
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**		
INDICATOR – You maintain an active case list							
	1	**2**	**3**	**4**	**5**		
INDICATOR – Client matters are completed in a timely fashion							
	1	**2**	**3**	**4**	**5**		
INDICATOR – You respond to communications from lawyers in a timely fashion							
	1	**2**	**3**	**4**	**5**		

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
Ensuring undertakings are fulfilled in a timely fashion	**1**	**2**	**3**	**4**	**5**		QBE Europe Professional Indemnity Risk Management / Solicitors: A Guide to Undertakings (January 2013)
INDICATOR – You have a written guideline in relation to communicating with the Court							
	1	**2**	**3**	**4**	**5**		
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
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
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 *Code of Professional Conduct*	**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**		

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

INDICATOR – You provide staff and lawyers training in culturally competent legal service delivery

	1	**2**	**3**	**4**	**5**		

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 *pro bono* work	**1**	**2**	**3**	**4**	**5**		ABA Standing Committee on Pro Bono & Public Service and the Center 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)
Your entity encourages *pro bono* work	**1**	**2**	**3**	**4**	**5**		
Pro bono hours 'count' toward billable hour targets	**1**	**2**	**3**	**4**	**5**		
You spend the appropriate amount of time with the client and are empathetic	**1**	**2**	**3**	**4**	**5**		

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

INDICATOR – You use alternative fee arrangements

	1	**2**	**3**	**4**	**5**		LegalTrek / Alternative Fee Arrangements: a Comprehensive Guide for Law Firms

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

Notes:

The Law Society of British Columbia

Memo

To: Benchers

From: Policy and Legal Services Staff

Date: November 14, 2017

Subject: Draft Online Self-Assessment Tool and Associated Considerations

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Purpose

1. This memorandum and the accompanying draft online self-assessment tool linked **HERE** address three matters that arose at the October 2017 Bencher meeting:

    a. clarifying what firms are *required* to do as part of the self-assessment exercise, in contrast to the optional aspects of the assessment;
    b. concerns about the length of time firms will spend completing the self-assessment; and
    c. concerns about the inapplicability of some of the content of the draft self-assessment to sole practitioners.

2. In an effort to address these matters, this memorandum aims to expand the proposal to assist the Benchers' understanding of the self-assessment process and to provide an opportunity to "test drive" a draft of the online version of the assessment tool.

Background

3. The law firm regulation proposal that has been under consideration by the Benchers is, in many ways, designed to create a regulatory impetus to engage law firms in establishing policies and processes that support lawyers in meeting their regulatory requirements.

4. The rationale is that, by encouraging firms to develop practice management structures that address the eight "Professional Infrastructure Elements" identified by the Task Force, the incidence of complaints can be reduced, which both better protects the public and

decreases the costs and time associated with lawyers, firms and the Law Society dealing with complaints.

5. Law firm regulation is therefore the Law Society's first foray into "proactive" regulation – the use of regulatory powers to encourage firms to have systems in place that prevent complaints at the outset, rather than waiting for complaints to happen and then dealing with the consequences.

6. The self-assessment process is a central feature of the proposed regulatory scheme.[1] The first phase of law firm regulation will require all law firms in BC to assess themselves against the eight Professional Infrastructure Elements and submit their completed assessment to the Law Society.

7. The self-assessment tool itself (discussed in greater detail in the next section of this memorandum) is designed as an educational exercise, embedded within a regulatory framework, to ensure that firms turn their minds to the policies and processes that address the Professional Infrastructure Elements. Firms will be required to evaluate the extent to which these systems are being developed or are already in place at the firm.

8. It is anticipated that through the development and implementation of policies and processes that address the Elements, firms will be better positioned to ensure their lawyers are meeting the necessary requirements relating to conduct and competence, resulting in improved client service and a reduction in complaints.

9. The results of the self-assessment (which in some ways might be likened to a form of required survey) will also enable the Law Society to identify areas where firms need further assistance and to prioritize the development of additional practice management resources for firms.

10. The details of the proposed self-assessment process are explored at length in the Second Interim Report of the Law Firm Regulation Task Force (the "Report")(see especially pp.

[1] Other Canadian jurisdictions have also included self-assessment as a core design feature of their law firm regulation schemes. Nova Scotia, Alberta, Saskatchewan and Manitoba are all at various stages of developing and testing their self-assessment tools. Nova Scotia is the only province to have reported back on the success of the tool following the completion of their Pilot Project in May 2017. Several Australian states have also utilized self-assessments in regulating law firms and have demonstrated the effectiveness of this approach. For example, in New South Wales, 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-assess. Additionally, 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-assessment. A majority of ILPs also reported that the self-assessment process was a learning exercise that helped them improve client service (see the Second Interim Report of the Law Firm Regulation Task Force at p. 15).

14-27), including more than half a dozen Recommendations that outline the goals, content and format of the self-assessment tool. These include:

> **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.

11. When the Report was presented to the Benchers in June 2017, a draft self-assessment tool was appended to provide an example of the structure and content of such a tool. The draft drew heavily from self-assessment tools being developed in the Prairie provinces and Nova Scotia, and had undergone a rigorous line-by-line review by Focus Groups comprised of lawyers from firms of various sizes from across the province, including sole practitioners.[2]

12. Despite the work that went into its development, the self-assessment tool represented an early draft. As indicated in the Report, the tool was expected to undergo further refinement, including conversion to an online tool. The Task Force envisaged that this

[2] The 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. Feedback from the Focus Groups sessions resulted in a number of amendments to the content and format of an earlier draft of the self-assessment tool.

work would not commence until the Benchers had approved the Recommendations set out in the Report.

13. However, in response to some of the issues raised at the October 2017 Bencher meeting, staff have created a **draft** version of the online self-assessment, with the goal of providing the Benchers with a more accurate sense of how the tool might operate in practice.

Discussion

14. The Benchers are encouraged to complete the draft online self-assessment tool, linked at paragraph one, above, in advance of the December meeting.

15. Although the tool is not finalized (e.g. the listed resources are not linked to the relevant documents, the list of Considerations is still under development, there is no ability to print as a PDF on completion), reviewing this material should improve users' understanding of the required and optional aspects of the self-assessment tool, as well as demonstrating the amount of time the assessment requires and its applicability to sole practitioners. These issues are also briefly discussed below.

Required vs. optional aspects of the self-assessment

16. The mandatory and optional aspects of the self-assessment process are described in detail in the introductory sections of the online assessment tool. This will enable all users to have a clear sense of what is required and what is optional when commencing the self-assessment exercise.

17. The mandatory aspects of the online assessment tool are limited. Users will be required to read each Professional Infrastructure Element, its associated Objective and several key Indicators (one page of text). Users will then be given the option to read or, alternatively, skip over the more detailed list of Considerations and Resources associated with each Element,[3] before providing a mandatory rating of their firm's performance in relation to each of the Elements.

18. There is also an opportunity for firms to indicate the areas in which they believe that they would benefit from additional practice resources. This section of the assessment is, once again, optional.

[3] This *optional* material comprises the bulk of the assessment tool.

19. The **only requirements** are that firm's consider, and rate their performance in relation to, each of the eight Professional Infrastructure Elements and submit their assessment to the Law Society. Firms will have four months to complete this exercise.

20. Importantly, the self-assessment does **not** impose a requirement for firms to put in place policies or processes in relation to each of the Professional Infrastructure Elements. Firms are simply asked to report out on the extent to which their practice is *currently* addressing these Elements. The goal of this exercise is to give the Law Society a better sense of where firms feel they are doing well and where there is a need for additional practice resources, as well as providing firms with the opportunity to reflect on their practices and to identify both strengths and areas requiring further attention.

21. If, at later stage in regulatory development, there was consideration of imposing a *requirement* on firms to put policies in place that address the Professional Infrastructure Elements, that matter would again come before the Benchers for discussion and decision.

Time to complete the self-assessment

22. Concerns were raised at the October Benchers meeting that the time required to complete the self-assessment exercise would be overly onerous for firms, particularly for sole practitioners. The draft online assessment tool has been developed, in part, to alleviate this concern.

23. The self-assessment repeatedly emphasizes that firms are **not required** to address all the Indicators and Considerations (or to develop or implement all the suggested policies and processes) found in the tool. This material is provided as guidance only.

24. If a firm decides not to view any of the "optional" material, the self-assessment exercise should take less than an hour to complete.

25. In contrast, some firms may engage more deeply with the self-assessment exercise. For example, a firm might complete the optional Workbook before moving to the online assessment tool, or to review all of the Considerations and associated Resources. However, this level of engagement is not required. It will be up to each law firm to determine how much time and resources they want to commit to the self-assessment process.

26. Nova Scotia's experience with their self-assessment tool —which is similar to the tool proposed for BC— is instructive in this regard. The Nova Scotia Barristers' Society's Pilot Project Final Report specifically addressed concerns about the regulatory burden created by the self-assessment. The Report noted that:

> While some participants expressed concerns about the time required to complete the self-assessment process at the outset of the process, no participants expressed the process had been too onerous after completing it.[4]

27. Program staff in Nova Scotia also report that the vast majority of participants spent no more than three hours completing the assessment, with the one hour or less often being reported by sole practitioners. A few large firms noted they completed the assessment over days or weeks, but only in that it was "passed around" for input from different departments and managers.

28. No single point person reported spending an onerous amount of time on the exercise and everyone claimed to find some value in the exercise.[5]

Applicability of self-assessment to sole practitioners

29. Concerns were also raised that portions of the draft self-assessment tool that was appended to the Report were inapplicable to sole practitioners. To address this issue, staff have created an alternate version of the self-assessment tailored to the unique practice circumstances of sole practitioners, which sole practitioners will complete instead of the self-assessment targeted at firms with more than one lawyer.

30. To incorporate the new "sole practitioner version" of the assessment, the online tool prompts the user to indicate if they are a sole practitioner before beginning their assessment. Sole practitioners will be directed to a different version of the assessment tool.

31. In that version, the Professional Infrastructure Elements and their Objectives — which are sufficiently high-level to be applicable to firms of all sizes — remain the same. However, a number of the Indicators, Considerations and Resources have been modified or eliminated. A separate Workbook for sole practitioners has also been created and is linked to the online assessment tool.

32. Given the limited time staff have had to create this material, the "sole practitioner" version of the assessment has not been vetted by the Task Force or members of the Focus Groups, and will undergo a more detailed review before finalization.

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[4] Nova Scotia Barristers' Society, "Legal Services Support Pilot Project Final Report" (May 29 2017) at p. 8. Online at: http://nsbs.org/sites/default/files/ftp/RptsCouncil/2017-05-19_LSSPilotProjectFinalRpt.pdf

[5] Communications with Jennifer Pink, Legal Services Support Manager at the Nova Scotia Barristers' Society, October 12, 2017.

Conclusion

33. This memorandum and the linked draft online assessment tool aim to give the Benchers a better sense of how the assessment exercise would operate and provide insight into the length of time it may take to complete the assessment and how the tool could be modified to accommodate sole practitioners.

34. Importantly, the draft online assessment is an *example* of how such a tool could function; not a blueprint for its design. The content, format and platform for hosting the assessment would undergo significant review before the tool was finalized. The set of Resources would also be expanded and linked electronically.

35. Further work on this, and other aspects of the assessment tool awaits approval of the regulatory scheme, in principle, by the Benchers at the December meeting.

The Law Society of British Columbia

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]

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[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 polices 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 ☐**	**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 ☐**

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 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: Cannons 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]

The Law Society of British Columbia

Final CPD Review Report of the Lawyer Education Advisory Committee

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Purpose: Decision

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Executive Summary

Over the course of the past two years, the Lawyer Education Advisory Committee has examined and evaluated every aspect of BC's continuing professional development ("CPD") program. The Committee now presents its Final Report, which outlines the Committee's consideration of the various features of the current CPD scheme and presents a set of 26 key recommendations designed to improve the overall quality of continuing professional development in BC.

As reflected throughout the Final Report, the Committee supports maintaining many of the core features of the current CPD scheme, including: the accreditation model; the 12 credit-hour requirement; existing subject matters, topics and learning modes; exemption criteria; and compliance and enforcement measures.

The Committee also proposes a number of modifications to the program. In general, these changes will result in an expansion of eligible learning activities and greater flexibility regarding how and when lawyers can satisfy their CPD credits.

Specific recommendations include: the addition of two new subject matters, including Professional Wellness, an increase in the number and type of eligible Practice Management and Lawyering Skills topics, amendments to the criteria governing CPD learning modes, and the introduction of new reporting requirements in which a portion of a lawyer's annual credits can be carried-over to satisfy the following year's CPD requirements.

Collectively, the recommendations contained in the Final Report reflect a more inclusive, responsive and flexible approach to CPD, and represent a new and exciting chapter for continuing legal education in BC.

Introduction

1. Over the past two years, the Lawyer Education Advisory Committee (the "Committee") has undertaken a comprehensive review of BC's Continuing Professional Development ("CPD") program. The length and detail of the Final Report is reflective of the enormity

of this task, which has spanned two consecutive Committees and engaged more than one thousand lawyers in consultation.

2. In the course of the review process, the Committee addressed and evaluated every aspect of BC's CPD program. The Final Report provides a detailed examination of the various features of the current scheme and presents a set of 26 recommendations designed to improve the overall quality of the CPD program.

3. Following a brief summary of the history of CPD in BC and a general overview of the review process, program objectives and foundational design features are discussed. The Final Report then shifts to the substantive elements of the CPD program, examining eligible and ineligible subject matters and topics, before moving to an evaluation of the learning mode criteria. The Final Report concludes by addressing reporting requirements, compliance and enforcement measures and the relationship between CPD and the Truth and Reconciliation Commission's Call to Action #27.

4. Throughout the review process, the Committee has taken care to avoid the over-regulation of the CPD program and has favoured modifications that increase reliance on, and trust in lawyers to make wise CPD choices.

5. Many of the recommendations support maintaining the core elements of the current CPD program. Other recommendations propose changes that represent a more liberalized approach to continuing legal education by expanding the scope of eligible CPD activities and delivery modes and providing lawyers with more flexibility as to when and how they may satisfy their CPD requirements.

6. These 26 recommendations are now before the Benchers for discussion and decision. If adopted, the proposed changes will set the course for a new chapter of CPD in BC, one that is responsive to the evolving nature of the practice of law and what it means to be a competent and professional lawyer.

Background

History of CPD in British Columbia

7. Continuing professional development has been the subject of Bencher discussions at various junctures over the past forty years. It was not until 2006, however, that the Lawyer Education Task Force began formally considering the merits of introducing some form of mandatory professional development program in British Columbia.

8. The Task Force's work on this issue culminated in a Preliminary Report recommending the establishment of a mandatory continuing legal education program in BC.[1]

9. Recognizing that the development and monitoring of education-based initiatives would be an ongoing task, the Law Society subsequently created the Lawyer Education Committee, which further refined the options for the proposed CPD program.

10. In 2007, the Lawyer Education Committee issued a detailed report recommending that each practising member of the Law Society must complete "not fewer than 12 hours per year of continuing professional development undertaken in approved educational activities that deal primarily with the study of law or matters related to the practice of law." The report included a list of approved activities that established the initial parameters of what would "count" for CPD in BC.[2]

11. In 2009 the Law Society of BC became the first Canadian law society to implement a mandatory CPD program.

12. The first review of the CPD program occurred in 2011, leading to a number of modifications that came into effect in 2012.[3] Over the past five years, no additional changes have been made to the CPD scheme.

The 2016-2017 review process

13. In early 2016, the Lawyer Education Advisory Committee commenced a second review of the CPD program. This work has been guided by the Law Society's statutory object and duty and the initiatives set out in the Strategic Plan.

14. Section 3 of the *Legal Profession Act* (the "*LPA*") requires the Law Society to uphold and protect the public interest in the administration of justice by, amongst other things, establishing standards for the education of its members. Section 28 of the *LPA* specifically permits the Benchers to maintain and support the CPD program:

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[1] This recommendation was adopted by the Benchers in November 2006. See Preliminary Report of the Lawyer Education Task Force on Mandatory Continuing Professional Development (November 2006), online at: law20society.bc.ca/Website/media/Shared/docs/publications/reports/LawyerEd_2006.pdf

[2] See Report of the Lawyer Education Committee on Continuing Professional Development (November 2007), online at: www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/LawyerEd_2007.pdf

[3] Report of the Lawyer Education Advisory Committee: Continuing Professional Development Review and Recommendations (September 2011), online at: www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/LawyerEd-CPD_2011.pdf

Education

28 The benchers may take any steps they consider advisable to promote and improve the standard of practice by lawyers, including but not limited to the following:

(a) establishing and maintaining or otherwise supporting a system of legal education, including but not limited to the following programs:

(ii) continuing legal education

15. Initiative 2-1(c) of the Strategic Plan identifies the review of the CPD program as an organizational priority for 2015-2017.

16. As discussed below, the 2016/2017 review process comprised three main elements: consideration of issues by the Lawyer Education Advisory Committee at regular meetings, *ad hoc* engagement with other law societies, and a two-phase consultation process.

17. The Committee utilized these forums to explore, on an issue-by-issue basis, every aspect of the current CPD scheme. Analysis of these issues is described throughout the body of the Report, and the Committee's suggested approaches are distilled into 26 key recommendations.

18. Importantly, the recommendations address both changes to the CPD scheme and proposals to maintain existing elements of the program. Several of the more detailed and operational aspects of the program – for example, the numerous criteria associated with the accreditation of different modes of CPD delivery (e.g. courses) or the procedural steps to which a lawyer must adhere in order to obtain credit (e.g. all applications for credit must be submitted through the website) – are not discussed where changes are not proposed.

19. More generally, where no modification to the program is recommended, the criteria and conditions set out in the current CPD Guidelines at **Appendix A** remain in place.

Committee meetings

20. Spanning the course of two consecutive Committees, the review process has been both lengthy and comprehensive. Supported by detailed policy analysis from the Policy and Legal Services department and input from the program's administrators, the Committee has examined every facet of the existing scheme and canvased possible alternatives to CPD content, format, delivery and reporting.

21. Throughout, the Committee's deliberations have been lively, thought-provoking, respectful and, in some instances, divergent. Importantly, with the exception of Recommendation 22B, the Report's recommendations represent the majority view of the

Committee. On a number of issues, Committee members held opposing views. Several particularly controversial issues required the Committee to resort to a vote.

22. Where Committee members have expressed strong support for a particular minority view, dissenting opinions are highlighted in this Report.

Engagement with other jurisdictions

23. In 2009, BC became the first Canadian jurisdiction to implement a mandatory CPD requirement for its lawyers. Eight years later, every Canadian law society requires members to engage in continuing professional development activities as a condition of practice. This expansion and diversification of CPD models across the country has produced a range of approaches against which to compare and evaluate the merits of BC's CPD program.

24. Accordingly, Law Society staff have engaged in *ad hoc* discussions with other provinces and territories, as well as looking to mandatory continuing legal education ("MCLE") requirements in the United States. Many of the Final Report's recommendations are informed by this comparative analysis. For example, discussions relating to accrediting wellness activities were greatly enhanced by consideration of how other legal regulators have incorporated this subject matter into their CPD and MCLE schemes.

Consultation with the profession

25. The third prong of the review process involved extensive consultation with the profession.

26. In June 2016, the Committee developed an email survey administered to all practising members of the Law Society (the "2016 Survey"). The goal of the survey was to elicit feedback about the value of, and potential changes to the current CPD program.

27. The 2016 Survey was completed by 1,237 members, making it statistically valid [see **Appendix B**]. Thousands of individual comments were provided to both specific and general questions. For example, there were over 700 written comments in response to the broad question of how CPD could be improved and over 350 comments in response to the question addressing the accreditation of learning activities related to lawyer wellness. The survey results were an important element of the Committee's discussions and helped shape a number of the recommendations presented in the Final Report.

28. A second round of consultation occurred over the summer of 2017 (the "2017 Consultation") focusing on over 60 institutions and organizations with potential interest in changes to the CPD program. Stakeholders were asked their views on the proposed

changes and for general suggestions as to how the CPD program could be improved [see **Appendix C**]. Stakeholders were also invited to request an "in person" meeting with the members of the Lawyer Education Advisory Committee and Law Society staff.

29. Twenty-three of these stakeholder groups provided the Law Society with written comments and one participated in a face-to-face meeting. Collectively, the feedback in the 2017 Consultation indicated widespread support for the proposed changes and assisted the Committee in finalizing its recommendations.

30. References to the feedback provided through both phases of the consultation process are provided at various points throughout this Report.

Purpose of the Final Report

31. The purpose of the Final Report is two-fold. First, it aims to provide the Benchers with an overview of the issues and considerations that have shaped the Committee's review of the CPD program over the past two years. Second, the Report presents a series of recommendations, which are designed to improve the overall quality of the program. Each recommendation is underpinned by detailed policy analysis and accompanied by supporting rationale.

32. Collectively, the 26 recommendations create a roadmap for the CPD program moving forward, one that recognizes both the value and necessity of the Law Society providing accessible, flexible, relevant and innovative CPD options to BC's lawyers.

Program objectives and key design features

Continuation of the CPD program

33. The Committee began by considering the threshold issue of whether the CPD program should be continued. As part of these early deliberations, past Law Society reports and academic commentary presenting arguments for and against mandatory continuing professional development were reviewed.[4] The Committee also noted that every Canadian law society has adopted of some form of CPD program.

[4] *Supra* note 1-3. See also, Lalla Shishkevish, "A Little Background on Mandatory Continuing Legal Education Through the Lens of the US MCLE Experience" (August 2015) and Chris Zielger and Justin Kuhn, "IS MCLE a Good Thing? An Inquiry into MCLE and Attorney Discipline", online at: www.clereg.org/assets/pdf/Is_MCLE_A_Good_Thing.pdf

34. Although there is limited empirical evidence of a direct correlation between CPD participation and improved lawyer competence, many of the arguments in favour of mandatory continuing legal education resonated with the Committee. Key amongst these is the notion that CPD raises competence by exposing lawyers to new developments in theory and practice and renewing basic knowledge and skills. Given that law is constantly in flux, ensuring education is of a continuing nature is vital to lawyers remaining competent over the long-term.

35. The Committee also recognizes the relationship between the CPD program and the Law Society's duty to protect the public interest by establishing standards of education for its members.[5] The CPD program is an important part of upholding this statutory mandate and sends a strong message to both the profession and the public that the Law Society is committed to establishing, maintaining and enhancing standards of legal practice in the province.

36. Notably, 83% of respondents to the 2016 Survey indicated they are in favour of continuing the requirement to complete CPD.

37. Based on these considerations, the Committee recommends that the CPD program be continued in British Columbia.

> **Recommendation 1**: The Law Society will maintain a continuing professional development requirement that must be satisfied by all practising BC lawyers.

Purpose statement

38. Before engaging in a review of the structure and content of the CPD program, the Committee revisited the CPD purpose statement, which has not been re-evaluated since the introduction of the program. The current purpose statement reads:

> *The goal of a mandatory continuing professional development program is to provide education resources that are easily available and relevant to lawyers at all stages of their practices, and to ensure that the resources are consumed in order to be able to assure the public that there is a commitment within the profession to establishing, promoting and improving the standards of practice in the Province*

39. Reconsideration of the purpose statement is warranted for a number of reasons. First, the purpose statement serves as an important point of reflection when considering

[5] See the *Legal Profession Act*, s. 3.

modifications to the current CPD scheme. Establishing clear goals and objectives should, in significant measure, drive recommendations regarding changes to the program.

40. Second, a clear purpose statement improves understanding of the rationale for CPD within the profession and for the general public, and as such is an important communication tool. Third, a clear purpose statement assists with monitoring and evaluating the success of the program.

41. The Committee is of the view that the current purpose statement does not address the full set of objectives that the CPD program seeks to achieve. In drafting a new purpose statement, the Committee identified the primary goals of continuing legal education, aided by a review of the CPD and MCLE purpose statements of more than a dozen legal regulators within Canada and across the United States. The Committee also referred to the Law Society's statutory mandate under s. 3 of the *LPA*.

42. The proposed new purpose statement reflects the program's primary objectives, highlighting the key ways in which continuing legal education protects the public interest: by achieving and maintaining high standards of lawyer competency, professionalism and learning in the practice of law.

Recommendation 2: The Law Society will adopt the following CPD purpose statement:

The purpose of the mandatory CPD program is to uphold and protect the public interest in the administration of justice by actively supporting the Law Society's members in achieving and maintaining high standards of competency, professionalism and learning in the practice of law.

Key design features

Accreditation model

43. Under an accreditation model, the regulator evaluates the nature, content and length of a professional development activity, and specifies whether, how much and what type of CPD credit lawyers will receive. For example, credit may be provided for pre-approved activities or courses presented by particular providers. Alternatively, lawyers can seek accreditation of programs that have not been pre-approved by the regulator.

44. Within Canada, the accreditation model has been adopted in BC, Saskatchewan, Quebec and New Brunswick. Ontario has a partial accreditation model, in which the Law Society of Upper Canada accredits ethics, professional responsibility and practice management content, but does not accredit other subject areas.

45. In contrast, Manitoba, Newfoundland, Prince Edward Island and all three territories have non-accreditation models. Under this approach, responsibility lies with the lawyer, not the law society, to determine whether a learning activity meets the CPD criteria and therefore qualifies for continuing professional development credit.

46. The Committee reviewed the particulars of several of these non-accreditation models and compared them to BC's scheme.

47. The Committee observes that the Law Society of BC's accreditation model is effectively administered and well understood by lawyers. In addition to taking the burden off practitioners to repeatedly assess whether learning activities are eligible for credit, accreditation also provides the Law Society with a level of assurance that lawyers are engaged in programming that meets established criteria.

48. The Committee concludes that replacing the accreditation model with an approach in which lawyers are required to self-evaluate whether an activity qualifies for credit would not improve the overall design, functionality or quality of the CPD program. Therefore, the continuation of the accreditation model is recommended.

> **Recommendation 3:** The Law Society will continue to accredit all eligible CPD programming.

Linkages to practice areas and testing

49. The Committee considered whether lawyers should be required to demonstrate a link between their individual practice areas and their continuing professional development activities. Currently, there is no such requirement.

50. To inform this analysis, the Committee considered the linkage requirement in Newfoundland. Under that program, eligible activities must be relevant to the lawyer's present or perceived future professional needs, or directly related to the lawyer's current or anticipated practice areas.

51. The majority of the Committee is of the view that lawyer competence, professionalism and learning are supported even in circumstances where practitioners complete CPD outside their primary area of expertise. Accordingly, the Law Society should not impose

a new requirement that lawyers demonstrate a nexus between their practice area and their CPD activities.

Recommendation 4: Lawyers will not be required to demonstrate a nexus between their practice area and their CPD activities.

52. The CPD program already relies on numerous criteria to establish subject matter and learning mode eligibility. These criteria serve as an effective mechanism to ensure that accredited programs meet basic standards of quality and relevance to the practice of law. The Committee concludes that an additional practice linkage requirement would be both unnecessary and unnecessarily onerous for lawyers.

53. Restricting CPD in such a fashion may also disadvantage particular groups of lawyers, including those practising in specialized areas with fewer CPD offerings, and lawyers in small or remote communities who have limited access to the full range of CPD opportunities.

54. From an operational perspective, such a requirement would be difficult to enforce given that the Law Society does not collect comprehensive information about lawyers' practice areas. Even if such information were available, staff would be required to exercise a high degree of discretion as to whether the linkage requirement is met. The Committee is of the view that this would be an inefficient use of staff resources, particularly in light of the robust accreditation model already in place.

55. Operational constraints also preclude the introduction of testing as a mandatory component of the CPD program. Given the wide range of practice areas, the multitude of providers, the varied means of satisfying CPD requirements and the disparate nature of CPD subject matters and associated topics, the Committee concludes that a universal testing requirement is not viable.

Recommendation 5: The Law Society will not introduce mandatory testing as part of the CPD program.

Learning plans

56. The Committee discussed the benefits and drawbacks of the learning plan model, which has been adopted by four other law societies - Alberta, Nova Scotia and, in a modified fashion, Newfoundland and the Northwest Territories.

57. Under this approach, lawyers identify particular goals and objectives and are responsible for creating and documenting their progress in a learning plan. Typically, there are no minimum hours, no mandatory subjects and no limits on the types of eligible learning activities. The plan is not submitted to the law society, but must be retained on record and is potentially subject to audit.[6]

58. In contrast, most law societies do not utilize learning plans, and instead require lawyers to complete and report a minimum number of CPD hours to within a defined reporting period.

59. The Committee reviewed the learning plan models in Alberta, Nova Scotia and Newfoundland, and concluded that they create an additional, time consuming step for lawyers who are required not only to complete and report their CPD, but also to create a plan and make declarations to the law society to this effect. The Committee also notes that jurisdictions adopting the learning plan model generally do not follow an accreditation model or institute a minimum number of mandatory hours.

60. For these reasons, the Committee recommends against the inclusion of learning plans as an element of the CPD program.

> **Recommendation 6:** The Law Society will not introduce a requirement for lawyers to complete a learning plan as part of their CPD obligations.

Content of the CPD program: subject matters

61. In the legal profession, change is upon us. Increased interconnectivity and interdependency, rapid advances in technology and pressures to reduce costs while maintaining competitiveness are transforming the way in which legal services are delivered. Shifting demographics are also poised to impact who provides and consumes legal services in the coming years.

62. To stay current and relevant, CPD programming must address an increasingly diverse set of subjects, issues and skills. As Dean Holloway observes:

> Tomorrow's lawyer — which, of course, actually means today's lawyer — still needs to know the law and how to navigate the legal system. She needs to be able to communicate with brevity and effect — though now also with cultural nuance that was alien to most of us a generation ago. But knowledge of the law and procedure

[6] This is the approach taken by the Law Society of Alberta and the Nova Scotia Barristers' Society.

> — our traditional stock in trade and the thing that for centuries has conferred on us the stature of a "learned profession" — is no longer enough. Tomorrow's lawyer also — at least if he wants to be successful — needs to have a solid level of business acumen and a firm grounding in exotic topics with foreign-sounding names such as project management and lean six sigma.
>
> [..]
>
> Tech-savviness, business acumen, cultural sensitivity, solution oriented design thinking . . . without these skills, and probably many others, a lawyer in private practice today will either flounder or end up before a discipline panel — or both. So, it's up to those of us who are training the next generation of the profession to make sure that we nurture these skills among our progeny.[7]

63. Many of the recommendations outlined in this Report are proposed as a means of ensuring that the CPD program stays current against the backdrop of a rapidly evolving and, in many ways, transforming profession.

64. The recommendations also reflect the Committee's view that a CPD scheme characterized by flexibility, choice and trust will be of greatest benefit to legal practitioners and by extension, the public, in maximizing opportunities for lawyers to engage in programming that will enhance their competence, professionalism and learning. Many other CPD programs in Canada and the U.S. are following a similar path, with a near-universal trend toward greater flexibility and inclusiveness.

Subject matters

65. The following subject matters are currently eligible for CPD credit: substantive law, procedural law, professional ethics, practice management, and lawyering skills [see the CPD Guidelines at **Appendix A**].

66. These subject matters are foundational elements of competent and professional legal practice, and the Committee supports their continued inclusion in the CPD program. Accordingly, the Committee's primary focus has been the set of *ineligible* subject matters, as well as ineligible topics within the above noted subject matters.

Professional Wellness

67. The Law Society of BC is one of only two Canadian law societies that will not provide lawyers CPD credit for educational activities related to lawyer well-being.[8]

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[7] Ian Holloway, "Training Lawyers for Tomorrow" Canadian Lawyer Magazine (August 8, 2017).

[8] Northwest Territories is the only other Canadian jurisdiction that does not accredit wellness courses. No province or territory *requires* lawyers to take wellness courses.

68. In considering whether this ineligibility is still warranted, the Committee's discussions were informed by numerous memoranda, articles and reports on the issue of lawyer wellness, and benefited from feedback from the Lawyers Assistance Program.

69. The Committee also observed that 60% of the respondents in the 2016 Survey are in favour of extending accreditation to wellness courses that support the mental and physical well-being of lawyers in the practice of law.

70. As described in greater detail in below, the Committee recommends that a new subject matter entitled "Professional Wellness" be added to BC's CPD program.

> **Recommendation 7**: The Law Society will recognize Professional Wellness as a subject matter that is eligible for CPD credit.

Wellness in the legal profession

71. Over the past decade, wellness —or lack thereof—amongst members of the legal profession has received increasing attention from law societies, bar associations, academics and the media.[9]

72. The statistics speak for themselves. A recent landmark study conducted by the Hazelden Betty Ford Foundation and the American Bar Association (the "ABA Study") reveals substantial and widespread levels of problem drinking and other behavioral health problems in the legal profession.[10]

73. The ABA Study found that problem drinking among lawyers is between two and three times higher than for other highly educated professionals. As many as 36% of lawyers

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[9] For example, the CBA recently launched its "Mental Health and Wellness in the Legal Profession" CPD module (online at: http://www.cba.org/CBA-Wellness/Professional-Development/MENTAL-HEALTH-AND-WELLNESS-IN-THE-LEGAL-PROFESSION) and the Ontario Bar Association introduced its "Mindful Lawyer CPD Series" (online at : http://www.oba.org/openingremarks/MindfulLawyer). The Law Society of Upper Canada also completed an in-depth study of this issue and released a series of key recommendations. See "Mental Health Strategy Task Force Final Report to Convocation", online at: lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2016/convocation-april-2016-mental-health.pdf

[10] P. R. Krill, R. Johnson, & L. Albert, "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys," (2016) 10 J. Addiction Med. 46, online at: http://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx

qualify as problem drinkers. Twenty-eight percent are experiencing some level of depression while 19% and 23% are struggling with anxiety and stress, respectively.

74. Other research estimates rates of addiction and depression for lawyers to be three times that of the general population. Similarly, anxiety disorders affect 20% to 30% of lawyers as compared to only 4% of the general population. [11]

75. Drug use also appears to be rampant.[12] Notably, the ABA's Commission on Lawyer Assistance Programs recently identified abuse of prescription drugs as second only to alcohol as the leading substance-use problem for lawyers.[13] Other difficulties facing legal practitioners include social alienation, work addiction, sleep deprivation and low levels of well-being.[14]

Support for accrediting Professional Wellness content

76. These statistics paint a picture of a profession in crisis. As the U.S. National Task Force on Lawyer Well-Being succinctly states in the foreword to its report *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* ("the Task Force Report")[15]:

> To be a good lawyer, one has to be a healthy lawyer. Sadly, our profession is falling short when it comes to well-being. The two studies referenced above reveal that too many lawyers and law students experience chronic stress and high rates of depression and substance use. These findings are incompatible with a sustainable legal profession, and they raise troubling implications for many lawyers' basic competence. This research suggests that the current state of lawyers' health cannot support a profession dedicated to client service and dependent on the public trust.

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[11] See Ontario Lawyers' Assistance Program, "2010 Annual Report", online at: www.olap.ca/olap-annual-reports.html and Megan Seto, "Killing Ourselves: Depression as an Institutional, Workplace and Professionalism Problem" (2012) 2:2 UWO J Legal Stud 5.

[12] For an insightful and moving account of drug use in the profession see Eilene Zimmerman, "The Lawyer, the Addict" New York Times (July 15, 2017), online at: www.nytimes.com/2017/07/15/business/lawyers-addiction-mental-health.html

[13] Commission on Lawyer Assistance Programs, " 2014 Comprehensive Survey of Lawyer Assistance Programs," online at: www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_2014_comprehensive_survey_of_laps.authcheckdam.pdf

[14] National Task Force on Lawyer Well-Being, "*The Path to Lawyer Well-Being: Practical Recommendations for Positive Change"* (August 2017), online at: https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportFINAL.pdf at p. 7.

[15] *Ibid.*

> We are at a crossroads… to reduce the level of toxicity that has allowed mental health and substance use disorders to fester among our colleagues, we have to act now. Change will require a wide-eyed and candid assessment of our members' state of being, accompanied by courageous commitment to re-envisioning what it means to live the life of a lawyer.

77. The link between lawyer competence, professionalism and wellness is emphasized throughout the Task Force Report:

> Lawyer well-being influences ethics and professionalism. Minimum competence is critical to protecting clients and allows lawyers to avoid discipline […]
>
> Troubled lawyers can struggle with even minimum competence…[l]awyer well-being is a part of a lawyer's ethical duty of competence. It includes lawyers' ability to make healthy, positive work/life choices to assure not only a quality of life within their families and communities, but also to help them make responsible decisions for their clients.[16]

78. The Task Force Report also underscores the value of educational initiatives focusing on mental health and substance use disorders, as well as those that address how to navigate the profession in a healthy manner. In this vein, one of the Task Force's key recommendations is that regulators recognize wellness courses for continuing legal education credit. [17]

79. The Task Force Report characterizes accreditation as a small but important step in addressing the wellness crisis in the profession and beginning the process of placing health, resilience and self-care at the forefront of what it means to be a lawyer. This learning also has the additional benefit of dismantling the stigma that is often a major barrier to seeking help for these types of issues.[18]

80. Notably, the ABA Model Rule has recently been amended to promote *mandatory* mental health and substance abuse programming for lawyers. This is in addition to encouraging legal regulators to accredit non-mandatory "lawyer well-being" learning activities that include a broader set of wellness topics.[19]

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[16] *Ibid*. at pp.8-9.

[17] *Ibid*. at p. 11.

[18] The ABA Study identified the two most common barriers to lawyers seeking treatment for a substance use disorder as not wanting others to find out they needed help and concerns regarding privacy or confidentiality. Consequently, many lawyers wait until their symptoms are so severe that they interfere with daily functioning before seeking assistance.

[19] American Bar Association, "Access Resolution 106: ABA Model Rule for Continuing Legal Education" (February 2017), online at:

A proposed approach to Professional Wellness

81. As noted previously, most Canadian law societies provide CPD credit for wellness topics. Many US states also approve wellness topics for MCLE credit, including Missouri, Kansas, Virginia, Rhode Island, North Carolina, Arkansas, Mississippi, Alabama, Georgia, Nevada, Iowa, Oklahoma, Montana, Minnesota, Illinois, Tennessee, New York, West Virginia, Alaska and Hawaii.[20]

82. Within Canada, most law societies recognize CPD courses that tackle a wide range of wellness topics related to substance use disorders, stress management, work-life balance, anxiety and depression. Typically, to be eligible for credit, wellness topics must address issues that arise within the legal context.

83. The Committee is of the view that carefully defining the nature and scope of Professional Wellness is a necessary condition of its inclusion in the CPD scheme. This is to ensure that Professional Wellness does not become a "catch-all" for a variety of topics that do not directly support or enhance lawyer competence, professionalism and learning related to the practice of law. For example, the Committee agreed that yoga and courses on healthy eating are too indirectly linked to the objectives of the CPD program to be eligible for credit.

84. Many of the 2016 Survey respondents also commented that their support for the inclusion of wellness in the CPD program was contingent on placing some restrictions on the list of eligible topics. The Lawyers Assistance Program provided similar feedback.

85. Following a review of wellness definitions in other jurisdictions and a consideration of the objectives of the CPD program, the Committee recommends the following definition for the new Professional Wellness subject matter:

> **Recommendation 8**: The Law Society will define Professional Wellness as:
>
> *"Approved educational programs designed to help lawyers detect, prevent or respond to substance use problems, mental health or stress-related issues that can affect professional competence and the ability to fulfill a lawyer's ethical and professional*

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www.americanbar.org/content/dam/aba/images/abanews/2017%20Midyear%20Meeting%20Resolutions/106.pdf . See especially Comment 4 at p. 6.

[20] Most states embed wellness content within professionalism or ethics subject matter, while others (Washington and Georgia) have established a separate subject category pertaining to mental health. Within Canada, wellness programming is generally recognized as falling within ethics, practice management or professional responsibility subject matter rather than being identified as a "stand-alone" subject matter.

duties. Such educational programs must focus on these issues in the context of the practice of law and the impact these issues can have on the quality of legal services provided to the public."

86. To further assist lawyers, the Committee developed detailed guidance material to support this newly defined subject matter (the "Professional Wellness Guidance Material"). In undertaking this task, the Committee reviewed a host of wellness topics that are currently accredited by US and Canadian jurisdictions, and considered which of these should be eligible (or ineligible) for credit in BC.[21]

87. As outlined in the Professional Wellness Guidance Material, below, the Committee proposes that to qualify for credit, Professional Wellness activities must be part of an approved educational program in the form of in-person programs, real time programs delivered through technology, reviewing previously recorded courses, interactive online study programs, writing or teaching. Group study and mentoring on Professional Wellness subject matter would not be eligible for credit. Additionally, the instructional materials must be specifically directed at lawyers and topics must be discussed in the context of the legal profession.

88. The Professional Wellness Guidance Material includes a non-exhaustive list of eligible topics including: substance use problems and mental health issues, addictive or self-harming behaviours, anxiety and depression, and stress and stress-related issues. Other programming may be eligible for credit if it meets the established criteria.

89. The Professional Wellness Guidance Material also lists those topics and activities that are not eligible for credit, namely: yoga, breathing exercises and meditation, healthy eating, exercise, re-evaluating personal career decisions, navigating career transitions, counselling sessions, treatment programs, and topics that focus on personal life events.

Recommendation 9: The Law Society will adopt the criteria outlined in the Professional Wellness Guidance Material as a basis for accrediting Professional Wellness subject matter.

[21] Note that other CPD subject matter (e.g. Practice Management and Lawyering Skills) is similarly defined by a list of topics that are eligible and ineligible for credit.

Professional Wellness Guidance Material

The Law Society of BC is concerned about the effects of substance use, mental health issues and stress on legal professionals in BC and the impact they have on the quality of legal services provided to the public.

The Law Society of Upper Canada Mental Health Strategy Task Force noted in its April 28, 2016 Report:

> Mental illness and addictions issues are present in significant numbers within the general Canadian population. There is increasing evidence suggesting that legal professionals may be at an even higher risk than the general population of experiencing life challenges and struggles with mental illness and addictions.

The Law Society of BC concludes that education on these topics may be beneficial in addressing these issues, raising awareness and diminishing stigma. As a result, Professional Wellness education will contribute to the CPD program's goal of supporting lawyer competence and the protection of the public interest.

Accordingly, the Law Society of BC will recognize Professional Wellness as a subject matter for which lawyers are eligible to receive CPD credits under certain circumstances.

Professional Wellness is defined as:

> Approved educational programs designed to help lawyers detect, prevent or respond to substance use problems, mental health or stress-related issues that can affect professional competence and the ability to fulfill a lawyer's ethical and professional duties. Such educational programs must focus on these issues in the context of the practice of law and the impact these issues can have on the quality of legal services provided to the public.

The following material is intended to provide additional guidance as to the types of educational programs the Law Society will recognize for Professional Wellness credits. Note that Professional Wellness CPD is not mandatory.

i. Learning Format

To qualify for credit, Professional Wellness subject matter must be part of an approved educational program, which includes the following learning modes: in-person programs; real time programs delivered through technology; reviewing previously recorded courses; interactive online study programs; writing; and teaching. Group study and mentoring on Professional Wellness subject matter will not be eligible for credit.

The presentation and instructional materials must be specifically directed at lawyers. The topics must be discussed in the context of the legal profession and in relation to the quality of legal services provided to the public.

ii. Eligible topics

Substance use problems and mental health issues

Educational programs that focus on developing awareness of substance use problems and mental health issues in the practice of law are eligible for approval. Examples of topics include alcohol and drug dependencies, addictive or self-harming behaviours, anxiety and depression.

The content of these educational programs may focus on any or all of the following: recognizing the signs and symptoms of substance use problems or mental health issues in oneself or one's colleagues, preventive measures; coping techniques, the effects of impairment, intervention strategies, reducing stigmatizing behaviours and attitudes, and the availability of the Lawyers Assistance Program (LAP) to help face these issues.

Educational programs will only receive credit if the presentation of material includes a component that addresses the risks substance use problems and mental health issues pose to lawyers' ability to meet their obligations under the Law Society Rules, the *Code of Professional Conduct* and the *Legal Profession Act*.

Stress and stress-related issues

Educational programs that focus on developing awareness of stress and stress-related issues in the practice of law are also eligible for approval. Examples of topics include procrastination, isolation, boundary setting and "burnout".

The content of these educational programs may focus on any or all of the following: recognizing the signs and symptoms of stress in oneself or ones colleagues; preventive measures; coping techniques; the effects of stress or stress-related problems; intervention strategies; reducing stigmatizing behaviours and attitudes; and the availability of the Lawyers Assistance Program (LAP) to help face these issues.

Educational programs will only receive credit if the presentation of material includes a component that addresses the risks that stress and stress-related issues pose to lawyers' ability to meet their obligations under the Law Society Rules, the *Code of Professional Conduct* and the *Legal Profession Act*.

iii. Ineligible topics

Educational programs that are not eligible for Professional Wellness credit include:

a. yoga courses,
b. breathing exercises and meditation courses,
c. healthy eating courses,
d. exercise classes,
e. courses addressing revaluating personal career decisions or navigating career transitions,
f. counselling sessions and treatment programs, and
g. learning activities that focus on personal life events and associated issues (e.g. personal trauma, grief and bereavement).

90. As discussed toward the end of the Final Report, the majority of the Committee recommends that lawyers not be limited as to how many Professional Wellness credits will count toward the annual 12 credit CPR requirement.

91. At this juncture, the Committee also recommends against imposing a mandatory requirement for lawyers to engage in Professional Wellness CPD programming.[22] However, as noted above, it is observed that the American Bar Association recently amended its Model Rule for Minimum Continuing Legal Education to include a requirement for lawyers to receive at least one hour of *mandatory* "mental health or substance use disorder programming" every three years.[23]

Pro bono and legal aid

92. During the 2011 CPD review, the Lawyer Education Advisory Committee determined that pro bono and legal aid work should not be recognized for CPD credit, on the basis that it is fundamentally the "practice of law," not professional development.

93. The 2016 and 2017 Committees considered numerous arguments for and against accreditation,[24] and came to a similar conclusion, ultimately recommending against the accreditation of pro bono and legal aid work.

> **Recommendation 10:** The Law Society will not recognize pro bono and legal aid work as eligible for CPD credit.

94. Proponents of accreditation argue that pro bono activities provide unique learning opportunities not available to lawyers in the course of their paid work, both in relation to skill and knowledge development and in gaining a deeper understanding of access to

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[22] No Canadian law society currently has mandatory wellness-related CPD requirements.
[23] *Supra* note 19.
[24] The Committee reviewed a number of relevant articles on this issue, including: Jason Wesoky and Christopher Bryan, "Receiving CLE Credit for *Pro Bono* Service" 41 The Colorado Lawyer 115 (August 2012), online at: http://www.garfieldhecht.com/wp-content/uploads/2012/08/Aug2012TCL_PointCounterpoint.pdf; Brian J. Murray "The Importance of Pro Bono Work in Professional Development" (2009) 23:3 Verdict, online at: http://www.jonesday.com/files/Publication/adc22e68-c7f5-44d2-a043-94709677480a/Presentation/PublicationAttachment/d2593229-ad83-428c-8023-a7afce3f3b62/Murray.pdf ; Esther Lardent, "Solving the Professional Development Puzzle" (2012) National Law Journal.

justice issues. Pro bono and legal aid work may also contribute to enhancing professional responsibility and ethics.

95. Others have suggested that pro bono work is comparable to mentoring or teaching the general public in that it is "service learning" that integrates meaningful community service with skill development. Similar arguments can be made to support the accreditation of legal aid work.

96. The Committee is, however, troubled by the prospect of accrediting pro bono and legal aid work for a number of reasons. Importantly, file specific legal work is not eligible for CPD credit. In the Committee's view, no exception should be made for free, but nevertheless file specific legal work.

97. The Committee also observes that although some American jurisdictions recognize pro bono work for a limited amount of MCLE credit, no Canadian law society currently grants CPD credit for pro bono activities.

98. Further, half of the respondents to the 2016 Survey were not in favour of including pro bono work in the CPD scheme and 64% were against providing credit for legal aid work. Examples of the comments provided include the following:

> "*This conflates the differing objectives of CPD. If mandatory CPD training is necessary in order to ensure ongoing substantive competency then it should be used for that. If you allow CPD for pro- bono - why not allow it [for] file work? How is the learning different if the work is done for free vs. being paid?*"

> "*If the purpose of the CPD is professional development and given that lawyers are expected to provide the same level of service and skill to paying and pro bono clients giving credit for work on pro bono files suggests that a lower level of skill is required when a person takes on these files and that pro bono files are a chance to learn about areas of the law that the lawyer is not skilled in. In my view this would violate the ethical obligations lawyers have to provide competent service*."

99. Notwithstanding the recommendation against accreditation, the Committee views this type of work as a professional duty and expresses support for initiatives that encourage lawyers to take on pro bono and legal aid files as part of ongoing efforts to improve access to justice.

Knowledge primarily within the practice scope of other professions and disciplines

100. The Committee examined the issue of whether knowledge that is primarily within the practice scope of other professions and disciplines but that is nevertheless relevant to the

practice of law should be eligible for CPD credit.[25] Law Society staff receive many requests from lawyers for this type of credit.

101. To frame the discussion, the Committee considered a number of examples: a personal injury lawyer taking a human anatomy course to improve understanding of the nature of a client's injuries, a lawyer representing a client suffering from mental illness attending a lecture for physicians on the DSM-V, and a criminal defence lawyer taking a course in forensic pathology in preparation for a murder case.

102. These examples demonstrate the varied ways in which a lawyer's learning, competence and professionalism —the objectives of the CPD program— can be enhanced by learning activities that fall outside the ambit of law, but are still relevant to a lawyer's practice.

103. The Committee also observes that the Law Society of Upper Canada provides credit for non-legal subjects if they are relevant to the lawyer's practice and development as a practitioner.

104. The Committee concludes that there is no principled basis for maintaining the blanket exclusion on all non-legal programming, and recommends that CPD credit be provided for learning activities addressing skills and knowledge within the scope of other professions and disciplines if the subject matter is sufficiently connected to the practice of law.

Recommendation 11: The Law Society will recognize educational programs that address knowledge primarily within the practice scope of other professions and disciplines, but are sufficiently connected to the practice of law as a subject matter that is eligible for CPD credit.

105. Program administrators will be required to evaluate whether the content of such programming is "sufficiently connected" to the practice of law. This is not dissimilar to the discretion staff already exercise in accrediting other types of programming.

106. The Committee also recommends against a requirement for lawyers to establish a nexus between their specific practice area and a non-legal learning activity for two key reasons. First, no other aspect of the CPD scheme requires lawyers to take CPD in their practice area; they are at liberty to take any type of accredited programming they wish.

[25] Knowledge that is primarily in the practice scope of other professions and disciplines is currently listed as ineligible under the Lawyering Skills subject matter. The Committee suggests that it is more appropriate to consider this as a new, independent subject matter.

Second, as noted throughout this Report, the Committee is wary of "over-regulating" the CPD program, including by way of creating additional conditions for accreditation. Rather, trust and respect should be extended to lawyers to select programming that they feel is valuable to their professional development.

Practice Management

107. The Committee's evaluation of the Practice Management subject matter was informed by a comparative review of the practice management topics recognized by other Canadian law societies, the feedback provided in the 2016 Survey and 2017 Consultation, and a consideration of emerging issues in the profession. The finalized list of eligible and ineligible topics, as discussed in more detail below, is found at **Appendix D.**

Eligible topics

108. The Committee recommends the continued eligibility of the current set of Practice Management topics on the basis of their ongoing relevance to lawyer learning, competence and professionalism. In a few instances, the Committee proposes slightly modified wording for improved clarity or inclusiveness; however, the substantive content of these topics remains the same.

109. The Committee is also of the view that changes to the social and economic milieu in which law is practised warrants the accreditation of two new Practice Management topics that are currently ineligible for credit, namely: understanding the business of law, and multicultural, diversity and equity issues that arise in the legal context.

Understanding the business of law

110. In probing the issue of whether topics relating to the business of law should continue to be ineligible for Practice Management credit, the Committee was briefed by a Law Society practice advisor on the types of business-related issues for which advice and support are frequently sought. The Committee also reviewed Ontario's CPD program, which recognizes both marketing and business law related activities for CPD credit, and canvassed various arguments for and against the accreditation of such topics.

111. This analysis resulted in the identification five "pillars" underpinning the business of law, all of which the Committee recommends becoming eligible for CPD credit:

i. *Marketing a law practice in accordance with professional obligations:* Accreditation of this topic recognizes the value of lawyer learning in relation to the professional and ethical standards for marketing activities. For example, a course addressing lawyers' professional obligations to ensure that marketing activities do not take advantage of client vulnerability or create unjustified client expectations supports both competence and professionalism and, as such, should be eligible for credit.[26]

ii. *Strategic business planning:* Strategic planning requires lawyers to engage in a process of determining the overall direction of their practices, identifying specific strategies that will facilitate the achievement of the defined direction and determining how those strategies will be implemented. Effective strategic planning can result in improvements in productivity, risk management, project management, client relationships and lawyer professional development, and should therefore be eligible for credit.

iii. *Management and running of a law practice:* As reflected by the support for law firm regulation by a number of Canadian law societies, the effective management of a legal practice is an essential component of ensuring the professional and competent delivery of legal services. Learning activities that support firms in meeting professional and ethical standards in key practice areas should therefore be eligible for credit.[27] A number of the currently ineligible Practice Management topics related to managing a legal practice would also become eligible for credit, including: "attracting and retaining law firm talent," "business case for the retention of lawyers and staff," "alternative work arrangements in a law firm," and "handling interpersonal differences within your law firm."

iv. *Technological systems incorporated into running a law practice:* Technology training has become increasingly important for lawyers. However, many practitioners fail to adequately understand the use of technological systems and their relationship to the delivery of legal services. As Richard Susskind observes, lawyers must understand developing technology to stay relevant:

> In the 2020s we will see technologies that change the way we work – you are no longer face-to-face advisers, you are a person putting in systems and

[26] See Rule 4.2 *Code of Professional Conduct*.

[27] The Law Firm Regulation Task Force suggests the Law Society provide CPD credit for designing firm policies that address eight key Professional Infrastructure Elements. See Law Society of BC, *Second Interim Report of the Law Firm Regulation Task Force* (June 29, 2017) at p. 29, online at: www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/LawFirmRegulationSecondInterimReport2017.pdf

> processes […] we as a profession have about five years to reinvent ourselves to move from being world-class legal advisers to world-class legal technologists.[28]

Accordingly, educational activities that improve lawyers' understanding of the technological systems underpinning legal practice should be accredited. The Committee also recommends removing "basic technology and office systems" from the list of ineligible Practice Management topics, given that at a very minimum lawyers require a basic understanding of such systems to run a functional practice.

v. *Financial systems incorporated into running a law practice:* Financial planning and management are critical to the success of any law practice. Poor financial management can adversely affect client service, impact a lawyer's competence and have serious professional and ethical implications.[29] Consequently, education in this area should be recognized for CPD credit.

112. The Committee distinguishes the "business of law" from marketing in the form of advertising. Advertising, which is essentially marketing directly to clients, focuses on self-promotion for profit maximization, and should therefore not be eligible for CPD credit. The "business of law," however, encompasses a broad range of activities with a different set of motivations, many of which the Law Society has an interest in promoting. For example, the accreditation of business-related courses that support lawyers in running more efficient practices may increase their availability to clients and thereby improve access to justice.

113. A similar distinction is made in Ontario, where the Law Society of Upper Canada accredits "marketing legal services in accordance with professional obligations" and "understanding the business of law, including financial considerations, client development and strategic planning," but excludes "any activity undertaken or developed primarily for the purposes of marketing to existing or potential clients." As discussed in the next section, the Committee recommends that any activities primarily focusing on marketing to clients remain ineligible for credit.

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[28] John Hyde, The Law Gazette, April 27 2016 "Susskind: 'you have five years to reinvent the legal profession'", online at: www.lawgazette.co.uk/law/susskind-you-have-five-years-to-reinvent-the-legal-profession/5054990.article

[29] The Ontario Bar Assistance Program estimates that up to half of lawyers seeking their help have money management issues that have escalated to the point where these problems adversely affect their practice and their personal lives. See LawPro Magazine "Dealing with Dollars : Why financial planning and management are as important as lawyering" (March 2003), online at: http://www.practicepro.ca/LawPROmag/march2003_financial.pdf

Recommendation 12: The Law Society will recognize "understanding the business of law" as an eligible Practice Management topic.

Multicultural, diversity and equity issues that arise within the legal context

114. Multicultural, diversity and equity related topics are currently ineligible for CPD credit in BC. Specific exclusions include programming that addresses the retention of lawyers and staff relating to gender, Aboriginal identity, cultural diversity and gender identity, as well as cultural sensitivity in working with law firm staff.

115. The Committee is concerned that denying credit for programs that relate to cultural sensitivity and the retention of culturally diverse lawyers is not reflective of the Law Society's commitment to addressing the Truth and Reconciliation Commission's Call to Action #27.[30]

116. The absence of any affirmative recognition of multiculturalism, diversity and equity programming within the Practice Management topics is also concerning and sets the Law Society of BC apart from the approach of other regulators. For example, the Law Society of Upper Canada accredits educational programs "respecting multicultural issues and diversity, if the topic addresses issues and opportunities that arise within the legal context." The ABA also recently adopted a resolution that encourages all state regulators to have two *mandatory* CLE credits specifically related to diversity and inclusion in the legal profession and the elimination of bias.[31]

117. Moving forward, the Committee supports the accreditation of equity, diversity and cultural competency related programming for a number of reasons. Most notably, these issues represent an important component of professional legal practice.[32] As noted in the Law Society of BC's 2012 Report *Towards a More Representative Legal Profession:*

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[30] The Committee's consideration of Call to Action #27 is discussed more fully at p. 44 of this report.

[31] The ABA Model Rule of Continuing Legal Education was amended to suggest that all lawyers should be required (either through a separate credit or through existing ethics and professionalism credits) to complete programs related to the promotion of racial and ethnic diversity in the legal profession, the promotion of full and equal participation in the profession of women and persons with disabilities, and the elimination of all forms of bias in the profession. See the ABA Model Rule, online at: https://www.americanbar.org/content/dam/aba/administrative/cle/aba_model_rule_cle.authcheckdam.pdf

[32] For example, equity, diversity and inclusion is one of the eight Professional Infrastructure Elements proposed as part of the Law Firm Regulation scheme.

Better practices, better workplaces, better results,[33] (the "Law Society of BC Report") although overt discrimination based on race and gender is less prevalent than it once was, it still occurs and demands an appropriate response. Women, visible minority lawyers and Indigenous lawyers continue to face systemic barriers in the profession created by unconscious bias, resulting in forms of discrimination that, while unintended, are no less real.

118. The Law Society of BC Report also recognizes equity and diversity in the legal profession as being in the public interest:

> the Law Society of BC is committed the principles of equity and diversity and believes the public is best served by a more inclusive and representative profession […] [n]ot 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.

119. Improving lawyer understanding of equity and diversity issues in the legal profession is also important from a client-service perspective. As the CBA highlights in its 2014 Report *Futures: Transforming the Delivery of Legal Services in Canada*:[34]

> It will be particularly important in the future for the demographics of the Canadian legal profession to reflect the diversity of the Canadian population at large. Clients want to connect with legal service providers with whom they share common values and experiences. Clients also want varied, creative, and diversified advice; it is not in their interests to receive legal services from a team comprised of lawyers whose life perspectives are homogeneous.

120. On this basis, the Committee recommends removing all topics related to multiculturalism, equity and diversity from the list of ineligible Practice Management topics, and adding "addressing multicultural, diversity and equity issues that arise within the legal context" to the list of eligible topics.

Recommendation 13: The Law Society will recognize "multicultural, diversity and equity issues that arise within the legal context" as an eligible Practice Management topic.

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[33] The Law Society of BC, *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.

[34] Canadian Bar Association, online at: www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf

Ineligible topics

121. The Committee recommends that Practice Management topics that are primarily profit focused remain ineligible for credit on the basis that these topics do not promote the type of learning that upholds and protects the public interest, particularly in light of the rising costs of legal services and corresponding access to justice issues. These topics include profit maximization, commoditization of legal services, any activity developed primarily for the purpose of marketing to existing or potential clients, and surviving a recession.

Lawyering Skills

Eligible topics

122. The Committee determined that the current set of Lawyering Skills topics continues to promote the objectives of the CPD program by supporting lawyer learning, competence and professionalism, and should therefore remain eligible for credit.

123. The Committee does, however, recommend minor changes to the wording of several of the topics for greater clarity and inclusiveness. These changes are reflected in the revised list of Lawyering Skills topics at **Appendix D.**

124. The Committee also proposes four new eligible Lawyering Skills topics: mentoring best practices for lawyers, training to be a principal, governance issues, and leadership for legal professionals, as discussed below.

> **Recommendation 14**: The Law Society will recognize mentoring best practices for lawyers, training to be a principal, governance issues and leadership for legal professionals as eligible Lawyering Skills topics.

<u>Mentoring best practices for lawyers</u>

125. Lawyers can currently obtain CPD credit for mentoring another lawyer. The Committee recommends that educational programs focused on *training* lawyers for

mentorship also be eligible for credit, as they are in Ontario.[35] Accrediting such programs may assist in improving the number and quality of mentorship relationships.[36]

Training to be a principal

126. The relationship between articling students and their principals can have a profound impact on the development of a junior lawyer.[37] Given the responsibilities associated with this role and the value of this relationship to professional development, the Committee recommends that learning activities that provide lawyers with the necessary skills to be an effective principal be recognized for CPD credit.

Governance issues

127. The Committee is of the view that learning activities that assist lawyers in developing governance-related skills should be eligible for credit.

128. Although time spent *serving* on boards or committees is not eligible for credit, many of the skills that support these types of service activities are relevant and transferrable to the practice of law. Examples of eligible courses might include those that address how to chair a meeting, the use of Robert's Rules of Order and understanding the duties and obligations of directors.

Leadership for legal professionals

129. The Committee recommends that learning activities addressing "leadership within the legal profession" be eligible for credit, as is the case in Ontario.

130. Leadership in law is not simply about attaining partnership. Rather, leadership is a quality that can be developed by all lawyers who have an interest in influencing and motivating others to achieve positive outcomes. Leaders are often visionaries and change-makers who exhibit high levels of trustworthiness, confidence, competence and resilience. These are also the hallmarks of a highly competent and professional lawyer.

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[35] The Law Society of Upper Canada recognizes "mentoring best practices for lawyers and paralegals" for credit, provided it addresses issues and opportunities that arise in the legal context.

[36] Mentoring is the least popular form of CPD consumption in BC, with only several dozen lawyers seeking accreditation each year for mentoring activities.

[37] Under the section 6.2-2 of the *Code*, a principal is tasked with providing the student with meaningful training and exposure to and involvement in work that will provide the student with legal knowledge and experience as well as an appreciation of the traditions and ethics of the profession.

Accordingly, lawyers should be supported and encouraged to develop these skills through continuing professional development.

131. Eligible programming might include learning activities that address organizational strategy and processes, change management, leadership styles and models, ethical responsibilities associated with leadership roles, creating and managing effective teams, and leadership skills for women.

Ineligible topics

132. The Committee recommends maintaining the current list of ineligible Lawyering Skills topics, including educational activities that focus on general business leadership and general project management.

133. The issue of whether “general business leadership” programs should be accredited generated considerable discussion. The Committee concluded that “leadership for legal professionals” was sufficient to capture pertinent leadership courses. Similarly, given the extent to which “legal project management” encompasses relevant programming, learning activities that focus on “general project management” should remain ineligible for credit.

134. The Committee also recommends that chairing, conducting and participating in committees or board meetings and serving on a boards of directors or a tribunal remain ineligible for credit. Although these are important service-related activities, time spent performing these roles is not fundamentally about lawyer learning.

Delivery of the CPD program: Learning modes

135. Currently, the CPD program recognizes seven different "learning modes," or delivery mechanisms for CPD, namely: courses, online interactive programs, local bar and CBA section meetings, study groups, teaching, writing, and mentoring. The CPD Guidelines set out the criteria for eligible activities under each learning mode. [See **Appendix A.]**

136. Following a review of CPD engagement for 2016 and an analysis of the results of the 2016 Survey, the Committee concludes that the existing learning modes provide practitioners with sufficiently varied means of satisfying their CPD requirements and should therefore be maintained.

137. The Committee also reviewed the accreditation criteria associated with each learning mode and recommends several changes, as discussed below. Unless a change is

recommended, the Committee proposes maintaining the existing conditions and criteria governing learning mode eligibility, as defined in the CPD Guidelines at **Appendix A.**

Courses

138. Currently, lawyers can obtain credit for attending a live course, participating in an online "real time" course and reviewing a previously recorded course with at least one other lawyer or articling student.

139. Given the popularity of this mode of CPD delivery,[38] the Committee considered how courses could be made more accessible to lawyers. In particular, the Committee focused on whether the requirement to watch a pre-recorded course with another lawyer should be relaxed. Notably, in Ontario lawyers can earn up to six credits per year for viewing or listening to archived or recorded CPD programs without a colleague.

140. Although co-attendance promotes accountability, participation and engagement, the Committee is of the view that *requiring* another lawyer to be present while watching a pre-recorded course does not guarantee these goals are achieved. Further, this restriction may make it more difficult for sole practitioners, including those in remote communities, to access pre-recorded CPD programming simply because there may not be another lawyer available with whom they can watch a recorded program.

141. Accordingly, the Committee recommends that BC adopt Ontario's approach and permit lawyers to receive credit for watching a pre-recorded course *without* the presence of another lawyer or articling student. The Committee also recommends against imposing a limit on the number of CPD hours that can be satisfied in this manner.

> **Recommendation 15**: Lawyers may receive CPD credit for viewing a pre-recorded course without the presence of another lawyer or articling student.

Online interactive courses, local bar and CBA section meetings and study groups

142. Following a review of the accreditation criteria for online courses with a testing component (interactive webinars), local bar and CBA section meetings and study

[38] Courses remain extremely popular with lawyers, with over 46% of the respondents in the 2016 Survey citing "live courses" as their preferred mode of CPD consumption. Online programming follows closely behind, with approximately 31% indicating this as their most preferred learning mode.

groups, the Committee concludes that these learning modes should continue to eligible for credit.

143. Although few lawyers satisfy their CPD credit by taking online interactive programs,[39] this learning mode provides practitioners with a range of free or low cost options to improve their professional competence. The Law Society's online Practice Management Course is an example of this type of programming.

144. Local bar association meetings, CBA section meetings and study groups continue to provide excellent forums for lawyers to discuss a wide range of legal topics in a group setting, and are an effective mode of continuing legal education.

145. As previously discussed, the Committee supports the continuing ineligibility of study group credit for serving on committees, boards and tribunals. Any group study activity that is file specific, as well as time spent reading materials before or after a study group session, should also remain ineligible for credit.

Teaching

146. Teaching plays an important role the transmission of knowledge and skills within and beyond the profession, and should continue to be recognized for credit at a ratio of three hours of credit for every hour taught.[40]

147. The Committee proposes a minor modification to the teaching accreditation criteria, namely that lawyers are eligible to receive credit for the first *two* times a subject matter is taught within the year. Currently, credit is only granted for the first instance of teaching a particular subject matter within the year.

148. This recommendation stems from a recognition that even in instances of repeat teaching, instructors are required to re-engage with the material and modify aspects of their presentations; for example, if the instruction is for a different audience or occurs in a different geographic region.

149. The Committee also received feedback that it can be difficult to secure repeat guest instructors for the PLTC program. Permitting CPD credit for the second instance of

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[39] In 2016, approximately 2% of the submissions for CPD accreditation were for "online courses with testing."

[40] For each hour of teaching, lawyers may claim up to two hours of preparation for teaching if the instruction is directed at an audience comprising lawyers, paralegals, articling students, law school or post-secondary students, or teaching that targets the continuing professional education or licensing program of another profession. If the teaching is directed at the general public, credit is only available for teaching time, not preparation time.

teaching the same subject matter within the year may have the added benefit of alleviating the shortage of lecturers.

Recommendation 16: Lawyers may receive CPD credit for teaching the same subject matter no more than twice in a calendar year.

Writing

150. Currently, writing for law books, articles and course materials is eligible for CPD credit to a maximum of six hours per writing project. There is no overall cap on writing credit hours.

151. Although the criteria associated with writing credits impacts a small number of lawyers,[41] changes in technology, including the widespread use of electronic media to disseminate information, warrant a detailed review of this learning mode.

152. The Committee focused on three activities that are currently ineligible for credit: preparation of PowerPoint presentations, writing for law firm websites, and writing on blogs and wikis.

153. With respect to PowerPoint presentations, the majority of the Committee is of the view that because these presentations are typically done in conjunction with teaching (that is, they are rarely stand-alone projects) and can be counted toward teaching preparation time, time spent preparing a PowerPoint presentation should not also be eligible for writing credit.

154. In relation to writing for law firm websites, Law Society staff indicate they receive numerous requests for credit for this type of activity, which are currently denied.

155. The Committee observes that firm websites are becoming increasingly valuable communication tools for educating lawyers within a firm as well as legal professionals outside the firm and the general public. Many of the educational publications populating firm websites reflect a high calibre of research and writing and offer insightful analysis and commentary on a wide array of legal issues. The same can be said for the writing on many non-firm websites that provide legal resources to the public.

156. The Law Society of Upper Canada has recently eliminated the distinction between legal writing for a third party publication and legal writing for a firm publication, including a website. The Committee recommends that the Law Society of BC adopt a

[41] In 2016, less than 1% of lawyers sought credit for writing.

similar approach and accredit writing for firm and non-firm websites, provided the writing is related to law or legal education and is not primarily for marketing purposes.

Recommendation 17: Lawyers may receive CPD credit for writing for law firm or other websites if the content is substantially related to law or legal education. Material that is developed primarily for the purpose of marketing to existing or potential clients will not be eligible for credit.

157. The Committee also reviewed the issue of accrediting writing for blogs and wikis. The Committee observes that some wiki sites, including those that provide valuable public legal resources, subject their contributors to fairly rigorous selection criteria and require submissions to be reviewed by editors. Others, however, do not.

158. Based on concerns about quality control, the Committee recommends that unless lawyers can demonstrate that writing for wikis and blogs is subject to editorial oversight prior to posting, contributions to blogs and wikis remain ineligible for CPD credit.

Recommendation 18: Lawyers will not receive CPD credit for writing for blogs and wikis unless they can demonstrate that submissions are subject to editorial oversight.

Mentoring

159. Currently, to qualify for mentoring credit a mentor must have engaged in legal practice in Canada for 7 of the 10 years immediately preceding the current calendar year. Until earlier this year, this requirement mirrored the requirements for eligibility to be a principal to an articling student under of Rule 2-57.

160. Rule 2-57 has since been amended, reducing the period of time a lawyer must practice to qualify as a principal to five of the past six years.[42] To maintain consistency between mentoring and principal requirements, the Committee recommends that the mentoring criteria become "a lawyer that has engaged in five years of full-time practice or part-time equivalent, where part-time practice is counted at a rate of 50% of full-time practice."

[42] This amendment responded to the Credential Committee's experience that many excellent principals do not meet the seven year threshold to be a principal and were frequently being granted exemptions from Rule 2-57 on the basis of special circumstances.

161. This amendment may also encourage more lawyers to satisfy their CPD through mentoring.

> **Recommendation 19**: Lawyers may receive mentoring credit for mentoring another lawyer if they have engaged in five years of full-time practice or part-time equivalent immediately preceding the current calendar year, where part-time practice is counted at a rate of 50% of full-time practice.

162. As noted earlier in this report, the Committee recommends against providing credit for mentoring in the area of Professional Wellness. This exclusion is designed to ensure that Professional Wellness credit is not sought for any form of counselling activities.

163. Mentoring one's own articling student, mentoring a law school student and mentoring a paralegal will all remain ineligible for credit as they are not sufficiently connected to the objectives of enhancing the mentor's learning, competence or professionalism. Mentoring that is file specific should also remain ineligible for CPD credit.

Self-study

164. The Committee gave considerable attention to the issue of whether CPD credit should be granted for self-study. Specifically, the Committee explored the issue of whether credit for time spent reading articles, cases, legal publications and other materials should be accredited.

165. The majority of the Committee concluded that accreditation of self-study in the form of independent reading should not be permitted for two key reasons. First, the Committee's recommended changes to the CPD program expand the types of subject matters, topics and learning modes that will become eligible for credit. If these recommendations are adopted, lawyers will have many more options to obtain their CPD credits, including activities that are akin to self-study; for example, watching pre-recorded courses without the presence of another lawyer.

166. Second, as reflected in the current CPD Guidelines, lawyers are expected (but not required) to complete 50 hours of self-study *outside* their accredited CPD hours. The majority of the Committee supports the continuation of the 50 hour non-mandatory continuing professional development goal, and is concerned that granting credit for independent reading would erode the message that lawyers are expected to complete considerably more than the "required" 12 hours of CPD each year.

Recommendation 20: Lawyers are recommended to complete a minimum of 50 hours of self-study per year in addition to the 12 hour credit requirement. Self-study activities, including independent reading, will not be eligible for CPD credit.

Reporting requirements

167. The Committee examined possible changes to the CPD reporting requirements, including instituting caps on particular subject matters and learning modes, expanding the current list of exemptions and modifying the annual reporting cycle.

Credit-hour requirement

168. With the exception of Alberta and Nova Scotia,[43] all Canadian law societies establish a minimum amount of CPD that lawyers must complete during the reporting period. On average, Canadian lawyers must fulfill 12 hours of CPD per year.

- Saskatchewan: 36 hours over 3 years, including 6 hours of ethics and practice management
- Manitoba: 12 hours annually, including 1.5 hours of ethics, professional responsibility or practice management
- Ontario: 12 hours annually, including 3 hours of ethics, professional responsibility and practice management
- Quebec: 30 hours every 2 years
- Nova Scotia: no mandatory minimum, but 12 hours is "expected"
- PEI: 24 hours every 2 years
- Newfoundland and Labrador: 15 hours annually
- Yukon: 12 hours annually
- Northwest Territories: 12 hours annually, including 2 hours of ethics and practice management
- Nunavut: 12 hours annually, including 1 credit of ethics

169. Currently, BC lawyers are required to complete 12 hours of CPD annually, including two hours of ethics and practice management.

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[43] In Alberta and Nova Scotia, there is no mandatory minimum amount of CPD. Rather than being required to complete a set amount of hours, lawyers must create learning plans outlining their goals for the year, and are expected to fulfill these plans. Nova Scotia "expects" but does not mandate 12 hours per year.

170. The 2016 Survey revealed that the 12 hour requirement is widely supported by BC lawyers: 55% of respondents felt 12 hours of CPD was "about right" as compared to only 10% of respondents that felt it was not enough. Similarly, 56% of respondents felt the two hour ethics and practice management requirement was "about right" with only 10% indicating it was insufficient.

171. There is no empirical evidence of a correlation between increased CPD hours and improved lawyer competence. The Committee is also aware that increasing the number of CPD hours could disproportionately impact lawyers who find it difficult to access CPD programming, including those in more remote communities and those operating with minimal profit margins, for example, legal aid practitioners.

172. Additionally, the Committee is concerned that simultaneously increasing the required number of hours and introducing new subject matters might suggest to lawyers and the public that new subject matters — for example, Professional Wellness — are less valuable forms of professional development. That is, an increase in the total number of CPD hours is required to "compensate" for these additions. The view of the majority of the Committee is that there is no hierarchy of CPD subject matters, and that the expansion of eligible subject matters does not demand an increase in mandatory CPD consumption.

Recommendation 21: The Law Society will maintain the 12 hour annual CPD credit requirement, including two hours of ethics and practice management.

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Imposing caps on credit-hours

173. One of the most challenging issues for the Committee to consider during the review process was whether lawyers should be subject to limits — or caps — on the number of credits from particular subject areas or topics within those subject areas that can "count" toward the 12 hour annual CPD requirement. That is, although the Committee agreed on *what* should be accredited, views diverged as to *how much* credit should be recognized outside the more traditional subject matters and topics.

174. Arguments for and against establishing caps were exchanged at both the Committee table and throughout the consultation process. Much of this dialogue unfolded in the context of Professional Wellness. However, the discussion of caps was revisited on numerous occasions when new subject matter and topics were considered.

Majority recommendation

175. Following considerable discussion and debate, the majority of the Committee concludes that there should be no limits imposed on the amount of credit that can be earned for any particular type of CPD. This position is based on the concern that restricting CPD consumption for certain subject matters or topics may send the message that capped areas are a less valuable form of continuing legal education.

176. With respect to Professional Wellness, specifically, the majority of the Committee holds the view that the goal of CPD is not only to keep lawyers up to date on the law; it is also about ensuring lawyers are practising well. Mandatory annual professional ethics and practice management requirements are illustrative of the broader purpose of CPD in promoting lawyer competence.

177. As discussed throughout the aforementioned report of the National Task Force on Lawyer Well-Being,[44] basic competency is threatened if lawyers are unable to achieve or maintain minimum levels of mental and physical wellness. A number of the comments in the 2016 Survey echo this sentiment:

> *"If the LSBC takes seriously the health and wellbeing of lawyers, it should support lawyers in their efforts to take care of their health. This could be achieved by providing accreditation for programs that have well-being as their topic. I accept that black letter law is an important part of my ongoing professional development, but if my health and wellbeing suffer, no amount of black letter law courses will make up for it."*

> *"It is well established that physical and mental well-being are critical issues for lawyers practicing in BC. Mental and physical well-being is a neglected but vital component to the healthy practice of law. Sometimes these issues impact a lawyer/law firm well-being more than substantive legal courses or training. I don't see why these types of courses would not be included in the CPD accreditation."*

178. Responses to the Committee's 2017 Consultation included similar observations:

> "*Lawyer wellness is of fundamental importance to the delivery of competent legal services... Our wellness platform is likely the most important CPD related program we run."*

[44] *Supra* note 14.

179. The Committee also observes that many of the conduct and competency issues before the Law Society originate from lawyers' struggles with wellness issues. As another 2016 Survey respondent notes:

> *"Difficulties with mental health and substance abuse are amongst the main causes of breaches of professional duties. The point of CPD is to inform lawyers with the hopes of fewer breaches of professional duties."*

180. Professional Wellness learning is not only important for those struggling with mental health and substance use, but also for their colleagues who may not recognize or know how best to assist partners, associates or employees in distress.

181. Further, restricting the amount of Professional Wellness that can count toward the annual 12 hour CPD requirement may reinforce stigma surrounding these issues.

182. To limit the scope of what will qualify for Professional Wellness credit, the Committee has taken steps to carefully define the topics that will be eligible for accreditation. As outlined in the Professional Wellness definition and Guidance, only educational programs that help lawyers detect, prevent and respond to mental health or stress-related issues that can affect professional competence will be accredited.

183. These programs must focus on these issues in the context of the practice of law and their impact on the quality of legal services provided to the public. Courses focusing on yoga, meditation, counselling, treatment, exercise, career changes and personal life events will not be accredited. This restricted scope will ensure that only programming that is of direct relevance to lawyer competence can be "counted" toward a lawyer's 12 hour annual CPD requirement.

184. The majority of the Committee is also of the view that imposing caps on new subject matter and topics is not consistent with the broader theme that has permeated the review process: trusting lawyers to make wise CPD choices for themselves. For example, if a litigator feels that six hours of education on how to manage stress in the courtroom will have a greater impact on their professional competence than a six hour course on cross-examination skills, the option to pursue the former should be available.

185. Accordingly, the majority of the Committee supports relying on lawyers to exercise their discretion in judging how much CPD they ought to take in any particular area to bolster their competence.

186. If, in time, the Law Society observes that a significant number of lawyers are accruing a substantial amount of their CPD credits in the area of Professional Wellness or other subject areas or topics and there are outstanding concerns about learning in substantive or procedural areas of law, the issue of caps could be revisited.

Minority recommendation

187. Several Committee members remain strongly opposed to the majority's proposal not to impose a caps on new subject matters and new topics, including Professional Wellness.

188. The minority is in favour of imposing a two hour credit limit on all new subject matters and topics proposed in this Report. This includes the new subject matters of Professional Wellness and "educational activities that address knowledge primarily within the scope of other professions and disciplines, but are sufficiently connected to the practice of law", the new Practice Management topics of understanding the business of law and multicultural, diversity and equity issues that arise within the legal context; and the new Lawyering Skills topics of mentoring best practices for lawyers, training to be a principal, governance issues and leadership for legal professionals.

189. The minority's concern is that permitting lawyers to receive an unlimited amount of credit in these new subject areas and topics may result in the displacement of learning in areas of substantive and procedural law and lawyering skills, which these Committee members regard as the original basis for mandatory continuing professional development. Given the critical role legal knowledge and skills play in developing and maintaining competence, ensuring lawyers complete at least 10 hours of CPD in these areas is important to practitioners, the Law Society and the public.

190. The minority is also concerned about the public's perception of lawyers being permitted to take unlimited amounts of CPD in new subject areas and topics that are not directly linked to maintaining or upgrading their legal skills and knowledge.

191. With respect to Professional Wellness, the minority view recommends that credit for this new subject matter also be limited to two credits per year.

192. A number of the comments provided in the 2016 Survey similarly support imposing a cap on the amount of Professional Wellness credits. For example:

> *"For wellness courses, I would set a limit of say 2 hours per year of the 12. It is important to encourage lawyers to avail themselves of these types of courses, but it should not derogate from the requirement to obtain ongoing updated legal education on an annual basis."*
>
> *"Wellness is of course important, and a professional obligation, but should not supplant ongoing substantive professional development."*

"I believe that wellness is an important component of effective practice. However, I think it would be prudent to incorporate a limit to ensure that lawyers are continuing to achieve certain thresholds of substantive knowledge."

193. The minority view is not that wellness issues are irrelevant to legal practice or that Professional Wellness is an inappropriate form of CPD. The opposition is largely related to the *amount* of Professional Wellness programming that is recognized for credit each year. Even if capped, lawyers could be encouraged to engage in more than two hours of wellness programming and count this toward the 50 hours of continuing legal education that lawyers are expected to do outside the annual 12 hour CPD requirement.

194. The minority suggests that once there has been an opportunity to assess attitudes toward, and utilization of these new CPD subject areas and topics, a future Lawyer Education Advisory Committee will be in a stronger position to make informed decisions as to whether changes to this credit-hour restriction are warranted, based on analysis and discussions with the profession.

195. In light of these opposing opinions, the Committee ultimately resorted to a vote, which resulted in a narrow majority favouring no imposition of caps on Professional Wellness or other new subject matter and topics at this time.[45]

196. Given the divergence of views on this issue, the Benchers are asked to determine which of the following two recommendations to adopt.

Recommendation 22A: The Law Society will not introduce additional caps on the number of credit-hours that can be satisfied with particular subject matters or topics.

Or, alternatively:

Recommendation 22B: The Law Society will introduce a cap of two credit hours per year on new subject matters and topics. This cap will be reviewed within three years, following an analysis of the impact of the inclusion of these new areas on the CPD program.

[45] This includes the new subject matters of Professional Wellness and "educational activities that address knowledge primarily within the scope of other professions and disciplines, but are sufficiently connected to the practice of law"; the new Practice Management topics of understanding the business of law and multicultural, diversity and equity issues that arise within the legal context; and the new Lawyering Skills topics of mentoring best practices for lawyers, training to be a principal, governance issues and leadership for legal professionals.

Exemptions

197. Under the current CPD Guidelines, a lawyer is required to fulfill the annual 12 hour CPD requirement unless the lawyer is non-practising (e.g. inactive, on maternity leave, on sabbatical), or is a new member who has completed the bar admission program of a Canadian law society during the reporting year.[46]

198. The Committee recommends against expanding this set of exemptions to include senior lawyers or judges returning to practice. The Committee also recommends against reducing the credit-hour requirement for part-time practitioners, on the basis that supporting competence and professionalism through ongoing learning is important for *all* practising lawyers, regardless of experience.

199. This recommendation is supported by the 2016 Survey results, in which the majority of respondents indicated that exceptions to the 12 hour requirement should not be created for different categories of practising lawyers.

200. The Committee also considered introducing an exemption based on what is frequently referred to as "interjurisdictional reciprocity." Under this arrangement, lawyers may claim an exemption from their BC CPD requirements if they satisfy another province's CPD requirements in the same year. For example, if a lawyer is called in both Ontario and BC and completes the Law Society of Upper Canada's CPD requirements, the Law Society of BC would recognize those credits and exempt the lawyer from completing CPD in BC for that year.

201. Most provinces, including BC, do not recognize satisfaction of another law society's CPD requirements as a basis for exemption. Program administrators note that interjurisdictional reciprocity creates administrative complexities, and that it may be difficult to monitor and evaluate equivalencies between CPD programs over time.

202. In BC, lawyers currently benefit from several other forms of reciprocity. For example, a lawyer may report having completed a course to both the Law Society of Upper Canada and the Law Society of BC, and receive CPD credit in both jurisdictions. A lawyer may also complete CPD programming offered by, or presented in another jurisdiction, and receive credit in BC, if the educational activity is independently accredited by the Law Society of BC.

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[46] Lawyers who resume practising law within the reporting year after having been exempt and new members by way of transfer must complete one credit hour for each full or partial calendar month in the practice of law.

203. The Committee concludes that existing forms of reciprocity are sufficient and that exemptions based on interjurisdictional reciprocity should not be introduced at this time.

> **Recommendation 23**: The Law Society will not introduce changes to the criteria governing exemptions from the 12 hour annual CPD credit requirement.

Carry-over

204. Currently, lawyers must fulfill their CPD requirements within the calendar year and meet the December 31st reporting deadline. Failure to do so results in a late fee and, if non-compliance persists, an administrative suspension.

205. The 2016 Survey indicated substantial membership support for changing the annual reporting model, with 75% of respondents supporting some form of carry-over of credits from year to year.

206. Additionally, the Committee observes that a number of other jurisdictions have successfully adopted multi-year reporting periods. For example, Saskatchewan requires 36 hours of CPD over three years; Quebec requires 30 hours over two years; and Prince Edward Island requires 24 hours every two years.

207. The primary advantage of introducing a more flexible reporting model is that it enables lawyers to take CPD at a time that best meets their professional and learning needs. In some years, lawyers may find it challenging to fulfill their credit-hour requirements as a result of any number of factors. For example, in some practice areas the most valuable CPD programming takes the form of a multi-day conference that occurs once every two years. Alternatively, a lawyer may be involved in a lengthy trial that creates scheduling conflicts with desired CPD activities.

208. The Committee examined a number of different approaches to creating a more flexible reporting model. These included a carry-over option, in which lawyers are permitted to carry over excess CPD credits to the following year, and variations on a two and three year reporting cycle in which lawyers are given a longer time period to complete their CPD. Each approach was tested with hypotheticals to evaluate how the scheme would work in practice.

209. The Committee rejected both the two and three year reporting models on the basis that they had the potential to create long gaps between CPD experiences. For example, a three year reporting cycle could result in a lawyer taking no CPD for 35 months and fulfilling all their requirements in the final month of the reporting period.

210. The multi-year reporting cycle also has the potential to create a CPD "crunch" for lawyers at the end of a lengthy reporting period. A lawyer who completes minimal CPD in year one and two of the reporting cycle may face significant challenges in satisfying a large outstanding credit requirement in a short timeframe.

211. In an effort to balance increased flexibility with the risks of creating inconsistent CPD consumption, the Committee determined that a carry-over model is the optimal approach.[47] Under this model, the annual reporting structure remains, such that lawyers are required to report their CPD by December 31st of each year, but are permitted to carry-over up to a maximum of six credits from one year to the next.

212. In limiting the amount of permissible carry-over, all lawyers will be required to fulfill at least six CPD requirements every year. That is, carry-over may not exceed six credits and is not permitted beyond the next calendar year.

213. The Committee also recommends that the carry-over of the annual two hour ethics and practice management requirements not be permitted; this requirement must be satisfied each year.

Recommendation 24: The Law Society will introduce a carry-over model in which lawyers are permitted to carry-over up to six CPD credits from one year to the next. The two hour ethics and practice management CPD requirement cannot be carried over to the following year.

214. The examples below demonstrate how the carry-over model operates.

	CPD recorded in Year 1	Carry over	CPD recorded in Year 2	Total hours recorded over 2 years
Lawyer A	18 hrs	6 hrs (max.)	6 hrs *[+ 6 hrs carry over]*	24
Lawyer B	15 hrs	3 hrs	9 hrs *[+ 3 hrs carry over]*	24
Lawyer C	12 hrs	0 hrs	12 hrs *[+ no carry over]*	24

215. Law Society staff advise that introducing a carry-over model is not expected to add significant complexity or cost to the administration of the CPD program.

[47] The ABA Model Rule also endorses a carry-over approach. See s. 3(A)(3) of the ABA Model Rule, *supra* note 19.

Compliance and enforcement measures

216. The Law Society has a formalized process for following-up with lawyers who have not completed their CPD requirements. This involves escalating action that includes sending email reminders at regular intervals during the year and issuing late fees. Continued failure to satisfy the CPD requirements results in suspension from practice. Lawyers must complete and report obtaining the outstanding CPD credits before the suspension is lifted.

217. As prescribed in Schedule 1 of the Rules, lawyers who complete their CPD hours by December 31st but do not report completion by this deadline are levied a late fee of $200. Lawyers who do not complete the required CPD hours by December 31st are levied a late fee of $500.

218. The Committee does not propose any changes to these monetary penalties on the basis that the current amounts are in line with the penalties issued for non-compliance by other law societies.

219. The Committee also reviewed the Supreme Court of Canada's recent decision in *Green v. Law Society of Manitoba* 2017 SCC 20, which supports administrative suspensions in response to failing to complete CPD. The Court held that this was a reasonable consequence for non-compliance, and an effective way to ensure consistency of legal service across the province and to guarantee that all lawyers meet expected educational standards.

220. Accordingly, the Committee does not recommend any changes to Rule 3-32(1), which governs suspensions.

Recommendation 25: The Law Society will continue to issue late fees and administrative suspensions in response to a lawyer's failure to satisfy their CPD requirements.

TRC Calls to Action

221. The Lawyer Education Advisory Committee supports, in principle, granting CPD credit for programming that reflects the content of Truth and Reconciliation Commission's Call to Action #27:

> *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 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.*

222. The Law Society's Truth and Reconciliation Advisory Committee is tasked with developing the Law Society's approach to the Calls to Action. The Lawyer Education Advisory Committee welcomes engagement with that Committee in the coming months to further explore the role of CPD in educating and training the profession on the content of the Calls to Action.

223. A number of the topics identified in Call to Action #27 are already eligible for CPD credit, including substantive law courses that focus on Indigenous law and human rights law.

224. If adopted, the recommendations in this Report will result in the accreditation of additional TRC-related programming. For example, the new subject matter "educational activities that address knowledge primarily within the practice scope of other professions and disciplines, but are sufficiently connected to the practice of law," will enable lawyers to earn CPD credit for interdisciplinary topics such as the legacy of residential schools and the history of Aboriginal-Crown relations.

225. The proposed Practice Management topic, "multicultural, diversity and equity issues that arise within the legal context," also captures some of the issues identified in Call to Action #27, including cultural competency and anti-racism.

226. Although these are small steps toward actualizing Call to Action #27, they represent an important starting place. The Committee looks forward to partnering with the Truth and Reconciliation Advisory Committee in moving forward with this important work.

Recommendation 26: The Lawyer Education Advisory Committee will continue to work with the Truth and Reconciliation Advisory Committee to define the role of CPD in educating and training the profession on the content of TRC Call to Action #27.

Summary of recommendations

227. The recommendations outlined in this Report are listed below. For ease of reference, the recommendations that represent *changes* to the CPD program are highlighted. Non-

highlighted recommendations indicate a proposal to maintain existing elements or approaches of the current CPD program.

Recommendation 1: The Law Society will maintain a continuing professional development requirement that must be satisfied by all practising BC lawyers.

Recommendation 2: The Law Society will adopt the following CPD purpose statement: *The purpose of the mandatory CPD program is to uphold and protect the public interest in the administration of justice by actively supporting the Law Society's members in achieving and maintaining high standards of competency, professionalism and learning in the practice of law*

Recommendation 3: The Law Society will continue to accredit all eligible CPD programming.

Recommendation 4: Lawyers will not be required to demonstrate a nexus between their practice area and their CPD activities.

Recommendation 5: The Law Society will not introduce mandatory testing as part of the CPD program.

Recommendation 6: The Law Society will not introduce a requirement for lawyers to complete a learning plan as part of their CPD obligations.

Recommendation 7: The Law Society will recognize Professional Wellness as a subject matter that is eligible for CPD credit.

Recommendation 8: The Law Society will define Professional Wellness as:

> *"Approved educational programs designed to help lawyers detect, prevent or respond to substance use problems, mental health or stress-related issues that can affect professional competence and the ability to fulfill a lawyer's ethical and professional duties. Such educational programs must focus on these issues in the context of the practice of law and the impact these issues can have on the quality of legal services provided to the public."*

Recommendation 9: The Law Society will adopt the criteria outlined in the Professional Wellness Guidance Material as a basis for accrediting Professional Wellness subject matter.

Recommendation 10: The Law Society will not recognize pro bono and legal aid work as eligible for CPD credit.

Recommendation 11: The Law Society will recognize educational programs that address knowledge primarily within the practice scope of other professions and disciplines, but are sufficiently connected to the practice of law as a subject matter that is eligible for CPD credit.

Recommendation 12: The Law Society will recognize "understanding the business of law" as an eligible Practice Management topic.

Recommendation 13: The Law Society will recognize "multicultural, diversity and equity issues that arise within the legal context" as an eligible Practice Management topic.

Recommendation 14: The Law Society will recognize mentoring best practices for lawyers, training to be a principal, governance issues and leadership for legal professionals as eligible Lawyering Skills topics.

Recommendation 15: Lawyers may receive CPD credit for viewing a pre-recorded course without the presence of another lawyer or articling student.

Recommendation 16: Lawyers may receive CPD credit for teaching the same subject matter no more than twice in a calendar year.

Recommendation 17: Lawyers may receive CPD credit for writing for law firm or other websites if the content is substantially related to law or legal education. Material that is developed primarily for the purpose of marketing to existing or potential clients will not be eligible for credit.

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Recommendation 20: Lawyers are recommended to complete a minimum of 50 hours of self-study per year in addition to the 12 hour credit requirement. Self-study activities, including independent reading, will not be eligible for CPD credit.

Recommendation 21: The Law Society will maintain the 12 hour annual CPD credit requirement, including two hours of ethics and practice management.

Recommendation 22A: The Law Society will not introduce additional caps on the number of credit-hours that can be satisfied with particular subject matters or topics.

Or, alternatively:

Recommendation 22B: The Law Society will introduce a cap of two credit hours per year on new subject matters and topics. This cap will be reviewed within three years, following an analysis of the impact of the inclusion of these new areas on the CPD program.

Recommendation 23: The Law Society will not introduce changes to the criteria governing exemptions from the 12 hour annual CPD credit requirement.

Recommendation 24: The Law Society will introduce a carry-over model in which lawyers are permitted to carry-over up to six CPD credits from one year to the next. The two hour ethics and practice management CPD requirement cannot be carried over to the following year.

Recommendation 25: The Law Society will continue to issue late fees and administrative suspensions in response to a lawyer's failure to satisfy their CPD requirements.

Recommendation 26: The Lawyer Education Advisory Committee will continue to work with the Truth and Reconciliation Advisory Committee to define the role of CPD in educating and training the profession on the content of TRC Call to Action #27.

Next Steps

228. The 26 recommendations outlined in the Final Report are before the Benchers for discussion and decision. If adopted, these proposals will serve as the roadmap for implementing changes to the CPD program over the next two years.

229. Phase 1 will involve the introduction the new CPD purpose statement and the two new subject matters of Professional Wellness and educational programs that address knowledge primarily within the practice scope of other professions and disciplines, but sufficiently connected to the practice of law. The proposed new Practice Management and Lawyering Skills topics will also become eligible for credit.

230. If these new subject matters and topics are *not* subject to a cap (see Recommendation 22A), these changes will be in place in time for lawyers to obtain credit for these new CPD areas during the 2018 reporting year.

231. Phase 2 of the implementation process will take effect January 2019 and will include the new learning mode criteria and the introduction of the carry-over option. As such,

lawyers will be permitted to carry-over up to six excess CPD credits from the 2019 reporting year to meet their 2020 reporting requirements.

232. If the Benchers determine that caps will be imposed on the new subject matters and topics, given technical and administrative complexity of making the necessary changes to the reporting system to accommodate caps, lawyers may not be eligible to receive credit for these new CPD areas until 2019.

233. Whereas Phase 1 largely relates to accreditation, the changes marked for Phase 2 have a significant impact on reporting and, as such, additional time may be required to ensure internal systems are operational.

234. In advance of both Phase 1 and Phase 2, the Law Society will develop a communications strategy to ensure that lawyers, CPD providers and the public are well-informed about the upcoming changes to the CPD program. Information will be disseminated using a variety of media, including the Law Society website, a Notice to the Profession, and the *Benchers' Bulletin*. The CPD Guidelines will also be redrafted.

235. From a budgetary perspective, the recommended changes to the CPD program to implement the Phase 1 modifications ought not to require additional funding, as existing resourcing should be sufficient to complete the required policy and operational work.

236. Discussions with the IT department regarding the necessary system modifications to include the new learning mode criteria and accommodate the carry-over model and an imposition of caps (if any) slated for Phase 2 of implementation are ongoing, but preliminary estimates for IT, communication and operation resources are in the range of $7,000 - $10,000.

Conclusion

237. Over the past two years, the Lawyer Education Advisory Committee has undertaken the difficult and complex task of reviewing all aspects of BC's CPD program.

238. Throughout, the level of engagement in this review exercise by Committee members has been exceptional. The 2016 Survey and 2017 Consultation also represents tremendous efforts on behalf of both Law Society staff and the many lawyers and organizations that participated in this process.

239. Cumulatively, this work has resulted in 26 key recommendations designed to improve the effectiveness and relevance of the CPD program.

240. Many of the foundational elements of Law Society of BC's current CPD scheme remain unchanged, including the accreditation model, the 12 hour credit requirement,

core subject matters, topics and learning modes, criteria governing exemptions and compliance, and enforcement measures.

241. Numerous modifications to the program have also been proposed. In general, these changes tend toward an expansion of eligible CPD programming and increased flexibility as to how and when lawyers can satisfy their CPD requirements.

242. Specifically, the Committee recommends the addition of two new subject matters, a reduction in the number of ineligible Practice Management and Lawyering Skills topics, and a corresponding increase in the range of eligible topics. The criteria governing learning modes have also been relaxed.

243. Other key changes include the adoption of a new purpose statement and the introduction of a carry-over of 6 credits from one year to the next. Future consultation with the Truth and Reconciliation Advisory Committee may result in additional changes to the program as is necessary to address Call to Action #27.

244. The Committee is of the view that collectively, these 26 recommendations represent an innovative, responsive and flexible approach to continuing professional development, one that actively supports lawyer learning, competence and professionalism and, in doing so, enhance the provision of legal services to the public.

BC Lawyers' Continuing Professional Development, effective January 1, 2012

BC lawyers, on January 1, 2009, became the first in Canada to be subject to a comprehensive continuing professional development (CPD) requirement. A thorough review of the CPD program was completed in 2011 following extensive consultation, with the Benchers approving revisions effective January 1, 2012.

BC practising lawyers, both full-time and part-time, must complete 12 hours of accredited CPD within the calendar year. At least two of the 12 hours must pertain to any combination of professional responsibility and ethics, client care and relations, and practice management.

While the Law Society continues to encourage self-study, the 12 hour requirement does not include self-study, such as reading or reviewing recorded material on one's own, subject to the exceptions for writing and some online programs outlined in the summary below.

Lawyers record their accredited CPD activities online at the Law Society website. The system is paperless. Application for accreditation of courses and other professional development activities can be made both by education providers and individual lawyers, either before or after the event. Application for accreditation before rather than after the event is strongly recommended.

The Law Society has endeavored to implement a program with sufficient flexibility to permit lawyers to meet the requirement in a way that matches their own professional goals and learning preferences, and that is as straightforward as reasonably possible for lawyers and education providers. The details of the program are outlined below.

Questions and suggestions may be directed to the Member Services Department, 6th Floor, 845 Cambie Street, Vancouver, BC V6B 4Z9, at cpd@lsbc.org, or (604) 605-5311 or 1 (800) 903-5300, local 5311 (toll-free in BC).

1. CPD Requirement for Practicing Lawyers

a. 12 hours of accredited continuing professional development within the calendar year

b. At least 2 of the 12 hours must pertain to any combination of professional responsibility and ethics, client care and relations, and practice management. Stand

alone, as well as embedded professional responsibility and ethics, client care and relations, and practice management content satisfy the 2 hour requirement.

c. While the Law Society continues to encourage self-study, the 12 hour requirement does not include self-study, such as reading or reviewing recorded material on one's own, subject to the exceptions for writing and some online programs listed below.

2. Overall Subject Matter Requirement for all Accredited Learning Modes

The subject matter of all accredited learning modes, including courses, must deal primarily with one or more of:

i) substantive law
ii) procedural law
iii) professional ethics
iv) practice management (including client care and relations)
v) lawyering skills.

Accredited learning activities are not limited to subject matter dealing primarily with BC or Canadian law. Credit is available for subject matter related to the law of other provinces and countries.

The following activities will not be accredited:

- lawyer wellness topics
- topics relating to law firm marketing or profit maximization
- activity designed for or targeted primarily at clients
- pro bono activities

(See Appendix A for descriptions of Professional Ethics, Practice Management and Lawyering Skills, including further detail on excluded subject matter.)

3. Credit for Different Types of CPD Activity

a. Courses

Courses will be accredited on the following criteria:

i. attending a course;

ii. participating in online "real time" courses, streaming video, web and / or teleconference courses, if there is an opportunity to ask and answer questions; or

iii. reviewing a previously recorded course with at least one other lawyer or an articling student, including by telephone or other real time communications technology

iv. reviewing a previously recorded course, if at least two lawyers review it together, including by telephone or other real time communications technology.

b. Online Interactive Programs

A lawyer may apply for credit for individually completing an online program, including an audio, video or web program, for up to a pre-accredited limit per online program, if the program has the following characteristics:

i. a quiz component, where questions are to be answered, and where either the correct answer is provided after the question is answered, or an answer guide is provided after the lawyer completes the quiz;

ii. the quiz is at the end of or interspersed throughout the program;

iii. the lawyer can email or telephone a designated moderator with questions, and receive a timely reply.

c. Listserv/forum /network site

Credit is not available for these forms of activity.

d. Local Bar and Canadian Bar Association Section Meetings

A lawyer may apply for credit for the actual time spent attending an educational program provided by a local or county bar association, as well as for section meetings of the Canadian Bar Association, excluding any portion of a meeting not devoted to educational activities.

To qualify, at least two lawyers or a lawyer and an articling student must participate in the activity at the same time, including by telephone or other real time communications technology.

e. Study Groups

Credit will be given for study group attendance at a meeting

i. if at least two lawyers or a lawyer and articling student are together for educational purposes (including reviewing a recorded program) at the same time (including by telephone or other real time communications technology),

ii. of an editorial advisory board for legal publications, but not as a part of regular employment, or

iii. of a law reform body or group, but not as a part of regular employment,

iv. if a lawyer chairs or has overall administrative responsibility for the meeting.

Credit will be not given for

i. participation on committees, boards and tribunals,

ii. any time that is not related to educational activity,

iii. activity that is file specific,

iv. time spent reading materials, handouts or PowerPoint, whether before or after the study group session.

f. Teaching

Lawyers may claim up to three hours of credit for each hour taught if the teaching is for

i. an audience that includes as a principal component, lawyers, paralegals, articling students and / or law school students,

ii. (a continuing professional education or licensing program for another profession, or

iii. a post-secondary educational program,

but not if the teaching is targeted primarily at clients or is file specific.

If teaching is directed to an audience not listed in i. to iii. above, such as the general public, one hour of credit for each hour taught, but not if targeted primarily at clients or is file specific.

The following conditions apply:

i. credit for volunteer or part-time teaching only, not as part of full-time or regular employment;

ii. if the lawyer only chairs a program, the time spent chairing the program is all that may be reported, not three hours for each hour of chairing;

iii. credit only for the first time in the year, and not for repeat teaching of substantially the same subject matter within the year

iv. credit may be claimed for the same course year to year, whether or not there are changes to the course;

v. a lawyer claiming teaching and preparation credit can also claim writing credit for additional time writing course materials;

vi. no credit for setting or marking examinations, term papers or other assignments;

vii. no credit for preparation time if the lawyer does not actually teach the course. Examples include

- assisting someone else in preparation without actually teaching,
- acting as a teaching assistant without actually teaching,
- preparing to teach, but the course is then cancelled.

g. Writing

Lawyers may claim credit

i. for writing law books or articles intended for publication or to be included in course materials intended for any audience

ii. a maximum of 6 hours for each writing project, based on the actual time to produce the final product,

iii. no cap on the overall credit hours available for writing,

iv. in addition to credit for teaching and preparation for teaching,

v. not for preparation of PowerPoint,

vi. not for writing for law firm websites,

vii. not for blogging or wikis (as there are no generally accepted standards for posting to blogs or wikis at present – this will be considered as part of the next CPD review).

viii. for volunteer or part-time writing only, not as a part of full-time or regular employment.

h. Mentoring

The following provisions apply to mentoring:

i. a lawyer who has engaged in the practice of law in Canada, either full or part-time, for 7 of the 10 years immediately preceding the current calendar year, and who is not the subject of an order of the Credentials Committee under Rule 3-18.31(4) (c), is eligible to be a mentor principal.

ii. mentoring credit is available for mentoring another lawyer or an articling student, but not for an articling principal mentoring one's own articling student;

iii. mentoring credit is not available for mentoring a paralegal;

iv. mentoring goals must comply with the subject matter requirements applicable for any other CPD credit;

v. mentoring must not be file specific or simply answer questions about specific files;

vi. a mentor is entitled to 6 hours of credit per mentee, plus another 6 hours (for a total of 12 hours) if mentoring two mentees separately. If two or more mentees are mentored in a group, the mentor is entitled to 6 hours, and each mentee is entitled to 6 hours;

vii. credit is for time actually spent together in the mentoring sessions, and can be face to face or by telephone, including real time videoconferencing.

viii. mentoring by email or similar electronic means qualifies for credit;

ix. there is no minimum time for each mentoring session;

i. Self study restriction

No credit is available for self-study, such as reading, and reviewing recorded material on one's own, subject to the prescribed exception above for approved interactive online programs. Lawyers are recommended to complete a minimum 50 hours of self-study annually, are not required lawyers to report this as it is not eligible for credit.

4. Accreditation Process

The Law Society considers applications for credit according to the following processes:

i. A course provider may apply for pre-approved status, in which case the provider is responsible for ensuring the courses meet the prescribed accreditation above criteria, or may request that the Law Society review and approve each course. Pre-approval status is dependent on the provider maintaining integrity and quality according to standards.

ii. A lawyer may apply individually for accreditation of a course if a provider has not done so.

iii. A lawyer must individually apply for accreditation of group study, teaching, writing and mentoring plans.

iv. All applications by providers and lawyers must be submitted electronically through the Law Society website log-in.

v. Approval decisions are made by Law Society staff. A provider or lawyer may ask staff to review a decision a second time.

5. Compliance and Reporting Requirements

i. The CPD requirement is based on the calendar year, with the compliance date being December 31 each year. Credits in excess of 12 hours cannot be carried over into a subsequent year.

ii. Lawyers log on to the Law Society website and click on a link to the CPD program, where they are shown their individual credits obtained to date in the calendar year. After completing an accredited course or other accredited learning activity, lawyers should add that to their record.

iii. Lawyers must keep their own record of the number of hours of professional responsibility and ethics, client care and relations, and

practice management they complete, and when they have completed at least 2 hours, should reply 'yes' to the specific question in their CPD report.

iv. Lawyers are notified electronically of the approaching calendar deadline and, if the deadline is not met, are given an automatic extension to April 1 of the following year to complete the necessary requirement, in which case a late fee of will be charged as follows:

- lawyers who complete their CPD hours by December 31 but do not report completion by the December 31 deadline will be levied a $200 late fee plus applicable taxes; or

- lawyers who do not complete the required CPD hours by December 31, and are therefore required to complete and report the required CPD hours by April 1 of the following year, will be levied a late fee of $500 plus applicable taxes.

v. If the requirement is not complete by April 1 of the following year, the lawyer is suspended until all required professional development is complete. The lawyer will receive a 60 day prior notice of the suspension. The Practice Standards Committee has the discretion to prevent or delay the suspension in special circumstances on written application by a lawyer.

vi. The twelve hour requirement is subject to adjustment for entering or re-entering practice mid-year. Lawyers who are exempt during the reporting year, but resume practising law within the reporting year, must complete one credit hour for each full or partial calendar month in the practice of law. The professional responsibility and ethics, client care and relations, and practice management requirement is also adjusted.

6. Exemptions

Lawyers with a practising certificate, whether full or part-time, are subject to the full CPD requirement, with the following exemptions:

i. lawyers with a practicing certificate who submit a declaration that they are not practising law in the reporting year. Examples of lawyers who might submit a declaration that they are not practising law are those who are

- inactive;

- on medical or maternity leave;
- taking a sabbatical.

ii. new members who have completed the bar admission program of a Canadian law society during the reporting year;

iii. lawyers who resume practising law within the reporting year after having been exempt and, subject to (ii), above, new members by way of transfer. These lawyers must complete one credit hour for each full or partial calendar month in the practice of law. The professional responsibility and ethics, client care and relations, and practice management requirement is also adjusted.

iv. no exemption is available for

- being too busy (such as a long trial);
- the practice of law being in another jurisdiction.

APPENDIX A

A GUIDE TO CRITERIA FOR ACCREDITING

1. **PROFESSIONAL ETHICS**
2. **PRACTICE MANAGEMENT**
3. **LAWYERING SKILLS**

I. PROFESSIONAL ETHICS

Content focusing on the professional and ethical practice of law, including conducting one's practice in a manner consistent with the *Legal Profession Act* and Rules, the *Code of Professional Conduct for British Columbia*, and generally accepted principles of professional conduct.

II. PRACTICE MANAGEMENT

Content focusing on administration of a lawyer's workload and office, and on client-based administration, including how to start up and operate a law practice in a manner that applies sound and efficient law practice management methodology.

Topics include

(a) client care and relations, including managing difficult clients;
(b) trust accounting requirements, including:
  (i) trust reporting;
  (ii) financial reporting for a law practice;
  (iii) interest income on trust accounts;
  (iv) working with a bookkeeper;
(c) Federal and provincial tax remittances, including employee income tax remittances;
(d) technology in law practice including:
  (i) law office systems;
  (ii) e-filing;
  (iii) legal document preparation and management, including precedents;
(e) retainer agreements and billing practices relating to Law Society requirements, including:
  (i) unbundling of legal services;
  (ii) permissible alternative billing arrangements;
(f) avoiding fee disputes;
(g) file systems, including retention and disposal;
(h) succession planning;
(i) emergency planning, including law practice continuity for catastrophic events and coverage during absences;
(j) managing law firm staff, including:
  (i) *Code of Professional Conduct for British Columbia* requirements;
  (ii) delegation of tasks/supervision;
(k) identifying conflicts, including:
  (i) conflict checks and related systems;

(ii) client screening;

(l) diary and time management systems, including:
  (i) limitation systems;
  (ii) reminder systems;
  (iii) follow-up systems;

(m) avoiding "being a dupe"/avoiding fraud;

(n) complying with Law Society Rules.

The following topics do not satisfy the practice management definition for CPD accreditation:

(a) law firm marketing;

(b) maximizing profit;

(c) commoditization of legal services;

(d) surviving a recession;

(e) basic technology and office systems (unless in the specific context of practising law, as listed above);

(f) attracting and retaining law firm talent;

(g) alternate work arrangements in a law firm;

(h) business case for retention of lawyers and staff, including retention relating to gender, Aboriginal identity, cultural diversity, disability, or sexual orientation and gender identity.

(i) handling interpersonal differences within your law firm;

(j) cultural sensitivity in working with your law firm staff;

(k) training to be a mentor.

III. LAWYERING SKILLS

Lawyering skills include

(a) effective communication, both oral and written;

(b) interviewing and advising;

(c) problem solving, including related critical thinking and decision making;

(d) advocacy;

(e) arbitration;

(f) mediation;

(g) negotiation;

(h) drafting legal documents;

(i) legal writing, including related plain writing;

(j) legal research;

(k) legal project management;

(l) how to work with law practice technology, including:
  (i) e-discovery;
  (ii) in the courtroom;
  (iii) client record management;

(iv) converting electronically stored information into evidence;
(v) social networking technology to facilitate client communication (but excluding marketing and client development);

but not

(a) general business leadership;
(b) chairing / conducting meetings;
(c) serving on a Board of Directors;
(d) general project management;
(e) skills and knowledge primarily within the practice scope of other professions and disciplines.

LAW SOCIETY OF BC 2016 CPD SURVEY RESULTS

Should there be some amount of mandatory CPD for lawyers?

Response	Chart	Percentage	Count
Yes		83.2%	1042
No		16.8%	211
		Total Responses	**1253**

How appropriate is the current requirement of 12 hours per year?

Response	Chart	Percentage	Count
Much too low		2.1%	27
A little too low		8.6%	108
About right		55.4%	696
A little too high		15.0%	188
Much too high		5.6%	71
The requirement should not be based on hours		13.3%	167
		Total Responses	**1257**

Should the annual CPD requirement be adjusted according to the individual lawyer's:

	Yes	No	Total Responses
Practising full or part time	616 (49.6%)	625 (50.4%)	1241
Length of time in practice	426 (34.4%)	812 (65.6%)	1238

How appropriate is the current requirement of 2 hours per year minimum for ethics, practice management and client care and relations education?

Response	Chart	Percentage	Count
Much too low		2.0%	25
A little too low		8.7%	110
About right		56.6%	712
A little too high		8.3%	105
Much too high		1.0%	13
There should be no such requirement		23.4%	294
		Total Responses	**1259**

Wellness: Are you in favour of extending CPD accreditation to wellness courses that support the mental and physical well-being of lawyers in the practice of law?

Response	Chart	Percentage	Count
Yes		60.3%	756
No		39.7%	497
		Total Responses	**1253**

Comment?

The 356 response(s) to this question can be found in the appendix.

Law firm marketing and business development: Are you in favour of extending CPD accreditation to law firm marketing and business development programs?

Response	Chart	Percentage	Count
Yes		34.1%	425
No		65.9%	823
		Total Responses	**1248**

Comment?

The 284 response(s) to this question can be found in the appendix.

Pro bono: Are you in favour of extending CPD accreditation to the provision of pro bono legal services?

Response	Chart	Percentage	Count
Yes		50.2%	629
No		49.8%	624
		Total Responses	**1253**

Comment?

The 315 response(s) to this question can be found in the appendix.

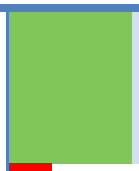
Legal Aid: Are you in favour of extending CPD accreditation to the provision of legal services funded through the Legal Services Society?

Response	Chart	Percentage	Count
Yes		35.6%	444
No		64.4%	802
		Total Responses	**1246**

Comment?

The 243 response(s) to this question can be found in the appendix.

Which of the following would you prefer?

Response	Chart	Percentage	Count
Maintain an annual CPD requirement, but allow lawyers who complete more than the required number of credits each year to carry over some of their excess credits to the next reporting year.		75.7%	946
Maintain an annual CPD requirement, but do not allow lawyers who complete more than the required number of credits each year to carry over some of their excess credits to the next reporting year.		24.3%	304
		Total Responses	**1250**

If you typically complete more than 12 hours of CPD in a year, do you record your hours in excess of the required 12 in the Law Society's online CPD reporting system?

Response	Chart	Percentage	Count
Yes		46.7%	587
No		40.5%	509
N/A		12.9%	162
		Total Responses	**1258**

If you typically complete more than 12 hours of CPD in a year, approximately how many hours do your complete in a typical year?

Response	Chart	Percentage	Count
13 - 15 hours		28.5%	356
16 to 20 hours		30.0%	375
21 to 25 hours		10.2%	127
More than 25 hours		14.9%	186
N/A		16.5%	206
		Total Responses	**1250**

The online system for reporting CPD credits is easy to use.

Response	Chart	Percentage	Count
Strongly agree		25.7%	324
Agree somewhat		45.1%	568
Neither agree nor disagree		7.7%	97
Disagree somewhat		14.6%	184
Strongly disagree		5.4%	68
Don't know		1.5%	19
		Total Responses	**1260**

If the Law Society were to provide a web app or mobile app for reporting CPD credits, would you likely use it?

Response	Chart	Percentage	Count
Yes		36.8%	462
No		37.7%	474
Not sure		25.5%	321
		Total Responses	**1257**

How would you PREFER to satisfy your CPD requirements this year? Please rank up to 8 preferences, with 1 indicating your first preference, 2 your second preference and so on.

	1	2	3	4	5	6	7	8	Total Responses
Live courses	513 (45.9%)	252 (22.6%)	158 (14.1%)	81 (7.3%)	52 (4.7%)	29 (2.6%)	21 (1.9%)	11 (1.0%)	1117
On-line courses	346 (30.9%)	329 (29.3%)	171 (15.3%)	110 (9.8%)	70 (6.2%)	44 (3.9%)	45 (4.0%)	6 (0.5%)	1121
Study groups	62 (7.1%)	128 (14.6%)	151 (17.2%)	172 (19.6%)	119 (13.6%)	115 (13.1%)	116 (13.2%)	14 (1.6%)	877
In-house education	140 (14.5%)	226 (23.4%)	220 (22.8%)	166 (17.2%)	71 (7.4%)	73 (7.6%)	57 (5.9%)	12 (1.2%)	965
Teaching	68 (7.6%)	114 (12.7%)	149 (16.6%)	148 (16.5%)	164 (18.3%)	150 (16.7%)	95 (10.6%)	8 (0.9%)	896
Writing	17 (2.1%)	64 (7.9%)	82 (10.1%)	108 (13.3%)	150 (18.5%)	197 (24.2%)	172 (21.2%)	23 (2.8%)	813
Mentoring	22 (2.6%)	48 (5.8%)	105 (12.6%)	137 (16.4%)	164 (19.7%)	138 (16.5%)	200 (24.0%)	20 (2.4%)	834
Other (Please specify below.)	34 (6.5%)	13 (2.5%)	20 (3.8%)	8 (1.5%)	13 (2.5%)	7 (1.3%)	19 (3.6%)	411 (78.3%)	525

The 184 response(s) to this question can be found in the appendix.

To what extent are any of the following a barrier to satisfying your annual CPD requirement?

	Strong barrier	Modest barrier	Not a barrier	Total Responses
Price	427 (34.9%)	427 (34.9%)	368 (30.1%)	1222
Geographic location	230 (19.2%)	305 (25.5%)	660 (55.2%)	1195
Time	270 (22.2%)	587 (48.4%)	357 (29.4%)	1214
Availability of topics relevant to your practice	277 (22.8%)	462 (38.0%)	477 (39.2%)	1216
Other (please specify below)	49 (17.2%)	32 (11.2%)	204 (71.6%)	285

The 173 response(s) to this question can be found in the appendix.

What are the top TWO factors likely to determine how you will fulfil your CPD credits in 2016?

Response	Chart	Percentage	Count
To enhance your knowledge and skills within your field(s) of practice		76.9%	969
To improve your competence as a lawyer		46.1%	581
Ease of participation in the course or other form of educational activity		35.3%	445
Price		25.0%	315
What is available for credit at the end of the year		7.6%	96
Other (Please specify below.)		4.1%	52
		Total Responses	**1260**

The 86 response(s) to this question can be found in the appendix.

How many years have you practised law?

Response	Chart	Percentage	Count
Fewer than 5 years		13.5%	170
5 to 10 years		15.9%	200
11 to 15 years		13.7%	172
16 to 20 years		11.5%	145
21 to 25 years		13.1%	165
26 to 30 years		11.1%	140
More than 30 years		21.3%	268
		Total Responses	**1260**

The size of the firm in which you practise is:

Response	Chart	Percentage	Count
Sole practitioner		21.9%	275
2 to 4 lawyers		13.8%	173

5 to 9 lawyers		10.2%	128
10 to 24 lawyers		10.2%	128
25 to 49 lawyers		3.3%	42
50 or more lawyers		10.8%	136
Not in a law firm (corporate/government counsel, etc.)		29.9%	376
		Total Responses	**1258**

Are you currently practicing?

Response	Chart	Percentage	Count
Full time		84.6%	1063
Part time		14.1%	177
Not Practising		1.3%	16
		Total Responses	**1256**

Where is the principal city, town or municipality of your law practice?

The 1220 response(s) to this question can be found in the appendix.

The best way(s) to improve the CPD program would be to:

The 723 response(s) to this question can be found in the appendix.

Please provide any additional comments.

The 191 response(s) to this question can be found in the appendix.

The Law Society of British Columbia

Memo

To: Lawyer Education Advisory Committee
From: Alan Treleaven
Date: June 26, 2017
Subject: CPD Review Consultation Update

I have sent the following customized email, with the 2016 CPD member survey results attached, to the following institutions, organizations and firms, and will provide a report on responses at the July 6 Committee meeting.

- Continuing Legal Education Society of BC
- Courthouse Libraries BC
- Trial Lawyers' Association of BC
- BC Legal Management Association (BCLMA)
- CBA BC
- CBA BC Aboriginal Lawyers Forum
- Federation of Asian Canadian Lawyers of BC
- South Asian Bar Association of BC
- Black Lawyers Association BC Chapter
- l'Association des juristes d'expression française de la Colombie-Britannique
- Ismali Lawyers Association
- 26 local bar associations
- 25 large law firms (with in-house education directors)
- BC's three law schools

……

Invitation to the Victoria Bar Association

Neil,

The Law Society of BC's Lawyer Education Advisory Committee is reviewing the Continuing Professional Development ("CPD") program. In addition to the Committee having consulted with the profession in 2016 through an online survey, the results of which are attached, the Committee is initiating further, focused consultations with institutions and organizations that may have a direct interest in potential changes to the CPD program.

At this stage of the review, the Committee is considering potential changes to the CPD program, such as introducing eligibility of the following subjects, topics and learning modes for CPD credit:

1. additional subject matter:
   a) educational activities related to professional wellness
   b) knowledge primarily within the practice scope of other professions and disciplines, but sufficiently connected to the practice of law
   c) educational activities related to Truth and Reconciliation Commission Report Call to Action #27, including cultural competency

2. additional practice management topics:
   a) understanding the business of law, including:
      (i) marketing of a law practice, including client development
      (ii) strategic business planning
      (iii) management and running of a law practice
      (iv) technological systems incorporated into running a law practice
      (v) financial systems incorporated into running a law practice
   b) multicultural and diversity issues that arise within the legal context
   c) mentoring best practices for lawyers

3. additional lawyering skills topics:
   a) governance issues
   b) leadership for legal professionals
   c) training to be an articling principal

4. additional learning modes:
   a) independent viewing of pre-recorded courses
   b) writing for law firm websites
   c) credit for teaching the same course up to two times per year

The Committee invites you to respond to the following questions by email to atreleaven@lsbc.org. (It would be helpful to receive your response by July 5.)

1. What suggestions do you have for expanding the scope of subject areas, topics and learning modes eligible for accreditation?

2. Do you have other comments or suggestions as to how the CPD program could be improved?

If you would like to arrange a follow-up discussion with Law Society representatives, please contact:

Alan Treleaven
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Thank you very much. *-Alan Treleaven*

Appendix D

New subject matters

- Professional Wellness
- Knowledge primarily within the practice scope of other professions and disciplines, but sufficiently connected to the practice of law

Eligible Practice Management topics
(a)client care and relations, including managing difficult clients
(b) trust accounting requirements, including: (i) trust reporting (ii) financial reporting for a law practice (iii) interest income on trust accounts (iv) working with a bookkeeper
(c) Federal and provincial tax remittances, including employee income tax remittances
(d) technology to assist running a law practice including: (i) law office systems (ii) e-filing (iii) legal document preparation and management, including precedents (iv) client record management
(e) retainer agreements and billing practices relating to Law Society requirements, including: (i) unbundling of legal services (ii) permissible alternative billing arrangements
(f) managing client expectations related to fees and disbursements
(g) file systems, including retention and disposal
(h) emergency planning, including law practice continuity for catastrophic events and coverage during absences
(i) managing law firm staff, including:

(i) *Code of Professional Conduct for British Columbia* requirements (ii) training, supervising and delegating to staff
(j) identifying conflicts, including: (i) conflict checks and related systems (ii) client screening
(k) diary and time management systems, including: (i) limitation systems (ii) reminder systems (iii) follow-up systems
(l) avoiding "being a dupe"/avoiding fraud
(m) complying with Law Society Rules
(n) understanding the business of law, including: (i)the marketing of a law practice in accordance with professional obligations, including client development; (ii) strategic business planning (iii) the management and running of a law practice (iv)the technological systems incorporated into running a law practice (v) the financial systems incorporated into running a law practice
(o) multicultural, diversity and equity issues that arise within the legal context
(p) mentoring best practices for lawyers
(q) succession planning and related issues

Ineligible Practice Management topics
(a) any activity developed primarily for the purpose of marketing to existing or potential clients
(b) maximizing profit
(c) commoditization of legal services
(d) surviving a recession

Eligible Lawyering Skills topics
(a) effective communication, both oral and written
(b) interviewing and advising
(c) problem solving, including related critical thinking and decision making
(d) advocacy
(e) arbitration
(f) mediation
(g) dispute resolution
(h) negotiation
(i) drafting legal documents
(j) legal writing, including related plain writing
(k) legal research
(l) legal project management
(m) technology to support a legal practice, including: (i) e-discovery (ii) in the courtroom (iii) converting electronically stored information into evidence (iv) social networking technology to facilitate client communication (but excluding advertising and client development)
(n) training to be a principal
(o) governance issues related to the practice of law
(p) leadership for legal professionals

Ineligible Lawyering Skills topics
(a) general business leadership
(b) general project management

The Law Society of British Columbia

Early Intervention Working Group Final Report

Early Intervention Working Group:

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Date: October 12, 2017

Prepared for: The Benchers

Prepared by: Michael Lucas

Purpose: For Information

Introduction

1. The Early Intervention Working Group was created in order to identify, through a policy-based approach, empirically and ethically sound opportunities to adapt existing or to create new programs or initiatives to:

    (a) improve the standards of practice of lawyers; and

    (b) assist all lawyers to practise more competently.

2. Prior to the establishment of the Working Group, staff in the Practice Standards Department had begun to compile and analyze data collected through the regulatory departments with a view to determining whether existing data assisted in identifying causes of poor performance by lawyers and to identify current and emerging trends related to lawyer competence and performance, as well as corresponding regulatory challenges and opportunities.

3. The data collected was anonymized and then analyzed by Standpoint Decisions Support Inc. Standpoint prepared a report dated June 9, 2017 reporting on the methodologies and findings. That report is attached as Appendix A.

4. This Working Group was given the task of reviewing the data and report to determine whether any recommendations for the creation of programs or regulatory processes could be made from the work generated to date.

Data Gathering

5. The Working Group spent its initial meetings discussing the underlying premise of the project as identified by the Manager of Practice Standards and examining the methodologies used to analyze the data prior to the establishment of the Working Group.

6. The data had been compiled from data recorded in the Law Society Information System (LSIS). The methodologies[1] were broken into three sets:

    (a) A review of 107 Practice Standards cases to identify leading issues that occurred or co-occurred among lawyers referred to the Practice Standards Committee. The 107 cases were reviewed internally by staff and assigned a subjective ranking for the lawyer's performance against a large number of competency related best practices;

[1] A full description of the methodologies used in the analyses is contained in Appendix A.

(b) An analysis of the information on all currently practising lawyers that modelled the likelihood of a lawyer attracting the attention of the Law Society based on their (i) history of complaints and intakes; (ii) last reported area of practice; (iii) firm size (iv) call year in BC; and (v) current insurance status.

(c) A review of 412 complaint files to attempt to identify root causes of complaints. The files were analysed to determine the frequency of different "root causes" of complaints based on the judgment of the investigating lawyers, broken down into eleven categories:

7. All the information that was compiled from LSIS and through staff review of complaint files was anonymized and then forwarded to Standpoint for analysis.

8. The Working Group wanted to ensure that, before any conclusions were reached about the results of the analysis, and most importantly before any programs based on the analysis of the data were designed, the data relied upon were valid and relevant.

Preliminary Points

9. The Working Group supports the concept of utilising Law Society data to assist with the design of programs that will improve lawyer competence.

10. If root causes of errors can be identified, and if those root causes are susceptible to being identified in advance and ameliorated through general education of the profession, or through programs targeted at specific groups within the profession, the public is better protected and the quality of the legal services is improved.

11. If information can be gathered to analyse when lawyers in various practice areas or at various stages of their careers are more likely to run into problems that attract the attention of the regulatory arms of the Law Society, the Law Society can be better placed to offer programs to support and assist lawyers in fulfilling their duties, consistent with s. 3(e) of the *Legal Profession Act.*

12. In other words, an "early intervention" approach to address root causes of regulatory concerns may, if implemented properly, fix issues before errors arise. This better protects clients and the Law Society will have less call to discipline lawyers for incompetence after the fact. This should improve public confidence in the legal profession.

13. However, to confidently address and minimise root causes of regulatory concern, one must have confidence that the data (a) correctly identifies the causes, (b) draws a proper correlation between different types of causes, and (c) permits the identification of those who need early

intervention to ensure that those who do not are not saddled with superfluous regulatory requirements that are of no or marginal benefit.

Analysis of the Data

14. The Working Group reviewed Standpoint's Report and met with Standpoint to discuss the findings generated.

15. The source of the data is reliable. The information collected and stored in LSIS comes from data that is reliably collected and recorded. Standpoint expressed confidence generally in the source of the data.

16. However, some of the sample sizes for the data sets – particularly on the Practice Standard set (Paragraph 6(a) above) - were small and the number of associated variables created a significant limitation on the conclusions that could be drawn regarding the large population of practising lawyers. While some of the results generated may not seem surprising, some concern was expressed that overall the analysis might be little more that anecdotal. Unfortunately, the analysis of the data disclosed only weak correlations among the various categories of data collected.

17. While the sample size of files reviewed in the complaints root causes analysis (Paragraph 6(c) above) was statistically relevant, the fact that the analysis of causes was based on the subjective application of the staff lawyers' opinions about the relevant root causes for each file created a limiting factor on the reliability of the analysis. There is a risk that the staff lawyers' conclusions about the root cause of the complaint may not be accurate or may be too subjective – that is, that a different root cause may be identified were the file reviewed by another staff lawyer.

18. The data collected in respect of lawyers drawing the regulatory attention of the Law Society (Paragraph 6(b) above) generated some interesting results and, Standpoint reported, demonstrated that the probability of a lawyer attracting the attention of Law Society regulatory attention could be predicted with reasonable certainty based on information that the Law Society routinely collects.

19. However, the analysis did not take into account the fact that not all lawyers who "attract attention" (which is broader that "are the subject of a complaint") are necessarily lawyers who practice law poorly, and that if the purpose of the analysis was to identify programs that create better lawyers (rather than to reduce the cost of Law Society regulation), the data collected would not necessarily do that.

20. There were some other limiting factors on the data that concerned the Working Group. For one, the manner in which the data had been collected and recorded had changed over time so that while one can be confident in the data collected, one cannot be confident that all data sets over the years necessarily reported the same information.

21. Another limitation of concern was the large number of variables associated with what, for example, gives rise to a complaint, together with the fact that many complaints are not valid, meaning, in the Working Group's view, some of the data identifying some of the lawyers does not demonstrate the sort of conduct the Law Society is seeking to address. For example, more than one-half of current practising lawyers have no complaints or intakes into Law Society regulatory programs. The Working Group cannot conclude that all of those lawyers do not pose the possibility of some risk, but it is impossible from the data collected to determine what risk, if any, they pose.

22. Moreover, the data collected would not identify those lawyers who may trigger one or more of the root causes, but still manage to avoid coming to the attention of the Law Society through regulatory processes. Without knowing what groups these lawyers may fall into or what the underlying root causes may be, it is impossible to determine what programs may be useful to improve the conduct or competence of this group.

23. As a consequence, the Working Group was left with the sense that while the data collected was interesting and identified certain trends worth noting, ultimately it would not be appropriate to rely on the analyses to identify programs to improve the standards of practice of lawyers; and to assist lawyers to practise more competently. The data collected is simply too broad and too variable, and the analysis regarding the root causes is too subjective, to rely on for those purposes.

Conclusions

24. The conclusions that there are only weak correlations amongst the various categories in some of the methodologies used for data collection does not give the Working Group confidence that valid conclusions can be drawn from the data about the sorts of programs that may be required.

25. Even where the data collected generated the ability to detect the probability of lawyers who may attract regulatory intakes, the Working Group was concerned that the issue of "regulatory intake" was not necessarily the determinative issue, and in any event did not take into account lawyers who may still practise in an unsatisfactory manner but who nevertheless did not come to Law Society regulatory attention.

26. The Working Group concluded that the exercise to date had not generated the data needed to make profession-wide conclusions on recommending pro-active, early intervention programs.

27. Because of the significant number of variables and even more significant number of relationships between the variables, the Working Group suspects that it will be very hard to collect data from which to make general conclusions.

28. As noted above, the Working Group supports utilising Law Society data to assist with the design of programs that will improve lawyer competence. However, rather than engaging in a general analysis of LSIS data, the Working Group recommends that the Law Society rely on its staff to use their knowledge gained in addressing Practice Standards or Professional Conduct matters in order to develop hypotheses upon which to base proactive programs. Data, much of which already exists, can then be identified and collected to test the validity of such hypotheses. If sound, programs could then be more confidently created to address the issues identified.

Characterizing Lawyer Performance and Risk

Prepared for:

Early Intervention Work Group

Law Society of British Columbia

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9 June 2017

Executive Summary

We conducted a series of analyses of existing data to investigate correlates of poor performance among members of the Law Society of British Columbia (hereafter the Law Society). Analyses were exploratory and were designed to test the benefits of data-driven approaches, as well as to generate insights for application in Law Society planning.

We first examined the frequency and co-occurrence of lapses in “best practices” among lawyers referred to the Practice Standards department. Data were generated by internal staff by scoring cases against a hierarchy of best practices that characterize responsible practice. The analysis suggested that the most common lapses among lawyers referred to Practice Standards were in maintaining resources to meet professional needs and appropriate practice management.

The second analysis was based on data drawn from LSIS and contrasted the differences between lawyers who had never attracted the attention of the Law Society and those who had. Although a lawyer’s history of intakes and complaints was the most important indicator, the probability of attracting attention was also associated with insurance status, firm size and area of practice.

The final analysis reported the results of a survey of investigating lawyers regarding the “root causes” of complaints among a sample of professional conduct cases. Communication and judgement issues were the causes reported most frequently, followed by office management and knowledge gaps. The distribution of these causes varied somewhat among firm sizes, with communication issues being cited more frequently among lawyers who worked in large firms.

These analyses highlight some of the benefits but also the limitations of analytical approaches using data currently available to the Law Society.

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Introduction

At the request of Kensi Gounden, we conducted a series of analyses of existing data to investigate correlates of poor performance among members of the Law Society of British Columbia (hereafter the Law Society). Analyses were exploratory and were designed to test the benefits of data-driven approaches, as well as to generate insights for application in Law Society planning.

This report presents methods and results of three sets of analyses that were conducted as part of the exploratory data analyses. They highlight the benefits but also the limitations of analytical approaches using data currently available to the Law Society.

1. Professional Best Practices

Purpose

The purpose of this analysis was to identify leading issues that occurred or co-occurred among groups of lawyers referred to the Practice Standards Committee. With this information, more standardized responses could be designed to address sets of commonly occurring issues and successful remediation could be tracked over time.

Methods

The analysis was based on records from 107 Practice Standards cases.[1] These cases were reviewed internally by staff and each was assigned a subjective ranking for the lawyer's performance against a large number of competency related best practices.[2] Best practices were descriptions of specific behaviours (e.g., “avoids sharp practice”), and a lawyer’s rankings for each behaviour was averaged within each of 16 categories (e.g., “conduct”) across five areas of responsible practice (Table 1).

Table 1. Hierarchy of best practices by areas of responsible practice.

Area	Category	Best Practice
Demonstrates professional responsibility and ethics	Conduct	Maintains confidentiality, avoids sharp practice, exercises good judgement, treats others with respect, maintains personal wellness, respects personal and professional boundaries, complies with handbook-specified conduct
	Clients	Respects client agreements. Avoids shady or vexatious clients, avoids conflicts of interest
	Planning	Has a suitable business plan, has a suitable succession plan, markets his/her practice appropriately, website, social media, maintains a prospective client file
	Maintains adequate staffing	Receptionist, assistant, paralegal, bookkeeper, accountant

[1] Source data: 770070-v1-Data_Points_for_Best_Practices_and_Root_Cause_Capture_2015-03-26_(plus_40_new_entries_and_4_example_cases).XLSX

[2] The hierarchy of best practices were developed iteratively through a series of meetings by Practice Standards staff based on reviews of the cases and informed by outside literature.

Area	Category	Best Practice
Maintains office systems and office management	Competently manages staff	Provides a safe and respectful workplace, makes staff aware of tasks and timelines, provides commensurate remuneration, makes staff aware of tasks and timelines, delegates appropriately
	Provides a suitable office	Dedicated space for staff, sufficient space for filing, conducive to work, appropriate for meeting clients, locking file cabinets, lockable office, fireproof safe, offsite data backup
	Manages the practice appropriately - uses the following systems regularly	Practice management software, conflict system, conflict system, client identification and verification, BF system, open-closed file list, file opening sheets, file organization system, file tracking system (numerical/alphabetical), time sheets, email organization, task management/diary, office Policy and Procedure manual, retainer refresher, tracking undertakings, closed file sheet, hard copy storage, destruction policy, trust accounting records, bookkeeping records
Communicates in a timely and appropriate manner and documents those communications	Manages and meets client expectations	Stated policy, prepares notes of calls and meetings, confirms fees and costs with clients, confirms client instructions and important communication, fulfils promised timelines, returns telephone calls, replies to emails, voicemail available, advises clients of course of action
	Maintains appropriate documentation	Retainer/engagement letter, non-engagement letter, disengagement letter, contingency fee agreements, interim reporting letters, final reporting letters
Demonstrates adequate knowledge of substantive and procedural law in area practiced; ability to relate law to client affairs and knows when matter exceeds knowledge	Maintain resources to meet professional needs	Current and suitable library, precedents, membership in CBA subsections, membership in relevant associations
	Professional development	Engages in continuing professional development, maintains network of colleagues
	Competence	Demonstrates adequate knowledge of legal principles, works within areas of practice, appropriate use of law to match case facts to match outcomes, seeks advice of other professionals when appropriate
Develops and applies technical skills such as drafting, negotiation, advocacy, research and problem solving	Drafting skills	Organized, spelling and grammar, logical argument, argument supported, clear advice and options
	Advocacy	Case law preparation, fact review, tone demeanor, prepared for questions
	Negotiation	Uses proper negotiation techniques, provides research to support position, proper documentation and reporting of settlements
	Process	Checklists, legal research, proper document review, analysis, issue recognition, considers possible options

Rankings reflected the subjective assessment by staff of the member and his/her likelihood of following the best practice:

- Always (0)
- Mostly (2)
- Sometimes (6)
- Rarely (8)
- Never (10)

The statistical analysis involved iteratively fitting a Bayesian statistical model to identify which categories were most likely to co-occur among lawyers. The measure of co-occurrence is called

"mutual information," and answers the question, "to what extent does knowing the value of category X reduce our uncertainty in the value of category Y." Although there are correlations among all the categories, only the strongest pairwise correlations were illustrated in the final model as a "maximum weight spanning tree." Spanning tree diagrams are useful for providing a visual representation of relationships among factors in an analysis. In the tree diagram the size of the circles indicate the relative weights of different categories in explaining variation in the dataset according to the model, such that the larger circles represent the most common categories and the width of the lines joining the circles indicate how much mutual information (i.e., the correlation) the categories share.[3]

Results

In all cases the mutual information shared by the different categories was <50%, suggesting that correlations among categories were low and the model fit was poor. In other words, there was a great deal of individual variation among lawyers in the issues that co-occurred, relative to the sample size of cases.

As illustrated in the spanning tree, the most common issues identified among the Practice Standards cases were related to maintaining the resources to meet professional needs, as well as appropriate practice management (Figure 1). The analysis identified relatively weak (as noted above) clusters of issues that were most commonly related among cases. For example, drafting, advocacy, analysis, negotiation and process tended to be correlated with one another, as did categories related to office management. Conduct and client communication issues were most closely correlated with poor implementation of practice management systems.

Discussion

This analysis was based on the scoring of Practice Standards cases by staff, and presents their beliefs regarding the frequency and co-occurrence of issues related to best practices among departmental cases. No inferences are made about the larger lawyer population because only a specific subset of issues is referred to the Practice Standards department. This makes the relative prevalence of practice resourcing and management issues among these cases unsurprising.

Weak correlations among categories is due to variation among cases and the relatively small sample size (i.e., challenge of predicting relationships among 16 predictor factors using only 107 cases). Clustering of categories generally followed the broader classification of areas of responsible practice, although this could have been an artefact of the scoring method. That is, the clustering could have resulted from the staff's perceptions of lawyer behaviour rather than actual behaviour.

[3] Table of full statistical relationships among categories is presented in Appendix Table A1.

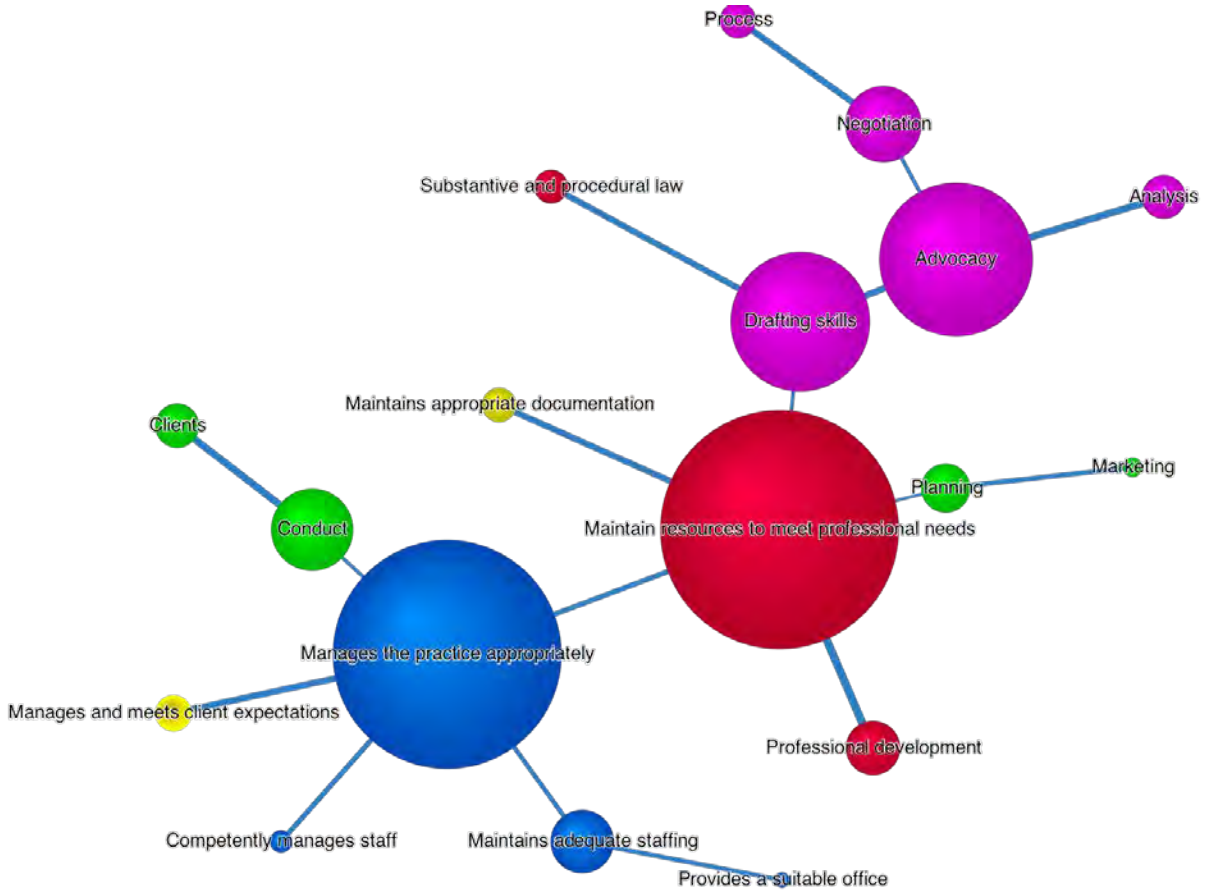

Figure 1. Spanning tree illustrating the relationships among categories of best practices scored for Practice Standards cases. Colours represent categories that group together under the areas of responsible practice listed in Table 1.

2. Attracting the Attention of the Law Society

Purpose

The Law Society responds to complaints made by the public and others through the intake process. A subset of these intakes result in a regulatory response. We refer to these cases as “attracting the attention of the Law Society.” Because attention requires resources, understanding the drivers associated with intakes that demand a regulatory response can set the stage for designing programs and actions to reduce that demand.

The purpose of this analysis was to identify factors that are associated with attracting the attention of the Law Society and to identify “neighbourhoods of risk” that could be targeted with specific programs or actions.

Methods

Information on all currently practicing lawyers was obtained from LSIS.[4] The initial analysis modelled the likelihood of a member attracting the attention of the Law Society based on the following predictors:

1. History of complaints and intakes;
2. Last reported area of practice;
3. Firm size;
4. Call year in BC; and,
5. Current insurance status.

These factors were known or suspected to influence regulatory responses, but we conducted a statistical analysis to examine all factors simultaneously to understand the relative, independent contribution of each.

Before proceeding with the analysis, data generated by the LSIS query had to be processed to:

1. Address changes made to intake and complaint tracking that occurred between 2011 and 2015. This involved a calculation to address the revised reporting of complaints post-2011 to include intakes that would have been considered complaints pre-2011. This was required to ensure that complaint data were presented as consistently as possible across all time periods. Approximately 1500 records were manually reviewed to ensure consistent classification of intakes and complaints.
2. Remove incomplete records and revise records containing obvious data entry errors.
3. Accommodate for changes in careers over time. Data from 1999-2015 were used to track changes in lawyer mobility among firms and to identify periods of non-practice.

The statistical analysis involved a method similar to that used for the professional best practices analysis, except that the procedure was modified to identify factors that best distinguished between lawyers who attracted the attention of the Law Society and those who did not. Specifically, attracting attention was treated as a binary target variable (i.e., attracting attention once or more than once were treated the same), and the model was fit using a tree-augmented naïve Bayes algorithm, which, unlike the spanning tree analysis, allowed for multiple connections among factors. As a result, the final model not only illustrated connections between the five factors and the target variable, but also between the factors themselves. This allowed us to determine the independent importance of each factor in explaining the variation of the target variable.

The statistical fit of the final model was tested with K-folds validation, where subsets of the data used to build the model are used to test its accuracy. The prediction of the model (attracting attention or not attracting attention) is compared with the actual data for each lawyer in the test sample and the frequency of correct predictions is used to characterize the accuracy of the model.

In addition to the statistical model, simple frequency distributions were used to characterize the distribution of lawyers among different “neighbourhoods of risk,” which were based on whether

[4] LSIS is the Law Society information system which provides database support for the regulatory group, among others. Source data: 842023 - 11-10-2015 All Members Statistics.xlsx

lawyers were associated with complaints and intakes, whether they had elicited a regulatory response, and whether the characteristics of their practice were consistent with those that tended to attract more complaints and intakes (referred to as “risk prone” practices, see below).

Results

The resulting model correctly predicted members attracting the attention of the Law Society for about 72% of currently practicing members.

The number of complaints and intakes was the strongest predictor of attracting attention of the Law Society (Figure 2), and the number of complaints and intakes was inversely correlated with call year (i.e., lawyers with more experience were associated with more complaints and intakes).[5] Attracting the attention of the Law Society resulted from the following factors, in decreasing order of importance (holding other factors constant):

1. History of complaints and intakes (62%)
2. Current insurance status – specifically full time practice; 14%)
3. Firm size (soles and small firms; 13%)
4. Last reported area of practice (most commonly residential real estate, family law, motor vehicle - plaintiff, wills and estates; 10%)

The independent contribution of call year was very small (<2%) because it was highly correlated with the number of complaints and intakes. Based on these results, we classified lawyers practicing full time as sole practitioners or in small firms and working in residential real estate, family law, motor vehicle - plaintiff, wills and estates as “risk prone” practices. All other lawyers were considered to be working in “risk averse” practices.

We then summarized lawyers into “risk neighbourhoods,” or groups that could be considered for targeted actions tailored to their characteristics (Figure 3). We found that, among currently practicing lawyers (n = 10,118 as of November 2015):

- 5,181 had never received a complaint or intake, and among those, 334 were in “risk prone” practices (defined by factors 2-4 in the above list);
- Of those receiving complaints or intakes, 3,500, or 71% had elicited no regulatory response, but 694 of those were in “risk prone” practices; and,
- Among those eliciting a regulatory response, about one-third were in “risk prone” practices.

[5] Table of full statistical relationships among factors is presented in Appendix Table A2.

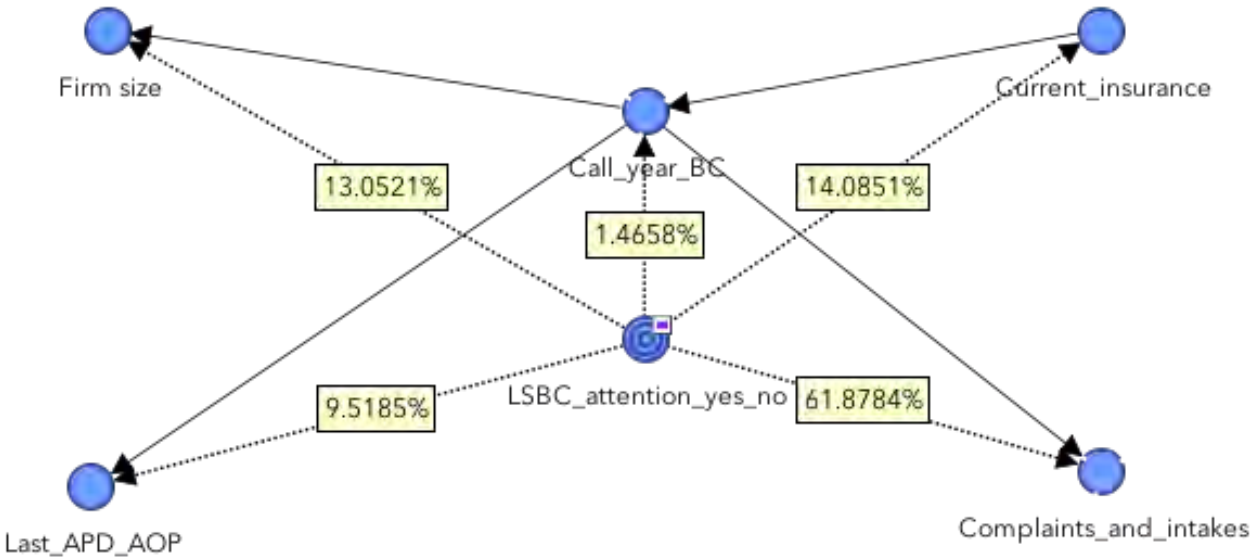

Figure 2. Network diagram for the LSIS model illustrating the independent effect of factors on the probability of attracting the attention of the Law Society. Dotted lines illustrate the direct effects on the target (i.e., attracting attention) and the solid lines indicate relatively strong correlations among the input factors. Numbers are the relative contribution of factors on the target node of attracting the attention of the LSBC.

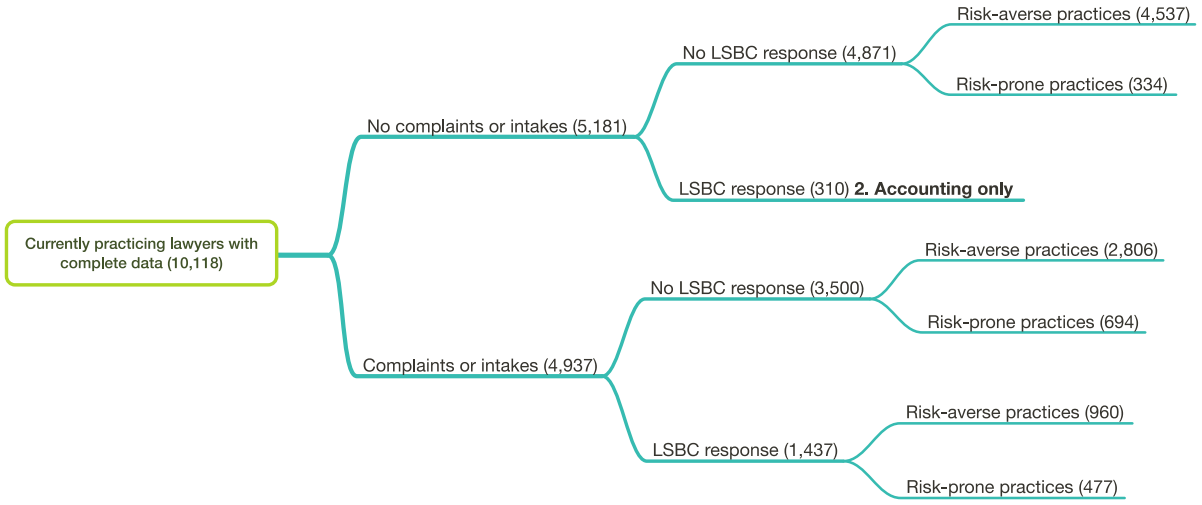

Figure 3. Categorization of the currently practicing lawyer population (as of November 2015) into "neighbourhoods of risk," based on whether they had attracted the attention of the Law Society and whether they worked in "risk prone" or "risk averse" practices. Numbers in brackets represent the number of lawyers in each categorization.

Discussion

This analysis demonstrated that the probability of a lawyer attracting the attention of the Law Society could be predicted with reasonable certainty based on information that the Law Society routinely collects. The analysis accommodated correlations among input factors and provided an independent assessment of how each affected the probability of attracting attention.

Almost half of all currently practicing members had generated no complaints, intakes or trust issues. Of those members who had generated complaints or intakes, only 30% had required

further action by the Law Society. The remaining 70% were identified as a group that could benefit from some form of proactive management because they generated complaints or intakes but had not yet required regulatory intervention. This group was considered to be at higher risk of generating complaints that could require action than the remaining group of lawyers who have yet to generate any complaints or intakes.

3. Root Causes of Complaints

Purpose

While all complaints examined by the Law Society are categorized into different types, the actual causes of those complaints my might not align with the classification. For example, a complaint of “failure to respond” might have been caused by an acute health issue. As a result, there is a risk of treating symptoms rather than causes if direction for actions or programs are taken from observed frequencies of current complaint types.

The purpose of this analysis was to determine the frequency of different “root causes” of complaints, based on the judgment of the investigating lawyers.

Methods

A random sample of complaint narratives were reviewed by Professional Conduct lawyers to assign “root causes” of complaints according to the following categories:

1. Communication
2. Judgment
3. Result-oriented complaint (later omitted)
4. File Management
5. Office management
6. Personal - health
7. Personal - other
8. Personality
9. Practice outside area of knowledge
10. Work load
11. Knowledge gap

The sample size used for the analysis was 412,[6] which was larger than the 381 required to achieve a target accuracy of 5% (i.e., estimate of the frequency that a cause is accurate within plus or minus 5%) based on a confidence of 5% (i.e., the same result would occur 19 times out of 20 if you drew a sample of the same size), based on total population of 48,102 complaints.

Unlike the previous analyses, data generated for this investigation were summarized as simple frequency distributions among the entire dataset, or stratified with respect to firm size (sole practitioner, small firm: 2-5 lawyers, medium firm: 6-20, large firm: 21+ lawyers). Up to three

[6] Source data: Complaint causes expanded analysis.xlsx and associated source spreadsheets completed by investigating lawyers.

causes were assigned to each complaint and each was considered an independent observation in the analysis, although we also analyzed only the first root cause assignment and results were similar. Results were presented as both raw frequencies and as proportions within firm size categories (i.e., the proportions of root causes summed to 1 for each category).

Results

In the sample of cases examined, communication (28%), judgement (23%), office management (13%) and knowledge gaps (10%) were the most common “root causes” of complaints identified.

As a proportion, communication was cited more often as a root cause among lawyers working in larger firms than smaller firms or as sole practitioners (Figure 4). As a proportion of root causes identified within firm sizes, judgement occurred with similar frequency among firm types, while office management was cited less frequently for lawyers working in large firms.

Sample sizes for other root causes were small and relative proportions should be interpreted cautiously.

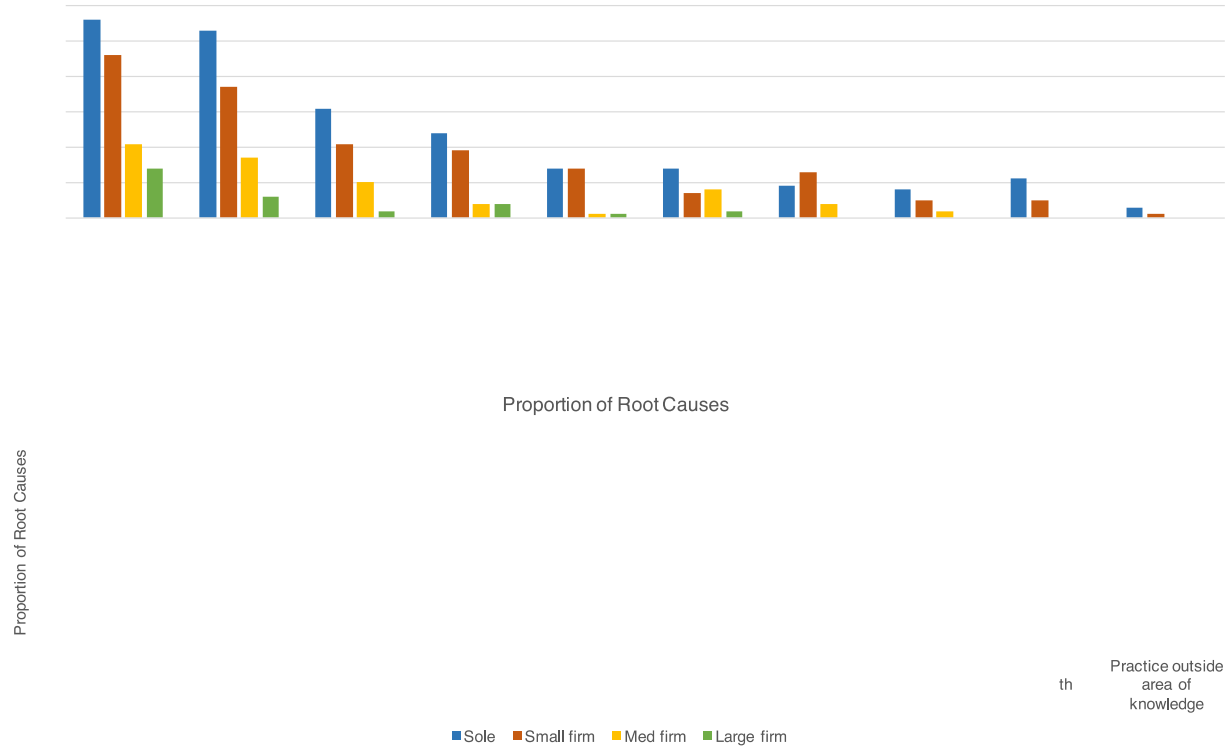

Figure 4. Frequency of root causes (top) and proportions within firm sizes (below) assigned by investigating lawyers to a sample (n = 412) of complaint cases.

Discussion

This analysis determined that the most common root causes of complaints, based on the opinions of the investigating lawyers, were communications and judgment. These comprised more than half of the root causes assigned to the cases. Interestingly, nearly 50% of causes

assigned to complaints generated by lawyers working in large firms were related to communication issues. This was higher than for any other firm size category.

There are several caveats associated with this analysis. The root causes assigned to cases were based on the judgments of investigating lawyers, who might not have known the actual root causes in all cases. As a result, this analysis is best considered a survey of beliefs regarding the root causes of the cases reviewed. There can be no independent verification of the actual root causes, so this analysis represents an approximation that cannot be verified. In addition, some cases were several years old and a cursory review by investigating lawyers might not have been adequate to capture information accurately.

Although the sample size was, in theory, adequate to generate reliable inferences about the entire set of complaints, this holds only if the cases reviewed were drawn completely randomly. In practice, the cases had to be drawn from a smaller set of complaints that were familiar to the lawyers doing the reviews. As a result, sampling was biased towards more recent cases and might not reflect the frequencies expected in the entire data set.

Appendix

Table A1. Relative strength of correlations between categories of best practices scored for Practice Standards cases. Results are presented visually in Figure 1.

Parent	Child	Symmetric Normalized Mutual Information	Relative Weight	Overall Contribution
Maintain resources to meet professional needs	Professional development	24.9%	1.00	8.8%
Conduct	Clients	21.3%	0.88	7.8%
Advocacy	Analysis	22.1%	0.88	7.8%
Drafting skills	Advocacy	21.3%	0.81	7.2%
Manages the practice appropriately	Manages and meets client expectations	20.0%	0.79	7.0%
Negotiation	Process	19.1%	0.79	7.0%
Maintain resources to meet professional needs	Maintains appropriate documentation	19.6%	0.77	6.8%
Drafting skills	Substantive and procedural law	19.8%	0.76	6.7%
Maintain resources to meet professional needs	Manages the practice appropriately	15.4%	0.63	5.5%
Manages the practice appropriately	Competently manages staff	15.2%	0.63	5.5%
Planning	Marketing	35.2%	0.59	5.2%
Manages the practice appropriately	Maintains adequate staffing	13.3%	0.55	4.9%
Maintains adequate staffing	Provides a suitable office	13.3%	0.55	4.9%
Advocacy	Negotiation	11.3%	0.47	4.2%
Manages the practice appropriately	Conduct	10.7%	0.45	3.9%
Maintain resources to meet professional needs	Drafting skills	11.2%	0.42	3.7%
Maintain resources to meet professional needs	Planning	11.4%	0.34	3.0%

Table A2. Relative strength of correlations among factors tested on the probability of attracting the attention of the Law Society. Results are presented visually in Figure 2.

Parent	Child	Symmetric Normalized Mutual Information	Relative Weight	Overall Contribution
Call year BC	Complaints and intakes	12.5%	1.00	35.2%
LSBC attention yes no	Complaints and intakes	12.1%	0.61	21.4%
LSBC attention yes no	Call year BC	3.0%	0.23	8.3%
Current insurance	Call year BC	2.1%	0.21	7.2%
Call year BC	Firm size	1.8%	0.19	6.5%
LSBC attention yes no	Last APD AOP	1.2%	0.19	6.5%
Call year BC	Last APD AOP	1.0%	0.18	6.4%
LSBC attention yes no	Current insurance	2.8%	0.17	5.8%
LSBC attention yes no	Firm size	1.1%	0.07	2.6%

The Law Society of British Columbia

Year End Report 2017

Committee: Access to Legal Services Advisory Committee

Martin Finch, QC (Chair)
Claire Hunter (Vice-Chair)
Jeffrey Campbell, QC
Barbara Cromarty
Christopher McPherson
Gregory Petrisor
Mark Rushton
Dan Smith
Michelle Stanford
The Honourable Thomas Cromwell
Jean Whittow, QC

December 8, 2017

Prepared for:	Benchers
Prepared by:	Access to Legal Services Advisory Committee
Purpose:	Information

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Introduction

1. The purpose of this report is to provide the Benchers with an update on the topics the Committee has been considering since July 2017. The Committee held meetings July 6th, September 28th and October 26th.

2. The Committee is an advisory committee. Its purpose is to monitor matters within its mandate that are relevant to the work of the Law Society. The Committee can also carry out discrete tasks the Benchers assign it. The primary focus of the Committee is to recommend to the Benchers ways the Law Society, through its strategic objectives and regulatory processes, can better facilitate access to legal services and promote access to justice.

Getting Better Particulars about Lawyers' Access to Justice Efforts

3. The Committee referred a series of optional questions for addition to the Annual Practice Declaration ("APD") to the Executive Committee. The questions seek to provide the Law Society with a better understanding of the amount and types of pro bono and low bono lawyers do, as well as participation in legal aid work and other efforts to support access to justice. At present, the Law Society lacks a detailed understanding of what lawyers do to foster access to legal services and access to justice, with an eye towards areas of unmet and underserved legal need. Much of the access to justice literature in Canada references the need for better data, and the Committee is of the view that the proposed questions for the APD will help augment the Law Society's understanding of what the profession is doing. The hope is that this will allow the Law Society to better support such efforts but also identify areas where opportunity for improvement exists.

4. The referral to the Executive Committee was bundled with a referral from staff relating to the broader question of the proper role of the APD and the types of questions it should contain. Because the APD is mandatory, it is important not to require lawyers as a condition of practice to answer questions that do not go to the core purposes of lawyer regulation. It is for this reason that the Committee favoured framing the access to justice and legal services questions as optional, rather than mandatory.

5. The Executive Committee has approved the optional APD questions for 2018, and will review the questions each year to determine whether to continue (or modify) asking the questions.

Developing an Access to Justice Vision Statement for Lawyers

6. At the September 29th Bencher meeting the Committee advanced an access to justice vision statement for lawyers. The Benchers unanimously adopted the vision.[1] The purpose of the vision is to inspire all lawyers to do what they can to better promote access to legal services and access to justice. The intention is to utilize the vision as an educational tool to help foster a culture within the legal profession where the call to promote access to legal services and access to justice is understood to constitute part of what it means to be a lawyer.

Strategic Planning

7. In September and October the Committee discussed how the Law Society might usefully focus its efforts in the upcoming Strategic Plan to advance access to justice and promote greater access to lawyers.

8. The Committee considered issues at both the macro level of general objectives the Strategic Plan should seek to cover and at the micro level of possible initiatives the Law Society might explore. It is important to note that once the Law Society formalizes the access to legal services and access to justice questions on the APD, over time the Law Society will get better data on which to base access related initiatives. Furthermore, that data can inform initiatives on the Strategic Plan that pre-date collection of the data provided there is sufficient overlap of subject matter.

9. Because the Committee recognizes the need to get better information to inform decision making, it ultimately favoured articulating macro level concepts for consideration on the Strategic Plan. From the macro level the Law Society can work towards discrete initiatives that are well informed.

10. The Committee discussed the following concepts:

    a. The Law Society might explore possible opportunities for deregulation of the practice of law. At present, the practice of law is largely reserved to lawyers and while many lawyers provide legal services in the areas of greatest need, many do not. The Law Society has engaged in forms of deregulation (or reregulation) by creating designated paralegals and in adopting the final report of the Legal Services

[1] The vision is available on the Law Society website.

Regulatory Framework Task Force. The work arising from that report calls for seeking a legislative amendment to permit the Law Society to establish new classes of legal service provider to address areas of unmet and underserved legal need. That work needs to continue, but there may also be opportunity to review the Act, Rules and Code and ascertain whether there are provisions that unnecessarily impede access to justice and access to legal services.

b. The Law Society might explore alternate models for the delivery of legal services. When discussing this topic the Committee considered a theoretical model of establishing an access to justice law firm that could also serve as a training centre for articled students and newly called lawyers. The Committee considered the possible challenges of developing new delivery models as well as the potential advantages of creating new models that were built from the ground up to address the current failings of the free market for legal services as well as addressing some of the systemic challenges that appear entrenched in part of the legal culture in Canada with respect to diversity and making lawyers' services accessible to people of modest means. The Committee is of the view that approaching the topic from the high level, rather than starting with a theoretical model, is the better approach for the Strategic Plan. The Law Society can explore discrete models of delivery when it better understands the issues and opportunities.

c. The Law Society might explore education opportunities for lawyers to address the culture of delay in courts. Delay in civil and criminal proceedings has been getting worse year-after-year for some time now and has been the subject of frequent commentary both in academic studies, the media and in court decisions such as *R. v. Jordan*, [2016] 1 SCR 631, where the court recognized with respect to delay in the criminal law context that "[f]inger pointing is more common than problem solving" (para. 107). The Committee considered opportunities for training during articles, in PLTC, as well as exploring with the legal profession how it sees the problem of delay and what lawyers think the profession might do to solve the problem.

Consulting with Large Law Firms

11. The Committee recognizes that there is much that large law firms can do to improve access to legal services in areas of unmet and underserved need and to promote access to justice. However, it is important to first understand what these firms are already doing to advance these goals. With the aid of Herman Van Ommen, QC the Committee commenced an informal outreach initiative, where Mr. Van Ommen, Mr. Finch, Ms. Hunter and Doug Munro met with the managing partners of approximately ten national/international law firms with offices in Vancouver. The Committee felt it was important to start the outreach in a measured way and to see what it learned before, potentially, recommending to the Benchers a broader outreach initiative. This decision was largely pragmatic. Outreach to

Vancouver firms carries minimal cost, and allows the Committee to reach the maximum number of lawyers.

12. The meeting took place October 10th and was a productive start to the conversation. The managing partners were interested in the issue and open to further discussion, including exploring possibly discrete topics that firms can get involved in. The feedback from the managing partners was positive and they appear supportive of exploring projects that have a good chance of making a meaningful impact in people's lives. To that end, they asked the Committee to develop for consideration one or two projects to discuss at a later meeting.

13. The Committee intends to continue its work on this topic, and hopes to generate sufficient momentum that the 2018 Committee can continue to advance the idea. The Committee has given some preliminary consideration to the question of whether such a project can help advance the calls to action of the Truth and Reconciliation Commission. At a preliminary level, the Committee discussed possible roles for the profession in assisting Indigenous Peoples during the work of the National Inquiry into Missing and Murdered Indigenous Women and Girls. Further consideration of such a topic would require liaising with the Law Society's Truth and Reconciliation Advisory Committee and, if an initiative is developed, ensuring that cultural competency and sensitivity training was a prerequisite to participation. The Committee intends to spend some time at its December 2017 meeting discussing this topic.

Limited Scope / Unbundled Legal Services

14. The Committee continues to monitor the issue of limited scope legal services. As the Benchers will recall, two years ago the Law Society's $60,000 access to justice fund – administered through the Law Foundation – funded the creation of an unbundling roster, focused initially on creating a roster of family law lawyers who are willing to do unbundled ILA in family law mediations. Kari Boyle spearheaded the project, which was championed within Mediate BC by Monique Steensma, CEO. Through collaboration with Courthouse Libraries Society, and support of the Law Foundation and the Law Society, the roster is up and running, the resources hosted through Courthouse Libraries, and as of mid-October approximately 106 lawyers had joined the roster.

15. The work of the project has expanded beyond family law, and along with the work of Access to Justice Committee of British Columbia's unbundling working group, efforts are underway to get more lawyers connected to the roster, create more resources, and find ways

to raise public awareness.[2] In addition, the CBA BC Branch has an Unbundled Legal Services Section, Chaired by Zahra Jimale. The Section is open to lawyers from all areas of practice, and is not limited simply to unbundling in the family law context.

16. The Committee still hears that some lawyers are concerned that performing limited scope legal services increases the risk of regulatory problems, as well as concerns regarding how the courts will view such services. The efforts highlighted above are an important part of changing that narrative, and the Committee commends the efforts of the numerous volunteers behind these initiatives, and the lawyers who have joined the roster. The Committee also notes that in recent years the courts have been quite vocal in support of lawyers exploring limited scope legal services, and it is an area of focus of Access to Justice BC, Chaired by The Honourable Chief Justice Bauman.

Conclusion

17. Almost two decades ago, the Benchers recognized the need to focus on access to justice by creating the Access to Justice Committee. That group started by exploring a variety of issues, but most notably the Law Society's work on pro bono and unbundled legal services. Shortly before the inception of the first Strategic Plan, the committee was converted into one of the inaugural Advisory Committees. Over the years its deliberations led to (or supported) the development of expanding roles for articled students and paralegals, exploring new classes of legal service providers, increasing funding for pro bono and access to justice, creating principled criteria for making funding decisions in those areas, recommending that the Benchers establish a legal aid task force so the Law Society could rejoin the legal aid debate, and providing input regarding the access to legal services initiatives the Benchers should focus on during each of the Law Society's Strategic Plans.

18. In recent years the Committee has focused on the importance of developing policy that is supported by quality, empirical data. This realization is not unique to the Committee. It is echoed by many other groups that are looking at the access to justice challenge, as well as important social challenges in other areas. In 2018 the Committee directed much of its attention on two questions: 1) how can the Law Society get good data about what lawyers are doing to promote access to legal services and access to justice? and 2) how best can the Law Society support the good work that is taking place, while also encouraging all lawyers to find ways to promote access to justice and legal services?

19. In September, by adopting the vision statement for lawyers regarding access to justice and legal services, the Benchers embraced an aspirational statement that the Committee hopes

[2] Mr. Munro attends the meetings and provides updates to the Committee. Mr. Munro also presented on the topic of unbundled legal services at the CBA West Conference in November.

can guide the profession and the Law Society to address the access to justice challenges that exist in our society. Through discussion with the Executive Committee regarding optional APD questions, the Committee hopes to provide the Law Society with better tools to collect quality data that supports the development of sound policy. The Committee is of the view that this work will better enable the Society to develop principled, empirically sound policy decisions, and is grateful the Executive Committee agreed to include the optional questions as part of the 2018 APD.

/DM

The Law Society of British Columbia

Year-End Report

Equity and Diversity Advisory Committee

Nancy Merrill, QC (Chair)
Lisa Hamilton (Vice-Chair)
Jasmin Ahmad
Brook Greenberg
Jamie Maclaren
Christopher McPherson
Linda Parsons, QC
Carolynn Ryan
Dan Smith

November 9, 2017

Prepared for: Benchers

Prepared by: Equity and Diversity Advisory Committee / Andrea Hilland

Introduction

1. The Equity and Diversity Advisory Committee ("Committee") is one of the six advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers in connection with those issues.

2. From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and may be asked to develop the recommendations or policy alternatives regarding such initiatives.

3. The purpose of this report is to advise the Benchers about the work the Committee has undertaken since its June 2017 report.

Topics of Discussion: July to October 2017

4. The Committee met on July 6, September 28, and October 26, 2017. The Committee has discussed the following initiatives between July and October, 2017.

Equity Ombudsperson Program

5. Based on a recommendation of the Committee, the Equity Ombudsperson Program was adapted from an external to an internal program. The newly appointed internal Equity Ombudsperson, Claire Marchant, began her role within the Law Society's Practice Advice Department in August, 2017. She will be in regular attendance at Committee meetings.

6. The Committee clarified the scope of the Equity Ombudsperson's services at the October 26, 2017 Committee meeting.

Gender Equality Report – 25th Anniversary

7. In 1992, the Law Society produced an extensive report on gender equality in the legal system. At the request of past Law Society President David Crossin QC, the Committee is preparing a retrospective review to mark the 25th anniversary of the report in 2017. A summary of the review will be published in the Winter 2017 Benchers Bulletin. A more detailed retrospective report will be published on the Law Society's website in the new year.

Diversity in the Legal Profession

8. A racialized lawyer presented at the September 28, 2017 Committee meeting regarding her experiences of discrimination in the legal profession in British Columbia. The Committee is devising a strategy to raise awareness about discrimination in the profession.

9. At the recommendation of the Committee, Alden Habacon presented on "intercultural fluency" at the October 27, 2017 Bencher meeting.

10. The Committee is developing a recommendation regarding the inclusion of equity and diversity principles in law firm regulation for consideration by the Benchers.

11. Cultural competence training for Law Society staff continues. An introductory cultural competency session was delivered to 20 staff members on July 20. On September 15, 50 employees participated in a "Blanket Exercise" – an experiential workshop that provides an overview of the history of Indigenous and Canadian relations from the time of contact to the present day. The Blanket Exercise was facilitated by Ardith Walkem (a member of the Truth and Reconciliation Advisory Committee), with assistance from Law Society staff.

Diversity and Inclusion Award

12. On the recommendation of this Committee, the Law Society of BC will honour a lawyer who has made positive contributions to diversity and inclusion in the legal profession in British Columbia. Five highly deserving nominees were considered by a selection subcommittee comprised of Equity and Diversity Advisory Committee members. The inaugural winner is Jennifer Chow, QC. She will receive the award on December 8, 2017.

Justicia in BC

13. The Justicia Project (facilitated by the Law Society of British Columbia and undertaken by law firms) has been actively underway in British Columbia since 2012. Representatives from the Justicia firms have developed model policies and best practice guides which are available online. A Managing Partners Summit which will feature a renowned keynote speaker on "bias interrupters" is being planned for January, 2018.

Maternity Leave Benefit Loan Program Review

14. In 2010, on the recommendation of the Committee, the Maternity Leave Benefit Loan Program was implemented as a pilot project to help alleviate the disproportionate number of women who leave private practice after having children. Despite the Program, women's attrition rates have increased. Following a thorough review of the Program, the Committee has agreed that the Program's current operation is ineffective and needs to be overhauled to increase its effectiveness.

15. A subcommittee comprised of Equity and Diversity and Credentials Committee members has been struck to develop realistic options to support lawyers in British Columbia who take parental and other leaves. The subcommittee met on September 28, 2017. The subcommittee is seeking approval from the Executive Committee to post a voluntary online survey of

lawyers on the Law Society's website to gather practical suggestions as to how the Law Society can help to better accommodate parents in the legal profession in BC.

Mental Wellness

16. The Committee has taken a leadership role in ensuring that mental wellness is integrated into the Law Society's strategic plan. Outreach is now underway. To that end, Committee members have presented to the Law Firm Diversity and Inclusion Network on September 22, 2017 and to the New West Bar Association on October 10, 2017.

Murdered and Missing Indigenous Women's Inquiry

17. On July 17, 2017, Nancy Merrill, QC (Chair of this Committee) and Dan Smith (member of this Committee and the Truth and Reconciliation Advisory Committee) met with two counsel for the Murdered and Missing Indigenous Women's Inquiry lawyers to offer the Committee's assistance. Although the Inquiry's counsel were unable to specify the type of assistance required, the Committee is keeping apprised of developments. During the week of September 25, 2017, Sarah Westwood attended a hearing of the Inquiry in Smithers, BC on behalf of the Law Society.

18. If requested by counsel for the Inquiry to do so, Jamie Maclaren of the Committee has agreed to put out a call through Access Pro Bono for lawyers to assist the victims' families and witnesses on a pro bono basis. If counsel for the Inquiry makes the request, the Committee anticipates seeking approval from the Executive Committee to upload a companion posting on the Law Society website as well.

Outreach

19. The Committee is working with the Communications Department to develop articles regarding equity, diversity and inclusion for publication in the Benchers Bulletin.

The Law Society of British Columbia

Lawyer Education Advisory Committee 2017 Year-End Report

Dean Lawton, QC, Chair
Sarah Westwood, Vice-Chair
Jasmin Ahmad
Tom Fellhauer
Brook Greenberg
Micah Rankin
Phil Riddell
Tony Wilson, QC

December 8, 2017

Prepared for: Benchers

Prepared by: The Lawyer Education Advisory Committee

Purpose: Information

Introduction

1. The Lawyer Education Advisory Committee's Year-End Report to the Benchers summarizes the Committee's work in 2017.

2. The foundation for the Committee's work is included in section 3 of the *Legal Profession Act*:

> *It is the object and duty of the society to uphold and protect the public interest in the administration of justice by …*
>
> *(c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission …*
>
> *(e) 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.*

CPD Program Review

3. The focus of the Committee's work in 2017 was to complete the review of the CPD program, pursuant to Strategic Plan Initiative 2-1(c):

> *2. The Law Society will continue to be an innovative and effective professional regulatory body.*
>
> ***Strategy 2-1***
> *Improve the admission, education and continuing competence of students and lawyers.*
>
> *Initiative 2-1(c)*
> *Conduct a review of the Continuing Professional Development [CPD] program.*

4. The Committee completed its review of the CPD program in the Fall of 2017. The review process has been both lengthy and comprehensive. Supported by detailed policy analysis from the Policy and Legal Services department and input from the program's administrators, the Committee examined every facet of the existing scheme and canvassed possible alternatives to CPD content, format, delivery and reporting.

5. In the summer of 2017, the Committee also engaged in a consultation process with 60 institutions and organizations with potential interest in changes to the CPD program. Stakeholders were asked their views on the proposed changes and for their general suggestions as to how the CPD program could be improved. Stakeholders were also invited to request an in-person meeting with members of the Committee and Law Society staff to discuss their views.

6. The Committee's work culminated in the Final CPD Review Report (the "Final Report"), which outlines the Committee's considerations of the various features of the CPD scheme and presents a set of 26 key recommendations designed to improve the overall quality of the CPD program moving forward.

7. As reflected throughout the Final Report, the Committee supports maintaining many of the core features of the current CPD scheme, including: the accreditation model; the 12 credit-hour requirement; existing subject matters, topics and learning modes; exemption criteria; and compliance and enforcement measures.

8. The Committee also proposes a number of modifications to the program. In general, these changes will result in an expansion of eligible learning activities and greater flexibility regarding how and when lawyers can satisfy their CPD credits.

9. Key recommendations are the addition of two new subject matters; namely, (1) Professional Wellness and (2) educational programs addressing knowledge within the scope of other professions or disciplines that is connected to the practice of law. The Committee also recommends an increase in the eligible Practice Management and Lawyering Skills topics to include areas such as multicultural, diversity and equity issues that arise within the legal context, understanding the business of law, mentoring best practices for lawyers, training to be a principal, governance issues and leadership for legal professionals.

10. Further recommendations include: amendments to the criteria governing CPD learning modes, such as permitting lawyers to watch pre-recorded CPD programs without the presence of another lawyer; writing credit for publishing on websites and on blogs and wikis subject to editorial oversight; and the introduction of new reporting requirements in which a portion of a lawyer's annual credits can be carried-over to satisfy the following year's CPD requirements.

11. The Final Report also presents the Benchers with an option to impose caps on new subject matters and topics, or to introduce the changes to the program without any caps on the new learning areas.

12. The Final Report was presented to the Benchers for discussion on October 27, 2017 and will be before the Benchers for decision on December 8, 2017.

PLTC & Truth and Reconciliation Report Call to Action #27

13. The Committee received and discussed reports on the progress of PLTC in implementing Truth and Reconciliation Report Call to Action #27:

> 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.

14. The following steps have been taken in implementing Call to Action #27:
    a. creation of two new sections in the schedule: one on child protection and one on sentencing;
    b. addition of a *Gladue* primer;
    c. enhancement of course content on Aboriginal title;
    d. a pilot residential school and colonization workshop in the September 2017 session.

15. Consultations are ongoing and include the Truth and Reconciliation Advisory Committee, the CBABC Aboriginal Lawyers Forum and BC's law schools.

The Law Society of British Columbia

Year End Report 2017

Committee: Legal Aid Advisory Committee

Nancy Merrill, QC (Chair)
Rick Peck, QC (Vice-Chair) (Life Bencher)
Barbara Cromarty
Christopher McPherson
Phil Riddell
Sarah Westwood
Odette Dempsey-Caputo

December 8, 2017

Prepared for:	Benchers
Prepared by:	Access to Legal Services Advisory Committee
Purpose:	Information

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1(b)(v) Meeting with other stakeholder groups, including lawyers and law firms, to ensure that the Law Society's efforts to champion legal aid occur collaboratively. Consideration should be given to hosting future colloquia to ensure efforts to advance legal aid revitalization continue to progress ... 10
1(b)(vi) Working with government, the courts and the profession about ways to reduce the time and cost associated with mega-trials....11
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1(b)(ix) Liaising with the Law Society's Truth and Reconciliation Advisory Committee and the Access to Legal Services Advisory Committee to ensure the Law Society has a consistent approach to improving access to justice for Indigenous Peoples 12

1(b)(x) Working with the Law Society's Communications Department and, if necessary, external experts, to ensure social media as well as traditional methods of communication are used to maximize the reach of the Law Society's efforts to educate, inspire and lead on legal aid reform in British Columbia 12

Looking Ahead to 2018 12

Introduction

1. The purpose of this report is to provide the Benchers with an update on the topics the Committee has dealt with in 2017.[1]

2. Advisory Committees report to the Benchers twice a year. As 2017 marked the inception of the Legal Aid Advisory Committee it did not produce a mid-year report. However, the Committee provided updates at Bencher meetings. The purpose of this report is to report on the work of the Committee to date and forecast the work that the Committee intends to undertake in 2018.

3. The sections of this report track the work the Committee is required to undertake, as contained in Duties and Responsibilities 1(b)(i)-(x) of its Mandate and Terms of Reference.

[1] David Crossin, QC (as he then was) was a member of the Committee until his appointment to the British Columbia Supreme Court. The Committee is grateful for Justice Crossin's many contributions to its work during his tenure on the Committee, and his career-long commitment to advancing legal aid and access to justice. Justice Crossin did not participate in the drafting of this report.

Mandate and Terms of Reference

Terms of Reference

The Committee monitors and advises the Benchers on key matters relating to the state of legal aid in British Columbia. This advisory function supports the Law Society's public interest mandate, and advances the Law Society's Vision for Publicly Funded Legal Aid that the Benchers adopted on March 3, 2017 (the "Vision for Legal Aid"). The Committee advances the recommendations in the report of the Legal Aid Task Force (March 3, 2017), and may explore additional concepts that are consistent with the findings of that report and the Vision for Legal Aid.

Composition

1. Under Rule 1-47, the President may appoint any person as a member of a committee of the Benchers and may terminate the appointment.

2. At least half of the Committee members should be Benchers, and the Chair of the Committee must be a Bencher.

Meeting Practices

1. The Committee operates in a manner that is consistent with the Benchers' Governance Policies.

2. The Committee meets as required.

3. The Committee may invite guests to participate in discussions of topics, or engage in consultations, but the meetings are not "public".

4. Quorum consists of at least half of the members of the Committee. (Rule 1-16(1)).

Accountability

The Committee is accountable to the Benchers. If the Benchers assign specific tasks to the Committee, the Committee is responsible for discharging the work assigned. If a matter arises that the Committee determines requires immediate attention by the Benchers, the Committee will advise the Executive Committee.

Reporting Requirements

With respect to its general monitoring and advisory function, the Committee provides status reports to the Benchers twice a year.

Duties and Responsibilities

1. The Committee must address the work assigned to the Committee in Recommendation 2 of the report of the Legal Aid Task Force (March 3, 2017):[2]

    a. Assist and advise the Benchers in helping the Law Society realize the vision set out in **Appendix 1**;

    b. Assist and advise the Benchers concerning how best to advance mandate Items 2-4, with particular consideration of, *inter alia*, the following:

        i. Developing and/or promoting research into the benefits of legal aid to society and the justice system;

        ii. Developing and/or promoting the creation of proper data analytics systems within the justice system and legal aid in order to better support analysis of the importance of legal aid in society and the justice system. Such systems should help support not only a business case for properly funded legal aid, but the social justice case as well;

        iii. Developing and/or promoting the creation of education materials and resources to help lawyers, politicians and the public better understand the importance of a strong legal aid system;

        iv. Advocating with government and the public for improvements to legal aid in British Columbia;

        v. Meeting with other stakeholder groups, including lawyers and law firms, to ensure that the Law Society's efforts to champion legal aid occur collaboratively. Consideration should be given to hosting future colloquia to ensure efforts to advance legal aid revitalization continue to progress;

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[2] The report can be found at document DM1442171. Mandate items 2-4 of the Legal Aid Task Force were: 2) Identify ways the Law Society could promote and improve lawyer involvement in delivering legal services through legal aid plans; 3) Identify ways to enhance Law Society leadership concerning legal aid; and 4) Develop the best methods for engagement with other organizations to coordinate the efficient use of resources in improving publicly funded legal aid. **Note: the reference to "Appendix 1" does not refer to the content of the 2017 year-end report.**

vi. Working with government, the courts and the profession about ways to reduce the time and cost associated with mega-trials;

vii. Working with the courts to determine how active case management might be used to support a more efficient and cost effective litigation system, thereby making legal aid more sustainable;

viii. Developing proposals for how to improve the advocacy skills of junior lawyers and facilitate their involvement in undertaking legal aid work to better ensure the current quality of advocacy as well as the future of the legal aid defense Bar;

ix. Liaising with the Law Society's Truth and Reconciliation Advisory Committee and the Access to Legal Services Advisory Committee to ensure the Law Society has a consistent approach to improving access to justice for Indigenous Peoples;

x. Working with the Law Society's Communications Department and, if necessary, external experts, to ensure social media as well as traditional methods of communication are used to maximize the reach of the Law Society's efforts to educate, inspire and lead on legal aid reform in British Columbia.

2. If the Committee is unable to advance this work, it must advise the Benchers as to the reasons why the work cannot be performed;

3. The Committee must advise the Benchers about the progress of its work and about any new developments regarding legal aid that the Committee determines are important in order for the Law Society to act in a manner consistent with the Vision for Legal Aid;

4. Committee members are required to discharge their work in a manner consistent with the Law Society's public interest mandate, as set out in s. 3 of the Legal Profession Act.

Staff Support

Staff Lawyer, Policy & Legal Services.

Status of Work

1(b)(i) Developing and/or promoting research into the benefits of legal aid to society and the justice system

1(b)(ii) Developing and/or promoting the creation of proper data analytics systems within the justice system and legal aid in order to better support analysis of the importance of legal aid in society and the justice system. Such systems should help support not only a business case for properly funded legal aid, but the social justice case as well

4. Mandate items 1(b)(i)&(ii) are sufficiently related that each is being explored concurrently. As was recognized in the Legal Aid Task Force report – and, indeed, throughout much of the access to justice literature – there is a scarcity of empirical data on the benefits of legal aid and various access to justice tools (e.g. limited scope retainers). The lack of empirical data is often cited as a barrier to developing initiatives that lead to the best possible outcomes, but also as a barrier to seeking increased funding for services such as legal aid.

5. In August the Legal Services Society retained Price Waterhouse Coopers (PWC) to conduct a survey of lawyers regarding the economics of undertaking legal aid. The Law Society co-sponsored the survey, and helped facilitate its delivery. Unfortunately, the sample size in the report leaves some challenges in interpreting the data. Staff are exploring what conclusions can be drawn from the findings.

6. Also during the summer, Mark Benton, QC began discussing the possibility of a collaborative research project with the World Bank on the economic benefit of legal aid in multiple jurisdictions, including British Columbia. These discussions are at a preliminary stage, but there is the potential for the Law Society to participate in the development of the research. The World Bank would bring a measure of weight to the research that hopefully would make the job of persuading government to adequately fund legal aid easier.

7. In the fall, the Committee invited Associate Professor Yvon Dandurand, Vivienne Chin, and Wayne Robertson, QC to meet and discuss possible research opportunities regarding the economic value of legal aid. This work is to be distinguished from the potential World Bank research in several ways. First, the World Bank study that Mr. Benton is exploring is at a speculative stage and, if it proceeds, would likely be a multi-jurisdictional analysis of legal aid systems including British Columbia. It is anticipated it would be a high-level, general research piece. While the Law Society could benefit from the research, it would not be expected to fund or lead in its creation. We would simply have the opportunity to liaise with the Legal Services Society during the development of the research. Second, and

following from the first point, the research the Committee is exploring would be spearheaded by the Law Society, with a focus on a discrete area of concern in British Columbia.

8. Associate Professor Dandurand along with Associate Professor Michael Maschek co-authored a research paper that explored the type of economic research that might usefully be undertaken in this area. That paper informed the deliberations of the Legal Aid Task Force, and directly influenced its recommendation regarding the need for further research in this area. Ms. Chin is a senior associate at the International Centre for Criminal Law Reform and Criminal Justice Policy.

9. Associate Professor Dandurand, Ms. Chin and Mr. Robertson provided the Committee with insight regarding the lack of empirical research into the economic benefits of legal aid, and the political, practical, and research challenges that confront such research. Despite the challenges that exist in terms of convincing government and the courts to share the data that exists, there is also the challenge of convincing them to establish a data collection architecture that ensures we will have the best quality data to understand the benefit and the cost of the justice systems and services (including legal aid). The guests indicated that the starting point is to identify the area of focus and the essential questions that need to be answered. From that, a research methodology can be developed to determine what data exists and to try and get the data. Lastly, the data can be analysed to determine the benefits and the costs of the discrete aspect of legal aid that is being considered.

10. The Committee intends to spend its next few meetings working on the area of focus and the necessary questions. It will be guided by the Law Society's vision for publicly funded legal aid. Once the questions are developed, the Committee will reach out to Associate Professor Dandurand and Ms. Chin to explore next steps, including the possibility for them to undertake the research. Mr. Robertson indicated that funding does exist through the joint research fund of the Law Foundation and Legal Services Society. The Committee is of the view that the research should be undertaken at the direction of the Law Society, so the end results are not seen as advancing the interest of the organization responsible for the research.

11. It will take time for a body of empirical research regarding the economic benefits of legal aid to develop. It remains important for this work to proceed, and the Committee will keep the Benchers apprised of its efforts in this area. At the same time, the Law Society and other justice system stakeholders must continue to move forward with efforts to support and improve legal aid, recognizing that adjustments can be made as new data becomes available. Therefore, concurrent with its exploration of research opportunities the Committee will continue to advance the other items in its mandate.

1(b)(iii) Developing and/or promoting the creation of education materials and resources to help lawyers, politicians and the public better understand the importance of a strong legal aid system

12. The Committee has reached out to Annie Rochette, Deputy Director, PLTC to explore opportunities to promote legal aid in the PLTC sessions. Ms. Rochette and her team will develop opportunities for inclusion of the topic in 2018. A launch in 2018 will afford the PLTC team the opportunity to make sure the sessions are methodologically sound and follow best practices for education.

13. The Committee has also met with Jason Kuzminski, Director of Communications and Public Affairs and will work together to develop a communications and outreach strategy for its work.

1(b)(iv) Advocating with government and the public for improvements to legal aid in British Columbia

14. Mandate item 1(b)(iv) is central to the work the Committee has undertaken and of the work that must be done in the future. It is not work that can be captured by a single initiative. Rather, it will be an ongoing process.

15. In July the Committee spoke with the Law Society's government relation specialists and implemented an outreach program to meet with select MLAs to discuss the importance of legal aid in British Columbia and the need for adequate funding. These efforts were supported by the Law Society's Communication Department through the publication of OpEds in local papers, the creation of a legal aid Facebook page and Twitter feed.

16. With respect to advocacy, the Committee recommended, and the Executive Committee subsequently authorized, that the Law Society seek leave to intervene in the *Single Mothers' Alliance* case. This decision will provide an opportunity to take a non-adversarial, educational role in the proceedings to highlight the public interest value in properly funded legal aid. Future updates will be provided as the matter progresses through the court.

1(b)(v) Meeting with other stakeholder groups, including lawyers and law firms, to ensure that the Law Society's efforts to champion legal aid occur collaboratively. Consideration should be given to hosting future colloquia to ensure efforts to advance legal aid revitalization continue to progress

17. The Committee has begun planning a colloquium in spring 2018. The Honourable Bruce Cohen, QC has agreed to again act as moderator for the event. The Committee intends to

finalize the agenda after the 2018 provincial budget has been set so it can better tailor the event to the economic realities the Legal Services Society will face in 2018.

18. The Committee has engaged in some preliminary discussions about what the colloquium might involve. Concepts include exploring how best to allocate any new funding for legal aid, discussing how to prioritize the services that legal aid should include (with specific reference to the Law Society's vision for publicly funded legal aid), and discuss any economic analysis research that is underway.

19. The Committee believes holding colloquia remains an important tool for showing leadership and advancing the cause of legal aid. However, the Committee also recognizes that such efforts must be more than a collection of people preaching to the choir. Colloquia must meaningfully advance legal aid (including advancing the Law Society's vision for publicly funded legal aid) and that first requires generating useful content for the event.

1(b)(vi) Working with government, the courts and the profession about ways to reduce the time and cost associated with mega-trials

20. The Committee reached out to Mr. Benton to better understand whether the Law Society should focus its efforts on working with the courts and profession about ways to reduce the time and costs associated with mega-trials.
21. Because mega-trials are funded differently than other legal aid services, the Committee is not focusing on the issue at this time. However, it may ultimately consider whether the amount of resources that are directed to mega-trials and the funding required has a spill-over effect into the funding government might otherwise allocate to legal aid.

1(b)(vii) Working with the courts to determine how active case management might be used to support a more efficient and cost effective litigation system, thereby making legal aid more sustainable

22. Due to how it prioritized its responsibilities, the Committee has yet to start work on item 1(b)(vii).

1(b)(viii) Developing proposals for how to improve the advocacy skills of junior lawyers and facilitate their involvement in undertaking legal aid work to better ensure the current quality of advocacy as well as the future of the legal aid defense Bar

23. In July the Committee met with Janet Winteringham, QC (as she then was) and Jeff Campbell, QC to discuss item 1(b)(viii). This work arose directly from the 2016 recommendation of the Criminal Defence Advocacy Society that steps be taken to improve the mentoring, training and legal aid opportunities for junior lawyers in the criminal bar.

24. A preliminary meeting of a group of experienced Barristers, including Vice-chair Peck and Mr. Campbell took place in August.

25. In October, Mr. Campbell debriefed the Committee about the status of this work. Mr. Campbell explained that he is preparing a draft letter to the Legal Services Society regarding a letter that Brent Bagnall authored. The focus of the response is to explore opportunities for greater mentoring and involvement of junior lawyers in criminal legal aid. The plan is for Mr. Campbell to share the letter with the Committee, along with Mr. Bagnall's letter, so the Committee can determine whether it has anything to add to the response and/or wishes to take authorship of the response. The Committee will provide updates to the Benchers as this work unfolds. At this point, it is sufficient to observe that junior lawyers are not taking on criminal defence work and the general coverage for legal aid does not permit them to junior a senior counsel through trial in most criminal law matters. It is important to explore ways in which this essential skills training and knowledge transfer can take place so we are ensured future defendants in criminal law matters have access to a robust defense Bar.

1(b)(ix) Liaising with the Law Society's Truth and Reconciliation Advisory Committee and the Access to Legal Services Advisory Committee to ensure the Law Society has a consistent approach to improving access to justice for Indigenous Peoples

26. The Committee intends to liaise with the Law Society's Truth and Reconciliation Advisory Committee in advance of hosting the 2018 legal aid colloquium in order to ensure relevant considerations of Indigenous People's experience in engaging the legal aid system are reflected in the discussions.

1(b)(x) Working with the Law Society's Communications Department and, if necessary, external experts, to ensure social media as well as traditional methods of communication are used to maximize the reach of the Law Society's efforts to educate, inspire and lead on legal aid reform in British Columbia

27. As noted above, the Committee is working with the Law Society's Communications Department to construct a plan to discharge its obligation under item 1(b)(x).

Looking Ahead to 2018

28. The Committee will develop its colloquium for either April or May 2018. In addition, it will continue to advance the initiatives related to research into the economics of legal aid. By the end of 2018 the Committee hopes to have substantially advanced most, if not all, of the tasks assigned to it under its mandate. If it accomplishes this goal, it anticipates that in early 2019 the Benchers will be asked to consider how best to continue to advance the Law

Society's vision for legal aid and what the role of the Committee ought to be moving forward.

/DM&ML&AB

The Law Society of British Columbia

Rule of Law and Lawyer Independence Advisory Committee – Year End Report

Craig Ferris, QC (Chair)
Mark Rushton (Vice-Chair)
Jeffrey Campbell, QC
Pinder Cheema, QC
Sharon Matthews, QC
Claude Richmond
Philip Riddell
Jon Festinger, QC
The Honourable Marshall Rothstein, QC

December 8, 2017

Prepared for: Benchers

Prepared by: Rule of Law and Lawyer Independence Advisory Committee/
Michael Lucas, Manager, Policy and Legal Services

Purpose: Information

Introduction

1. The Rule of Law and Lawyer Independence Advisory Committee is one of the six advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers on matters relating to those issues. From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and may be asked to develop the recommendations or policy alternatives regarding such initiatives.

2. The lawyer's duty of commitment to his or her client's cause, and the inability of the state to impose duties that undermine that prevailing duty, has been recognized as a principle of fundamental justice.[1] The importance of lawyer independence as a principle of fundamental justice in a democratic society, and its connection to the support of the rule of law, has been explained in past reports by this Committee and need not be repeated at this time. It will suffice to say that the issues are intricately tied to the protection of the public interest in the administration of justice, and that it is important to ensure that citizens are cognizant of this fact.

3. The Committee's mandate is:

   · to advise the Benchers on matters relating to the Rule of Law and lawyer independence so that the Law Society can ensure

     - its processes and activities preserve and promote the preservation of the Rule of Law and effective self-governance of lawyers;

     - the legal profession and the public are properly informed about the meaning and importance of the Rule of Law and how a self-governing profession of independent lawyers supports and is a necessary component of the Rule of Law; and

   · to monitor issues (including current or proposed legislation) that might affect the independence of lawyers and the Rule of Law, and to develop means by which the Law Society can effectively respond to those issues. The Committee was particularly concerned about the provisions of Bill C-51 (the *Anti-Terrorism Act, 2015*) and was pleased to see the Law Society make an effort to engage in the debate on that Bill.

4. The Committee has met on January 25, March 1, April 5, June 7, July 5, September 27, October 25, and December 6, 2017.

[1] Canada (Attorney General) *v.* Federation of Law Societies of Canada, 2015 SCC 7, [2015] 1 S.C.R. 401

5. This is the mid-year report of the Committee, prepared to advise the Benchers on its work to date in 2017 and to identify issues for consideration by the Benchers in relation to the Committee's mandate.

Topics of Discussion in 2017

I. Increasing Public Awareness of the importance of the Rule of Law

6. The Committee has continued efforts to advance both the profession's and the public's understanding of the importance of the rule of law. Its primary activities to this end have been undertaken through the creation of a lecture series and a continuation of the high school essay contest.

a. Rule of Law Lecture Series

7. The Committee hosted the Law Society's inaugural Rule of Law Lecture Series on May 31 at the UBC Downtown campus. The Lecture, entitled "Brexit, Presidential Executive Orders and the Rule of Law: A discussion on the limits of executive power" was attended by approximately 170 people, who heard presentations by Anne Egeler, Deputy Solicitor General for the State of Washington, and Richard Gordon, lead counsel for Wales in *R. (On the Application of Miller and Another) v. Secretary of State for Exiting the European Union*, more commonly referred to as "the Brexit case." A video of the Lecture has been posted on the Law Society website, together with a written copy of the presentation given by Mr. Gordon.

8. The event received many favourable comments from those attending. The Committee will undertake a second lecture series in May 2018, and has been giving consideration to possible topics and speakers.

b. High School Essay contest

9. The Committee recently completed its second essay contest for high school students. This year's topic was "How would you explain the rule of law to a fellow student who has never heard the term before?"

10. The contest was open to currently enrolled high school students in British Columbia who were taking or had taken Civic Studies 11 or Law 12. This year's contest was also expanded to students enrolled in private schools in BC.

11. A total of 84 essays were received. Judging was done of the essays by a panel comprised of Craig Ferris QC, Jeff Campbell QC and Professor Arlene Sindelar from the Department of History at UBC.

12. Presentations were made to the winner and the runner-up at the June 9 Benchers meeting.

13. The Committee has begun the planning process for next year's contest. The topic will be "How does social media interact with the Rule of Law?" The information on the contest has been posted on the Law Society website and materials have been sent out and publicised through various education-related organisations.

II. Public Commentary on the Rule of Law

14. In mid-2015, the Benchers approved the Committee's proposal that it publicly comment on issues relating to the Rule of Law. The recommendation resulted from the Committee's conclusion that, in the course of undertaking its monitoring function, it often identifies news stories or events that bring attention to the rule of law, or lack thereof, and exemplify the dangers to society where it is either absent, diminished or, perhaps, threatened, from which the Committee could usefully select appropriate instances for comment.

15. So far this year, the Committee has commented on:

a. The Rule of Law and Events in the United States

https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/RuleofLaw-US.pdf

b. How uninformed criticism of the Courts can Undermine the Rule of Law

https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/RuleofLaw-criticism_2017-04.pdf

16. The Committee has also made use of its Twitter account "@RuleofLawBC" to circulate its commentary, and to "retweet" commentary or articles by other groups that the Committee has thought clarifies the importance of the rule of law. The number of followers, while still modest, has more than doubled since the beginning of the year.

III. Meetings with Other Groups

17. The Committee met in March with representatives of Lawyers Rights Watch Canada (LRWC) and the British Columbia Civil Liberties Association (BCCLA).

a. Lawyers Rights Watch Canada

18. The Committee heard about the work being undertaken by LRWC, which involves providing advocacy for lawyers, judges and human rights defenders who are being unjustly detained in foreign nations. LRWC engages as well in advocacy campaigns including writing letters to public authorities in countries where a given individual is being unreasonably held, as well as the preparation of complaints (often collaboratively with local organisations) as well as oral and written statements for submission to the United Nations. Occasionally LRWC will prepare amicus briefs to various foreign courts. LRWC had some ideas as to how the Law Society

could enhance its human rights advocacy efforts. As an example, reference was made to the letter writing model of the Law Society of Upper Canada's (the "LSUC") Human Rights Monitoring Group. Other potential options, such as trial monitoring or assisting lawyers who are being unduly imprisoned, were also discussed. The Committee will consider these suggestions.

19. The Committee participated with Lawyers Rights Watch Canada, the Bar Human Rights Committee of England and Wales, the International Bar Association Human Rights Institute, the General Council of the Bar (England and Wales) and the SADC (Southern Africa) Lawyers' Association in preparing a letter to the President of Zimbabwe expressing concerns over a bill to amend the Zimbabwe constitution that would decrease the transparency and independence in the selection of judges, and thus adversely affect the rule of law in Zimbabwe even further. The letter was prepared in support of the Law Society of Zimbabwe.

b. British Columbia Civil Liberties Association

20. The Committee also heard about two matters that the BCCLA was involved in: challenges to state surveillance and interceptions of communications subject to solicitor-client privilege, as well as a challenge to the legal framework around the segregation of inmates in federal prisons. The former issue is one that the Committee has been interested in and has publicly commented on in the past, and the latter is one that was discussed by the Committee earlier in the year as a result of an article in *Macleans* magazine on the case of Adam Capay. The Committee continues to monitor the course of these proceedings.

IV. Border Searches

21. The Committee noted news reports that border agents in both Canada and the United States had been reported to have required the production of passwords to electronic devices. The Committee noted that this raised a concern insofar as lawyers may be required to provide such passwords.

22. The Committee prepared a letter (https://www.lawsociety.bc.ca/Website/media/Shared/docs/newsroom/Van-Ommen-Letter-to-govt-re-Search-Electronic-Devices.pdf) for the President's signature, to the Ministers of Justice and of Public Safety outlining concerns with such requirements as they may relate to lawyers and how the requirements may adversely affect solicitor-client privilege. The letter recommended the Ministers consult with their American counterparts to co-ordinate a uniform, bi-lateral approach to safeguarding privileged electronic communications at border crossings between Canada and the United States. The Minister of Public Safety responded, confirming that CBSA officers are instructed not to examine documents if they suspect they may be the subject of privilege, if they are specifically marked with the assertion that they are privileged, or if privilege is claimed by a lawyer with respect to documents that the lawyer is carrying.

23. Coincidentally, the American Bar Association wrote a similarly-themed letter to the US Department of Homeland Security at about the same time as the Law Society's letter was prepared. We have had some email discussions with the ABA on this matter and have agreed to keep in touch. The Law Society of BC's letter and the ABA letter were commented on in the English legal press as well. The Committee has continued to monitor the issue as the subject remains of interest to lawyers.

V. Amendments to Controlled Drugs and Substances Act (Bill C-37)

24. The Committee prepared a letter to the Minister of Health and the Chair of the Senate Standing Committee on Legal and Constitutional Affairs (https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/2017RuleofLaw_LetterBillC-37.pdf) concerning proposed revisions to the *Customs Act* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* that would permit the opening of routine correspondence delivered to a law office. The Committee pointed out how this could adversely affect solicitor-client privilege and urged reconsideration of the proposed amendments, or at least that provisions be included in the legislation that will create a constitutionally accepted method to preserve solicitor-client privilege and ensure that it is not even accidentally violated.

VI. Criminal Trial Delays and the Rule of Law

25. In light of the Supreme Court of Canada's decision in *R. v. Jordan*, the Committee discussed whether there could be adverse consequences on the public confidence in the justice system and the rule of law. Constitutional rights are engaged, and consideration to increasing the speed at which trials proceed has raised issues such as increasing the direct indictment process in order to skip over preliminary inquiries.

26. However, the most glaring issue that the Committee identified was the number of vacancies on Superior Courts, particularly in British Columbia.

27. Coincidentally, these concerns were noted by the Chief Justice of British Columbia when he addressed the Benchers at their May meeting. This situation adversely affects the efficiency of the court and adversely affects both the rule of law and the public confidence in the justice system.

28. The Committee therefore prepared a letter for signature by the President to the Minster of Justice urging that the situation be addressed https://www.lawsociety.bc.ca/Website/media/Shared/docs/newsroom/highlights/2017-05_appointments-to-SCBC.pdf. The Committee notes that a number of justices have been appointed in British Columbia over the past months.

VII Bill C-59: National Security Act

29. Last year's Committee prepared submissions that were sent by the Law Society in respect to the consultation that the federal government was holding on proposing amendments to National Security legislation.

30. Earlier this year, the federal government presented Bill C-59 (An Act respecting national security matters) to Parliament. The Committee reviewed Bill C-59 and has prepared a letter that was signed by the President noting concerns about the Act in relation to the Law Society's earlier submissions, as well as identifying where the Bill improved the existing legislation. This letter is posted on the Law Society website: https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/2017RuleofLaw_LetterBillC-59.pdf

VIII. Lawyer Independence and the Regulation of Alternate Legal Services Providers

31. The December 2014 Report for the Legal Services Regulatory Framework Task Force recommended that the Law Society seek a legislative amendment to the *Legal Profession Act* that would permit the Law Society to establish new classes of legal service providers to address areas of underserved and/or unmet legal needs. The Task Force also noted that it was important to ensure that, by so doing, the public's right to the benefit of being able to retain independent lawyers was not adversely affected and urged that the issue be considered by the Rule of Law and Lawyer independence Advisory Committee.

32. The Committee therefore spent time in the spring of 2017 reviewing the subject and considering the issue. It has prepared a short report for the consideration of the Executive Committee that reaches the general conclusion that lawyer independence need not be adversely affected by having the independent self-regulating body of the legal profession regulate other categories of legal service providers provided the regulatory body is properly structured to ensure that new categories of legal service providers are properly qualified and trained in the professional standards of the profession and that the new categories of legal service providers are adequately represented in the governing body.

IX. Safeguarding Lawyer Independence when Practising in Foreign Nations

33. In light of the many articles it monitored concerning the state of the rule of law and related issues in various countries, the Committee discussed the risks of professional values being compromised where law firms open or operate in foreign nations. The Committee noted that the Solicitors Regulation Authority of England and Wales has developed principles relating to the practice of law by English lawyers in foreign countries.

34. While the Committee did not believe that, at this time, the Law Society should seek to develop rules relating to the practice of law by British Columbia lawyers working outside of Canada, it

will be considering at its December meeting what steps to take to raise awareness of the issues and related concerns for members of the bar to consider.

X. Meaning of the Rule of Law in Connection with the Law Society Mandate

35. The Committee has previously identified that section 3 of the *Act* engages the Rule of Law. The Committee believes that a statement of principle could clarify the meaning and practical implications of Section 3, while also taking adequate account of the relationship between the Law Society's mandate and the Rule of Law. The topic was discussed at the May 2015 Benchers Retreat, particularly in the context of how the provisions of section 3 – and particularly s. 3(a) – inform the Law Society's activities, by examining developments in access to justice, exploring the scope of directives that the section presents, and discussing opportunities to advance the objectives of the section.

36. Improving the Law Society's public communication on the importance of the rule of law is one aspect of advancing the public interest in the administration of justice and thereby discharging the object and duty of section 3. There are, however, other considerations that can be given to this section. The Committee has devoted a fair amount of its time in the fall toward this topic, and is nearing completion of a discussion paper outlining the parameters around which it recommends the section be interpreted to inform the future work of the Law Society.

XI. Alternate Business Structures

37. The Committee continues to monitor the general development of and debate surrounding alternate business structures in England, Australia, and the debates in other parts of the world.

38. The Committee is also aware of efforts being undertaken through the Law Society of Upper Canada and by the law societies of the three prairie provinces to begin some discussion on the topic and it will continue to monitor and participate in those discussions as it is able to do. It has noted that the Law Society of Upper Canada appears to have rejected for the time being the concept of "full" ABSs.

39. The Committee learned that the Law Society of Ontario recently approved a modified form of ABS structure designed to enable the delivery of legal services through "civil society organizations," such as charities, not for profit organizations and trade unions, to clients of such organizations in order to facilitate access to justice. This prompted the Committee to ask staff to begin preparing an updated report on ABSs to follow the predecessor of this Committee's 2011 report on the subject. It is hoped that this will be ready early in the new year.

XII. Developing Issues

40. The Committee continues to review items that appear in media reports that express concerns about the rule of law domestically and internationally. There are many issues that come from the United States in the wake of the last few months of the political events there that keep the Committee focused. However, issues that arise as a result of the response of many countries to terrorist activities warrant scrutiny to ensure that the rule of law is not overrun in the need to provide safety and security to the citizens of the country.

The Law Society of British Columbia

Year-End Report

Recruitment and Nominating Advisory Committee

Herman Van Ommen, QC (Chair)
Miriam Kresivo, QC (Vice-Chair)
Jasmin Ahmad
Dean Lawton, QC
Nancy Merrill, QC
Michelle Stanford

December 8, 2017

Prepared for: Benchers

Prepared by: Recruitment and Nominating Advisory Committee / Renee Collins

Introduction

1. At their April 7, 2017 meeting, Benchers approved the creation of a Recruitment and Nominating Advisory Committee (the Committee) in accordance with the Terms of Reference set out in Appendix 1.

2. Its mandate is to advise the President, the Executive Committee or the Benchers, as appropriate, about potential appointees to other organizations to which the Law Society makes appointments and to Law Society committees, task forces and working groups when appointees other than Benchers are required. The Committee actively seeks out well-qualified persons with the requisite character, knowledge and experience, expertise and willingness to serve and fulfill the responsibilities of the appointment.

3. The purpose of this report is to advise the Benchers about the work the Committee has undertaken since its creation in April 2017.

Appointments Considered and Recommended

4. The Committee has held meetings July 7 and October 27, 2017, and consulted by email, to consider and discuss the appointments process and upcoming appointments.

5. The following appointments have been considered and recommended in that time:

- **CBA National Council and CBABC Provincial Council:** required one Bencher re-appointment by the President
    - Sarah Westwood was reappointed as the President's designate for a fourth one year term commencing September 1, 2017
- **LTSA Stakeholders Advisory Committee:** required annual review of appointment with no fixed term
    - Edward Wilson's re-appointment was recommended
- **Continuing Legal Education Society of BC:**
    - **Law Society member:** required two appointments by the Presidents of Law Society of BC / CBA jointly for two year terms to begin September 1, 2017. The Committee recommended appointment of:
        - Nina Purewal – Prince Rupert County
        - Michael Sinclair – Yale County
    - **Bencher:** required two re-appointments by the President for two year terms to begin September 1, 2017. The Committee recommended re-appointments of:
        - Dean Lawton, QC
        - Martin Finch, QC

6. The Committee has also considered candidates for and will be making recommendations:

    - to Benchers on a re-appointment to the Legal Services Society for a three year term to begin January 1, 2018 and nominations to the Land Title & Survey Authority Board for a three year term to begin April 1, 2018;

    - to the Executive Committee on appointments to the Law Foundation for three year terms to begin January 1, 2018; and

    - to the President on an appointment to the CBABC REAL Advisory Board for a one year term to begin January 1, 2018 .

Appointments Process Revisions

7. The Committee has embarked on a review of appointments processes. It has begun with changes to the online application system.

8. Previously, online applications were kept indefinitely with the result that information became out of date. An automatic deletion of online applications after a two year period has been implemented to ensure currency of information.

9. The online application form itself has been revised to include the request of two references.

Appendix 1

RECRUITMENT AND NOMINATING ADVISORY COMMITTEE

TERMS OF REFERENCE

Updated: March 2017

MANDATE

The Recruitment and Nominating Advisory Committee advises the President, the Executive Committee or the Benchers, as appropriate, about potential appointees to other organizations to which the Law Society makes appointments and to Law Society committees, task forces and working groups when appointees other than Benchers are required. The Committee actively seeks out well-qualified persons with the requisite character, knowledge, experience, expertise and willingness to serve and fulfill the responsibilities of the appointment.

COMPOSITION

1. Under Rule 1-47, the President may appoint any person as a member of a committee of the Benchers and may terminate the appointment.
2. The Chair and Vice-chair should be members of the Executive Committee.

MEETING PRACTICES

1. The Committee operates in a manner that is consistent with the Benchers' Governance Policies.
2. The Committee meets as required.
3. Quorum consists of at least half of the members of the Committee (Rule 1-16(1)).

ACCOUNTABILITY

The Committee is accountable to the Benchers.

REPORTING REQUIREMENTS

The Committee provides reports as required on all external appointments and when requested to do so by the President, on internal appointments.

DUTIES AND RESPONSIBILITIES

1. To actively seek out qualified candidates for upcoming appointments.
2. To consider and evaluate persons who have expressed interest in appointment to Law Society committees, task forces and working groups and to the boards and committees of other organizations.
3. To apply the Bencher policies on internal and external appointments in considering and evaluating potential appointments.
4. To make recommendations from time to time to the President, the Executive Committee or the Benchers, as appropriate, about potential appointees to available appointments.
5. To ensure that the Bencher policies on internal and external appointments reflect best practices for appointments and the needs of the Law Society.

6. To take on such other duties as the Benchers may assign from time to time.

STAFF SUPPORT

Manager, Executive Support

The Law Society of British Columbia

Year-End Report

Truth and Reconciliation Advisory Committee

Herman Van Ommen, QC (Co-Chair)
Grand Chief Ed John (Co-Chair)
John Borrows
Dean Lawton, QC
Michael McDonald
Lee Ongman
Dan Smith
Ardith Walkem

November 27, 2017

Prepared for: Benchers

Prepared by: Truth and Reconciliation Advisory Committee / Andrea Hilland

Introduction

1. The Truth and Reconciliation Advisory Committee ("Committee") is one of the six advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers in connection with those issues.

2. From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and may be asked to develop the recommendations or policy alternatives regarding such initiatives.

3. The purpose of this report is to advise the Benchers about the work the Committee has undertaken since its June 2017 report.

Topics of Discussion: July to October 2017

4. The Committee discussed the following initiatives between July and November, 2017.

Truth and Reconciliation Symposium

5. The majority of the Committee's work involved planning a symposium that was held on November 23, 2017. The theme of the symposium was: *Transforming the Law from a Tool of Assimilation into a Tool of Reconciliation*. There were 300 in-person and 166 online participants. Participants engaged in a number of facilitated breakout sessions to share their ideas on what the Law Society can do to facilitate reconciliation. A report on the findings from the symposium with a number of concrete action items will be prepared by Law Society staff with guidance from this Committee.

Video Project: "But I was Wearing a Suit"

6. During the Truth and Reconciliation Symposium, the Law Society launched a video titled "But I Was Wearing a Suit," in which Indigenous lawyers shared their experiences of discrimination within the legal profession. The video is an educational tool that was developed to raise awareness and facilitate the correction of biases against Indigenous people in the legal profession. The video was created in collaboration with Indigenous lawyers, the Law Society of BC, and the Continuing Legal Education Society of BC.

Cultural Competence Training

7. Cultural competence training for Law Society staff continues. On September 15, 50 Law Society employees participated in a "Blanket Exercise" – an experiential workshop that provides an overview of the history of Indigenous and Canadian relations from the time of contact to the present day. The Blanket Exercise was facilitated by Ardith Walkem (a member

of the Truth and Reconciliation Advisory Committee), with assistance from Law Society staff. This Committee has recommended the Benchers also partake in the Blanket Exercise, and there are plans to conduct one at the Benchers Retreat next year.

Murdered and Missing Indigenous Women's Inquiry

8. On July 17, 2017, Nancy Merrill, QC (Chair of the Equity and Diversity Advisory Committee) and Dan Smith (member of this Committee and the Equity and Diversity Advisory Committee) met with two counsel for the Murdered and Missing Indigenous Women's Inquiry lawyers to offer the Committee's assistance. Although the Inquiry's counsel were unable to specify the type of assistance required, the Committee is keeping apprised of developments. During the week of September 25, 2017, Sarah Westwood attended a hearing of the Inquiry in Smithers, BC on behalf of the Law Society.

Education

9. The Professional Legal Training Course curriculum will be updated in light of the Truth and Reconciliation Commission's Recommendation 27, to ensure that lawyers receive appropriate cultural competency training. Cultural competency will be integrated throughout the curriculum as a core competency of the course.

10. Immediate changes are already underway. PLTC students participate in a half-day cultural competency workshop regarding Indigenous issues. A half-day module relating to child protection and a day on criminal procedure have also been added to the curriculum. Information regarding *Gladue* (Indigenous personal history) factors in sentencing and the criteria for *Gladue* reports has now been added to the criminal procedure course notes and Practice Material.

11. PLTC staff continues its work on improving and expanding the content of the Practice Material in different areas where Indigenous content would be relevant. Again, this means making more immediate changes to the Practice Material but having the long-term objective of integrating Indigenous legal issues into related areas of the PLTC, for example in family law, property law and criminal law. Finally, PLTC staff is creating new exam questions based on the Indigenous content that is in the existing and revised Practice Material.

Collaborations

12. Some representatives from the Committee are involved in Truth and Reconciliation working groups for the Canadian Bar Association of BC and the Continuing Legal Education Society. The Committee acknowledges that strategic collaborations are helpful for information sharing, identifying synergies, and coordinating efforts.

Federation of Law Societies

13. The Law Society of British Columbia has taken a lead role in the Federation of Law Society's response to the Truth and Reconciliation Commission's recommendations. The Federation's Truth and Reconciliation Advisory Committee met on September 22, 2017. The Law Society of BC's representative was appointed to the bench and resigned from both the Law Society of BC and Federation of Law Societies Truth and Reconciliation Advisory Committees. The Law Society of BC has put forward a recommendation for a new western region representative for the Federation of Law Societies Truth and Reconciliation Advisory Committee.

The Law Society of British Columbia

CEO's Report to the Benchers

December 2017

Prepared for: Benchers

Prepared by: Adam Whitcombe
Acting Executive Director/Chief Executive Officer

2015 – 2017 Strategic Plan Update

I am attaching the final update on our current Strategic Plan. As it demonstrates, we have successfully completed many of the initiatives identified in 2015, made good progress on others, and introduced and implemented some initiatives added to the plan during the course of the intervening three years. In particular, we have successfully:

- defined the Law Society's position on legal aid through the work of the Legal Aid Task Force;
- evaluated and reported on both the PLTC program and the CPD program; and
- established a Rule of Law lecture series, a high school essay contest and written articles to engage the public and lawyers in in general justice issues.

We continue to work on advancing the alternate legal service provider initiative, proactive regulation and our truth and reconciliation efforts. However, overall, we were successful in accomplishing much of the plan.

At this meeting, the Benchers will be asked to approve a new strategic plan for the next three years. The new plan continues some of the initiatives from the current plan while introducing new initiatives reflecting the consideration given to the current state of the legal profession and justice system by the Benchers over the course of the fall.

Access to Justice BC (A2JBC) Leadership Meeting

On behalf of the Law Society, I attended the Access to Justice BC Strategic Learning meeting at the Courthouse Libraries offices on Tuesday, November 7.

The all-day session was chaired by Chief Justice Robert Bauman and reviewed the A2JBC's efforts to date, particularly exploring the extent to which A2JBC activities are contributing to culture shifts in the profession and public with a view to updating the next iteration of A2JBC's expected results, strategy, work plan and capacity. Subjects discussed included A2JBC's engagement strategy and the measurement and support initiatives. It was also apparent from the number and variety of participants that there are many organizations engaged in improving access to justice and that a forum for communicating and discussing those efforts likely helps avoid duplication and provides the opportunity for learning what works and what might not.

While A2JBC is principally focused on fostering and supporting access to justice initiatives rather than delivering programs itself, one of the more promising projects A2JBC has undertaken is the development of a measurement framework focused on monitoring and evaluating improvements in access to justice in BC. The framework

recognizes that if we are to improve access to justice, measurement and evaluation are essential elements in determining what efforts are making a difference. More work will need to be done to implement the framework but it presents an excellent start.

Ninth Justice Summit

The President and I were invited to attend the 9th Justice Summit at UBC Law School on Friday, November 25. Unfortunately, Herman was ill the day of the summit so was unable to attend.

The justice summits were established by the Ministry of Justice and Attorney General with the intention of bringing together leaders from the profession, the Courts, policing, health care and social agencies, indigenous organizations, government and others to establish a collaborative framework for information sharing and strategizing on how best to address the major justice system issues of the day. The inaugural justice summit was held in 2013 and under the terms of the Justice Reform and Transparency Act at least one is required to be held at least annually.

The focus of this summit was on justice and technology. The summit continued the work begun at the 8th summit held in the spring of this year that generated four recommendations for consideration at this summit:

- The development of an inclusive, standards-based digital information management strategy for the sector;
- Senior sponsorship (or project governance) arrangements to implement the strategy;
- A coordinated response on behalf of the sector regarding future network investments at the community level; and
- With respect to the courts, the development of technology access standards and the broader exploration and piloting of video technology in (e.g.) court appearances.

It's fair to say the recommendations as presented did not survive intact after being workshopped by breakout groups organized for the morning and afternoon sessions. Nevertheless, there was considerable good discussion about the importance of integrating technology into the current justice system processes and operations and some concrete plans to see that this is done.

There will be a report, likely in 2018, on the results of the 9th summit.

TRC Symposium

The TRC Symposium held on Thursday, November 23 was a significant success. With over 450 attendees, in person and online, it was well attended and provided the opportunity to hear a number of different voices on both the challenges and the opportunities we face in transforming the law from a tool of assimilation into a tool of reconciliation.

Some notable highlights were the video *"But I Was Wearing a Suit"* introduced by Ardith Wal'petko We'dalx Walkem during the initial plenary session. The video illustrates the racism that Indigenous lawyers and law students face within the legal profession through the telling of the stories of those who have experienced it. It provided a powerful introduction to the subject of the symposium.

Equally powerful was the keynote speech by the Honourable Judge Steven L. Point, OBC *"We Create Our Future by What We Think, Say and Do Today"*. Judge Point spoke of his personal experiences to illustrate how bias and discrimination are daily occurrences for Indigenous people. And because of the trauma experienced by Indigenous people, Judge Point told us that many of them are hesitant to speak to non-Indigenous authority figures. As he said, ""The justice system has failed to understand Aboriginal people."

We are in the process of creating a portal to allow Symposium participants to offer advice and recommendations for action after reflection on the day's proceedings.

Continuing Legal Education Society of BC AGM

On Thursday November 29, Sharon Matthews, QC and I attended the annual general meeting of CLEBC. Under the current bylaws of CLEBC, both the President and the Law Society are members of the CLEBC. I attended on behalf of the Law Society and Ms. Matthews attended on behalf of the President. Benchers may recall that Joost Blom, QC attended the June meeting this year to provide an overview of the changes to the constitution and bylaws. The most significant elements of the changes was updating the constitution and bylaws of the society to comply with the new Societies Act and to add Thompson Rivers University as one of the members of CLEBC. As a result of adding TRU as a member, the total number of members was increased to preserve the existing ratio of LSBC/CBABC members to law school members. Under the new bylaws, the Law Society, the President and the First Vice-President are now members of CLEBC entitled to attend the annual general meeting and vote. A similar increase in members was provided to CBABC. There was also discussion of the interest in increasing the diversity of directors appointed to the CLEBC board and the work of the CLEBC's Truth and Reconciliation committee.

Annual Employee Survey

As Benchers may recall that, for more than a decade, we have conducted an annual employee engagement survey in the late fall. This year, we deferred the survey until early 2018. Fall is always a busy time at the Law Society, and the expectation is that conducting the survey in January may improve the response rate. As well, shifting the survey will ensure that it does not coincide with other human resource activities during October and November.

Bencher and Committee Evaluation Surveys

Each year we ask the Benchers and committee members to complete an online evaluation survey. The results are reviewed by the Governance Committee early in the New Year and a report is provided to the Benchers, usually at the March Bencher meeting. This year's surveys should be available on Monday December 4 for a period of two weeks and Benchers and committee members will be advised by email about the links to the surveys. We hope that Benchers will take a few minutes to complete the Bencher evaluation survey and the surveys for any committees on which they sat in 2017.

Best Wishes and Thanks

As this is the last Bencher meeting for 2017, I would like to take this opportunity on behalf of all staff to wish you all a very happy holiday season and to thank the Benchers for your many contributions and hard work throughout the year.

I would also like to extend congratulations to all of the Benchers who were acclaimed and elected and a special welcome to those Benchers joining us for the first time in 2018. We look forward to working with you in the coming year.

As this is the final meeting for Herman Van Ommen, QC as President, I would like to take this opportunity on behalf of all staff to thank him for his vision and leadership throughout this year. He has demonstrated a practical understanding of the Law Society and a keen interest in ensuring that he leaves the Law Society better than he found it.

And as this will be my final meeting as Acting Executive Director/Chief Executor Officer, I would like to take the opportunity to thank Herman and the Executive Committee for their confidence and support during this interim period, all of the Benchers who have offered me advice and assistance and the staff of the Law Society, who have all been truly supportive throughout my time as Acting Executive Director/Chief Executive Officer. I very much look forward to working with our new Executive Director/Chief Executive Officer in the New Year.

The Law Society of British Columbia

2015 – 2017 Strategic Plan

Our Mandate

Our mandate is 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, 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.

Our Goals

To fulfil our mandate in the next three years, we have identified three specific goals:

1. **The public will have better access to legal services.**

   We know that one of the most significant challenges in Canadian civil society today is ensuring that the public has adequate access to legal advice and services.

2. **The public will be well served by an innovative and effective Law Society.**

   We recognize that the public expects and deserves effective regulation of the legal profession. 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.

3. **The public will have greater confidence in the rule of law and the administration of justice.**

   We believe that the rule of law, supported by an effective justice system, is essential to Canadian civil society. The legal profession plays an important role in maintaining public confidence in both the rule of law and the administration of justice. We recognize the importance of working with others to educate 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.

1. The public will have better access to justice.

Strategy 1–1

Increase the availability of legal service providers

Initiative 1–1(a)

Follow-up on recommendations from the December 2014 report of the Legal Services Regulatory Framework Task Force toward developing a framework for regulating non-lawyer legal service providers to enhance the availability of legal service providers while ensuring the public continues to receive legal services and advice from qualified providers.

Status – December 2017

The Legal Services Regulatory Framework Task Force made recommendations in December 2014 that outlined seven areas of law in which new classes of legal service providers could be permitted to practice.

The Task Force recommended that the Benchers seek a legislative amendment to permit the Law Society to establish new classes of legal service providers and there have been discussions with the Ministry of Justice and Attorney General to that end. This initiative was paused for discussions with the Society of Notaries Public concerning merger as described at Initiative 2-2(c) below, but given the status of that initiative (as described below) is again being pursued.

Initiative 1–1(b)

Continue work on initiatives for advancement of women and minorities, including through the Justicia Program, the Aboriginal Mentoring Program.

Status - December 2017

Gender initiatives continue through the Justicia Program. The Justicia model policies and best practice resources are now available on the Law Society's website, online modules to promote the materials are being developed, and outreach is now underway to encourage smaller and regional firms to adopt and implement them. The Law Society continues to administer the Aboriginal Lawyers Mentoring Program to support Aboriginal lawyers.

Work is underway to consider ways to encourage more involvement of equity seeking groups in Law Society governance. The Truth and Reconciliation Advisory Committee has facilitated an increase of Indigenous interest and participation in Law Society governance.

Strategy 1–2

Increase assistance to the public seeking legal services

Initiative 1–2(a)

Evaluate the Manitoba Family Justice Program and determine if it is a viable model for improving access to family law legal services in British Columbia.

Status - December 2017

The Access to Legal Services Advisory Committee determined that the Manitoba project was not viable to duplicate in BC. It preferred a proposal by Mediate BC to set up a roster to match family law mediators with lawyers prepared to provide unbundled independent legal advice to participants in mediation. The Mediate BC proposal received $60,000 and the project is now running. A working group of practitioners is developing practice resources to aide lawyers who wish to provide limited scope services through the roster. A Law Society practice advisor has been assigned to review materials generated by the working group.

Initiative 1–2(b)

Examine the Law Society's role in connection with the advancement and support of Justice Access Centres (JACs).

Status - December 2017

Staff wrote to the Deputy Attorney General following up on issues and a substantive reply has not yet been received. Further work will depend on the nature of the reply. In the meantime, staff continues to monitor activities concerning development of JACs. The Access to Legal Services Advisory Committee has held two meetings with the CEO of Courthouse Libraries. Courthouse Libraries and the Ministry of the Attorney General are exploring the potential for libraries throughout BC to act as "hubs" that will connect to the JACs via technology. This approach is consistent with the concept

identified by the Committee in prior years of establishing community based "franchises" of the JAC model. The Committee remains available for input from Courthouse Libraries and the Ministry as to whether there is anything the Law Society can do to facilitate the expansion of JACs in this manner.

Initiative 1–2(c)

Examine the Law Society's position on legal aid, including what constitutes appropriate funding and whether other sources of funding, aside from government, can be identified.

Status - December 2017

The Legal Aid Task Force has been created by the Benchers. A mandate has been approved, and the task force has met on a number of occasions to discuss the mandate items. A "draft vision" and discussion paper have been prepared by the Task Force, which formed the basis of discussion at a Colloquium on Legal Aid organized by the Task Force and held on November 26, 2016 that was attended by senior levels of government, the courts and invited members of the profession. The Task Force provided a final report that outlined initiatives that could be pursued. The Legal Aid Advisory Committee was created to pursue those initiatives

2. The Law Society will continue to be an innovative and effective professional regulatory body.

Strategy 2–1

Improve the admission, education and continuing competence of students and lawyers

Initiative 2–1(a)

Evaluate the current admission program (PLTC and articles), including the role of lawyers and law firms, and develop principles for what an admission program is meant to achieve.

Status - December 2017

The Lawyer Education Advisory Committee report and recommendations were presented and approved at the March 2016 Benchers' meeting.

Initiative 2–1(b)

Monitor the Federation's development of national standards and the need for a consistent approach to admission requirements in light of interprovincial mobility.

Status - December 2017

The Federation's National Admission Standards Project Steering Committee circulated a proposal concerning proposed national assessments. The Lawyer Education Advisory Committee's Report to the Benchers under Initiative 2-1(a) includes an analysis and recommended response, which was approved at the Benchers' March 2016 meeting. The Federation Council has placed the national assessments proposal in abeyance because several law societies, including BC, were not supporters.

Initiative 2–1(c)

Conduct a review of the Continuing Professional Development program.

Status - December 2017

The Lawyer Education Advisory Committee is presenting its final report on this issue at the December 2017 bencher meeting.

Initiative 2–1(d)

Examine Practice Standards initiatives to improve the competence of lawyers by maximizing the use of existing and new data sources to identify at-risk lawyers and by creating Practice Standards protocols for remediating high risk lawyers.

Status - December 2017

The Early Intervention Working Group was created to review the work undertaken regarding the collection f and possible uses for data as identified. Its final report is being presented to the Benchers at their December 2017 meeting

Initiative 2–1(e)

Examine alternatives to articling, including Ontario's new legal practice program and Lakehead University's integrated co-op law degree program, and assess their potential effects in British Columbia.

Status - December 2017

The Lawyer Education Advisory Committee conclusions on this subject were presented and approved at the March 2016 Benchers' meeting. Ontario's Benchers decided in November 2016 to review the licensing processes, including articling and alternatives to articling, and plan to complete the review in 2017 or 2018. The Lawyer Education Advisory Committee continues monitor developments in Ontario and assess the potential effects in BC.

Strategy 2–2

Expand the options for the regulation of legal services

Initiative 2–2(a)

Consider whether to permit Alternate Business Structures and, if so, to propose a framework for their regulation.

Status - December 2017

The Law Society has done a preliminary report, and information has been gathered from Ontario, which is undertaking its own analysis of ABSs, and the UK and Australia, which have permitted ABSs. The Law Society is monitoring consideration of ABSs currently taking place in the Prairie provinces and through the Rule of Law and Lawyer Independence Advisory Committee and the Law Firm Regulation Task Force, reviews the discussion of the initiative from time to time in other jurisdictions, particularly in the USA. The Rule of Law and Lawyer Independence Advisory Committee considers it would be advisable to do a follow up report to the 2011 report on ABSs, but no specific consideration is underway at this time and no task force has yet been created to examine the subject independently in BC.

Initiative 2–2(b)

Continue the Law Firm Regulation Task Force and the work currently underway to develop a framework for the regulation of law firms.

Status - December 2017

A consultation paper and survey were prepared and undertaken by the Law Firm Regulation Task Force and consultations with the profession took place around the province in February. Focus group consultations took place in the spring of 2017, and the Task Force has prepared a further Interim report. Further recommendations are being considered at the December 2017 Benchers meeting.

Initiative 2–2(c)

Continue discussions regarding the possibility of merging regulatory operations with the Society of Notaries Public of British Columbia.

Status - December 2017

Working Groups were created to (1) examine educational requirements for increased scope of practice for notaries (as proposed by the notaries) and (2) examine governance issues that would arise in a merged organization. Governance issues were considered by the benchers in a preliminary manner in camera at their June 2015 meeting. The Qualifications Working Group reported on their efforts to examine educational requirements at the July 2016 bencher meeting. After consideration, the Benchers elected to keep open the possibility of merging regulatory operations with the Society of Notaries Public, while re-engaging with the Ministry of Justice concerning legislative

amendments to permit the Law Society to regulate new classes of legal service providers.

Strategy 2-3

Respond to the Calls to Action in the Report of the Truth and Reconciliation Committee, 2015

Initiative 2-3(a)

The Benchers will:

1. Seek opportunities to collaborate with Aboriginal groups and other organizations to further examine the Recommendations and identify strategic priorities;
2. Embark upon the development of an action plan to facilitate the implementation of relevant Recommendations;
3. Encourage all lawyers in British Columbia to take education and training in areas relating to Aboriginal law (the Law Society's mandatory continuing professional development program recognizes and gives credit for education and training in areas relating to Aboriginal issues); and
4. Urge all lawyers in British Columbia to read the TRC Report and to consider how they can better serve the Indigenous people of British Columbia.

Status - December 2017

A Steering Committee was created early in 2016 to assist in determining how best to engage in appropriate consultation with Aboriginal communities and representatives and to assist in developing the agenda and substantive program for the Benchers' 2016 Retreat that took place in early June. Following the retreat, the "Truth and Reconciliation Advisory Committee" was created, and terms of reference for the Committee were established in the Fall of 2016. The Committee is now working to address its mandate.

The Committee also undertook the planning of a Symposium entitled "Transforming the Law from a Tool of Assimilation into a Tool of Reconciliation" that was held on November 23, 2017. Follow-up to the discussion that occurred at the Symposium will be undertaken.

PLTC staff have begun to modify the curriculum further to TRC Call to Action #27.

3. The public will have greater confidence in the administration of justice and the rule of law.

Strategy 3–1

Increase public awareness of the importance of the rule of law and the proper administration of justice

Initiative 3–1(a)

Develop communications strategies for engaging the profession, legal service users, and the public in general justice issues.

Status - December 2017

The Communications department has developed a communications plan, and it is being engaged to, for example, obtain interviews on local radio stations on relevant issues.

The first annual Rule of Law Lecture was undertaken through the Rule of Law and Lawyer Independence Advisory Committee was held on May 31. A second lecture is being planned for May 2018.

Initiative 3–1(b)

Examine the Law Society's role in public education initiatives.

Status - December 2017

Work on this initiative has not yet formally commenced, although over the course of this Strategic Plan the Rule of Law and Lawyer Independence Advisory Committee, in connection with the 800th anniversary of Magna Carta, completed a successful essay contest for high school students in 2015 and has followed up on this successful initiative by establishing an annual contest for high schools.

Initiative 3–1(c)

Identify ways to engage the Ministry of Education on high school core curriculum to include substantive education on the justice system.

Status - December 2017

Some work has begun by, for example, creating the high school essay competition referred to above. Work on engaging directly with the Ministry of Education was not undertaken, however. It is understood that the Justice Education Society has been engaging in this work.

Strategy 3–2

Enhance the Law Society voice on issues affecting the justice system

Initiative 3–2(a)

Examine and settle on the scope and meaning of s. 3(a) of the *Legal Profession Act*.

Status - December 2017

This topic was introduced for discussion at the Bencher Retreat in May, 2015. The information gathered at that retreat is being considered by the Rule of Law and Lawyer Independence Advisory Committee with a view as to how it can be incorporated into Law Society policy. Final consideration is scheduled to be given to this subject by the Rule of Law and Lawyer Independence Advisory Committee at its December meeting, with a view to reporting to the Benchers early in 2018.

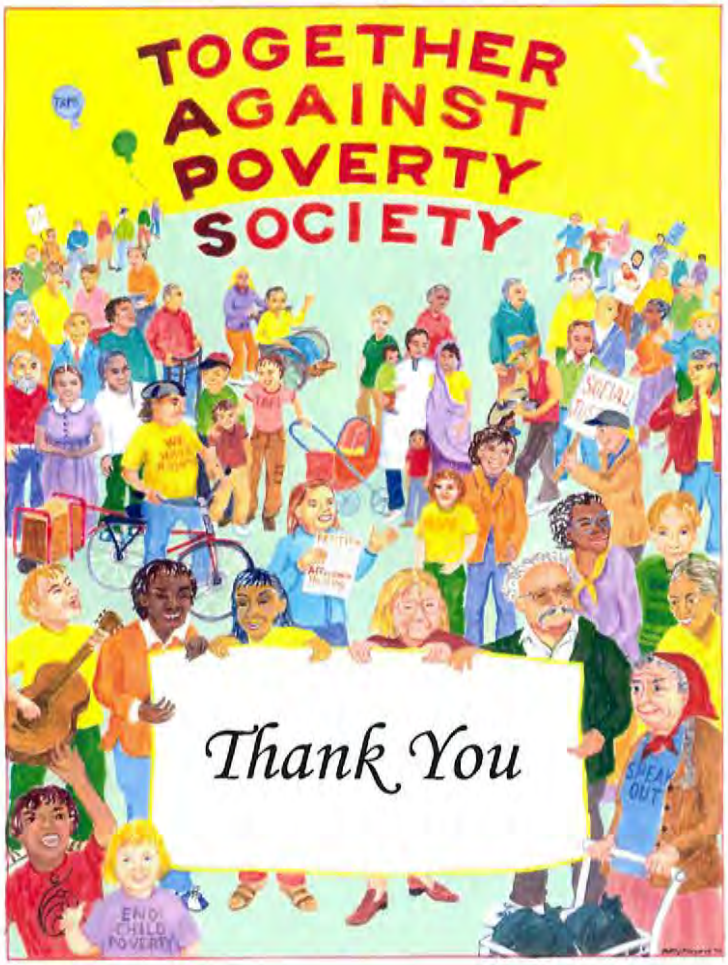
Initiative 3–2(b)

Identify strategies to express a public voice on the justice system, including public forums.

Status - December 2017

A proposal from the Rule of Law and Lawyer Independence Advisory Committee was approved by the Benchers in July 2015. The Committee has prepared commentary on various topics that has been published in *The Advocate*, the Benchers Bulletin and the Law Society website.

A staff working group was created by the Chief Executive Officer in order to engage staff on how the Law Society may express a public voice on issues, which reported to the Management Group in January 2016.



Thank you!
Dina

Thanks for your support!
Kathleen

Thank you so much for your support of TAPS
Heidi

Thank you!
Khaela

Thank you!
Jen

Thank you!
-Yuka

Thank you so much!
-Emily
Tenant Advocate

Thank you! -Isabelle

Dear Herman,

Thank you for the very generous donation to TAPS in lieu of a welcome gift at the Law Society Dinner this year. Donations like these go a long way for an organization like ours, so thank you on behalf of all of our staff... we greatly appreciate it.

Doug King
Executive Director