



Agenda

Benchers

Date: Friday, May 4, 2018

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

8:30 am Call to order

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

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

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
OATH OF OFFICE:					
Ms. Kresivo will administer an oath of office (in the form set out in Rule 1-3) to new Appointed Benchers, Anita Dalakoti, Roland Krueger, Claire Marshall and Guangbin Yan.					
1	Administer Oaths of Office		President		Presentation
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.					
2	Consent Agenda <ul style="list-style-type: none"> · Minutes of April 6, 2018 meeting (regular session) · Minutes of April 6, 2018 meeting (<i>in camera</i> session) · Amendment to Rule 3-80(4): Waiver of Late Trust Report Fee 		President	Tab 2.1 Tab 2.2 Tab 2.3	Approval Approval Approval



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
GUEST PRESENTATION					
3	Peter German, QC: Report on Anti-Money Laundering		Peter German, QC		Presentation
EXECUTIVE REPORTS					
4	President's Report		President		Briefing
5	CEO's Report		CEO	Tab 5	Briefing
6	Briefing by the Law Society's Member of the Federation Council		Herman Van Ommen, QC		Briefing
DISCUSSION/DECISION					
7	Publication of Hearing Reports – Credentials		Lisa Hamilton, QC	Tab 7	Discussion/ Decision
8	Law Firm Regulation Task Force: Update on Regulation and Recommendations for Participation Incentives		Steve McKoen	Tab 8	Discussion/ Decision
9	25 Year Retrospective Report: Gender Equity Report		Jasmin Ahmad	Tab 9	Briefing
REPORTS					
10	Report on Outstanding Hearing & Review Decisions		Craig Ferris, QC	<i>(To be circulated at the meeting)</i>	Briefing



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
FOR INFORMATION					
11	For Information: <ul style="list-style-type: none"> 2018 AGM: Setting the Locations Notifying Adjudicators of Appeals Six Month Bencher Calendar – May to October 			Tab 11.1 Tab 11.2 Tab 11.3	Information Information Information
IN CAMERA					
12	Cost Pressures: Discipline		CEO		Discussion
13	<i>In camera</i> <ul style="list-style-type: none"> Bencher concerns Other business 		President/CEO		Discussion/ Decision



Minutes

Benchers

Date: Friday, April 06, 2018

Present: Miriam Kresivo, QC, President
Nancy Merrill, QC, 1st Vice-President
Craig Ferris, QC, 2nd Vice-President
Jeff Campbell, QC
Pinder Cheema, QC
Jennifer Chow, QC
Barbara Cromarty
Jeevyn Dhaliwal
Martin Finch, QC
Brook Greenberg
Lisa Hamilton, QC
Dean P.J. Lawton, QC
Jamie Maclaren, QC
Geoffrey McDonald
Steven McKoen
Christopher McPherson, QC
Claude Richmond
Phil Riddell
Elizabeth Rowbotham
Mark Rushton
Carolynn Ryan
Michelle Stanford
Sarah Westwood
Michael Welsh, QC
Tony Wilson, QC
Heidi Zetzsche

Unable to Attend: Jasmin Ahmad

Staff Present: Don Avison
Deborah Armour, QC
Renee Collins
Su Forbes, QC
Andrea Hilland
Jeffrey Hoskins, QC
Lindsay Jalava
Jason Kuzminski
Eva Milz
Michael Lucas
Alison Luke
Jeanette McPhee
Lesley Small
Alan Treleven
Adam Whitcombe
Vinnie Yuen

Guests:	The Honourable David Eby, QC	Attorney General and Minister responsible for ICBC, Liquor, and Gaming
	Priyan Samarakoone	Program Manager, Access Pro Bono Society of BC
	Michele Ross	Education Chair, BC Paralegal Association
	Rose Singh	Practice Manager/Paralegal, BC Paralegal Association
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Herman Van Ommen, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada
	Dom Bautista	Executive Director, Law Courts Center
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Mark Benton, QC	Executive Director, Legal Services Society
	Ron Usher	General Counsel, The Society of Notaries Public of BC
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University

CONSENT AGENDA

1. Minutes & Resolutions

a. Minutes

The minutes of the meeting held on March 2, 2018 were approved as circulated.

The *in camera* minutes of the meeting held on March 2, 2018 were approved as circulated

b. Resolutions

The following resolution was passed unanimously and by consent.

Proposed Terms of Reference for the Mental Health Task Force

BE IT RESOLVED that the Terms of Reference for the Mental Health Task Force are as follows:

Mandate

1. The Law Society of British Columbia's 2018-2020 Strategic Plan includes a focus on the mental health of the legal profession and provides that the Law Society will take steps to improve the mental health of the legal profession by:
 - (a) identifying ways to reduce the stigma of mental health issues; and
 - (b) developing an integrated mental health review concerning regulatory approaches to discipline and admissions.
2. The Mental Health Task Force has been created to make recommendations and take steps to assist the Law Society in achieving these goals (the "Goals") in order to further promote and protect the public interest.

Duties and Responsibilities

3. The Mental Health Task Force will:
 - (a) meet as required;
 - (b) prepare a mid-year and year-end report to the Benchers on its activities;
 - (c) assist and advise the Benchers in achieving the Goals, including by:

- (i) making recommendations to the Benchers with respect to the development of a “diversion” or other alternative discipline process;
 - (ii) making recommendations to the Benchers with respect to other aspects of the discipline process;
 - (iii) making recommendations to the Benchers with respect to the Law Society admissions process;
 - (iv) making recommendations to the Benchers with respect to the potential development of additional support resources for current, former and prospective Law Society members;
 - (v) making recommendations to the Benchers with respect to the potential development and promotion of education materials for Law Society members that increase awareness of mental health issues and reduce stigma;
 - (vi) making recommendations to the Benchers with respect to potential development of an education program and materials for Law Society staff, hearing panel members, and Benchers that increase awareness of mental health issues and reduce stigma;
 - (vii) making recommendations to the Benchers concerning the role that other Law Society committees could have in advancing the Goals; and
 - (viii) making recommendations to the Benchers as to the advisability, viability and scope of a potential voluntary, confidential member survey;
- (d) identify stakeholders and the role each can play in assisting the Task Force in fulfilling its mandate;
 - (e) collaborate with stakeholders, experts and other professional organizations as appropriate;
 - (f) collaborate with the Law Society Communications Department and the Executive Committee to ensure that promotion of any initiatives is included in the Law Society’s comprehensive communication plan; and
 - (g) establish a process to receive input from Law Society members at key stages of the Task Force’s work in regard to matters within the Task Force’s mandate.

Amendments to Law Society Rules re Law Firm Regulation

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

1. In Rule 1

(a) by rescinding the definitions of “complainant”, “complaint”, “conduct unbecoming a lawyer”, “firm”, and “trust funds” and substituting the following:

“complainant” means a person who has delivered a complaint about a lawyer or a law firm to the Society under Rule 3-2 [Complaints];

“complaint” means an allegation that a lawyer or a law firm has committed a discipline violation;

“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;

“law firm” or **“firm”** means a legal entity or combination of legal entities carrying on the practice of law;

“trust funds” includes funds received in trust by a lawyer or law firm acting in that capacity, including funds

(a) received from a client for services to be performed or for disbursements to be made on behalf of the client, or

(b) belonging partly to a client and partly to the lawyer or law firm if it is not practicable to split the funds;

(b) in the definition of “disciplinary record”, by rescinding paragraph (a) (iii) and substituting the following:

(iii) conduct unbecoming the profession, *and*

(c) in the definition of “disciplinary violation”, by rescinding paragraphs (b) and (e) and substituting the following:

(b) conduct unbecoming the profession;

- (e) conduct that would constitute professional misconduct, conduct unbecoming the profession or a contravention of the Act or these rules if done by a lawyer or law firm;.

2. By adding the following rules:

Law firms

Definitions and application

2-12.1 (1) In Rules 2-12.1 to 2-12.5

“deliver” means to deliver to the Executive Director;

“designated representative” means a practising lawyer designated by a law firm under Rule 2-12.5;

“registration form” means a form required under Rule 2-12.2 completed to the satisfaction of the Executive Director;

“self-assessment report” means a report required under Rule 2-12.3 in a form approved by the Executive Committee completed to the satisfaction of the Executive Director.

(2) Rules 2-12.1 to 2-12.5 do not apply to

- (a) a public body such as government or a Crown corporation,
- (b) a corporation that is not a law corporation, or
- (c) a law corporation that provides legal services solely as part of another law firm as a partner, associate or employee of the firm.

Registration

2-12.2 (1) A law firm that is engaged in the practice of law on May 1, 2018 or commences or resumes engaging in the practice of law after that date must deliver a registration form within 30 days.

(2) A law firm must inform the Executive Director immediately of a change of any information included in the registration form.

Self-assessment report

- 2-12.3** (1) From time to time, the Executive Director may require a law firm to complete and deliver a self-assessment report.
- (2) The Executive Director must notify the law firm of the requirement to deliver a self-assessment report at least 3 months before the date on which the Executive Director requires the law firm to deliver it.
- (3) All information and documents received by the Society under this rule are confidential, and no person is permitted to disclose them to any person.
- (4) Despite subrule (3), the Society may use information and documents received under this rule only for the purpose of statistical and other analysis regarding the practice of law.

Late delivery

- 2-12.4** (1) A law firm that fails to deliver a document required under Rule 2-12.2 [Registration] or 2-12.3 [Self-assessment report] by the time that it is due is deemed to have been in compliance with the rules if the law firm does the following within 60 days:
- (a) deliver the document required;
- (b) pay the late delivery fee specified in Schedule 1.
- (2) A law firm that fails to deliver a document required under Rule 2-12.2 [*Registration*] or 2-12.3 [*Self-assessment report*] beyond 60 days from the time that it is due is in breach of the rules and must immediately do the following:
- (a) deliver the document required;
- (b) pay the late delivery fee specified in Schedule 1;
- (c) pay an additional late delivery fee specified in Schedule 1.

Designated representative

- 2-12.5** (1) A law firm that is engaged in the practice of law must designate as its designated representative one or more practising lawyers engaged in the practice of law as members of the law firm.
- (2) A law firm that is engaged in the practice of law on May 1, 2018 or commences or resumes engaging in the practice of law after that date must

notify the Executive Director of the designation of designated representative as part of the registration process under Rule 2-12.2 [*Registration*].

- (3) A law firm that changes its designation of designated representative must inform the Executive Director within 7 days.
- (4) A designated representative must respond promptly and completely to any communication from the Society.
- (5) A designated representative
 - (a) is not responsible for a disciplinary violation by a law firm as a result of being a designated representative, and
 - (b) must not knowingly or recklessly provide false or inaccurate information in any form or report required under Rules 2-12.1 to 2-12.5..

3. *By rescinding Rule 3-1 (e) and substituting the following:*

- (e) a law firm..

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

- 3-2** Any person may deliver a written complaint against a lawyer or law firm to the Executive Director..

5. *In Rule 3-3 by adding the following subrule:*

- (4.1) Despite subrule (1), the Executive Director may disclose any information concerning a complaint to a designated representative of a law firm in which the lawyer who is the subject of the complaint engages in the practice of law..

6. *By rescinding Rule 3-5 (9) (b) and substituting the following:*

- (b) a representative of the law firm, if the complaint is about a law firm..

7. *In Rule 3-23 by adding the following subrule:*

- (2.1) The Executive Director may disclose information about Practice Standards Committee deliberations to a designated representative of a law firm in which the lawyer who is the subject of the deliberations engages in the practice of law..

8. *In Rule 3-51(2), by striking the phrase “in a manner unbecoming a lawyer” and substituting the phrase “in a manner unbecoming the profession”.*

9. *In each of Rules 3-53, by adding the following definition:*

“lawyer” includes a law firm,;

10. *By rescinding Rule 3-88 and substituting the following:*

3-88 In this division:

“efforts to locate” means steps that are reasonable and adequate in all the circumstances, including the amount of money involved;

“lawyer” includes a law firm.

11. *In Rule 4-1*

(a) *by rescinding subrules (1) and (2) and substituting the following:*

(1) In this part,

“conduct meeting” means a meeting that a lawyer or a law firm is required to attend under Rule 4-4 (1) (c) [*Action on complaints*];

“conduct review” means a meeting with a conduct review subcommittee that a lawyer or a law firm is required to attend under Rule 4-4 (1) (d).

(2) This part applies to a former lawyer, an articled student, a law firm, a visiting lawyer permitted to practise law under Rules 2-16 to 2-20 and a practitioner of foreign law as it does to a lawyer, with the necessary changes and so far as it is applicable., *and*

(b) *by adding the following subrule:*

(4) In this part, a law firm may act through its designated representative or another lawyer engaged in the practice of law as a member of the law firm..

12. *In Rule 4-4 (1), by rescinding paragraphs (c) and (d) and substituting the following:*

(c) require the lawyer or law firm to attend a meeting with one or more Benchers or lawyers to discuss the conduct of the lawyer,

(d) require the lawyer or law firm to appear before a Conduct Review Subcommittee, or.

13. In Rule 4-7, by striking the phrase “the lawyer or law corporation” and substituting “the lawyer or law firm”.

14. In Rule 4-8, by adding the following subrule:

- (4.1) Despite subrule (1), the Executive Director may disclose information about Discipline Committee deliberations to a designated representative of a law firm in which the lawyer who is the subject of the deliberations engages in the practice of law..

15. In Rule 4-10, by striking the phrase “to meet with a lawyer required to attend” and substitute “to meet with a lawyer or a law firm required to attend”.

16. In Rules 4-12 (1), 4-13 (6) (d) and 4-15 (3) (a), by striking “the lawyer” and substituting “the lawyer or law firm”.

17. In Rule 4-16 (b), by striking “the lawyer” and substituting “the respondent”.

18. In Rule 4-38, by rescinding subrule (7) and substituting the following:

- (7) If the Bencher presiding at a pre-hearing conference considers it appropriate, he or she may allow any person to participate in a conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this rule..

19. In Rule 4-44 (1) (b), by striking the phrase “in section 38 (5) or (6)” and substituting “in section 38 (5) to (7)”.

20. By renumbering Rule 5-1 as Rule 5-1 (1) and adding the following subrule:

- (2) In this part, a law firm may act through its designated representative or another lawyer engaged in the practice of law as a member of the law firm..

21. In Rule 5-5, by rescinding subrule (1) and substituting the following:

- (1) In this rule “respondent” includes a shareholder, director, officer or representative of a respondent law firm..

22. In Rule 9-11 (1), by rescinding paragraph (a) and substituting the following:

- (a) in the course of providing legal services the corporation does anything that, if done by a lawyer, would be professional misconduct or conduct unbecoming the profession,.

23. In Schedule 1, section L, by adding the following line items:

- 4. Late registration delivery fee (Rule 2-12.4) 200.00
- 5. Late self-assessment delivery fee (Rule 2-12.4) 500.00.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

Amendments to Rule 5-12 (Application to Vary Certain Orders) and 2-104 (Anonymous Publication - Credentials decisions)

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

- 1. ***In Rule 2-104, by striking the phrase “to the Benchers under subrule (4)” and substituting “to the review board under subrule (4)”.***

- 2. ***In Rule 5-12:***

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

- (a) the same panel or review board that made the order;; ***and***

(b) by rescinding the preamble to subrule (5) and substituting the following:

- (5) The panel, review board or Committee that hears an application under subrule (1) must.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

EXECUTIVE REPORTS

2. President’s Report

President Miriam Kresivo, QC acknowledged the traditional territories of the Coast Salish peoples, noted the attendance and welcomed the Attorney General, the Hon. David Eby, QC to the meeting. She also noted a Bencher request to move the proposed Law Firm Regulation Rules revisions from the Consent Agenda to the Discussion portion of the Agenda.

She then briefed the Benchers on her recent activities including her attendance at the Federation Council meetings, at which a focus was anti-money laundering initiatives. She noted that BC was

acknowledged as a leader in its development of compliance and educational initiatives. She also briefed Benchers on the President's round table, which provides a valuable opportunity to discuss common issues amongst law societies.

Ms. Kresivo also briefed Benchers on Mr. Avison's and her recent meetings with Peter German, QC and with the Attorney General regarding money laundering, and Law Society's anti-money laundering initiatives.

She also thanked those Benchers who have attended Welcoming Ceremonies on her behalf, reminded Bencher of the upcoming deadline for candidate nominations in the May 9 Vancouver County Bencher by-election, and provided an update regarding the anticipated appointment of 4 new Benchers, taking the opportunity to thank Appointed Bencher Claude Richmond for continuing to serve in the interim. Ms. Kresivo also discussed logistics concerning the upcoming Bencher Retreat, and briefed Benchers on her anticipated visits to Bar associations in the Okanagan, Victoria, Prince George and the Kootenays.

3. CEO's Report

CEO Don Avison provided Benchers with a number of updates. He briefed Benchers on his recent attendance with Ms. Kresivo and others at the Federation Council meetings, noting that there have been a number of changes at the CEO level at law societies in several provinces.

On the legislative front, he noted that the Law Society continues to have productive discussions with government on proposed statutory reforms, and will brief Benchers as developments occur.

On the operational front, he noted that remediation work will begin on the Law Society building in the coming weeks for waterproofing, which may cause some minor disruption.

Retreat planning is going well, with the confirmation of keynote speakers Dr. Marie Wilson, who was one of three commissioners on the historic Truth and Reconciliation Commission, and Dr. Jeanette Armstrong, Canada Research Chair in Okanagan Indigenous Knowledge and Philosophy and Executive Director of the En'owkin Centre.

Mr. Avison also updated Benchers on recent changes to the Board of the College of Dental Surgeons, noting the importance of maintaining an awareness of other self-regulated professions.

4. Briefing by the Law Society's Member of the Federation Council

Herman Van Ommen, QC briefed Benchers on the recent spring Federation Council meetings, noting that this meeting gathers all law society Presidents for a round table discussion, followed by a regular Council meeting, the focus of which included the budget, terms of reference for the NCA review and a discussion on the review of whether to continue provision of CLE programs.

The next meeting will be in June, with a continued focus on the NCA review.

DISCUSSION/DECISION

5. Anti-money Laundering Initiatives

Ms. Kresivo summarized the current Law Society initiatives aimed at combatting money laundering in BC, and encouraged Benchers to familiarize themselves with the Federation submissions to the House of Commons Committee, which were created with input from all law societies including our own. She noted that the Law Society of BC working group charged with providing that input would now be tasked with reviewing our procedures to ensure we are taking all appropriate measures to protect the public. Referring to the recent meetings with the Attorney General and Peter German, QC, she emphasized the Law Society's continuing commitment to work with government on this issue.

Mr. Avison referred briefly to the Federation's proposed revisions to the Model Code, the objective of which is to make the model rules more robust. He noted that BC has moved in advance of the Model Code revisions to enhance our own anti-money laundering provisions, and to increase education to ensure the risks are top of mind with members. He echoed Ms. Kresivo's comments that the Law Society will continue to work closely with government on areas of concern.

6. Remarks by The Honourable David Eby, QC, Attorney General and Minister responsible for ICBC, Liquor, and Gaming

Minister Eby spoke to Benchers on the government's concerns regarding money laundering in BC. He referred to the findings of Peter German, QC, who has been investigating money laundering in BC casinos, describing how some have been evading Chinese currency controls to get money out of China through investing in BC. He noted that the next phase of the investigation will focus on real estate.

He also noted that concern has been expressed regarding the exemption from reporting to Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) with respect to lawyers' trust accounts. However, he confirmed his support for the independence of lawyers and the importance of solicitor-client privilege, noting specifically his confidence in the Law Society of BC on this issue. He observed that money laundering has been occurring in casinos despite their FINTRAC reporting requirements, and in fact, the Law Society's anti-money laundering requirements may be far more robust and effective than FINTRAC's.

Given the upcoming investigations into money laundering through real estate transactions, there may be increased focus on lawyers. The Minister observed that it will be important for the Law

Society to demonstrate its leadership in this area and be able detail the procedures it has in place to ensure that lawyers are not facilitating illicit activity.

Ms. Kresivo thanked the Minister for his remarks, noting her appreciation for the good relationship between government and the Law Society. She assured the Minister that the Law Society understands the gravity of the money laundering issue and the onus on us to continue to develop, maintain and enforce processes that are appropriate, robust and effective.

7. Creating Additional Investigation Powers for Complainants' Review Committee (CRC) and Practice Standards Committee (PSC)

Mr. Avison briefed Benchers on the proposed changes to the Rules to facilitate a more efficient investigative process.

Mr. McKoen moved (seconded by Ms. Rowbotham) a resolution to approve in principle an amendment to the Rules to permit CRC to refer matters to the Executive Director for investigation and to permit the PSC to do likewise as outlined in the accompany materials, and that the Benchers refer the issue to the Act and Rules Committee to prepare the amendments accordingly for consideration by the Benchers at a future date.

The resolution was passed unanimously.

8. Amendment to Rules re Law Firm Regulations

This item was originally included on the Consent Agenda, but was placed on the regular Agenda for discussion following the expression of concern regarding the proposed wording of the revised Rules. The matter was reviewed by the Act and Rules Committee and the proposed Rules revised to reflect a designated representative's duty to respond to correspondence and messages directed by the Society to the designated representative's law firm "promptly and completely" rather than "within 2 business days".

Act and Rules Chair Pinder Cheema moved (seconded by Mr. Welsh) that Benchers approve the revised resolution in the materials. The resolution was passed unanimously.

Ms. Kresivo thanked Benchers and committee members for their diligence in review of the materials and responsiveness to concerns expressed.

9. Publication of Hearing Reports – Credentials

Ms. Kresivo reminded Benchers that this item has come back before them for their reconsideration following concerns expressed at the June 2017 Bencher meeting when this issue was first considered. The Committee has subsequently reviewed the issue and provides revised recommendations.

Chair of the Credentials Committee, Lisa Hamilton, QC briefed Benchers on the underlying issue as well as the proposed recommendations. Currently, following a credentials hearing in which an applicant successfully establishes his or her good character, repute and fitness to practise, the hearing report is published without anonymization and may contain considerable private and sensitive information; conversely, an unsuccessful applicant's hearing report may also contain private information but is anonymized.

The Committee proposed alternative options to address this anomaly, and to balance the public interest effectively and transparently while recognizing legitimate privacy concerns respecting the applicant. The option recommended by the Committee is for all hearing reports to be published anonymously, but that there be published an outcome for each decision that names the applicant, identifies whether he or she was admitted or not, and, if admitted, what conditions (if any) are attached to the admission. The outcome and the reasons will both be made public, but the reasons will be anonymized and will be published separately.

Benchers discussed the various options presented, including how each option balances privacy and openness. In response to a question, Ms. Hamilton confirmed that while this recommendation applies to publication of hearing reports only, the Committee agreed in principle on the importance of being able to share information with other law societies; it was noted that the Act and Rules Committee is currently considering a proposed Rule revision on that topic.

Following discussion, Ms. Kresivo noted Benchers will have time to consider the recommendations before the item returns to the table next meeting for decision.

REPORTS

10. Law Firm Regulation Task Force – Update

Chair Steve McKoen updated Benchers on the anticipated timeline for implementation of the pilot project and the self-assessment tool, noting that the mandatory registration phase should begin in early May. Following the completion of the registration period, the pilot project will begin which will involve a cross section of approximately 10% of firms in the province and will include all the Benchers' firms. The pilot project aims to collect information on how firms are performing in key areas of practice management and feedback on the self-assessment tool. The tool itself will be presented to the Executive Committee for its review by the end of May, and

can be rolled out to those firms selected for the pilot project in June for anticipated completion by September.

Mr. McKoen also reviewed with Benchers the Law Firm Regulation “primer” which provides quick answers to potential questions about law firm regulation, encouraging Benchers to familiarize themselves with it.

11.2018 February YTD Financial Report

Chief Financial Officer Jeanette McPhee briefed Benchers on the Year to Date Financial Report, noting the small positive variance based on timing of revenues and expenses. Revenue from membership and PLTC are expected to be on budget, and TAF revenue is expected to be lower than last year. Operating expenses are also expected to be on budget, with the caveat that an expected increase in citations will increase discipline resource costs.

The Lawyers Insurance Fund is on track, and while there has been a downturn in the equity markets, investment returns are flat given that we hold an asset mix that includes bonds, mortgage and real estate holdings.

12. Report on Outstanding Hearing & Review Decisions

Craig Ferris, QC reviewed the report with Benchers, thanking them for their prompt decision writing and reminding all to notify Ms. Robertson of the member responsible for the first draft decision.

In response to a question, Mr. Ferris confirmed he would review the protocol for notifying panel members and Benchers if and when a decision is appealed.

13. Executive Director’s Delegations

Following an in camera discussion, Benchers passed the following resolution:

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

1. *In Rule 1, by rescinding the definition of “Executive Director”;*
2. *By adopting the following rule:*

Executive Director’s delegate

- 1-44.1** (1) Any power or authority delegated to the Executive Director under these rules may be exercised by the Executive Director’s delegate.

- (2) In the absence of evidence to the contrary, an employee of the Society or a person retained by the Society is the Executive Director's delegate when acting within the scope of his or her employment or retainer to exercise a power or authority delegated to the Executive Director under these rules.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

RTC
2018-04-06

REDACTED MATERIALS

REDACTED MATERIALS



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: April 9, 2018
Subject: **Waiver of Late Trust Report / Accountants Report Filing Fees**

1. At their March meeting the Benchers approved the recommendation of the Executive Committee to change the rules with respect to late fees on trust reports and accountants' reports. The matter was referred to the Act and Rules Committee for action.
2. The Act and Rules Committee recommends that the Benchers adopt the attached suggested resolution to give effect to the policy decision made in March. Also attached are the memo from the Executive Committee recommending the change and redlined and clean versions of the rule amendments.
3. This is the recommendation that was approved:

Recommendation

1. After consideration, the Executive Committee agreed an amendment is warranted and recommends that the Benchers amend Rule 3-80(4) to vest discretion in the Executive Director to waive the fee for late filing of trust account where special circumstances exist, and leave a review of such decisions to a judicial review.
2. The Committee concluded that the recommendation best addresses the policy issue raised as it cures the problem of delay and operational inefficiency caused by the existing rule.
4. Note that, in addition to Rule 3-80(4), two other rules require amendment as a result of that change.

Attachments: memo
draft
suggested resolution



Memo

To: Benchers
From: Executive Committee
Date: February 21, 2018
Subject: Waiver of Late Trust Report / Accountants Report Filing Fees

Issue and Recommendation

1. The Professional Regulation Department seeks a rule change to Law Society Rules, Rule 3-80(4) to give the Executive Director, rather than the Discipline Committee as the rule currently contemplates, the discretion to waive a late fee under Rule 3-80(3) when special circumstances exist, particularly in connection with applications for reinstatement. The Professional Regulation Department asked the Policy and Legal Services Department to analyze the issue and help develop a recommendation for the Benchers.
2. As there is no committee that is specifically tasked with undertaking a review of regulatory policy issues prior to consideration by the Benchers as a whole, the Executive Committee was asked to give preliminary consideration to the request at issue and to consider the policy issues that the request entails. The Committee recommends that the Benchers approve the request in principle and that the matter be forwarded to the Act and Rules Committee to draft the required rule amendments.

Background

3. Former lawyers who seek reinstatement of their membership to the Law Society must make an application to the Executive Director. Staff consider these applications. Rule 2-85, however, provides that the application cannot be considered unless the former lawyer applicant has submitted all outstanding trust reports and paid all the assessments that have accrued unless the Discipline Committee has waived them.
4. A referral to the Discipline Committee has to fit within a limited window of meetings and engages additional regulatory process than does a request to the Executive Director. The proposed rule amendment therefore seeks to find a way to streamline the regulatory process.

5. Rule 3-80 was one of the rules brought into force in the early-mid 2000s on the recommendations of the Trust Account Review Task Force. It provides an administratively efficient way to provide consequences for the failure of a lawyer to deliver a trust report on time. The rule includes a discretion to waive the assessment of \$400 per month for each month or part of a month that the report is outstanding until it is delivered. Given the importance of trust accounts in a lawyer's practice and the responsibility that the Law Society has to ensure the proper use of trust accounts, the rule has been an effective way to draw to the attention to the profession the seriousness with which the Law Society approaches the requirements to deliver a trust report.
6. Some lawyers who have not filed a trust report end up not being able to renew their membership and consequently cease being members of the Law Society and cease being able to practise law. From time to time, of course, some of those individuals look to reinstate their membership, but the application cannot be considered until all outstanding assessments have been paid or waived. Currently, Rule 2-85(7)(b) requires such applications for waiver by an applicant seeking to reinstate membership have to go to the Discipline Committee even though the applicant may have not been a member for some years.

Proposal

7. The proposal is to remove the requirement that the matter application for waiver or reduction of assessment for late filing of a trust report be heard initially by the Discipline Committee in each instance, and instead be given to the Executive Director., .

Analysis

8. The *Legal Profession Act* gives the Benchers broad, rule-making power:
 - 11(1) The benchers may make rules for the governing of the society, lawyers, law firms, articulated students and applicants, and for the carrying out of this Act.
 - (2) Subsection (1) is not limited by any specific power or requirement to make rules given to the benchers by this Act.
 - (3) The rules are binding on the society, lawyer, law firms, the benchers, articulated students, applicants and persons referred to in section 16(2)(a) or 17(1)(a).

9. Furthermore:

4(2) The benchers govern and administer the affairs of the society and may take any action they consider necessary for the promotion, protection, interest and the welfare of the society.

(3) The benchers may take any action consistent with this Act by resolution

(4) Subsection (2) and (3) are not limited by any specific power or responsibility given to the benchers by this Act.

10. Moreover, s. 32 of the *Act* gives the Benchers power to establish standards of fiscal responsibility relating to the integrity and financial viability of the professional practice of a lawyer or law firm.

11. The general requirements of Rules 2-85 and 3-80 therefore fit within the scope of the Law Society's statutory authority, leaving the question as to whether it is reasonably within the authority granted by the *Act* to change the entity that can consider an application as to waive or reduce an assessment from the Discipline Committee to the Executive Director.

12. In *Green v. Law Society of Manitoba*, 2017 SCC 20 the court found:

[20] ... the standard applicable to review of the law society rule is reasonableness. A law society rule will be set aside only if the rule “is one no reasonable body informed by [the relevant] factors could have [enacted]”: *Catalyst Paper Corp. v North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 24. This means “that the substance of [law society rules] must conform to the rationale of the statutory regime set up by the legislature”: *Catalyst paper*, at para. 25; see also *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810, at para. 25.

13. The Court went on to state at para. 24:

The Law Society must therefore be afforded considerable latitude in making rules based on its interpretation of the “public interest” in the context of its enabling statute: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559, at paras. 50 and 87.

14. And added, at para. 25, that:

This Court has previously recognized that self-governing professional bodies have particular expertise when it comes to deciding on the policies

and procedures that govern the practice of their professions: *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869, at p. 887.

15. Some rules vest discretion in the Executive Director to make a decision (for example: 2-8(3)(a), 2-14(3), 2-34(2)(b), etc.). Some rules vest discretion in committees to make a decision (for example: 2-29(4), 3-80(4), etc.). Some rules are a hybrid, vesting discretion in the Executive Director with a right for review of the Executive Director's Decision by a committee (e.g. 2-16(4) and (5)).
16. For matters relating to administrative penalties that do not require an analysis of whether professional misconduct has taken place, or do not require a hearing or other quasi-judicial process, it can be argued quite rationally that it is reasonable to vest in the Executive Director the discretion to extend time for compliance or to waive a late fee in cases where special circumstances exist. It is a decision to review the consequences of the imposition of an administrative function, not to review a decision of a committee. Having in effect created a process that automatically imposes a consequence on a lawyer's failure to do something, it is not, the argument would go, unreasonable to permit the Executive Director to determine whether to waive or reduce the consequence. It would also be more administratively expedient to do so, as the Executive Director can consider a request at any time, whereas requests to a committee would generally require a meeting.
17. Because the Law Society has systems in place that vest a broad discretion with the Executive Director, it would be presumptively reasonable to vest with the Executive Director the authority to waive the late fee where special circumstances exist. To the extent the Discipline Committee currently relies on guidance from staff regarding whether it is appropriate to waive the late fee, it suggests the factors for determining when special circumstances exist are well understood by the Executive Director. If a lawyer was of the opinion the Executive Director did not exercise his or her authority properly under the rule, judicial review of the decision would be possible.
18. The Committee gave some consideration to whether a review of the Executive Director's decision by the Discipline Committee should be available, and decided against making such a recommendation. While setting up the opportunity for review by a committee of a decision by staff happens elsewhere in the rules, most if not all of those decisions are more substantive¹ than a decision to waive a fee imposed by the rules. Administrative fairness may not require what would essentially be two requests for an exercise of discretion to waive a fee imposed by the rules. While a sub-rule that allows the lawyer to seek a review of a decision by the Executive Director to the Discipline Committee (at

¹ For example, the Credentials Committee can, if asked, review many exercises of discretion by staff in relation to matters under Part 2 of the Rules such as refusing to issue an interjurisdictional practice permit or for a review of a failed standing in PLTC.

which point the Discipline Committee would be able to either confirm the decision of the Executive Director, or replace/modify it) could be considered, it would likely work against the intent of the amendment as it may reasonably be expected to be used in cases where the Executive Director declines to waive or reduce the fee as requested.

Recommendation

19. After consideration, the Executive Committee agreed an amendment is warranted and recommends that the Benchers amend Rule 3-80(4) to vest discretion in the Executive Director to waive the fee for late filing of trust account where special circumstances exist, and leave a review of such decisions to a judicial review.
20. The Committee concluded that the recommendation best addresses the policy issue raised as it cures the problem of delay and operational inefficiency caused by the existing rule.

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Credentials Committee

Reinstatement of former lawyer

- 2-85** (7) The Executive Director must not consider an application for reinstatement of a former lawyer unless the former lawyer has
- (a) submitted all trust reports required under Rules 3-79 [*Trust report*] and 3-84 (1) [*Former lawyers*],
 - (b) paid all assessments accrued under Rule 3-80 [*Late filing of trust report*] before and after the former lawyer ceased to be a member of the Society unless the ~~Discipline Committee~~ Executive Director waives all of orders the assessments ~~need not be paid~~ under Rule 3-80 (3) and any conditions have been fulfilled, and
 - (c) paid all costs of trust reports ordered under Rule 3-81 (6) [*Failure to file trust report*].

PART 3 – PROTECTION OF THE PUBLIC

Division 7 – Trust Accounts and Other Client Property

Late filing of trust report

- 3-80** (1) A lawyer who does not deliver a trust report as required under Rule 3-79 [*Trust report*] or 3-82 (5) [*Accountant's report*] is in breach of these rules.
- (2) A lawyer who fails to deliver a trust report by the date required under Rule 3-79 [*Trust report*] or 3-82 (5) [*Accountant's report*] is deemed to have been in compliance with the rules during the period of time that the lawyer was late in delivering the report if the lawyer delivers the following to the Executive Director within 30 days of the due date:
- (a) the required report;
 - (b) the late fee specified in Schedule 1.

LAW SOCIETY RULES

- (3) A lawyer who does not deliver a trust report for 30 days after it is required under Rule 3-79 [*Trust report*] or 3-82 (5) [*Accountant's report*] is liable to an assessment of \$400 per month or part of a month until the report is delivered.
- (4) When there are special circumstances, the ~~Discipline Committee~~ Executive Director may, on application and in its ~~his or her~~ discretion, waive payment of all or part of an assessment made under this rule unconditionally or on any conditions that the Executive Director considers appropriate.

Former lawyers

- 3-84** (1) A former lawyer must deliver a trust report as required under Rule 3-79 [*Trust report*] for any period during which the former lawyer was a member of the Society.
- (2) If a former lawyer does not deliver a trust report as required under subrule (1), an assessment under Rule 3-80 [*Late filing of trust report*] applies.

PART 5 – HEARINGS AND APPEALS

Recovery of money owed to the Society

- 5-14** (1) A lawyer or former lawyer who is liable to pay the costs of an audit or investigation ~~money as follows~~ must pay to the Society the full amount owing by the date set by the Discipline Committee.:

~~(a) costs of an audit or investigation;~~

- (1.1b) A lawyer who is liable to pay an assessment under Rule 3-80 [*Late filing of trust report*] must pay to the Society the full amount owing by the date specified in that Rule or as set or extended by the Executive Director.

- (2) A lawyer who has not paid the full amount owing under subrule (1) or (1.1) by the date set or extended ~~by the Discipline Committee~~ is in breach of these Rules and, if any part of the amount owing remains unpaid by December 31 following the making of the order, the Executive Director must not issue a practising certificate to the lawyer unless the Benchers order otherwise.

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WAIVER OF LATE FEE

SUGGESTED RESOLUTION:

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

1. *By rescinding Rule 2-85 (7) (b) and substituting the following:*
 - (b) paid all assessments accrued under Rule 3-80 [*Late filing of trust report*] before and after the former lawyer ceased to be a member of the Society unless the Executive Director waives all of the assessments under Rule 3-80 (3) and any conditions have been fulfilled, and

2. *By rescinding Rule 3-80 (4) and substituting the following:*
 - (4) When there are special circumstances, the Executive Director may, on application and in his or her discretion, waive payment of all or part of an assessment made under this rule unconditionally or on any conditions that the Executive Director considers appropriate.

3. *By rescinding Rule 5-14 and substituting the following:*

Recovery of money owed to the Society

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REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



CEO's Report to the Benchers

May 2018

Prepared for: Benchers

Prepared by: Donald J. Avison

Bencher By-Election

With the appointment of Madam Justice Sharon Matthews to the Supreme Court of British Columbia, a by-election process was initiated to fill the vacancy in Vancouver County. There are eight candidates taking part in the election and an orientation session will be provided to the successful candidate prior to the Law Society of BC retreat and Bencher meetings scheduled for May 31 to June 2, 2018 in Osoyoos.

Electronic voting initially opened on April 24 and was set to close on May 8. However; as a result of technical difficulties with the website and a problem with the ballot, the voting platform was taken off-line at 6:00pm on April 24. The website issues were addressed, the issue with the ballot was remedied and new balloting opened at 10:00am on Thursday, April 26 and will now close at 5:00pm on Monday, May 14.

Making sure our systems run properly and effectively is my responsibility. I apologize for the inconvenience that was caused by the interruption in the voting process.

Benchers will be briefed on the challenges that resulted in the decision to suspend voting.

New Bencher Orientation

Four new appointed Benchers were designated by Order-in Council last week. They are:

- Roland Krueger
- Claire Marshall
- Guangbin Yan
- Anita Dalakoti

An orientation session for the new Benchers will take place on May 3, 2018. This will include general background on the Law Society, committee processes, Bencher meetings and organizational structure. The new Benchers will also be briefed on the Society's Strategic Plan and the status of work on the 2018 priorities.

The 2018 Law Society Retreat – Spirit Ridge

Planning is well underway for this year's retreat which will focus on aspects of the Calls to Action from the Truth and Reconciliation Commission.

There will be three elements involved in this year's session. Participants will hear from Dr. Marie Wilson, one of the three TRC Commissioners. Dr. Wilson is currently a consultant in the field of reconciliation and is a member of the Board of Directors of the CBC/Radio Canada. She holds five honorary doctorates and is a member of both the Order of the Northwest Territories and the Order of Canada.

Marie spent more than 20 years with CBC North as an award-winning journalist and broadcaster. She developed a northern television news service that operated in French, English and in eight Indigenous languages. Marie also spent time in South Africa where she worked with the South African Broadcasting Corporation in preparation for that country's first, post-apartheid coverage of South Africa's Truth and Reconciliation Commission.

Those attending the retreat will also hear from Dr. Jeanette Armstrong, an award winning writer, activist, poet, educator and member of the Okanagan First Nation. Jeanette has been an active member of the Okanagan Nation Alliance and the En'owkin Centre. She is a professor of Indigenous Studies at UBC – Okanagan and, in 2013, was appointed as a Canada Research Chair in Indigenous Knowledge and Philosophy. She is deeply committed to cultural revitalization and to addressing misconceptions regarding Indigenous peoples.

The program will conclude with a Blanket Exercise developed to provide participants with insights regarding Indigenous history, culture, rights, the experience of colonization and the adverse impacts resulting from the legacy of residential schools. We are grateful that Ardith Walkem QC, a member of our Truth and Reconciliation Advisory Committee, will lead this session.

Justice Summit 2018

Pursuant to the *Justice Reform and Transparency Act*, a Justice Summit must be convened at least once per year to facilitate a frank conversation amongst justice system leaders on how the system can be reformed and improved. This year the Summit will focus on justice and Indigenous peoples. As the event overlaps with the Law Society retreat, we have taken steps to make certain that we will also have senior Law Society representation at the Summit.

I am also informed that a second session of the Justice Summit will take place in November.

Anti-Money Laundering Initiatives

The Attorney General of BC spoke to Benchers at the April 6 meeting regarding this area of concern, and about the work that Peter German QC was asked to undertake regarding the link between money laundering and casinos.

Mr. German will be attending the May 4 meeting to provide an overview of his work and his findings.

I will also provide information to Benchers regarding work that the Law Society continues to do in this area.

Complaint Investigations

Benchers will also be briefed regarding progress made with respect to the completion of investigation files and the corresponding impact on matters likely to result in hearings.

LSBC Online Programs

Over the last year, our online Practice Management Course was licensed for adaptation by the Law Societies of New Brunswick, Alberta and Manitoba. This week, we received word that the Law Society of Saskatchewan has also decided to purchase the Practice Management Course. You will recall that representatives of Alberta and Manitoba have agreed to collaborate with us to improve the course content and testing. Saskatchewan has also asked to participate in this collaborative process. This is great news, which will allow us to substantially enhance our Practice Management Course beyond with limited resources.

Appointment of Adam Whitcombe as Deputy Executive Director and Deputy Chief Executive Officer

Mr. Whitcombe's appointment was announced on April 26. The new designation more appropriately reflects his role within the organization. Adam is deeply committed to the work of the Law Society and I will be looking to him to make certain we provide consistent high quality materials to the Benchers and to committees.

I look forward to discussing these matters with you at the meeting next week.

Donald J. Avison
Executive Director/Chief Executive Officer



Memo

To: The Benchers
From: Credentials Committee
Date: March 14, 2018
Subject: Publication of Credentials Hearing Decisions

Introduction

1. At the Benchers meeting on June 8, 2017, the Benchers considered a proposal by the Credentials Committee to revise the current policy on the publication of Credentials hearing decisions. That proposal was the result of concerns discussed at the Committee level regarding the indefinite publication of personal information about applicants in Credentials decisions. The Committee considered that the significant privacy concerns at issue supported a reconsideration of the publication policy. In a memorandum submitted to the Benchers at the June meeting, the Committee proposed the redaction of an applicant's identity after a certain period of time following publication.
2. The publication policy for Credentials decisions is found in Rule 2-104 of the Law Society Rules, which requires the publication of the names of successful applicants unless the applicant can show the publication will cause "grievous harm" to the applicant or another identified individual. If an applicant is approved subject to conditions, there is no ability to apply for an order that he or she not be identified in the published decision. If an applicant is unsuccessful in seeking admission to the profession, the Rule requires anonymizing his or her name unless they consent to publication.
3. Since the early 1990s, Credentials hearing decisions have been made public and published on the Law Society website. The current rules are based on a review by the Benchers in the early 2000s. At that time, after considering recommendations from the Disclosure and Privacy Task Force, the Benchers resolved that unsuccessful applicants' names should be anonymized because it served little regulatory purpose to publish their names if they were not members of the Law Society. The Benchers considered that the names of successful applicants should be published unless the applicant could show "grievous harm" would result from publication. However, after a period of six months, the Benchers considered that the information in published decisions was less relevant to

the protection of the public interest. The Benchers resolved that published decisions would be moved from the “current” section of the Law Society website to an “archived” section after six months.

4. In 2014, the Benchers rescinded the rule that required archiving decisions because Internet technology had rendered the archiving function less effective. As a result, historical decisions are now as accessible as current decisions.
5. The publication policy for Credentials decisions engages important and competing interests. There is a strong public interest in openness and transparency in Law Society decisions. The public has a right to know how the Law Society reaches its decisions on admitting applicants whose past conduct has raised questions about their character and fitness to practice law. Public scrutiny protects the integrity of the process and promotes confidence in the legal profession and the Law Society’s regulatory function. On the other hand, Credentials hearing decisions often disclose intensely private information regarding the applicant’s personal history. The indefinite publication of highly personal information in Credentials hearing decisions may cause significant harm to applicants.
6. At the June Benchers meeting, the Committee recommended the following changes to the publication policy:
 - (a) Where applicants are admitted without conditions, anonymize their names in the published decision after a period of six months;
 - (b) Where applicants are admitted with conditions, anonymize their names six months after the expiry of the conditions;
 - (c) Immediately anonymize the names of applicants who meet the grievous harm test;
 - (d) Publish the name of unsuccessful applicants, unless they can meet the grievous harm test; and
 - (e) Anonymize past decisions of unsuccessful applications, if subsequently they are admitted.
7. When the proposal was discussed at the June meeting, some Benchers expressed their view that Applicants should not be identified at all due to the private information discussed in Credentials decisions. Some Benchers were concerned that it would be impossible to anonymize an applicant’s identify after it had been published on the Internet. Another suggestion was a presumption of anonymous publication, subject to an assessment by the panel. Others discussed the importance of transparency in the publication of Credential decisions. Some Benchers expressed their view that unsuccessful applicants’ names should not be published, or at least that they should be treated in the same manner as successful applicants.
8. After some discussion, it was resolved that the Credentials Committee would consider the comments shared at the meeting and report back to the Benchers.

Discussion

9. The policy regarding publication of Credentials decisions involves profound issues regarding public confidence in the Law Society's regulatory function and the privacy concerns of applicants and others whose deeply personal information is discussed in Credentials decisions. It is hoped that this memorandum will inform a robust discussion amongst the Benchers regarding the proper re-formulation of the publication policy for Credentials decisions.

10. It is a foundational principle that courts and tribunals are expected to be open and information is expected to be available to the public. Openness is necessary to maintain the independence and impartiality of the Law Society. It is integral to public confidence in the Law Society and the profession. However, in some circumstances the privacy interests of an individual may require that certain information be redacted from published decisions.

The Different Categories of Applicants in Credentials Hearings

11. It is important to note that there are different categories of applicants who are subject to Credentials hearings, and that there are different considerations at issue for the various categories of applicants. In this memorandum we have set out what we believe to be the relevant factors for the different categories of applicants: successful applicants; successful applicants subject to conditions; unsuccessful applicants; transfers from other jurisdictions; and reinstatement of disbarred lawyers.

(a) Successful Applicants

12. Under Rule 2-104, successful applicants who are admitted on conditions are named in the decision. In reviewing Credentials decisions from the last decade, the decisions sometimes discuss highly personal information, such as a history of substance abuse, psychiatric issues, details of family violence, and rehabilitation efforts. In rare instances, these decisions were redacted to protect the privacy of the applicant or third parties. However, most decisions contained unredacted details of the events that placed the character of the applicant under question.

13. It is apparent from a review of past decisions that it is often necessary for the hearing panel to discuss personal details of applicants in describing how they may have addressed their past conduct in establishing that they should be admitted to the profession. It is questionable, however, whether the public interest requires a general rule that successful applicants should always be named. The publication of the decision, including the critical

reasoning for admitting the applicant, is arguably more important to transparency than the identity of the applicant.

14. If an applicant is admitted, it is because they have met the burden of proof to establish their good character, repute, and fitness to practice law. Once admitted, the applicant is on the same legal standing as lawyers who have not undergone a hearing. The publication of the applicant's intimate personal information for an indefinite period of time may affect their reputation throughout their career. In some circumstances it may cause significant prejudice.
15. However, some may consider that there is a public interest in identifying successful applicants as the public has an interest in knowing the identity of lawyers whose past conduct has required a Credentials hearing. The issues discussed in the Credentials hearing might affect a person's decision to retain the lawyer. In fact, it is possible that in some circumstances (such as where there is notoriety or media interest surrounding a hearing), there would be controversy generated by the anonymization of the applicant.
16. It should also be noted that Credential hearings are open to the public. Any member of the public or media can attend a hearing and publicize the hearing. The proposal to anonymize the names of applicants does not amount to a publication ban. The public interest in open proceedings and transparency is arguably not diminished if it is possible for the public to ascertain the identity of the applicant in cases where there is a public interest in doing so.
17. Further, not naming the applicant would arguably be consistent with the spirit of the former policy of archiving older decisions. In formulating the former policy, the Benchers of the day considered that after a period of time the information in the decision may be less relevant to the protection of the public. They resolved that the decision would be "archived" so that it was not easily accessible. As discussed above, evolution in Internet technology has rendered the previous policy ineffective. Accordingly, the Benchers may consider that revision to the publication policy would be consistent with the spirit of the former policy, which involved making dated decisions less accessible.

(b) Successful Applicants who are Subject to Conditions

18. Under Rule 2-104(3)(a), successful applicants who are admitted on conditions are named in the decision. These persons do not have the right to seek an order to have portions of the decision redacted, even on the ground that publication would cause "grievous harm".
19. A review of Credential decisions reveals that applicants who were admitted to the profession subject to conditions often had a history of personal challenges such as substance abuse, criminal charges, and mental illness. In many cases, these issues resulted

in the hearing panel ordering conditions. Consequently, the published decisions often disclose personal information for which there is a significant privacy interest.

20. For applicants who are admitted subject to conditions, however, there is a clear public interest in knowing that a lawyer is subject to conditions. Clients have an interest in knowing that their lawyer is subject to conditions on their practice. This weighs in favour of identifying applicants in Credentials hearing decisions who are admitted subject to conditions, at least for the time period the conditions are in force.

(c) Unsuccessful Applicants

21. Under Rule 2-104(2) a publication must **not** identify a rejected applicant unless the applicant consents. The rationale for this policy is that there is little regulatory purpose in publicizing unsuccessful applicants because they are not members of the Law Society.
22. A review of Credential decisions reveals that the decisions include personal information regarding past criminal charges, domestic violence, dishonesty, and substance abuse. In addition to anonymizing the names of the applicants, other aspects of the decisions were redacted to protect the identity of unsuccessful applicants. As with successful applicants, the matters discussed in Credentials decisions are often intensely personal.
23. Some Benchers have expressed the concern that a policy of naming unsuccessful applicants may discourage certain societal groups from pursuing a career in the legal profession.
24. There has been a concern that by not naming applicants who have been rejected, those persons may conceal the Credentials decision in seeking admission to other law societies or engaging in the unauthorized practice of law. This has occurred in some cases in the past, which clearly raises concerns about protection of the public.
25. The Law Society has the discretion to disclose the Credential decisions to the Federation of Law Societies of Canada and to other law societies. It has been noted that there is currently a lack of communication on this issue between Law Societies. It is our view, however, that the problem of rejected applicants attempting to conceal the decision should be remedied through improved communications with other Law Societies rather than through the publication policy.

(d) Reinstated Lawyers and Transfer Applicants from Other Jurisdictions

26. Under Rule 2-103(2), disbarred lawyers who are subsequently reinstated must be named in the publication.

27. Credential decisions involving reinstated lawyers include extensive details of the circumstances that led to the disbarment. While these circumstances generally involved a breach of professional rules, the decisions also included personal information such as substance abuse and mental illness.
28. There is, however, a strong public interest in knowing the identity of a formerly disbarred lawyer who has been reinstated. The disbarment of a lawyer is usually widely reported in the media. Indeed, the Law Society has often publicized the disbarment of a lawyer pursuant to its mandate to protect the public. It is not difficult to imagine the controversy that would arise from a policy withholding the identity of a reinstated lawyer who had been previously disbarred. It would be dramatically inconsistent for the Law Society to publicize a disbarment and then anonymize the identity of the lawyer when reinstated.
29. It is our view that the public interest in knowing the identity of a reinstated lawyer outweighs his or her privacy interests, particularly as the details of the circumstances leading to disbarment have likely already been published in a disciplinary decision. The public has a strong interest in knowing why the lawyer was disbarred and on what basis he or she has regained the privilege to practice law.
30. With respect to applicants from other jurisdictions, Credentials hearings have been ordered where there is a question regarding the fitness or character of the transferring lawyer.
31. It is our view that there is a public interest in naming successful applicants who have transferred from another jurisdiction. Given that some aspect of their past conduct (usually professional conduct) has brought their character or fitness under review, it is in the public interest to know the name of the lawyer and on what basis the hearing panel has decided to accept that lawyer's admission in this province.

Review of the Practices of Other Law Societies

32. A review of the related rules from other law societies, including the Law Society of Ontario, the Law Society of Alberta, and the Law Society of Manitoba are outlined below:

(a) Ontario

Rule 18 – Access to Hearing (*Law Society Hearing Division, Rules of Practice and Procedure*) provides that all hearings are open to the public, unless the hearing pertains to “intimate financial or personal matters” that should not be disclosed to preserve the interests of any person affected or the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

(b) Alberta

Rule 78(2) – Public or Private Proceedings (*Legal Professional Act*) provides that the Hearing Committee or the Benchers, on their own motion or on the application of the member concerned, may direct all or part of the hearing to be private. However, even if the meeting is private, the Society is not precluded from disclosing or publishing the name of a member whose conduct is the subject of a hearing.

(c) Manitoba

Section 78 – Exclusion of Members of Public (*Legal Profession Act*) provides that a committee, panel or court may make an order excluding members of the public from a hearing if it thinks that “the public interest in the disclosure of other information is outweighed by the interest of the public or any person in preventing the information from being disclosed.”

33. In general, these rules pertain to proceedings, which are open to the public unless there is an overarching reason to prevent this practice (eg. intimate financial or personal matters). Further, Manitoba has implemented a policy, as of 2016, to publish the names of applicants who review a decision on admission by way of a hearing panel of the Admissions and Education Committee. These previously had been anonymized.

Options

34. There are a number of possible options in reconsidering the publication policy for Credentials decisions:

Option One: Maintain the *Status Quo*.

35. While the current policy serves the interests of openness and transparency, it is our view that the indefinite publication of highly personal information (in some cases long after there is a public interest in doing so) warrants a change to the publication policy. A lawyer’s reputation and career may be indefinitely marred by the publication of information about events that occurred in the distant past, often before they were called to the Bar. It is our view that the public interest does not require the indefinite publication of this information.

Option Two: Anonymize every applicant, successful or unsuccessful, except those who are subject to conditions or who have been reinstated. For those applicants who are subject to conditions, anonymize the decisions once the lawyer is no longer subject to conditions.

36. Under this option, there would be general anonymization of applicants' identities based on the private nature of the information discussed in Credentials hearings. Successful and unsuccessful applicants would be treated the same, although lawyers subject to conditions would still be named pursuant to the public right to know that a particular lawyer has conditions placed on his or her practice.
37. Applicants who have been reinstated following disbarment would be named, unless the applicant meets the grievous harm test. The rationale for treating these applicants differently is that their personal information has likely already been published in the disciplinary decision that led to the disbarment. There is also a compelling public interest in knowing the identity of a disbarred lawyer returning to practice.
38. While the anonymization of all applicants (except those subject to conditions and reinstatements) would effectively protect the privacy interests of applicants, this option raises legitimate concerns about the openness and transparency of Law Society proceedings. Such a policy may attract controversy. Arguably, this concern may be tempered by the fact that the hearings are open to the public. For cases where there is a public interest in knowing the identity of a particular applicant, this information would be discoverable.

Option Three - Name all successful applicants, but modify the test for redacting personal information (including identity) to a less onerous test.

39. As noted above, the "grievous harm" test sets a high threshold that is difficult to meet in practice. A review of past Credentials decisions illustrates that there are very few examples of applicants who have met this test to avoid publication of their personal identity and/or personal information.
40. Rather than adopt a general policy anonymizing all applicants regardless of the circumstances, the Rules could maintain the policy of naming successful applicants, but revise the test for redaction to make it more accessible. A modified test could be framed as:
- whether the public interest in the disclosure of the information is outweighed by the interest of the Applicant or any other person in preventing the information from being disclosed.*
41. This is a contextual approach involving a fact-specific inquiry, allowing the hearing panel to consider whether the privacy concerns at issue should result in the anonymization of the applicant or the redaction of personal information. The legal test of whether the privacy interests outweigh the interests in disclosure provides a more accessible remedy than the "grievous harm" test. This approach allows for the publication of an applicant's

identity where there are no concerns with respect to personal information, but redaction in those cases where there are privacy concerns

42. This option maintains a presumption of openness in Law Society proceedings, but allows the hearing panel to craft an appropriate order to redact a decision to protect privacy interests.

Option 4: Publication of “Outcome of Hearing” identifying outcome at a hearing; Reasons would be published anonymously.

45. Under this option, all hearing reports would be published anonymously. This would ensure that the precedential value for why or why not an applicant was or was not admitted would be available, and there would be transparency of all decisions for the purposes of the public interest.
46. Recognizing that the hearing itself is public, however, and that the public may be interested in knowing whether or not a particular applicant was admitted, an “Outcome of Hearing” (akin, perhaps, to the “order” issued by a court that is separate from its reasons) would be issued by the Panel that named the applicant, named whether he or she had been admitted, and (if applicable), would set out the conditions on which the applicant was admitted (although medical conditions would continue to be redacted). This “Outcome of Hearing” would be posted publicly on the Law Society’s website.
47. The result of this approach would be that the *outcome* of the hearing would be published and would therefore be available to interested parties (including other regulatory bodies), but none of the personal particulars of the matter would be linked to the applicant’s name. While the reasons would be published, they would be published anonymously so the information contained in the reasons would not be immediately linked to the applicant. Some process may have to be identified recognizing that if the Reasons were published contemporaneously with the Outcome, the two could be linked too easily. This is not the Committee’s intention.
48. As has been the case since Credentials decisions were first made public, if a particular person asked for the reasons relating to a particular order, they would be available by contacting the Law Society. However, the reasons would still not name the Applicant. They would still bear a style of cause of “Re: Applicant (No. X)”.
49. It is, of course, possible that an industrious member of the public would be able to link the Reasons with the Outcome and post the reasons on the internet and name the applicant. It was also possible, in the time before internet search engines were available, that a member of the public would publish Hearing Panel decisions in another publication that could be widely circulated. Short of prohibiting such conduct in the rules (which might be criticized as a limitation on transparency), the Law Society has little control over how third parties utilize material we provide.

50. The advantage of the method outlined above is that the Law Society will have done what it can to be transparent about outcome while reasonably protecting an applicant from the public connecting, through a simple internet search, an applicant with sensitive personal information. The details the public needs in order to be able to find easily (whether the applicant was rejected, or was admitted, and if admitted on what conditions), will be easily obtained.

Recommendation

51. After a considerable discussion of the issues and various options, the committee recommends that the Benchers approve in principle Option 4 above.
52. The Committee concludes that Option 4 presents the best balance available to the Law Society to ensure that the public interest is protected while at the same time preserving legitimate privacy interests of both successful and unsuccessful applicants.
53. The public needs to know the *outcome* of a public hearing. If “form of practice” conditions are applied to the successful applicant, the public needs to know what those are. If an applicant has been rejected, it may be in the public interest for other bodies to know that fact.
54. However, the *reasons* for the outcome would not name the applicant. The public is still protected, because the reasons will be easily accessible through the Law Society website, and the public can assess how the Law Society reached its decision. The rationale for the outcome will still be available to counsel for future applicants for precedent value. But the often personal information contained in the Reasons will not name the Applicant.
55. Reasons have, since 1999, been available for Credentials hearings. If a member of the public called the Law Society to ask for a copy of the reasons, they would be provided. Option 4 would keep this practice alive. However, the style of cause would not name the applicant. Admittedly, someone could re-publish the reasons on the internet with the applicant’s name attached, but the Law Society can never, in a public process, fully prevent that from occurring.
56. While this option also does not absolutely prevent an industrious member of the public from being able to figure out which reasons attach to which applicant, it at least prevents Reasons naming an applicant from “popping up” on a Google search should someone be searching a particular person out of idle curiosity. What will, instead, “pop up” is the outcome of the hearing and that, in most cases, is what people are really interested in.

57. The Committee therefore recommends Option 4 be approved in principle and that the matter be referred to the Act and Rules Committee to draft rules to reflect the policy direction.



Memo

To: Benchers
From: Law Firm Regulation Task Force and the Policy and Legal Services Department
Date: April 17, 2018
Subject: **Update on the Law Firm Regulation Pilot Project**

Purpose

1. The purpose of this memo is to update the Benchers on the decisions made by the Law Firm Regulation Task Force regarding the design of the law firm regulation pilot project, in which a self-assessment tool will be rolled out to a sub-set of BC's law firms.
2. The pilot has been designed to ensure the Law Society obtains the best possible information to answer three key questions:
 1. How are BC's law firms performing in relation to the areas covered by the eight Professional Infrastructure Elements?
 2. In which of these areas do law firms need additional support, including educational resources?
 3. How user-friendly is the self-assessment tool?

Background

3. In December 2017, the Benchers approved the Second Interim Report of the Law Firm Regulation Task Force ("the Report").¹ The majority of the Report's recommendations were adopted, with several modifications, including direction from the Benchers that rather than requiring *all* firms to complete the self-assessment tool, law firm regulation should begin with a pilot project involving a smaller sub-set of firms.

¹ See the Law Firm Regulation Task Force Second Interim Report (December 8, 2017) online at: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/LawFirmRegulationSecondInterimReport2017.pdf>

4. The Benchers having approved, as a policy initiative, the pilot project in principle at the December 2017, the task of developing the operational features of the project was left to staff as overseen by the Task Force.
5. Having completed a comprehensive review of the pilot's design features as developed by staff,² the Task Force aims to provide the Benchers with a summary of the finalized pilot project design as outlined below, including:
 - objectives of the pilot project
 - size of the pilot project
 - selection of pilot project participants
 - requirements of participation
 - benefits associated with participation
6. There was some urgency to finalize the design of the pilot project given that there must be adequate time to communicate relevant details to the profession and to complete the necessary work in advance of the target launch date of mid-2018.

Discussion

Objectives of the pilot project

7. The pilot project does not represent a fundamental shift in the approach the Task Force initially envisaged for law firm regulation. Rather, it largely reflects a change in scale: from imposing a profession-wide requirement to complete the self-assessment to an initial introduction of the tool to a smaller sub-set of the profession.
8. Accordingly, the goals of the pilot project closely align with those of the “first round” of the self-assessment described in Recommendation 15 of the Report.³ These objectives are:

² Staff and the Task Force have explored each of the pilot project design features in detail. This work has included cross-departmental meetings to consider the operational impacts of the pilot on the Law Society, meetings with staff in Nova Scotia, Alberta, Saskatchewan and Manitoba to discuss their successes and challenges in piloting their self-assessment tools and reviewing pilot project reports and statistics from other provinces, and a Task Force meeting.

³ 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.

- a. to evaluate the extent to which firms across BC have policies and processes in place in relation to the eight Professional Infrastructure Elements through the completion of the self-assessment tool;
 - b. to provide the Law Society with information (upon receiving the self-assessment) as to where firms have the greatest need for additional educational resources, which will assist the Law Society in improving practice support;
 - c. to test and evaluate the content of the self-assessment tool, the processes for administering the tool, and the time and effort required to complete the self-assessment by asking users to report on its functionality and clarity; and
 - d. to enable the Law Society to assess the staff and financial resources required to implement an impactful self-assessment process.
9. A long term study would be necessary to determine whether the self-assessment has the capability to improve the quality of the delivery of legal services — as indicated, for example, by the reduction of complaints against a firm or its lawyers. Given the lengthy time frames required for such a study (e.g. benchmarking followed by ongoing evaluation of a firm’s performance), evaluating the self-assessment tool’s ability to effect attitudinal or behavioural change is *not* an objective of the pilot project.
10. Upon the completion of the pilot project, the Task Force will report out to the Benchers on how each of these objectives has been met and make recommendations regarding the design and implementation of future phases of law firm regulation, if any.

Design Feature 1: The objectives of the pilot project are:

- a. to evaluate the extent to which firms across BC have policies and processes in place in relation to the eight Professional Infrastructure Elements through the completion of the self-assessment tool;
- b. to provide the Law Society with information (upon receiving the self-assessment) as to where firms have the greatest need for additional educational resources, which will assist the Law Society in improving practice support;
- c. to test and evaluate the content of the self-assessment tool, the processes for administering the tool, and the time and effort required to complete the self-assessment by asking users to report on its functionality and clarity; and

- d. to enable the Law Society to assess the staff and financial resources required to implement an impactful self-assessment process.

Size of the pilot project

11. The pilot project provides the Law Society with a critical opportunity to gain an understanding of how firms in BC are currently performing in relation to the eight Professional Infrastructure Elements, and where additional resources are necessary.
12. To obtain representative feedback from the profession, the pilot sample size must be sufficiently large. The Task Force has endorsed an approach in which a maximum of 10% of BC's firms — up to 375 participants — will be included in the pilot project.⁴ Staff will retain the discretion to determine the exact number of participants that are necessary within the limit defined by the Task Force to ensure the sample size is statistically relevant.
13. This approach will result in BC's pilot project being larger than those of other Canadian law societies.⁵ This is necessary, however, to ensure that the pilot project will enable the Law Society to draw meaningful conclusions about how the profession might respond to, and benefit from law firm regulation.

Design Feature 2: In order to obtain meaningful, representative and statistically significant results, the pilot project will include up to 10% of BC's firms (up to 375 participants). Staff will retain the discretion to determine the exact number of participants that are necessary within the limit defined by the Task Force to ensure the sample size is statistically relevant.

Selection of pilot project participants

14. Pilot project participants will be randomly selected by applying an algorithm to the list of firms created by the firm registration process. The algorithm will take into account two

⁴ Participants will not include firms that are currently excluded from law firm regulation including in-house counsel, government lawyers and non-profit and pro bono legal organizations.

⁵ For example, each of the three Prairie provinces had only a small number of firms (20) complete their pilot projects. Notably, the Nova Scotia Barristers' Society also attempted to include 10% of its firms in their pilot project, although the resulting sample size was much smaller than that proposed for BC in absolute terms (less than 50 firms).

key variables to ensure the pilot project reflects the diverse nature of BC’s firms: firm size and location.⁶

- a. Size of firm - ensure adequate representation of different sized firms in the pilot project: sole practitioners; small firms (e.g. 2 to 20 lawyers); medium firms (e.g. 11-25 lawyers); and large firms (e.g. 26+ lawyers)
 - b. Location - ensure that participants are drawn from all parts of the province, including both rural and urban settings
15. The random selection of participants provides the Law Society with a defensible rationale for why some firms were chosen for the pilot while others were not. No changes or substitution will be made to the list of participants unless there are “exceptional circumstances,” as determined by the Executive Director or the Executive Director’s delegate.
 16. There are a range of possible situations in which such exceptions might arise. For example, a sole practitioner with an imminent maternity leave or who is facing suspension, a firm that is in the process of dissolving, a scenario where including the firm would compromise the fairness of an existing Law Society process involving the firm (i.e. an active investigation or an upcoming Practice Standards review) or a situation where inclusion in the pilot would impede an investigation. This list of examples is not exhaustive.
 17. Firms with one or more lawyers with a disciplinary history will not be removed from the selected cohort, given that the pilot seeks to capture, to the greatest extent possible, a subset of firms that are a representative of the profession as a whole. This necessarily includes those with practice management issues. Including these firms in the pilot project provides an opportunity for the Law Society to learn how to deal with challenging firms in the context of the new regulatory framework – something that will be inevitable if the program is rolled out to the entire profession.

⁶Other jurisdictions have also accounted for representation across geographic regions and firm size in selecting their pilot project participants. See Nova Scotia Barristers’ Society, “Legal Services Support Pilot Project Preliminary Report” (February 17, 2017) at pp. 6-7, online at: <http://nsbs.org/mselp-self-assessment-pilot-project> and discussions with the Law Society of Saskatchewan and Manitoba (January 2018).

Design Feature 3: Pilot project participants will be randomly selected by applying an algorithm to the list of firms generated by the registration process that takes into account firm size and location.

Firms will only be removed from the cohort of participants if there are “exceptional circumstances” as determined by the Executive Director or the Executive Director’s delegate.

Firms with lawyer(s) that have a disciplinary history with the Law Society will not be excluded from the pilot project.

18. On several occasions, at both Benchers and Executive Committee meetings, it has been indicated that all of the Benchers’ firms should be included in the pilot project. Accordingly, all the Benchers’ firms will be included in the cohort of firms selected for the pilot.
19. The rationale for such inclusion is two-fold. First, it will provide Benchers with experience with the self-assessment that will assist them in fielding questions and concerns from the profession as to how the tool operates. Second, it will demonstrate Benchers’ commitment to the exercise.

Design Feature 4: All of the Benchers’ firms will be included in the pilot project.

Requirements of participation

20. Pilot project participants will be tasked with completing an online self-assessment tool, which will be submitted to the Law Society.⁷ A critical design issue for the Task Force was whether completion of the self-assessment tool should be mandatory or voluntary.
21. The Task Force recognizes that a voluntary pilot project would likely be favoured by the profession. If voluntary, firms that are opposed to, or skeptical about law firm regulation need not participate. Firms that feel confident about their practice management structures or view participation in the pilot as a professional duty of sorts could volunteer to

⁷ The online survey will also be linked to a PDF “Workbook” that contains all the material found in the online self-assessment in a single document. The Workbook also provides additional spaces for firms to make notes identifying their strengths and weaknesses in relation to each of the Professional Infrastructure Elements. The Workbook is for the firm’s personal use and is not submitted to the Law Society. Participants will also be asked to complete a user-survey to provide feedback on the utility of the tool.

participate, aware that they can drop out (without consequence) if the exercise becomes too onerous or other priorities take precedence.

22. In contrast, under the mandatory model, firms selected for the pilot are *required* to complete the self-assessment in accordance with the Law Society Rules. This approach mirrors the Task Force’s original recommendation of a mandatory self-assessment tool for the profession-wide roll out of law firm regulation.⁸
23. Importantly, firms selected for the pilot will *not* be required to put in place new policies and processes - they will simply be asked to evaluate their current performance in relation to the eight Professional Infrastructure Elements. This information will be used to assist the Law Society in improving the self-assessment tool and the process by which it is administered and for no other purpose. There will be no consequence for low ratings.
24. Despite the appeal of minimizing push-back from the profession, the Task Force selected mandatory participation for three key reasons, namely: (1) to avoid the loss of a “representative sample”, (2) to minimize the likelihood of the low participation rates observed in other (voluntary) self-assessment pilot projects and (3) to ensure the efficient use of Law Society time and resources. Each rationale is described in greater detail below.

Design Feature 5: Participation in the pilot project will be mandatory for those firms that are randomly selected in order to ensure the pilot contains a representative sample of BC’s firms, to improve the likelihood of achieving reasonable participation rates and to enable the pilot to be completed in a timely fashion.

Representative sample

25. Firms concerned about their practice management systems are unlikely to volunteer to submit a self-assessment to the regulator that reveals their challenges. On the other hand, firms that already have robust policies and processes in place and that feel confident about their delivery of legal services are more apt to sign up for a voluntary pilot.

⁸ See Recommendation 10 of the Second Interim Report which states: “All firms are required to complete a self-assessment and submit it to the Law Society.” In December 2017, the Benchers replaced this Recommendation with a direction to begin with a pilot project of the self-assessment, but did not instruct that the pilot be voluntary.

26. This dynamic undermines several of the pilot project’s objectives, including evaluating the extent to which BC’s firms have policies and processes in place in relation to the eight Professional Infrastructure Elements (particularly firms struggling with practice management) and determining where there is a need for additional educational resources.
27. A pilot sample that is heavily populated with firms that are “doing well” will not provide an accurate picture of how firms are performing in relation to the Elements or where further support is required.

Participation rates

28. Feedback from other law societies that have recently concluded pilot projects indicates that the voluntary approach yields low participation rates.
29. The participation challenges associated with the voluntary model occur at two stages: first, in getting firms to commit to the pilot project at the outset, and second, ensuring those firms that have committed to the pilot fulfill their obligations and submit their self-assessment to the law society. Alberta and Nova Scotia’s experiences are illustrative in this regard.
30. In Alberta, 56 firms were initially contacted to participate in the self-assessment pilot project.⁹ More than 50% of firms contacted *did not* commit to participating in the pilot. Of the remaining 25 firms that committed to participate, 9 firms still failed to complete the self-assessment. As a result, only 28% of the firms the law society asked to participate in the pilot project actually completed the exercise.¹⁰
31. In Nova Scotia, 58 firms were contacted as potential pilot project participants. Twenty five percent of these firms declined participation at the outset. Of the 44 firms that did commit to participating, 10% (4 firms) provided no response and another 16% (7 firms) backed out.¹¹
32. Saskatchewan reported a 66% completion rate for its pilot, with 20 of the 30 firms approached completing the exercise. Manitoba’s completion rates were similar.
33. Given the proposed scale of BC’s pilot project, the voluntary model could result in several hundred firms declining participation at the outset or dropping out at a later stage.

⁹ Staff note that most of the communication was done by email with the occasional phone call. Although emails were noted as being less personal, phone calls were viewed as being prohibitively time consuming.

¹⁰ Communications with Len Polsky, Manager, Practice Management, Law Society of Alberta (January 15, 2018).

¹¹ Nova Scotia Barristers’ Society, “Legal Services Support Pilot Project Final Report” (June 6, 2017) at p. 5. Online at: http://nsbs.org/sites/default/files/ftp/RptsCouncil/2017-05-19_LSSPilotProjectFinalRpt.pdf

The challenges of securing and maintaining voluntary participation would make it very difficult to ensure the pilot cohort maintains its desired size and representativeness.

Resources and timing

34. Voluntary pilot projects have also proven to be resource intensive and time consuming. Staff in Alberta, Saskatchewan, Manitoba and Nova Scotia all commented on the significant amount of time and energy required to secure and maintain commitment of participants, which was characterized as akin to “pulling teeth” and a “wild goose chase.”
35. The Prairie provinces commented on the need to provide some firms with multiple extensions on the time allotted for submitting the self-assessment and the regulator missing project deadlines as a result.
36. Nova Scotia found that an average of five to six unique communications were required to fully secure participation even once firms had agreed to the pilot, in principle. In some cases the ‘courting’ process carried over more than two months. As a result, the amount of time it took to complete the pilot project doubled from three to six months.¹²
37. Nova Scotia’s final report concludes that “clear deadlines and eventually, if necessary, communication of regulatory consequence for failure to self-assess will be required to ensure full participation.”¹³
38. The Task Force also notes the challenges in securing voluntary participants for the Law Society’s law firm regulation focus group sessions in March 2017. It took considerable time and effort to secure commitment of a mere *five* participants in each focus group to review of the draft self-assessment tool, notwithstanding the fact that many of these firms were contacted by Benchers, including the President.¹⁴
39. These experiences suggest that seeking (and maintaining) the voluntary participation of a large number of firms in the pilot project is likely to consume considerable time and resources,¹⁵ resulting in the pilot taking closer to a year to complete.

¹² Nova Scotia Barristers’ Society, “Legal Services Support Pilot Project Preliminary Report” (February 17, 2017), *supra* note 6.

¹³ Nova Scotia Barristers’ Society, “Legal Services Support Pilot Project Final Report” (June 6, 2017) *supra* note 11 at p. 6.

¹⁴ Unless the Benchers each committed to securing the participation of 15 firms, in addition to their own, the task of finding participants would fall to staff. It should be noted that in Alberta, where staff contacted firms rather than Benchers, the completion rate for the pilot was less than 30%. Staff in Alberta underscored that having practice advisors or other staff be the first point of contact in efforts to elicit participation was not very successful. In contrast, in Saskatchewan, a Bencher called each firm to explain the project and encourage participation, resulting in a much higher completion rate.

¹⁵ For example, based on Nova Scotia’s experience, a voluntary pilot project in BC may require over 2,000 individual communications with firms simply to secure sufficient participation (375 firms multiplied by an average

40. On this basis of the factors discussed above, the Task Force determined that mandatory participation is essential to the timely success of the BC's pilot project.

Benefits associated with participation

41. Recognizing that completing the pilot project will take effort and time, the Task Force supports extending benefits to firms that are selected to complete the self-assessment. This approach may provide additional motivation for these firms to complete the exercise and reduce some of the push-back that may result from imposing new regulatory requirements on a sub-set of the profession.

42. A **separate memo has been prepared** seeking Benchers approval of the following two benefits:

a. Granting CPD credit

The Task Force proposes providing up to two CPD credits to lawyers that contribute to completing the self-assessment form as part of the pilot project. The Task Force's view is that credit would be provided on the basis that the exercise improves the lawyer's understanding of the firm's practice management and professional ethics and, in doing so, enhances competence and professionalism, which are the stated objectives of the CPD program.

b. Exempting participants from the first cycle of a profession-wide self-assessment

In recognition of the effort it will take to complete the self-assessment as part of the pilot project, as well as the benefits to the firm of reflecting on its policies and practices at an early stage of the implementation of law firm regulation, the Task Force proposes excluding pilot participants from the first round of the self-assessment when (and if) it is rolled out to the entire profession.

This benefit may reduce some of the perceived unfairness of a firm being required to be an early adopter of the self-assessment.

Design Feature 6: Create benefits for firms that participate in the pilot project, which may include up to two hours of CPD credit for lawyers that contribute to the firm's

of five communication per firm to secure participation). Hundreds of additional communications may be necessary to ensure participants that have committed actually complete the self-assessment and submit it to the Law Society.

self-assessment and an exemption from the first cycle of a profession-wide self-assessment.

Summary of Design Features

Design Feature 1: The objectives of the pilot project are:

- a. to evaluate the extent to which firms across BC have policies and processes in place in relation to the eight Professional Infrastructure Elements through the completion of the self-assessment tool;
- b. to provide the Law Society with information (upon receiving the self-assessment) as to where firms have the greatest need for additional educational resources, which will assist the Law Society in improving practice support;
- c. to test and evaluate the content of the self-assessment tool, the processes for administering the tool, and the time and effort required to complete the self-assessment by asking users to report on its functionality and clarity; and
- d. to enable the Law Society to assess the staff and financial resources required to implement an impactful self-assessment process.

Design Feature 2: In order to obtain meaningful, representative and statistically significant results, the pilot project will include up to 10% of BC's firms (up to 375 participants). Staff will retain the discretion to determine the exact number of participants that are necessary within the limit defined by the Task Force to ensure the sample size is statistically relevant.

Design Feature 3: Pilot project participants will be randomly selected by applying an algorithm to the list of firms generated by the registration process that takes into account firm size and location.

Firms will only be removed from the cohort of participants if there are "exceptional circumstances" as determined by the Executive Director or the Executive Director's delegate.

Firms with lawyer(s) that have a disciplinary history with the Law Society will not be excluded from the pilot project.

Design Feature 4: All of the Benchers' firms will be included in the pilot project.

Design Feature 5: Participation in the pilot project will be mandatory for those firms that are randomly selected in order to ensure the pilot contains a representative sample of BC's firms, to improve the likelihood of achieving reasonable participation rates and to enable the pilot to be completed in a timely fashion.

Design Feature 6: Create benefits for firms that participate in the pilot project, which may include up to two hours of CPD credit for lawyers that contribute to the firm's self-assessment and an exemption from the first cycle of a profession-wide self-assessment.

Next Steps

43. The Task Force aims to present the Benchers with a report on the findings of the pilot project and to make recommendations about subsequent phases of law firm regulation by the end of 2018.
44. The following timeline identifies how the pilot must unfold to meet this target date.

Date	Goal
April	Bencher approval of law firm regulation rules
May	Registration period begins Approval of the self-assessment form by Executive Committee
Early June	Finalize selection of mandatory pilot project participants and provide initial communication to these firms

Mid-June to Late August	10 week period for selected firms to complete the self-assessment tool
September-October	Complete follow up with firms and analyse results
November	Draft a report of pilot project findings and recommendations
December	Present pilot project report to Benchers

45. Based on the experience of other jurisdictions that have completed smaller pilot projects, these timeframes are ambitious. Effective project management will be essential to meet this goal.
46. From an operational perspective, a number of key tasks and responsibilities underpin the success of the pilot project, including:
- General project administration, oversight and guidance
 - Strategic advice and research support around resources for the self-assessment
 - Communications to the profession
 - Finalizing the online self-assessment tool and associated Workbooks
 - Technology testing
 - Selection of participants and associated communications
 - Self-assessment administration and data collation
 - Responding to questions from pilot participants
 - Analysis of self-assessment result
 - Drafting a final report
47. The proposed pilot project is a small-scale version of what the Task Force recommended for the profession-wide implementation of the self-assessment. As such, the budget outlined in the Second Interim Report is sufficient to cover the costs of a mandatory pilot project and no additional resources are necessary at this time.¹⁶

¹⁶ See the Second Interim Report of the Law Firm Regulation Task Force *supra* note 1 at paras. 145-149.

Conclusion

48. Commencing a pilot project in which a small-subset of BC's firms complete the self-assessment tool is the next major step in the implementation of law firm regulation.
49. The Task Force has given detailed consideration to the various design features of the pilot project and has made several key decisions that will enable the pilot to meet its key objectives as described above.
50. Participants will be required to complete a self-assessment over the summer months and submit this document to the Law Society. The Law Society will only use this information for statistical and general analysis, with the aim of improving the content of the tool and the process by which it is administered.
51. Following the completion of the pilot, the Task Force will work with staff to analyse the results and aims to provide the Benchers with a report on the findings of the pilot project and recommendations on next steps for law firm regulation in BC by the end of the year.



Memo

To: Benchers
From: Law Firm Regulation Task Force
Date: April 16, 2018
Subject: **Recommendations on extending benefits to pilot project participants**

Purpose

1. The purpose of this memo is to present two recommendations to the Benchers on behalf of the Law Firm Regulation Task Force (the “Task Force”) that extend the following benefits to pilot project participants:
 - a. lawyers in firms that are selected for the pilot project are eligible for up to two hours of continuing professional development (“CPD”) credit for time spent completing their firm’s self-assessment report; and
 - b. firms that complete the pilot project are exempt from the first cycle of any profession-wide implementation of the self-assessment.

Background

2. Following Bencher approval of the pilot project, as a policy initiative, in December 2017, the task of developing the operational aspects of the project was left to staff as overseen by the Task Force. The majority of that work is now complete.
3. The pilot project will commence in June, at the conclusion of the firm registration process. Participants will be randomly selected by applying an algorithm to the list of firms generated by the registration process that takes into account firm size and location. To ensure results are meaningful, representative and statistically significant, the pilot project will include up to 10% of BC’s firms (approximately 375 participants).
4. Importantly, participation in the pilot project will be mandatory for those firms that are selected. This is to ensure that the pilot contains a representative sample of BC’s firms, achieves reasonable participation rates and is completed in a timely fashion. New Law Society rules reflect this mandatory requirement.

Discussion

5. Although new rules make the completion of the self-assessment a regulatory requirement, the Benchers are encouraged to leverage mechanisms that minimize the likelihood of the Law Society having to resort to enforcing rules. This will ensure that the “proactive” nature of law firm regulation gets off to a strong start.
6. Recognizing that the self-assessment exercise will take pilot project participants effort and time,¹ the Task Force is of the view that extending benefits to firms that are selected for the pilot may provide additional motivation to complete the self-assessment and reduce some of the push-back that may result from imposing new requirements on a subset of the profession.
7. As such, the Task Force recommends two benefits: granting lawyers a limited amount of CPD credit for contributing to their firm’s self-assessment and exempting firms that are selected for the pilot from the first cycle of the profession-wide self-assessment, if any.

a. CPD Credit

8. The Task Force seeks Bencher approval of a recommendation to provide lawyers with up to two CPD credits for contributing to their firm’s self-assessment as part of the pilot project.
9. Individual lawyers will only receive credit for the amount of time they *personally* spend on the self-assessment, up to a maximum of two hours, and will only be eligible to receive such credit if the law firm submits the self-assessment report to the Law Society by the deadline for completion.
10. During the course of its discussions, the Task Force also contemplated how to address the issuance of CPD credit if the self-assessment were implemented profession-wide. The Task Force’s preliminary views are that up to two CPD credits could be granted to lawyers that contribute to their firm’s self-assessment, *but only for the first time that the lawyer contributes to the firm’s self-assessment*. This qualification addresses the concern that although the self-assessment invites a detailed review of the firm’s practice management systems, subsequent self-assessments completed by the same lawyer may provide diminished opportunities for ongoing learning.

¹ Anecdotally, the Nova Scotia Barristers’ Society 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.

11. This “post-pilot” CPD proposal is not included in the formal recommendation below given that decisions on future phases of law firm regulation, if any, have not yet been made by the Benchers.

Recommendation 1: Lawyers at firms that are selected for the pilot project will be eligible for up to two hours of CPD credit for time they personally spend on the self-assessment exercise. Lawyers will only be eligible to receive such credit if their firm submits the self-assessment report to the Law Society by the deadline for completion.

Rationale

12. To complete the self-assessment, a lawyer or lawyers at the firm must work through each step of the online tool and evaluate the extent to which the firm has policies and processes in place in relation to the eight Professional Infrastructure Elements. The lawyer(s) may provide additional written comments on their practice management systems and the utility of the tool. The self-assessment also enables respondents to explore a robust body of guidance and educational resources. As such, the self-assessment is predominantly an educational exercise.
13. These educational benefits are perhaps best illustrated by the Australian experience, which demonstrates the impact of the self-assessment process on learning, professionalism and competence:
- 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-assess²
 - 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-assessment³

² 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

³ 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>

- a majority of ILPs reported that the self-assessment process was a learning exercise that helped them improve client service⁴
14. In BC, the goal of the self-assessment is to encourage the firm and its lawyers to achieve appropriate standards of professional conduct and competence.
 15. As such, the self-assessment fits squarely within the overall purpose of the CPD program, namely: *“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.”*⁵
 16. Specifically, credit would be provided on the basis that the self-assessment exercise improves the lawyer’s understanding of the firm’s practice management systems and professional ethics and, in doing so, enhances competence and professionalism.
 17. For example, the self-assessment encourages reflection on, and provides guidance and resources in relation to almost all of topics that are currently accredited under the CPD Practice Management subject matter, including:
 - client care and relations, including managing difficult clients
 - trust accounting requirements
 - technology to assist running a law practice including:
 - retainer agreements and billing practices relating to Law Society requirements, including:
 - managing client expectations related to fees and disbursements
 - file systems, including retention and disposal
 - emergency planning, including law practice continuity for catastrophic events and coverage during absences
 - managing law firm staff, including training, supervising and delegating to staff
 - identifying conflicts, including conflict checks and related systems
 - time management systems, including limitation systems
 - understanding the business of law, including the management and running of a law practice, the technological systems incorporated into running a law practice and the financial systems incorporated into running a law practice

⁴ *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.

⁵ Final CPD Review Report of the Lawyer Education Advisory Committee, online at: https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/LawyerEd-CPD_2017.pdf at p.11.

- multicultural, diversity and equity issues that arise within the legal context
 - succession planning and related issues
18. A copy of one of the draft self-assessment Workbooks⁶ is included at **Appendix A** of this memo to illustrate how the tool provides a wide range of learning opportunities in relation to both practice management and ethics.
 19. The proposal to provide up to two hours of CPD credit for the completion of the self-assessment tool also falls in line with the Benchers' policy decision to grant CPD for another education-related regulatory requirement: the Practice Management Course.
 20. As is the case with the self-assessment form, completing the Practice Management Course is mandatory for some lawyers under the Rules. Lawyers practicing in a "small firm" must complete the course within 6 months after commencing practice in a small firm setting (Law Society Rule 3-28), articulated students must complete the course in order to qualify for call and admission (Rule 2-76(1)(b.1)) and lawyers may be ordered to complete the course by the Practice Standards Committee (Law Society Rule 3-19). Lawyers who are not required to take the course as a mandatory condition of practice can take the course for educational purposes and claim CPD credit.
 21. As is the case with the self-assessment, the Practice Management Course asks lawyers to review key practice management topics and provides additional practice resources. Notably, all of the major topics addressed in the Practice Management Course are also covered by the self-assessment.⁷
 22. The Practice Management Course does have a testing component, which the self-assessment does not, although the self-assessment does require firms to rate their performance in relation to key areas of practice management.⁸
 23. Lawyers can earn up to six hours of free CPD credit each year taking the Practice Management Course (including the two hour professional responsibility, ethics, and practice management requirement). Time spent adding comments to the course pages or making suggested changes to course content counts as time spent on the course for CPD purposes. There is no

⁶ The self-assessment takes two forms – the optional Workbook and the online Self-Assessment Form. The two tools are similar in content, and largely differ in format and presentation. There are two Workbooks and two streams of the online tool, one for sole practitioners, one for all other firms. One of the draft Workbooks has been appended to this memo as an example.

⁷ Law Society of BC, Practice Management Course, online at: <https://learnsbc.ca/node/48>

⁸ No particular grade is required to claim credit for participation in the Practice Management course, except for those captured by Rules 3-28, Rule 2-76(1)(b.1) and Rule 3-19, who must repeat the quizzes until they obtain 100% for each module.

restriction on the number of times CPD credit can be earned in this way; a lawyer can take the course every year and earn half their CPD credit doing so.

24. In contrast, the Task Force’s CPD proposal for pilot project participants is reasonably modest. Given the many parallels between the self-assessment and the Practice Management Course, the Task Force is of the view there is a principled basis for offering up to two CPD credits to lawyers that contribute to their firm’s the self-assessment during the pilot.
25. As a final note, as the pilot cohort is designed to be representative of the profession, the participants will include many sole practitioners, as well as firms in small communities and remote parts of the province. Given that CPD can be expensive and difficult to access for lawyers outside of urban centres, “free” CPD credits may be a particularly valuable benefit for some of these individuals.

b. Exemption from the first cycle of the profession-wide self-assessment

26. The Task Force also recommends that pilot project participants are exempt from the first cycle of the profession-wide implementation of the self-assessment.

Recommendation 2: Firms that complete the pilot project will be provided an exemption from the first cycle of the profession-wide self-assessment in future phases of law firm regulation, if any.

Rationale

27. Providing pilot participants with such an exemption is a means of recognizing the time and effort already expended by the firm in completing the self-assessment and the accompanying user-satisfaction questionnaire during the pilot.
28. As with providing CPD credit, this benefit is expected to reduce resistance to the pilot, including negative attitudes about the perceived unfairness of being randomly selected to meet a new regulatory requirement.
29. Future phases of law firm regulation must be approved by the Benchers, and consideration of how the self-assessment might be modified going forward will not be determined until late 2018.

30. However, given there is a reasonable possibility that the entire profession will be subject to some form of self-assessment by the end of 2019, the Task Force is of the view that offering pilot participants an exemption from the first cycle of the profession-wide self-assessment will go some ways to rewarding firms for their participation.

Conclusion

31. Extending certain benefits to firms that are selected to complete the self-assessment as part of the pilot project has advantages for both participants and the Law Society. In addition to reinforcing the message that the self-assessment is a valuable learning opportunity for both firms and the lawyers, it may also minimize opposition the pilot project and reduce the likelihood of the Law Society having to rely on rule enforcement as a means of ensuring full participation.
32. The Benchers are asked to approve the above recommendations at their May meeting. This would enable the Law Society to reference these benefits in communications about the pilot project in advance of the anticipated June launch-date.



SELF-ASSESSMENT WORKBOOK

Overview of the self-assessment exercise

The self-assessment exercise is a central feature of the Law Society of BC's proactive approach to regulating law firms.

The primary goal of the self-assessment exercise is to encourage firms to examine their practice management systems and to evaluate the extent to which firm policies and processes address core areas of professional, ethical firm practice. Additionally, the self-assessment process will provide the Law Society with information about where firms may require additional practice resources and support.

As such, the self-assessment is an educational exercise and a learning opportunity for both firms and the Law Society.¹

a. Professional Infrastructure Elements and Objectives

The cornerstones of the self-assessment exercise are the eight **Professional Infrastructure Elements**, which represent key aspects of professional, ethical firm practice. The Elements are sufficiently high-level to be adapted to different practice contexts, yet concrete enough to establish clear, basic standards for firm conduct.

Each Element is paired with an **Objective**, which reflects the outcomes that firms should strive to achieve in addressing each Professional Infrastructure Element.

The self-assessment exercise asks firms to evaluate their current performance in relation to the Professional Infrastructure Elements and their Objectives, as set out below.

¹ Australian studies demonstrate a reduction in complaints against firms when firms self-assess how robust their practice management systems are across key areas of firm practice. The majority of firms that participated in the self-assessment exercise also reported that it was a learning exercise that helped them improve client service.

Professional Infrastructure Elements and 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: Observe the laws protecting human rights, and the principles of equity, diversity and inclusion in the workplace and in all aspects of the provision of legal services.

b. Indicators and Considerations

The Law Society believes that law firms should have appropriate policies and processes in place to ensure legal services are provided in accordance with the Professional Infrastructure Elements and their Objectives.

To assist firms in assessing the strength of their policies and processes, the self-assessment includes a broad set of **Indicators** and a more detailed list of **Considerations** that provide guidance on the types of policies, procedures, processes, methods, steps and systems that a prudent law firm might employ to satisfy each Professional Infrastructure Element and its associated Objective.

The Indicators and Considerations encourage firms to undertake a detailed review of their practice management systems and think about the areas where the firm is doing well and where more robust policies and processes may be necessary.

The Indicators and Considerations should be viewed as guidance only; it is not necessary for firms to adopt or implement all of the suggested approaches. However, there is an expectation that at a minimum, firms will have policies and processes in place that ensure that their lawyers are supported in complying with their professional obligations under the *Legal Profession Act*, the Law Society Rules and the *Code of Professional Conduct for British Columbia*.

c. Resources

The self-assessment also contains a set of **Resources**, which are largely drawn from the existing body of Law Society practice management materials, the Rules and the *BC Code*. As part of the pilot project, participants are asked to indicate to the Law Society where they would benefit from additional practice resources and support.

Format: Self-Assessment Report and Workbook

The self-assessment exercise has been developed in two formats: an online Report that must be submitted to the Law Society, and an optional Workbook for firm-use only.

Whether used separately or together, both the Report and Workbook help firms identify gaps in policies and processes and provide guidance and resources that will assist firms in reviewing and improving their practice management systems.

1. Self-Assessment Report (mandatory)

The online Self-Assessment Report is the mandatory portion of the self-assessment exercise. The Report **must** be submitted to the Law Society by **September 10, 2018**. The Report is an educational tool and information provided in the Report will not be used by the Law Society for disciplinary purposes (see Law Society Rule 2-12.3(4)).

Firms selected for the pilot project will be sent an electronic link to the Self-Assessment Report and the associated instructions. The Report provides firms with flexibility as to how deeply they engage with the assessment exercise. Users have the choice of skipping over a portion of the guidance material or alternatively, to delve into the assessment in considerable detail.

The only requirement is that firms evaluate their performance in relation to each of the Professional Infrastructure Elements and submit the completed Report to the Law Society.

2. The Workbook (optional)

The Self-Assessment Workbook is an additional, optional resource that is intended to supplement the Self-Assessment Report. The Workbook is **not submitted** to the Law Society.

The Workbook contains all the information contained in the Report in a single document that can be downloaded, saved and printed. The Workbook also includes areas where firms can make detailed comments about their strengths and weaknesses in relation to each Professional Infrastructure Element. In many ways, the Workbook functions as the “working copy” of the firm’s self-assessment.

How to use the Workbook

The Workbook can enhance the clarity and utility of self-assessment exercise in a variety of ways:

- Those responsible for the firm's Self-Assessment Report may wish to review the Workbook to get a full sense of the nature and scope of the assessment exercise in advance of completing the mandatory Self-Assessment Report and submitting it to the Law Society.
- Firms may circulate the Workbook to lawyers and staff who are not responsible for completing the Self-Assessment Report itself, but who nevertheless have feedback about the firm's practice management systems.
- Firms may use the Workbook as a learning tool to educate lawyers and staff about firm best practices (e.g. reviewing the Workbook at lunch-and-learns, meetings).
- Firms may use the Workbook to document their strengths as well as highlighting those areas that need further attention. This information will provide firms with a baseline from which to measure progress in improving their practice management systems over time.
- Firms can build on the Workbook's guidance and resources to create their own set of practice management materials.

Firms are encouraged to save the Workbook and use it as a record, guide and reference, not only during the pilot project, but as part of ongoing efforts to assess and improve the firm's practice management systems.

Terminology

The following terms are used throughout the Workbook and are defined as follows:

“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.

SELF-ASSESSMENT WORKBOOK

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, checking for conflicts, review of disciplinary records and reference and credentials checks)
- Lawyers and staff participate in ongoing training, including in the following areas, as appropriate:
 - client identification and verification
 - identification of conflicts
 - use of trust accounts and receipt of cash
 - 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
- Lawyers have professional development plans that are relevant to their area of practice
- Processes are in place for identifying performance objectives and evaluating progress towards those objectives
- Appropriate resources are in place to ensure that 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 stay current on the appropriate technology

RESOURCES:

- Law Society of BC, [Practice Checklists Manual](#)
- Law Society of BC, [Model conflicts of interest checklist](#)
- Law Society of BC, [Practice Advisors – Frequently Asked Questions](#)
- Law Society of BC, [The Trust Accounting Handbook](#)
- Law Society of BC, [Sample general retainer agreement](#)
- Law Society of BC, [Sample joint retainer agreement – acting for two or more clients](#)
- Law Society of BC, [Bencher's Bulletin Fall 2017, Limited scope retainer FAQs](#)
- Lawyers Insurance Fund, [Managing the risk of a limited scope retainer](#)
- Lawyers Insurance Fund, [Employee fraud, cybercrimes and more](#)
- Lawyers Insurance Fund, [Delegation: The buck stops here!](#)
- Lawyers Insurance Fund, [Five key causes of claims: Legal issue failures](#)
- Lawyers Insurance Fund, [Risk management resources](#)
- BC Human Rights Tribunal, [Human Rights and Duties in Employment](#)
- [BC Code](#) [section 2.1: Canons of Legal Ethics; section 3.1: Competence; section 3.2: Quality of Service; section 3.3: Confidentiality; section 3.4: Conflicts; section 3.5: Preservation of clients' property; section 3.6: Fees and Disbursements; Chapter 4 – Marketing of Legal Services; section 6.1: Supervision; section 6.2 : Students]
- [Law Society Rules](#) [Part 3 - Division 7: Trust Accounts and Other Client Property; Part 8: Lawyers' Fees; Rules 10-3 and 10-4: Records and Security]

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:

- Law Society of BC, *Benchers' Bulletin* Spring 2013, [How to Recognize and Cope with Stress](#)
- Law Society [Practice Advisors](#) and [Equity Ombudsperson](#)
- Ontario Bar Association, [The Mindful Lawyer CPD Series](#)
- [Lawyers Assistance Program](#)
- [Lifeworks Canada](#)
- *BC Code* [[section 2.1](#): Canons of Legal Ethics; [section 3.1](#): Competence; [section 7.1](#): Responsibility to the Society and the Profession Generally]
- [Law Society Rules](#) [[Part 3 - Division 1](#): Complaints]

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

- Processes are in place to ensure lawyers and staff are informed about priorities and deadlines
- Policies are in place to ensure lawyers and staff comply with applicable deadlines and limitation periods
- Reviews are conducted with lawyers and staff to evaluate the appropriateness of their workload and issues are addressed
- Processes are in place to ensure the effective use of bring forward systems and calendars to keep track of key dates (e.g. limitation periods, court 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 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:

- Lawyers Insurance Fund, [Missed Limitations and Deadlines: Beat the clock \(see especially tips 1 to 22\)](#)
- Lawyers Insurance Fund, [Limitations and deadlines](#)
- Lawyers Insurance Fund, [Five key causes of claims - Oversights](#)
- Law Society of BC, [Practice Checklist Manual](#)
- [BC Code](#) [section 3.1: Competence; section 3.2: Quality of Service; section 3.6: Fees and Disbursements]
- [Law Society Rules](#) [Part 8: Lawyers' Fees]
- [Legal Profession Act, 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:

- Lawyers Insurance Fund, [Delegation: The buck stops here!](#)
- Lawyers Insurance Fund, [Risk: Delegating work or transferring files](#)
- [BC Code](#) [section 6.1: Supervision; section 6.2 : Students]
- [Law Society Rules](#) [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 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:

- Law Society of BC, [Succession planning: Tools, documents and resources](#)
- Law Society of BC, [Precedent letters: Lawyer leaving law firm](#)
- Law Society of BC, *Benchers' Bulletin* Summer 2017, [Ethical Considerations when a lawyer leaves a firm](#)
- Law Society of BC, [Winding Up a Practice: A Checklist](#)
- Law Society of BC, [Practice Advisors – Frequently Asked Questions](#)
- Lawyers Insurance Fund, [Cover Pages: A guide to insurance for private practitioners](#)
- Lawyers Insurance Fund, [Excess insurance: Protection for claims that exceed \\$1 million](#)
- Lawyers Insurance Fund, [Insurance coverage for lawyers no longer in private practice](#)
- *BC Code* [section 3.7: Withdrawal from Representation]
- *Law Society Rules* [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.

<p>RATING ELEMENT 1</p>	<p>Policies and processes have not been developed.</p> <p>1 <input type="checkbox"/></p>	<p>Policies and processes are under development but are not functional.</p> <p>2 <input type="checkbox"/></p>	<p>Policies and processes are functional.</p> <p>3 <input type="checkbox"/></p>	<p>Policies and processes are fully functional and regularly assessed and updated.</p> <p>4 <input type="checkbox"/></p>
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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
 - any changes in payment instructions
 - timing of reports and final accounts
- Processes are in place to monitor and reinforce adherence to communication policies
- Communication policies and processes are reviewed and updated and are accessible to lawyers and staff
- Lawyers and staff receive specific and ongoing education and training relating to client communications and relations

RESOURCES:

- Law Society of BC, Online Learning Centre, [Communication Toolkit](#)
- Lawyers Insurance Fund, [Employee fraud, cybercrimes and more](#)
- Lawyers Insurance Fund, [The ‘bad cheque’ scam](#)
- Lawyers Insurance Fund, [Other social engineering scams, including the ‘phony change in payment instructions’](#)
- Lawyers Insurance Fund, Missed Limitations and Deadlines: [Beat the clock \(see especially tips 62 to 72\)](#)

- Lawyers Insurance Fund, [Email: Preventing a mailstrom](#)
- Lawyers Insurance Fund, Five key causes of claims - [Communication failures](#) and 'no trail'
- *BC Code* [[section 3.1](#): Competence; [section 3.2](#): Quality of Service; [section 3.3](#): Confidentiality; [section 3.5](#): Preservation of Clients' Property; [section 3.6](#): Fees and Disbursements; [section 6.1](#): Supervision; [section 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 firm's areas of expertise, the ability to provide timely communication and 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 and won't be provided

RESOURCES:

- Law Society of BC, [Retainer Agreement](#)
- Law Society of BC, [Joint Retainer- acting for two or more clients](#)
- Law Society of BC, [Model Non-Engagement Letters](#)
- Law Society of BC, [Practice Advisors – Frequently Asked Questions](#)
- Lawyers Insurance Fund, [Managing the risks of a limited scope retainer](#)
- Lawyers Insurance Fund, Missed Limitations and Deadlines: [Beat the clock \(see tips 48 to 55 for effectively managing the retainer or non-retainer\)](#)
- Lawyers Insurance Fund, Five key causes of claims - [Retainer and non-retainer failures](#)
- [BC Code](#) [section 3.2: Quality of Service; section 3.6: Fees and Disbursements]
- [Law Society Rules](#) [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 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

RESOURCES:

- Law Society of BC, [Discipline Advisory 'Lack of civility can lead to discipline'](#)
- Law Society of BC, [Practice Checklists Manual: Client Identification and Verification Procedure](#)
- Law Society of BC, Online Learning Centre, [Communication Toolkit](#)
- Lawyers Insurance Fund, Missed Limitations and Deadlines: [Beat the clock \(see tips 62 to 72 for avoiding communication failures\)](#)
- Lawyers Insurance Fund, [Five key causes of claims – Communication failures](#)
- [BC Code](#) [section 3.1: Competence; section 3.2: Quality of Service; section 3.3: Confidentiality]; section 4: Marketing of Legal Services]
- Law Society Rules [[1“advertising”](#)], 3-34, 9-7]

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
 - 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:

- Law Society of BC, [Practice Advisors – Frequently Asked Questions](#)
- Law Society of BC, [Precedent Letter: Reporting Letter to Client – Closing a File](#)
- Law Society of BC, *Benchers' Bulletin* Spring 2015, [Practice Watch: Acting for a client with dementia](#)

- Lawyers Insurance Fund, Missed Limitations and Deadlines: Beat the clock (see tips 62 to 72 for avoiding communication failures)
- Lawyers Insurance Fund, Five key causes of claims – [Communication failures](#)
- Lawyers Insurance Fund, [Risk: Aging clients](#)
- [BC Code](#) [[section 3.1](#): Competence; [section 3.2](#): Quality of Service (Clients with Diminished Capacity); [section 3.6](#): Fees and Disbursements; [section 3.7](#): Withdrawal from Representation]

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.

<p>RATING ELEMENT 2</p>	<p>Policies and processes have not been developed.</p> <p>1 <input type="checkbox"/></p>	<p>Policies and processes are under development but are not functional.</p> <p>2 <input type="checkbox"/></p>	<p>Policies and processes are functional.</p> <p>3 <input type="checkbox"/></p>	<p>Policies and processes are fully functional and regularly assessed and updated.</p> <p>4 <input type="checkbox"/></p>
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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 firm's physical space or technology
- A privacy policy is in place and is communicated to lawyers and staff

RESOURCES:

- Law Society of BC, [Practice Advisors – Frequently Asked Questions](#)
- Law Society of BC, [Model Privacy Policy](#)
- Law Society of BC, Discipline Advisory – [Maintaining privilege and confidentiality when ending the solicitor-client relationship](#)
- Lawyers Insurance Fund, [Employee fraud, cybercrimes and more](#)
- Public Safety Canada, [Create stronger cyber safety policies](#)
- Office of the Information & Privacy Commissioner for BC, [Securing Personal Information: A Self-Assessment Tool for Organizations](#)
- Public Safety Canada, [Educate your employees on cyber safety](#)
- Public Safety Canada, [Run a more cybersafe business](#)
- Public Safety Canada, [Cyber safe guide for small and medium businesses](#)

- [BC Code](#) [section 3.3: Confidentiality; section 6.1: Supervision; section 6.2: Students]
- [Legal Profession Act](#), sections 87 (Certain matters privileged) and 88 (Non-disclosure of privileged and confidential information)

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:
 - in relation to electronic communications (email, texting, e-documents)
 - when a common interest or joint retainer extends the solicitor-client privilege to third parties
- Solicitor-client privilege is clearly explained to clients by lawyers
- Processes are in place for dealing with situations where exceptions to duties of confidentiality and solicitor-client privilege may apply
- Lawyers and staff are provided with training on the requirements of privacy legislation
- 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:

- Law Society of BC, [Practice Advisors – Frequently Asked Questions](#)
- Law Society of BC, [What to do if your laptop or briefcase is stolen](#)
- Lawyers Insurance Fund, [Employee fraud, cybercrimes and more](#)
- Lawyers Insurance Fund, [The ‘bad cheque’ scam](#)
- Lawyers Insurance Fund, [Other social engineering scams, including the ‘phony change in payment instructions’](#)
- Office of the Privacy Commissioner for BC, [Privacy Breaches: Tools and Resources](#)

- Public Safety Canada, [How to recover from a cyber incident](#)
- Public Safety Canada, [Cyber safe guide for small and medium businesses](#)
- [BC Code](#) [section 3.3: Confidentiality; section 6.1: Supervision; section 6.2 : Students; rule 7.2-10: Inadvertent communications; section 7.8: Errors and omissions]
- [Law Society Rules](#) [Rule 3-96.1: Electronic submission of documents; [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 that lawyers and staff have within and outside the physical office
 - client files and other confidential material are not left in publically accessible areas
 - client confidentiality is guarded when visitors enter private areas (e.g. lawyer or staff offices)
 - copiers, fax machines and mail services are located such that confidential information cannot be seen by persons not employed by or associated with the firm
- Processes are in place that ensure reasonable security measures are taken when removing physical records or technological devices from the office
- Processes are in place to ensure that closed files and other documents stored off-site are kept secure and confidential

RESOURCES:

- Law Society of BC, [Cloud computing checklist](#)
- Law Society of BC, [Law Office Search Warrants](#)
- Lawyers Insurance Fund, [Employee fraud, cybercrimes and more](#)
- Office of the Information Privacy Commissioner for BC, [Securing Personal Information: A Self-Assessment Tool for Organizations](#)
- Office of the Information Privacy Commissioner for BC, [Privacy Breaches: Tools and Resources](#)
- [BC Code](#) [section 3.3: Confidentiality; section 3.5: Preservation of Clients' Property; section 6.1: Supervision; section 6.2: Students, section 7.8 Errors and Omissions]
- [Law Society Rules](#) [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
- 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:

- Law Society of BC, *Benchers' Bulletin* Spring 2017, [Think twice before taking your laptop or smart phone across borders](#)
- Law Society of BC, *Benchers' Bulletin* Spring 2018, [Crossing the border into or out of the United States](#)
- Law Society of BC, E-Brief, [Minister of Public Safety responds to Law Society's concerns on searches of lawyer's electronic devices at the border](#)
- Law Society of BC, [Cloud computing checklist](#)
- Lawyers Insurance Fund, [Employee fraud, cybercrimes and more](#)
- Lawyers Insurance Fund, [The 'bad cheque' scam](#)
- Lawyers Insurance Fund, [Other social engineering scams, including the 'phony change in payment instructions'](#)
- Public Safety Canada, [Create stronger cyber safety policies](#)
- Public Safety Canada, [Educate your employees on cyber safety](#)
- Public Safety Canada, [Run a more cybersafe business](#)
- Public Safety Canada, [Cyber safe guide for small and medium businesses](#)
- Public Safety Canada, [How to recover from a cyber incident](#)

- Office of the Information Privacy Commissioner for BC, [Securing Personal Information: A Self-Assessment Tool for Organizations](#)
- [BC Code](#) [section 3.3: Confidentiality; section 3.5: Preservation of Clients' Property]
- [Law Society Rules](#) [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:

- Law Society of BC, [Lawyers Sharing Space](#)
- Law Society of BC, [Practice Advisors](#)
- [BC Code](#) [section 3.3: Confidentiality; section 3.4; Conflicts (Lawyer due diligence for non-lawyer staff; Space-Sharing Arrangements); section 4 – Marketing of Legal Services]
- [Law Society Rules](#) [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.

<p>RATING ELEMENT 3</p>	<p>Policies and processes have not been developed.</p> <p>1 <input type="checkbox"/></p>	<p>Policies and processes are under development but are not functional.</p> <p>2 <input type="checkbox"/></p>	<p>Policies and processes are functional.</p> <p>3 <input type="checkbox"/></p>	<p>Policies and processes are fully functional and regularly assessed and updated.</p> <p>4 <input type="checkbox"/></p>
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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 lawyers and staff and is reviewed and updated
- Processes are in place to monitor and reinforce that 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:

- Law Society of BC, Model conflicts of interest checklist
- Law Society of BC, [Independent legal advice checklist](#)
- Law Society of BC, [Independent legal advice checklist annotated with risk management tips](#)
- Law Society of BC, [Joint retainer – acting for two or more clients](#)
- Law Society of BC, [Model non-engagement letters](#)
- Law Society of BC, [Reporting letter to client – Closing a File](#)
- Law Society of BC, [Practice Advisors – Frequently Asked Questions](#)
- Law Society of BC, [Lawyers sharing space](#)
- [BC Code](#) [rule 2.1-3: To the client; [section 3.4](#); Conflicts; [section 6.1](#): Supervision; [section 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
 - before hiring a new lawyer or staff at the firm
 - before receiving a confidential disclosure
 - before 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, written consent is obtained from a client if representation is agreed to after a permissible conflict has been identified

RESOURCES:

- Law Society of BC, Model conflicts of interest checklist
- Law Society of BC, [Independent legal advice checklist](#)
- Law Society of BC, [Independent legal advice checklist annotated with risk management tips](#)
- Law Society of BC, [Joint retainer – acting for two or more clients](#)
- Law Society of BC, [Model non-engagement letters](#)
- Law Society of BC, [Reporting letter to client – Closing a File](#)
- Law Society of BC, [Practice Advisors – Frequently Asked Questions](#)
- Law Society of BC, [Lawyers sharing space](#)

- Law Society of BC, *Benchers' Bulletin* Summer 2017, Ethical considerations when a lawyer leaves a firm
- Lawyers Insurance Fund, About to act for family and friends?
- Lawyers Insurance Fund, [Witnessing a signature? Stop. Read this first](#)
- [BC Code](#) [rule 2.1-3: To the client; [section 3.4](#): Conflicts; [section 6.1](#): Supervision; [section 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

<p>RATING ELEMENT 4</p>	<p>Policies and processes have not been developed.</p> <p>1 <input type="checkbox"/></p>	<p>Policies and processes are under development but are not functional.</p> <p>2 <input type="checkbox"/></p>	<p>Policies and processes are functional.</p> <p>3 <input type="checkbox"/></p>	<p>Policies and processes are fully functional and regularly assessed and updated.</p> <p>4 <input type="checkbox"/></p>
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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 lawyers and staff and is reviewed and updated
- Processes are in place to monitor and reinforce adherence to the information management policy
- Lawyers and staff are provided ongoing training on the firm's 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 lawyers and staff

RESOURCES:

- Law Society of BC, [Practice Advisors – Frequently Asked Questions](#)
- Law Society of BC, *Benchers' Bulletin* Winter 2017, [Closing a client file: What documents to keep and for how long](#)

- Law Society of BC, [Closed Files – Retention and Disposition](#)
- Law Society of BC, [Ownership of Documents in a Client’s File](#)
- Law Society of BC, [Reporting letter to client – Closing a File](#)
- Law Society of BC, [Model non-engagement letters](#)
- Law Society of BC, [Cloud computing checklist](#)
- Lawyers Insurance Fund, [Employee fraud, cybercrimes and more](#)
- [BC Code](#) [section 3.5: Preservation of clients’ property; section 6.1: Supervision; section 6.2: Students]
- [Law Society Rules](#) [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
- 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

RESOURCES:

- Law Society of BC, [Practice Checklists Manual: Client identification and verification procedure checklist](#)
- Law Society of BC, Discipline Advisory, [Client ID and Verification](#)
- Law Society of BC, *Benchers' Bulletin* Winter 2017, [Closing a client file: What documents to keep and for how long](#)
- Law Society of BC, [Closed Files – Retention and Disposition](#)
- Law Society of BC, [Ownership of Documents in a Client's File](#)
- Law Society of BC, [Reporting letter to client – Closing a File](#)
- Law Society of BC, [Model non-engagement letters](#)
- Law Society of BC, [Cloud computing checklist](#)
- Lawyers Insurance Fund, [Employee fraud, cybercrimes and more](#)
- Lawyers Insurance Fund, [The 'bad cheque' scam](#)
- Lawyers Insurance Fund, [Other social engineering scams, including the 'phony change in payment instructions'](#)
- Office of the Information & Privacy Commissioner for BC, [Securing Personal Information: A Self-Assessment Tool for Organizers](#)
- Public Safety Canada, [Create stronger cyber safety policies](#)
- Public Safety Canada, [Educate your employees on cyber safety](#)
- Public Safety Canada, [How to recover from a cyber incident](#)
- Public Safety Canada, [Run a more cybersafe business](#)
- Public Safety Canada, [Cyber safe guide for small and medium businesses](#)
- [BC Code](#) [section 3.5: Preservation of clients' property]
- [Law Society Rules](#) [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

<p>RATING ELEMENT 5</p>	<p>Policies and processes have not been developed.</p> <p>1 <input type="checkbox"/></p>	<p>Policies and processes are under development but are not functional.</p> <p>2 <input type="checkbox"/></p>	<p>Policies and processes are functional.</p> <p>3 <input type="checkbox"/></p>	<p>Policies and processes are fully functional and regularly assessed and updated.</p> <p>4 <input type="checkbox"/></p>
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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 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

RESOURCES:

- Law Society of BC, [The Trust Accounting Handbook](#)
- Law Society of BC, *Bencher's Bulletin* Winter 2012, [Practice Watch – Fees, Disbursements and Interest](#)
- Law Society of BC, [Practice Resource: Solicitors' Liens and Charging Orders – Your Fees and Your Clients](#)
- *BC Code* [section 3.6: Fees and Disbursements; section 6.1: Supervision; section 6.2: Students]
- *Law Society Rules* [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]
- *Legal Profession Act*, [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
 - 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:

- Law Society of BC, [Retainer Agreement](#)
- Law Society of BC, [Practice Advisors – Frequently Asked Questions](#)
- [BC Code](#) [section 3.2: Quality of Service; section 3.6: Fees and Disbursements; section 3.7: Withdrawal from Representation]
- [Law Society Rules](#) [Part 3 - Division 7: Trust Accounts and Other Client Property; Part 8: Lawyers' Fees]
- [Legal Profession Act, 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:

- Law Society of BC, [Disputes involving fees and the Law Society Fee Mediation Program](#)
- [BC Code](#) [section 3.2: Quality of Service; section 3.6: Fees and Disbursements]
- [Law Society Rules](#) [Part 3 - Division 7: Trust Accounts and Other Client Property; Part 8: Lawyers' Fees]
- [Legal Profession Act, 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

<p>RATING ELEMENT 6</p>	<p>Policies and processes have not been developed.</p> <p>1 <input type="checkbox"/></p>	<p>Policies and processes are under development but are not functional.</p> <p>2 <input type="checkbox"/></p>	<p>Policies and processes are functional.</p> <p>3 <input type="checkbox"/></p>	<p>Policies and processes are fully functional and regularly assessed and updated.</p> <p>4 <input type="checkbox"/></p>
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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 and in relation to any change in payment instructions
- 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 take steps to identify and prevent fraudulent activities, including staying informed of the Law Society's fraud alerts
- 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:

- Law Society of BC, [The Trust Accounting Handbook](#)
- Law Society of BC, [Sample Checklist of Internal Controls](#)
- Law Society of BC, [Garnishment of Lawyers' Trust Accounts](#)
- Law Society of BC, [Trust Accounting Checklist](#)
- Lawyers Insurance Fund, [Employee fraud, cybercrimes and more](#)
- Lawyers Insurance Fund, [The 'bad cheque' scam](#)
- Lawyers Insurance Fund, [Other social engineering scams, including the 'phony change in payment instructions'](#)

- [BC Code](#) [section 3.5: Preservation of Clients' Property; section 6.1: Supervision; section 6.2: Students]
- [Law Society Rules](#) [Part 2 - Division 1: Practice of Law (Supervision of Limited Number of Paralegals); Part 3 – Division 6: Financial Responsibility; Part 3 - Division 7: Trust Accounts and Other Client Property; Part 3 – Division 8: Unclaimed Trust Money; Part 8: Lawyers' Fees]

Indicator 2: Does the firm have appropriate and adequate commercial insurance?

Considerations

- Lawyers are aware of the risks the firm faces and whether or not those risks are insured under the Law Society's compulsory policy or through commercial policies purchased by the firm
- Adequate commercial insurance coverage is in place, including excess, crime or fidelity (for employee theft) insurance, social engineering and funds transfer fraud insurance and cyber insurance, as appropriate, to respond to risks that are not covered under the Law Society's compulsory policy
- Processes are in place to assess, on a regular basis, both the risks the firm faces and the adequacy of commercial insurance
- Lawyers are aware of the reporting obligations under the compulsory policy and any commercial insurance policies

RESOURCES:

- Lawyers Insurance Fund, [Cover Pages: A guide to insurance for private practitioners](#)
- Lawyers Insurance Fund, [My Insurance Policy: Questions and Answers \(includes what's covered and what's not, reporting obligations\)](#)
- Lawyers Insurance Fund, [Excess insurance: Protection for claims that exceed \\$1 million](#)
- Lawyers Insurance Fund, [Other commercial insurance: Protection for claims that our policy does not cover](#)
- Lawyers Insurance Fund, [List of excess and other commercial insurance brokers](#)
- Lawyers Insurance Fund, [Insurance coverage for lawyers no longer in private practice](#)
- Lawyers Insurance Fund, [Employee fraud, cybercrimes and more](#)
- Lawyers Insurance Fund, [The 'bad cheque' scam](#)

- Lawyers Insurance Fund, [Other social engineering scams, including the ‘phony change in payment instructions’](#)
- [BC Code](#) [section 7.1: Responsibility to the Society and the Profession Generally (Meeting Financial Obligations)]
- [Law Society Rules](#) [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 judgments, 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:

- Law Society of BC, [Practice Advisors – Frequently Asked Questions](#)
- [BC Code](#) [section 7.1: Responsibility to the Society and the Profession Generally (Meeting Financial Obligations)]
- [Law Society Rules](#) [Part 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 <input type="checkbox"/>	Policies and processes are under development but are not functional. 2 <input type="checkbox"/>	Policies and processes are functional. 3 <input type="checkbox"/>	Policies and processes are fully functional and regularly assessed and updated. 4 <input type="checkbox"/>
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What does your firm do well?

How could your firm improve?

Element 8 – EQUITY, DIVERSITY AND INCLUSION

Objective: Observe the laws protecting human rights, and the principles of equity, diversity and inclusion in the workplace and in all aspects of the provision 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 that foster the creation of a fair and safe working environment for all lawyers and staff?

Considerations

- Policies or processes are in place that comply with legal obligations protecting human rights and encourage diversity, inclusion, substantive equality and accommodation in the recruitment, retention and advancement of lawyers and staff
- Hiring policies and processes are free of bias and unlawful discrimination, including interview questions
- Policies are reviewed, updated and communicated to lawyers and staff
- Lawyers and staff participate in education and training on issues relating to unlawful discrimination, harassment and bullying, including legal obligations under the *Human Rights Code* and the *Workers Compensation Act*
- Maternity and parental leave policies are in place for lawyers and staff
- Flexible work schedules are an option for lawyers and staff who have child-care or other caregiver responsibilities
- Accommodation policies are in place for lawyers and staff with disabilities
- Internal complaints mechanisms are in place to address concerns and allegations of unlawful discrimination and harassment in the workplace

RESOURCES:

- Law Society of BC, [Promoting a respectful workplace: A guide for developing effective policies](#)
- Law Society of BC, [Model Policy: Flexible Work Arrangements](#)
- BC Human Rights Tribunal, [Human Rights and Duties in Employment](#)
- [BC Code](#) [section 6.3: Harassment and Discrimination]

Indicator 2: Are policies and processes in place that encourage lawyers to develop and maintain the necessary knowledge and skills to provide legal services in a manner consistent with principles of equity, diversity, inclusion and non-discrimination?

Considerations

- All clients, court and registry staff and colleagues are treated in a manner consistent with applicable human rights laws and the principles of equity, diversity and inclusion
- Language used in communicating with clients is appropriate to the individual receiving the communication and reflects freedom from unlawful discrimination
- Processes are in place to address language barriers, cultural differences and issues of mental capacity
- Lawyers and staff have adequate knowledge and skills to ensure that clients with disabilities and other equality seeking groups receive competent legal services
- Lawyers and staff participate in skills-based training with respect to the Truth and Reconciliation Commission Call to Action #27:
 - “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.”
- Legal requirements relating to accessibility have been considered and where accessibility may be an issue, lawyers meet with clients in other appropriate settings

RESOURCES:

- Law Society of BC, [Equity Ombudsperson](#)
- Law Society of BC, *Benchers' Bulletin* Winter 2016, [Working in a Diverse Society: The Need for Cultural Competency](#)
- Law Society of BC, [Practice Advisors - Frequently Asked Questions](#)
- Law Society of BC, Practice Checklists Manual, [Human Rights Complaint Procedure](#)
- Law Society of BC, [Equity and Diversity Centre](#)
- Law Society of BC, [The Business Case for Retaining and Advancing Women Lawyers in Private Practice](#)

- BC Human Rights Tribunal, [Human Rights Duties in Employment](#)
- BC Human Rights Tribunal, [Human Rights in Services, Facilities, Accommodations](#)
- Canadian Human Rights Tribunal, [Accommodation Works!](#) Truth and Reconciliation Commission of Canada: [Calls to Action](#)
- *BC Code* [[section 2.1](#): Canons of Legal Ethics; [section 3.1](#): Competence; [section 3.2](#): Quality of Service; [section 6.1](#): Supervision; [section 6.2](#): Students; [section 6.3](#): Harassment and Discrimination; [section 7.2](#): Responsibility to Lawyers and Others]

Rating

Element 8 – EQUITY, DIVERSITY AND INCLUSION

Objective: Observe the laws protecting human rights, and the principles of equity, diversity and inclusion in the workplace and in all aspects of the provision of legal services.

<p>RATING ELEMENT 8</p>	<p>Policies and processes have not been developed.</p> <p>1 <input type="checkbox"/></p>	<p>Policies and processes are under development but are not functional.</p> <p>2 <input type="checkbox"/></p>	<p>Policies and processes are functional.</p> <p>3 <input type="checkbox"/></p>	<p>Policies and processes are fully functional and regularly assessed and updated.</p> <p>4 <input type="checkbox"/></p>
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What does your firm do well?

How could your firm improve?



Memo

To: Benchers
From: Equity and Diversity Advisory Committee
Date: April 9, 2018
Subject: 25 Year Retrospective Report

Purpose

This memo seeks Benchers endorsement of the Equity and Diversity Advisory Committee's "Retrospective Analysis of Gender in the Legal Profession in BC (1992-2017)" (attached).

Background

2017 marked 25 years since the Law Society of BC produced an extensive report regarding gender and the legal profession. The 1992 Gender Equality Report documented the difficulties that many women have faced in the practice of law. The report included a number of recommendations, many of which were aimed at the Law Society of BC. The anniversary of the report presented the Equity and Diversity Advisory Committee with an opportunity to reflect on the effectiveness of the Law Society's efforts to improve gender equality in the legal profession over the past 25 years.

The Equity and Diversity Advisory Committee has compiled comparative demographic data and tracked the Law Society's progress on the recommendations from the 1992 Gender Equality Report. Despite the Law Society of BC's efforts to improve gender equality in the legal profession over the past 25 years, a comparison of the "then and now" demographic data reveals that women continue to leave the legal profession at a higher rate than men. The Retrospective Report acknowledges that more information will be required to determine factors that may be contributing to the disproportionate attrition rates.

Although the Equity and Diversity Advisory Committee has identified matters for further investigation, the Committee has not yet devised research strategies. The Committee intends to seek Benchers approval of specific research plans before pursuing further studies.

Recommendation

The Equity and Diversity Advisory Committee recommends that the Benchers endorse the "Retrospective Analysis of Gender in the Legal Profession in BC (1992-2017)".



Retrospective Analysis of Gender in the Legal Profession in BC (1992-2017)

Equity and Diversity Advisory Committee

Jasmin Ahmad (Chair)
Brook Greenberg (Vice-Chair)
Jennifer Chow, QC
Tina Dion, QC
Jamie Maclaren, QC
Linda Parsons, QC
Elizabeth Rowbotham

March 14, 2018

Prepared for: Law Society of British Columbia
Prepared by: Equity and Diversity Advisory Committee

Background

2017 marked 25 years since the Law Society of BC produced an extensive report regarding gender and the legal profession. The 1992 Gender Equality Report documented the difficulties that many women have faced in the practice of law. The report included a number of recommendations, many of which were aimed at the Law Society of BC.¹ The anniversary of the report presents an opportunity to reflect on the Law Society's efforts to improve gender equality in the legal profession over the past 25 years.

Upon the release of the 1992 Report, the Benchers confronted many of the recommendations head-on, determined to show leadership by encouraging more equitable conditions for women in practice. The Law Society of BC's initiatives in direct response to the 1992 Report include:

- An amendment to the *Code of Professional Conduct* to explicitly prohibit discrimination and sexual harassment.² The amendment was adopted in 1992;
- A 50% reduction in liability insurance for members in part-time practice since 1993;
- A non-practising membership category with a lower fee was introduced in 1994;
- The Equity Ombudsperson Program which began operating in 1995 to resolve discrimination and harassment complaints within the legal profession. The program was initially designed as an external mechanism, but following a recent review, the program was brought into the Practice Advice Department of the Law Society in 2017;
- The development of model workplace policies on maternity and parental leave, alternative work arrangements, gender-neutral language, employment equity, and workplace harassment. The Law Society continues to encourage law firms to adopt the model policies;
- Actively encouraging women lawyers to stand for election as Benchers;
- The creation of a locum registry to assist law firms to obtain temporary replacements for parental leave absences; and
- The establishment of a permanent advisory committee to focus on issues of equity and diversity in the legal profession.

¹ A chart showing the Law Society's progress on the recommendations is attached as Appendix A.

² The *Code of Professional Conduct* states: 6.3-3 A lawyer must not sexually harass any person; 6.3-4 A lawyer must not engage in any other form of harassment of any person; 6.3-5 A lawyer must not discriminate against any person.

Updates

Since the 1992 Report, the Law Society has developed additional initiatives to support the retention and advancement of women in the legal profession:

- The Law Society released its report “The Business Case for Retaining and Advancing Women Lawyers in Private Practice” in 2009.³ The report explains the competitive advantages for firms that foster inclusive and equal opportunity work environments, in recruiting talent, attracting clients, and avoiding turnover costs.
- In 2010, the Maternity Leave Benefit Loan Program was launched as a pilot project to assist self-employed women lawyers to remain in practice after giving birth.⁴
- The Justicia Project began operating in British Columbia in 2012. Justicia is a voluntary program, facilitated by the Law Society of British Columbia and undertaken by law firms, to identify and implement best practices to retain and advance women lawyers in private practice. The participating law firms have developed model policies and videos, which are available online. They have also organized keynote presentations on how to identify and interrupt unconscious biases in an effort to improve career opportunities for women and diverse lawyers.

The anniversary of the Gender Equality Report provides an opportunity to reflect on how much has changed for women lawyers over the past 25 years. Recent statistics⁵ offer some insight:

- The demographic data shows that the number of women entering practice has now reached gender parity. There is near gender parity up to 15 years of call, with women representing 49% and men representing 51% of this segment of lawyers. The gender disparity becomes larger as year of call increases. The gender ratio for:
 - 15-19 year calls is 43% women and 57% men;
 - 20-24 year calls is 40% women and 60% men;
 - 25-29 year calls is 33% women and 67% men; and
 - Over 30 year calls 16% women and 84% men.

Although there has been a 17% increase in the proportion of women practicing law since 1992, they still only account for 40% of practicing lawyers.

³ Available online: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/Retaining-women-business-case.pdf> .

⁴ The effectiveness of the program is currently being reviewed.

⁵ See Appendix B: Comparative Gender Demographics of the Legal Profession in BC.

- Women make up a higher proportion (58%) of non-practicing lawyers than men (42%).
- Women continue to have a higher attrition rate (25.8%) than men (17.5%).⁶
- Men represent 75% and women represent 25% of retired lawyers.

In the past 25 years, the number of women engaged in Law Society governance has increased:

- In 1992, only 12% of elected Benchers were women, compared to 48% in 2017;
- In 1992, only 20% of committee members were women, compared to 44% in 2017;
- There were no women chairing committees in 1992, but in 2017, 40% of the committees were chaired by women; and
- The Law Society of British Columbia has seen five women presidents since 1992.

In terms of Law Society staff, there has always been a relatively high representation of women. In 1992, four out of five Managers and one out of three Directors were women. In 2017, three out of five members of the Executive Team, six out of eight members of the Leadership Council and 10 out of 13 members of the Management Team are women.

Attrition

A closer analysis of the comparative attrition rates is useful for assessing the effectiveness of the Law Society's initiatives intended to support women. The Law Society of BC has compiled the attrition rates for women and men with respect to the legal profession a number of times:

- A 1989 *Benchers' Bulletin* report indicated that "only 19% of [Law Society of BC] members are women and yet 33% of those who have given up their practicing certificates over the last two years are women."⁷ "When former members who were retired, disbarred, or appointed to the bench were excluded from the list, women made up 36% of those who had not renewed their membership in 1988-89."⁸
- The Law Society of BC's 1991 report entitled *Women in the Legal Profession: A Report of the Women in the Legal Profession Subcommittee* from 1991 noted that the attrition rate for lawyers called between 1984 and 1988 was 19% for women and 11% for men.⁹

⁶ This attrition rate is based on the number of lawyers called in 2012 who maintained practicing status in 2016.

⁷ *Benchers' Bulletin* (June, 1989) at 5.

⁸ Joan Brockman, "Appendix 1: Encountering Barriers and/or Moving On: A Survey of Former Members of the Law Society of British Columbia" *Women in the Legal Profession: A Report of the Women in the Legal Profession Subcommittee*, (Law Society of BC: September, 1991) at 8.

⁹ *Ibid.*

- Attrition rates were again calculated in 2008 by comparing the number of lawyers who were called to the bar in 2003 against those who were: practicing, non-practicing, or had entirely ceased practice by 2008. In 2008, the attrition rate was 34% for women (with 19% non-practicing members and 15% ceased members), and 17% for men (with 9% non-practicing members and 8% ceased members).
- As mentioned above, the attrition rate for 2016 was 25.8% for women (with 21.4% non-practicing and 4.4% ceased members), and 17.5% (with 11.8% non-practicing members and 5.7% ceased members) for men.

Because the categories of Law Society membership has evolved over the years, attrition rates may not be truly comparable. For example, a “non-practicing membership” category “was introduced in 1994 to accommodate career breaks by lawyers who needed to attend to family responsibilities.”¹⁰ Before that, “non-practicing” meant “ceased practice”. The 2008 and 2016 attrition rates differentiate between non-practicing and ceased members.

The 1991 attrition rate is based on those called in 1986 who maintained “good standing” in 1990, whereas the more recent attrition rates are based on those called in a particular year who have maintained “practicing status” five years later. Although the number of lawyers who have entirely ceased practice seems to be lower as compared to pre-1994 numbers, this decrease may seem artificial when the “non-practicing membership” category is factored into the comparison.

The number of lawyers who entirely cease practice has decreased since 1991, but more recent calculations in 2008 and 2016 (that factor in non-practicing members and ceased members) indicate higher attrition rates exist now than existed in 1991. A closer investigation of the current attrition rates will be necessary to determine whether the Law Society’s initiatives to support the retention and advancement of women in the legal profession have been effective.

Women clearly constitute a higher proportion (58%) of non-practicing lawyers than men (42%). However, it is not clear what “non-practicing status” means with respect to legal careers (i.e. whether non-practicing lawyers are leaving the profession altogether, or pursuing other law-related careers). More information about non-practicing membership is required to assess:

- The frequency of non-practicing status applications (including how many times individual lawyers obtain non-practicing memberships);
- The average duration of non-practicing status;
- What lawyers are doing as non-practicing members; and
- Reintegration rates (i.e. how often non-practicing members return to practicing status).

¹⁰ *Benchers’ Bulletin* (March-April, 2004).

The Law Society provides an optional online survey for lawyers who are changing their practice status (i.e. from full time to part time, practicing to non-practicing, or ceasing practice entirely). Even so, the response rate has been so low that it is difficult to generate meaningful conclusions from the data. Revitalizing the survey as part of a broader attrition study would likely be helpful to illuminate common reasons for lawyers to withdraw from practice.

Advancement

The Law Society of BC does not currently collect partnership data from its members, so the gender breakdown for law firm partners in British Columbia is unknown. The data from the Law Society of Ontario indicates that, in 2014, 9.7% of female lawyers and 23.5% of male lawyers held “law firm partner licenses”.¹¹ Although the partnership proportions in British Columbia are likely within a similar range, it would be beneficial to ascertain whether a similar disparity exists in this province.

Women have made demographic progress in other areas of the legal profession that the Law Society does not track, such as in the judiciary,¹² in legal education,¹³ and in government.¹⁴

Conclusions

The Law Society of BC believes the public is best served by a profession that reflects the gender diversity of society, and has made concerted efforts to improve gender equality in the legal profession over the past 25 years. However, a comparison of the “then and now” demographic data reveals that women continue to leave the legal profession at a higher rate than men. More information is required to determine the contributing factors to the disproportionate attrition rates, to enable the Law Society to develop effective policies, programs and initiatives to support the retention and advancement of women in the legal profession.

¹¹ Law Society of Ontario data, reported in: <http://www.catalyst.org/knowledge/women-law-canada-and-us> .

¹² See: <http://www.fja-cmf.gc.ca/appointments-nominations/AppointedByGender-eng.html> .

¹³ Since 1991, all three deans at the University of British Columbia Law School, and three of five deans at the University of Victoria Law School have been women.

¹⁴ The governments of both Canada and British Columbia have now achieved gender parity in Cabinet (see: <https://www.theglobeandmail.com/news/politics/justin-trudeau-cabinet-list-2017/article33561688/> and <https://thetyee.ca/News/2017/07/18/NDP-Gender-Balanced-Cabinet/>). Four of the federal ministers are legally trained, including the Honourable Jody Wilson-Raybould, the first Indigenous Federal Minister of Justice.

Next Steps

The Equity and Diversity Advisory Committee would like to further investigate:

1. Attrition data, including:
 - a. The frequency of change in status applications;
 - b. The average duration of non-practicing memberships;
 - c. What lawyers are doing as non-practicing members;
 - d. Reintegration rates; and
 - e. Change in status survey responses.
2. The effect of parenthood on the retention and advancement of lawyers in BC; and
3. Information regarding career advancement, including:
 - a. The comparative income levels of male and female lawyers, and
 - b. The gender demographics of partnership and other leadership roles.

APPENDIX A: PROGRESS CHART ON IMPLEMENTING THE RECOMMENDATIONS FROM 1992

Recommendation	Done	Explanation
3.1 The Law Society should revise the <i>Professional Conduct Handbook</i> to include sexual harassment as professional misconduct	Yes	The BC <i>Code of Professional Conduct</i> states: 6.3-3 A lawyer must not sexually harass any person. 6.3-4 A lawyer must not engage in any other form of harassment of any person. 6.3-5 A lawyer must not discriminate against any person.
3.2 a) Encourage firms to adopt the model Workplace Harassment Policy; b) Law Society to assist with the implementation of such policies	Yes	The model policy is available online, and has been promoted through Benchers Bulletin. In 2013, anti-bullying legislation came into effect, and legal employers are bound by the legislation. The WorkSafeBC Occupational Health and Safety Policy Guideline D3-115-2 ("Anti-Bullying Legislation") requires employers to adopt written policies and procedures, and to provide training to ensure that supervisors and staff are aware of them. Online modules are available: e.g. through CBA and CLE.
3.3 Law Society to sponsor education program for firms re: sexual harassment (in-house seminars, CLE course, video for in-house use, special course)	Yes	CLE and Law Society's Equity Ombudsperson have created a free online module.
3.4 a) Law Society to adopt this principle: "To attract and retain the best legal talent...law firms must develop policies that allow lawyers to balance family and professional responsibilities." b) Law Society to encourage firms to make every effort to grant reasonable parental leaves.	Yes	Benchers have endorsed Justicia model policies on flexible work arrangements and parental leaves. The Law Society is encouraging the adoption of these policies by smaller firms.
3.5 Firms to adopt the model Parental Leave Policy	Firms task	Law firm task (but LSBC model policy available online)
3.6 CBA to investigate feasibility of funding parental leave for lawyers and articulated students	CBA task	Not Law Society task, but Law Society developed the Maternity Leave Benefit Loan. A recent program review found it is underutilized.
3.7 a) LSBC to conduct periodic surveys on parental leave policies of law firms and publish the information. b) LSBC to assist firms to obtain temporary replacements for parental leave absences by maintaining a locum register	Partially Yes	Partially: Justicia law firms have shared information about their parental leave policies. Some details are available on the Law Society's website. LSBC maintains a locum register.
3.8 PLTC to accommodate students who are pregnant or primary caregivers to children.	Yes	There is more flexibility now. PLTC is offered at three times during the year.
3.9 a) LSBC to promote alternate types of practice (e.g. part time, flex time, job sharing) and become a model employer. b) LSBC to promote the acceptability of part time partners	Yes	Flexible work arrangement model policy is available on the Law Society's website.
3.10 Firms to adopt Alternative Work Arrangements Model Policy	Yes	Not LSBC task, but LSBC is promoting flexible work arrangements. A model policy is available on LSBC website.
3.11 Federal and Provincial Judges: part time appointments	Court task	Not a LSBC task.

3.12 a) LSBC provide lower fees and insurance premiums for part time members b) CBA lower fees for part time members	Yes	Part time membership is now available. Not a LSBC task, but CBA membership is no longer mandatory.
3.13 LSBC and CBA to make Counsel Network more accessible to lawyers seeking alternative work schedule arrangements, locums and research positions, less costly to law firms who wish to hire lawyers under these terms.	Yes	LSBC administers a locum registry.
3.14 Lawyers Assistance Program (LAP) to investigate ways of assisting lawyers who are having difficulty managing the stress of work and family obligations.	Yes	LAP provides educational sessions and online resources. Not LSBC task. LSBC provides an assistance program to all members of the Law Society.
3.15 LSBC to conduct periodic surveys of salaries and benefits provided to lawyers who have alternative work arrangements.	No	Technological advancements have led to increased alternative work arrangements. Billable hours continue to be the determining factor for the acceptability of such arrangements.
3.16 LSBC to introduce an inactive category of membership with substantially lower fees to permit members to take leaves of absence and maintain contact with the legal profession.	Yes	Non-practicing membership is now available.
3.17 LSBC to encourage women who leave the profession for family responsibilities to return to practice by: a) amending rule 400 [regarding requalification if not in full-time active practice for 3 years] to include full-time or part-time practice b) reducing administrative fees required for reinstatement c) evaluating competence on an individual basis where the lawyer is absent from the profession for more than three years d) granting the lawyer returning to practice a reasonable period of time after reinstatement to pay PLTC costs e) work with CLE to make programs available to inactive lawyers at a reasonable cost to help maintain competency.	Yes Yes Yes Yes Yes	Rule 2-89 now states (1) If, for a total of 3 years or more in the relevant period, a lawyer has not engaged in the practice of law, the lawyer must not practise law without first doing one of the following: (a) passing the qualification examination; (b) obtaining the permission of the Credentials Committee.... (3) A lawyer may apply in writing to the Credentials Committee for permission to practise law without passing the qualification examination. (4) On an application under subrule (3), the Credentials Committee may approve the application if, in its judgement (a) the lawyer has engaged in activities that have kept the lawyer current with substantive law and practice skills, or (b) the public interest does not require the lawyer to pass the qualification examination. There are some CPD course offerings that are low cost or free of charge, and CLE has a bursary program.
3.18 CBA to institute a reduced membership fee for lawyers who have left practice to fulfill family commitments, to continue their studies, or to pursue other personal developments.	Yes	CBA task. CBA membership is no longer mandatory.
3.19 LSBC to encourage law firms to adopt policies that allow women who take family leave to maintain competency levels.	Yes	The model policies developed by the Justicia Project support this recommendation.

<p>3.20 a) LSBC to amend the Professional Conduct Handbook to include the principle that every member is entitled to equal treatment with respect to conditions of employment and partnership without discrimination because of sex, sexual orientation, marital status, and family status, as well as race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age or disability.</p> <p>b) The Professional Conduct Handbook should stipulate that discrimination on prohibited grounds is professional misconduct.</p>	<p>Yes</p> <p>Yes</p>	<p>Code of Professional Conduct states: 6.3-3 A lawyer must not sexually harass any person. 6.3-4 A lawyer must not engage in any other form of harassment of any person. 6.3-5 A lawyer must not discriminate against any person.</p>
<p>3.21 a) Firms to adopt Model Workplace Equity Policy b) LSBC to assist firms to implement the Model Policy</p>	<p>Yes</p>	<p>LSBC provides a model policy on website. In 2013, anti-bullying legislation came into effect. Legal employers are bound by the legislation. The anti-bullying legislation requires employers to adopt written policies and procedures, and to provide training to ensure that supervisors and staff are aware of them.</p>
<p>3.22 Firms to adopt the Equity Policy on the Recruitment Process endorsed by the LSBC</p>	<p>Not LSBC</p>	<p>Law firm task. LSBC model policy available online.</p>
<p>3.23 LSBC promote gender equality in hiring and promotion policies.</p>	<p>Yes</p>	<p>A diversity statement appears on the Law Society's career opportunity webpage. LSBC has a high representation of women in the Executive Team (3/5 are women), Leadership Council (6/8 are women), and Management Team (10/13 are women).</p>
<p>3.24 LSBC and CBA to encourage women – immigrant women, women with disabilities, lesbians, Aboriginal women, and women of colour, to serve on committees, run for election, and participate in activities and programs.</p>	<p>Yes</p>	<p>Calls for nominations include an equity and diversity statement.</p>
<p>3.25 CBA to establish a section, conference, or committee with the objective of promoting equality in the legal profession.</p>	<p>Yes</p>	<p>CBA task. The CBA has a standing Equality and Diversity Committee. LSBC also has an Equity and Diversity Advisory Committee.</p>
<p>3.26 LSBC to adopt a statement of principle which advocates acceptance of gay men and lesbian women in the legal profession which acknowledges their lawful right to equality regardless of sexual orientation.</p>	<p>Yes</p>	<p>The Code prevents lawyers from discriminating against any person.</p>
<p>3.27 LSBC sponsor education programs which encourage law firms to sensitize their members to the issues affecting gay and lesbian lawyers and foster an atmosphere in the firm which allows gays and lesbians to openly acknowledge their sexual orientation.</p>	<p>Yes</p>	<p>Justicia firms have arranged for unconscious bias training for their managing partners.</p>
<p>3.28 CBA make membership services and insurance programs available to all CBA members and their dependents without discrimination on the basis of family status or sexual orientation</p>	<p>Yes</p>	<p>Not LSBC task. Law Society's personal counselling service is available to all members and dependents without discrimination on the basis of family status or sexual orientation.</p>

3.29 CLE and PLTC educate the legal profession about discrimination on the basis of sexual orientation and include in their regular curricula legal issues affecting gays and lesbians.	Yes	
3.30 a) LSBC encourage law firms to adopt equal opportunity employment guidelines which address the concerns of immigrant women, women with disabilities, Aboriginal women, gay men, lesbians, and women of colour. b) LSBC to establish education programs for law firms which will sensitize lawyers to the barriers facing these members of the legal profession.	Yes In progress	Model policies and best practice guides are available online. Published report in 2012, but more work needs to be done.
3.31 LSBC take a lead role in eliminating discrimination against immigrant women, women of colour, Aboriginal women, gay men, lesbians, and women with disabilities in its own hiring and promotion policies and to make every effort to eliminate such discrimination among legal employers.	Yes	LSBC has a Workplace Equity Policy and an Anti-Bullying and Harassment Policy. LSBC and CLE BC collaborated on a video to educate the profession about discrimination against Indigenous lawyers. Justicia firms have participated in unconscious bias training.
3.32 Law Schools to: a) develop an adequate response to backlash re: gender equality initiatives b) improve part time and co-op programs for students, and daycare facilities for parents with children c) adopt an effective response to students and guest speakers who use sexist or racist language	Not LSBC	Law school task
3.33: Law Schools, LSBC, CBA, CLE, PLTC, law firms to adopt the Gender Neutral Language Policy	Yes	Model policy is available on LSBC website.
3.34: a) LSBC to undertake periodic surveys of articled students to assess the quality of the articling process and measure the extent to which gender bias plays a role in hiring and employment decisions. b) LSBC to publish the results of the annual surveys to the law schools in BC.	No	It may be more effective to get data from firms (e.g. Justicia demographic data) because students may not know why they are not being hired, or not being kept on. Statistics might be more enlightening (e.g. number of women in law school, then entering profession, then staying with the profession or going to non-practicing status.)
3.35 a) Benchers to sponsor student forums to address gender equality issues, share information about the legal profession with students, and listen to student concerns. b) LSBC to encourage law firms to participate in these forums.	Bencher interviews; Justicia forums	The Bencher interviews provide an opportunity to share information about the legal profession and listen to student concerns. The Justicia firms have invited renowned keynote speakers to address lawyers (including managing partners and associates) from participating firms with the goal of improving equity, diversity, and inclusion in the private bar. LSBC helps to coordinate these events.

3.36 LSBC to appoint an ombudsperson to receive, investigate, and mediate complaints of sexual harassment, sex discrimination, and sexual orientation discrimination in the legal profession.	Yes	The LSBC has an Equity Ombudsperson, and has recently redesigned the Program to increase its effectiveness.
<p>3.37 LSBC appoint a standing committee, reflective of the gender, sexual orientation, race, and ethnic characteristics of the legal profession to:</p> <p>a) monitor women's participation in the legal profession and identify new problem areas for further study and research;</p> <p>b) obtain endorsements of model policies</p> <p>c) oversee the creation of a certification program sponsored by the LSBC which would identify "Equality Policy Employers" and would authorize the law firm to display it in advertising and recruiting materials. To get certification, the Firm would have to agree: to adopt the policies, implement them, report annually on the implementation of the policies, and certification could be revoked if not lived up to.</p> <p>d) advertise the availability and distribute copies of model policies to members</p> <p>e) monitor the implementation of the recommendations</p> <p>f) report annually to the members regarding the status of the recommendations and of women in the legal profession.</p>	Yes	<p>Equity and Diversity Advisory Committee</p> <p>Ongoing</p> <p>Ongoing Justicia</p> <p>Ongoing</p> <p>Ongoing Ongoing</p>

APPENDIX B: COMPARATIVE GENDER DEMOGRAPHICS OF THE LEGAL PROFESSION IN BC

	1991 ¹⁵		2016		Difference	
	Male	Female	Male	Female	Male	Female
Entering Law School			48%	52%		
Entering Practice	249 (62%)	155 (38%)	314 (50%)	313 (50%)	65	158 (+12%)
Practicing	5634 (77%)	1567 (23%)	7,094 (60%)	4,574 (40%)	1460	3007 (+17%)
• % of all lawyers	79%	21%	49%	32%	-30%	+11%
Non-Practicing	200 (58%)	143 (42%)	656 (42%)	929 (58%)	-16%	+16%
• % of all lawyers	3%	8%	4.5%	6.5%	+1.5%	-1.5%
Retired ¹⁶			780 (75%)	261 (25%)		
• % of all lawyers			5.4%	1.8%		
Attrition rate ¹⁷	13%	19%	17.5%	25.8%	+4.5%	+6.8%
• Called/Maintained=Ceased	250/218=32	131/106=25	263/217=46	252/187=65	+14	+40
• Non-practicing member			31 (11.8%)	54 (21.4%)		
• Entirely ceased	32 (13%)	25 (19%)	15 (5.7%)	11 (4.4%)	-7.3%	-14.7%

¹⁵ The 1991 numbers are from the Law Society of BC Report entitled "Women in the Legal Profession: A Report of the Women in the Legal Profession Subcommittee," (September, 1991).

¹⁶ In 1991, retired lawyers were counted in the "non-practicing" category. In 2016, the number of non-practicing lawyers (including retired) was 1436 (55%) men and 1190 (45%) women. Although this statistic suggests a 3% change since 1991, the gender ratio of retired lawyers in 2016 was 75% men and 25% women. The 2016 ratio for non-practicing lawyers is 58% women and 42% men.

¹⁷ The attrition rates were calculated by comparing the number of all lawyers called to the bar in BC in a certain year to the number of lawyers who maintained practicing status 5 years later. The 1991 rate is based on those called in 1986 who maintained "good standing" in 1990, whereas the 2016 rate is based on those called in 2012 who maintained "practicing status" in 2016. The numbers are not exactly comparable because the "non-practicing member" category was created in 1994. Before 1994, the "non-practicing" category indicated entirely ceased membership (including due to appointment to the bench, retiring, being disbarred, or death). The 2012 numbers for lawyers who entirely ceased membership are included for comparison.

TYPE OF PRACTICE						
	Male	Female	Male	Female	Male	Female
Private	80%	63%	83%	66%	+3%	+3%
• Solo	1,023	223	1,813	805		
• 2-10 lawyers	1,774	421	1,975	1,087		
• 11-25 lawyers	515	116	881	460		
• 26-50 lawyers	293	73	357	188		
• 51+ lawyers	775	223	853	471		
"Otherwise Employed"	984	551	1,215	1,563		
Public ¹⁸	20%	37%	17%	34%	-3%	-3%
Government	336 (6.5%)	186 (14%)				
Industry	198 (3.9%)	60 (4.5%)				
Legal Education	32 (0.6%)	22 (1.7%)				
Out of Province	254 (4.9%)	77 (5.8%)				
Society/Union	59 (1.2%)	33 (2.5%)				
Other	5 (0.1%)	12 (0.9%)				

¹⁸ The categories of "public" lawyers came from the Gender Equality Report's survey of members conducted in 1991.

BENCHER GENDER DEMOGRAPHICS					
	1992		2017		Difference
	Male	Female	Male	Female	Female
Benchers	23 (82%)	5 (18%)	17 (55%)	14 (45%)	+27%
Elected Benchers	22 (88%)	3 (12%)	13 (52%)	12 (48%)	+36%
Appointed Benchers	1 (33%)	2 (67%)	4 (67%)	2 (33%)	-34%
Committee Members	65 (80%)	16 (20%)	80 (56%)	63 (44%)	+24%
Committee Chairs*	12 (100%)	0	12 (60%)	8 (40%)	+40%

* The 1992 committees were: Executive, Communications, Competency, Credentials, Discipline, Finance, Liability Insurance, Planning, Professional Standards, Special Compensation Fund, and Unauthorized Practice. The 2017 committees were: Executive, Complainants Review, Credentials, Ethics, Discipline, Practice Standards, Unauthorized Practice, Act and Rules, Finance and Audit, Governance, Access to Legal Services, Equity and Diversity, Legal Education, Rule of Law and Lawyer Independence, and Truth and Reconciliation.



Memo

To: Benchers
From: Executive Committee
Date: April 25, 2018
Subject: 2018 Annual General Meeting: Setting the Locations

This memorandum advises Benchers of the Executive Committee's approval of a date, time and locations for the Law Society's 2018 Annual General Meeting (AGM), pursuant to [Rules 1-8 and 1-9](#).

Date

The date is October 30, 2018, which takes into account Bencher meeting dates, Federation Conference dates and the President's calendar. There do not appear to be any conflicting religious or cultural holidays on this day.

Time

The customary starting time for the AGM is 12:30 pm, permitting attendees to work through the morning and combine the meeting with lunch.

Locations

Rule 1-9 requires that the Executive Committee designate locations to be joined to the AGM, which must include at least 9 locations:

- 5) The Executive Committee must designate locations to be joined to the annual general meeting by telephone, including at least the following locations:
 - (a) one in District No. 1, County of Vancouver, or District No. 4, County of Westminster;
 - (b) one in District No. 2, County of Victoria;
 - (c) one in District No. 3, County of Nanaimo;
 - (d) one in District No. 5, County of Kootenay;
 - (e) one in District No. 6, Okanagan;
 - (f) 2 in District No. 7, County of Cariboo;
 - (g) one in District No. 8, County of Prince Rupert;
 - (h) one in District No. 9, Kamloops.

Rule 1(9)(6) also provides the Executive Committee the authority to cancel a location with an anticipated attendance of fewer than 15 members, 7 days before the AGM.

In 2017, we held the AGM in the following locations:

District #1, County of Vancouver	Vancouver
District #2, County of Victoria	Victoria
District #3, County of Nanaimo	Nanaimo
District #4, County of Westminster	Abbotsford
District #5 County of Kootenay	Castlegar and Cranbrook
District #6, Okanagan	Kelowna
District #7, County of Cariboo	Prince George and Fort St. John
District #8, County of Prince Rupert	Prince Rupert, Smithers and Terrace
District #9, Kamloops	Kamloops

Attendance at the various locations has diminished over the past 5 years, as the following chart demonstrates:

District	City	2013	2014	2015	2016	2017
District 1 Vancouver	Vancouver	102	157	71	44	57
District 2 Victoria	Victoria	29	44	25	12	19
District 3 Nanaimo	Nanaimo	10	18	12	8	6
District 4 Westminster	Abbotsford	8	12	7	7	4
	Surrey	N/A	6	5	3	N/A
District 5 Kootenay	Castlegar	9	3	5	4	3
	Cranbrook	5	5	6	3	1
District 6 Okanagan	Kelowna	8	12	5	8	2
District 7 Cariboo	Prince George	5	7	6	5	4
	Dawson Creek	N/A	5	N/A	1	N/A
	Fort St. John	9	N/A	6	N/A	2
District 8 Prince Rupert	Prince Rupert	7	8	5	2	1
	Smithers	7	5	3	7	6
	Terrace	11	11	5	4	2
District 9 Kamloops	Kamloops	14	19	7	9	5
		224	312	168	117	112

Given attendance rates, and the electronic attendance option afforded by the integrated webcast/online voting platform, the Executive Committee has approved restricting the 2018 AGM satellite locations to those required under the Rules. Vancouver will remain the primary location, and the locations in Surrey, Abbotsford, one location in the Kootenays and two locations in Prince Rupert will be eliminated.

Based upon consideration of factors such as the average attendance and the most consistent attendance, Castlegar and Smithers were designated at the locations for Kootenay and Prince Rupert respectively. In the Kootenays, average attendance over 5 years between Castlegar and Cranbrook has been quite similar, at 4.8 and 4 respectively. Castlegar attendance is marginally higher and has remained somewhat consistent over the last 3 years, while attendance in Cranbrook has dropped from 6 to 1 in the last 3 years (with the local Chair being the only attendee last year).

In Prince Rupert, average attendance over the last 5 years amongst the locations is as follows: Prince Rupert 4.6; Smithers 5.6; Terrace 6.6. However, while attendance at Prince Rupert and Terrace has dropped consistently, with each location hosting only 2 members and 1 member respectively last year, attendance at Smithers has remained fairly consistent.

Accordingly, the Executive Committee has designated the following satellite locations:

District #1, County of Vancouver	Vancouver
District #2, County of Victoria	Victoria
District #3, County of Nanaimo	Nanaimo
District #5 County of Kootenay	Castlegar <i>or</i> Cranbrook
District #6, Okanagan	Kelowna
District #7, County of Cariboo	Prince George and Dawson Creek*
District #8, County of Prince Rupert	Prince Rupert <i>or</i> Smithers <i>or</i> Terrace
District #9, Kamloops	Kamloops

*Dawson Creek should be designated in 2018 continuing the convention of alternating annually between Fort St. John and Dawson Creek.



Memo

To: Craig Ferris, QC
From: Michelle Robertson, Hearing Administrator
Date: April 25, 2018
Subject: Notifying Adjudicators of Appeals

Further to the discussion held at the April 6, 2018 Bencher meeting and our discussion, I confirm that, going forward, I will circulate all Court of Appeal decisions concerning the Law Society to all adjudicators. I will also provide a copy of any Notice of Review to the hearing panel whose decision is being reviewed.