



Agenda

Benchers

Date: Friday, July 13, 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.*

RECOGNITION					
1	Presentation of the 2018 Law Society Scholarship	5	President		Presentation
2	Rule of Law Essay Contest: Presentation of Winner and Runner-up	5	President		Presentation
CONSENT AGENDA					
<p>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 Deputy Executive Director/Deputy CEO, Adam Whitcombe prior to the meeting.</p>					
3	Minutes of June 2, 2018 meeting (regular session)	1	President	Tab 3.1	Approval
	Minutes of June 2, 2018 meeting (<i>in camera</i> session)			Tab 3.2	Approval
	External Appointments: Justice Education Society and Legal Services Society			Tab 3.3	Approval
	Delegation of Bencher Authority to the Finance and Audit Committee			Tab 3.4	Approval

Agenda



GUEST PRESENTATIONS					
4	Presentation by Legal Services Society Chair	15	Celeste Haldane, Chair of Legal Services Society		Presentation
5	Presentation by Law Foundation Board Chair	15	Eileen Vanderburgh, Board Chair of Law Foundation of BC		Presentation
EXECUTIVE REPORTS					
6	President's Report	10	President		Briefing
7	CEO's Report	10	CEO	Tab 7	Briefing
8	Financial Report – May Year-to-Date	10	Jeanette McPhee	Tab 8	Briefing
9	Federation Council Meeting Update: June Meeting	10	President		Briefing
DISCUSSION/DECISION					
10	Truth and Reconciliation Action Plan	10	Nancy Merrill, QC	Tab 10	Discussion/ Decision
11	Governance Committee Mid-Year Report	10	Steve McKoen	Tab 11	Discussion/ Decision
12	Publication or Disclosure of Interim Orders – Rule 3-10: Proposed Rule Amendments	5	Michael Lucas	Tab 12	Discussion/ Decision
REPORTS					
13	Counsel Resource Plan: Report on Progress	10	Deb Armour, QC	Tab 13	Briefing



Agenda

14	Mid-Year Reports: <ul style="list-style-type: none"> Access to Legal Services Advisory Committee Rule of Law and Lawyer Independence Advisory Committee Equity and Diversity Advisory Committee Lawyer Education Advisory Committee Legal Aid Advisory Committee Mental Health Task Force 	5	Jeff Campbell, QC	Tab 14.1	Briefing
		5	Jeff Campbell, QC	Tab 14.2	
		5	Jasmin Ahmad	Tab 14.3	
		5	Dean Lawton, QC	Tab 14.4	
		5	Nancy Merrill, QC	Tab 14.5	
		5	Brook Greenberg	Tab 14.6	
15	Report on Outstanding Hearing & Review Decisions	1	Craig Ferris, QC	<i>(To be circulated at the meeting)</i>	Briefing
FOR INFORMATION					
16	Six Month Benchers Calendar			Tab 16	Information
IN CAMERA					
17	Litigation Report – July 2018	5	Deb Armour, QC	Tab 17	Briefing
18	<i>In camera</i> <ul style="list-style-type: none"> Law Society of BC v. Trinity Western University Benchers concerns Other business 	20	President/CEO		Discussion/ Decision



Minutes

BENCHERS

Date: Saturday, June 02, 2018

Present:

Miriam Kresivo, QC, President	Claire Marshall
Nancy Merrill, QC, 1 st Vice-President	Geoffrey McDonald
Craig Ferris, QC, 2 nd Vice-President	Steven McKoen
Jasmin Ahmad	Christopher McPherson, QC
Jeff Campbell, QC	Phil Riddell
Pinder Cheema, QC	Elizabeth Rowbotham
Jennifer Chow, QC	Mark Rushton
Barbara Cromarty	Carolynn Ryan
Anita Dalakoti	Karen Snowshoe
Martin Finch, QC	Michelle Stanford
Brook Greenberg	Michael Welsh, QC
Lisa Hamilton, QC	Tony Wilson, QC
Roland Krueger	Guangbin Yan
Jamie Maclaren, QC	Heidi Zetzsche

Unable to Attend:

- Jeevyn Dhaliwal
- Dean Lawton, QC
- Sarah Westwood

Staff Present:

Don Avison	Jeffrey Hoskins, QC
Deborah Armour, QC	Jason Kuzminski
Renee Collins	Michael Lucas
Su Forbes, QC	Jeanette McPhee
Andrea Hilland	Alan Treleaven

Guests:	Donald Cranston, QC	President, Law Society of Alberta
	Jonathan Herman	CEO, Federation of Law Societies
	Elizabeth Osler	Deputy Executive Director, Law Society of Alberta
	Paul Schabas	Treasurer (President), Law Society of Ontario
	Ardith Walkem, QC	Member, TRC Advisory Committee
	Tuma Young	Member at Large, Council of the Nova Scotia Barristers' Society

DRAFT

1. ADMINISTER OATH OF OFFICE

Ms. Kresivo administered the oath of office to newly elected Bencher Karen Snowshoe.

CONSENT AGENDA

2. MINUTES & RESOLUTIONS

a. Minutes

The minutes of the meeting held on May 4, 2018 were approved as circulated.

The *in camera* minutes of the meeting held on May 4, 2018 were approved as circulated.

b. Resolutions

The following resolutions were passed unanimously and by consent.

Powers of Complainants' Review and Practice Standards Committees

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

1. *In Rule 3-14 by rescinding subrule (5) (b) and substituting the following:*

- (b) refer the complaint to the Practice Standards Committee or to the Discipline Committee with or without recommendation;
- (c) direct the Executive Director to conduct further investigation of the complaint to determine its validity..

2. *In Rule 3-17 by adding the following subrule:*

- (6) At any time, including after taking an action under Rule 3-19, the Practice Standards Committee may
 - (a) direct the Executive Director to conduct further investigation of the complaint to determine its validity, or
 - (b) refer any information that indicates that a lawyer's conduct may constitute a discipline violation to the Executive Director to be treated as a complaint under Division 1..

Correction to electronic transfer rules

BE IT RESOLVED to amend Rule 3-64 (4) (a) by striking “subrule (5) or (6),” and substituting “subrule (5) or Rule 3-65 (1.1) (a),” effective July 1, 2018.

2018 Law Society Scholarship

BE IT RESOLVED to award the 2018 Law Society Scholarship to Gabriella Jamieson.

2018 Law Society Indigenous Scholarship

BE IT RESOVLED to award the 2018 Law Society Indigenous Scholarship to Christina Gray.

EXECUTIVE REPORTS**3. PRESIDENT’S REPORT**

Ms. Kresivo reported on her meetings with the Penticton Bar and members in Osoyoos and speaking in Prince George at their annual Law Talks. In the coming weeks, she will be speaking at the Kamloops Bar Association’s annual general meeting. She will also be attending convocation at Thompson Rivers University and will be presenting the Law Society gold medal there.

Ms. Kresivo noted the upcoming Vancouver call ceremonies on June 22 and encouraged Benchers to attend. She will also be attending the call ceremony in Victoria on June 28, which members of the Executive Committee will be attending in conjunction with an Executive Committee meeting in Victoria.

4. CEO’S REPORT

Mr. Avison advised that law firm registration is going well with 2000 plus firms registered so far. The self-assessment tool, which is the next phase in Law Firm Regulation, was approved by Executive Committee at its last meeting and the pilot project is expected to proceed following the conclusion of law firm registration.

Mr. Avison reported that he had met with the Deputy Minister of Finance, Lori Wanamaker, and had a good discussion, including touching on anti-money laundering and an expected white paper on beneficial ownership of real property. He also had the opportunity to discuss with her legal aid funding and areas for further investment and why that would be in the public interest, given the costs of unrepresented litigants.

He mentioned the 10th B.C. Justice Summit which is focusing on Indigenous justice issues. The Summit is currently underway and Mr. Lawton and Mr. Whitcombe are participating in the Summit on behalf of the Law Society. He had been advised that this Summit was focused on the core issues with another Summit scheduled for November to follow up on an action plan. He also reported that he and Ms. Merrill met with Doug White, Co-Chair of the BC Aboriginal Justice Council for Criminal Justice. Mr. White welcomed a level of direct engagement with the Law Society.

Finally, Mr. Avison noted that PLTC had a record 250 students attending the current session at several locations around the province. He also mentioned that the 2019 budget is under development and will be coming forward to the Finance and Audit Committee in July.

5. FEDERATION PRESENTATION

Mr. Herman expressed appreciation for the invitation to attend the Benchers' retreat and for the opportunity to speak about the Federation. He extended greetings from President, Sheila MacPherson, who was unfortunately unable to attend.

Mr. Herman noted that the Federation of Law Societies of Canada (FLSC) is a voluntary association of all 14 Canadian regulators of lawyers plus the notaires in Quebec. It does not have an independent mandate and derives its mission and strategic plan from its members collectively.

One of the key roles of the FLSC is addressing interprovincial mobility. This involves necessary cooperation and collaboration amongst all regulators to give full faith and credit to the qualifications established by each provincial regulator.

Another key role for the FLSC is support for CanLII. The FLSC has just finished supporting the purchase of LexUM by CanLII. As a result, the FLSC and its members now own a sophisticated tech company which provides the best assurance of sustained access to case law and legal information in what has become a very competitive environment.

The FLSC's current strategic priorities include following up on the calls to action issued by the Trust and Reconciliation Commission and anti-money laundering policy, rules and enforcement.

On the latter issue, Mr. Herman noted that we are the only country where our constitution supports lawyers not participating in reporting suspicious transactions. This is not well understood outside the legal profession. The perception is that, as lawyers do not have to report to FINTRAC, there is a gaping loophole and huge risk. He suggested that we must fight this narrative and to do so, we must have robust rules that are at least comparable to ones imposed in other jurisdictions around the world and they must be enforced consistently. In his view, it would be better to persuade the Canadian government that there is no gap but rather the opposite.

Mr. Herman acknowledged the work of our Council member, Mr. Van Ommen, who chairs the National Committee on Accreditation and is a member of National Requirement Review committee. He also mentioned Mr. Lawton, who is a member of the FLSC's Trust and Reconciliation Committee, supported by Andrea Hilland as one of the staff to the Committee. He also noted that there is direct involvement of law societies through our staff, mentioning Mr. Treleven, Ms. Armour, Ms. McPhee, Mr. Lucas and Mr. Whitcombe.

Ms. Kresivo thanked Mr. Herman for his presentation and expressed agreement with his observation that the anti-money laundering narrative has to change and we need to reiterate frequently our work with the rules, enforcement and education.

6. REMARKS FROM MR. SCHABAS, TREASURER OF THE LAW SOCIETY OF ONTARIO

Mr. Schabas expressed appreciation for the invitation to attend the retreat and for the opportunity to speak to the Benchers.

He commented that he very much appreciated the retreat yesterday. He noted that the Law Society of Ontario (LSO) has had an Equity and Indigenous Affairs Committee for 20 years but more recently has established an Indigenous Advisory Group of elders and lawyers. This group has been instrumental in all LSO has accomplished to date, including the establishment of an Indigenous specialist certification and an Indigenous framework. The LSO has also released a guide to representing Indigenous clients and released a report on regulatory process in relation to Indigenous issues. The latter report was commissioned as the result of a LSO discipline proceeding and Ovid Mercredi was retained to reach out to Indigenous communities and to investigate and provided recommendations.

Mr. Schabas mentioned the LSO's Statement of Principles, which turned out to be controversial last year. He noted that the statement arose for a report from the racialized licencees working group that made hard findings regarding systemic racism and barriers to entry and advancement in the legal profession. He noted that a small minority of licensees objected on the basis of free speech but that the vast majority of licencees have signed the statement.

Mr. Schabas commented on the current review of lawyer licensing underway. He said that the challenge is that there are more law students wanting to enter the profession and not enough articling positions to meet the demand. The consultation underway has proposed four options for discussion: the status quo, the status quo with enhancements (such as a minimum wage requirement), articling and then skills exam, or eliminate articling and the LPP and have exams only. He noted that the LSO was conscious of the mobility issues inherent in any revision of the admission requirements in Ontario and noted that the LSO was looking for feedback until October.

Mr. Schabas observed that LSO has recently approved a limited license for paralegals in family law. He also observed that LSO has a legal aid task force investigating the state of legal aid and it was expected to make a recommendation that LSO be a liaison between the Legal Aid Ontario and the Bar.

Ms. Kresivo thanked Mr. Schabas for speaking with us about events unfolding in Ontario and expressed appreciation for his comments on the articling review as it will have an effect on us.

DISCUSSION/DECISION

7. SELECTION OF BENCHERS' NOMINEE FOR 2019 SECOND VICE-PRESIDENT

Ms. Kresivo reviewed the process for selection of the Benchers' nominee for 2nd Vice-President. She noted that, to date, the only declared candidate was Mr. Lawton and called for any further nominations. As there were no further nominations, Mr. Lawton was declared the Benchers' nominee for 2019 2nd Vice President for election at the Annual General Meeting.

8. TRUTH AND RECONCILIATION ADVISORY COMMITTEE

- **Proposed Action Plan**

Ms. Merrill noted that the Action Plan was being presented for discussion only. The Action Plan sets out a proposed framework for future work. She suggested that the Law Society has an obligation to advance truth and reconciliation and that the Action Plan supports that obligation. She noted Ms. Hilland's efforts to develop the Plan and she welcomed any questions or suggestions.

- **Scholarship Recommendations**

Ms. Merrill introduced the discussion of the Indigenous Law Graduate Scholarship. The scholarship was created in 2012 to enhance the retention of Indigenous lawyers by assisting the development of Indigenous leaders in the legal academic community. The scholarship has been available since 2013, but was not awarded in 2016 or 2017 because no applications were received. The Committee has suggested four options for the scholarship and is recommending that the Benchers approve the third option: expanding the eligibility criteria to include Indigenous Juris Doctor students enrolled in BC law schools. Ms. Merrill, seconded by Ms. Hamilton, moved the approval of the third option.

A number of Benchers expressed support for the resolution and several made suggestions for consideration by the TRC Advisory Committee. One suggestion was that the Law Society

consider creating twenty \$1000 scholarships for high school students, to be awarded based on a 500 word essay about why they want to be lawyers. Another suggestion was that the scholarship should only be awarded to those going into their 3rd year in law school. It was also suggested that it was a good idea to expand the pool of eligible applicants but we should make the change incrementally as the proposed change might result in a number of good applicants but if not, we could expand the criteria further in the future.

The motion passed unanimously.

REPORTS

9. REPORT ON OUTSTANDING HEARING & REVIEW DECISIONS

Mr. Ferris called for assistance with populating a panel for the following week. He noted there was only one item outstanding.

10. DEBRIEF OF RETREAT CONFERENCE AGENDA

Ms. Merrill reviewed the retreat program. She noted that Dr. Jeannette Armstrong provided an interesting perspective on what is law and that Dr. Marie Wilson provided us with reasons for not tolerating the intolerable. She said the blanket exercise was impactful and moving and that every lawyer and judge should participate in such an exercise.

A number of Benchers expressed appreciation for the retreat program and the speakers. It was suggested that the retreat illustrated the challenges for the Law Society and for lawyers and that Benchers might think about incorporating the issues into the student interviews. There was a suggestion that we need to think about retraining and relearning to understand the various forms of legal traditions and laws of the Indigenous communities and that there needs to be specific knowledge about Indigenous legal orders, especially in courts in those communities. It was suggested that we might call upon legal education service providers to include this type of content in educational conferences. There was also interest in extending the blanket exercise to more of the profession and even consider making it mandatory. There was also a caution that the work of truth and reconciliation involves a different realm where hearts and spirits are being touched and that it could be helpful to have healing support or spiritual support available for a day when emotions are likely to be evoked. It was also suggested that using the terms story or tale in describing the experience of survivors might be taken as minimizing the experience and that experiences was a better term. Finally, it was noted that the Law Society has a duty to uphold the administration of justice and that if we are to truly engage in truth and reconciliation, we have to stop minimizing other sovereigns in BC who have laws. We may need to reframe our activities so as to support justice in all its manifestations in BC.

REDACTED MATERIALS

REDACTED MATERIALS



Memo

To: Benchers
From: Recruitment and Nominating Advisory Committee
Date: July 4, 2018
Subject: **External Appointments: Justice Education Society and Legal Services Society**

Introduction

At its May meeting, the Committee considered appointments to the Boards of Directors of the Justice Education Society and the Legal Services Society. Both positions are Benchers appointments.

Justice Education Society

Ardith Walkem, QC was first appointed to the Justice Education Society Board on September 1, 2016 and will complete her first term at the end of August. The Committee was advised that Ms. Walkem is eligible for reappointment and Ms. Walkem confirmed her willingness to be reappointed.

Ms. Walkem recused herself for the Committee's discussion of this appointment.

The Committee resolved to recommend to the Benchers reappointing Ms. Walkem for a second term.

Legal Services Society

Jean Whittow, QC was first appointed to the Board of the Legal Services Society for a three year term commencing September 7, 2015. Her current term ends on September 6, 2018.

Celeste Haldane, Chair of the Legal Services Society Board of Directors, has recommended Ms. Whittow's reappointment.

Section 4(3) of the Legal Services Act specifies that directors are to be appointed by the Law Society after consultation with the executive of the British Columbia branch of the Canadian Bar Association. We have consulted with the executive of the CBABC and they concur with the re-appointment of Ms. Whittow.

The Committee resolved to recommend to the Benchers reappointing Ms. Whittow for a second term.

Recommended Resolution

BE IT RESOLVED to:

1. Reappoint Ardith Walkem, QC to the Board of the Justice Education Society for a second term; and
2. Reappoint Jean Whittow, QC to the Board of the Legal Services Society for a second term.



Memo

To: Benchers
From: Finance and Audit Committee
Date: July 7, 2018
Subject: Delegation of Benchers Authority to the Finance and Audit Committee

At their October meeting last year, the Benchers approved the External Funding Accountability Policy proposed by the Finance and Audit Committee. The purpose for the policy was to provide guidance to external organizations seeking funding from the Law Society regarding our expectations for accountability in the use of the funds provided.

The policy provides that each funded organization must agree:

1. to use the funds only for the intended purposes of the program and project;
2. if the expenditures for the program or project in any given year do not use all of the funds the Law Society provides, any unused or unaccounted portion of the funding must be refunded to the Law Society, unless the amount of the net assets falls within the Law Society previously approved net assets level for that program or project;
3. to use the funds as set out in the detailed budget for the program or project and in accordance with the proposed work plan and schedule, unless prior approval is received from the Law Society; and
4. that funds may not be transferred from one budget category to another without the prior approval of the Law Society.

During the year, as the policy contemplates, the funded organizations may ask to reallocate funding and may wish to use some of their unrestricted net assets on one-time projects or capital projects. The policy contemplates that the Law Society would provide approval, which would normally involve a Benchers resolution. The Legal Profession Act, s. 9(2) does provide that the Benchers may authorize a committee to do any act or to exercise any jurisdiction that the Benchers are authorized to do or to exercise, except the exercise of rule-making authority.

Accordingly, in order to accommodate and expedite the approval process contemplated by the policy, the Finance and Audit Committee suggests that the Benchers delegate the approval

authority required under the policy to the Finance and Audit Committee as provided in the following resolution.

BE IT RESOLVED that the Benchers delegate to the Finance and Audit Committee the authority to grant the Law Society approvals provided for under the External Funding Accountability Policy.



CEO's Report to the Benchers

July 2018

Prepared for: Benchers

Prepared by: Donald J. Avison

Law Society and CLEBC receive ACLEA Outstanding Achievement Award

On June 15, 2018, the Association for Continuing Legal Education (ACLEA) announced that the Law Society of BC and CLEBC were being recognized with the 2018 Award of Outstanding Achievement – Public Interest for the Law Society of BC Truth and Reconciliation Symposium that was held in Vancouver on November 23, 2017.

ACLEA is an international continuing legal education association that was established in 1964 and that now has more than 500 members from the US, Canada, the United Kingdom, Australia, New Zealand, and Mexico.

Congratulations for this recognition must go to the Symposium's organizers and speakers.

I would also add that the video "But, I was Wearing a Suit" that was produced for the Symposium continues to have an impact. It was recently used as part of the program at the annual retreat of the Benchers of the Law Society of Alberta that took place at Jasper in June.

Government of British Columbia releases a White Paper on a proposed Land Owner Transparency Act

On June 20, 2018 the Honourable Carole James, Minister of Finance, released a White Paper, together with draft legislation, focused on achieving greater transparency with respect to the registration of beneficial ownership of land.

According to Minister James, the intent of the proposed legislation is to end "hidden ownership" in real estate and to assist in addressing tax evasion, tax fraud, and money laundering.

The government has invited input and, when I discussed beneficial ownership with the Deputy Minister of Finance in May, she specifically indicated that government would want to hear from the Law Society regarding the content of the proposed legislation.

We are in the process of developing comments on the White Paper for consideration by the Executive Committee. Any input you might wish to provide on this can be forwarded to Mr. Michael Lucas, Director of Policy.

Government's work on this front is also linked to the assignments that have been undertaken by Dr. Peter German. His report on casinos and money-laundering was released in June and Dr. German has agreed to take on a second phase of analysis that will focus more specifically on the real estate context.

Dr. German, in response to questions asked at a press conference when his first report was released, made a number of positive comments regarding the anti-money laundering initiatives of the Law Society. I will speak to this in more detail at the July 13 meeting with the Benchers.

Budget Development Process

Work on the proposed budget for 2019 has been underway for some time now and will be on the agenda for the July 12 meeting of the Finance and Audit Committee. As is the normal practice, it is anticipated that a proposed budget will be placed before the Benchers for consideration at the September 2018 meeting.

Senior Staffing Changes

As Benchers know, the Manager, Governance and Board Relations position is currently vacant following the departure of Ms. Collins. Interviews are being conducted and we are optimistic that we will have a new person in place prior to the September meeting of Benchers.

The other significant news on the staffing front is that the Law Society's Chief Legal Officer, Deb Armour, QC, has confirmed her intention to leave the Law Society, effective September 21, 2018.

Ms. Armour, QC has played a critical role in shaping the regulatory work of the Law Society and how we serve the public interest of British Columbians. Her significant and lasting contributions include guiding the TWU litigation to its recent resolution by the Supreme Court of Canada, her leadership in anti-money laundering both through our discipline process and as representative of the Law Society on the Federation of Canadian Law Societies working group that is developing new national model rules. Deb's support for proactive regulation was manifest in her work with the Law Firm Regulation Task Force, and she was actively involved in the development of our discipline guidelines. She has also been a much sought after presenter for CLEBC, UVic, the Inns of Court, CBABC, the International Conference of Legal Regulators and other groups, along with teaching Ethics and Professionalism at the Allard School of Law.

Deb has graciously agreed to continue in her role and to support our work while we conduct a search to find a new Chief Legal Officer. During this transition period, it is our priority to find the best individual to lead the regulatory functions of the Law Society. We will share the job announcement with you in coming days.

Again, I cannot thank Deb enough for her dedication, passion, and enthusiasm, as well as the leadership she has provided to her team. She will be greatly missed.

The Law Society
of British Columbia



Quarterly Financial Report

May 31, 2018

Prepared for: Finance & Audit Committee Meeting – July 12, 2018
Bencher Meeting – July 13, 2018

Quarterly Financial Report – to the end of May 2018

Attached are the financial results and highlights to the end of May 2018.

The second quarter results to the end of June 2018 are not available due to the timing of the FAC and Benchers meetings.

General Fund**General Fund (excluding capital and TAF)**

The General Fund operations for the first five months of the year have resulted in a positive variance to budget of \$1.2 million, due to a positive variance in revenue of approximately \$320,000, and the remainder due to the timing of expenses.

Revenue

Revenue was \$10.6 million, \$343,000 (3%) over budget, which is due to higher membership fees, PLTC fees and interest revenue. As we expect revenue to be ahead of budget, so this positive variance will continue to year end.

Operating Expenses

Operating expenses were \$9.1 million, \$816,000 (8%) below budget mainly due the timing of expenditures.

Reserve Spending

The Benchers have approved reserve spending of \$350,000 related to the Counsel Resource Plan and the clearing of the backlog of files in Investigations, Monitoring and Enforcement (IME). To date \$225,000 of this has been spent.

2018 Forecast - General Fund (excluding capital and TAF)

As of May 31st we are forecasting to have a negative variance to budget of \$181,000 by the end of the year.

Operating Revenue

At this time, revenues are projected to be favorable to budget. Practicing membership revenue is budgeted at 12,080 members and we are currently forecasting 12,140 members, an increase of 60 members and \$95,000 additional revenue. PLTC revenue is budgeted at 500 students and we are currently forecasting 540 students, an increase of 40 students and \$104,000 additional revenue. Interest income is also projected to be favorable to budget by \$120,000 for the year. This increase is related to additional interest on the high interest savings account and higher cash balances.

Operating Expenses

Operating expenses are expected to have an unfavourable variance of \$500,000. This is comprised of additional discipline external counsel fees of \$440,000 with a higher number of citations and staff vacancies. In addition, there will be \$60,000 more in Investigations additional external counsel fees as a large file has been sent out for external expertise.

TAF-related Revenue and Expenses

The first quarter TAF revenue has only been received at this time, and is slightly ahead of budget by \$56,000.

TAF expenses are also favorable to budget by \$90,000 due to salary savings and the timing of travel expenses.

Special Compensation Fund

In 2017, pursuant to Section 50 of the Legal Profession Amendment Act, \$1,000,000 of the unused reserves of the Special Compensation Fund was transferred to the Lawyers Insurance Fund. The remainder is being held to offset anticipated future costs related to document production and recovery collections.

Lawyers Insurance Fund

LIF assessment revenues were \$6.7 million in the first five months of the year, close to budget.

LIF operating expenses were \$2.6 million, \$532,000 in savings, primarily related to staff vacancy savings and the timing of expenses.

The market value of the LIF long term investment portfolio is \$168.7 million. The investment income to the end of May 2018 is below budget as the stock market returns to date have been minimal. With this market performance, the LIF long term investment portfolio return was only 0.78%, slightly behind the benchmark return of 1.57%.

Summary of Financial Highlights - May 2018
(\$000's)

2018 General Fund Results - YTD May 2018 (Excluding Capital Allocation & Depreciation)				
	Actual*	Budget	\$ Var	% Var
Revenue (excluding Capital)				
Membership fees	8,373	8,295	78	1%
PLTC and enrolment fees	451	387	64	17%
Electronic filing revenue	343	357	(14)	-4%
Fines, penalties & recoveries	232	200	32	16%
Application fees	229	210	19	9%
Interest Income	285	140	145	104%
Other Revenue	130	114	16	14%
Building revenue & tenant cost recoveries	567	564	3	1%
	10,609	10,267	343	3%
Expenses (excl. dep'n)				
	9,064	9,880	816	8%
Results before spending on reserve items	1,545	387	1,159	
Approved spending from reserves*	225	-	(225)	
	1,320	387	(934)	

*Actuals include \$225,000 in Benchers approved items to be funded from reserve

2018 General Fund Year End Forecast (Excluding Capital Allocation & Depreciation)		
Practice Fee Revenue	Avg # of Members	
2013 Actual	10,985	
2014 Actual	11,114	
2015 Actual	11,378	
2016 Actual	11,619	
2017 Actual	11,849	
2018 Budget	12,080	
2018 Forecast	12,140	
		Actual Variance
Revenue		
Membership revenue - projected to be 60 members positive variance		95
PLTC revenue projected to 40 students positive variance		104
Interest income - high interest savings account, interfund interest		120
		319
Expenses		
Forecasted additional Discipline external counsel fee spending		(440)
Forecasted additional IME external counsel fee spending		(60)
		(500)
2018 General Fund Variance		(181)

Reserve Funded Amounts (Benchers approved):	Approved	Spent
Counsel resource plan funding for clearing the backlog in IME	350	225

Trust Assurance Program Actual				
	2018 Actual	2018 Budget	Variance	% Var
TAF Revenue **	1,094	1,038	56	5.4%
Trust Assurance Department	1,135	1,225	90	7.3%
Net Trust Assurance Program	(41)	(187)	146	

2018 Lawyers Insurance Fund Long Term Investments - YTD May 2018*		<i>Before investment management fees</i>
Performance	0.78%	
Benchmark Performance	1.57%	

* June investment results not yet available

The Law Society of British Columbia
General Fund
Results for the 5 Months ended May 31, 2018
(\$000's)

	2018 Actual	2018 Budget	\$ Variance	% Variance
Revenue				
Membership fees (1)	10,488	10,421		
PLTC and enrolment fees	451	387		
Electronic filing revenue	343	357		
Fines, penalties and recoveries	232	200		
Application fees	229	210		
Interest income	285	140		
Other revenue	130	114		
Building Revenue & Recoveries	567	564		
Total Revenues	12,725	12,393	332	2.7%
Expenses				
Regulation	3,928	3,873		
Education and Practice	1,502	1,660		
Corporate Services	1,112	1,276		
Benchers Governance and Events	461	412		
Communications and Information Services	802	1,022		
Policy and Legal Services	809	898		
Occupancy Costs	675	739		
Depreciation	374	422		
Total Expenses	9,663	10,302	639	6.2%
General Fund Results before Trust Assurance Program	3,062	2,091	971	
Trust Assurance Program (TAP)				
TAF revenues	1,093	1,038	55	5.3%
TAP expenses	1,135	1,225	90	7.3%
TAP Results	(42)	(187)	145	-77.5%
General Fund Results including Trust Assurance Program	3,020	1,902	1,118	
Contribution from Trust Assurance Program to Lawyers Insurance Fund	-			
General Fund Results	3,020			

(1) Membership fees include capital allocation of \$2.10m (Capital allocation budget = \$2.14m)

The Law Society of British Columbia
General Fund - Balance Sheet
As at May 31, 2018
(\$000's)

	May 31 2018	Dec 31 2017
Assets		
Current assets		
Cash and cash equivalents	7,471	18,633
Unclaimed trust funds	2,066	2,016
Accounts receivable and prepaid expenses	7,628	1,678
B.C. Courthouse Library Fund		787
Due from Lawyers Insurance Fund	10,727	17,385
	<u>27,891</u>	<u>40,499</u>
Property, plant and equipment		
Cambie Street property	12,336	12,370
Other - net	1,552	1,433
	<u>13,888</u>	<u>13,804</u>
Long Term Loan	276	
	<u>42,056</u>	<u>54,303</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	2,016	6,290
Liability for unclaimed trust funds	2,066	2,016
Current portion of building loan payable	500	500
Deferred revenue	12,302	22,054
Deferred capital contributions	1	1
B.C. Courthouse Library Fund		787
Deposits	55	58
	<u>16,939</u>	<u>31,706</u>
Building loan payable	1,100	1,600
	<u>18,039</u>	<u>33,306</u>
Net assets		
Capital Allocation	3,652	2,666
Unrestricted Net Assets	20,365	18,331
	<u>24,017</u>	<u>20,997</u>
	<u>42,056</u>	<u>54,303</u>

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
Results for the 5 Months ended May 31, 2018
(\$000's)

	<i>Invested in Capital</i> \$	<i>Working Capital</i> \$	<i>Unrestricted Net Assets</i> \$	<i>Trust Assurance</i> \$	<i>Capital Allocation</i> \$	<i>2018 Total</i> \$	<i>2017 Total</i> \$
Net assets - At Beginning of Year	11,704	3,314	15,018	3,313	2,666	20,997	19,816
Net (deficiency) excess of revenue over expense for the period	(522)	1,467	945	(42)	2,117	3,020	1,180
Contribution to LIF				-		-	
Repayment of building loan	500	-	500	-	(500)	-	-
Purchase of capital assets:						-	-
LSBC Operations	317	-	317	-	(317)	-	-
845 Cambie	314	-	314	-	(314)	-	-
Net assets - At End of Period	12,313	4,781	17,094	3,271	3,652	24,017	20,997

The Law Society of British Columbia
Special Compensation Fund
Results for the 5 Months ended May 31, 2018
(\$000's)

	2018 Actual	2018 Budget	\$ Variance
Revenue			
Annual assessment	-	-	
Recoveries	-	-	
Interest income	2	-	
Loan interest expense			
Other income	-	-	
Total Revenues	2	-	2
Expenses			
Claims and costs, net of recoveries	35	-	
Administrative and general costs	-	-	
Total Expenses	35	-	35
Special Compensation Fund Results before Contribution Lawyers Insurance Fund	(33)	-	(33)

The Law Society of British Columbia
Special Compensation Fund - Balance Sheet
As at May 31, 2018
(\$000's)

	May 31 2018	Dec 31 2017
Assets		
Current assets		
Cash and cash equivalents		1
Accounts receivable		
Due from General Fund		
Due from Lawyers Insurance Fund	243	276
	<u>243</u>	<u>277</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities		-
Deferred revenue		
	<u>-</u>	<u>-</u>
Net assets		
Unrestricted net assets	243	277
	<u>243</u>	<u>277</u>

The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
Results for the 5 Months ended May 31, 2018
(\$000's)

	2018	2017
	\$	\$
Unrestricted Net assets - At Beginning of Year	277	1,364
Net excess of revenue over expense for the period	<u>(33)</u>	<u>(1,088)</u>
Unrestricted Net assets - At End of Period	<u>243</u>	<u>277</u>

The Law Society of British Columbia
Lawyers Insurance Fund
Results for the 5 Months ended May 31, 2018
(\$000's)

	2018 Actual	2018 Budget	\$ Variance	% Variance
Revenue				
Annual assessment	6,668	6,400		
Investment income	1,218	2,642		
Other income	60	25		
Total Revenues	<u>7,946</u>	<u>9,067</u>	<u>(1,121)</u>	<u>-12.4%</u>
Expenses				
Insurance Expense				
Provision for settlement of claims	7,116	7,116		
Salaries and benefits	1,086	1,332		
Contribution to program and administrative costs of General Fund	517	550		
Provision for ULAE	-	-		
Insurance	82	40		
Office	313	414		
Actuaries, consultants and investment brokers' fees	252	369		
Premium taxes	10	-		
Income taxes	-	-		
	<u>9,377</u>	<u>9,821</u>		
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	291	379		
Total Expenses	<u>9,668</u>	<u>10,200</u>	<u>532</u>	<u>5.2%</u>
Lawyers Insurance Fund Results before Contributions	<u>(1,722)</u>	<u>(1,133)</u>	<u>(1,653)</u>	
Lawyers Insurance Fund Results	<u><u>(1,722)</u></u>			

The Law Society of British Columbia
Lawyers Insurance Fund - Balance Sheet
As at May 31, 2018
(\$000's)

	May 31 2018	Dec 31 2017
Assets		
Cash and cash equivalents	13,031	18,538
Accounts receivable and prepaid expenses	502	668
Prepaid Taxes		
Current portion General Fund building loan	500	500
LT Portion of Building Loan	1,100	1,600
Investments	168,759	167,448
	<u>183,892</u>	<u>188,753</u>
Liabilities		
Accounts payable and accrued liabilities	691	1,738
Deferred revenue	8,756	7,786
Due to General Fund	10,727	17,385
Due to Special Compensation Fund	243	276
Provision for claims	71,347	67,719
Provision for ULAE	9,601	9,601
	<u>101,365</u>	<u>104,505</u>
Net assets		
Internally restricted net assets	17,500	17,500
Unrestricted net assets	65,026	66,748
	<u>82,526</u>	<u>84,248</u>
	<u>183,892</u>	<u>188,753</u>

The Law Society of British Columbia
Lawyers Insurance Fund - Statement of Changes in Net Assets
Results for the 5 Months ended May 31, 2018
(\$000's)

	Unrestricted \$	Internally Restricted \$	2018 Total \$	2017 Total \$
Net assets - At Beginning of Year	66,748	17,500	84,248	70,369
Net excess of revenue over expense for the period	(1,722)	-	(1,722)	13,879
Net assets - At End of Period	65,026	17,500	82,526	84,248



Truth and Reconciliation Action Plan

Truth and Reconciliation Advisory Committee

Grand Chief Ed John (Co-chair)

Nancy Merrill, QC (Co-chair)

John Borrows

Craig Ferris, QC

Dean Lawton, QC

Claire Marshall

Michael McDonald, QC

Ardith Walkem, QC

May 8, 2018

Prepared for: Law Society of British Columbia

Prepared by: Truth and Reconciliation Advisory Committee

BACKGROUND

On October 30, 2015, the Benchers unanimously acknowledged the findings of the Truth and Reconciliation Commission (TRC) and committed to addressing all of the TRC calls to action that are within the purview of the Law Society's mandate. The Law Society appreciates its moral and ethical obligation to advance truth and reconciliation. The Truth and Reconciliation Action Plan will guide the Law Society's strategic and meaningful response to the TRC calls to action.

TRUTH AND RECONCILIATION ACTION PLAN

COMMITMENTS

In accordance with the TRC's calls to action, the Law Society of British Columbia commits to:

1. Improving the legal profession's understanding of the detrimental impacts of the imposition of colonial laws and policies on Indigenous peoples;
2. Fostering the legal profession's respect for Indigenous individuals, institutions, and laws;
3. Increasing the legal profession's appreciation of the applicability of Indigenous laws within the Canadian legal system;
4. Engaging with Indigenous communities and organizations to better understand the unique needs of Indigenous people in relation to the legal system in British Columbia;
5. Undertaking strategic collaborations to:
 - a. Advance intercultural competence training for lawyers;
 - b. Enhance the availability of culturally competent legal services for Indigenous people in British Columbia; and
 - c. Improve access to justice for Indigenous people in British Columbia;
6. Addressing the unique needs of Indigenous people within the Law Society's regulatory processes;
7. Supporting Indigenous lawyers, articulated students, and law students in British Columbia;
8. Implementing all of the TRC calls to action that are within the purview of the Law Society's mandate; and

9. Continually reviewing, evaluating, and renewing the Truth and Reconciliation Action Plan to ensure that it remains relevant and effective in advancing the Law Society's efforts towards truth and reconciliation.

ACTIONS

1. The Law Society of British Columbia will be more inclusive of Indigenous people by:

- i. Seeking guidance from the Law Society of BC's Truth and Reconciliation Advisory Committee;
- ii. Publicly stating its commitment to implementing the TRC calls to action that are within the purview of the Law Society's mandate;
- iii. Ensuring that Law Society events are more inclusive of Indigenous people, by:
 - a. Acknowledging Indigenous territories at the beginning of Law Society functions;
 - b. Observing Indigenous protocols to open Law Society events;
 - c. Inviting Indigenous dignitaries to attend Law Society meetings and events;
 - d. Increasing the use of Indigenous businesses, suppliers, venues, and service providers; and
 - e. Applying the "alternate attire procedure" to process applications for the use of Indigenous regalia at call ceremonies.
- iv. Making the Law Society premises more welcoming for Indigenous individuals (e.g. by ensuring that symbols in the Law Society building are respectful of Indigenous people).
- v. Improving the accessibility of Law Society processes by Indigenous people by:
 - a. Requesting that the government of British Columbia appoint an Indigenous benchner;
 - b. Ensuring Indigenous representation on Law Society Committees;
 - c. Reviewing the Law Society's *Act, Rules, Code*, policies, and procedures to identify and remove any systemic barriers for Indigenous people;
 - d. Recruiting Indigenous Benchers, committee members, and staff;
 - e. Connecting with Indigenous communities; and

- f. Developing information sheets and online resources aimed at Indigenous audiences.
- 2. The Law Society of British Columbia will foster its support for Indigenous law students, articulated students, and lawyers by:**
- i. Tracking progress on the Law Society's 2000 Report regarding Aboriginal Lawyers, with the goal of addressing any outstanding recommendations within the purview of the Law Society;
 - ii. Expanding the eligibility criteria for the Indigenous graduate scholarship to include Indigenous Juris Doctor students;
 - iii. Making concerted efforts to:
 - a. Hire Indigenous law students (e.g. summer and articulated students) and lawyers; and
 - b. Appoint Indigenous lawyers to Law Society Committees;
 - iv. Continuing to administer the Law Society's Indigenous Lawyers Mentorship Program;
 - v. Strategically collaborating with law schools and legal organizations to develop and enhance initiatives to recruit, retain, and advance Indigenous lawyers; and
 - vi. Continuing to monitor demographics regarding Indigenous lawyers in BC.
- 3. The Law Society of British Columbia will increase the involvement of Indigenous people in Law Society governance by:**
- i. Integrating the TRC's calls to action into the Law Society's strategic plan;
 - ii. Seeking guidance from the Truth and Reconciliation Advisory Committee;
 - iii. Requesting that the government of British Columbia appoint an Indigenous benchler;
 - iv. Assigning Indigenous individuals to Law Society committees;
 - v. Improving coordination and cooperation among Law Society committees;
 - vi. Enhancing collaborative efforts with other legal organizations;
 - vii. Fostering engagement with Indigenous communities; and
 - viii. Enriching relations with Indigenous lawyers.

4. The Law Society of British Columbia will improve the intercultural competence of Law Society Benchers, staff, and committee members, and all lawyers and Admission Program candidates in British Columbia by:

- i. Mandating Indigenous intercultural competence education for all Law Society Benchers, staff, and committee members, and all lawyers and Admission Program candidates in British Columbia;
- ii. Clarifying criteria, standards, and best practices for intercultural competence education;
- iii. Cataloguing Indigenous legal course offerings that are available to lawyers in BC;
- iv. Collaborating with appropriate legal and Indigenous organizations to:
 - a. Develop and distribute appropriate intercultural competence educational resources (e.g. online tools and best practice guides) in light of the TRC calls to action; and
 - b. Support the training of intercultural competence educators (e.g. “train the trainers” session for Indigenous lawyers who are interested in learning how to facilitate a “Blanket Exercise”).
- v. Facilitating the dissemination of existing educational resources (e.g. the Truth and Reconciliation Symposium proceedings and “But I was Wearing a Suit” videos); and
- vi. Reviewing the “continuing professional development” requirements in light of the TRC calls to action.

5. The Law Society of British Columbia will regularly review, evaluate, and report on its progress on the Truth and Reconciliation Action Plan, by:

- i. Clarifying timelines for accomplishing action items;
- ii. Establishing mechanisms for interested parties (including Indigenous communities, legal organizations, lawyers, articulated students, and law students) to provide feedback on the Law Society’s efforts toward truth and reconciliation;
- iii. Identifying rational indicators of progress; and
- iv. Providing regular progress reports that are publicly available (e.g. mid-year and year-end progress reports at Benchers’ meetings).

6. **In recognition that truth and reconciliation are ongoing and long term endeavors, the Law Society will ensure the Truth and Reconciliation Action Plan maintains relevance by:**
 - i. Adapting the Truth and Reconciliation Action Plan in response to regular reviews, progress evaluations, and emerging Indigenous legal issues.

The Law Society
of British Columbia



2018 Mid-Year Report

Governance Committee

Steven McKoen (Chair)
Jamie Maclaren, QC (Vice-Chair)
Haydn Acheson
Lisa J. Hamilton, QC
Carolynn Ryan
Tony Wilson, QC

July 5, 2018

Prepared for: Benchers

Prepared by: Governance Committee

Purpose: Information and Decision

Committee Activity

1. Since the beginning of the year, the Governance Committee has met three times.
2. At its January 25th meeting, the Committee met and reviewed the results of the year-end 2017 Bencher and Committee evaluation process.
3. The Committee provided its report on the 2017 Bencher and committee evaluations at the March Bencher meeting and made several recommendations which were accepted by the Benchers.
4. In particular, the Committee recommended that:
 - The committee, task force and working group annual evaluation be revised to provide that respondents have the opportunity to comment on their respective committee, task force or working group but that the 12 specific statements be removed from future annual evaluations.
 - The practice of a two-stage consideration of important policy matters instituted in 2017 at the Bencher table continue and that the Benchers consider our process for and participation in decision making at the Bencher table with the goal of fostering good decision-making after the expression of any contrary or dissenting views on the matter at hand.
 - While recognizing the necessity of *in camera* consideration of certain matters to be decided by the Benchers, the use of *in camera* sessions and meetings outside the normal Bencher meetings should be judicious so that decision-making by the Benchers is as transparent and open as reasonably possible.
5. The recommendations were adopted by the Benchers.
6. At its April 5th meeting, the Committee spent some time considering the current iteration of the Bencher Governance Policies document, which retains much of its 1994 origins in its structure and content. In particular, it continues to manifest the Carver governance model in much of its structure.
7. The Committee concluded that it would work on producing a revised version of the present governance document which would:
 - Consolidate those elements of the current document that are appropriately characterized and understood to be policies;
 - Consolidate those parts of the current document which provide an overview of governance principles and expectations for Benchers and others and label as such; and

- Separate those parts of the current document that deal specifically with the ED/CEO role and responsibilities, including the current executive limitations, and recommend consideration of continuing utility of these by the ED/CEO and the Executive Committee.
8. Staff was asked to prepare a draft for consideration of the Committee and the Committee expects to consider the draft at its July 12th meeting.
 9. The Committee also considered a request from the Recruitment and Nominating Advisory Committee (RNAC) that the Committee consider the current policy governing of appointment of Benchers to external organizations. The RNAC was of the view that the policy is out-of-date and unduly restrictive, given what concerns might actually arise with respect to such appointments.
 10. The Committee discussed whether the policy needed to be changed, observing that the policy created a presumption but not a prohibition and did provide some latitude for appointments where the external organization required the appointment of a Bencher.
 11. The Committee considered the optics of recommending a change to the current policy. It was suggested that the appointment of Benchers to external organizations did have the appearance of favoritism for those at the table and that changing the policy to make this more permissible might appear to be inappropriate.
 12. The Committee discussed how the Benchers should proceed if the RNAC recommends the appointment of a Bencher to an external organization. It was suggested that if a Bencher is considered the best choice for an appointment and the appointment is not otherwise required by the legislation or bylaws of the external organization, then the appointment should have to be ratified by the Bencher table so there is a public presentation of the rationale that will be reflected in the Minutes.
 13. At its May 3rd meeting, the Committee concluded that it should recommend that the policy remain as it is with the addition of language that where a Bencher is recommended for appointment to an external organization, such a recommendation would have to be approved by the Benchers and supported by a rationale for the appointment of a Bencher.
 14. Also at its May 3rd meeting, the Committee had before it a memorandum from Mr. Whitcombe regarding the current Code of Conduct and examples of codes of conduct from other similar organizations.
 15. The Committee discussed the current Code of Conduct and noted that our Code did not have the broad sweep seen in some of the examples and was concerned that our Code may be too focused on specific rules and missing overarching principles. It was also noted that there are no provisions for Benchers disclosing and recusing themselves or outlining consequences and penalties for non-compliance. In particular, there was a suggestion that there should be

some provision for removal a Benchers if the Benchers was cited by the Discipline Committee. There was also discussion about the incorporation of civility and the freedom to express dissent into the Code.

16. Given that the Code has not been substantially considered from more than 20 years, the Committee thought that some external assistance would be helpful in ensuring that our Code is comprehensive and reflects best practices. The Committee therefore resolved to recommend retaining a consultant to assist with revisions to the Code.

For Decision

17. The Committee recommends retaining a consultant to assist the Committee with recommendations to the Benchers on possible revisions to the Code.
18. The Committee recommends that the current policy regarding the appointment of Benchers to external organizations be amended to provide:

“A Benchers should be appointed to an outside body where that body’s legislation or by-laws require that the Law Society appointee be a Benchers. In all other cases, there should be a rebuttable presumption against appointing Benchers to other bodies. Where it is recommended or proposed that a Benchers be appointed to an outside body, a rationale for the appointment of the Benchers should be provided to the Benchers and the appointment must be ratified by the Benchers and the decision reflected in the Minutes.”

Memo

To: Benchers
From: Executive Committee
Date: June 29, 2018
Subject: Proposed Rule Amendments: Publication or Disclosure of Interim Orders – Rule 3-10

Issue

1. The Discipline department has raised an issue concerning the publication of interim orders made under Rule 3-10. The issue is particularly focused on the publication of orders under that Rule by which restrictions or conditions are placed on a lawyer's practice. The Rule is silent as to authorization to publish or disclose such orders. This is to be contrasted with specific authority (under Rule 4-47(2)) that permits publication of a suspension that may be ordered under Part 3 of the Rules, including Rule 3-10.
2. The Executive Committee, in its Regulatory Policy function, considered the request to recommend to the Benchers that the Rules be amended to provide specifically that restrictions or conditions imposed as a result of a proceeding initiated pursuant to Rule 3-10 can be published. The Committee recommends that the Benchers approve such amendments in principle and refer the matter to the Act and Rules Committee to draft appropriate rules.

Background

3. Rule 3-10 (formerly Rule 3-7.1) was created in 2010. While at that time there were (and still are) rules that permit seeking an interim order to suspend or place conditions or restrictions on a lawyer's practice, those rules permitted such orders only *after* a citation had been authorized against the lawyer. Rule 3-10 was created to provide a process to issue such orders *before* a citation had been authorized. It was noted at the time a new rule was being considered that there may be compelling public interest reasons to seek a suspension or place conditions on a lawyer's practice *before* the investigation of a matter against the lawyer was completed and before it had been determined whether there was sufficient evidence to warrant the authorization of a citation.

4. The Benchers approved the creation of what is now Rule 3-10, relying at the time on their general rule-making power under s. 11. However, they also resolved to seek an amendment to the *Legal Profession Act* to provide more specific authorization for such a rule, which request was granted in the *Legal Profession Amendment Act 2012* (and can be found in s. 26.01 of the *Legal Profession Act*).
5. The heading of what is now Rule 3-10 is “Extraordinary action to protect public.” At the time the rule was passed, it was noted that it was expected orders would only be sought in rare cases where extraordinary circumstances existed. Unlike interim orders sought *after* a citation had been authorized, an order sought under the new rule would not have the benefit of the evidence having met the threshold of issuing a citation. The threshold ultimately adopted in the legislation in 2012 was to permit three benchers to make such an order if *satisfied it is necessary to protect the public*. In 2012, the rule was amended, following the legislation, to add in the requirement of “reasonable grounds.”
6. It was noted that seeking conditions, limitations or a suspension at such an early stage of an investigation was unusual, given that evidence may not have been tested to a significant degree. However, some cases were noted where the allegations arising in a complaint may be so egregious as to require the Law Society to address them in this manner, particularly where criminal charges had been laid from the same or related facts. Consequently, it was contemplated that, where such an order was made, it would be done in the public interest to ensure proper regulation of the profession, and better protection of the public seeking the services of lawyers.

Publication/Disclosure of Orders Made Under Rule 3-10

7. When the rule was passed, there were no provisions added concerning publication or disclosure of restrictions or conditions that were ordered pursuant to that rule. Interestingly, if a lawyer is *suspended* pursuant to that Rule, publication is permitted under what is now Rule 4-47(2), as the Executive Director is permitted to publish suspensions that are made under Part 2 or Part 3 of the rules. Rule 3-10 falls under Part 3 of the rules. Rule 4-47(2), however, has not been amended since 2007 (prior to the creation of Rule 3-10) and was therefore obviously created with other processes in mind, such as administrative suspensions.

Publication of Orders Placing conditions or limitations on the rules as they now exist

8. The Committee considered whether an order under Rule 3-10 that places conditions or limitations on the practice of a lawyer be published or disclosed? There is no rule that specifically says it cannot. That being said, Rule 3-3 generally prohibits the disclosure of information that forms part of a complaint, and while arguably an order made under Rule 3-10 is the *result* of information that forms part of a complaint and not the information itself, that is not without doubt.

9. However, Rule 3-3 permits the disclosure of information forming part of a complaint if it is for a purpose of complying with the objectives of the Act or the rules. The overriding objective of the Act is for the Law Society to protect the public interest in the administration of justice in a number of ways, one of which is by regulating the practice of law and another is by ensuring the competence of lawyers. The Act and the Rules give three Benchers the ability, if satisfied on reasonable grounds that extraordinary action is necessary to protect the public, to impose conditions or limitations on the practice of a lawyer who is the subject of an investigation so that the public is not unwittingly harmed by the lawyer. Applications pursuant to Rule 3-10 are only sought in the most extraordinary cases where there is a significant risk to the public. They are serious cases. It would be odd if, having made the decision that condition or limitations placed on a lawyer's practice pursuant to an order made on the application is necessary to protect the public, the Law Society would not be able to *inform* the public of the condition or limitation imposed.
10. The Committee considered that it was also worth noting that Rule 3-3(2)(c) permits the disclosure of an *undertaking* given by a lawyer during the course of an investigation that limits or prohibits a lawyer's practice of law. In other words, where a lawyer undertakes to a limitation during the course of an investigation, that is permitted to be disclosed. However, if the lawyer does not agree to give such an undertaking and it has to be imposed under Rule 3-10, there is no rule authorizing such publication.
11. The Committee noted that the rules provided explicit authority to publish suspensions made under rule 3-10, and that there is explicit authority to publish a condition, limitation or suspension to a lawyer's practice and the nature of that condition, limitation or suspension (see Rule 4-50) made under Rule 4-26 (which are made after a similar proceeding to that in Rule 3-10, but *after* a citation has been authorized).
12. The existence of explicit authority to disclose in those enumerated circumstances could be construed as implying an intent that no disclosure is permitted of orders of conditions or limitations made under Rule 3-10, on the statutory construction principle of *expressio unius est exclusio alterius*. Lack of any provisions permitting disclosure of conditions or limitations ordered under Rule 3-10 when there are provisions permitting publication or disclosure of suspensions that rule may lead one to presume the Law Society did not intend to permit disclosure of the former.
13. *Expressio unius* is not, however, strictly determinative. Sullivan on the Construction of Statutes (6th edition) references Cameron J.A. in *Dorval v. Dorval*, [2006] SJ No. 94 (CA):

... [T]he maxim *expressio unius est exclusio alterius* is only an aid to statutory construction,. As Laskin C.J. noted in *Jones v. New Brunswick (Attorney General)*, "This maxim provides at the most merely a guide to interpretation; it does not pre-

ordain conclusions.” And its application calls for a considerable measure of caution lest too much be made of it. ...”

... First, much depends on context, including the particular subject-matter. Second, express reference to a matter may have been unnecessary and been made only out of abundant caution. Third, the lack of express reference may have been the product of inadvertence. Fourth, the express and the tacit, incongruous as they may be, must still be such as to make it clear they were not intended to co-exist. And finally, the indiscriminate application of *expressio unius* to the particular subject-matter may lead to inconsistency or injustice.

14. The inference that can be drawn from the Law Society’s object and duty under the *Legal Profession Act* can be argued to outweigh the inference that might be drawn from the inconsistency with which disclosure of the types of orders made under Rule 3-10 and 4-23 (see for example, *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, [1989] 1 SCR 1722).
15. It is also true, however, that an order made under Rule 3-10 comes at a much earlier stage of investigation. This may warrant caution in publishing or disclosing any order outlining conditions or limitations on practice. But arguably such should be the case for the disclosure of a suspension as well. Whether a suspension or a condition or limitation, the lawyer’s practice is affected by the order, and the public who may be considering retaining such lawyer may be interested in knowing what constraints have been placed on the lawyer by his or her governing body. The authority would be discretionary, which is a safeguard against a situation where disclosure would be unfair or cause undue hardship.
16. It would, as noted, be odd if, having made a decision that the condition or limitation ordered under Rule 3-10 needs to be made to protect the public, the Law Society would never be able to notify the public of the decision, and therefore the lack of specific authority may not be determinative in order to comply with the purpose of the Act. Many conditions or limitations that could be imposed under Rule 3-10 would be extremely difficult to enforce without disclosure to the public.
17. It would also, as noted, be odd to have created a regulatory regime that permitted disclosure of a restriction given by way of an undertaking but not one imposed by way of an order. But having expressly given the permission to disclose a limitation or restriction by way of an undertaking, the lack of an express permission to disclose the limitation imposed by an order might be viewed as significant.

Clarification of Disclosure or Publication through Amendments to the Rules

18. If publication or disclosure of conditions or limitations ordered under Rule 3-10 were made on the basis of the current rules, it is possible that a lawyer subject to the order would seek some way to restrain its disclosure or seek some other remedy against the Law Society for having disclosed it. The Committee thought that while the argument

against such a concern would be fairly strong, it is true that it could be made stronger by amending the rules to specifically authorize that the Executive Director is permitted to disclose and publish an order made under Rule 3-10. The possibility of the *exclusio unius* maxim applying would be removed if the publication provisions were consistent, or at least expressly set out for each circumstance.

19. This might best be accomplished through a full review of all the disclosure provisions in the Act as has been proposed through an examination of Disclosure and Privacy considerations proposed for Strategic Planning purposes.
20. In the interim, however, clarification might be done through amendments to Rule 3-3, or perhaps by addition of new rules concerning publication and disclosure of processes under Part 3 of the Rules or through amendments to Rule 4-47(2) by including a power to take action where conditions are placed on practice under Parts 2 or 3 in addition to the power that currently exists to do so where a person is suspended.

Conclusion, Recommendation and Next Steps

21. As the Rules currently stand, where a lawyer is *suspended* after a proceeding under Rule 3-10, the Executive Director has a discretion to publicize the existence of the suspension. That discretion, which might be inferred to extend to the publication of *conditions* or *limitations* imposed after a proceeding under Rule 3-10, is not set out directly in the Rules. Although no rule currently prohibits publication of conditions or limitations imposed under Rule 3-10, the lack of express reference to it despite there being express authority to publish suspensions made under the same rule, or to disclose restrictions if imposed through an undertaking creates a concern that the rules could be interpreted to not permit such disclosure and that an effort to do so could result in a challenge.
22. Creating a regulatory discretion with the Executive Director to disclose (through publication) conditions or limitations imposed by Rule 3-10 would be consistent with existing Law Society Rules concerning the publication of suspensions imposed under Rule 3-10. It would also be consistent with the Law Society's overall mandate to protect the public interest in the administration of justice by regulating the legal profession and ensuring competence of lawyers and with the Law Society's objective to be fully transparent and open about the regulatory process while at the same time protects the rights of the lawyer to a fair hearing. It also protects the public interest by ensuring that clients are alerted to the limitations on their lawyer's practice so that the client has full knowledge of the conditions or limitations under which their lawyer is permitted to practise law.
23. Creating a rule to provide a discretion to the Executive Director to publish permits a consideration to be given to the effect of publication on the lawyer as well, and permits there to be a decision by the Executive Director *not* to publish if there are (likely rare)

situations where the adverse effect of publication outweighs the public interest in publication, recognizing that the proceeding under Rule 3-10 may happen at an early stage of investigation. However, given that proceedings under Rule 3-10 are “extraordinary actions to protect the public interest,” it may be expected that an exercise of discretion *not* to publish would itself likely require extraordinary circumstances.

24. While there are sound arguments on the principles of statutory construction that this lack of express reference to publication is not be determinative, this argument has not been tested.
25. The Committee therefore recommends that the Benchers approve in principle amendments to the Rules that specifically set out the authority to publish limitations and conditions placed on a lawyer’s practice as a result of a proceeding undertaken pursuant to Rule 3-10 as a safer course of action, and to refer the matter to the Act and Rules Committee to prepare amended rules.



Memo

To: Benchers
From: Deb Armour, QC, Chief Legal Officer
Gurprit Copland, Manager, Investigations, Monitoring and Enforcement
Date: July 4, 2018
Subject: Counsel Resource Plan Update

BACKGROUND

In 2016, staff of the Law Society undertook a review of internal versus external legal counsel resourcing for the Professional Regulation Department. The review included an in-depth look at current and forecasted future demand and capacity in the areas of Intake and Early Resolution; Investigations, Monitoring and Enforcement (Investigations); and Discipline. We determined that it is generally more cost effective to provide legal services through internal rather than external resources. We also determined that current and forecasted demand significantly exceeded capacity in the area of Investigations. An increasing backlog of aged files had developed since 2013.

Staff recommended to the Finance and Audit Committee (FAC) that additional staff be hired in 2017 as follows:

- Investigations - 2 lawyers, 1 paralegal and 1 administrative assistant on a permanent basis in 2017 and 1 contract lawyer for 2017-2018. Half of those resources were to bring work inside. The other half was to address, at least in part, the significant shortfall in overall resources.
- Discipline - 1 lawyer and 0.5 of a full time equivalent (FTE) paralegal and 0.5 FTE administrative assistant on a permanent basis in 2017. These increased resources were entirely to bring work inside, as it was determined to be more effective to do the work inside rather than out. There was no increase in overall resources for Discipline.

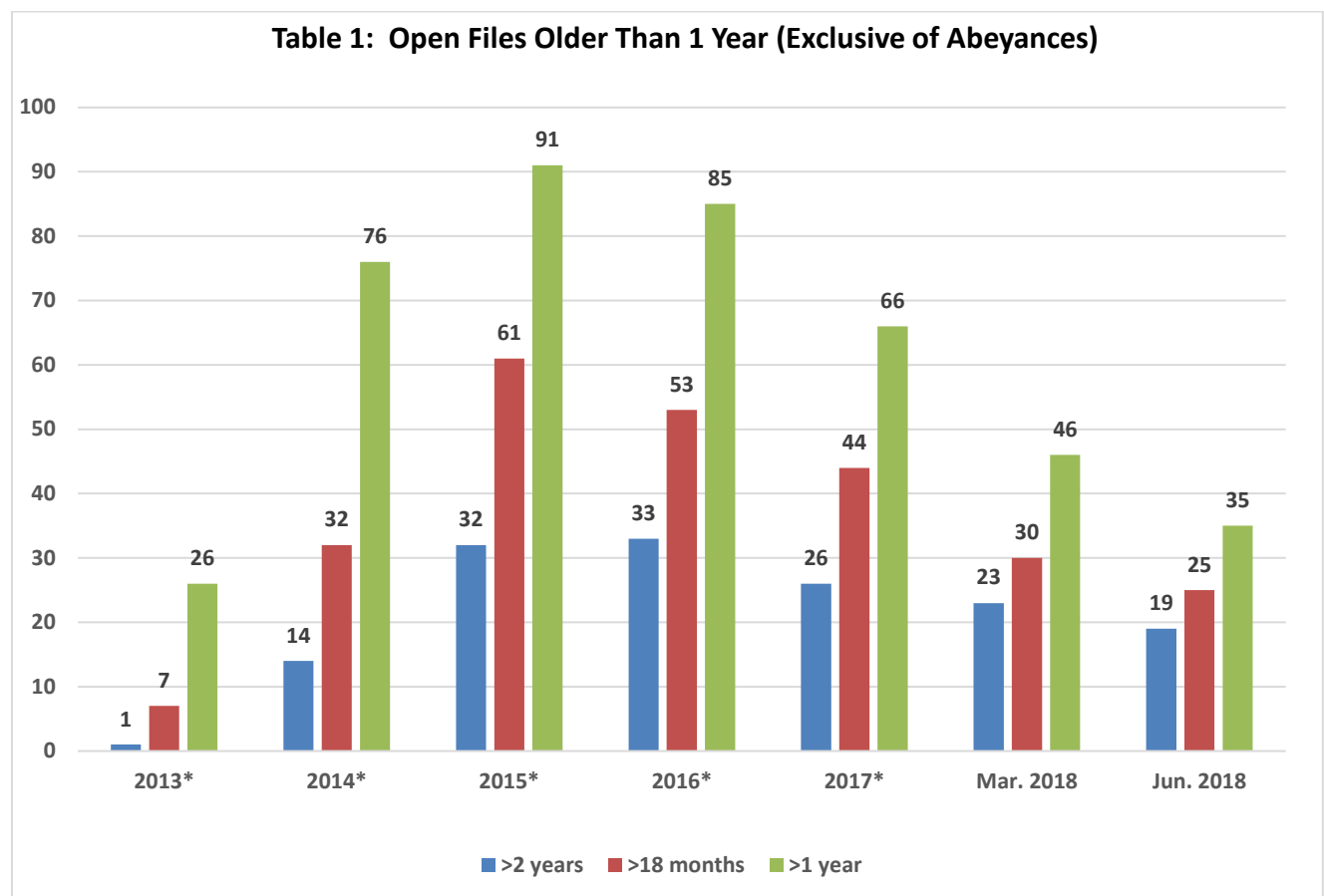
Our projections determined that increasing the staff in Investigations as proposed would largely eliminate the backlog by the end of 2019. The FAC approved the proposal to hire additional staff as outlined above and also asked staff to indicate what it would take to eliminate the backlog by the end of 2018 instead of 2019. Based on additional information provided by staff, the FAC approved reserve funding of \$350,000 to clear the Investigations file backlog by the end of 2018.

PROGRESS IN CLEARING AGED FILES¹

We are pleased to report that we continue to make steady progress in clearing the backlog and expect to clear it entirely by the end of 2018.

There will always be some aged files as some investigations cannot be concluded within a year. This is due to a number of factors including the need for forensic assistance on files, the complexity of the investigation, and waiting for information from other sources such as criminal and civil proceedings. There are also files that age as a result of being held in abeyance pursuant to the Discipline Committee's direction and the Abeyance Policy. We set a target of 20 aged files, excluding abeyed files, for the end of 2018.²

Table 1 sets out the number of open files older than 1 year, 18 months and 2 years since the end of 2013.

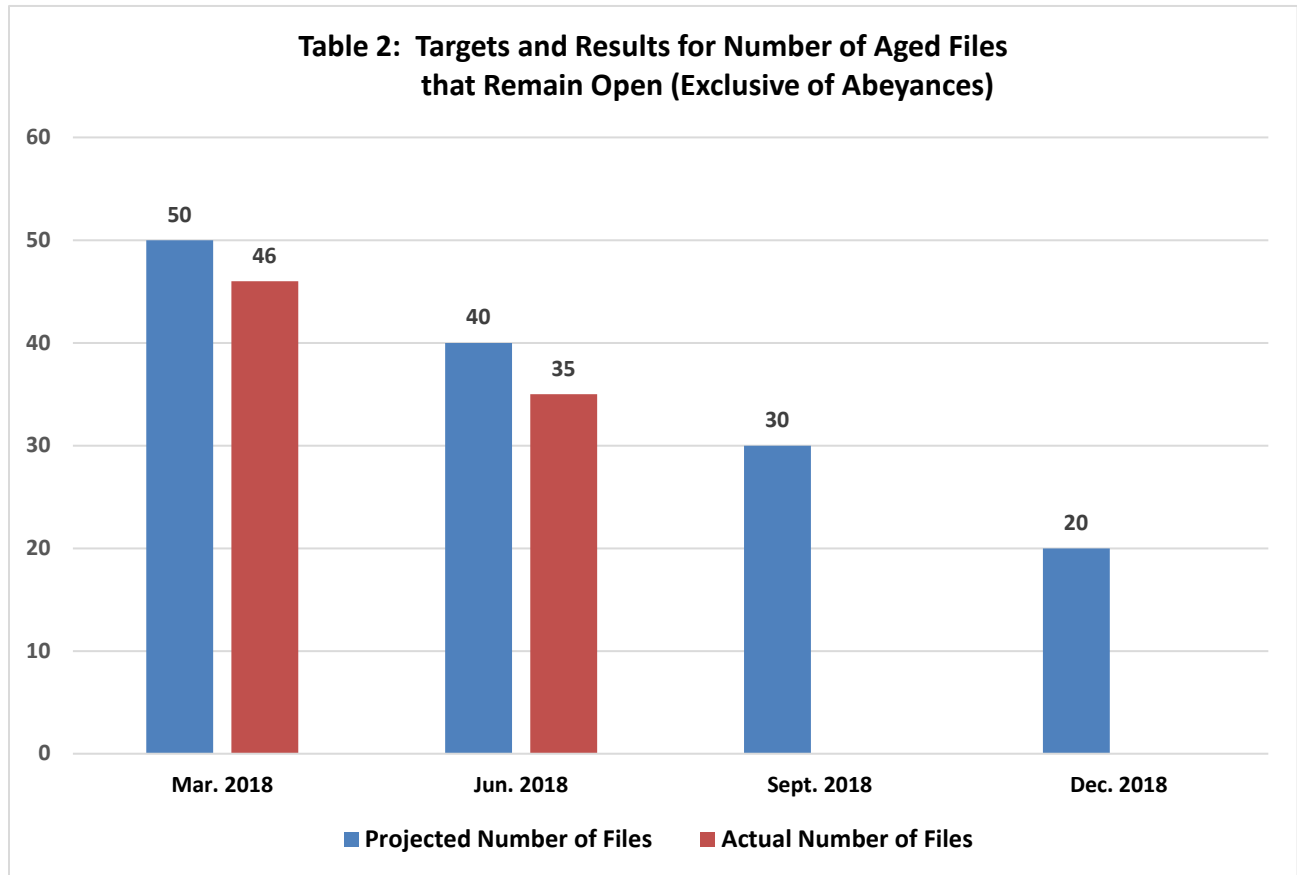


*As of Dec. 31st of each year

¹ Aged files are files older than 1 year.

² Pursuant to the Discipline Committee's direction and the Abeyance Policy, there are currently 18 aged files in abeyance. The statistics in this memo are exclusive of the abeyed files.

In December 2017, we established quarterly targets for the clearing of aged files. Table 2 below sets out our targets for the number of open aged files to the end of 2018 and our results for March and June 2018.

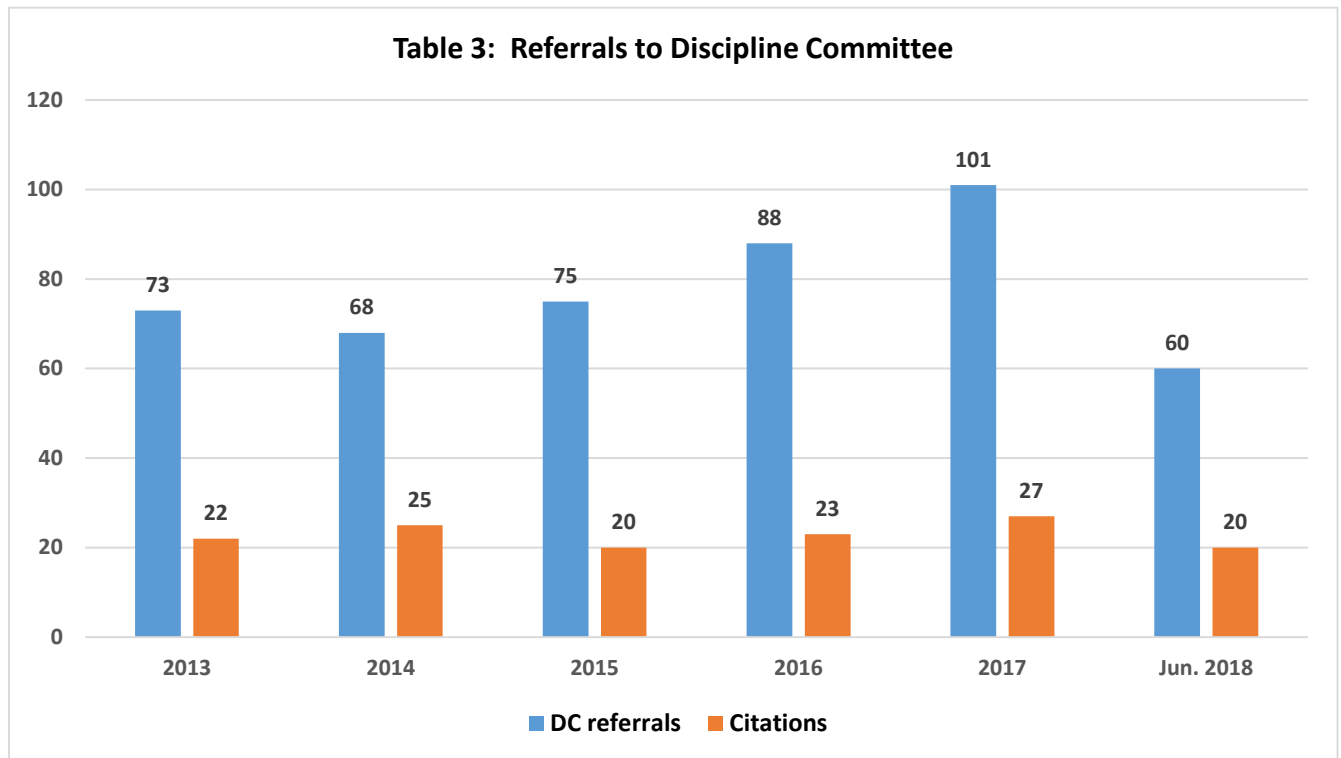


We remain on track to reach the targets we have set. In the last 12 months, we have closed 124 aged files and, although new files have become aged in that period, the net result is a reduction in the backlog by 51%.

In 2017, we referred more matters to the Discipline Committee and there were more cites authorized than in any of the previous 4 years. This trend of increased referrals to the Committee and increased cites, as compared to the results for 2013 to 2016, continues. There have been 60 investigations referred to the Committee and 20 cites authorized in the first six months of this year.

We are forecasting a total of 50 new Discipline files in 2018, which consists of 43 cites and 7 reviews. The number of cites forecasted for 2018 is about twice the number of cites authorized on average between 2013 and 2016 (average of 22 cites).

Table 3 sets out the number of Discipline Committee referrals and citations authorized since 2013.



Although we expect to clear the backlog by the end of this year, we anticipate that the number of referrals to Discipline will continue to be higher going forward than in the period 2013 to 2016. This is for two reasons. First, we will not be allowing the accumulation of another backlog and, second, the files we are seeing in investigations are generally more serious and complex than we saw in the period 2013 to 2016. We are currently developing criteria to categorize files as serious and/or complex in order to more accurately quantify year over year changes.

EXTERNAL COUNSEL FUNDING

We have allocated all of the \$350,000 funding to 14 files that have been sent to external counsel. We expect all 14 files to be concluded in 2018.

Mid-Year Report 2018

Committee: Access to Legal Services Advisory Committee

Jeffrey Campbell, QC (Chair)
Claire Hunter (Vice-Chair)
Brook Greenberg
Phil Riddell
Michelle Stanford
The Honourable Thomas Cromwell

July 13, 2018

Prepared for: Benchers

Prepared by: Access to Legal Services Advisory Committee

Purpose: Information

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Introduction

1. The purpose of this report is to provide the Benchers with an update on the topics the Committee has been considering in 2018.
2. The Committee is an advisory committee. Its purpose is to monitor matters within its mandate that are relevant to the work of the Law Society. The Committee can also carry out discrete tasks the Benchers assign it. The primary focus of the Committee is to recommend to the Benchers ways the Law Society, through its strategic objectives and regulatory processes, can better facilitate access to legal services and promote access to justice.

Developing a Proposal for Large, Vancouver Law Firms to Improve Access to Legal Services / Access to Justice

3. In its 2017 Year-End Report, the Committee advised the Benchers about preliminary conversations it had with a number of large, Vancouver law firms. The purpose the meeting was twofold: first, to get a better sense of what large law firms are doing to promote access to legal services and access to justice; second, to explore what these firms might be prepared to do in the future to better advance these objectives.
4. The large law firms were interested in exploring further with the Committee what they might do to advance access to legal services and access to justice in a practical, result-driven way. They invited the Committee to develop some concepts for consideration at a future meeting.
5. In 2018 the Committee has continued the work started by last year's Committee. In January, the Committee identified one concept, in particular, that it felt had real promise. The idea is to encourage firms to establish a non-profit law firm that operates on a cost recovery model, to provide legal services in areas of unmet and underserved need.
6. In January the Committee began fleshing out the concept, considering past proposals of a similar nature by staff as well as a similar initiative proposed in 2017 by Claire Hunter at a Committee meeting. The Committee researched extra-jurisdictional initiatives, and received input from the DC Affordable Law Firm, a non-profit firm that was established by DLA Piper, Arent Fox and Georgetown Law.¹ The DC model is one of many possible configurations in which large law firms – in this case in concert with a law school – can

¹ See <http://dcaffordablelaw.org/>

provide targeted legal assistance to people who would not otherwise be able to afford the services of a lawyer.

7. In March the Committee met with Bill Maclagan, QC. Mr. Maclagan is the Managing Partner at Blakes, and participated in the 2017 meeting between managing partners of several large firms and representatives of the Committee. During his tenure as a Benchers, Mr. Maclagan also chaired the Access to Legal Services Advisory Committee. Mr. Maclagan provided encouraging feedback, but also highlighted some of the practical considerations that must underpin any such initiative.
8. Because the idea, in its most rudimentary form, is to encourage others to undertake the creation and operation of a non-profit firm – rather than develop a project the Law Society oversees – the approach is somewhat different than concepts explored in prior years. In essence, the Committee is developing a concept and assessing the need in the community for a non-profit firm, with the intention of crafting a proposal for consideration by private law firms. The Committee recognizes that the concept is not something that the Law Society, as regulator, would run or oversee, and so part of the work is to reach out to people in the community and get an understanding of what is needed and what is possible.
9. At the April meeting, the Committee met with Professor Andrew Pilliar from the faculty of law at Thomson Rivers University. Professor Pilliar has a PhD from UBC, with a focus on access to justice issues. Professor Pilliar shared his perspectives on the concept of an access to justice firm, and also discussed the potential for an access to justice event (co-hosted by the three law schools) to take place in the fall. Nancy Merrill, QC also attended that meeting, in her capacity as Chair of the Legal Aid Advisory Committee. It is possible that both, or either Advisory Committee, might provide some input and/or participate in the event if it takes shape and the Law Society is invited to participate. At this stage, the event is speculative.
10. At its May meeting, the Committee met with Kim Hawkins, Executive Director of Rise Women's Centre and Wayne Robertson, QC, Executive Director of the Law Foundation (that meeting is detailed below), and that provided additional perspective to this work by providing an example of how one organization is tackling areas of significant need, exploring both the opportunities and the challenges they face.
11. Following the meeting in May, the Committee decided to establish a subgroup of the Committee to focus on further exploring the non-profit firm project. This allows the work to progress without occupying all of the Committee's "band-width". The subgroup consists of: Mr. Campbell, Ms. Hunter, Ms. Stanford, The Honourable Thomas Cromwell, and Nancy Merrill, QC. As of the date of this report, the subgroup will have met twice.
12. The subgroup has engaged in some informal discussions with people who are knowledgeable about the legal needs gap in British Columbia, and who can provide insight

into what it might take to make a non-profit law firm viable. These discussions are information gathering sessions, designed to help inform the subgroup before it reports back to the Committee. As the work is exploratory and theoretical, the Committee and subgroup are careful to explain that this is not a Law Society initiative *per se*; it is, at this stage, an inquiry as to the feasibility and desirability of such a project.

13. In refining the concept, the subgroup identified several key principles:

- a. Any firm that is established should have the goal of supplementing the existing market place, rather than disrupting it. Here the object is to “do no harm” while doing some good. The Committee recognizes the potential disruptive capacity of such firms entering a marketplace that might be vulnerable to such an event, and care is required not to cause unintended harm;
- b. Any firm that is established should focus on unmet and underserved need. The subgroup’s consultations are designed to better define what this includes;
- c. Any firm that is established should operate on a cost-recovery model, providing low cost legal services to people who are unable to afford traditional services in the marketplace. The idea is not to propose a pro bono model that requires ongoing funding to exist.

14. The work of the subgroup (and ultimately the Committee) is still in the developmental stage. The Committee envisions the end result would be to return to the large law firms with a more detailed proposal and encourage them, individually or in concert, to explore the concept. It may be the concept is discussed with interested groups beyond those firms as well. The ideal end result is to propose a model that is replicable and scalable based on the needs of local communities.

15. At this stage the Committee does not see the concept as something that creates obligations for the Law Society, either at the level of funding or rule changes. The Committee is available to address any questions the Benchers may have, or recommendations for direction regarding its work on this during the second half of 2018.

The Access to Justice Fund

16. Every year the Law Society provides \$340,000 to the Law Foundation to support access to justice programs. Approximately \$280,000 of that goes to support organized pro bono.² The remaining \$60,000 is allocated to an access to justice fund, for initiatives other than pro bono (the “A2J Fund”). At the inception of the A2J Fund, the Benchers delegated to

² Including market rental subsidy for Access ProBono.

the Committee the role of meeting with the Law Foundation each year to recommend where to allocate the A2J Fund. The concept is to engage in an open dialogue. While the Law Foundation ultimately has the discretion to allocate the funding to projects it prioritizes, the reality is that good faith dialogue informs the process.

17. Each year the Committee meets with Mr. Robertson to discuss areas of need and share ideas for where to allocate the A2J Fund. In the past two years, the A2J Fund supported a children's lawyer initiative, prior to that, the Fund supported the creation of a roster of lawyers who will provide unbundled ILA in family law mediations, as well as the creation of online resources to promote limited scope legal services, and prior to that, a family law duty counsel project received funding.
18. For 2018, the Committee met with Ms. Hawkins, Executive Director of Rise Women's Legal Centre³ prior to discussing the A2J Fund with Mr. Robertson. Rise Women's Legal Centre is an excellent example of the type of good work lawyers can do to promote access to justice, consistent with the vision the Benchers adopted in September 2017.⁴ Most of the services are provided by law students, who are supervised by staff lawyers. This allows for lower cost access to justice than is possible through a traditional law firm model. It also inculcates an ethos of providing legal services to individuals who, for a range of reasons, cannot afford a lawyer in the traditional marketplace.
19. The Committee was of the view that finding ways to expand the reach of Rise's services to women outside the Lower Mainland is important, and recommended to the Law Foundation that the A2J Fund be allocated in 2018 for such a purpose (subject to an appropriate application being made by Rise Women's Legal Centre to the Law Foundation).

Referral from Lawyer Education Advisory Committee

20. In December 2017 the Benchers considered a report of the Lawyer Education Advisory Committee that included Recommendation 10: *The Law Society will not recognize pro bono and legal aid work as eligible for CPD credit*. The Benchers referred the topic back to the Lawyer Education Advisory Committee, with the purpose of reconsidering the proposal and to consult with the Access to Legal Services Advisory Committee.
21. The Committee considered the materials referred to it from the Lawyer Education Advisory Committee, along with historical information on the topic and a policy memorandum from staff.

³ For details of the Centre, see <https://womenslegalcentre.ca/>

⁴ See <https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/VisionAdvanceAccessToJustice2017.pdf>

22. The question of whether pro bono should qualify for some amount of CPD is not a new one. In 2009 the Committee recommended to the Benchers that the Lawyer Education Advisory Committee consider whether pro bono should count towards CPD as part of the professional ethics / professional responsibility component. That recommendation did not lead to CPD for pro bono forming part of the program. While the 2018 Committee gave due consideration to the reasoning of the prior Committee, it did not fetter its analysis by the prior policy perspective.
23. The Committee engaged in an analysis premised on the concept that in order to count for CPD credit, any particular activity (be it pro bono, group study, coursework, etc.) must advance the purposes of the CPD program. In other words, it is insufficient to show that the activity creates a benefit unrelated to the CPD program, and therefore conclude that lawyers should be provided CPD credit as a reward for undertaking that beneficial, but unrelated, activity.
24. In analyzing the topic the Committee was able to agree on some basic principles, but was unable to reach consensus as to whether pro bono advanced the purposes of the CPD program and therefore ought to be eligible for some portion of the CPD requirement. The Committee provided a memorandum to the Lawyer Education Advisory Committee, setting out the various perspectives for and against including a credit for some pro bono work in the CPD program.

Looking Forward

25. In the second half of the year, the subgroup will continue to advance its work on the non-profit law firm model, with the goal of the Committee discussing it further in the fall.
26. The Committee hopes to review data relating to the changes in the Annual Practice Declaration, which were designed to get a better understanding of the types of access to justice work lawyers are performing.
27. As noted, the Committee held preliminary discussions with Professor Pilliar about an Access to Justice event (week) co-hosted by the three British Columbia law schools. The Committee hopes that if that event takes place, the Law Society will participate if invited to do so, and attend in any event. As that event takes shape, the Committee will provide updates to the Benchers as necessary.



Rule of Law and Lawyer Independence Advisory Committee – Mid-Year Report

Jeff Campbell, QC (Chair)
Christopher McPherson, QC (Vice-Chair)
Jennifer Chow, QC
Jon Festinger, QC
Jeevyn Dhaliwal
Mark Rushton
The Honourable Marshall Rothstein, QC
Leah George-Wilson

July 13, 2018

Prepared for: Benchers

Prepared by: Rule of Law and Lawyer Independence Advisory Committee/
Michael Lucas, Manager, Policy and Legal Services

Purpose: Information

Introduction

1. The Rule of Law and Lawyer Independence Advisory Committee is one of the four advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers on matters relating to those issues. From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and may be asked to develop the recommendations or policy alternatives regarding such initiatives.
2. The lawyer's duty of commitment to his or her client's cause, and the inability of the state to impose duties that undermine that prevailing duty, has been recognized as a principle of fundamental justice.¹ The importance of lawyer independence as a principle of fundamental justice in a democratic society, and its connection to the support of the rule of law, has been explained in past reports by this Committee and need not be repeated at this time. It will suffice to say that the issues are intricately tied to the protection of the public interest in the administration of justice, and that it is important to ensure that citizens are cognizant of this fact.
3. The Committee's mandate is:
 - to advise the Benchers on matters relating to the Rule of Law and lawyer independence so that the Law Society can ensure
 - its processes and activities preserve and promote the preservation of the Rule of Law and effective self-governance of lawyers;
 - the legal profession and the public are properly informed about the meaning and importance of the Rule of Law and how a self-governing profession of independent lawyers supports and is a necessary component of the Rule of Law; and
 - to monitor issues (including current or proposed legislation) that might affect the independence of lawyers and the Rule of Law, and to develop means by which the Law Society can effectively respond to those issues.
4. The Committee has met on January 24, February 28, April 4, and May 2, 2018.
5. This is the mid-year report of the Committee, prepared to advise the Benchers on its work to date in 2018 and to identify issues for consideration by the Benchers in relation to the Committee's mandate.

¹ Canada (Attorney General) v. Federation of Law Societies of Canada, 2015 SCC 7, [2015] 1 S.C.R. 401

Topics of Discussion in 2018

I. Increasing Public Awareness of the importance of the Rule of Law

6. The Committee has continued efforts to advance both the profession's and the public's understanding of the importance of the rule of law. Its primary activities to this end have been undertaken through the continuation of a yearly lecture series and high school essay contest.

a. Rule of Law Lecture Series

7. The Committee hosted the Law Society's second annual Rule of Law Lecture Series on June 7 at the UBC Downtown campus. The Lecture, entitled "The Rule of Law and Social Justice" included presentations by The Honourable Ian Binnie, who served as a Justice of the Supreme Court of Canada for nearly 14 years, Dr. Catherine Dauvergne, Dean of the Peter A. Allard School of Law at UBC and Jonathan Kay, a Canadian journalist who previously practised law in New York City.
8. The Lecture was attended by approximately 170 people. This year, a decision was made to try webcasting the event live. A few people did attend the event through the webcast, and more advertising for next year of this alternative will be considered. A video of the entire Lecture will soon be posted on the Law Society website.
9. The event received many favourable comments from those attending. The Committee plans to undertake a third lecture series next year, and will begin giving some attention to planning later in 2018.

b. High School Essay contest

10. The Committee recently completed its third essay contest for high school students. This year's topic was "How does social media interact with the Rule of Law?"
11. The contest was open to currently enrolled high school students in British Columbia who were taking or had taken Civic Studies 11 or Law 12.
12. A total of 49 essays were received. Judging of the essays was done by a panel comprised of Jeff Campbell QC, Jennifer Chow, QC and Professor Arlene Sindelar from the Department of History at UBC.
13. Presentations are expected to be made to the winner and the runner-up at the July 13, 2018 Benchers meeting.
14. The Committee will soon start the planning process for next year's contest.

II. Public Commentary on the Rule of Law

15. In mid-2015, the Benchers approved the Committee's proposal that it publicly comment on issues relating to the Rule of Law. The recommendation resulted from the Committee's conclusion that, in the course of undertaking its monitoring function, it often identifies news stories or events that bring attention to the rule of law, or lack thereof, and exemplify the dangers to society where it is either absent, diminished or, perhaps, threatened, from which the Committee could usefully select appropriate instances for comment.
16. A number of controversial and sensitive issues have arisen this year relating to the rule of law that include matters relating to the criminal justice system, contempt of court, and civil disobedience. The Committee has been cautious not to weigh in with public commentary unless it is appropriate and prudent to do so. Instead, the Committee has been more focussed on examining proposed legislative initiatives and has proposed responses to some of the problems identified.

III. Meetings with Other Groups

17. The Committee met in May with a representative of the CBA National Criminal Law Section. The Committee was informed about some concerns with Bill C-75 (An Act to Amend the Criminal Code, Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts). The proposed scheme aims to address issues relating to court delay and jury selection, and is drafted largely in response to recent Supreme Court of Canada cases that touch on those issues. While many of the concerns that were raised by the CBA may be legitimate, the Committee felt that most of them were not rule of law or lawyer independence issues.
18. A possible exception, however, is the omnibus nature of Bill C-75, which obscures many of its details, thereby making proper legislative review and debate implausible. As noted by Professor Adam Dodek, omnibus bills are problematic as they expose a conflict between parliamentary sovereignty and separation of powers.² This point is illustrated by the fact that, notwithstanding the intrinsic obscurity of omnibus bills, the courts have been unwilling to interfere with parliamentary processes. Thus, given the reluctance of the courts, the Committee is not taking any action at this time. Nevertheless, the Committee will continue to monitor the issue and will keep apprised of any pertinent action that is taken by the CBA National Criminal Law Section.

² Dodek, Adam, *Omnibus Bills: Constitutional Constraints and Legislative Liberations*, December 12, 2016

IV. Amendments to the Civil Resolution Tribunal Amendment (Bill 22)

19. The Committee is preparing a letter, for consideration by the President, to the Premier and Attorney General concerning Bill 22, which recently received royal assent. The Bill, which amends the *Civil Resolution Tribunal Act*, passed very quickly, with minimal opportunity for public consultation. The letter, the points out how the Bill's proposal to increase the tribunal's jurisdiction to handle MVA claims produces a perception of conflict of interest. Specifically, the Attorney General, who oversees ICBC, and who has expressed a desire to reduce that entity's MVA damage payouts, is responsible for appointing the tribunal members. This creates a risk in that tribunal members could be seen as trying to advance the government's agenda. Such a perception could erode public confidence in the administration of justice.

V. Amendments to Controlled Drugs and Substances Act (Bill C-37)

20. The Committee prepared a letter last year to the Minister of Health and the Chair of the Senate Standing Committee on Legal and Constitutional Affairs concerning proposed revisions to the *Customs Act* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* that would permit the opening of routine correspondence delivered to a law office. The Committee pointed out how this could adversely affect solicitor-client privilege and urged reconsideration of the proposed amendments, or at least that provisions be included in the legislation, that will create a constitutionally accepted method to preserve solicitor-client privilege and ensure that it is not even accidentally violated.
21. Earlier this year, the Committee received a letter from the Minister in response, which stated that border officers must have reasonable grounds to open any mail and that they use a variety of risk assessment techniques to make such determinations. The Committee decided to take no further action at this point, but maintained that it would examine the matter again should further issues arise.

VI. Safeguarding Lawyer Independence when Practising in Foreign Nations

22. In light of the many articles it monitored concerning the state of the rule of law and related issues in various countries, the Committee discussed the risks of professional values being compromised where law firms open offices or otherwise operate in foreign nations. The Committee noted that the Solicitors Regulation Authority of England and Wales has developed principles relating to the practice of law by English lawyers in foreign countries.
23. The Committee recognised, however, that there are relatively few BC lawyers working abroad and that there appear not to be any significant issues arising on this particular aspect of practice in a foreign jurisdiction. In light of this, the Committee will monitor the issues and will only take action if an incident emerges.

VII. Amendments to the Access to Information Act and Privacy Act (Bill C-58)

24. The Committee prepared a letter for signature by the President, to the Treasury Board President and the Chair of the Standing Committee on Access to Information, Privacy and Ethics. The letter outlined concerns regarding proposed amendments that would require disclosure of information relating to judicial expenses of individual judges. While recognizing the need for transparency, the Committee was concerned that such provisions were an infringement on judicial independence. Furthermore, such disclosure could trigger unwarranted criticism of judges, who have limited ability to defend themselves.
25. The Chair of the Standing Committee on Access to Information, Privacy and Ethics sent a response letter, which the Committee views as largely unresponsive. The Chair of the Standing Committee advised our Committee to forward its concerns to the Senate as the Bill was about to shift over to that chamber.
26. Bill C-58 is currently proceeding through second reading in the Senate. The Committee has prepared a new letter for signature by the President which is to be sent to the Standing Senate Committee on Legal and Constitutional Affairs.

VIII. Lawyer Independence and the Regulation of Alternate Legal Services Providers

27. The December 2014 Report for the Legal Services Regulatory Framework Task Force recommended that the Law Society seek a legislative amendment to the *Legal Profession Act* that would permit the Law Society to establish new classes of legal service providers to address areas of underserved and/or unmet legal needs. The Task Force also noted that it was important to ensure that, by so doing, the public's right to the benefit of being able to retain independent lawyers was not adversely affected and urged that the issue be considered by the Rule of Law and Lawyer independence Advisory Committee.
28. The Committee therefore spent some time in the spring of 2017 reviewing the subject and considering the issue. The Committee has brought to the attention of the Executive Committee its conclusion that lawyer independence need not be adversely affected by having the independent self-regulating body of the legal profession regulate other categories of legal service providers provided the regulatory body is structured to ensure that new categories of legal service providers are properly qualified and trained in the professional standards of the profession and that the new categories of legal service providers are adequately represented in the governing body.

IX. Meaning of the Rule of Law in Connection with the Law Society Mandate

29. The Committee has previously identified that section 3 of the *Act* engages the Rule of Law. The Committee believes that a statement of principle could clarify the meaning and practical implications of Section 3, while also taking adequate account of the relationship between the

Law Society's mandate and the Rule of Law. The topic was discussed at the May 2015 Benchers Retreat, particularly in the context of how the provisions of section 3 – and particularly s. 3(a) – inform the Law Society's activities, by examining developments in access to justice, exploring the scope of directives that the section presents, and discussing opportunities to advance the objectives of the section.

30. Improving the Law Society's public communication on the importance of the rule of law is one aspect of advancing the public interest in the administration of justice and thereby discharging the object and duty of section 3. There are, however, other considerations that can be given to this section.
31. The Committee is nearing completion of a discussion paper that will recommend parameters to help inform future work by the Law Society that requires interpretation of section 3. Before finalizing the paper, however, the Committee decided to wait for the release of the Supreme Court of Canada decision in *Trinity Western* as it expects that judgment may provide further interpretation of section 3, which the Committee would then incorporate into its recommendations. The decision was recently released, and the Committee will be reviewing it soon.

X. Developing Issues

32. The Committee continues to review items that appear in media reports that express concerns about the rule of law domestically and internationally. There are many issues that arise, including potential conflicts between social media being used as a court of public opinion and the rule of law. Concerns also continue to arise internationally (e.g. United States, Poland, Turkey and China), where attacks on the credibility and/or rights and freedoms of lawyers, judges and independent law enforcement agencies appear to be accelerating.

2018 Mid-Year Report

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
Guangbin Yan

May 23, 2018

Prepared for: Benchers

Prepared by: Equity and Diversity Advisory Committee

Purpose: Information

Introduction

1. The Equity and Diversity Advisory Committee is one of the advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers in connection with those issues. From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and may be asked to develop the recommendations or policy alternatives regarding such initiatives.
2. The purpose of this report is to update the Benchers about the work the Committee has undertaken since its December 2017 report.
3. The Committee met on January 25, March 1, April 5, and May 3, 2018. The Committee has discussed the following matters between January and May, 2018.

Justicia

4. The Justicia Project (facilitated by the Law Society of British Columbia and undertaken by law firms) has been actively underway in British Columbia since 2012. Representatives from the Justicia firms have developed model policies, best practice guides, and video vignettes which are available on the Law Society's website.
5. The Justicia law firms hosted a Managing Partners Summit which featured a renowned keynote speaker, Kathleen Nalty, on January 17, 2018. Ms. Nalty presented on "Advancing Diversity and Inclusion by Interrupting Unconscious Bias". She presented two identical sessions for the managing partners, and one session for the associates of law firms participating in the Justicia Project. Some members of the Equity and Diversity Advisory Committee also attended.

Equity and Diversity in Law Firm Regulation

6. The Law Firm Regulation Task Force developed recommendations over the period of two years. In the fall of 2017, the Equity and Diversity Advisory Committee supported the Task Force's recommendation to include equity and diversity principles within law firm regulation. The Law Firm Regulation Task Force's recommendations were endorsed by the Benchers in December of 2017.
7. The Equity and Diversity Advisory Committee assisted the Law Firm Regulation Task Force in the development of a self-assessment tool with respect to law firm equity, diversity, and inclusion. The self-assessment tool will be used by law firms participating in the Law Firm Regulation Pilot Project.

25 Year Retrospective Report

8. In 1992, the Law Society produced an extensive report on gender equality in the legal system. At the request of past Law Society President David Crossin QC, the Committee prepared a retrospective review to mark the 25th anniversary of the report. The retrospective review was presented to the Benchers at the May 4, 2018 Benchers' meeting.
9. The retrospective report consists of three parts: 1) a comparison of "then and now" statistics; 2) a chart showing the Law Society's progress on implementing the recommendations from the 1992 Report; and 3) next steps regarding areas for further study.

Attrition Study

10. As a follow up to the 25 year report, the Equity and Diversity Advisory Committee intends to pursue a closer investigation of attrition rates including: the timing of non-practicing applications; the average duration of non-practicing memberships; the frequency of change in status applications; reintegration rates; timing of return to practice; and rate and timing of ceased memberships.
11. The Committee also plans to revitalize interest in the Law Society's "exit survey" – a voluntary online survey that is distributed to lawyers when they change their practice status to non-practicing, or cease practice altogether.

Maternity Leave Benefit Loan Program Review

12. The Maternity Leave Benefit Loan Program was implemented as a pilot project in 2010, on the recommendation of the Committee, to help alleviate the disproportionate number of women who leave private practice after having children. The Committee has reviewed the Program, and is in the process of developing improvements.
13. In April, 2018, a representative from the Criminal Defence Advocacy Society emailed Law Society staff with feedback on the Maternity Leave Benefit Loan Program. A teleconference was held on April 30, 2018. Jasmin Ahmad (Chair) and Brook Greenberg (Vice Chair) participated in the meeting on behalf of the Committee, and Tamara Levy, QC and Claire Hatcher represented the Criminal Defense Advocacy Society. Ms. Ahmad invited the Criminal Defense Advocacy Society representatives to submit their feedback in writing.
14. The Committee is devising methods to gather additional information with a view to improving the Program.

Equity and Diversity Online Resources

15. The Committee anticipates that online resources may help law firms to fulfill the self-assessment indicators for the Law Firm Regulation Pilot Project. The Committee is therefore in the process of ensuring that all relevant resources the Committee has developed in support of equity and diversity in the legal profession are easily accessible on the Law Society's website prior to the launch of the Pilot Project.

Intercultural Fluency Training

16. Intercultural competence training for Law Society staff continues. Law Society staff are continually being encouraged to participate in online webinars offered through the Canadian Centre for Diversity and Inclusion.
17. On May 9, 2018, 100 Law Society staff members attended a seminar entitled "Intercultural Essentials for Serving the Public," facilitated by Alden Habacon (an intercultural fluency expert who presented to the Benchers in September of 2017).

Collaborative Opportunities

18. The Canadian Bar Association of BC's Equality and Diversity Committee approached the Law Society's Equity and Diversity Advisory Committee to encourage information sharing and collaboration.
19. The Committee has discussed possible initiatives to support racialized lawyers, including participation in the Legal Equality and Diversity Roundtable (LEADR). The Chair of the Law Society's Equity and Diversity Advisory Committee attended LEADR's teleconference on May 2, 2018. LEADR includes affinity groups to develop joint projects. Participants in the teleconference included: the CBA Equality and Diversity Committee, Women Lawyers Forum, Aboriginal Lawyers Forum, Community Legal Assistance Society, Federation of Asian Canadian Lawyers, South Asian Bar Association, and Civil Liberties Association.
20. This Committee has offered to support the Lawyer Education Advisory Committee in relation to the Articling Program Review, to ensure that the experiences of racialized students are considered.
21. Law Society staff (Equity Ombudsperson Claire Marchant and Policy Counsel Andrea Hilland) attended the Law Societies Equity Network conference in Saskatoon on May 14 and 15, 2018. The Law Societies Equity Network is comprised of the staff members from law societies across the country (including the Federation of Law Societies) who are responsible for equity, diversity, and Indigenous initiatives in their respective jurisdictions. The objective of the LSEN is to share updates and to collaborate on national initiatives.

Monitoring the Work of the Mental Health Task Force

22. The Committee receives regular updates on the work of the Mental Health Task Force.

Demographic Data

23. On the recommendation of this Committee, the Executive Committee amended the Annual Practice Declaration in 2013 to include a question on the demographic composition of the legal profession in British Columbia. The responses for 2016 and 2017 are as follows:

Characteristics	2016		2017	
	Responses	Percent	Responses	Percent
Aboriginal/Indigenous (First Nations, Métis, Inuit)	316	2.64%	314	2.63%
I choose not to answer	2471	20.61%	2587	21.7%
I do not identify with any of these characteristics	6993	58.33%	6702	56.22%
Lesbian/Gay/Bisexual/Transgender	339	2.83%	374	3.14%
N/A LSBC	13	0.11%	7	0.06%
Person with a Disability	214	1.79%	219	1.84%
Visible Minority/Racialized/Person of Colour	1642	13.7%	1718	14.41%
Total Responses	11988		11921	



Lawyer Education Advisory Committee 2018 Mid-Year Report

Dean Lawton, QC Chair
Sarah Westwood, Vice Chair
Barbara Cromarty
Michael Welsh, QC
Celeste Haldane
Rolf Warburton

July 13, 2018

Prepared for: Benchers

Prepared by: The Lawyer Education Advisory Committee

Purpose: Information

Introduction

1. The Lawyer Education Advisory Committee's Mid-Year Report to the Benchers summarizes the Committee's work to-date in 2018 and outlines the Committee's plans for the balance of the year.

Committee Strategic Priorities

2. In December 2017, the Lawyer Education Advisory Committee (the "Committee") completed a major two-year review of the Continuing Professional Development program. Having successfully concluded that project, the Committee has re-directed its focus in 2018, prioritizing a number of the initiatives set out in the 2018-2020 Strategic Plan.
3. The applicable sections of the Strategic Plan stipulate the following:

Preserving and Protecting the Rights and Freedoms of All Persons

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

- Encouraging all lawyers in British Columbia to take education and training in areas relating to Aboriginal law (the Law Society's mandatory continuing professional development program recognizes and gives credit for education and training in areas relating to Aboriginal issues).

Ensuring the Independence, Integrity, Honour and Competence of Lawyers

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

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

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

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

- Examining the availability of Articling positions and develop a Policy and proposals on access to Articling positions and remuneration.
 - Examining the effectiveness of Articling and develop proposals for the enhancement of Articling as a student training and evaluation program.
 - Examining alternatives to Articling.
4. In accordance with the Strategic Plan, the Committee's primary task is to review the Articling Program, including undertaking an evaluation of the effectiveness of the program, the availability of articles, approaches to remuneration and a consideration of potential modifications to the existing articling scheme.
 5. The Committee's work to address aspects of the Truth and Reconciliation Commission Calls to Action that intersect with its mandate, including CPD and the Admission Program, is also ongoing.
 6. The Committee is also tasked with reconsidering whether pro bono activities should be eligible for CPD credit, pursuant to the Benchers' direction in December 2017, and has considered the issue of CPD in relation to the self-assessment process that forms part of law firm regulation.
 7. These matters are described in further detail, below.

Articling Program Review

8. The focus of the Committee's work in the first half of 2018 has been discussing possible approaches to a review of the Articling Program, pursuant to the Strategic Plan. This work falls into three broad categories, as described briefly, below.

a. Review of past Law Society reports and current articling requirements

The Committee has reviewed previous major Law Society reports addressing articling, including the work of the 2001-2002 Admission Program Task Force and the 2015 Admission Program Review.

The Committee also reviewed a range of Law Society documents and rules to ensure it has a strong understanding of the current articling requirements, including the Articling Agreement, the Articling Skills and Practice Checklist, the Articling Guidelines and the Law Society Rules governing articling.

Following this analysis, the Committee created a master list of potential articling-related issues that could be examined in an effort to scope the upcoming review of the Articling Program.

b. Development of a forward-looking research plan

At the conclusion of the work described above, the Committee worked with staff to create a general framework for reviewing the Articling Program. Critical research questions were identified, as well as methods for collecting information in relation to each of the research areas, namely: availability of articling positions, remuneration for articling, quality of the Articling Program and effectiveness of the Articling Program.

Together, this broad set of research questions and methodologies comprise a research plan that will guide the Committee's work on these issues.

The proposed research plan is expected to produce a robust body of empirical data that will enable the Committee to draw conclusions about the Articling Program and formulate recommendations regarding future changes to the program, if any. This approach differs, in both nature and scope, from the Law Society's previous evaluations of the Articling Program, which have been based almost exclusively on opinion surveys.

c. Drafting a purpose statement for the Articling Program

A review of the Articling Program must begin with answering a fundamental question: what is articling for? The Committee observed that the Law Society lacks a clearly defined purpose statement for the Articling Program, and determined that developing a statement that articulates what articling is intended to achieve is desirable for a number of reasons.

In addition to acting as an important reference point when evaluating the effectiveness of the current scheme, a purpose statement also serves as an important communications tool, improving both the profession and the public's understanding of the rationale for the program. A clear purpose statement also helps clarify how articling fits in to the

larger context of the Law Society Admission Program. Accordingly, the Committee has begun work on developing a purpose statement for the Articling Program.

Eligibility of pro bono activities for CPD credit

9. The 2016 and 2017 Lawyer Education Advisory Committees considered numerous arguments for and against providing CPD credit for pro bono activities. Both Committees concluded that such credit was not warranted, resulting in the following recommendation to the Benchers in the Committee's Final CPD Report in December 2017:

Recommendation 10: The Law Society will not recognize pro bono and legal aid work as eligible for CPD credit.

10. There was considerable debate around the Benchers table as to whether this Recommendation should be adopted. Ultimately, the Recommendation was not approved, and the Benchers directed that the pro bono matter be subject to further consideration by the appropriate Law Society Committees in 2018.
11. In response, in February 2018, the Committee requested an opinion from the Access to Legal Services Advisory Committee (the "Access Committee") as to whether pro bono work should be eligible for CPD credit and, if so, how such accreditation meets the goals of CPD and/or improves access to justice. If the Access Committee were to be in support of accreditation, it was asked to opine on what type and amount of pro bono work should be eligible for credit and how this work would be verified.
12. Despite discussing the issue over the course of several meetings, the Access Committee could not reach a consensus or come to a unanimous recommendation. In place of a recommendation, the Access Committee drafted a memo summarizing the competing arguments for and against the accreditation of pro bono work.
13. The Lawyer Education Advisory Committee is currently reviewing the Access Committee's feedback, in addition to revisiting its past work on the issue, and expects to provide the Benchers with a final recommendation on the eligibility of pro bono work for CPD credit this fall.

Eligibility of law firm regulation self-assessment completion for CPD credit

14. The Committee considered a proposal by the Law Firm Regulation Task Force to provide CPD credit to lawyers that contribute to their law firm's self-assessment report as part of the law firm regulation pilot project.
15. The Committee ultimately supported a recommendation that lawyers be eligible for up to two hours of CPD credit for this activity (as approved by the Benchers in April 2018), but noted concern as to how such accreditation would operate beyond the scope of the pilot project if, for example, law firm regulation is broadened to the entire profession.

TRC Calls to Action

16. The Lawyer Education Advisory Committee is committed to fulfilling its role in the Law Society's integrated approach to addressing Call to Action #27, including exploring how cultural competency training and skill development within the profession might be advanced through continuing professional development and other mechanisms.
17. As articulated in the Final CPD Report in December 2017, the Committee supports, in principle, granting CPD credit for programming that reflects the content of the Truth and Reconciliation Commission's Call to Action #27, and the Law Society already does so to some extent under the existing CPD rules.
18. However, the Committee recognizes that further work on these issues must follow the leadership and guidance of the Truth and Reconciliation Advisory Committee, which has been mandated to set the course for the Law Society's overarching approach to the Calls to Action.
19. The Committee anticipates receiving further advice from the Truth and Reconciliation Advisory Committee as to the role the Lawyer Education Advisory Committee can play in actualizing the Calls to Action, and encourages ongoing communication and future collaboration to advance these issues.

Mid-Year Report 2018

Committee: Legal Aid Advisory Committee

Nancy Merrill, QC (Chair)
Rick Peck, QC (Vice-Chair) (Life Bencher)
Christopher McPherson, QC
Phil Riddell
Sarah Westwood
Odette Dempsey-Caputo
Richard S. Fowler, QC

July 13, 2018

Prepared for: Benchers

Prepared by: Legal Aid Advisory Committee

Staff Support: Michael Lucas, Aaron Bockner, Doug Munro

Purpose: Information

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Introduction

1. The purpose of this report is to provide the Benchers with an update on the work of the Advisory Committee in 2018.
2. Advisory Committees report to the Benchers twice a year.
3. The Committee's mandate is:

Mandate and Terms of Reference

Terms of Reference

The Committee monitors and advises the Benchers on key matters relating to the state of legal aid in British Columbia. This advisory function supports the Law Society's public interest mandate, and advances the Law Society's Vision for Publicly Funded Legal Aid that the Benchers adopted on March 3, 2017 (the "Vision for Legal Aid"). The Committee advances the recommendations in the report of the Legal Aid Task Force (March 3, 2017), and may explore additional concepts that are consistent with the findings of that report and the Vision for Legal Aid.

Composition

1. Under Rule 1-47, the President may appoint any person as a member of a committee of the Benchers and may terminate the appointment.
2. At least half of the Committee members should be Benchers, and the Chair of the Committee must be a Bencher.

Meeting Practices

1. The Committee operates in a manner that is consistent with the Benchers' Governance Policies.
2. The Committee meets as required.
3. The Committee may invite guests to participate in discussions of topics, or engage in consultations, but the meetings are not "public".
4. Quorum consists of at least half of the members of the Committee. (Rule 1-16(1)).

Accountability

The Committee is accountable to the Benchers. If the Benchers assign specific tasks to the Committee, the Committee is responsible for discharging the work assigned. If a matter arises that the Committee determines requires immediate attention by the Benchers, the Committee will advise the Executive Committee.

Reporting Requirements

With respect to its general monitoring and advisory function, the Committee provides status reports to the Benchers twice a year.

Duties and Responsibilities

1. The Committee must address the work assigned to the Committee in Recommendation 2 of the report of the Legal Aid Task Force (March 3, 2017):
 - a. Assist and advise the Benchers in helping the Law Society realize the vision set out in **Appendix 1**;
 - b. Assist and advise the Benchers concerning how best to advance mandate Items 2-4, with particular consideration of, *inter alia*, the following:
 - i. Developing and/or promoting research into the benefits of legal aid to society and the justice system;
 - ii. Developing and/or promoting the creation of proper data analytics systems within the justice system and legal aid in order to better support analysis of the importance of legal aid in society and the justice system. Such systems should help support not only a business case for properly funded legal aid, but the social justice case as well;
 - iii. Developing and/or promoting the creation of education materials and resources to help lawyers, politicians and the public better understand the importance of a strong legal aid system;
 - iv. Advocating with government and the public for improvements to legal aid in British Columbia;
 - v. Meeting with other stakeholder groups, including lawyers and law firms, to ensure that the Law Society's efforts to champion legal aid occur

collaboratively. Consideration should be given to hosting future colloquia to ensure efforts to advance legal aid revitalization continue to progress;

- vi. Working with government, the courts and the profession about ways to reduce the time and cost associated with mega-trials;
 - vii. Working with the courts to determine how active case management might be used to support a more efficient and cost effective litigation system, thereby making legal aid more sustainable;
 - viii. Developing proposals for how to improve the advocacy skills of junior lawyers and facilitate their involvement in undertaking legal aid work to better ensure the current quality of advocacy as well as the future of the legal aid defense Bar;
 - ix. Liaising with the Law Society's Truth and Reconciliation Advisory Committee and the Access to Legal Services Advisory Committee to ensure the Law Society has a consistent approach to improving access to justice for Indigenous Peoples;
 - x. Working with the Law Society's Communications Department and, if necessary, external experts, to ensure social media as well as traditional methods of communication are used to maximize the reach of the Law Society's efforts to educate, inspire and lead on legal aid reform in British Columbia.
2. If the Committee is unable to advance this work, it must advise the Benchers as to the reasons why the work cannot be performed;
 3. The Committee must advise the Benchers about the progress of its work and about any new developments regarding legal aid that the Committee determines are important in order for the Law Society to act in a manner consistent with the Vision for Legal Aid;
 4. Committee members are required to discharge their work in a manner consistent with the Law Society's public interest mandate, as set out in s. 3 of the Legal Profession Act.

Staff Support

Staff Lawyer, Policy & Legal Services.

Research

4. Mandate items 1(b)(i)&(ii) are sufficiently related that each is being explored concurrently.
5. In its 2017 year-end report, the Committee provided a detailed overview of its meetings with Associate Professor Yvonne Dandurand, Vivienne Chin, and Mark Benton, QC on the topic of economic analysis research.
6. In 2018 the Committee engaged Professor Dandurand to perform a preliminary research project, which will identify the existing data and the parameters for what a fully realized economic analysis project would entail. Once armed with that report, the hope is that it will provide the groundwork for a proper economic analysis of legal aid. The ultimate object is to have data to better support advocacy efforts for increasing funding for legal aid.

Education

7. In 2017, the Committee reached out to Annie Rochette, Deputy Director, PLTC to explore opportunities to promote legal aid in the PLTC sessions. Ms. Rochette and her team are developing opportunities for inclusion of the topic.
8. The Committee's initial understanding was that new modules could be added to PLTC in 2018. That appears to have been incorrect. As the Committee now understands things, any new content such as discrete content for legal aid, is to be incorporated into the system-wide reform of PLTC. In other words, it is not simply a matter of adding a stand-alone sections; it requires integrating learning opportunities throughout PLTC, and therefore needs to be worked into other curriculum redesign that is underway.
9. In light of this, the Committee now understands that it is anticipated the first models relating to legal aid will be added to the PLTC curriculum in September 2019 or February 2020.

Communications

10. The Committee has met a number of times with Jason Kuzminski, Director of Communications and Engagement. Mr. Kuzminski is developing a communications plan and the Committee is working on its mandate items with an eye to providing content to Mr. Kuzminski and his team.
11. The Committee wants to produce some more op ed pieces, and anticipates discussing the content of those efforts in the second half of 2018. The Law Society's position on legal aid has also been communicated via its social media presence.

12. The Committee advises the Benchers that in the fall there may be a legal aid work stoppage / work action by lawyers who do legal aid work. The Committee has asked the Ethics to update its opinion regarding lawyers who do legal aid work regarding their professional obligations, in the event such a work stoppage takes place.

Advocacy

13. The work of the Law Society advocating to government for improvements to legal aid will continue and, ultimately, needs to be informed by the economic research identified above.
14. Miriam Kresivo, QC and Don Avison, Executive Director, met with The Hon. David Eby, Attorney General. Mr. Avison has also met with Lori Wannamaker, Deputy Minister of Finance. Nancy Merrill, QC (Chair) met with Leonard Krog, MLA from Nanaimo. The intention is that the Law Society will make its submission to the provincial government in September regarding the provincial budget, as it pertains to legal aid.

Collaborating with Other Stakeholders

15. The Committee continues to consult with the Legal Services Society. It has reached out to Mr. Benton to better understand whether the Law Society should focus its efforts on working with the courts and profession about ways to reduce the time and costs associated with mega-trials.
16. Because mega-trials are funded differently than other legal aid services, the Committee is not focusing on the issue at this time. However, it may ultimately consider whether the amount of resources that are directed to mega-trials and the funding required has a spill-over effect into the funding government might otherwise allocate to legal aid.
17. Mr. Benton has also kept the Committee updated regarding possible research developments involving legal aid in various jurisdictions.
18. The Committee observes that it has been extremely useful to have Phil Riddell as a member while he is also on the Board of Legal Services Society. Mr. Riddell has been able to facilitate better flows of information and assist collaboration with Legal Services Society. At the July meeting, Mr. Riddell will update the Committee on the seven new Parents Centres and the 30 new lawyers who are hired to staff the centres.
19. On the topic of improving advocacy skills and legal aid opportunities for junior lawyers, the Committee continued to get updates Jeff Campbell, QC regarding the efforts of the Criminal Defence Advocacy Society (CDAS) and the Legal Services Society.

20. The LSS and CDAS have established a conference for young criminal lawyers. This project arose out of concerns in the criminal bar about the lack of mentorship and guidance for new lawyers. A number of representatives from the CDAS and LSS formed a joint planning committee to organize the program. Mr. Campbell has been involved in the planning committee. The first conference took place over two days in March, 2018 and was well attended. The next conference is scheduled for November, 2018.
21. The Committee has also worked on internal consultations. In February the Committee held a joint-meeting, for half-a-day with the Truth and Reconciliation Advisory Committee and the Access to Legal Services Advisory Committee. The joint meeting allowed each group to share its priorities with the others.
22. From that meeting the Committees established a new protocol by which each shared with the others upcoming agendas (accessible via Benchernet). The Committees also committed to keeping open channels of communication going forward, in order to make sure each was advancing the goals of the Law Society in a harmonious manner.
23. The Committee – in conjunction with the Access to Legal Services Advisory Committee – has discussed with Assistant Professor Andrew Pilliar at Thomson Rivers University the potential for an access to justice themed event in the fall. Thomson Rivers, UBC and University of Victoria are exploring a possible access to justice event coordinated via the three law schools. Although it is in early development stage at this point, it might be that there is an opportunity for the Law Society to participate in the event.
24. Lastly, the Committee hopes to host a future colloquium. It will be discussing possible topics, date and location at its July meeting and the Chair should be able to provide an oral update at the July Benchers meeting.

Looking Ahead

25. As noted, the Committee remains interested in hosting a future colloquium. It will discuss it further at its July 2018 meeting. The Committee will support the Law Society's submission to the provincial government regarding the need for improved legal aid funding as part of the next provincial budget.
26. In July, Gary Bass, will join the Committee. Mr. Bass is a retired RCMP Deputy Commissioner. His inclusion fulfills a recommendation from 2017, to expand the membership of the Committee to include perspectives of external stakeholders. This report was completed prior to Mr. Bass's involvement with the Committee.

/DM&ML&AB

The Law Society
of British Columbia



Mental Health Task Force 2018 Mid-Year Report

Brook Greenberg, Chair
Michelle Stanford, Vice Chair
Christopher McPherson, QC
Carolyn Ryan
Derek LaCroix, QC

July 13, 2018

Prepared for: Benchers

Prepared by: Alison Luke on behalf of the Mental Health Task Force

Purpose: Information

Introduction

1. Over the last several years, the incidence of mental health and substance use issues within the legal profession has garnered increasing attention. In addition to recent American academic research revealing high rates of depression, anxiety and substance use disorders amongst lawyers, a number of surveys, research papers and media articles have similarly identified these issues as being both significant and pervasive within the Canadian legal profession.
2. Recognizing that the benefits of lawyer wellbeing are compelling, and that the potential impact of unwell lawyers on the public interest can be significant, addressing mental health and substance use within the profession was elevated to an organizational priority for the Law Society in its 2018-2020 Strategic Plan:¹

Supporting and Assisting Lawyers, Articled Students, and Lawyers of other Jurisdictions who are Permitted to Practise Law In British Columbia in Fulfilling their Duties in the Practice of Law

While the public interest is the focus of the work of the Law Society, the public interest is also served where, as relevant, the Law Society can support and assist students and lawyers to meet the standards the Law Society has established. Disciplining those who fail in meeting standards will always be important, but such processes address after-the fact results. On the other hand, providing resources to assist lawyers and students in meeting the standards can lead to better and healthier lawyers and reduce the likelihood of incidents that will lead to a regulatory outcome.

We will improve the mental health of the legal profession by

- Identifying ways to reduce the stigma of mental health issues.
 - Developing an integrated mental health review concerning regulatory approaches to discipline and admissions.
3. In January 2018, the Mental Health Task Force (the “Task Force”) was established to specifically address these strategic priorities. In April, the Benchers approved the Task Force’s Terms of Reference, which define the scope of the Task Force’s duties and responsibilities [see **Appendix A**].

¹ See the Law Society of British Columbia’s 2018-2020 Strategic Plan, online at: https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/StrategicPlan_2018-2020.pdf

4. Pursuant to section 3(b) of its Terms of Reference, the Task Force is required to produce a mid-year report to the Benchers on its activities. This report is therefore intended to serve as an informational update for the Benchers on the Task Force's work since January.
5. To date, the Task Force has primarily been engaged in consulting with the profession, internally within the Law Society and with subject-matter experts.
6. The Task Force expects to be in a position to make a series of initial recommendations addressing various elements of the Task Force's mandate this fall.
7. The Task Force also expects to be in a position to make recommendations with respect to significant policy matters, including a potential "diversion" or alternative discipline approaches by late 2018 or early 2019.

Discussion

8. Over the last six months, the Task Force has made considerable efforts to increase its understanding of mental health and substance use issues within the legal profession.
9. This work has included:
 - a. reviewing relevant reports, articles, studies and other educational materials;
 - b. encouraging the development of a communications strategy aimed at starting a public conversation about mental health and substance use issues affecting lawyers; and
 - c. undertaking extensive consultations with subject-matter experts, stakeholders and Law Society staff.
10. These activities are described in further detail below.

A. Literature review and educational activities

11. The Task Force has reviewed key reports, articles, surveys and studies that focus on mental health and substance use, primarily as these issues relate to lawyers.
12. Among the most influential of these resources is the 2017 Report of the National Task Force on Lawyer Well-Being entitled, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (the “Report”).²
13. The Report, which has been characterized as “the most ambitious roadmap yet related to the well-being of lawyers,”³ draws on the findings of two recent ground-breaking studies. The first study, commissioned by the American Bar Association Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation, found that of the 13,000 lawyers surveyed, between 21 and 36 percent qualified as problematic users of alcohol, and that approximately 28 percent, 19 percent, and 23 percent were currently struggling with some level of depression, anxiety and stress, respectively. Over 11 percent of respondents reported having suicidal thoughts at some point in their careers.⁴
14. The second study surveyed over 3,300 law students and similarly found concerning levels of depression, anxiety and suicidal thoughts amongst students, as well as high rates of binge drinking.⁵

² The National Task Force was conceptualized and initiated by the American Bar Association Commission on Lawyer Assistance Programs (CoLAP), the National Organization of Bar Counsel (NOBC), and the Association of Professional Responsibility Lawyers (APRL). The National Task Force Report is found online at: <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf>

³ American Bar Association, “Growing concern over well-being of lawyers leads to comprehensive new recommendations” (August 2017) online at: https://www.americanbar.org/news/abanews/aba-news-archives/2017/08/growing_concern_over.html

⁴ P. R. Krill, R. Johnson, & L. Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46 (2016).

⁵ J. M. Organ, D. Jaffe, & K. Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116 (2016).

15. Based on this data, the Report urges leaders in the legal profession to take action to address both mental health and substance use, and provides a series of recommendations for key stakeholders, including legal regulators.⁶
16. The Report has contributed significantly to the Task Force's understanding of mental health and substance use issues within the profession, as well as the rationale for taking action to address these issues and the range of possible educational and regulatory responses.
17. The Task Force has reviewed the Report's recommendations and has examined how at least some of these proposals could best be adapted and recommended to the Benchers. The Report will continue to serve as an important resource for the Task Force as it develops its first set of recommendations later this year.
18. The Task Force has also familiarized itself with the Law Society of Ontario's Mental Health Strategy,⁷ and has reviewed many of the recommendations therein.
19. Members of the Task Force were invited to review the BC Centre on Substance Use's 16-hour online Addiction Medicine Diploma, which is designed to improve knowledge of substance use and addiction treatment for medical professionals. At least one member of the Task Force has completed the full Diploma program.

B. Communications

20. The Task Force has prioritized working with the Law Society's communications department to develop a strong communications campaign, both to promote the work of the Task Force and to address the stigma associated with mental health and substance use issues.

⁶ Other stakeholders that are prescribed a specific set recommendations include judges, legal employers, law schools, bar associations, lawyers' professional liability carriers and lawyer assistance programs. The recommendations revolve around five central themes: (1) identifying stakeholders and the role each can play in reducing the level of toxicity in the profession, (2) eliminating the stigma associated with help seeking behaviors, (3) emphasizing that well-being is an indispensable part of a lawyer's duty of competence, (4) educating lawyers, judges, and law students on lawyer well-being issues, and (5) taking small, incremental steps to change how law is practiced and how lawyers are regulated to instill greater well-being in the profession.

⁷ Ontario is the only other Canadian law society to strike a task force that exclusively focuses on mental health. In contrast, in the US, over a dozen states have established mental health task forces or commissions.

21. Examples of recent communications initiatives include establishing a mental health page on the Law Society website, creating an email inbox that enables members of the profession and the public to directly contact the Task Force and the publication of an article in the *Benchers' Bulletin*.⁸
22. The Law Society also participated in the Canadian Mental Health Association's Mental Health Week, releasing a series of tweets designed to raise the profile the Task Force, highlight the prevalence of mental health and substance use issues within the profession and promote resources that are currently available to lawyers, including the Lawyers Assistance Program and Lifeworks.

C. Internal consultation

23. The Task Force has consulted extensively with various Law Society departments in order to improve its understanding of how the Law Society currently addresses mental health and substance use issues as part of both its regulatory and education and support functions, and to determine whether improvements can be made through increased resources, education and policy initiatives.
24. Members of the Task Force held meetings with management of the Professional Responsibility Department as well as staff in the Education and Practice Management Department, including Practice Advisors, Practice Standards lawyers and Credentials staff.
25. During these consultation sessions, staff identified the type of education, skills-based training and resources that would enable them to better assist members or applicants living with a mental health condition or a substance use disorder, including applicants and members involved in admissions, practice standards, complaints, investigations and discipline processes.
26. The Task Force has also explored how Benchers and non-Bencher members of various Law Society Committees and hearing panels may benefit from additional training to improve their general awareness and understanding of

⁸ Brook Greenberg, "Mental Health Issues in the Legal Profession" (Spring 2018), *Benchers' Bulletin*, online at: https://www.lawsociety.bc.ca/Website/media/Shared/docs/bulletin/BB_2018-01-Spring.pdf#feature

mental health and substance use disorders, and the relevance of these health issues to their deliberations and decision-making.

27. Collectively, these consultations are expected to inform some of the Task Force's early recommendations on education and training initiatives within the Law Society.

D. External consultation

28. The Task Force has engaged in considerable external consultation with a number of key stakeholders and experts, including BC's law schools and a range of professionals that specialize in mental health and substance use disorders.

Law schools

29. Given their role in developing the next generation of lawyers, BC's law schools were identified as being an important stakeholder that should be consulted in the early stages of the Task Force's work.
30. The law schools were invited to meet with the Task Force to discuss how mental health and substance use issues manifest within the student body, to explore how law school initiatives addressing these issues might intersect with the work of the Task Force and to articulate concerns and challenges in addressing mental health and substance use disorders within the student population.
31. The Dean and Associate Deans of the Allard School of Law and the Associate Dean of UVic Faculty of Law provided the Task Force with a comprehensive overview of their respective wellness initiatives and resources.⁹ The presenters commented on the significant number of students experiencing mental health or substance use issues, and the need to encourage open discussion about these issues as part of ongoing efforts to reduce stigma.

⁹ The Faculty of Law at Thompson Rivers University was contacted on several occasions but decided not to participate in a presentation with the Task Force.

32. During these presentations, the law school representatives raised specific concerns about the manner in which mental health and substance use disorders are addressed in the Law Society's admission process and the problematic focus on alcohol at firm sponsored events.
33. The law school representatives made a number of suggestions as to how the admissions process could be made more transparent, predictable and less stigmatizing for students with mental health or substance use issues.
34. Notably, the law school representatives advised that in their experience, many if not most students decline to make use of education and treatment resources available to them once they discover that the Law Society inquires about health conditions and substance use treatment during the admission process.

Consultations with subject-matter experts

35. The Task Force has also consulted widely with experts on mental health and substance use issues, including academics, lawyers, nurses and doctors.
36. The Task Force has benefited from the insights provided by Orlando DaSilva, who was instrumental in raising the profile of mental health issues within the legal profession during his tenure as the president of the Ontario Branch of the Canadian Bar Association. Mr. DaSilva's extensive personal and professional experiences with mental health issues provided the Task Force with valuable commentary on the types of regulatory and educational strategies that the Task Force might consider in addressing mental health and substance use issues affecting lawyers.
37. Margaret Ostrowski, QC, past president of the CBA-BC Branch, former Chair of the province's Mental Health Review Board and a former practising psychologist, provided the Task Force with materials that focused on the beneficial role that psychologists can play in assisting those living with mental health issues.
38. The Task Force has also forged a strong relationship with experts at the British Columbia Centre on Substance Use ("BCCSU"), a provincially networked organization with a mandate to develop, implement and evaluate

evidence-based approaches to substance use and addiction. Within this framework, BCCSU is also involved in the collaborative development of policies, guidelines and standards.

39. The Task Force and Law Society staff participated in a panel presentation by key staff from BCCSU, which highlighted a number of important issues for the Task Force to consider in formulating its upcoming recommendations.¹⁰
40. As part of this panel, Jonathan Chapnick, an employment and human rights lawyer and senior advisor on mental health in the workplace specifically addressed policy considerations relating to the regulation of lawyers with mental health and substance use disorders [see **Appendix B**].
41. The BCCSU has assisted other regulated professions to develop policies and practices relating to substance use and discipline proceedings within those professions, and has similarly agreed to work with the Task Force to develop policies and a statement of “best practices” for regulators dealing with substance use issues.
42. Upcoming consultations are also scheduled with Dr. Ray Baker and Dr. Paul Sobey, physicians specializing in Occupational Addiction Medicine,¹¹ and representatives from the Canadian Mental Health Association [see **Appendix C**].

Next Steps/Work Plan

43. Over the next several months, the Task Force will review the large body of work described above and formulate its first set of recommendations.

¹⁰ The presentation included contributions from Ms. Cheyenne Johnson, Director of BCCSU's Clinical Activities and Development, Dr. Keith Ahamad, Clinical Researcher and Director of the Addiction Medicine Enhanced Skills Training Program at UBC, Division Lead for Addiction in the Department of Family and Community Medicine at Providence Health Care and Physician Lead at the St. Paul's Hospital Addiction Medicine Consult Service and Dr. Kenneth Tupper, BCCSU's Director of Implementation and Partnerships.

¹¹ Dr. Baker has over 25 years of experience in working with unions, employers and regulatory bodies developing policy, training personnel and performing medical assessments and providing treatment recommendations for thousands of individuals with addictive disorders. Dr. Paul Sobey is an addiction medicine physician and consultant, the current president of the Canadian Society of Addiction Medicine and the lead Physician on the Royal Columbian Hospital Addiction Medicine Service.

44. These initial recommendations will primarily focus on strategies to increase education and awareness of mental health and substance use issues amongst Law Society staff involved in providing practice advice and dealing with lawyers in various Law Society processes, including practice standards and professional regulation. The recommendations will also address training for Bencher and non-Bencher members of Committees and hearing panels.
45. The goal of these recommendations will be to create a strong foundation of knowledge and a robust set of resources that will better able the Law Society to support affected lawyers and protect the public interest.
46. Additional recommendations will focus on consultation with the appropriate Committees to improve the way that the Law Society addresses issues of mental health and substance use in its various processes, including admissions.
47. The initial recommendations report will be presented to the Benchers later this fall, with the goal of providing the Benchers with further policy recommendations in late 2018 or early 2019.

MENTAL HEALTH TASK FORCE

TERMS OF REFERENCE

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.

REDACTED MATERIALS

REDACTED MATERIALS



The BC Centre on Substance Use (BCCSU) is a provincially networked organization with a mandate to develop, help implement, and evaluate evidence-based approaches to substance use and addiction. Building on the extensive efforts of the BC Centre for Excellence in HIV/AIDS, the BCCSU's vision is to transform substance use policies and care in BC by translating research into education and evidence-based care guidance. By supporting the collaborative development of evidence-based policies, guidelines and standards, the BCCSU seeks to improve the integration of best practices and care across the continuum of substance use, thereby serving all British Columbians.

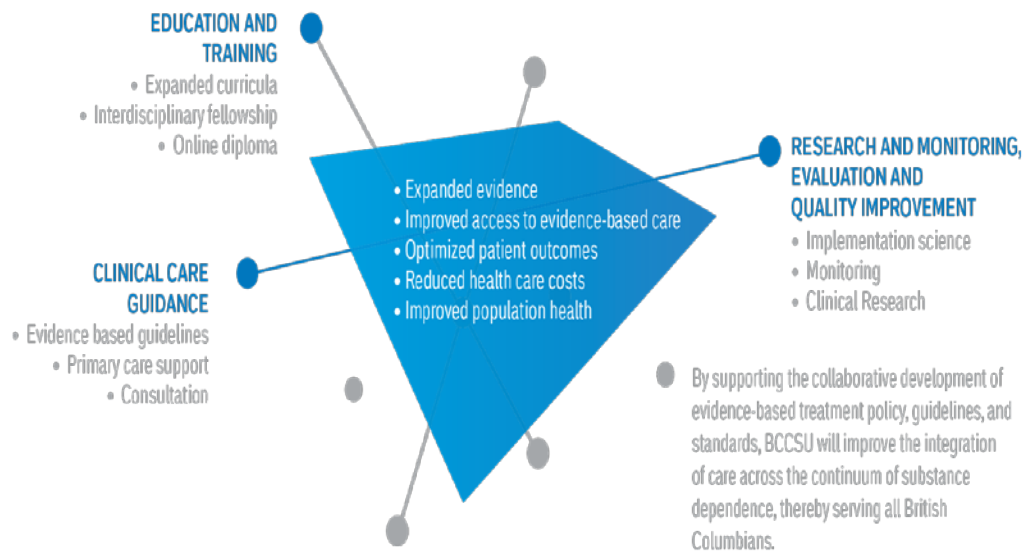
The BCCSU seeks to achieve these goals through integrated activities of its three core functions: research and evaluation, education and training, and clinical care guidance.

Research —Leading an innovative multidisciplinary program of research, monitoring, evaluation and quality improvement activities to guide health system improvements in the area of substance use.

Education and Training—Strengthening addiction medicine education activities across disciplines, academic institutions and health authorities, and training the next generation of interdisciplinary leaders in addiction medicine.

Clinical Care Guidance—Developing and helping implement evidence-based clinical practice guidelines, treatment pathways and other practice support documents.

CORE FUNCTIONS



Vision, Mission, and Values

Our Vision

Transform substance use policy and care in BC through the integration of evidence-based education, research, and care.

Mission

The BCCSU's mission is to provide provincial leadership in substance use and addiction research, education and clinical care guidance and to seamlessly integrate these pillars to help shape a comprehensive, connected system of treatment and care that reaches all British Columbians.

Values

ADVANCING, SEEKING, AND SHARING OF KNOWLEDGE

The Centre supports primary and secondary prevention, health promotion, clinical care, education, training and research initiatives that contribute to the knowledge and

understanding of substance use and addiction, and seeks every opportunity to share this knowledge widely.

COLLABORATION

Substance use presents a range of complex issues that require a range of stakeholders who engage effectively with communities. The BCCSU places great value on active collaboration with a range of stakeholders, including health care professionals and other care providers, policy makers, people who use substances, family advocacy and support groups, and service providers in primary, acute care settings, and recovery-oriented system of care. The Centre regularly seeks the advice and active participation of knowledge holders in designing, implementing and disseminating its core functions.

EMPOWERMENT

The Centre supports and empowers individuals, families, and communities to live better lives with dignity and to support and enable positive change.

EVIDENCE, EXCELLENCE, AND QUALITY

The BCCSU, through its affiliates, care providers, researchers, educators, leadership, and staff, strives for excellence and quality through innovation and adherence to the highest scientific and ethical standards to promote evidence-based practices.

ADVOCACY

The Centre plays an advocacy role for positive and evidence-based public policy change, reducing stigma, and supporting patients and their families.

MUTUAL RESPECT AND EQUITY

The Centre values and respects all members of its communities, each of whom individually and collaboratively make a contribution to transforming care, education, training, and research in this area.

REGULATING LAWYERS WITH **MENTAL HEALTH & SUBSTANCE USE DISORDERS:** **NAVIGATING THE PATH FORWARD**

Presentation to LSBC Mental Health Task Force (30 May 2018)

JON CHAPNICK, SENIOR ADVISOR, WORKPLACE MENTAL HEALTH, UBC



MENTAL HEALTH TASK FORCE

Terms of Reference

- ...take steps in relation to...
 - ✓ reducing stigma
 - ✓ regulatory approach to discipline
 - ? alternative process (“diversion”)
 - ? other aspects
 - ✓ regulatory approach to admissions

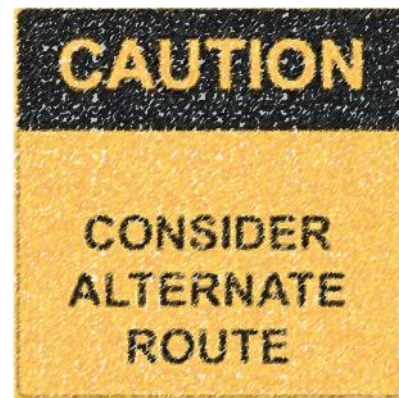
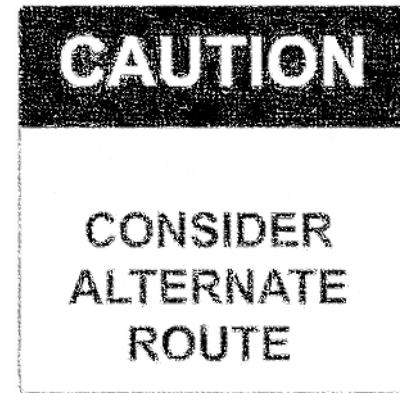




NAVIGATING THE PATH FORWARD

Caution Signs

- Bad evidence
- Mental health profiling
- Multiple domains
- Non-standard care





SCOPE OF PRESENTATION

Regulatory side	Support side
Fitness and capacity to practice	Health and well-being
Professional competence	Wellness services
Professional misconduct	Personal support
Conduct unbecoming	Education and awareness
etc.	etc.

STIGMA



“...the subjects of stigma are redirected on a path where their identities are engulfed, their relationships transformed, and the direction of their lives shifted because they have been marked by a stereotypical attribute...”

James D. Livingston, *Mental Illness -Related Structural Stigma: The Downward Spiral of Systemic Exclusion Final Report* (Calgary: Mental Health Commission of Canada, 2013).

STIGMA

Labeling

- Applying oversimplified social label
- Labeled persons are believed to be distinctly different
- e.g. persons **with mental illness**



Stereotyping

- Associating social label with undesirable characteristics
- Based on dominant beliefs, perceptions
- e.g. persons with mental illness = **violent**

Separation

- Setting labeled persons apart
- Separating 'us' from a 'stigmatized them'

Bruce G. Link & Jo C. Phelan, "Conceptualizing Stigma" (2001) 27 Annual Review of Sociology 363.

James D. Livingston, *Mental Illness-Related Structural Stigma: The Downward Spiral of Systemic Exclusion Final Report* (Calgary: Mental Health Commission of Canada, 2013).

STIGMA

Social stigma

- Exists at group level
- Behaviour adversely impacts labeled group
- e.g. disinclination to refer clients to lawyers with mental illness



Structural stigma

- Exists at institutional level
- Rules, policies, etc. arbitrarily restrict/disadvantage/burden labeled persons
- e.g. *next slide...*

James D. Livingston, *Mental Illness-Related Structural Stigma: The Downward Spiral of Systemic Exclusion Final Report* (Calgary: Mental Health Commission of Canada, 2013).

Structural Stigma

Law Society of British Columbia Application: Law Society Admission Program Enrolment

1. Given Name(s) _____ Surname _____

2. a) Based on your personal history, your current circumstances or any professional opinion or advice you have received, do you have a substance use disorder¹? ☐ Yes ☐ No
 b) Have you been counseled or received treatment for a substance use disorder? ☐ Yes ☐ No

3. If you answered yes to questions 2 (a) or (b), please provide a general description on a separate sheet.

4. Based on your personal history, your current circumstances or any professional opinion or advice you have received, do you have any existing condition that is reasonably likely to impair your ability to function as an articulated student? ☐ Yes ☐ No

5. If the answer to question 4 is "yes", please provide a general description of the impairment on a separate sheet.

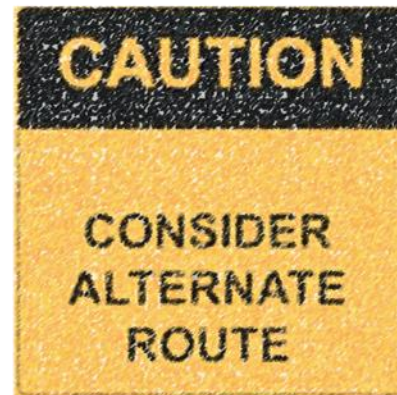
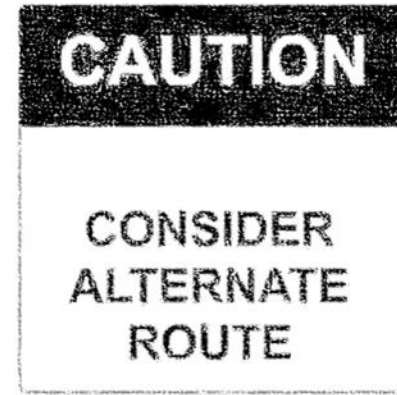
_____ Date _____ Signature of applicant _____

¹Substance Use Disorder includes alcohol or drug abuse or dependence (for more exact diagnostic criteria for substance use disorders, refer to DSM-IV-TR-American Psychiatric Association 2000. Diagnostic and Statistical manual of Mental Disorders: 4th Edition, Text Revision. Washington, DC)

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CAUTION SIGNS



BAD EVIDENCE



“...researchers have pointed out that policy, in particular drug-related policy, has a long history of being devised in the absence of scientific evidence...”

Michael R. Frone, *Alcohol and Illicit Drug Use in the Workforce and Workplace* (Washington, DC: APA, 2013).



Bad information

- Anecdotes, assumptions, rough estimates, etc.
- e.g. “...it *appears* lawyers experiencing mental health and substance use issues make up a *significant* portion of those who...are involved in the discipline process...”

Bad information practices

- Result in misunderstanding/mischaracterization of policy issues
- e.g. overgeneralizing findings; speculating / misapplying information

MENTAL HEALTH PROFILING



“...Mental health profiling may be defined as any action undertaken for reasons of...public protection that relies on stereotypes about a person’s mental health or addiction rather than reasonable grounds, to single out a person for greater scrutiny or different treatment...”

Ontario Human Rights Commission, *Policy on Prevention Discrimination based on Mental Health Disabilities and Addictions* (18 June 2014).



Red flags

- Arbitrariness, disproportionality
- Restriction or burden based on broad categories (e.g. diagnosis of mental illness) rather than specific and measurable findings from individualized assessments of impairment, capacity or risk

Example

- Mandatory self-disclosure of substance use disorder

MENTAL HEALTH PROFILING

Law Society of British Columbia Application: Law Society Admission Program Enrolment

1. Given Name(s) _____ Surname _____

2. a) Based on your personal history, your current circumstances or any professional opinion or advice you have received, do you have a substance use disorder¹? ☐ Yes ☐ No
 b) Have you been counseled or received treatment for a substance use disorder? ☐ Yes ☐ No

3. *If you answered yes to questions 2 (a) or (b), please provide a general description on a separate sheet.*

4. Based on your personal history, your current circumstances or any professional opinion or advice you have received, do you have any existing condition that is reasonably likely to impair your ability to function as an articled student? ☐ Yes ☐ No

5. *If the answer to question 4 is "yes", please provide a general description of the impairment on a separate sheet.*

_____ Date _____ Signature of applicant _____

¹Substance Use Disorder includes alcohol or drug abuse or dependence (for more exact diagnostic criteria for substance use disorders, refer to DSM-IV-TR-American Psychiatric Association 2000. Diagnostic and Statistical manual of Mental Disorders: 4th Edition, Text Revision. Washington, DC)

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MENTAL HEALTH PROFILING

PHP approach

- medical evaluations
- intensive Tx
- compliance monitoring
- abstinence
- 12-step
- drug testing
- in lieu of discipline



Robert L. Dupont *et al.*, "Setting the standard for recovery: Physicians' Health Programs" (2009) 36 Journal of Substance Abuse Treatment 159.

Federation of State Physician Health Programs, Inc., *Physician Health Program Guidelines* (Chicago: FSPHP, 2005).

Interior Health, *Procedural Guidelines for Policy AU0200 – Substance Use Disorder* (Interior Health Authority, 2013).

MENTAL HEALTH PROFILING

“...no credible scientific evidence currently exists to suggest that employee substance use is among the major and consistent causes of workplace injuries and accidents (or any other productivity outcome)...”



Michael R. Frone, “Alcohol, Drugs & Workplace Safety Outcomes” in Julian Barling and Michael R. Frone, eds, *The Psychology of Workplace Safety* (Washington, DC: APA, 2004) 127.



N. Chau *et al.*, “Relationship between job, lifestyle, age and occupational injuries” (2009) 59 *Occupational Medicine* 114.

K.T. Palmer *et al.*, “Chronic health problems and risk of accidental injury in the workplace: a systematic literature review” (2008) 65 *Occupational & Environmental Medicine* 757.

Bhattacharjee, A. *et al.*, “Relationships of job and some individual characteristics to occupational injuries in employed people: a community-based study” (2003) 45 *Journal of Occupational Health* 382.

MULTIPLE LIFE DOMAINS



“...Structural stigma...is likely to surface when restrictions are imposed on multiple life domains and social contexts, rather than on a specific activity for a circumscribed duration...”

James D. Livingston, *Mental Illness-Related Structural Stigma: The Downward Spiral of Systemic Exclusion Final Report* (Calgary: Mental Health Commission of Canada, 2013).



Red flags

- Conflating regulatory and support functions
- Intrusions and impositions that would not be acceptable for people with other health conditions

Example

- Mandated abstinence from all psychoactive substances and compulsory attendance at support group meetings led by peers

NON-STANDARD HEALTH CARE

CAUTION

CONSIDER
ALTERNATE
ROUTE



Quality Healthcare

Meaning of “quality”

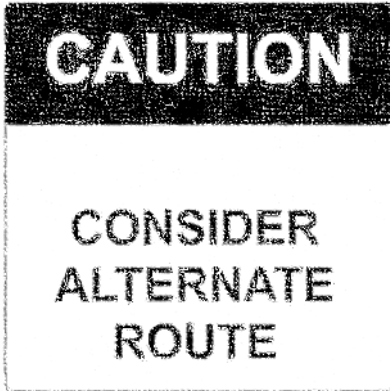
- Evidence-based
- Specific to individual clinical needs
- Respectful of patient and family preferences, needs and values
- Patient-centred (i.e. “...puts patients at the forefront of their health and care, ensures they retain control over their own choices, helps them make informed decisions and supports a partnership between individuals, families, and health care servicers providers...”)



British Columbia, Ministry of Health, *The British Columbia Patient-Centred Care Framework* (February 2015).

British Columbia, Ministry of Health, *Setting Priorities for the B.C. Health System* (February 2014).

NON-STANDARD HEALTHCARE



“...One must ask why society is willing to use coercive preventative [healthcare and other] measures for people with mental illnesses but not for other groups of citizens...”

James D. Livingston, *Mental Illness-Related Structural Stigma: The Downward Spiral of Systemic Exclusion Final Report* (Calgary: Mental Health Commission of Canada, 2013).



Red flags

- Frequent use of “IMEs”
- Regulatory leverage to gain Tx compliance
- One-size-fits-all recommendations

Example

- Blanket restrictions on choice of first-line diagnostic care provider.

NON-STANDARD HEALTHCARE



NOVA SCOTIA BARRISTERS' SOCIETY

FITNESS TO PRACTISE PROGRAM INFORMATION AND CONSENT TO PARTICIPATE

The Fitness to Practise Program is part of the Society's Professional Responsibility process, which supports the Society's public protection mandate. The Professional Responsibility process deals with concerns regarding a lawyer's conduct in the course of the practice of law.

You have been referred to the Fitness to Practise Program pursuant to Part 9 of the Regulations of the *Legal Profession Act* (attached). This form provides information about the Program, the Fitness to Practise Committee (FTPC) and related processes.

i) Voluntary Program

Before you decide if you want to participate in this process, it is important that you understand the purpose of the Program and what you will be asked to do. You do not have to take part in this program. Taking part is entirely voluntary. Informed consent is needed before the initial referral to the Committee. You may decide not to take part or you may withdraw your consent at any time.

ii) Medical Assessment

On receipt of this referral, the FTPC may require you to submit to a medical assessment, which may include a physical, mental health or addictions assessment or examination by a qualified health professional approved by the Society.

iii) Interim Agreement

The FTPC may also require you to enter into an interim agreement respecting conditions or restrictions on your practising certificate or undertakings with regard to your practice.

If you do not comply with the Committee's requirements, the FTPC will refer the matter back to the Executive Director.

iv) Remedial Agreement

If the FTPC determines that your ability to practise law with reasonable skill and judgment has been substantially impaired by a physical, mental or emotional condition, disorder or addiction as revealed by a medical assessment, the Committee may enter into a remedial agreement with you where it is in the public interest to do so.

v) Referral to Executive Director

If the FTPC determines that your ability to practise law with reasonable skill and judgment has not been substantially impaired by a physical, mental or emotional condition, disorder or addiction, the Committee will refer the matter back to the Executive Director.

The FTPC may amend an interim agreement or a remedial agreement with your consent. If you do not consent to the amendment of the interim agreement or remedial agreement, the Fitness to Practise Committee will refer the matter back to the Executive Director.



NON-STANDARD HEALTHCARE

“...Professionals in the mental health system may engage in other practices that contribute to stigma, such as...using legal leverages and coercion to gain treatment compliance...”



James D. Livingston, *Mental Illness-Related Structural Stigma: The Downward Spiral of Systemic Exclusion Final Report* (Calgary: Mental Health Commission of Canada, 2013).

Meaning of “quality”

- Evidence-based
- Specific to individual clinical needs
- Respectful of patient and family preferences, needs and values
- Patient-centred (i.e. “...puts patients at the forefront of their health and care, **ensures they retain control** over their own choices, helps them make informed decisions and supports a partnership between individuals, families, and health care servicers providers...”)

British Columbia, Ministry of Health, *The British Columbia Patient-Centred Care Framework* (February 2015).

British Columbia, Ministry of Health, *Setting Priorities for the B.C. Health System* (February 2014).

NON-STANDARD HEALTHCARE



Compliance Monitoring as Healthcare



“...A monitoring agreement is...designed to help the individual achieve abstinence...The monitoring agreement provides leverage, creating incentives for the individual to comply with recommendations of qualified treatment professionals...”

Corinne L. Shea, ed., *The New Paradigm for Recovery. Report of the John P. McGovern Symposium hosted by the Institute for Behaviour and Health, Inc.* (Washington, DC: 2013).



NOVA SCOTIA BARRISTERS' SOCIETY

FITNESS TO PRACTISE PROGRAM INFORMATION AND CONSENT TO PARTICIPATE

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The FTPC may amend an interim agreement or a remedial agreement with your consent. If you do not consent to the amendment of the interim agreement or remedial agreement, the Fitness to Practise Committee will refer the matter back to the Executive Director.

Suppose a lawyer (who has a seizure disorder) misses a court appearance due to a seizure.

The interests of the lawyer's client are negatively impacted by the lawyer's absence.

The client complains to the Law Society.

What would the Law Society do?





THE UNIVERSITY OF BRITISH COLUMBIA



Mental Health Task Force Guest Speakers July 12 2018



About CMHA

Founded in 1918, the Canadian Mental Health Association (CMHA) is a national charity that helps maintain and improve mental health for all Canadians. As the nation-wide leader and champion for mental health, CMHA promotes the mental health of all and supports the resilience and recovery of people experiencing mental illness.

In BC, mental health, substance use and addictive behaviour are within the scope of the organization.

Through our family of over 100 local, provincial and national locations across Canada, CMHA provides a wide range of innovative services and supports tailored to and in partnership with our communities.

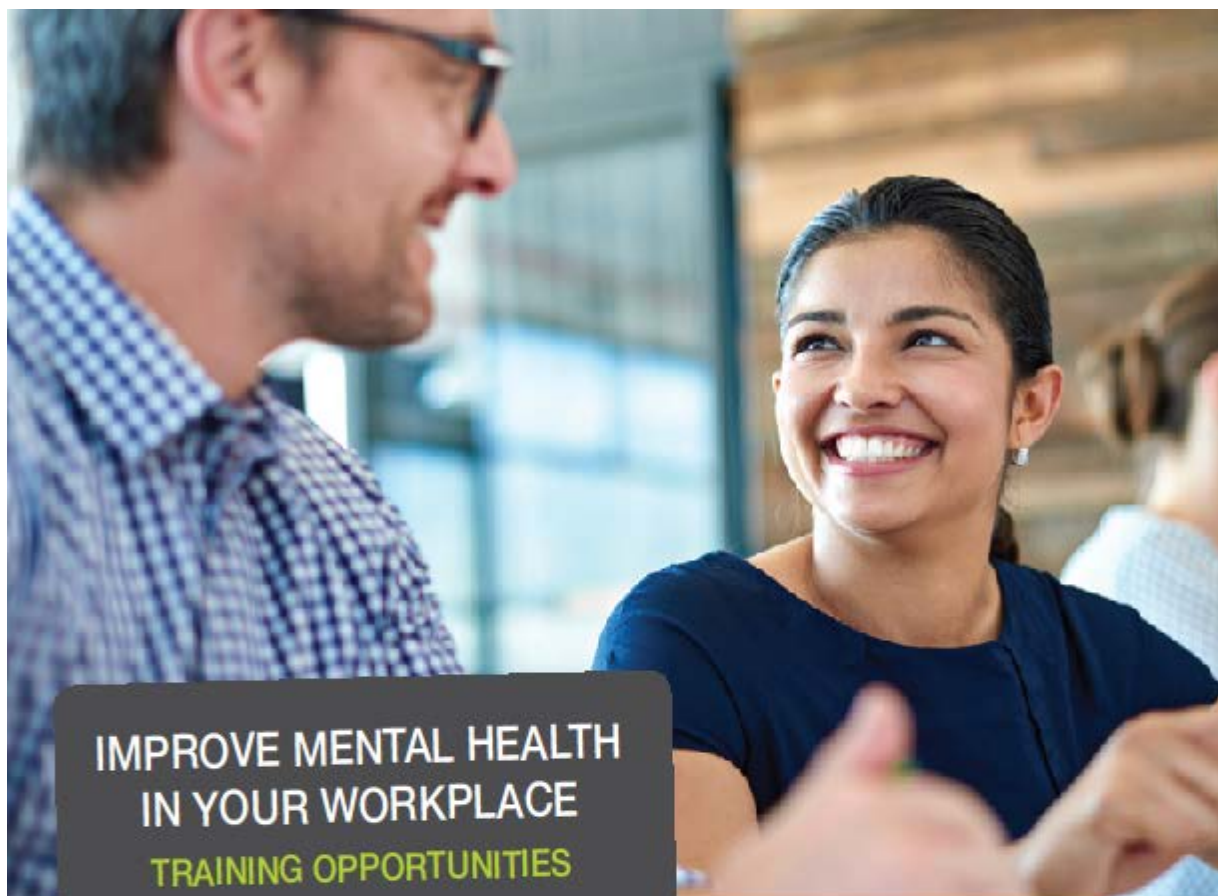
CMHA BC has been accredited through Imagine Canada's national Standards Program. The Standards Program awards accreditation to charities and nonprofits that demonstrate excellence in five fundamental areas: board governance; financial accountability and transparency; fundraising; staff management; and volunteer involvement.

Programs and Services

The Canadian Mental Health Association provides mental health promotion and mental illness recovery-focused programs and services for people of all ages and their families.

Workplace

CMHA offers a variety of workshops and training sessions to improve mental health in the workplace.



IMPROVE MENTAL HEALTH IN YOUR WORKPLACE

TRAINING OPPORTUNITIES

Mental health is a state of well-being in which every individual realizes his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community. —World Health Organization

Let us help you create a mentally healthier workplace

Twenty percent of Canadians will experience a diagnosed mental illness in their lifetime but more than 40% will experience challenges with their mental health during their working years

Of those 40%, 2 out of 3 people suffer in silence fearing judgment rather than seeking treatment.

Work with us to ensure your employees and members get the support they need. A psychologically healthy and safe workplace is within your reach.



**Canadian Mental
Health Association
British Columbia**
Mental health for all

The Canadian Mental Health Association (CMHA), founded in 1918, is one of the oldest voluntary organizations in Canada. Each year, we provide direct service to more than 100,000 Canadians through the combined efforts of more than 10,000 volunteers and staff across Canada in over 120 communities.

All-Staff Presentations

CMHA BC can customize a presentation for your workplace, either as a presentation or a workshop. Topics for larger staff groups may include:

- Awareness of Mental Health at Work
- Resiliency
- Social Support

Cost: \$500–750 for 1 to 2-hour workshop. No maximum number of attendees.

Union and Occupational Health and Safety Representatives

Safe & Sound: Building a Psychologically Safe Workplace

Learn about how to promote mental health and address mental illness, including addiction, in the workplace from a health and safety perspective. This workshop includes a review of local policies or regulations, and provides an overview of *National Standard of Canada for Psychological Health and Safety in the Workplace*.

Cost: \$1500 for 3-hour training session. Discount offered for multiple sessions booked. Max 30 attendees.

Leaders and Managers

Mental Health Works

Addressing the mental health needs of your workers starts with training your managers to notice when employees are struggling. Give them the tools and skills they need to open a dialogue with employees that are showing signs of distress or overwhelm. This has been identified as one of the most cost-effective and practical interventions a workplace can invest in.

Cost: \$1500 for 3-hour or \$2500 for 6-hour training session. Max 25 attendees.

First Responders

Resilient Minds—Building the Psychological Health of Firefighters

CMHA offers a modular training to enhance the mental health of firefighters. The training can be delivered directly to teams or by a train the trainer program. The skill-building workshops provide comprehensive information on trauma, mental health problems, and resiliency.

Please contact us for pricing.

Front Line Workers

Responding with Respect

Give your front line staff the tools they need to work with clients who may be experiencing distress due to mental illness or stress. Participants gain knowledge on how to recognize those who may be experiencing a mental health problem, respond to them and refer them to further help.

Cost: \$1500 for 3-hour workshop. Max 25 attendees.

Mental Health First Aid

Provide training for your team to provide initial help to people who are showing signs of a mental health problem or experiencing a mental health crisis.

Cost: approximately \$200 per person for 2-day training.

Suicide Prevention Training

Most people with thoughts of suicide don't truly want to die, but are struggling with the pain in their lives. Help your staff feel more comfortable asking employees or colleagues about suicide and give them the tools they need to intervene and access support.

- 3-hour SafeTALK workshop
- 2-day ASIST suicide intervention and suicide first aid training

Please contact us for pricing. Training can be hosted on site.

Organizational Change Agents

Psychological Health and Safety Advisor Training

If you are committed to improving psychological health and safety in your workplace, and want to approach it systematically and sustainably, this training will give you the skills to implement the *National Standard of Canada for Psychological Health and Safety in the Workplace*. Developed to provide an experiential learning opportunity, this training prepares agents to assess readiness for change, apply tools to assess and analyze psychological health and safety, and prepare an implementation plan.

Cost: \$1500 per person for 2-day training.

Peer Support Program Development and Support

Attend our workshops on building and sustaining a peer support program. Peer support allows you to leverage the lived experience of mental illness and recovery in your workplace. It's a proven way to increase psychological support and protection in your workplace.

Please contact us for pricing.

...and a lot more!

Executive Presentations

Let us help you make the case for building a mental health strategy integrated into your organizational strategic plan.

Consultation Services

We can help you develop a mental health strategy, a mental health policy, a peer support program, or implement the *National Standard of Canada for Psychological Health and Safety in the Workplace*.

Keynotes and custom workshops are also available.

REDACTED MATERIALS

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