



# Agenda

## Benchers

Date: Friday, September 27, 2019

Time: **7:30 am** Continental breakfast  
**8:30 am** Call to order

Location: Bencher Room, 9<sup>th</sup> Floor, Law Society Building

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

### CONSENT AGENDA

Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Governance & Board Relations prior to the meeting.

1	Minutes of July 12, 2019 meeting (regular session)
2	Direction regarding Second Vice-President Election Process
3	The 2019 Law Society Indigenous Scholarship
4	Anti-Money Laundering Working Group

### EXECUTIVE REPORTS

5	President's Report	Nancy G. Merrill, QC
6	CEO's Report	Don Avison
7	Briefing by the Law Society's Member of the Federation Council	Herman Van Ommen, QC

### GUEST PRESENTATIONS

8	"What I've learned about my mental health and why it's important"	The Honourable Justice Michele H. Hollins
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# Agenda

The Law Society  
of British Columbia



## DISCUSSION/DECISION

9	2020 Budget & Fees	Craig Ferris, QC Don Avison Jeanette McPhee
10	Fiduciary Property (Rule 3-55): Proposal to Amend Rules	Craig Ferris, QC Michael Lucas
11	Reporting to Law Enforcement: Proposal to Amend Rules	Craig Ferris, QC Natasha Dookie
12	Report of the Annual Fee Review Working Group	Dean Lawton, QC
13	Law Society Awards: Design Selection, Nominations and Criteria	Lisa Hamilton, QC

## UPDATES

14	Equity Ombudsperson Program: 2018 Annual / 2019 Interim Report	Claire Marchant
15	Report on attendance at the International Conference of Legal Regulators in Edinburgh and re-populating the pools for Tribunal Members	Craig Ferris, QC
16	Report on Outstanding Hearing & Review Decisions ( <i>Materials to be circulated at the meeting</i> )	Craig Ferris, QC

## FOR INFORMATION

17	Correspondence from the Minister of Justice dated August 12, 2019
18	Correspondence from the Attorney General dated August 12, 2019
19	Correspondence from the Attorney General dated August 14, 2019
20	Federation of Law Societies of Canada submission to Immigration, Refugees, and Citizenship Canada: Amendments to the Immigration and Refugee Protection Act and Citizenship Act, and new College of Immigration and Citizenship Act
21	2020 Benchers and Executive Committee Meetings Schedule

# Agenda

The Law Society  
of British Columbia



22	Three Month Benchers Calendar – October to December 2019
<b><i>IN CAMERA</i></b>	
23	Other Business



# Minutes

## Benchers

Date: Friday, July 12, 2019

Present:

Nancy G. Merrill, QC, President	Geoffrey McDonald
Craig Ferris, QC, 1 <sup>st</sup> Vice-President	Steven McKoen, QC
Dean P.J. Lawton, QC, 2 <sup>nd</sup> Vice-President	Christopher McPherson, QC
Jasmin Ahmad	Jacqui McQueen
Jeff Campbell, QC	Phil Riddell, QC
Pinder Cheema, QC	Elizabeth Rowbotham
Jennifer Chow, QC	Mark Rushton
Barbara Cromarty	Carolynn Ryan
Anita Dalakoti	Karen Snowshoe
Jeevyn Dhaliwal	Michelle D. Stanford, QC
Martin Finch, QC	Sarah Westwood
Brook Greenberg	Michael Welsh, QC
Lisa Hamilton, QC	Tony Wilson, QC
Roland Krueger, CD	Guangbin Yan
Jamie Maclaren, QC	Heidi Zetzsche
Claire Marshall	

Unable to Attend: Not Applicable

Staff Present:

Don Avison	Alison Luke
Gurprit Bains	Tara McPhail
Natasha Dookie	Jeanette McPhee
Su Forbes, QC	Jacqueline Maxwell
Mira Galperin	Eva Milz
Kerryn Garvie	Doug Munro
Andrea Hilland	Michelle Robertson
Jeffrey Hoskins, QC	Lesley Small
David Jordan	Alan Treleaven
Michael Lucas	Adam Whitcombe, QC

Guests:	Kenneth Armstrong Dom Bautista Dr. Lew Bayer Richard Fyfe, QC  Derek LaCroix, QC April Lemoine Shawn Mitchell Wayne Robertson, QC Linda Russell Herman Van Ommen, QC  Bill Veenstra, QC	Vice-President, Canadian Bar Association, BC Branch Executive Director, Law Courts Center Founder, Civility Experts Inc. Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General  Executive Director, Lawyers Assistance Program CFO, Courthouse Libraries BC CEO, Trial Lawyers Association of BC Executive Director, Law Foundation of BC CEO, Continuing Legal Education Society of BC Law Society of BC Member, Council of the Federation of Law Societies of Canada  Past President, Canadian Bar Association, BC Branch
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## RECOGNITION

### 1. 2019 Rule of Law Essay Contest: Presentation of Co-Winners

President Merrill presented the award to the co-winners of the 2019 Rules of Law Essay Contest. This year's contest asked students to explain the rule of law to a new classmate who had recently arrived in Canada. Bret Van Den Brink and Vivian Osiek are the co-winners of this year's contest. Both winners wrote exemplary essays, which are posted on the Law Society website.

## CONSENT AGENDA

### 2. Minutes of June 8, 2019, meeting (regular session)

The minutes of the meeting held on June 8, 2019 were approved as circulated.

### 3. External Appointment: Vancouver Airport Authority

The following resolution was passed unanimously and by consent.

*BE IT RESOLVED* to appoint Charlene Ripley to the Vancouver Airport Authority Board for a term of three years.

### 4. AGM Rule Amendments

The following resolution was passed unanimously and by consent.

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

#### 1. *In Rule 1-8, by rescinding subrules (5) to (8) and substituting the following:*

- (5) At least 60 days before an annual general meeting, the Executive Director must, issue a notice of the date and time of the annual general meeting.
- (6) In order to be considered at the annual general meeting, a resolution must be
  - (a) signed by at least 2 members of the Society in good standing, and
  - (b) received by the Executive Director at least 35 days before the annual general meeting.
- (6.1) On receipt of a resolution under subrule (6), the Executive Director must promptly issue a notice of the resolution, including the text of the resolution and the names of the 2 members who signed it.
- (6.2) Not later than 21 days before the annual general meeting, the 2 members who signed a resolution submitted under subrule (6) may, by notifying the Executive Director in writing,

- (a) withdraw the resolution, or
    - (b) make changes to the resolution.
  - (7) Before advance voting is permitted under Rule 1-13.1 [Voting in advance of general meeting] and at least 16 days before an annual general meeting, the Executive Director must issue
    - (a) a notice containing the following information:
      - (i) the locations at which the meeting is to be held,
      - (ii) each resolution received in accordance with subrule (6), with any changes submitted under subrule (6.2), unless the resolution has been withdrawn under that subrule, and
      - (iii) notice of advance voting under Rule 1-13.1 if it is to be permitted, and
    - (b) the audited financial statement of the Society for the previous calendar year.
  - (8) The accidental failure to comply with any requirement under subrule (5), (6.1) or (7) does not invalidate anything done at the annual general meeting.
  - (9) A notice or other document required to be issued under this rule must be made available to Benchers and members in good standing by electronic or other means.;
- 2. ***In Rule 1-9, by rescinding subrule (3) and substituting the following:***
  - (3) The local chair must record the names of those in attendance and, unless the Executive Director directs otherwise, may dispense with registration and voting, non-voting and student cards under Rule 1-13 [Procedure at general meeting].
- 3. ***In Rule 1-11, by rescinding subrule (5) and substituting the following:***
  - (5) At least 21 days before a special general meeting, the Executive Director must, by electronic or other means, distribute to Benchers and members of the Society in good standing
    - (a) a notice of the meeting stating the business that will be considered at the meeting, and
    - (b) any resolution to be voted on under Rule 1-13.1 [Voting in advance of general meeting].
- 4. ***In Rule 1-13, by rescinding subrules (2), (4), (13) and (15) to (17) and substituting the following:***
  - (2) The Executive Director must register all persons attending a general meeting as follows:
    - (a) members of the Society in good standing who have not previously voted on any resolution under Rule 1-13.1 [Voting in advance of general meeting], who must be given a voting card;
    - (a.1) members of the Society in good standing who have previously voted on any resolution under Rule 1-13.1, who must be given a non-voting member card;
    - (b) articulated students, who must be given a student card;
    - (c) appointed Benchers and persons given permission to attend the meeting by the President, who may be given a card for

identification only.

- (4) At a general meeting, the President may allow a person who is not a Bencher, a member in good standing or a student to speak.
- (12.1) A resolution on which members have voted in advance of the general meeting must not be amended, postponed or referred at the general meeting.
- (13) The President must decide questions of procedure to be followed at a general meeting not provided for in the Act or these Rules.

**5. *By adding the following rules:***

**Voting in advance of general meeting**

- 1-13.1 (1) The Benchers may authorize the Executive Director to permit members of the Society in good standing to vote by electronic means on general meeting resolutions in advance of the general meeting.
- (2) When advance voting is permitted under subrule (1), all members of the Society in good standing must have the opportunity to vote by electronic means on all general meeting resolutions.
- (3) The Executive Director
  - (a) may retain a contractor to assist in any part of electronic voting on general meeting resolutions,
  - (b) must ensure that votes cast electronically in a secret ballot remain secret, and
  - (c) must take reasonable security measures to ensure that only members entitled to vote can do so.
- (4) A ballot on a general meeting resolution may be produced electronically, and to cast a valid vote, a member must indicate his or her vote in accordance with instructions accompanying the ballot.
- (5) The period of voting in advance of a general meeting must be at least 15 days ending at the close of business on the last business day before the general meeting.
- (6) A person who has voted electronically in advance of the meeting is present at the meeting for the purpose of calculation of a quorum under Rule 1-12 [Quorum].

**Voting at general meeting**

- 1-13.2 (1) A member of the Society in good standing who is present at a general meeting and has not previously voted on any resolution under Rule 1-13.1 [Voting in advance of general meeting] is entitled to one vote.
- (2) A member of the Society must not
  - (a) cast a vote or attempt to cast a vote that he or she is not entitled to cast, or
  - (b) enable or assist a person
    - (i) to vote in the place of the member, or
    - (ii) to cast a vote that the person is not entitled to cast.



- (3) Voting at a general meeting must be by show of voting cards, or by show of hands if voting cards have not been issued, unless the President orders a secret ballot.
- (4) A member of the Society is not entitled to vote by proxy.

## **5. Extension of Time to File for a Review of a Decision of a Hearing Panel – Policy Issues Arising from the Johnson Decision**

A Bencher requested that this item be moved from the Consent Agenda for discussion for the purposes of seeking clarification about whether the Law Society had jurisdiction to amend the rule. The Benchers referenced the August 2015 decision [see *Law Society of British Columbia v. Johnson*, 2015 LSBC 40] in which the majority determined that there was jurisdiction to extend the time to apply for a review of a decision of the hearing panel. President Merrill clarified that the decision sought was in principle approval that:

- a. there be an open-ended extension on the 30-day period in which to initiate a review of a hearing panel's decision;
- b. criteria for exercising discretion to grant an extension be developed through jurisprudence; and
- c. the President (or President's designate) is the appropriate decision maker for any requests for extension of time;

and further recommends that the matter be returned to the Act and Rules committee to prepare rules to reflect these policy directions. The motion passed with all but one Bencher in favour.

## **REPORTS**

### **6. President's Report**

President Merrill thanked Ms. Stanford and Ms. Hamilton for putting their names forward to be the Benchers' Nominee for 2020 Second Vice-President, and congratulated Ms. Hamilton who was successful. Ms. Merrill also congratulated Mr. Greenberg who was chosen as the recipient of the Zenith award for demonstrating leadership in addressing mental health and substance use issues in the legal profession.

Ms. Merrill provided a summary of the Executive Committee meeting that took place on June 27; including approval of certain expenditures, revision of the criteria for the pro bono award, that the rules be amended to allow the Discipline Committee to consider disclosure of information that may be evidence of an offence to law enforcement and indicated that guidelines will be developed regarding the exercise of the discretion. Ms. Merrill also discussed a recent

request from the RCMP for a list of members' email addresses for the purposes of excluding data from searches of a lawyer's mirror image hard drives or cell phones. She said staff have been directed to obtain further information about the request.

Ms. Merrill then announced the audio-conference locations that have been approved for the 2019 Annual General Meeting: Vancouver, Victoria, Courtenay, Cranbrook, Kelowna, Prince George, Fort St. John, Smithers, Terrace and Kamloops.

Finally, Ms. Merrill reported on various ceremonies, lectures and meetings she attended since the June 8 Bencher meeting.

## **7. CEO's Report**

Mr. Avison discussed Bill C-75 that was passed by Parliament at the end of the session. In particular, he said that changes to the summary conviction rules and the increase of the mandatory minimum penalties results in a potential issue with respect to the capacity of agents, and in this case, the ability of articulated students and law students to appear in contested summary conviction matters. Mr. Avison said the Law Society is working with the provincial government and the Federation of Law Societies of Canada to find a way to address the issue and is hopeful it can be resolved in the coming weeks. The Courts have also been made aware of the nature of the issue that has arisen.

Secondly, with respect to the discussions between the Government of Canada (specifically, the Department of Finance and the Department of Justice) with Federation officials and Law Society officials, Mr. Avison reported that these discussions in relation to working co-operatively on anti-money laundering initiatives had gone quite well.

Mr. Avison then referred to positive engagement with the provincial government on key initiatives such as legal aid and anti-money laundering, and said he would be attending various meetings with Ministers and MLAs in August as well as caucus meetings that had been scheduled for late October.

## **8. Briefing by the Law Society's Member of the Federation Council**

Ms. Ferris attended the Federation of Law Societies of Canada meeting in June in place of Mr. Van Ommen, who was unavailable. He noted that the Federation Council does not permit substitutes for Council members so he did not have the ability to vote or participate at the meeting as if he was a Council member.

Mr. Ferris said it is important that the Benchers are aware of what the Federation of Law Societies of Canada is doing and remain engaged in that work. He reported that the Federation has started its strategic planning process and that it would be discussed over the course of the

next four meetings, with a new strategic plan likely being available in March 2020. He said it is therefore important for the Benchers to organize their comments and consider how they would like to report back at the next Federation meeting in the fall. In his view, the Benchers should play a role in driving the agenda at the Federation level to ensure positions taken nationally have been well considered at the provincial level.

Mr. Ferris provided an update to the Federation Council on the work happening in British Columbia on the anti-money laundering file. He observed there were differing levels of understanding regarding how BC has progressed on the file and a lot of interest was expressed in the work.

Standard Council updates followed on Federation priorities such as the National Committee on Accreditation modernization committee. Mr. Ferris said the work being done on the National Committee on Accreditation was ongoing and that the first stage was to develop a gap-analysis, to identify the different levels of competencies among students. The gap needs to first be identified before it can be determined if a different process should be adopted.

Mr. Ferris reported that there was some reorganization of the Truth and Reconciliation Committee and a sub-group was being established to work on competency.

Finally, there were a number of other updates and a presentation from the Vice-President of the International Bar Association on what the Association does and its engagement with the Federation.

## **GUEST PRESENTATIONS**

### **9. Civility and its Measurable, Tangible Benefits to an Organization and the Practice of Law**

Dr. Lew Bayer provided a presentation on civility, with specific reference to its impact on organizations and the practice of law. Dr. Bayer said she had been speaking about civility for over 20 years and that in the last 10 years she had experienced an increased interest in the field. She said studies had found that organizations that had implemented civility programs experienced 30% more profit and a 20% reduction in staff turnover, as well as other improvements such as staff engagement.

Dr. Bayer's focus was on civility in the workplace; in particular, repair behavior. She referred to different examples of social knowledge that can constitute repair behavior and the value in knowing when it is appropriate to adopt certain behaviours. She commented that a recent study from Harvard University indicated that certain behaviours previously categorized as uncivil now do not appear on people's radar as not normal and that what constitutes normal common courtesy has changed over time, particularly in the last 10 years.

Throughout her presentation, Dr. Bayer provided definitions of civility, and expanded on the four core skills to civility: social intelligence, systems thinking, cultural competence and continuous learning. She said these core competencies were measurable through a number of ways, such as observation and paper-based surveys. Dr. Bayer finished her presentation with a lively discussion of different situations people encounter in the workplace and suggested civil ways to respond to these scenarios.

## **DISCUSSION/DECISION**

### **10. Bencher Code of Conduct**

Mr. McKoen, Chair of the Governance Committee, spoke to the item and put forward a motion that Benchers approve and adopt the Bencher Code of Conduct provided in the materials. Some Benchers sought clarification on the interpretation of the language about conflicts of interest. Mr. McKoen distinguished between a conflict of interest and a conflict of duties, and explained that conflicts rules are typically pretty concise because they cannot cover all scenarios.

A Bencher proposed a friendly amendment to change the final sentence in paragraph 9 to “with the Bencher fulfilling the duties associated with the Bencher’s role.” The friendly amendment was accepted.

The motion passed unanimously.

### **11. Executive Committee Elections**

Mr. McKoen introduced and spoke to the item. The Governance Committee looked at the issue from the perspective that all Benchers have the same rights and duties, and on that basis, it was of the view that the Rules should not contain unnecessary distinctions with regard to the process for electing members of the Executive Committee. The Governance Committee recommended that Benchers approve the following two resolutions.

1. Be it resolved that the Benchers approve amending Rule 1-41:
  - a. To recognize that there are four Benchers to be elected under the Rule;
  - b. To reconcile the voting methods described in the Rule such that the voting for both the elected and appointed Bencher positions, if necessary, occurs in the manner provided for the elected Bencher positions; and
  - c. To clarify the processes provided for in the Rule for nominating elected and appointed Benchers such that they are consistent.
2. Be it resolved that the Benchers approve amending Rule 1-41:

- a. To provide that, if a vote for the appointed Bencher position on the Executive is required, all Benchers, elected and appointed, would eligible to vote for the appointed Bencher to sit on the Executive Committee.

The resolution to approve resolution 1 passed unanimously.

Benchers had differing views on resolution 2. Some Benchers were in favour of the motion and were of the view that it was problematic to continue to distinguish between elected and appointed Benchers when determining who is eligible to vote for the appointed Bencher member on the Executive Committee. It was suggested that, as the group of appointed Benchers is small, any election within that group may not be very democratic and may prevent people from putting their name forward as a candidate. Continuing a distinction between the way in which elected and appointed Benchers are elected to the Executive Committee may reinforce the fact that there are different ways in which Benchers arrive at the table.

Taking the opposite view, some Benchers expressed concern about the impact of allowing elected Benchers to vote for appointed Benchers and how this may affect the independence of appointed Benchers, as well as the public's perception of the election process. Reasons were advanced for maintaining the distinction and the election process where only appointed Benchers may vote for appointed Benchers to be elected to the Executive Committee.

With 9 votes in favour, 19 votes opposed and 2 abstentions, the resolution to approve resolution 2 failed.

## **12. Anti-Money Laundering and Terrorist Financing (Cash Transactions, Trust Accounts, and Client Identification and Verification)**

Mr. Avison began by acknowledging the work of key staff in relation to anti-money laundering efforts and reminded Benchers of the resources devoted to anti-money laundering work at the Law Society. He then provided a background on the issue before Benchers. This item follows the Federation of Law Societies' Anti-Money Laundering and Terrorist Financing Working Group final report on changes to the model rules that are intended to enable law societies to better combat money laundering through the legal profession in Canada. The report and model rules included in the report have since been adopted by the Federation Council and referred to the law societies for implementation.

The decision before the Benchers was how to amend the BC Law Society Rules to give effect to the Federation model rules. The proposed rule amendments were divided into three parts: (1) regulation of cash transactions, (2) trust accounting and (3) client identification and verification.

For the rule changes regarding the regulation of cash transactions, two options were put forward for consideration by the Benchers. A motion was put forward to adopt Option 2 as set out below and the motion passed unanimously.

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

**1. In Rule 3-53:**

***(a) by rescinding the definition of “public body” and substituting the following:***

**“public body” means**

- (a) a ministry or department of the government of Canada or of a province or territory,
- (b) a local public body as defined in paragraphs (a) to (c) of the definition in Schedule 1 to the *Freedom of Information and Protection of Privacy Act*, or a similar body incorporated under the law of another province or territory,
- (c) a body incorporated by or under an Act of a province or territory for a public purpose, or
- (d) a subsidiary of a public body whose financial statements are consolidated with those of the public body., ***and***

***(b) by adding the following definitions:***

**“disbursements”** means amounts paid or required to be paid to a third party by a lawyer or law firm on behalf of a client in connection with the provision of legal services to the client by the lawyer or law firm that are to be reimbursed by the client;

**“expenses”** means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client that are to be reimbursed by the client;

**“financial institution” means**

- (a) an authorized foreign bank within the meaning of section 2 [Definitions] of the *Bank Act* (Canada) in respect of its business in Canada or a bank to which the *Bank Act* applies,
- (b) a co-operative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,
- (c) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
- (c.1) a financial services co-operative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, SQ 2000, c. 77, other than a caisse populaire,

- (d) a company to which the *Trust and Loan Companies Act* (Canada) applies,
- (e) a trust company or loan company regulated by a provincial or territorial Act,
- (f) a department or agent of Her Majesty in right of Canada or of a province or territory where the department or agent accepts deposit liabilities in the course of providing financial services to the public, or
- (g) a subsidiary of a financial institution whose financial statements are consolidated with those of the financial institution;

**“professional fees”** means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or law firm;.

2. ***By rescinding Rule 3-59 and substituting the following:***

**Cash transactions**

**3-59** (1) This rule applies when a lawyer or law firm engages in any of the following activities on behalf of a client, including giving instructions on behalf of a client in respect of those activities:

- (a) receiving or paying funds;
- (b) purchasing or selling securities, real property or business assets or entities;
- (c) transferring funds or securities by any means.

(2) Despite subrule (1), this rule does not apply when a lawyer or law firm receives or accepts cash in connection with the provision of legal services by the lawyer or law firm

- (b) from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity,
- (c) pursuant to the order of a court or other tribunal for the release to the lawyer or the lawyer’s client of cash that has been seized by a peace officer, law enforcement agency or other agent of the Crown in an official capacity,
- (d) to pay a fine, penalty or bail, or
- (e) from a financial institution or public body.

(3) While engaged in an activity referred to in subrule (1), a lawyer or law firm must not receive or accept cash in an aggregate amount greater than \$7,500 in respect of any one client matter.

(4) Despite subrule (3), a lawyer or law firm may receive or accept cash in an aggregate amount greater than \$7,500 in respect of a client matter for professional fees, disbursements or expenses in connection with the provision of legal services by the lawyer or law firm.

- (5) A lawyer or law firm that receives or accepts cash in an aggregate amount greater than \$7,500 under subrule (4) must make any refund greater than \$1,000 out of such money in cash.
- (6) A lawyer or law firm that receives cash, unless permitted under this rule to accept it, must
  - (a) make no use of the cash,
  - (b) return the cash, or if that is not possible, the same amount in cash, to the payer immediately,
  - (c) make a written report of the details of the transaction to the Executive Director within 7 days of receipt of the cash, and
  - (d) comply with all other rules pertaining to the receipt of trust funds.
- (7) For the purposes of this rule, a lawyer who receives or accepts cash in foreign currency is deemed to have received or accepted the cash converted into Canadian dollars based on
  - (a) the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's Daily Noon Rates in effect at the relevant time, or
  - (b) if no official conversion rate is published as set out in paragraph (a), the conversion rate of the Bank of Canada in effect on the most recent business day..

3. *In Rule 3-70, by striking the phrase “that is not the lawyer’s employer”.*

4. *In Rule 3-98,*

*(a) by rescinding the definition of “financial institution” and substituting the following:*

**“financial institution”** has the same meaning as in Rule 3-53; *and*

*(b) by inserting the following definitions:*

**“disbursements”** has the same meaning as in Rule 3-53;

**“expenses”** has the same meaning as in Rule 3-53;.

Regarding rule changes with respect to trust accounting, the following resolution was put forward for consideration. The resolution passed.

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

1. *In Rule 1, by rescinding the definition of “trust funds” and substituting the following:*



**“trust funds”** means funds directly related to legal services provided by a lawyer or law firm received in trust by the lawyer or law firm acting in that capacity, including funds

- (a) received from a client for services to be performed or for disbursements to be made on behalf of the client, or
- (b) belonging partly to a client and partly to the lawyer or law firm if it is not practicable to split the funds;.

2. *By adding the following rule:*

**Trust account only for legal services**

- 3-58.1** (1) Except as permitted by the Act or these rules or otherwise required by law, a lawyer or law firm must not permit funds to be paid into or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.
- (2) A lawyer or law firm must take reasonable steps to obtain appropriate instructions and pay out funds held in a trust account as soon as practicable on completion of the legal services to which the funds relate..

The following resolution regarding client identification and verification passed unanimously.

***BE IT RESOLVED to amend the Law Society Rules effective January 1, 2020, as follows:***

1. *In Rule 3-98,*

- (a) *by rescinding the definitions of “money”, “public body” and “securities dealer” and substituting the following:*

**“money”** includes cash, currency, securities, negotiable instruments or other financial instruments, in any form, that indicate a person’s title or right to or interest in them, and electronic transfer of deposits at financial institutions;

**“public body”** has the same meaning as in Rule 3-53;

**“securities dealer”** means an entity that is authorized under federal, provincial or territorial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services, other than an entity that acts exclusively on behalf of an entity so authorized.;

- (b) *by adding the following definition:*

**“professional fees”** has the same meaning as in Rule 3-53;.

**2. In Rule 3-99, by rescinding subrule (2) and substituting the following:**

- (1.1) The requirements of this division are in keeping with a lawyer's obligation to know his or her client, understand the client's financial dealings in relation to the retainer with the client and manage any risks arising from the professional business relationship with the client.
- (2) Rules 3-100 to 3-108 and 3-110 do not apply when a lawyer provides legal services
  - (a) on behalf of his or her employer, or
  - (b) in the following circumstances if no financial transaction is involved:
    - (i) as part of a duty counsel program sponsored by a non-profit organization;
    - (ii) in the form of pro bono summary advice.
- (2.1) A lawyer is not required to repeat compliance with Rules 3-100 to 3-106 when another lawyer or an interjurisdictional lawyer who has complied with those rules or the equivalent provisions of a governing body
  - (a) engages the lawyer to provide legal services to the client as an agent, or
  - (b) refers a matter to the lawyer for the provision of legal services..

**3. By rescinding Rule 3-100 and substituting the following:**

**Requirement to identify client**

- 3-100** (1) A lawyer who is retained by a client to provide legal services must obtain and record, with the applicable date
- (b) for individuals, all of the following information:
    - (i) the client's full name;
    - (ii) the client's home address, home telephone number and occupation;
    - (iii) the address and telephone number of the client's place of work or employment, where applicable, and
  - (c) for organizations, all of the following information:
    - (i) the client's full name, business address and business telephone number;
    - (ii) the name, position and contact information for individuals who give instructions with respect to the matter for which the lawyer is retained;
    - (iii) if the client is an organization other than a financial institution, public body or reporting issuer

- (A) the general nature of the type of business or activity engaged in by the client, and
  - (B) the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number.
- (2) When a lawyer has obtained and recorded the information concerning the identity of an individual client under subrule (1) (b), the lawyer is not required subsequently to obtain and record that information about the same individual unless the lawyer has reason to believe the information, or the accuracy of it, has changed..

**4. In Rule 3-101, by rescinding paragraphs (a) and (b) and substituting the following:**

- (a) if the client is
  - (i) a financial institution,
  - (ii) a public body,
  - (iii) a reporting issuer, or
  - (iv) an individual who instructs the lawyer on behalf of a client described in subparagraphs (i) to (iii),
- (b) when a lawyer
  - (i) pays money to or receives money from any of the following acting as a principal:
    - (A) a financial institution;
    - (B) a public body;
    - (C) a reporting issuer,
  - (ii) receives money paid from the trust account of another lawyer or an interjurisdictional lawyer,
  - (iii) receives money from a peace officer, law enforcement agency or other public official acting in an official capacity, or
  - (iv) pays or receives money
    - (A) [rescinded]
    - (B) to pay a fine, penalty or bail, or
    - (C) [rescinded]
    - (D) for professional fees, disbursements or expenses, or.

5. *By rescinding Rules 3-102 to 3-107 and 3-109, and substituting the following:*

**Requirement to verify client identity**

- 3-102** (1) When a lawyer provides legal services in respect of a financial transaction, the lawyer must
- (a) obtain from the client and record, with the applicable date, information about the source of money, and
  - (b) verify the identity of the client using documents or information described in subrule (2).
- (2) For the purposes of subrule (1), the client's identity must be verified by means of the following documents and information, provided that documents are valid, original and current and information is valid and current:
- (a) if the client is an individual
    - (i) an identification document issued by the government of Canada, a province or territory or a foreign government, other than a municipal government, that
      - (A) contains the individual's name and photograph, and
      - (B) is used in the physical presence of the client to verify that the name and photograph are those of the client,
    - (ii) information in the individual's credit file that is used to verify that the name, address and date of birth in the credit file are those of the individual, if that file is located in Canada and has been in existence for at least three years, or
    - (iii) any two of the following with respect to the individual:
      - (A) information from a reliable source that contains the individual's name and address that is used to verify that the name and address are of those of the individual;
      - (B) information from a reliable source that contains the individual's name and date of birth that is used to verify that the name and date of birth are those of the individual;
      - (C) information that contains the individual's name and confirms that the individual has a deposit account or a credit card or other loan amount with a financial institution that is used to verify that information;
  - (b) if the client is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and

address of the organization, including the names of its directors where applicable, such as

- (i) a certificate of corporate status issued by a public body,
  - (ii) a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or
  - (iii) a copy of a similar record obtained from a public body that confirms the organization's existence;
- (c) if the client is an organization that is not registered in any government registry, such as a trust or partnership, a copy of the organization's constating documents, such as a trust or partnership agreement, articles of association, or any other similar record that confirms its existence as an organization.
- (3) An electronic image of a document is not a document or information for the purposes of this rule.
- (4) For the purposes of subrule (2) (a) (iii)
- (a) the information referred to must be from different sources, and
  - (b) the individual, the lawyer or an agent is not a source.
- (5) To verify the identity of an individual who is under 12 years of age, the lawyer must verify the identity of a parent or guardian of the individual.
- (6) To verify the identity of an individual who is 12 years of age or over but less than 15 years of age, the lawyer may refer to information referred to in subrule (2) (a) (iii) (A) that contains the name and address of a parent or guardian of the individual and verifying that the address is that of the individual.

### **Requirement to identify directors, shareholders and owners**

- 3-103** (1) When a lawyer provides legal services in respect of a financial transaction for a client that is an organization referred to in Rule 3-102 (2) (b) or (c) [*Requirement to verify client identity*], the lawyer must
- (a) obtain and record, with the applicable date, the names of all directors of the organization, other than an organization that is a securities dealer, and
  - (b) make reasonable efforts to obtain and, if obtained, record with the applicable date
    - (i) the names and addresses of all persons who own, directly or indirectly, 25 per cent or more of the organization or of the shares of the organization,

- (ii) the names and addresses of all trustees and all known beneficiaries and settlors of the trust, and
  - (iii) information identifying the ownership, control and structure of the organization.
- (2) A lawyer must take reasonable measures to confirm the accuracy of information obtained under this rule.
- (3) A lawyer must keep a record, with the applicable dates, of the following:
  - (a) all efforts made under subrule (1) (b);
  - (b) all measures taken to confirm the accuracy of information obtained under this rule.
- (4) If a lawyer is not able to obtain the information referred to in subrule (1) or to confirm the accuracy of that information in accordance with subrule (2), the lawyer must
  - (a) take reasonable measures to ascertain the identity of the most senior managing officer of the organization,
  - (b) determine whether the following are consistent with the purpose of the retainer and the information obtained about the client as required by this rule:
    - (i) the client's information in respect of its activities;
    - (ii) the client's information in respect of the source of the money to be used in the financial transaction;
    - (iii) the client's instructions in respect of the transaction,
  - (c) assess whether there is a risk that the lawyer may be assisting in or encouraging fraud or other illegal conduct, and
  - (d) keep a record, with the applicable date, of the results of the determination and assessment under paragraphs (b) and (c).

### **Use of an agent for client verification**

- 3-104** (1) A lawyer may retain an agent to obtain the information required under Rule 3-102 [*Requirement to verify client identity*], provided the lawyer and the agent have an agreement or arrangement in writing for this purpose in compliance with this rule.
- (5) A lawyer must retain an agent to obtain the information required under Rule 3-102 [*Requirement to verify client identity*] to verify the person's identity and must have an agreement or arrangement in writing with the agent for that purpose if the client

- (a) is not present in Canada, and
  - (b) is not physically present before the lawyer.
- (6) A lawyer must not rely on information obtained by an agent under this rule unless the lawyer
  - (a) obtains from the agent all of the information obtained by the agent under that agreement or arrangement, and
  - (b) is satisfied that the information is valid and current and that the agent verified identity in accordance with Rule 3-102 [*Requirement to verify client identity*].
- (7) A lawyer may rely on an agent's previous verification of an individual client if the agent was, at the time of the verification
  - (a) acting in the agent's own capacity, whether or not the agent was acting under this rule, or
  - (b) acting as an agent under an agreement or arrangement in writing entered into with another lawyer required under this division to verify the identity of a client.

### **Timing of verification for individuals**

- 3-105** (1) At the time that a lawyer provides legal services in respect of a financial transaction, the lawyer must verify the identity of a client who is an individual.
- (2) When a lawyer has verified the identity of an individual, the lawyer is not required subsequently to verify that same identity unless the lawyer has reason to believe the information, or the accuracy of it, has changed.

### **Timing of verification for organizations**

- 3-106** (1) A lawyer who provides legal services in respect of a financial transaction must verify the identity of a client that is an organization promptly and, in any event, within 30 days.
- (2) When a lawyer has verified the identity of a client that is an organization and obtained and recorded information under Rule 3-103 [*Requirement to identify directors, shareholders and owners*], the lawyer is not required subsequently to verify that identity or obtain and record that information, unless the lawyer has reason to believe that the information, or the accuracy of it, has changed.

**Record keeping and retention**

- 3-107** (1) A lawyer must obtain and retain a copy of every document used to verify the identity of any individual or organization for the purposes of Rule 3-102 (1) *[Requirement to verify client identity]*.
- (2) The documents referred to in subrule (1) may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.
- (3) A lawyer must retain a record of the information, with applicable dates, and any documents obtained or produced for the purposes of
- (a) Rule 3-100 *[Requirement to identify client]*,
  - (b) Rule 3-103 *[Requirement to identify directors, shareholders and owners]*,
  - (c) Rule 3-102 (2) *[Requirement to verify client identity]*, or
  - (d) Rule 3-104 *[Use of an agent for client verification]*.
- (4) The lawyer must retain information and documents referred to in subrule (3) for the longer of
- (a) the duration of the lawyer and client relationship and for as long as is necessary for the purpose of providing services to the client, and
  - (b) a period of at least 6 years following completion of the work for which the lawyer was retained.

**Criminal activity, duty to withdraw**

- 3-109** (1) If, in the course of obtaining the information and taking the steps required in Rule 3-100 *[Requirement to identify client]*, 3-102 (2) *[Requirement to verify client identity]*, 3-103 *[Requirement to identify directors, shareholders and owners]* or 3-110 *[Monitoring]*, or at any other time while retained by a client, a lawyer knows or ought to know that he or she is or would be assisting a client in fraud or other illegal conduct, the lawyer must withdraw from representation of the client.
- (2) This rule applies to all matters for which a lawyer is retained before or after this division comes into force.

**Monitoring**

- 3-110** (1) While retained by a client in respect of a financial transaction, a lawyer must monitor on a periodic basis the professional business relationship with the client for the purposes of
- (a) determining whether the following are consistent with the purpose of the retainer and the information obtained about the client under this division:



- (i) the client’s information in respect of their activities;
- (ii) the client’s information in respect of the source of the money used in the financial transaction;
- (iii) the client’s instructions in respect of transactions, and
- (b) assessing whether there is a risk that the lawyer may be assisting in or encouraging dishonesty, fraud, crime or other illegal conduct.
- (2) A lawyer must keep a record, with the applicable date, of the measures taken and the information obtained under subrule (1) (a)..

### **13. Amendments to Rule 4-55 (Investigation of Books and Accounts): Policy Considerations**

Ms. Bains, Deputy Chief Legal Officer, spoke to the item and said the issue arose out of practical issues associated with applying the rules relating to the mirror imaging of electronic records during an investigation. The two issues identified were (1) Executive Director designations and (2) the time period allotted to a lawyer who wishes to request that certain records be excluded from an investigation. She said the requirement that the Executive Director must specifically designate a person to conduct an investigation created procedural layers that served no apparent purpose and that compliance with the rule was hindered by staff changes. In terms of the requirement in Rule 4-55(3) that a lawyer must make a request to exclude personal records that are not relevant to an investigation within 7 days of receiving an investigation order, Ms. Bains said often lawyers need more time to review their records and submit such a request.

Three recommended amendments to Rule 4-55 were put forward for consideration by the Benchers:

- a) Amend Rule 4-55(1) to state, for example, that “the chair may order that the Executive Director investigate the books, records and accounts.”
- b) Repeal Rule 4-55(6)(a).
- c) Amend Rule 4-55(3), replacing “7 days” with a longer period of time, such as “21 days,” as well as to require that the request be made in writing to the Executive Director, and to clarify that extensions would only be granted in exceptional circumstances.

The Executive Committee recommended that the Benchers, in principle, amend the rules as stated above. The motion passed unanimously.

## UPDATES

### 14. 2019 May YTD Financial Report

Ms. McPhee, Chief Financial Officer, provided an update on the financial results and highlights to the end of May 2019. The General Fund operations resulted in a positive variance to the budget mainly due to additional practice fee revenue, the timing of expenses, along with some permanent expense savings, primarily with external counsel fees. Staff were forecasting to be ahead of budget in key revenue areas, including practice fee revenue, PLTC student revenues, D&O insurance recoveries, along with expense savings, mainly in external counsel fees.

Trust Administration Fee revenue was below budget with a significant decrease in real estate unit sales. Staff are forecasting TAF revenue to be below budget for the year.

Lawyers Insurance Fund assessment revenues were slightly ahead of budget and there were savings with operating expenses. The LIF long-term investment portfolio return for the first five months of the year was higher than the budgeted amount for the entire year, resulting in additional income in the first five months.

### 15. Mid-Year Reports

- **Equity, Diversity and Inclusion Advisory Committee**

Ms. Ahmad, Chair of the Equity, Diversity and Inclusion Advisory Committee, thanked Committee members and staff for their work to date and provided a summary of the Committee's work. She said there had been a focus on inclusion, which has led to an extension of the scope of the Committee's work. "Inclusion" was added to the Committee's name at the June Bencher meeting. The Committee also made recommendations to the Governance Committee about leadership issues, and the processes for electing and nominating leaders, such as the second vice-president.

Ms. Ahmad indicated the Committee would be seeking Benchers' approval for the retention of an independent firm to conduct an equity, diversity and inclusion audit of the Law Society and the legal profession. The goals of the audit would be to: 1) establish benchmarks for diversity within the organization, and 2) identify the Law Society's strengths and areas for improvement in relation to advancing its EDI goals. The data gathered in an EDI audit would help to inform policy options to enhance EDI throughout the organization.

Other areas considered by the Committee included lawyer roles regarding return to practice and eligibility to become a principal because of the requirement to be practising for a minimum number of years, which the Committee believes are two areas where women are disproportionately affected. The Committee also recommended to the Law Society

Communications department that photos of call ceremonies be posted on the Law Society website so that people have a greater awareness of diversity in the legal profession around the province.

- **Lawyer Education Advisory Committee**

Mr. Wilson, Chair of the Lawyer Education Advisory Committee, thanked the Committee and staff for its work to date and provided a summary of the Committee's work.

The Committee has focused on three areas to date. First, the Committee is in the process of reviewing the articling process. A preliminary discussion of the results of a survey of articling students would be brought to the Benchers in the fall.

Secondly, the Committee has been working with the Mental Health Task Force on consideration of mandatory continuing professional development requirements for wellness. Mr. Wilson said this would likely come to the Benchers for consideration towards the end of 2019 or beginning of 2020.

And lastly, Mr. Wilson reported that the Committee had been looking at the Call to Action 27 and how to incorporate a greater program for mandatory cultural competency in the legal profession. A memorandum on the issue had been prepared and the Committee was consulting with the Truth and Reconciliation Advisory Committee. The matter would likely come to Benchers for consideration initially at the October meeting, and for decision at the December meeting.

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

Mr. Campbell, Chair of the Rule of Law and Lawyer Independence Advisory Committee, thanked the Committee members and staff for their work to date, and provided a summary of the Committee's work.

Mr. Campbell referred to the Rule of Law lecture that was recently held, where approximately 225 people were in attendance and 60 people watched the lecture online. Favourable feedback was received about the lecture and a video of the lecture can be viewed online.

Mr. Campbell reported on other work of the Committee, such the annual rule of law essay contest, engaging in public commentary on rule of law issues, and a meeting with a delegation from the Ukraine who were particularly interested in issues relating to attacks on the judiciary and the culture of the bar in Canada in terms of defending the judiciary.

The Committee has also been monitoring other legal issues, such as Bill C-75, and has made a submission to the Provincial Government on the impact of the Bill. The Committee also prepared

a submission to the Federal Government on Bill C-58 that relates to the disclosure of judicial expenses. Concerns were expressed in the submission to the Federal Government and ultimately that legislation was abandoned.

Mr. Avison added that he is satisfied that the provincial government is taking the concerns expressed about Bill C-75 seriously and is moving towards a solution.

- **Truth and Reconciliation Advisory Committee**

Mr. Lawton, Co-Chair of the Truth and Reconciliation Advisory Committee, thanked Committee members and staff for their work to date and provided a summary of the Committee's work. He started with a brief history of the Committee.

Mr. Lawton reported that the Committee was working on two particular subjects in 2019: (1) mandatory cultural competency training for lawyers in BC, and (2) outreach, which involves improving Law Society engagement with indigenous peoples, organizations and individuals.

A memorandum that creates a pathway towards mandatory cultural competency would come before Benchers in the fall. Mr. Lawton also mentioned intercultural competency training that had taken place with staff at the Law Society and the incorporation of intercultural competency into the Professional Legal Training Course materials.

The recent Tribunal Refresher course focused on indigenous intercultural competence in the tribunal context, and a targeted call for Indigenous applicants for the Law Society of BC's hearing panel pools was sent to Indigenous organizations in British Columbia on May 30, 2019.

Mr. Lawton referred to various events where representatives from the Law Society and the Truth and Reconciliation Advisory Committee participated; including, the First Nations Provincial Justice Council Forum, the 12<sup>th</sup> Annual Justice Summit, the Reception for the Canadian Bar Association of BC Aboriginal Lawyers Forum Retreat and Mr. Lawton gave a presentation at the University of Victoria Faculty of Law to 38 visiting judges from Thailand on truth and reconciliation matters.

- **Mental Health Task Force**

Mr. Greenberg, Chair of the Mental Health Task Force, thanked Committee members and staff for their work to date and provided a summary of the Committee's work.

He reported that the Committee had been focusing on implementing three recommendations that were approved by Benchers in December 2018. The Committee also focused on outreach more generally, and were working on further recommendations to put before Benchers in the fall.

One of the recommendations the Committee had been working on relates to educating people within the Law Society on mental health and substance use issues. Staff have partnered with the Canadian Mental Health Association to develop specialized training sessions, which will be rolled out in the fall. The cost of the sessions is minimal and it is intended they will continue. The Task Force has also consulted with Lifeworks on the services it provides and how to make those programs more accessible generally.

Mr. Greenberg said the Task Force were consulting with the Credentials Committee regarding the medical fitness questions, and explained the Task Force's concerns with asking those questions. He was hoping there would be a joint recommendation on this matter to bring to the Benchers in the fall.

The Task Force also consulted with the Ethics Committee regarding removing stigmatizing language on the Code, and Mr. Greenberg said he was hoping there would be a joint recommendation to bring to Benchers in the fall.

Mr. Greenberg spoke about outreach generally and said the Task Force had been doing education outreach to discuss mental health and substance use issues with members of the legal profession. He noted a positive change in people's willingness to attend wellness-themed presentations in person and said he had observed change taking place in terms of the work to reduce the stigma surrounding mental health and substance use issues.

Finally, Mr. Greenberg said work was ongoing on recommendations to be included in a further report to Benchers and that there would be more to come on this at a later date.

## **16. Report from Ad Hoc Bencher Election Working Group**

President Merrill indicated this item was for information only and encouraged Benchers to reach out to the members of the Working Group if they had any suggestions.

## **17. Report on Outstanding Hearing & Review Decisions**

Mr. Ferris thanked Mr. McKoen for taking on additional hearing duties, and reminded Benchers of their responsibility to follow up with other panel members to make sure the timing for completion of reports is met.

## **FOR INFORMATION**

## **18. Letter from David Stuart: Commemorative Certificate Luncheon**

There was no discussion on this item.

### **19. Pro-Bono Award Criteria**

There was no discussion on this item.

### **20. Recognition of Mental Health Task Force Efforts – award given to Brook Greenberg**

There was no discussion on this item.

### **21. Three Month Bencher Calendar – July to September 2019**

There was no discussion on this item.

The Benchers then commenced the *In Camera* portion of the agenda.

KH  
2019-09-18



# Memo

To: Benchers  
From: Governance Committee  
Date: August 23, 2019  
Subject: Direction regarding future process for selecting the Benchers' nominee for Second Vice-President

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## Background

At the May 3, 2019 Benchers meeting the process for selecting the Benchers' nominee for Second Vice-President was discussed. It was noted that an informal practice had developed over time, in lieu of a formal process being specified in the *Legal Profession Act* or Law Society Rules. The informal practice relied on Rule 19-1(5), which states "*If only one candidate is nominated, the President must declare that candidate the Second Vice-President elect*". It became common practice for the Benchers to collectively decide who would be the Benchers' nominee for Second Vice-President through an informal process. It was suggested that the process could be improved by withholding the names of any candidates until the end of the nomination process.

Benchers agreed that the names of any candidates put forward would not be announced until the end of the nomination period and if more than one candidate was announced an election would be held by secret ballot. At that time, President Merrill also asked the Governance Committee to look at the nomination process in more detail.

An email seeking expressions of interest in the 2020 Second Vice-President position was sent to Benchers in May. After the deadline for nominations closed, President Merrill announced at the June Benchers meeting that two Benchers had expressed interest in being the Benchers' nominee for the 2020 Second Vice-President. An election was held online following the June 8 Benchers meeting and the results were announced at the July 12 Benchers Meeting.

At its July 11 meeting, the Governance Committee discussed the issues raised in the memorandum from staff on the process for the selection of the Benchers' nominee for Second Vice-President, and a memorandum from the Equity, Diversity & Inclusion Advisory Committee (EDI) on equity, diversity and inclusion in the Law Society Leadership. The Committee was of the view that it would be helpful to have job descriptions for the positions of Second Vice-President, First Vice-President, President and members of the Executive Committee, including

information about the honoraria and an estimate of the time commitment required for each position. It was also agreed that the Law Society's diversity statement be included in all calls for nomination and the Committee requested that the Equity, Diversity and Inclusion Advisory Committee be consulted on appropriate wording for the statement.

## **Recommendation**

Rather than formalizing the nomination process by amending the Law Society Rules, the Committee agreed to seek a direction from Benchers to staff to run any future elections for the Second Vice-President in the same manner as the 2020 Second Vice-President election until directed otherwise. Specifically, the names of any candidates put forward would not be announced until the end of the nomination period.

The Committee therefore recommends Benchers approve the following resolution:

**BE IT RESOLVED that the Benchers direct staff to run any future elections for the Benchers' nominee for Second Vice-President in the same manner as the 2020 Second Vice-President election until directed otherwise.**





# Memo

To: Benchers  
From: Lesley Small  
Date: September 12, 2019  
Subject: **2019 Indigenous Scholarship**

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The Benchers are asked to ratify the recommendation of the Credentials Committee to award the 2019 Indigenous Scholarship to [REDACTED]

The Indigenous Scholarship is offered for Indigenous students enrolled in full time legal studies in the province of British Columbia. The scholarship may be awarded to one student (\$20,000) or divided equally between two students (\$10,000 per student), at the discretion of the Credentials Committee. The Indigenous Scholarship aims to enhance the demographic representation of Indigenous lawyers in British Columbia by supporting their legal education.

## Eligibility

The Indigenous Scholarship is open to Canadian Indigenous students who are enrolled in full-time studies at the University of British Columbia, University of Victoria or Thompson Rivers University law schools.

## Criteria

The Credentials Committee takes the following criteria into consideration:

- i) academic standing;
- ii) positive social contributions, such as volunteer work;
- iii) the applicant's intention to practise in BC after completing legal studies; and
- iv) financial need.

## Documents Required in Support of the Application

Candidates must submit a letter setting out the details of the applicant's academic career, social contributions, intention to practise in BC upon completion of legal studies, and financial need. The following must also be submitted with the application:

- i) official transcripts of the applicant's academic career;

- ii) proof of enrolment in a law school in British Columbia;
- iii) two letters of recommendation from the applicant's law school (preferably one academic reference, and one reference confirming the applicant's social contributions); and
- iv) proof of Canadian Indigenous ancestry, specifically, a photocopy of either a status, citizenship, membership, registration, or enrolment card.

## Background

In 2011, the Executive Committee asked the Equity and Diversity Advisory Committee to consider whether the Law Society should offer a scholarship for Aboriginal lawyers completing graduate studies. The Indigenous Law Graduate Scholarship was created in 2012 to enhance the retention of Indigenous lawyers by assisting the development of Indigenous leaders in the legal academic community. Such leaders could serve as role models in law schools and encourage Indigenous students to pursue legal careers. The scholarship presented a strong positive message that the Law Society valued and supported the participation of Indigenous peoples in the development of law and issues relevant to the legal profession. The scholarship has been available since 2013, but was not awarded in 2016 or 2017 because no applications were received in those years.

The underutilization of the Indigenous Scholarship indicated that the scholarship was not meeting its goal of improving the retention of Indigenous lawyers in BC. As a result, the Truth and Reconciliation Advisory Committee made the following recommendations to the Benchers:

- that the eligibility criteria be expanded to include JD students. The Committee believed that providing scholarships to Indigenous JD students would more directly assist their progression toward becoming lawyers (as compared to legal academics) and that it would broaden the applicant pool.
- limiting the eligibility to Indigenous students who are enrolled in full time studies at British Columbia law schools. The previous eligibility criteria for graduate studies also recognized those who could demonstrate a real or substantial connection to BC. The Committee felt that limiting the eligibility would provide clearer parameters for eligibility, help manage the anticipated increase in applications, and ensure that applicants have a demonstrable connection to British Columbia.
- increase the amount budgeted for the Scholarship from \$12,000 to \$20,000.
- allow the Scholarship to be awarded to one student (\$20,000), or divided equally between two students (\$10,000 per student), at the discretion of the selection committee.

The Benchers approved the recommendations of the Truth and Reconciliation Advisory Committee at its meeting in June 2018 and this is the first year that the Indigenous Scholarship has included Indigenous Juris Doctor students.

## 2019 Applicants

The Committee considered applications for the 2019 Indigenous Scholarship from the following applicants:

- [REDACTED]
- [REDACTED]
- [REDACTED]

## Recipient

The Credentials Committee resolved to recommend to the Benchers that the \$20,000 Indigenous Scholarship be awarded to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## Attachments

- Application with supporting documents from [REDACTED]

# **REDACTED MATERIALS**

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# Memo

To: Benchers  
From: Executive Committee  
Date: September 18, 2019  
Subject: Anti-Money Laundering Working Group

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At its August 8, 2019 Executive Committee meeting, the Committee considered draft Terms of Reference for a proposed new Anti-Money Laundering Working Group.

The Committee agreed to recommend to Benchers that an Anti-Money Laundering Working Group be created and that the attached Terms of Reference be approved.

The Executive Committee therefore recommends that Benchers approve the following resolution:

**BE IT RESOLVED that the Benchers approve the creation of an Anti-Money Laundering Working Group and the attached Terms of Reference.**

# Anti-Money Laundering Working Group

## TERMS OF REFERENCE

### MANDATE

*The Working Group monitors and advises the Benchers on key matters relating to the state of anti- money laundering strategies and initiatives in British Columbia. This advisory function supports the Law Society’s public interest mandate.*

### 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 Working Group members should be benchers, and the Chair of the Working Group must be the President, a Vice-President, or the President’s designate.*

### MEETING PRACTICES

1. *The Working Group operates in a manner that is consistent with the Benchers’ Governance Policies.*
2. *The Working Group meets as required.*
3. *The Working Group may invite guests to participate in discussion of topics or engage in consultations, but the meetings are not “public”.*
4. *Quorum consists of at least half the members of the Working Group (Rule 1-17(1)).*

### ACCOUNTABILITY

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

### REPORTING REQUIREMENTS

*With respect to its general monitoring and advisory function, the Working Group will provide status reports to the Benchers twice a year.*

### DUTIES AND RESPONSIBILITIES

1. *The Working Group will keep the Benchers advised as to:*
  - a. *The actions the Law Society is taking with respect to anti-money laundering initiatives;*
  - b. *Trends in money laundering in British Columbia and other provinces;*
  - c. *Status or progress of the Provincial Inquiry into Money Laundering;*
  - d. *The nature and adequacy of Law Society resources dedicated to anti-money laundering; and*
  - e. *Recommendations on positions to be taken at the Provincial Inquiry into Money Laundering and/or related proceedings.*
2. *The Working Group will ensure there is continuing Benchers involvement in liaising with the Provincial government regarding money laundering.*

3. *The Working Group will monitor and advise the Benchers on the work of the Federation of Law Societies on anti-money laundering issues.*
4. *The Working Group will liaise with the Discipline Committee, Trust Assurance and the Lawyers Insurance Fund to keep apprised of emerging money laundering issues, patterns and trends.*
5. *The Working Group will track Discipline case proceedings and outcomes where the allegations involve money laundering by lawyers.*
6. *The Working Group will develop and recommend to the Benchers model anti-money laundering policies, including whether an anti-money laundering component should be added to Law Firm Regulation.*
7. *The Working Group will work with the Law Society's Communications Department and, in circumstances the Working Group recommends and as approved by the Executive Committee, external consultants, to ensure social media as well as traditional methods of communication are used to maximize the ability of the Law Society to educate the profession, and inform the public and government regarding the Law Society's anti-money laundering activities, policies and rules.*

## **STAFF SUPPORT**

Chief Executive Officer





## **CEO's Report to the Benchers**

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September 27, 2019

Prepared for: Benchers

Prepared by: Don Avison

## **1. Government Engagement**

Over the past month, President Merrill and I have met with several Cabinet and Caucus members of the government, with members of the Opposition, and with the Leader of the Green Party to discuss the status of various matters linked to the Law Society's Strategic Plan.

The next significant event in our engagement with government involves a "Day at the Legislature" planned for October 23<sup>rd</sup>, which I will brief Benchers on at the September 27<sup>th</sup> meeting.

A number of other meetings have taken place with senior officials since the last Bencher meeting. At present, we are looking to arrange for President Merrill and Mr. Greenberg to meet with senior government officials regarding the work of the Law Society's Mental Health Task Force.

## **2. 2020 Budget Development Process**

Benchers will be asked to consider the proposed 2020 Law Society budget at the September 27<sup>th</sup> meeting.

Once again, we will be having an information session about the proposed Fees and Budget on September 26<sup>th</sup>. This session provides an opportunity to be briefed on and ask questions about the budget submission. We had a significant turnout at last year's meeting and we hope you will attend on September 26<sup>th</sup>.

## **3. Law Society's Annual General Meeting and Bencher Elections**

This year's AGM will take place on October 2<sup>nd</sup>. There are no members' resolutions, so the only resolution to be considered will be the appointment of the auditors. Changes made earlier this year regarding AGM procedures seem to have been well received.

Nominations for the November Bencher elections are being received and work is well underway for the Bencher elections that will take place in November. Voting will be online as in past years.

#### **4. Cullen Commission Update**

The public inquiry into money laundering established by the Government earlier this year is beginning to take shape. A number of senior staff, including Commission Counsel, have been recruited. The Law Society, in a letter from President Merrill (see attached), has written to the Commission to indicate our interest in participating. The Commission has not yet indicated who will be participating and I anticipate that it will be several months yet before the public hearings of the Commission will commence.

Don Avison  
Chief Executive Officer

# The Law Society

*of British Columbia*



## **The Law Society of British Columbia 2020 Fees and Budgets Report**

# THE LAW SOCIETY OF BRITISH COLUMBIA

## 2020 Fees and Budgets Report

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## **Law Society Overview**

### **General Fund - Law Society Operations**

#### **Overview**

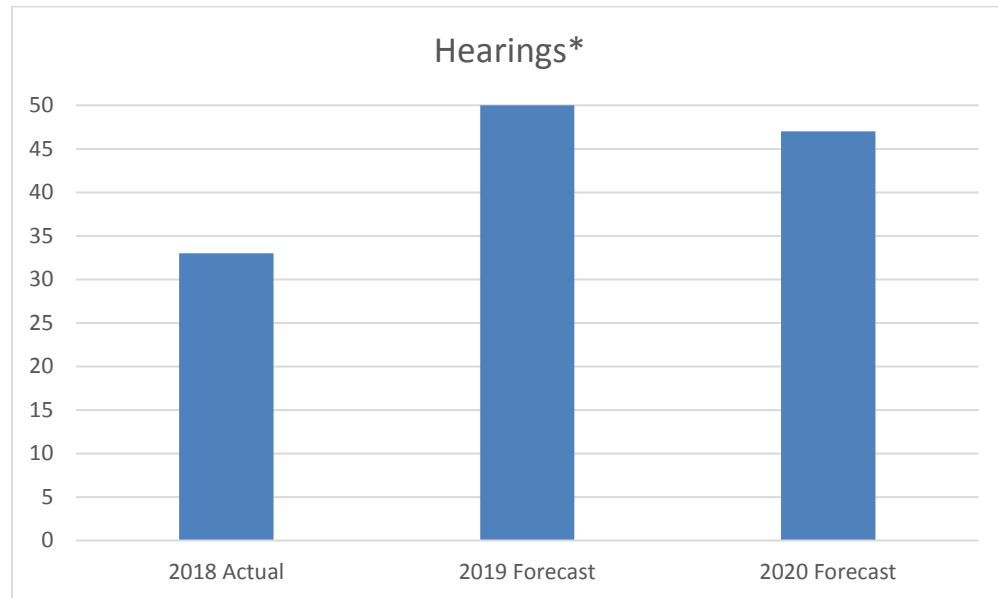
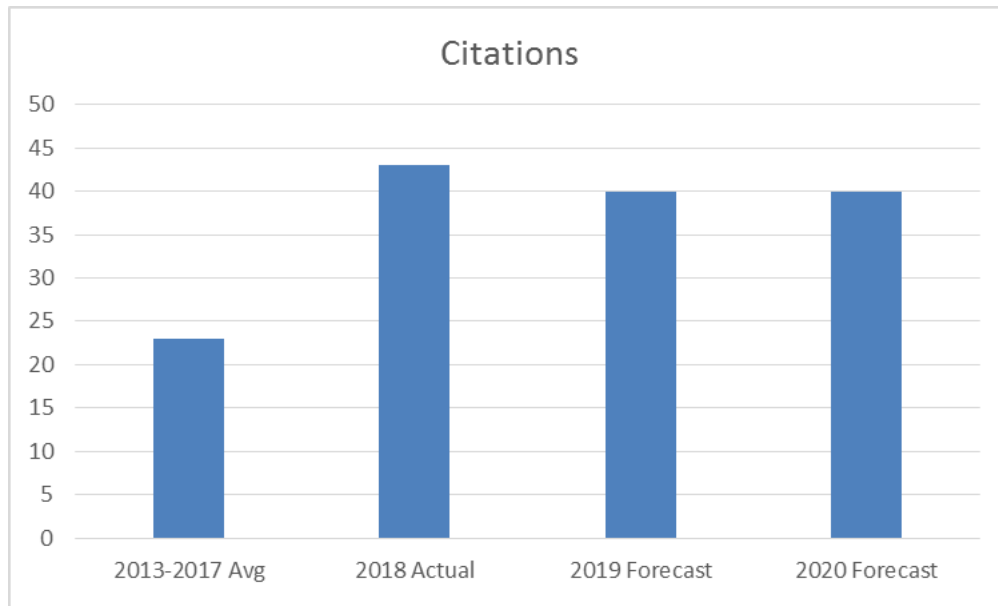
The Benchers will set the 2020 fees pursuant to the Legal Profession Act, following their review of the Finance and Audit Committee's recommendations at the September 27<sup>th</sup> Bencher meeting. The Finance and Audit Committee, with input and consultation from management, has based its recommendations on a thorough review of the Law Society's finances, statutory mandate and strategic plan.

The focus of this budget is to support the Law Society's strategic plan, and to deliver the core regulatory programs to ensure that the Law Society remains an effective professional regulatory body.

There are several themes reflected in the 2020 budget:

#### **1. Continuing to address the increased number of citations and serious files**

There will continue to be a focus on addressing the large number of citations authorized in 2018 and 2019, which is projected to continue into 2020. As can be seen in the charts below, in the five years prior to 2018, the average number of citations authorized each year was 23. In 2018, and projected for 2019 and 2020, the expected levels of citations will continue to be higher, with 43 authorized in 2018, and a similar number expected in 2019 and 2020. With the increased level of citations, the number of hearings is expected to increase to 50 in 2019 and is projected at 47 in 2020. To address this work more effectively, the 2020 budget includes the addition of three term employees, one lawyer and two paralegals. These additional staff are in lieu of the expected retainer of external counsel, at a similar cost but considered more effective. There is also a review of complaints, investigations and discipline processes in progress which should identify potential areas of change.



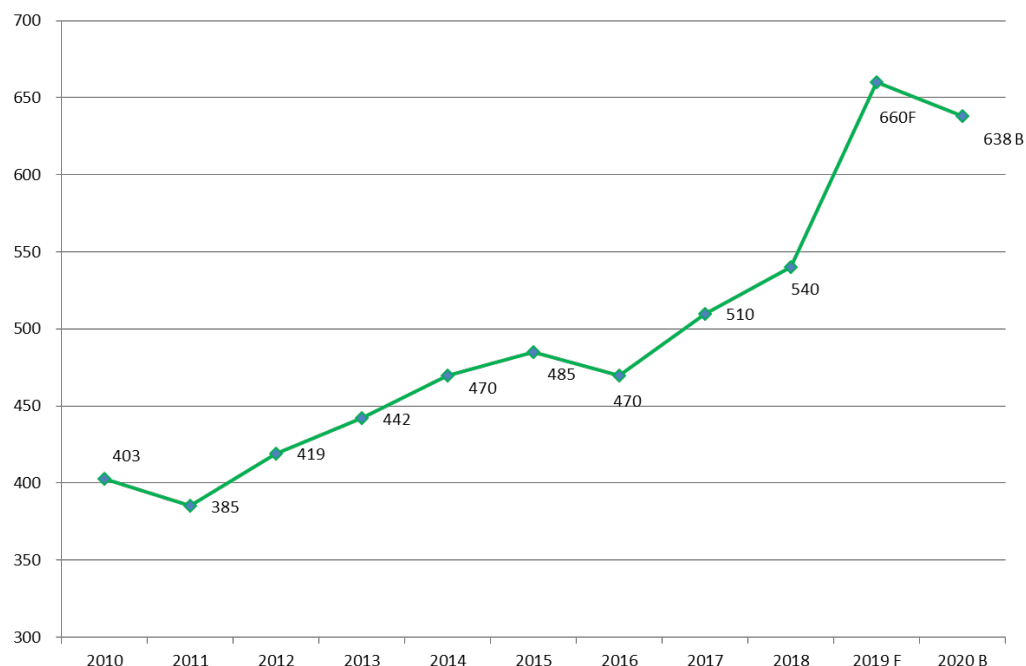
\*Hearings including facts & determination hearings, disciplinary actions, reviews, appeals and interim proceedings (not including credentials hearings).

## **2. Significant increase in PLTC students and NCA transfers**

In 2020, we are expecting 638 PLTC students, an increase of approximately 100 students over the general registration in recent years. This is primarily related to significant increases in NCA students. In order to best support this increase in students, an additional classroom has been added in Vancouver and more space is required in Surrey. With more classes, there will be additional instructor and part time staff administrative resources required, which is partially offset by reduced sessional instructors. In addition, there are costs relating to increased remediation



work. A chart showing the historical levels of PLTC students is shown below.



### 3. Continued focus on anti-money laundering initiatives

All law societies across Canada are enhancing their anti-money laundering and terrorist financing (AMLTf) monitoring and enforcement efforts. The Federation of Law Societies formed an Anti-Money Laundering and Terrorist Financing Working Group to review the model rules for no-cash, client ID and verification and the use of trust accounts. These efforts have led to the implementation of revised rules and an elevated focus on these matters. This has led to more investigations which, in turn, has increased the number of files and required resources in Investigations, Forensic Accounting, Trust Assurance, and Discipline. The 2020 budget includes additional professional development costs for continued training and certification through the Association of Certified Anti-Money Laundering Specialists for some staff.

### 4. Supporting Benchers strategic planning

In order to best support Benchers strategic planning, policy and committee work, the 2020 budget includes an additional staff policy lawyer resource, as well as support for the continued rollout of the Mental Health Task Force initiatives. The budget also anticipates the development of Law Firm Regulation policies and an additional part-time FOI staff resource to assist in responding to public inquiries.

### 5. Improvement of technology and services to the public and lawyers

There is a renewed focus on the public and lawyer services with an emphasis on information technology (IT) system improvements and two additional member services staff resources. The budget includes an IT staff resource to update the Law

Society Information System (LSIS), as well as to increase online lawyer services through the member portal, and enhanced use of data analytics and artificial intelligence in our work. There will also be an additional finance staff resource to provide technology improvements and enhanced reporting, including electronic funds transfer, E-Billing, accounting system integration, reporting system changes and the use of credit cards for certain payments.

Additionally, there are plans to develop new online learning platforms to provide additional lawyer resources for courses, including practice management, practice refresher, trust accounting, and anti-money laundering.

### **Other Budget Assumptions**

- Projected 2.5% growth in lawyers, to 12,846 practicing lawyers
- Credentials and member services fees similar to historical levels
- Market based staff compensation and benefits adjustments
- IME external counsel fee budget converted to 0.7 lawyer
- IER lawyer increase of 0.2 FTE
- Increase the graduate studies scholarship to \$20,000 to match other award levels
- Increased IME transcriptions and mirror imaging with more serious files of \$33,000
- Virtual Desktop Infrastructure implementation average maintenance costs to improve flexibility of \$40,000, offset by an average annual reduction in capital expenditures of \$10,000
- Bi-annual information technology system security testing of \$50,000
- Reduction of \$275,000 in regulation external counsel fees, relating mainly to legal defence files
- Decreases in consulting and external counsel costs in Corporate Services of \$23,000
- Implementation of E-Billing reduces mailing and printing costs by \$26,000

### **Budget Risks**

**Lawyer Numbers** – The revenue received from the practice fee and other credentials and membership fees serves to offset 80% of the budgeted costs. As such, a significant short-term reduction in lawyers could result in a need to draw on net assets. To mitigate this risk, we closely track lawyer numbers and monitor the demographics of our lawyer base to anticipate any potential reductions in our lawyer numbers. We also apply an estimate of lawyer numbers based on historical lawyer growth.

**Inflation** – Staff salaries and benefits comprise approximately 75% of the total expense budget, so rising inflation and related salary market levels may put pressure on compensation costs. Rising inflation may also cause an increase in other operating expenses.

**External Counsel Fees** – External counsel fees represent a significant portion of the overall budget. While these costs are analyzed, managed and tracked rigorously, they can also be unpredictable in nature. These costs are typically driven by three factors, conflicts, work load, and the requirement of special skills. The complexity of new cases cannot be anticipated, which can have an impact on costs and demand.

The additional costs relating to law firm regulation, AML efforts, identifying misuse of trust accounts and addressing the shortfall of resources in discipline are mainly external counsel fees. These amounts, in some cases are quite large and they have been estimated using a number of assumptions about the number of files, timing, and the costs per file. The actual costs incurred could vary from what has been estimated.

**Staff Vacancy Savings** – In order to anticipate vacancies in staff positions during the year, and reduce practice fee requirements, a staff vacancy savings budget is estimated each year based on historical trends. The amount of staff vacancy savings depends on the total amount of staff vacancies in any given year. If there are lower vacancies than estimated in the vacancy budget, operating savings will be overestimated, resulting in budget pressure.

**Electronic Filing Revenues and Trust Administration Fees** – These fees correlate very closely with the number of real estate unit sales in BC. These fee budgets have been set based on the forecasts of the Real Estate Associations and actual results could vary from these forecasts. The status of electronic filing revenue after 2020 remains to be determined.

## **2020 Operating Revenue Summary**

General Fund revenues are projected to be \$29.3 million, \$2.0 million (7.4%) over the 2019 budget, due to higher lawyer numbers, higher PLTC student numbers, and significant D&O Liability insurance recoveries expected in the year, as well as an increase in the practice fee of \$29.93 (1.6%) to provide for a balanced budget. The budgeted revenue is based on estimates of 12,846 full-time equivalent practicing lawyers and 638 PLTC students. Other revenues are projected at similar levels to 2019.

## **2020 Operating Expense Summary**

General Fund operational expenses, before reserve spending, are also projected to be \$29.3 million. This equates to a 2.8% increase in expenses over 2019.

## **General Fund Net Assets**

As noted in the 2019 budget materials, some funding for the 2019 budget was to come from the use of reserves. This reserve spending was initially budgeted as \$1.215 million and was comprised of:

1. Discipline external counsel fees for a total cost of \$1.835 million in 2019, of which \$1.115 million was to be funded through reserve.
2. Additional resources to develop policies for law firm regulation with estimated costs of \$100,000.

It is expected that only \$820,000 of the \$1.115 million for reserve discipline spending will be required in 2019 and the \$100,000 for law firm regulation policies will be deferred until 2020.

Additional revenue is also expected to be collected in 2019, along with anticipated savings in expenses. The projected unrestricted net assets are outlined in the table below:

<b><u>2019</u></b>		
Opening Balance- as per 2018 audited financial statements		<b>\$ 5,623,000</b>
2019 forecasted additional revenue- as per May financial report		\$ 830,000
2019 forecasted expense savings (not including reserve spending savings) - as per May financial report		\$ 600,000
2019 forecasted discipline reserve spending - \$1.12million Bencher approved		\$ (820,000)
<b>Projected 2019 Reserve Closing Balance</b>		<b><u>\$ 6,233,000</u></b>
<b><u>2020</u></b>		
Law Firm Regulation- Bencher approved in 2019		\$ (100,000)
2020 Budget expected to be break even		\$ -
		\$ (100,000)
<b>Projected 2020 Reserve Closing Balance</b>		<b><u>\$ 6,133,000</u></b>

Appendix A contains the General Fund operating budget.

## Capital Plan

The Law Society maintains a rolling 10 year capital plan to ensure that capital funding is available for capital projects required to maintain the 839/845 Cambie building and to provide capital for operational requirements, including computer hardware and software, furniture and workspace improvements. In addition, the capital plan funds the annual \$500,000 debt service payment on the 839/845 Cambie building loan from LIF.

The annual capital allocation levy is included in the annual practice fee, and remains at \$176 per lawyer. In the 2020 capital plan, \$1.5 million is budgeted for capital projects (Appendix C). Projects include base building maintenance, including future window and cladding repairs, post tension work and atrium repairs. In addition, the operational capital includes replacing computer hardware and software, furniture, and renovation of office workspaces.

## 2020 Practice Fee

Taking all of the above into account, \$1,903.99 of the 2020 annual practice fee funds the Law Society operations and capital plan, an increase of \$29.93 (1.6%) over 2019.

### **The Law Society of BC 2020 Fee Recommendation**

	Funding (in 000's)				Per Lawyer			
	2020	2019	Change (\$)	Change (%)	2020	2019	Change (\$)	Change (%)
<b>Law Society Operating Expenses</b>	<b>\$ 29,295</b>	<b>\$28,484</b>	<b>811</b>	<b>2.8%</b>	<b>\$1,903.99</b>	<b>\$ 1,874.06</b>	<b>\$ 29.93</b>	<b>1.6%</b>
Federation of Law Societies*	361	348	13	3.7%	28.12	28.12		
CanLI <sup>†</sup>	539	486	53	10.9%	41.94	39.24		
CLBC*	2,615	2,539	76	3.0%	203.57	205.00		
The Advocate**	347	332	15	4.4%	22.26	21.75		
LAP*	792	792	-	0.0%	61.69	64.00		
Pro bono/Access (CPI Increase)*	354	347	7	2.1%	27.56	28.00		
<b>Annual Practice Fee</b>					<b>\$2,289.12</b>	<b>\$ 2,260.17</b>	<b>\$ 28.95</b>	<b>1.3%</b>

\*2020 full fee paying equivalent members projected at 12,846

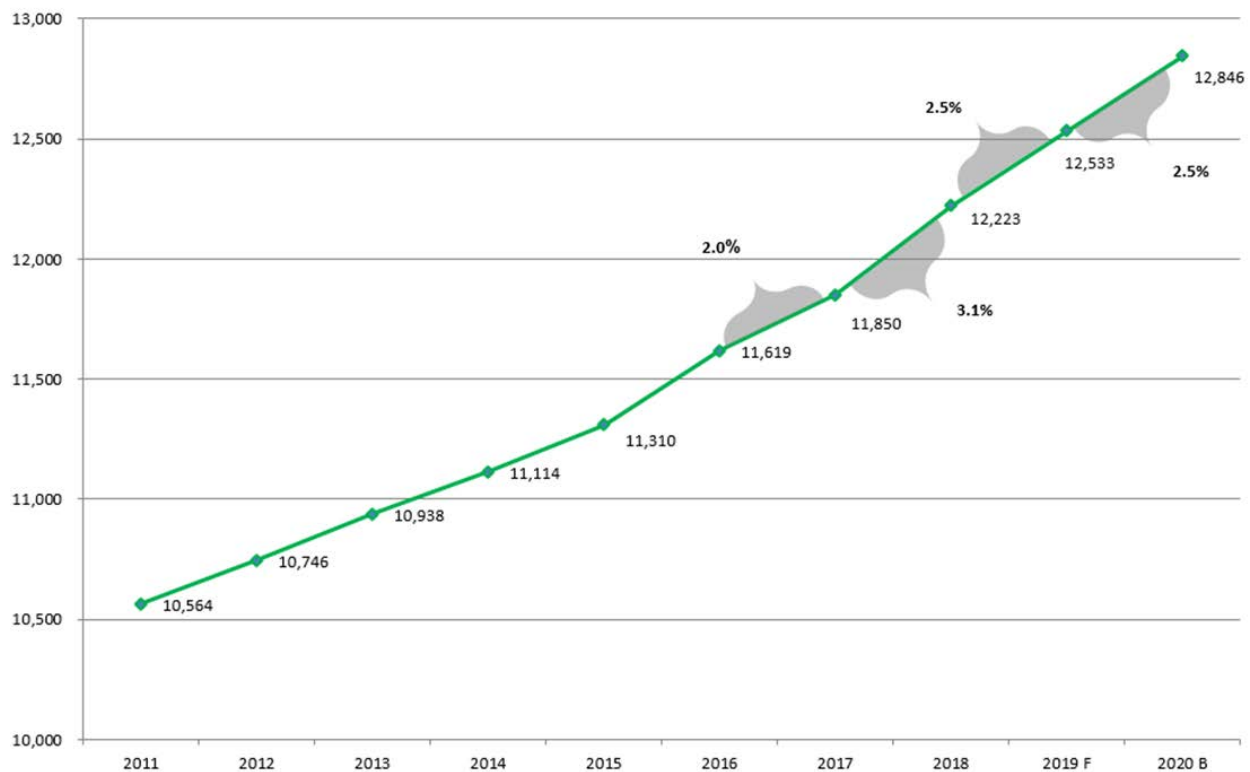
\*\*2020 practicing, non-practicing and retired members projected at 15,583

## **2020 Operating Revenue**

Total revenues, excluding the capital allocation levy, are budgeted at \$29.3 million, an increase of \$2.0 million (7.4%) over the 2019 budget (Appendix A).

**Practice fee revenues** are budgeted at \$22.8 million, a 5.4% increase over the 2019 budget due to the projected growth in the number of practicing lawyers and a modest increase in the annual practice fee. Based on the average growth in lawyers over the last few years, budgeted full-time equivalent practicing lawyers is projected to increase to 12,846 lawyers, 2.5% over the 2019 practicing lawyer projection. Other categories of membership are assumed to remain consistent with previous years.

### **Practicing Lawyer Projection**



**PLTC revenues** are budgeted at \$1.9 million, based on 638 students, slightly less than the 2019 forecast of 660 students and about 100 students higher than the 2019 budget of 540.

**Electronic filing revenues** are budgeted at \$700,000, a decrease of \$140,000 from the 2019 budget, in line with downward trends in the real estate market.

**Other revenues**, which include credentials and incorporation fees, fines, penalties and cost recoveries, and interest income are budgeted at \$2.5 million, about \$600,000

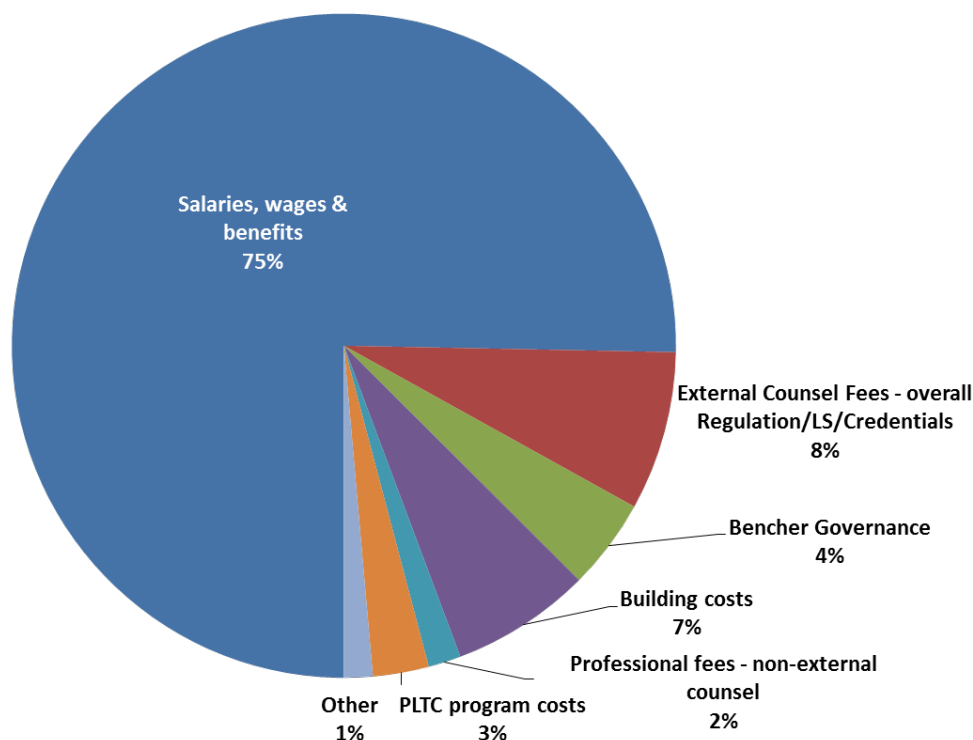
higher than 2019, primarily due to large D&O insurance recoveries expected in 2020 and a small increase in interest income related to additional cash on hand.

**Building revenue and recoveries** are budgeted at \$1.4 million in 2020. The Law Society owns the 839/845 Cambie building, and occupies the majority of space, and the space that is not occupied by the Law Society is leased out to external tenants. In 2020, external lease revenues are budgeted at \$849,000. Also included in lease revenues is an inter-fund market rent allocation of \$526,000 charged by the General Fund for space occupied at 845 Cambie by the Lawyers Insurance Fund and the Trust Assurance Program.

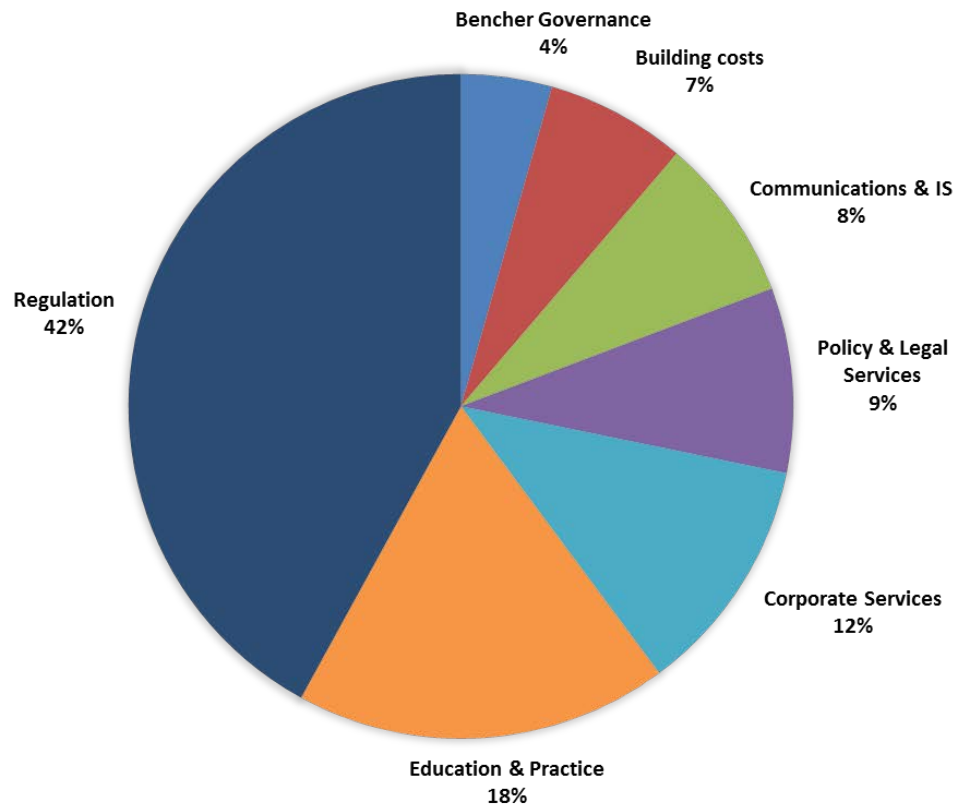
## **2020 Operating Expenses**

The majority of operating expenses (75%) are related to staffing costs to provide the programs and services to both the public and lawyers. External counsel fees have decreased to 8% of overall spending, which is consistent with external counsel fee spending levels prior to the increase in 2019 from reserve spending.

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



The operating costs by department, as a percentage of the 2020 budget are:



## **Departmental Summaries**

### **Bencher Governance and Board Relations**

The Bencher Governance and Board Relations area includes the costs of the Bencher and committee meetings, including travel and meeting costs, which are required to govern the Law Society, board relations, events and the costs of any new initiatives related to the Bencher Strategic Plan. In addition, this includes the Board Relations and Events department that coordinates and organizes the Bencher and Executive meetings, coordinates external appointments, and plans and provides administrative and logistical support for the annual general meeting and Bencher elections.

The 2020 Bencher Governance and Board Relations operating expense budget is \$1.3 million, an increase of \$25,000 (2%) from the 2019 budget.



## Corporate Services

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

**General Administration** includes the Office of the CEO. General administration also includes the Operations department which provides general administrative services, such as reception and office services, and office renovation services.

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

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

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

The 2020 Corporate Services operating expense budget is \$3.4 million, \$186,000 (5.8%) higher than the 2019 budget, with increases relating to market based compensation adjustments, an additional finance staff resource, partially offset by savings in Human Resources consulting costs.

## Education & Practice

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

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

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

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

**Practice Standards** is a remedial program that assists lawyers who have difficulty in meeting core competencies and who exhibit practice concerns, which may include

issues of client management, office management, personal matters, and substantive law. The Practice Standards department conducts practice reviews of lawyers whose competence is in question, and recommends and monitors remedial programs.

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

The total 2020 Education & Practice operating expense budget is \$5.3 million, an increase of \$410,000 (8.4%) from the 2019 budget. Much of the increase relates to market based compensation adjustments and additional costs related to the increase in PLTC students. In addition, movement to a new online learning platform is planned, along with the development of course content for practice management, practice refresher, anti-money laundering and trust accounting.

## Communications and Information Services

**Communications** is responsible for all lawyer, government and public relations and provides strategic communication advice to all areas of the Law Society. The department also manages and maintains the Law Society website, electronic communications and produces our regular publications such as the *Bencher Bulletin*, the *E-Brief* and the *Annual Review*.

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

The 2020 Communications and Information Services operating expense budget is \$2.3 million, an increase of \$250,000 (12.0%). This increase is primarily related to market based compensation adjustments, increases in maintenance costs relating the implementation of Virtual Desktop Infrastructure (VDI) and bi-annual security testing of the information technology systems.

## Policy & Legal Services

Policy & Legal Services includes policy, legal services, external litigation and interventions, ethics, tribunal and legislation, information and privacy, and unauthorized practice.

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

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

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

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

The 2020 Policy and Legal Services operating expense budget is \$2.6 million, an increase of \$105,000 (4.2%) from the 2019 budget. This is primarily due to an additional policy staff lawyer resource, a part time staff resource in Information & Privacy and market based compensation adjustments. These increases are partially offset by an expected decrease in the external counsel fees for the Law Society's legal defence.

## Regulation

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

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

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

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

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

The 2020 Regulation operating expense budget is \$12.3 million, a decrease of \$222,000 (-1.8%) from the 2019 budget. This decrease is related to the reduction in Discipline external counsel fee spending from 2019 levels. This decrease is offset by increases related to market based compensation adjustments and a 0.2 FTE staff lawyer increase in the Intake and Early Resolution department.

It should be noted that three term Discipline staff resources have been added to assist with citations and hearings, offset by a corresponding decrease in external counsel fee budgets. Additionally, there is a 0.7 FTE staff lawyer increase in the Investigations department, offset by a corresponding decrease in external counsel fee budgets.

## Building Costs

The Law Society owns the 839/845 Cambie Street building and occupies 80% of the available space. The cost of occupying and maintaining the building is partially offset by lease revenues from tenants, which are recorded in the revenue section.

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

The 2019 building operating expense budget is \$2.0 million, an increase of \$56,000 (2.9%) over the 2019 budget for building maintenance projects. This increase is offset by increased building revenue and recoveries.

## **External Organization Funding**

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

**Federation of Law Societies** – The Federation is expected to remain the same as the 2019 fee of \$28.12 per lawyer. The Federation of Law Societies of Canada provides a national voice for provincial and territorial law societies on important national and international issues.

**CanLII** – The CanLII fee is expected to be \$41.94 per lawyer. CanLII is a not-for-profit organization initiated by the Federation of Law Societies of Canada. CanLII's goal is to make primary sources of Canadian Law accessible for free on its website at [www.canlii.org](http://www.canlii.org). All provincial and territorial law societies have committed to provide funding to CanLII.

**Courthouse Libraries of B.C. (CLBC)** – With the support from the Law Society of British Columbia, the Law Foundation of British Columbia, and the Ministry of Attorney General, CLBC provides lawyers and the public in BC with access to legal information, as well as training and support in accessing and using legal information. Through its information services, curation of print and digital collections, website content and training, the library provides practice support for lawyers and access to justice support to the public across the province, through its 30 physical locations. The Law Society's 2020 funding is set at \$2.62 million versus \$2.54 million in 2019, a 3% increase. This will equate to a \$203.57 per lawyer contribution.

**The Advocate** – The Advocate is funded at \$347,000 for 2020, which will draw down some of the Advocate net asset reserves, equal to per lawyer funding of \$22.26. The Advocate publication is distributed bi-monthly to all BC lawyers.

**Lawyer's Assistance Program (LAP)** – LAP provides confidential outreach, education, support and referrals to lawyers and other members of British Columbia's legal community. LAP has requested funding of \$792,440 which is consistent with 2019 funding. The contribution per lawyer will be \$61.69.

**Pro bono and access to justice funding** – The Finance and Audit Committee recommended the contribution to pro bono and access to legal services funding be increased by the CPI index starting in 2019. This funding is sent to the Law Foundation for distribution. With the CPI increase of 2%, the funding amount for 2020 is \$353,736.

## **Trust Assurance Program and Fee**

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

The Trust Administration Fee (TAF) is currently set at \$15 per transaction, and will remain the same for 2020. Assuming a projected decrease in real estate transactions in 2019, with a modest increase in 2020, the 2020 TAF revenue is budgeted at \$3.7 million, a 9% decrease over the 2019 budget of \$4.0 million.

The Trust Assurance operating expense budget is \$3.6 million, an increase of \$230,000 (6.8%) from the 2019 budget. Increases are primarily related to market based compensation adjustments, and additional professional development costs related to AML training and certification through the Association of Certified Anti-Money Laundering Specialists.

Initiatives that continue into the 2020 year include, 1) re-auditing high risk firms, 2) audit real estate and wills & estate firms every 4 years, 3) develop and deliver webinars and trust accounting courses, 4) promote new firm visits, 5) update trust accounting materials, 6) use data analytics to improve effectiveness and efficiencies. Efficiencies will be gained through designing condensed audit programs for low risk audits, and data analytics will reduce audit time and allow more audits per auditor.

The TAF reserve at December 31, 2018 was \$3.0 million. The Benchers recommend the TAF reserve be 6 months of operating expenses, with any excess transferred to Part B insurance funding. During 2019, \$1.16 million will be transferred to Part B insurance funding. The level of TAF reserve will continue to be monitored by the Finance and Audit Committee.

### **TAF Projections**

	TAF		Total		Total	Net	Transfer to	Net Asset
	Matters	Rate	Revenue	Expense	Income/ (Deficit)	LIF		Balance
<b>2018 Actuals</b>	269,889	\$ 15	\$ 4,048,339	\$ 2,625,990	\$ 1,422,349	\$ (1,780,000)	\$	2,955,000
<b>2019 Projections</b>	233,994	\$ 15	\$ 3,509,910	\$ 3,364,332	\$ 145,578	\$ (1,160,000)	\$	1,940,578
<b>2020 Budget</b>	245,694	\$ 15	\$ 3,679,840	\$ 3,593,993	\$ 85,847	\$ (140,000)	\$	1,886,425

## **Special Compensation Fund**

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

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

Section 50 of the Legal Profession Amendment Act, 2012 provides for the transfer of unused reserves that remain within the Special Compensation Fund to the Lawyers Insurance Fund for the purposes of the insurance program. During 2017, \$1 million of the unused reserves were transferred, with no additional transfers since that time. Work is continuing on the production of documents for past files. The remaining Special Compensation Fund net assets are expected to be sufficient for the remaining work.

# **Lawyers Insurance Fund**

## **Overview**

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

A number of factors influence the financial stability of our insurance program, and we will review each below. Overall, with the exception of a spike in the severity of Trust Protection claims under Part B and an increase in case reserves under Part A, 2018 was a year of moderation, which unfolded with no concerns.

## **Frequency and Severity of Claims**

### **Part A:**

The first factor is the total incidence of claims and potential claims, or “reports” under Part A. The number of reports has risen slightly in the past year; however, frequency is consistent with recent levels. In the 5 year period from 2004 to and including 2008, the average number of reports annually was 945. The 4 years that followed, 2009 to 2012, reflected the impact of the recession on claims and generated an annual average of 1,032 reports. In 2013, the number of reports fell to 978, and in 2014, increased to 1,014. From 2015 to 2017, the number of reports again increased to an average of 1,107 and in 2018, the number of reports grew to its highest ever: 1141. For 2019, projecting to the end of the year, we expect the number of reports to be consistent with 2018.

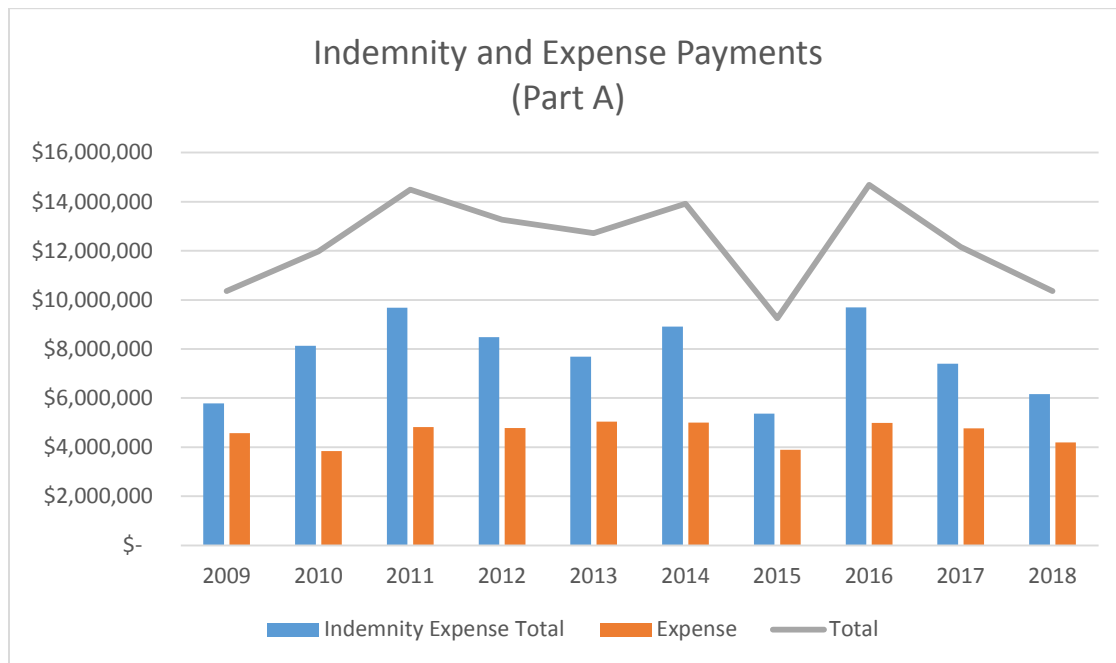
This increase is moderated in the report frequencies (number of reports divided by the number of insured lawyers) for the year-to-date (June 30) compared with the past 8 years:

<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
13.3%	14.0%	12.5%	12.0%	12.3%	13.4%	12.8%	12.9%	12.5%	12.3% (projected)

The second factor is the amount paid to defend and resolve claims. As depicted in the graph below, the severity (the dollar value) of claim payments on a *calendar* year basis has varied within a relatively small margin – with the notable exception of a dip in payments seen in the 2015 results. In the 5 year period from 2004 to 2008, the average annual payments were \$10M. The 6 years that followed, 2009 to 2014, generated average annual payments of \$12.8M. Due largely to the timing of payments, 2015 was unusually low at \$9.3M and the average in 2016-17 increased to \$13.4M; however, 2018 saw a decrease in payments at \$10.4M. Projected to year-end, total payments



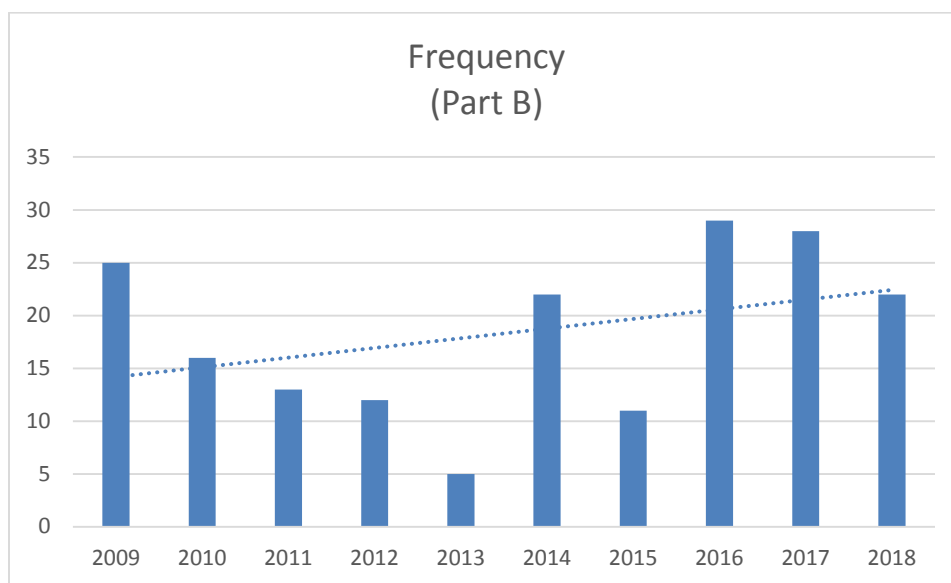
are expected to be consistent with 2018, but it is too early to predict this with any reliability.



That said, on a claim year basis, the total incurred of \$35M (total reserves and payments) for the claims reported in 2018, exceeds any previous year. This is likely primarily due to conservative reserving practices, but it may also signal a more severe claim year. Time will tell, and we will monitor payments as the claims develop.

### Part B:

Because of the small number of trust protection claims under Part B of the policy, the year-over-year experience is more volatile. The graph below clearly depicts this volatility. 2018 closed out the year with 22 reports, 16% more than the annual average of 19. We've received 14 reports so far in 2019, which is above the average and slightly ahead of 2018.



As to severity, in 2016 and 2017, total payments were \$94,000 and \$45,000, respectively; however, as anticipated, Part B claims cost the fund significantly more last year, due primarily to a number of larger payments in respect of one disbarred lawyer. A total of \$1.5M was paid, far exceeding the annual average of \$83,000. We expect to pay the balance of these claims this year and along with others, estimate paying \$200,000 on claims, again exceeding the average but by a smaller margin.

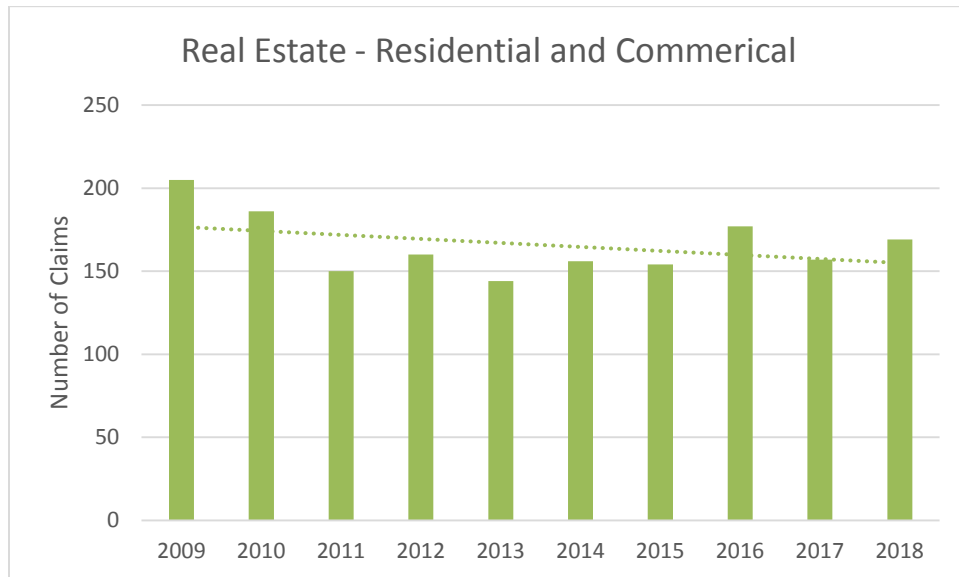
## Future Practice Risks

The third factor is the risk of increased future claims.

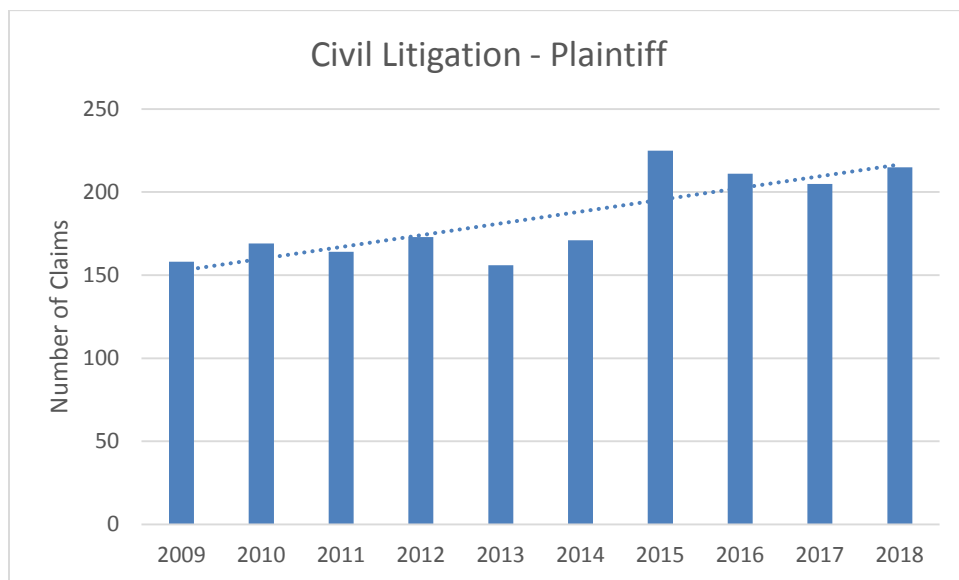
The expanded coverage under Part C for trust shortages caused by certain social engineering scams came into effect as of January 1, 2017. It was expected to give rise to increased claims, and the experience at this early stage is in line with projections. When the expanded coverage was introduced, we predicted an average of 2 claims per year. In 2017, we received 2 covered claims under Part C, and 1 claim in 2018. To date, these claims have resulted in payments totaling \$487,500. There have been no claims reported under Part C so far in 2019.

In the real estate area, REDMA claims now account for \$5.5M of payments and a projected further exposure of \$800,000. Fortunately, the number of reports and payments has abated in recent years. On other fronts, the BC government's move to levy a tax on foreign purchases of Vancouver real estate has, to date, given rise to 14 claims against lawyers, with a total incurred (reserves and payments) of \$1.4M (up from 9 claims and \$1M a year ago). In addition, the provincial government's anti-money laundering property-transparency measures introduced in September 2018 and in January 2019 (but not yet in force) may result in new claims. We expect our extensive risk management efforts in this area, however, to moderate the impact of these new initiatives on claims.

More broadly, as illustrated in the graph below, the overall frequency of reports arising from commercial and residential real estate practice, combined, has remained relatively consistent since the end of the impact of the recession in 2012. The de-escalation of real estate values in British Columbia reduces the severity risk of these claims, although a sharp market correction would lead to more claims against lawyers. To date, we have not seen a significant shift, either way, in the severity of these claims, but we continue to monitor this risk.

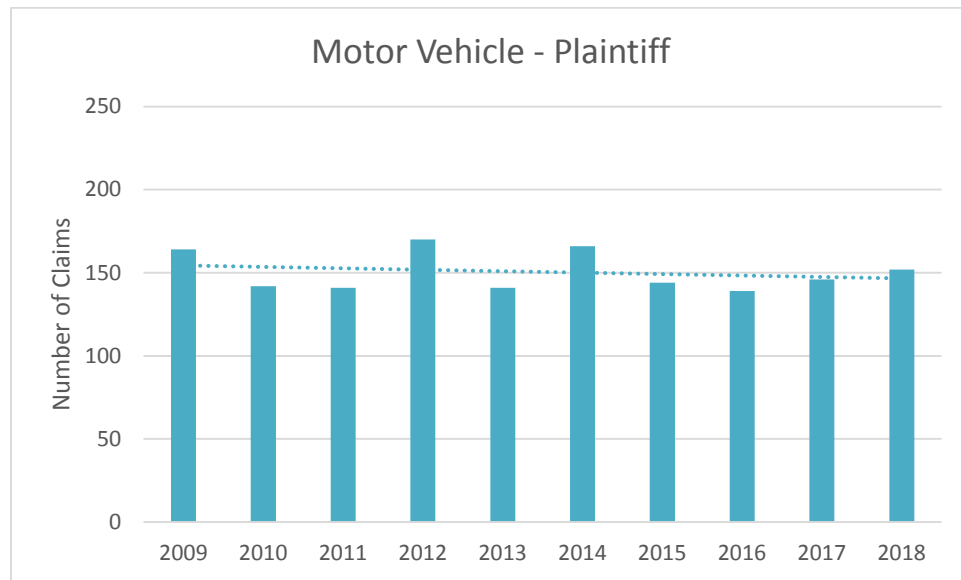


On the other hand, civil litigation on the plaintiff side continues to be a significant and growing cause of claims and potential claims – as demonstrated by the graph below. These claims comprise almost 20% of reports across all practice areas.

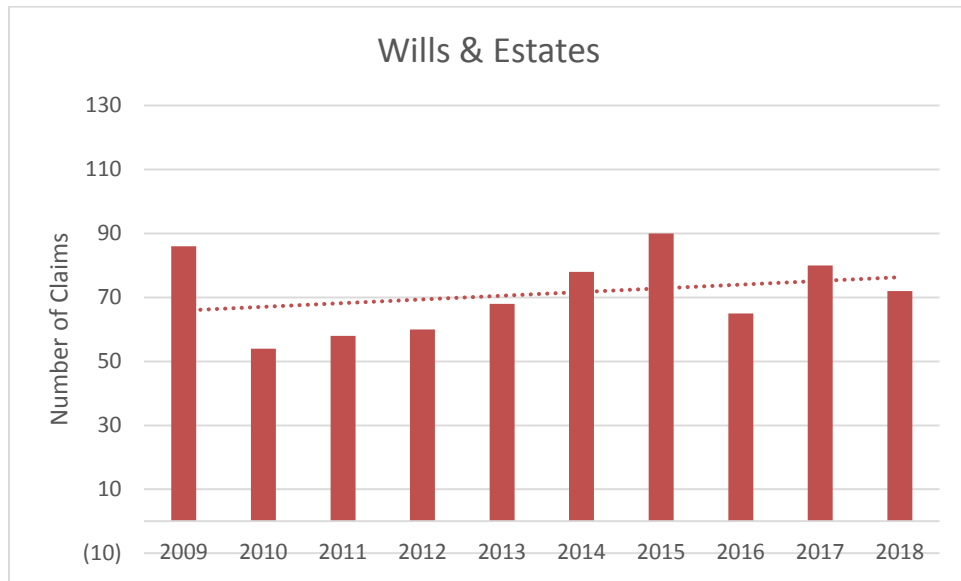


Motor Vehicle practice on the plaintiff's side is another area where we may see increased risk. The government's initiative to fold all actions for Part 7 benefits (scope

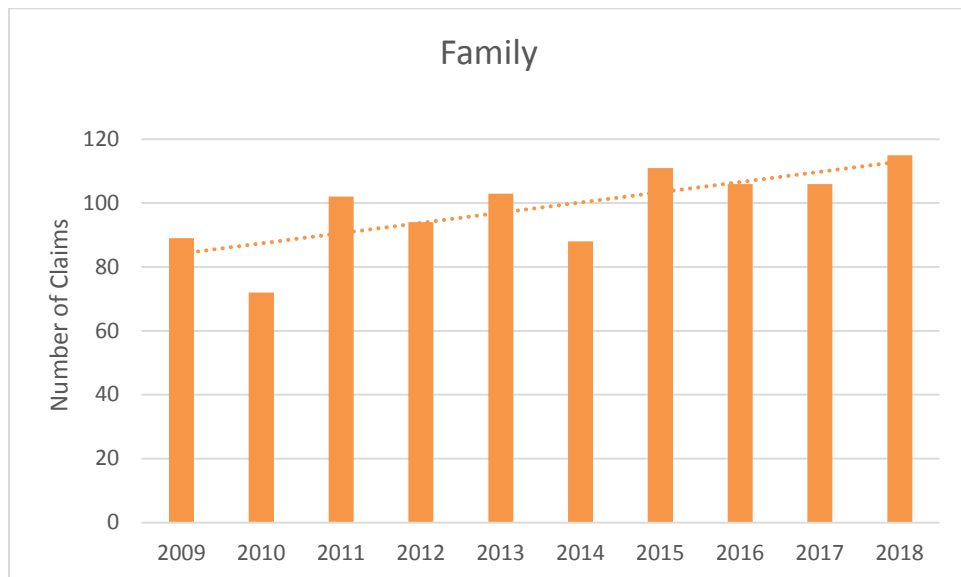
now significantly expanded) and “minor injury” claims into the exclusive jurisdiction of the Civil Resolution Tribunal as of April 1, 2019 may catch some lawyers off-guard. Claims will arise from lawyers starting actions in the wrong venue, or failing to send section 103 notices to ICBC to suspend the running of the limitation period for Part 7 benefit actions. We expect additional and larger claims – but in limited numbers – as our risk management notices and advice to lawyers have been frequent and timely. Although it is too early to see claims (see graph below), we are watching this area closely for signs of an uptick in frequency.

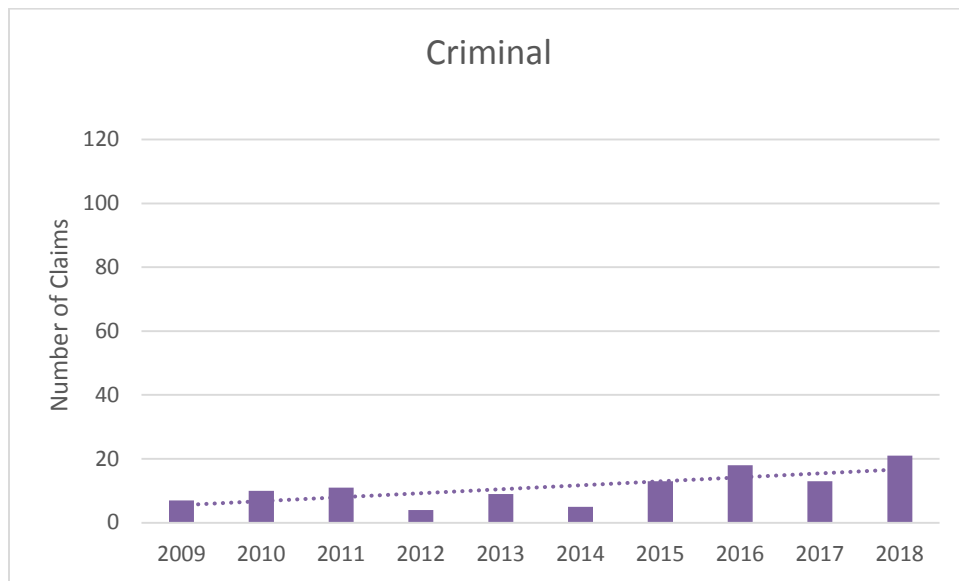


The *Wills, Estates and Succession Act* and probate rules came into effect in March, 2014. They remain likely to give rise to claims against lawyers for failing to adequately satisfy themselves and document that the will reflects the testator’s true intentions, free from undue influence. On the other hand, the opportunity to repair faulty wills has expanded under *WESA*, reducing the cost of claims against lawyers for drafting and execution errors. The graph below illustrates that claims related to wills and estates that might have been expected given our aging demographic have not increased over the 10-year period. Nonetheless, we foresee the wills and estates practice area generating increasing numbers of future claims as the population ages and passes on significant wealth to beneficiaries.



Two practice areas whose numbers have grown over the last 10 years are family and criminal. Both generate relatively few reports (see graphs below) and modest indemnity payments.





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

## Investment Returns

The fourth factor is the return on investments available to fund the insurance program. The 2018 return on LIF long-term investments – at -0.25% – was below the benchmark return of -0.16%. We are budgeting returns of 5.2% for 2019, based on actuarial projections.

## Net Assets

The LIF net assets as at December 31, 2018 were \$76.9M, including \$17.5M set aside for trust protection claims under Part B. The unrestricted net asset position of the fund at year-end was therefore \$59.4M, down \$7.3M from the previous year at \$66.7M.

## Minimum Capital (Net Asset) Requirements

In addition to the investment return, there is a need to maintain a certain amount of the fund for contingencies and adverse developments. Applying the Minimum Capital Test (MCT) – an industry-wide solvency benchmark for insurers – the Fund's actuary analyzed LIF's future risks relative to its net assets and advised on an appropriate level of capital funding. His view was that as of year-end 2018, LIF's MCT ratio was 222%, and the program was appropriately funded based on an internal target capital ratio of 199%, at a minimum.

## Revenue

As noted in Appendix D, the total LIF assessment revenues for 2020 are budgeted at \$16M, which is based on 8,160 full-time and 1,171 part-time insured lawyers. Investment income is budgeted at \$9.1M, based on an estimated investment return of 5.2%.

## Expenses

Operating expenses, excluding the provision for claim payments, are budgeted for 2020 at \$8.7M, an increase of \$237,000 (2.7%) over the 2019 budget (Appendix D). The increase is due to an increased contribution to the administrative costs of the General Fund, funding for a short-term contract position, and market-based salary adjustments.

## Other Assets

Based on the Trust Assurance reserve policy, we transferred \$1.78M from Trust Assurance to LIF in 2018. In 2019 we expect to transfer \$1.16M.

## Recommendation for 2020

The annual insurance fee increased to \$1,800 last year after having been set at \$1,750 for the previous seven years. It remained at \$1,800 in 2019. Taking all factors into account, the insurance fee will remain at \$1,800 (full-time) and \$900 (part-time) for 2020.

## Annual Practice Fee and Insurance Assessment

The 2020 Law Society Budget results in an annual practice fee of \$2,289.12 and an insurance assessment of \$1,800. This is a \$28.95 (0.7%) increase over the 2019 annual mandatory fees.

The components of the 2020 mandatory fees for insured, practicing lawyers are as follows:

### **The Law Society of BC 2020 Fee Recommendation**

	Funding (in 000's)				Per Lawyer			
	2020	2019	Change (\$)	Change (%)	2020	2019	Change (\$)	Change (%)
Law Society Operating Expenses	\$ 29,295	\$28,484	811	2.8%	\$1,903.99	\$ 1,874.06	\$ 29.93	1.6%
Federation of Law Societies*	361	348	13	3.7%	28.12	28.12		
CanLII*	539	486	53	10.9%	41.94	39.24		
CLBC*	2,615	2,539	76	3.0%	203.57	205.00		
The Advocate**	347	332	15	4.4%	22.26	21.75		
LAP*	792	792	-	0.0%	61.69	64.00		
Pro bono/Access (CPI Increase)*	354	347	7	2.1%	27.56	28.00		
Annual Practice Fee					\$2,289.12	\$ 2,260.17	\$ 28.95	1.3%
Insurance Assessment					\$1,800.00	\$ 1,800.00	-	0.0%
Total Mandatory Fee					\$4,089.12	\$ 4,060.17	\$ 28.95	0.7%

\*2020 full fee paying equivalent members projected at 12,846

\*\*2020 practicing, non-practicing and retired members projected at 15,583



# APPENDIX A – GENERAL FUND – Operating Budget

THE LAW SOCIETY OF BRITISH COLUMBIA  
OPERATING BUDGET (excluding capital/depreciation)  
For the Year ended December 31, 2020  
GENERAL FUND SUMMARY

	2020 Budget	2019 Budget	2019 Forecast	2018 Actual	2020B vs 2019B Variance	%	2020B vs 2019F Variance	%
<b>GENERAL FUND REVENUES</b>								
Practice fees	22,833,314	21,673,114	21,928,114	19,850,606				
PLTC and enrolment fees	1,874,050	1,554,000	1,869,000	1,538,561				
Electronic filing revenue	700,000	841,000	841,000	832,643				
Interest income	582,500	512,100	572,100	653,876				
Credentials and membership services	678,425	696,880	696,880	627,587				
Fines & penalties	315,000	275,000	275,000	266,454				
Program cost recoveries	162,300	93,500	93,500	181,825				
Subscriptions	-	61,000	61,000	34,484				
Insurance recoveries	580,000	60,000	285,000	372,642				
Other cost recoveries	10,000	10,000	10,000	152,590				
Other revenue	181,600	187,970	162,970	192,461				
Building revenue and recoveries	1,377,963	1,304,565	1,304,565	1,261,051				
<b>TOTAL GENERAL FUND REVENUES</b>	<b>29,295,152</b>	<b>27,269,129</b>	<b>28,099,129</b>	<b>25,964,780</b>	<b>2,026,023</b>	<b>7.4%</b>	<b>1,196,023</b>	<b>4.3%</b>
<b>GENERAL FUND EXPENSES</b>								
Benchers Governance and Events	1,294,915	1,269,531	1,252,531	1,317,856				
Corporate Services	3,399,414	3,213,333	3,159,333	2,969,348				
Education & Practice	5,318,022	4,907,990	5,071,990	4,039,284				
Communications and Information Services	2,340,253	2,090,120	2,082,120	1,988,222				
Policy and Legal Services	2,634,992	2,529,907	2,311,907	2,126,568				
Regulation	12,308,120	12,529,771	11,762,771	9,769,667				
Building costs	1,999,437	1,943,477	1,943,477	1,861,018				
<b>TOTAL GENERAL FUND EXPENSES</b>	<b>29,295,152</b>	<b>28,484,129</b>	<b>27,584,129</b>	<b>24,071,963</b>	<b>811,023</b>	<b>2.8%</b>	<b>1,711,023</b>	<b>6.2%</b>
<b>GENERAL FUND NET CONTRIBUTION</b>	<b>-</b>	<b>(1,215,000)</b>	<b>515,000</b>	<b>1,892,817</b>	<b>1,215,000</b>		<b>(515,000)</b>	
<b>Trust Assurance Program</b>								
Trust Administration Fee Revenue	3,679,840	4,041,687	3,509,910	4,048,339				
Trust Administration Department	3,593,993	3,364,332	3,364,332	2,625,990				
<b>Net Trust Assurance Program</b>	<b>85,847</b>	<b>677,355</b>	<b>145,578</b>	<b>1,422,349</b>	<b>(591,508)</b>		<b>(59,731)</b>	
<b>TOTAL NET GENERAL FUND &amp; TAP CONTRIBUTION</b>	<b>85,847</b>	<b>(537,645)</b>	<b>660,578</b>	<b>3,315,166</b>	<b>623,492</b>		<b>(574,731)</b>	

## APPENDIX B – GENERAL FUND – Revenues and Expenses

	2020 Budget	2019 Budget	2018 Actual	2020 v 2019 Budget Var	2020 v 2018 Actual Var
<b>GENERAL FUND REVENUES</b>					
<b>Fee and Assessment Revenues</b>					
Practice Fees	22,833,314	21,673,114	19,850,606	1,160,200	2,982,707
PLTC Fees	1,874,050	1,554,000	1,538,561	320,050	335,489
Other Credential Fees	481,925	482,730	456,325	(805)	25,600
GLA LLP, FLC and Law Corp Fees	126,500	127,450	98,750	(950)	27,750
Auth./Certs of Standing	70,000	86,700	72,512	(16,700)	(2,512)
LTA E-filing	700,000	841,000	832,643	(141,000)	(132,643)
Interest Income	582,500	512,100	653,876	70,400	(71,376)
Other Income	1,600	7,000	21,721	(5,400)	(20,121)
Grant (LF) Income	180,000	180,970	170,741	(970)	9,259
<b>Fines, Penalties and Recoveries</b>					
Trust Reporting Penalties	55,000	35,000	65,403	20,000	(10,403)
Professional Development Reporting Penalties	110,000	90,000	100,700	20,000	9,300
Discipline and Citation Fines and Recoveries	150,000	150,000	100,351	-	49,649
Program Cost Recoveries	162,300	93,500	181,825	68,800	(19,525)
Insurance Recoveries	580,000	60,000	372,642	520,000	207,358
Other Cost Recoveries	10,000	71,000	187,074	(61,000)	(177,074)
<b>Building Revenue &amp; Recoveries</b>					
LIF and Trust Administration Program	526,368	526,365	503,101	3	23,267
Outside Tenants including Recoveries	783,338	711,800	679,002	71,538	104,336
Other	68,257	66,400	78,947	1,857	(10,690)
<b>TOTAL GENERAL FUND REVENUES</b>	<b>29,295,152</b>	<b>27,269,129</b>	<b>25,964,780</b>	<b>2,026,023</b>	<b>3,330,371</b>
<b>PROGRAM AREA EXPENSES</b>					
<b>Bencher and Governance Committees</b>					
Benchers Meetings	256,350	289,350	234,071	(33,000)	22,279
Office of the President	240,440	305,500	233,092	(65,060)	7,348
Benchers Retreat	132,200	125,000	149,558	7,200	(17,358)
Life Benchers Dinner	35,500	35,500	30,161	-	5,339
Certificate Luncheon	12,050	10,500	10,715	1,550	1,335
LS Award/Bench & Bar Dinner	6,650	3,825	6,072	2,825	578
Federation of Law Societies Mtgs	145,683	126,341	131,961	19,341	13,722
General Meetings	82,050	75,550	93,566	6,500	(11,516)
QC Reception	9,700	8,000	7,359	1,700	2,341
Welcome / Farewell Dinner	16,500	16,000	16,101	500	399
Volunteer Recognition	14,500	13,000	1,445	1,500	13,055
Gold Medal Award	6,700	2,100	6,019	4,600	681
2019 2nd AGM	-	-	116,354	-	(116,354)
Executive Committee	23,700	24,000	16,855	(300)	6,845
Finance & Audit Committee	4,200	9,200	3,026	(5,000)	1,174
Equity & Diversity Advisory Committee	5,000	5,000	678	-	4,322
Access to Legal Services Advisory Committee	5,000	5,000	5,621	-	(621)
Rule of Law & Lawyer Independence Advisory Committee	6,500	6,500	8,837	-	(2,337)
Acts and Rules Committee	3,600	3,600	7,727	-	(4,127)
Governance Committee	5,000	5,000	297	-	4,703
Law Firm Regulation Task Force	2,000	2,000	591	-	1,409
Legal Aid Task Force	5,000	5,000	29,535	-	(24,535)
Truth and Reconciliation Steering Committee	10,000	10,000	6,492	-	3,508
Recruitment and Nominating Advisory Committee	-	3,000	2,340	(3,000)	(2,340)
Mental Health Task Force	5,000	5,000	3,980	-	1,020
Rule of Law and Lawyer Independence Lecture	10,000	15,000	9,307	(5,000)	693
Legal Aid Advisory Committee - Public Event	-	15,000	6,364	(15,000)	(6,364)
Futures Task Force	10,000	-	-	10,000	10,000
Bencher Contingency	75,000	17,500	-	57,500	75,000
Total Benchers and Governance Committees	1,128,323	1,141,466	1,138,122	(13,144)	(9,799)
Board Relations and Events	500,850	477,621	502,328	23,229	(1,478)
Interfund Cost Recovery	(319,650)	(334,507)	(322,594)	14,857	2,944
Staff Vacancies	(14,608)	(15,049)	-	441	(14,608)
<b>Total Bencher Governance and Events</b>	<b>1,294,915</b>	<b>1,269,531</b>	<b>1,317,856</b>	<b>25,384</b>	<b>(22,941)</b>

	2020	2019	2018	2020 v 2019	2020 v 2018
	Budget	Budget	Actual	Budget Var	Actual Var
<b>Corporate Services</b>					
General Office	1,533,327	1,505,825	1,355,366	27,502	177,961
Records Management	338,791	313,065	319,373	25,726	19,418
Finance Department	1,342,728	1,182,338	1,094,188	160,390	248,540
Human Resources	834,312	871,147	737,421	(36,835)	96,891
Staff Vacancies	(79,698)	(86,255)	-	6,557	(79,698)
Interfund Recovery	(570,047)	(572,787)	(537,000)	2,740	(33,047)
<b>Total Corporate Services</b>	<b>3,399,414</b>	<b>3,213,333</b>	<b>2,969,348</b>	<b>186,081</b>	<b>430,066</b>
<b>Education and Practice</b>					
Licencing and Admissions	1,873,577	1,630,207	1,368,636	243,370	504,941
PLTC and Education	2,811,718	2,561,895	2,016,427	249,823	795,290
Practice Standards	688,308	770,456	585,249	(82,148)	103,059
Practice Advice and Loss Prevention	87,032	81,890	68,973	5,142	18,059
Staff Vacancies	(142,612)	(136,458)	-	(6,154)	(142,612)
<b>Total Education and Practice</b>	<b>5,318,022</b>	<b>4,907,990</b>	<b>4,039,284</b>	<b>410,032</b>	<b>1,278,738</b>
<b>Communications and Information Services</b>					
Communications	735,106	735,124	733,317	(18)	1,789
Information Services	2,035,456	1,779,034	1,580,343	256,422	455,113
Staff Vacancies	(61,026)	(62,432)	-	1,406	(61,026)
Interfund Cost Recovery	(369,283)	(361,606)	(325,438)	(7,677)	(43,845)
<b>Total Communications and Information Services</b>	<b>2,340,253</b>	<b>2,090,120</b>	<b>1,988,222</b>	<b>250,133</b>	<b>352,031</b>
<b>Policy and Legal Services</b>					
Policy & Legal Services Department	1,486,414	1,302,303	1,194,934	184,111	291,480
Tribunal & Legislative Counsel	402,244	357,162	325,545	45,082	76,699
Legal Defence	250,200	400,000	224,952	(149,800)	25,248
Interventions - Files	25,000	48,000	24,141	(23,000)	859
Information & Privacy	227,519	167,743	153,753	59,776	73,766
Tribunal Costs	226,000	223,500	147,873	2,500	78,127
Ethics Committee	5,000	5,000	4,503	(0)	497
Unauthorized Practice	372,490	371,865	300,906	625	71,584
Staff Vacancies	(71,369)	(68,485)	-	(2,884)	(71,369)
Interfund Cost Recovery	(288,506)	(277,181)	(250,039)	(11,325)	(38,467)
<b>Total Policy and Legal Services</b>	<b>2,634,992</b>	<b>2,529,907</b>	<b>2,126,568</b>	<b>105,085</b>	<b>508,424</b>
<b>Regulation</b>					
Office of the CLO	857,844	874,422	572,791	(16,578)	285,053
Intake & Early Assessment	2,135,399	2,025,641	1,853,958	109,758	281,441
Discipline	2,826,423	3,449,011	1,785,168	(622,588)	1,041,255
Forensic Accounting (including Files)	1,272,259	1,274,584	719,125	(2,325)	553,134
Investigations, Monitoring & Enforcement	3,406,770	3,157,082	3,214,453	249,688	192,317
Custodianships	1,840,111	1,780,352	1,624,173	59,759	215,939
Staff Vacancies	(30,687)	(31,321)	-	634	(30,687)
<b>Total Regulation</b>	<b>12,308,120</b>	<b>12,529,771</b>	<b>9,769,667</b>	<b>(221,651)</b>	<b>2,538,452</b>
<b>Building Occupancy Costs</b>					
Property Taxes	513,822	538,836	515,747	(25,014)	(1,925)
Financing Costs	29,700	29,700	45,839	-	(16,139)
Building Costs	1,455,915	1,374,941	1,299,433	80,974	156,483
<b>Total Building Occupancy Costs</b>	<b>1,999,437</b>	<b>1,943,477</b>	<b>1,861,018</b>	<b>55,960</b>	<b>138,419</b>
<b>TOTAL PROGRAM EXPENSES</b>	<b>29,295,152</b>	<b>28,484,129</b>	<b>24,071,963</b>	<b>811,023</b>	<b>5,223,189</b>
<b>GENERAL FUND CONTRIBUTION before TAP</b>	<b>(0)</b>	<b>(1,215,000)</b>	<b>1,892,817</b>	<b>1,215,000</b>	<b>(1,892,818)</b>
<b>Trust Administration Program</b>					
Trust Administration Fee Revenue	3,679,840	4,041,687	4,048,339	(361,847)	(368,499)
Total Trust Assurance Program Expenses	3,593,993	3,364,332	2,625,990	229,661	968,003
<b>Net Trust Assurance Program</b>	<b>85,847</b>	<b>677,355</b>	<b>1,422,349</b>	<b>(591,508)</b>	<b>(1,336,501)</b>
<b>TOTAL GENERAL FUND CONTRIBUTION</b>	<b>85,847</b>	<b>(537,645)</b>	<b>3,315,166</b>	<b>623,492</b>	<b>(3,229,319)</b>

## APPENDIX C – CAPITAL PLAN

	<b><u>2020</u></b>	<b><u>2019</u></b>
Computer hardware – Monitors and Desktop computers/VDI	\$274,000	\$270,000
Computer software – VDI Software and Server Upgrades	\$179,000	\$146,000
Computer upgrades – DM Sysytem	\$88,000	\$48,000
Equipment, furniture and fixtures replacement	\$200,000	\$288,000
Building projects – Building cladding and window repairs PT Strand/Atrium	\$770,000	\$814,000
<b>Total</b>	<b>\$1,511,000</b>	<b>\$1,566,000</b>

<b>LAW SOCIETY CAPITAL SUMMARY</b> <b>2020 10-Year Capital Plan</b>												
	<b>Carry Fwd</b>	<b>TOTAL</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>
<b>INFORMATION TECHNOLOGY</b>												
Computer Hardware	384,220	2,555,860	273,790	127,940	322,640	221,140	360,350	250,000	250,000	250,000	250,000	250,000
Computer Software	268,991	1,504,000	179,000	244,000	196,000	105,000	150,000	150,000	120,000	120,000	120,000	120,000
System Upgrades	65,280	800,000	80,000	80,000	80,000	80,000	80,000	80,000	80,000	80,000	80,000	80,000
Phone System	8,000	121,000	8,000	8,000	8,000	49,000	8,000	8,000	8,000	8,000	8,000	8,000
Subtotal	726,491	4,980,860	540,790	459,940	606,640	455,140	598,350	488,000	458,000	458,000	458,000	458,000
<b>OPERATIONS</b>												
Equipment, Furniture & Fixtures	449,341	1,613,000	200,000	208,000	139,000	139,000	139,000	188,000	150,000	150,000	150,000	150,000
Subtotal	1,175,832	6,593,860	740,790	667,940	745,640	594,140	737,350	676,000	608,000	608,000	608,000	608,000
<b>845 BUILDING</b>												
Base Building/ Improvements	1,064,150	7,121,183	420,000	801,000	717,481	540,000	420,000	1,170,000	670,000	470,000	420,000	1,492,702
LSBC Renovations	609,000	4,087,000	350,000	245,000	400,000	550,000	350,000	641,000	501,000	350,000	350,000	350,000
Subtotal	1,673,150	11,208,183	770,000	1,046,000	1,117,481	1,090,000	770,000	1,811,000	1,171,000	820,000	770,000	1,842,702
<b>TOTAL CAPITAL PLAN</b>	<b>2,848,982</b>	<b>17,802,043</b>	<b>1,510,790</b>	<b>1,713,940</b>	<b>1,863,121</b>	<b>1,684,140</b>	<b>1,507,350</b>	<b>2,487,000</b>	<b>1,779,000</b>	<b>1,428,000</b>	<b>1,378,000</b>	<b>2,450,702</b>

Cumulative funded C/F	2,166,663	1,023,489	1,273,652	1,015,565	720,004	728,438	939,050	195,782	186,670	555,106	1,000,488
Current Year Capital Collected	2,205,808	2,260,953	1,955,853	1,667,560	1,692,574	1,717,962	1,743,732	1,769,888	1,796,436	1,823,383	1,850,733
Total Capital Fee Available	4,372,471	3,284,442	3,229,505	2,683,125	2,412,578	2,446,400	2,682,782	1,965,670	1,983,106	2,378,488	2,851,221
Building loan repayment	(500,000)	(500,000)	(500,000)	(100,000)	-	-	-	-	-	-	-
Capital expenditures as above	(2,848,982)	(1,510,790)	(1,713,940)	(1,863,121)	(1,684,140)	(1,507,350)	(2,487,000)	(1,779,000)	(1,428,000)	(1,378,000)	(2,450,702)
Cumulative Funding	1,023,489	1,273,652	1,015,565	720,004	728,438	939,050	195,782	186,670	555,106	1,000,488	400,519

# APPENDIX D – LAWYERS INSURANCE FUND

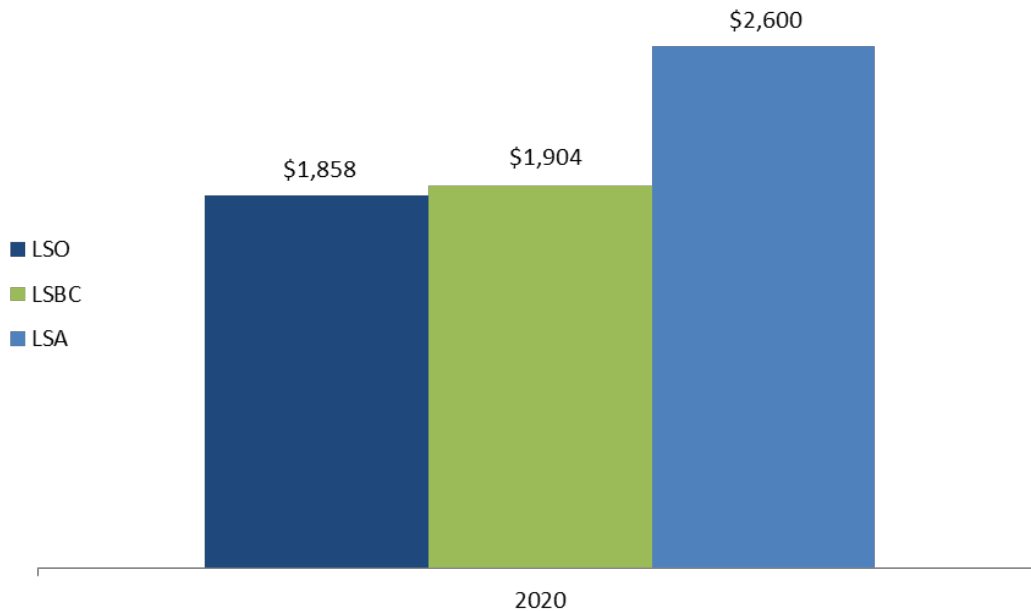
THE LAW SOCIETY OF BRITISH COLUMBIA  
Lawyers Insurance Fund  
For the year ended December 31, 2020  
CONSOLIDATED STATEMENT OF REVENUE AND EXPENSE

	2020 Budget	2019 Budget	Variance	%
<b>REVENUE</b>				
Annual Assessment	16,021,096	16,070,679		
Investment Income	9,089,849	8,633,600		
Other Income	65,000	60,000		
<b>TOTAL REVENUE</b>	<b>25,175,945</b>	<b>24,764,279</b>	<b>411,666</b>	<b>1.7%</b>
<b>INSURANCE EXPENSE</b>				
Actuaries, consultants and investment management fees	943,024	930,455		
Allocated office rent	323,829	323,829		
Contribution to program and administrative costs of General Fund	1,469,544	1,381,566		
Insurance	453,169	466,228		
Office and Legal	1,020,438	989,429		
Premium taxes	8,120	10,216		
Provision for settlement of claims	17,790,000	17,198,000		
Provision for ULAE				
Salaries, wages and benefits	3,621,587	3,477,864		
	<b>25,629,710</b>	<b>24,777,587</b>	<b>852,123</b>	<b>3.4%</b>
<b>LOSS PREVENTION EXPENSE</b>				
Contribution to co-sponsored program costs of General Fund	881,820	905,254		
<b>TOTAL EXPENSE</b>	<b>26,511,530</b>	<b>25,682,841</b>	<b>828,689</b>	<b>3%</b>
<b>Net Contribution</b>	<b>(1,335,585)</b>	<b>(918,562)</b>	<b>(417,023)</b>	

## **APPENDIX E – PRACTICE FEE COMPARISON**

### Other Law Societies' Practice Fees

- 2020 LSBC practice fee compared to 2019 LSA practice fees
- 2020 LSUC fee based a projected 2% increase over 2019 (projection not yet available)

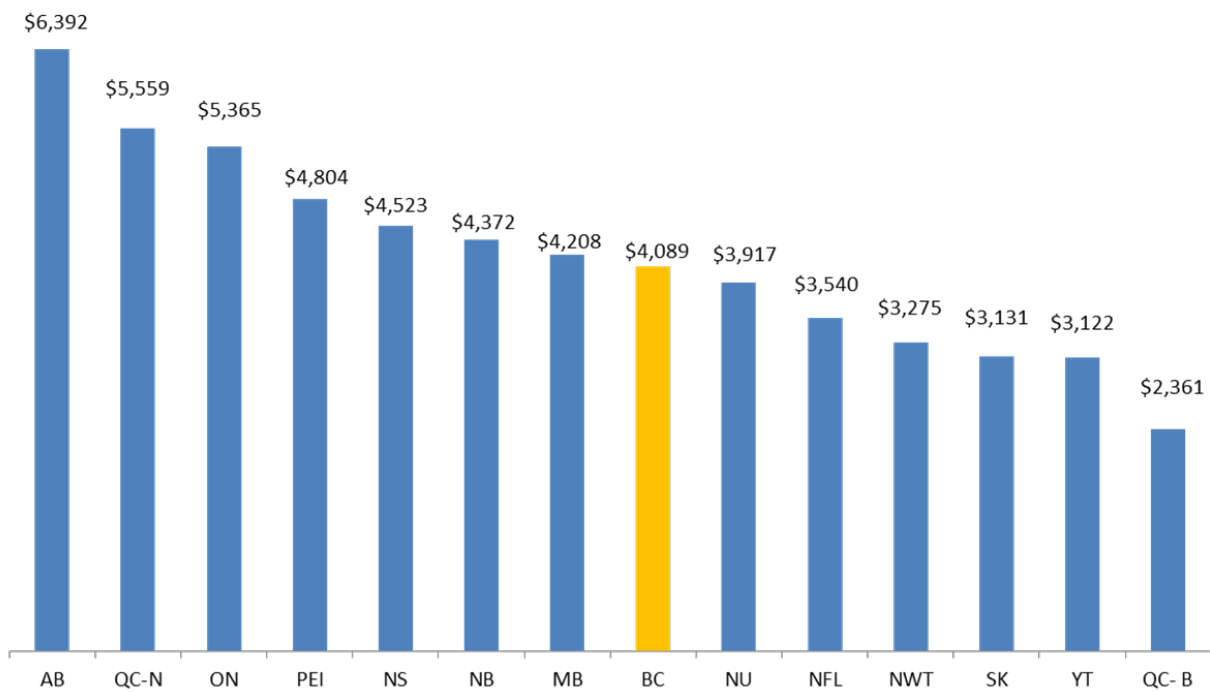


\*Fees do not include external funding, if applicable, but include capital funding

## **APPENDIX F – MANDATORY FEE COMPARISON**

Mandatory Fee Comparison - 2020  
(Full Time Practicing Insured Lawyers)

● 2020 LSBC insurance fee compared to 2020 projections or 2019 insurance fee of other Law Societies, increased by 2%



## **Proposed Rule Amendments: Fiduciary Property (Rule 3-55)**

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Date: July 15, 2019

Prepared for: Benchers

Prepared by: Executive Committee

Purpose: Discussion and Decision



## Purpose

1. Having regard to decisions of Hearing Panels relating to how trust accounts were used and having regard to amendments to the Model Rules recommended by the Federation of Law Societies' Anti-Money Laundering Working Group, the Executive Committee has considered the rules relating to fiduciary property (and in particular Rule 3-55), which were created in 2015 and amended in 2016.
2. This Report reviews the issues and the consideration given by the Committee to those issues.
3. The Committee recommends amending Rule 3-55 by deleting Rule 3-55(6). This will result in a requirement that fiduciary property must be held outside of a trust account. Consequential amendments will be needed to Rules 3-60(4) and 3-61(3).

## Background

4. In 2015, the Benchers amended the Law Society Rules by creating a rule regarding fiduciary property.
5. Up to that point in time, the definition of “trust funds” included funds and valuables for which a lawyer was responsible in a representative capacity where the lawyer’s appointment was derived from a solicitor-client relationship.<sup>1</sup> Because those funds were deemed to be “trust funds,” they had to be held in a trust account. Concerns had been raised within the profession (particularly by the Wills and Estates bar) that when a lawyer was acting in a fiduciary capacity rather than as a lawyer, the limitations on how funds could be held in a trust account created difficulties in discharging one’s fiduciary obligations.
6. Consequently, the Benchers approved a rule that created a separate category of property called “fiduciary property,” which was defined as “funds, other than trust funds, and valuables for which a lawyer is responsible in a representative capacity or as a trustee, if the lawyer’s appointment is derived from a solicitor-client relationship” – essentially stripping out that portion of the then-definition of “trust funds.” The policy rationale for this change in rules is described in a memorandum to the Benchers dated April 25, 2013, and was considered and approved in principle at the May 10, 2013 bencher meeting. After consultation with the profession and further work by the Act and Rules Committee, the new rules were approved at the March 6, 2015 Bencher meeting.

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<sup>1</sup> For example, where a long-time client has come to trust his or her lawyer and decides to appoint the lawyer as Executor of the client’s will, or as Power of Attorney for the client’s affairs, or as Trustee of a trust created by the client. In these circumstances, the lawyer is acting qua fiduciary and not qua lawyer. The lawyer provides no legal services to the estate, or to the trust.

7. The fiduciary property rules were therefore created in order to permit lawyers, acting in a fiduciary capacity where the appointment was derived from a solicitor-client relationship but on which the lawyer was not acting as lawyer, to hold property outside a trust account, because the requirements for how funds must be held and dealt with in a trust account can be too limiting in the discharge of fiduciary responsibilities.<sup>2</sup> And, because “fiduciary property” was now defined as “funds *other than trust funds*,” fiduciary property *could not be held* in a trust account.
8. The fiduciary property rules also provided that the lawyer must be able to produce certain records relating to fiduciary property for any period for which the lawyer was responsible for the fiduciary property, and that the records in question formed part of the books, records and accounts of a lawyer, which the lawyer must produce and permit to be copied as required under the rules. As a lawyer’s mishandling of fiduciary property could be expected to amount to “conduct unbecoming the profession” the Law Society would need to access the records of the lawyer where an investigation is necessary. Further, there is a possibility that some limited activities of a lawyer in connection with fiduciary property could be covered by Part B Insurance, and it is therefore important to access lawyer’s accounting records for such property if necessary to investigate such a claim.
9. Relatively soon after the new rules were implemented, the Law Society received some feedback from the profession to the effect that the prohibition on holding fiduciary property in a trust account was *too* limiting and that, from time to time, it was more convenient for lawyers acting in a fiduciary capacity to simply deposit funds held in a fiduciary capacity in their pooled trust account without having to open a separate fiduciary account – for example in situations where the funds would not be held for a long period of time, such as where they were being distributed to beneficiaries in an estate.
10. The Benchers therefore approved rule amendments in June 2016 that permitted fiduciary property to be held in a trust account provided that the lawyer complied with all the rules pertaining to trust funds with respect to the fiduciary property.

## New Considerations

11. Subsequent to the amendment to the rules that permitted fiduciary property to be held in a trust account, the Law Society has become increasingly focused on clarifying the use of a lawyer’s trust account to reduce the likelihood of such accounts being used for improper

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<sup>2</sup> The policy considerations for this proposal were considered in detail and included a consideration of the public interest in ensuring that a client, who may have established a lengthy and trusted relationship with a lawyer over the years, could appoint a lawyer as a trustee (or executor or attorney) confident in the fact that the lawyer was a member of a regulated profession and in whom the client had already established confidence and trust, and that the lawyer could act fully as a trustee without being limited by the trust rules. If lawyers were unable to undertake this role on request, the client could be forced to utilise the services of a person or entity with whom they had no previous relationship and in whom they had not yet established trust.

purposes, including the possibility of money-laundering. Permitting non-trust funds such as fiduciary property to be held in a trust account complicates efforts to draw a clear line respecting the use of the trust account.

12. Trust accounts, including pooled trust accounts, must be designated on the records of the savings institution and the lawyer as a “trust account” thereby leading outside parties presume that the funds in the account are “trust funds” relating to legal services to be performed or disbursements to be made on behalf of a client.
13. Where a lawyer is acting in a fiduciary capacity, he or she is not providing any legal advice or otherwise engaging in the practice of law. There is no solicitor-client privilege in that relationship. While trust account records are not all necessarily privileged, they *may*, depending on the facts, be privileged. Consequently, depositing funds that are “fiduciary property” and therefore not subject to privilege into a trust account where there *is* a possibility of a claim of solicitor-client privilege being made can make investigation by outside organizations, such as the police, difficult to conduct should it be necessary to do so.
14. Given that there is no possibility of solicitor-client privilege attaching to dealings with fiduciary property, the rationale for being able to deposit the money in a trust account where solicitor-client privilege may be claimed (and in some cases may be presumed) is difficult to sustain.
15. “Fiduciary property” was contemplated as a recognition of a service some lawyers may undertake from time to time by accepting fiduciary obligations in common circumstances such as acting as an executor or personal representative under a will, or as a trustee for minor children, or as an attorney appointed under a power of attorney where, in each case, the relationship is documented and the purpose is clear. Lawyers in their fiduciary role would be managing assets, not simply holding them.
16. However, the Investigations and Trust Assurance Departments have reported that some audits have disclosed that lawyers have held money in a trust account that is not related to the delivery of legal services for a client where the relationship is not documented. When questioned, the lawyer has stated that he or she is holding it “as a fiduciary” and therefore it is “fiduciary property.” This opens the possibility that a client could, with reference to the fiduciary property rule, tell a lawyer to hold *any* funds in a trust account in trust for the client, even where no legal services are performed or where the lawyer is not being asked to manage the assets as a fiduciary. Nevertheless, because the lawyer would be holding the funds in a fiduciary capacity derived from a solicitor-client relationship, the lawyer could argue that the funds are fiduciary property and that holding them in a trust account is permitted. This would be contrary to the intent of the rules, but could be difficult to refute.

## **Federation of Law Societies Model Trust Accounting Rule and new Law Society Rule 3-58.1**

17. An additional new development subsequent to the implementation of an amendment to the fiduciary property rules is the creation of a Model Trust Accounting Rule by the Federation of Law Societies, which was approved by Federation Council in October 2018. The Model Rule was unanimously approved by the Federation of Law Societies in December 2018. The Benchers approved a new Law Society Rule (Rule 3-58.1) based on the Federation Model Rule in July, 2019. It states:

**3-58.1** (1) Except as permitted by the Act or these rules or otherwise required by law, a lawyer or law firm must not permit funds to be paid into or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.

18. The intent of the Model Rule, and thus also the Law Society Rule, is to restrict the use of lawyers' trust accounts to purposes directly connected to the provision of legal services. The Federation opined that allowing lawyers to use their trust accounts for purposes unrelated to the provision of legal services unnecessarily increases the risk of money laundering or other illegal activity even when the funds in question are not "cash."
19. Consequently, a rule such as Rule 3-55(6) that currently permits the deposit of non-trust funds (fiduciary property) into a "trust account" would be contrary to the intent of the Model Rule, and Law Society Rule 3-58.1.

## **Consultations**

20. A Consultation Notice regarding amending the fiduciary property rule was posted on the Law Society's website in February 2019. The Notice explained the history of the rule and outlined the new considerations that caused the Law Society to consider whether to remove the ability to place fiduciary property funds into a lawyer's trust account. Consultation was open for approximately one month.
21. The Notice was also communicated to the Chairs of the Wills and Estates Sections of the Canadian Bar Association (BC Branch), as the Wills and Estates Bar had been the proponent of the initial fiduciary property rule and had been the only groups to participate in the consultations that were undertaken when the rule was initially being debated.
22. One specific submission to the consultation was received, and two other enquiries were received.

23. The focus of the submission received was on the situation where a lawyer acts both as the Executor and as solicitor for the Estate (or where the lawyer's firm is acting as solicitor for the Estate).
24. The submission noted that the orderly administration of estates is facilitated, where a lawyer is also acting as executor, by using the trust account as a holding account for the estate, because all necessary information for the preparation of estate executor accounts is on hand and readily available and capable of reconciliation. Where the lawyer/executor acts in a dual capacity and collects of assets and funds for distribution, legal work is being provided, particular where there is a necessity to dispose of assets to accumulate funds for distribution.
25. As noted above, Rule 3-58.1 now states that a lawyer or law firm must not permit funds to be paid into or withdrawn from a trust account unless the funds are *directly related* to legal services provided by the lawyer or law firm. (emphasis added).
26. Where the lawyer/executor either individually or through his or her firm also acts in a legal capacity for the Estate, the funds collected with respect to the estate would likely be categorized as being "directly related" to legal services provided by the lawyer or the law firm. This would not be the case if the lawyer acts only as executor, because the lawyer would not be acting in any legal capacity.
27. Consequently, the concern raised by the submission is likely already addressed in Rule 3-58.1
28. If it is thought advisable, this could be specifically clarified through guidelines created by the Law Society.

## Discussion

29. Money laundering, terrorist financing and other criminal activities pose serious threats. Lawyers must always recognize that their role is not to facilitate criminal activity, but lawyers also need to guard against becoming unwitting accessories to such activity. The current rules permitting the use of a trust account for the deposit of "fiduciary property," which is broadly defined, can increase the risk that lawyers may unwittingly be used to facilitate illegal activities.
30. There is a risk that criminals may attempt to assert the privilege that can be argued to attach to a lawyer's trust account to hide beneficial ownership of funds from authorities and to facilitate the movement of funds without detection. The creation of a trust by a former client that imposes fiduciary duties on a lawyer permitting the resulting funds to be deposited into a trust account that gives rise to the possibility of a claim of solicitor-client privilege would be a tempting proposition by which criminals could be able to

obscure beneficial ownership while maintaining control over the illicit funds and making it more difficult for law enforcement authorities to trace the funds. The Executive Committee, after discussion, concluded that the best way to reduce this risk was to prevent fiduciary property from being deposited to a trust account, because it has no connection to legal services.

31. While it is obviously hoped that lawyers acting as fiduciaries would not be involved in suspicious transactions or criminal activity, the fact is that where they are not acting as a lawyer, the reporting obligations of all involved in a matter under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* must be applied. If the funds are in a trust account, that possibility can be frustrated as there is an exemption on lawyers having to report under the Act, and where funds are in a trust account there may be a presumption that lawyers are providing related legal services. While perhaps the lawyer could be required to advise the savings institution that the fiduciary property funds are not “trust funds,” the result is that some funds in a pooled trust account would have to be segregated and that would cause confusion, and also open up possibilities for mistakes to be made.
32. Because trust accounts are only to be used for funds directly related to the provision of legal services, the deposit of fiduciary property to a trust account would constitute an anomaly. If such deposits were to continue to be permitted, outside parties might presume that legal services are being provided with respect to the funds and that therefore a solicitor-client relationship exists, which can give rise to a claim of privilege. The ability to investigate those funds, should it be necessary, by outside agencies is thereby complicated when there is no real reason to do so. This is not a message that either the Law Society or the legal profession should want to send.
33. While the “fiduciary property” rules were created to preserve lawyers being able to deal with funds in a fiduciary capacity outside a solicitor-client retainer, and to preserve the public’s ability to use respected and regulated individuals as fiduciaries for matters of importance to clients, the Committee concluded that it is time to recognize the need to ensure a complete separation (as was originally proposed) of fiduciary property from a trust account.
34. The Committee was mindful that it may be more convenient for lawyers to utilize the trust account from time to time for the deposit of funds that are fiduciary property, particularly where it was on a short term basis to a pooled trust account. However, aside from the concerns identified above, questions may also arise about the attribution of interest as the funds in question are not “trust funds.” In any event, the Committee concluded that “convenience to a lawyer” ought not to be the primary determinative of the policy decision at issue. If the public interest can be better protected by demonstrating a clear delineation on the use of a trust account, then the fact the resulting rule may be less convenient for lawyers may be a necessary consequence.

35. The Committee concluded that Rule 3-58.1 is intended to clarify, unambiguously, that trust accounts are only for funds directly related to the provision of legal services. Currently, Rule 3-55(6) is an exception to that end, and the Committee concluded that it should be removed.

## Other Provinces

36. The law societies in each of Manitoba and Nova Scotia are giving consideration to revising their rules to prohibit the deposit to a trust account of money handled by a lawyer in a fiduciary or representative capacity not related to the provision of legal services, having regard to Federation's Model Trust Account Rule. The Law Society of Alberta passed rules preventing such deposits in April, 2019.

## Recommendation

37. In light of the Law Society's effort to draw a "bright line" so that the use of the trust account is for purposes only where legal services are provided, the Committee recommends that Rule 3-55(6) be deleted. This will mean that funds that are fiduciary property cannot be deposited to a trust account. The Committee recognizes that in some limited circumstances, where a lawyer is acting in a dual role (such as executor and lawyer to an estate), the funds in question may be directly related to the provision of related legal services and may thereby be deposited in a trust account, but these circumstances are expected to be limited.
38. Consequential amendments will be needed to Rules 3-60(4) and 3-61 (3).
39. In effect, this recommendation will reverse the amendment approved in 2016. It will nevertheless permit individuals who are lawyers to act as fiduciaries, thereby preserving the original policy decision from 2013. It will, as was initially contemplated, prevent fiduciary property from being deposited to a trust account.
40. The Committee recommends as well that staff develop guidelines to assist the bar in the discharge of its responsibilities in handling fiduciary property.

MDL/al



# **Reporting to Law Enforcement: Proposal to Amend Rules**

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**Executive Committee**

September 5, 2019

Prepared for: The Benchers

Purpose: Decision



## I. Issue

1. The current rules permit the Executive Director with the consent of the relevant committee of Discipline, Credentials or Practice Standards, to deliver to a law enforcement agency information or documents in the Law Society's possession that reasonably may be evidence of an offence.
2. The Executive Committee, in its Regulatory Policy role, considered whether to recommend to the Benchers that the rules be amended:
  - (a) to permit the Executive Director to provide the information on his or her own discretion without the involvement of a Committee,
  - (b) to leave the manner in which the discretion is exercised largely unchanged but to centralize the process to involve only one Committee, or
  - (c) to remove the discretionary aspect and simply *require* the Law Society to provide such information to law enforcement agencies.
3. This report outlines the Committee's consideration of the issues, explains why it accepted or rejected the matters under consideration and makes a recommendation for a rule change.

## II. The Current Process

4. In the course of Law Society regulatory activity, the Law Society occasionally comes into possession of documents or information that may be evidence of an offence. While the Law Society's regulatory function is not to investigate criminal wrongdoing or to make findings of guilt, it may be in the broader public interest to provide information or documents that may be evidence of an offence, gathered in the course of the Society's regulatory activities, to relevant law enforcement authorities.
5. The Law Society Rules provide generally for the confidentiality of Law Society processes and proscribe the general sharing of information. However, the Law Society Rules contain several provisions that give the Executive Director discretion to deliver to law enforcement agencies information or documents obtained through Law Society investigative processes, be they through credential applications, discipline or practice standards investigations or insurance (Part B) matters.<sup>1</sup>
6. In each case, before the Executive Director delivers information to a law enforcement agency, the relevant committee amongst Discipline, Practice Standards and Credentials must give its consent and must "reasonably believe" the documents or information in

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<sup>1</sup> See Rules 2-53(4), 3-3(4), 3-23(3), 3-46(5)(c) and 4-8(5)

question “may be evidence of an offence.” These rules permitting disclosure are permitted under each of ss. 33.1(1)(c) and 33.1(2) of the *Freedom of Information and Protection of Privacy Act*.

### III. Past Consideration by the Benchers

7. The Benchers first considered this issue in 1985 when a motion was debated “*that whenever a matter involving criminal activity on the part of a lawyer came to the attention of the Law Society, it was to be reported to the police provided it was lawful to do so.*” Concerns were expressed by the Benchers about the ambit of the proposed requirement and in determining what conduct would fall within the proposal. Eventually, the Benchers resolved that, whenever any matter involving criminal activity on the part of a lawyer came to the attention of the Law Society, it was to be referred to the Discipline Committee, who was to decide whether it should be reported to the police.
8. The issue was next considered in the context of the work of the Disclosure and Privacy Task Force in 2003. That Task Force, comprised mostly of Benchers, recommended to the Benchers that the Rules “*be amended to allow the Executive Director, in his discretion but subject to the Legal Profession Act, to release information or documents to a law enforcement agency which he reasonably believes may be evidence of an offence.*” The Task Force noted that giving the Executive Director clear authority to make such disclosure would permit it to be done in a timely manner and would permit agreements with law enforcement agencies concerning how the information could be provided.
9. However, when the matter came before the Benchers, concerns were expressed about leaving the matter in the hands of the Executive Director. The matter was referred back to the Task Force for further consideration, and it was returned to the Benchers with a recommendation that was ultimately approved that resulted in the current Rules.

### IV. Key comparisons: Rules and Practices

10. Information disclosure varies across law societies, as does the practice for disclosure. Not all law societies have rules permitting the disclosure of information to law enforcement authorities, and of those that do, the issue is addressed in fairly different ways.
11. In some law societies, the Executive Director is, with the consent of a committee, permitted to *advise* the Minister of Justice that there are reasonable grounds that a lawyer has committed a criminal offence, and if so is directed to forward a copy of the hearing record and other specified information.<sup>2</sup>

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<sup>2</sup> See s. 78(5),(6) and (8) *Legal Profession Act* (Alberta)

12. In others, certain law society officials have a *duty* to disclose to a law enforcement authority any information about possible criminal activity on the part of a member that is obtained during an investigation.<sup>3</sup>
13. In still others, there is a general prohibition on sharing information gathered during an investigation, subject to some general exceptions.<sup>4</sup>
14. Some address the question from an analysis of the release of *personal information* and permit it to be given without consent to a body responsible by law for the prevention, detection or repression of crime or statutory offences, if the information is necessary to prosecute an offence against an Act applicable in the province.<sup>5</sup>
15. Most law societies appear to involve a committee in the determination about whether to release information to a law enforcement agency. Saskatchewan and Ontario permit the decision to be made at the staff level.<sup>6</sup>
16. It is worth noting, too, that Standard 18 of the Federation of Law Societies' National Discipline Standards is:

There is an ability to report to police about criminal activity in a manner that protects solicitor-client privilege.

## V. Options

17. Three main options were considered:

- Amend the Rules to permit the Executive Director to exercise the discretion to provide information that may disclose an offence to law enforcement authorities without the consent of a committee. Guidelines for the exercise of discretion would be created;
- Amend the Rules to centralize the process for obtaining consent from one of three committees to that of a single committee. Guidelines for the exercise of discretion would be created;

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<sup>3</sup> Section 69(2)(d) of *Legal Profession Act* (Manitoba). In practice, we are told that disclosure is not made until the conclusion of a prosecution, and permission would be sought from clients before confidential information is shared.

<sup>4</sup> See s. 49.12 *Law Society Act* (Ontario). We are told that the Law Society of Ontario interprets this section to permit it to disclose information to the police during the investigation stage, subject to the protection of privilege and confidentiality. Disclosure is made on the approval of the Executive Director, Professional Regulation.

<sup>5</sup>Section 59(3), Act respecting Access to Documents held by Public Bodies and the Protection of Personal Information (c. A-2.1) (Québec)

<sup>6</sup> See s. 54, *Legal Profession Act* (Saskatchewan) and Rule 405(3). For Ontario, see footnote 4, above.

- Amend the Rules to create a *requirement* (and not leave it to the discretion of any group on a case-by-case basis) that the Law Society has a duty to provide information that is not the subject of solicitor-client privilege that may disclose an offence to law enforcement authorities.

## VI. Discussion

18. The Executive Committee considered each of the options and noted the following points:

### *Disclosure of Information and the Public Interest*

19. There is a considerable premium in demonstrating that the Law Society is not seen as an organization that protects lawyers, particularly where there is information that may suggest that a lawyer has committed an offence. Indeed, other self-regulatory bodies – notably those dealing with teachers and realtors – have suffered considerably where their actions have been perceived as weighted towards their members’ interests rather than the broader public interest. The perception of the professions themselves has been negatively affected through these failures. The legal profession is not immune from this criticism. In 2013, the then-Law Society of Upper Canada was heavily criticized in the *Toronto Star* for not disclosing information in the possession of that law society concerning alleged criminal activity of lawyers to police. The *Star* noted that most law societies *do* report criminal activity to police.
20. Disclosure of information to law enforcement to ensure the ability to properly investigate an alleged offence is in the public interest. As a principle, public confidence in the administration of justice would also expect that, where law societies have information that may disclose an offence, law societies have the ability to share it with the authorities and do so where it was not otherwise precluded (such as where the information was privileged). Failing to do so might be viewed by the general public as obstructionist in a moral, although not legal, sense. While it is not the Law Society’s role to prosecute crime, it is also not consistent with the Law Society’s role to protect lawyers by not disclosing information in its possession that may disclose an offence involving a lawyer.
21. On the other hand, the public interest also requires prosecutions by law enforcement agencies to be done effectively, fairly, and not to be tainted by information that prosecutors should not have. This includes other considerations that have to be addressed in making a decision to provide information, such as:
- The extent to which the disclosure is prohibited due to the Law Society’s statutory obligations to maintain solicitor-client privilege and confidentiality;

- The extent to which disclosure may undermine or prejudice the Law Society's ability to carry out its mandate in the credentials, Part B insurance claims, complaint investigation and discipline processes, as the case may be, in the context of the particular case at hand or generally;
  - Whether disclosure will undermine the Law Society's ability to either obtain, or tender at a hearing, reliable and credible evidence;
  - The extent to which law enforcement requires or does not require the disclosure (for example, because Law Society information can be compelled from a lawyer in circumstances where the prosecution could not compel such information, disclosing such information to the prosecution could complicate the prosecution's investigation);
  - The extent to which the disclosure will trigger the Law Society's obligations pursuant to the *Freedom of Information and Protection of Privacy Act* and any steps necessary to ensure compliance with that Act.
22. The Committee concluded that it was therefore obviously necessary to ensure that the Law Society Rules provided an avenue to permit the disclosure of information to law enforcement authorities that had been gathered during Law Society investigative processes.
23. However, a rule *requiring* disclosure could be unworkable where privileged information is involved, and moreover would be troubling if the disclosure adversely affected either Law Society investigations or law enforcement investigations, such as where the law enforcement authority did not want the information because it was compelled testimony obtained by the Law Society.
24. The Committee therefore concluded that the rule should retain a discretion to disclose, and that it would be wise to prepare guidelines for consideration in the exercise of that discretion that took into account factors, including those in paragraph 19 above, that would be relevant when considering the issue.

*Disclosure of the Existence of Information or Documents as Opposed to Disclosure of the Actual Information or Documents themselves*

25. Because, as noted above, there will be instances where it is not clear that the information or documents are privileged, or because disclosure of actual documents or information could compromise the investigation being undertaken by the law enforcement agency, disclosure of the *existence* of information or documents that the Law Society possesses that it considers may be evidence of an offence rather than disclosure of the *actual* information or documents themselves would be advisable.

26. This would necessitate that any report to law enforcement officials would need to contain sufficient information to outline the basis of the belief that an offence has been committed.
27. There may be occasions where the information or documents are already in the public domain and it is clear that privilege does not, or can no longer, attach to them, in which case disclosure of the particulars of the information or the documents themselves may be considered.

Who Exercises the Discretion?

28. The decision to provide information from a Law Society investigation to law enforcement agencies is currently a discretionary one that currently lies with a committee, although it is the Executive Director who determines whether to bring the matter to the relevant committee for consideration. In practical terms, this gives the Executive Director the ability to determine whether *to not* disclose information. If that discretion now lies with the Executive Director, the Committee considered whether there was a substantial benefit to engaging the committees in exercising the discretion (by being required to seek their consent) *to* disclose the information or the existence of the information?
29. The Committee also recognized that vesting the discretion in the Executive Director could improve efficiencies in process, because decisions could be made more quickly. The Committee further understood that vesting the discretion in the Executive Director (or a delegate) could improve consistency in decision-making, because the discretion would be exercised, in reference perhaps to guidelines, by one person rather than by one of three Committees, the composition of which changes each year.
30. However, if the disclosure of documents, or the existence of documents, is to be considered, the Committee concluded that the act of balancing public interest rationales in favour of disclosure against other legal considerations that must be kept in mind that may militate against disclosure is something for which the benchers, or a group of them, should bear ultimate responsibility.
31. After consideration, the Executive Committee concluded that the involvement of a bencher committee was therefore warranted. Recognizing that a decision one way or another could be the subject of some criticism, the Committee concluded that it would be unfair to require staff, through the Executive Director, to bear responsibility for making a final decision on the exercise of discretion.

Which Committee?

32. The current rule requires the involvement of one of three committees in the exercise of the discretion to provide information. This permits the involvement of Benchers in the

consideration of the matter, which is valuable given the importance of the decision being made and the balance of the broad, general public interest relating to law enforcement versus the general right to the presumption of innocence of individuals (not all of whom will necessarily be lawyers).

33. However, given the way the rule is framed at present, the committee charged with having to consent before the Executive Director can disclose information varies depending on where the investigation was conducted within the Law Society.
34. Spreading the discretion amongst one of three different committees increases the risk that the discretion about whether or not to consent will vary depending on which committee is involved. The Executive Committee concluded that possibility was not ideal.
35. The Committee concluded it would be better to vest the exercise of discretion to a single committee. The Executive Committee considered that the logical choices were the Discipline Committee or the Executive Committee.
36. After consideration, the Committee concluded that the Discipline Committee would be the more logical choice. That Committee is the Committee most likely to be dealing with the underlying facts (although not always), and that Committee most usually has at least one criminal law lawyer appointed who will have some familiarity with the issues under consideration. Moreover, keeping the factual matrix for consideration within the Discipline Committee reduces the possibility of conflicting other benchers outside that committee, who may be needed to sit on a hearing of matter under investigation.

#### Hearing Decisions

37. Hearing decisions are public. The Executive Committee concluded there is therefore no need for a rule requiring disclosure to law enforcement officials of a hearing decision that may raise facts that may be evidence of an offence.

#### Guidelines

38. The Committee concluded it would be useful to have staff prepare guidelines that would outline the considerations to be addressed in exercising any discretion afforded in disclosing the existence of information or documents to law enforcement officials.

## **VII. Recommendation**

39. After consideration, the Executive Committee recommends that:

- the Law Society Rules be amended so that the Executive Director may disclose information or documents that may disclose an offence to law enforcement

agencies that have been gathered in the course of a complaint investigation, a practice standards investigation an application for admission, enrolment or re-instatement, or a claim made under trust protection insurance, with the consent of one committee, rather than one of the three existing committees;

- the single committee be the Discipline Committee;
- that a set of guidelines be prepared by staff that outline considerations that should be taken into account by the committee when considering a request from the Executive Director to disclose information or documents to law enforcement agencies.

40. In the event the recommendation is accepted, the matter should be referred to the Act and Rules Committee to prepare the necessary rule amendments to be returned to the Benchers for approval.

MDL/al



The Law Society  
*of British Columbia*



## Reduced Practice and Insurance Fees

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### Annual Fee Review Working Group

Dean Lawton, QC Chair  
Jeff Campbell, QC  
Barb Cromarty  
Roland Krueger, CD  
Phil Riddell, QC

Date: September 5, 2019

Prepared for: Benchers

Prepared by: Staff

Purpose: Decision

## Working Group Process

1. In August, 2017, a member resolution was received for consideration at the 2017 Annual General Meeting. The resolution sought to have the Law Society investigate and duly consider providing public interest practitioners with reduced rates of practice fees and insurance premiums, which together comprise the annual fee. It was agreed that the Law Society would establish a working group to look at the issue in lieu of the resolution being considered at the AGM.
2. This Working Group was established in January 2018 with the mandate to investigate and duly consider providing public interest practitioners with reduced rates of practice fees and insurance fees and will report back to the Benchers before the 2018 annual general meeting.
3. The Working Group met four times in 2018. The Working Group heard from the proponents of the initial member resolution, produced a consultation paper for consideration by the profession and received and reviewed submissions from a number of individuals and groups in relation the specific issues and questions identified in the consultation paper.
4. The Working Group presented its report for discussion at the December 2018 Bencher meeting and decision at the January 2019 Bencher meeting. The voting members of the Working Group recommended against providing public interest practitioners with reduced rates of practice fees and insurance fees. However, the Working Group did suggest that the Benchers give consideration to our current practice of charging all lawyers largely the same amount for practice and insurance fees regardless of factors such as type, volume of work, and area of legal practice, income from practice, risk, geography, clientele and other considerations identified in the consultation.
5. At the January 2019 Bencher meeting, there was support at the Bencher table for further work to be done on the question of reduced rates of practice and insurance fees. A motion to refer the broad question of reduced rates of practice and insurance fees back to the Annual Fee Review Working Group passed unanimously.
6. Following on the direction of the Benchers, the Working Group met again on May 2, 2019. The Working Group reviewed information about the practice in other Canadian jurisdictions regarding differential practice and insurance fees. The Working Group also heard from Mr. Krueger regarding his proposal that the costs associated with the General Fund for expenses such as governance, operations, accounting, and information technology would be allocated equally to all lawyers, and the costs associated with expenses such as scheduled audits, investigations, discipline and custodianships would be allocated to those creating the cost to the Law Society. A similar approach would apply to costs associated with expenses incurred by the

Insurance Fund. Staff were directed to provide the Working Group with information about the Law Society's fixed and variable costs, for both LIF and the operations funded by the general practice fee.

7. The Working Group next met on July 12, 2019. At that meeting, the Working Group considered a memorandum from staff following up on Mr. Krueger's suggestion. The memorandum noted that for some programs and activities of the Law Society, costs were being allocated to those who caused them to be incurred. Examples included registration fees for law corporations and limited liability partnerships, insurance surcharges for those with paid indemnity claims, and fees for changing member status. The memorandum also provided a general plan for allocating costs in some areas to those causing them to be incurred and a risk rating method with respect to insurance. The Working Group considered the memorandum and engaged in a wide ranging discussion regarding the potential for a principled approach to differential fees.

## Discussion

8. The mandate given by the Benchers to the Working Group was to consider whether there was a principled justification for the Law Society changing its present practice of charging all members in a particular category of membership the same annual practice fee and, where applicable, insurance fees, and if so, what basis might be appropriate and feasible for determining and assessing differential fees for any particular sub-group of the membership.
9. In particular, the Working Group was to assist the Benchers by:
  - a. making recommendations to the Benchers regarding whether the Law Society should change its present practice of charging all members in a particular category of membership the same annual practice fee and, where applicable, insurance fees; and
  - b. if required, making recommendations to the Benchers regarding what basis might be appropriate and feasible for determining and assessing differential fees for any particular subgroup of the membership
10. The review of the experience regarding differential practice and insurance fees in other Canadian jurisdictions indicated that most jurisdictions charge just one fee to all practising members. Ontario is an exception and provides for three levels of fees based largely on whether the lawyer is providing legal services for a fee or not.<sup>1</sup>

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<sup>1</sup> 100% of Annual Fee - Lawyers or paralegals who practise law or provide legal services, whether they do so in Ontario or in some other part of the world, including law teachers who practise or provide legal services, or federal, provincial and municipal government, corporate employees and other lawyers or paralegals who provide legal advice, opinions, or services with respect to the laws of Ontario or Canada.

11. In the UK, both the Bar Council and the Solicitors Regulation Authority use income from practice as the basis for determining the amount to be paid. For example, depending on income the annual practising certificate fee ranges from £100 to £3000.<sup>2</sup> The Solicitors Regulatory Authority has both a practising certificate registration fee and a firm periodic fee based on firm income x a percentage + a minimum fee. For example, a firm with a turnover income of £10,000,000 would pay £29,075.
12. In New South Wales (NSW), Australia all solicitors pay the same basic fee with the only difference being that those in private practice make a contribution to the Fidelity Fund. The NSW website states that the Fidelity Fund exists to compensate persons who suffer pecuniary loss due to defaults by law practices arising from dishonest acts or omissions of the associates of the practice relating to trust money or property. Barristers pay varying amounts depending on geography and experience. For example, a QC in Sydney would pay \$7,241 while a one year call in Sydney would pay \$383.
13. In reviewing the various approaches to practice fees across Canada and in other common law jurisdictions, it was apparent to the Working Group that none of the jurisdictions deviated significantly from that of the Law Society of BC.
14. The Working Group discussed the income-based approach to practice fees and recognized that, much like income tax in Canada, this method appeared to reflect a progressive approach to membership. However, it was apparent that the value of the UK license for barristers or solicitors relative to the income earned was not progressive. In fact, both schemes had regressive elements in that those earning higher incomes paid less, proportionate to their income. While recognizing that this could be addressed by adjusting the scheme, the Working Group also recognized that the income-based approach abandoned the one-size fits all model without relating the amount that it cost to regulate a particular lawyer to the amount the lawyer had to pay. While attractive, the Working Group was of the view that an income-based approach did not present a principled justification for abandoning the one-size fits all model.
15. The Working Group also discussed some of the options previously considered, such as reducing fees for legal aid lawyers or those providing significant *pro bono* services. Although there was some support for this approach, there was no consensus that there was a principled justification for providing a monetary advantage to one particular subset of practitioners over

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- 50% of Fee - Lawyers or paralegals who do not practise law or provide legal services, including those employed in education, in government or in a corporation in a position where not required to practise law or provide legal services.
  - 25% of Fee - Lawyers or paralegals who do not engage in any remunerative work and do not engage in the practise of law or provision of legal services in or outside of Ontario, or who are in full-time attendance at a university, college or designated educational facility and not practising law or providing legal services, or who are on pregnancy or parental leave and who do not practise law or provide legal services.

<sup>2</sup> The Bar Council fees as a percentage of income vary from about 0.25% to 1% of income depending on the amount of income and the range in which that income falls.

others. Accordingly, the Working Group could not recommend that the Law Society change its present practice of charging all members in a particular category of membership the same annual practice fee.

16. The Working Group also considered the fixed and variable approach to fees suggested by Mr. Krueger. The Working Group had a memorandum from staff reviewing how a variable approach to fees might work with both the practice fee and the insurance fee. The example provided with respect to the practice fee recognized that our discipline and professional conduct programs represent about 25% of the total general fund costs, which are funded by the fees from *all* members. However, in any given year only around 10% of the members find themselves within the professional conduct/discipline program. The Working Group was told that if all of the costs associated with the professional conduct and discipline programs were allocated to the members who were *engaged* by those programs, the base annual fee in 2018 could have been about \$1,200.
17. While the example illustrated a principled approach to funding the costs of Law Society programs through the use of what amounts essentially to user fees, the Working Group recognized that we were not likely to allocate *all* the costs of any program equally across all of the members engaged with those programs. But the example served as an illustration to the Working Group of an alternative to reducing the practice fee for a particular subset of the members while increasing the practising fees for the remainder.
18. The Working Group also had information regarding a risk-rated approach to the insurance fee based on areas of practice. The example given used the fixed and variable costs of the insurance program over the past five years, the relative frequency of reports by area of practice normalized against the volume of practice in each area and the information provided about areas of practice in the annual practice declaration to calculate a risk-rated insurance fee for every insured member. The Working Group observed that there would be an issue handling the situation in which a lawyer reported a claim outside the areas of practice reported on their annual practice declaration. Although such a circumstance would not likely result in a gap in, or denial, of coverage, there were unanswered questions about what financial consequences ought to be imposed on lawyers in such a circumstance. It was also noted that, depending on the consequences, this issue might result in lawyers not reporting claims or potential claims to LIF.
19. Although the example illustrated a method of adjusting the insurance fee to reflect the relative risk of each insured member based on practice areas, the Working Group was concerned that the result was essentially a zero-sum game in which some members would pay less than the current insurance fee and others would pay more. Overall, the Working Group was not satisfied that there was sufficient justification for changing the present practice of charging all members in a particular category the same insurance fee.

## Recommendation

20. The consensus of the Working Group is that there is not sufficient principled justification for changing the Law Society's present practice of charging all members the same annual fee, regardless of areas of practice.
21. The Working Group, however, was of the view that the Benchers give consideration to whether some of the variable costs incurred by the Law Society in some areas, such as the professional conduct and discipline programs, should be allocated to a greater degree to those members creating those costs, either on a per file basis or as an addition to their annual practice fee.

**The Law Society**  
*of British Columbia*



## **Law Society Awards: Design Selection, Nominations and Award Criteria**

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September 19, 2019

Prepared for: The Benchers

Prepared by: Staff on behalf of the Design Selection Committee and the  
Executive Committee

## Introduction

1. The purpose of this memorandum is to update the Benchers on new designs of awards recognizing excellence in the legal profession, provide an update on the nomination process to date for this year's awards, and to propose changes to the eligibility criteria for the awards.

## Design Selection

2. Every two years, the Law Society Award is presented to honour the lifetime contribution of a truly exceptional member of the legal profession. Every other year, recognition awards are presented to lawyers who have demonstrated leadership and excellence in the areas of legal aid, family law, pro bono, and equity, diversity and inclusion.
3. Until 2018, recipients of the Law Society Award were presented with a large, solid bronze statuette of Justice Begbie on horseback that was mounted to a solid piece of walnut. The Law Society discontinued issuing the Begbie statuettes as a step toward its Truth and Reconciliation commitments. In its place, the award presented to Richard Peck, QC, was an elegant glass design.
4. In February, the Executive Committee passed a motion to seek proposals from artists and designers for new, creative designs for awards that are more distinctive and would replace the glass designs.
5. Communications and Engagement posted a request for proposals for design of one or more of the awards to BC Bid, as well as publicized the opportunity on the Law Society website and Twitter account, and with Emily Carr University of Art + Design, the Canada Council for Arts, BC Arts Council, CARFAC and BC Alliance of Arts + Culture. Additional outreach to art galleries that represent Indigenous artists was also undertaken.
6. In August, following the close of the RFP process, the design selection panel met to review sample images of several artists' sculptures and painted works. The panel, chaired by Lisa Hamilton, QC, and including Jeff Campbell, QC, Jasmin Ahmad, Michelle Stanford, QC and Claire Marshall, were unanimous in recommending Rod Smith to design all five awards. Mr. Smith is a Kwakwaka'wakw sculptor based in Qualicum Beach. He is best known for his precise, elegant hand-painted, Indigenous-themed abstract images onto his sculptures.
7. As part of the selection process, the panel determined that the awards for legal aid, family law, pro bono, and equity, diversity and inclusion should have a common, consistent shape for the awards, with each category distinguished by unique colours or images painted onto them. This "branded" approach to recognition awards is similar to the UK Law Society's Excellence Awards.



8. Mr. Smith and the art gallery which represents him have proposed an iconic “s-form” design, which will distinguish the four awards using the following colour schemes:

Excellence in Family Law Award – red and black, signifying bloodlines.



Leadership in Legal Aid Award – green and black, alluding to trees and growth in the field.



Pro Bono Award – blue, grey and white, associated with clarity and communication.



Equity, Diversity and Inclusion Award – multiple colours and black, representing diversity.



\* Note: this colour scheme would be applied to an s-form sculpture

9. Mr. Smith will hand-paint each award, and the painted sculptures will be mounted on a two-tiered base that will enable a name plaque to be affixed to it. The finished award product will be comparable in size to previous awards (approximately 10 x 4 inches + 1½ inch base).
10. For the Law Society Award, Mr. Smith is proposing platters made of hand-turned wood to give it contours, which will be hand-painted using the same style and technique of the other awards. Collaboration with Mr. Smith and the gallery on final design details is continuing, with further consideration being given to the colour scheme and symbolic images that represent the qualities embodied by recipients of this signature award. The platters can sit on a base or be hung on a wall as desired. Examples of platters are attached as an Appendix to this memo.

## Nominations

11. Nominations for the legal aid, family law, pro bono, and equity, diversity and inclusion awards opened mid-August and a call for nominations was included in the Law Society E-brief on August 14, 2019. Information about each of the awards on the Law Society website has been updated, including links to new nominations forms. The final date to submit a nomination for any of the awards is **Friday, October 4, 2019**.
12. To date, few applications for the awards have been received. Benchers are encouraged to reach out to members of the profession and encourage them to submit nominations for the awards.

## Award Criteria

13. Each of the four awards have similar criteria for who is eligible to receive the award and who can nominate an eligible person for the award. Currently, the awards criteria for the legal aid, family law and pro bono awards only permits practising lawyers who are in good standing with the Law Society of BC to be eligible for the awards, whereas the Equity, Diversity and Inclusion award can be awarded to “any person in BC working in the legal field or justice system who has made an outstanding contribution in furtherance of diversity and inclusion in the legal profession in BC”.
14. At its September 12, 2019 meeting, the Executive Committee discussed the different eligibility criteria between the awards and a request received from two members of the legal profession that the awards eligibility criteria for the family law award be broadened to include retired members. The view expressed was that, by requiring those eligible for the family law award to be a practising lawyer, this will unfairly and unduly limit those eligible for the award.

15. The Committee discussed the request and agreed to recommend to Benchers at the September 27 meeting that the awards eligibility criteria for all awards be broadened to include “all current and former members” and to allow the award to be given posthumously.
16. The Committee was also of the view that you should be a current member of the Law Society of BC to nominate someone for an award, except in the case of the Equity, Diversity and Inclusion Award where it already provides that any person may submit a nomination for the award.
17. The Executive Committee’s view was that the awards criteria should be amended and apply to the current nominations process for the 2019 awards. The Executive Committee therefore recommends that Benchers approve the following resolution:

**BE IT RESOLVED that the Benchers approve amendments to the awards criteria for all four Law Society awards:**

- a) to include “all current and former members” and allow for the award to be given posthumously, and
- b) require the person nominating an individual for the award to be a current member of the Law Society of BC, except in the case of the Equity, Diversity and Inclusion Award, where the criteria provides that any person may submit a nomination for the award.

## Appendix A

### Rod Smith's Hand-turned Wooden Platters

















## **July 2018 – June 2019 Report**

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### **Equity Ombudsperson Program**

Claire Marchant (Equity Ombudsperson)

September 4, 2019

Prepared for: Benchers

Prepared by: Claire Marchant, Practice Advisor/Equity Ombudsperson

Purpose: Information

## Introduction

1. The purpose of this report is to provide a review of the work undertaken as part of the Law Society of British Columbia (“**Law Society**”) Equity Ombudsperson Program (the “**Program**”) from July 1, 2018 to June 30, 2019 (the “**Term**”).
2. This report provides anonymized data about the volume and nature of contact received by the Program, in addition to describing the other work undertaken by the Program during the Term.

## Equity Ombudsperson Program

1. The purpose of the Program is to provide confidential advice on issues of discrimination to lawyers, articulated students, law students and support staff of legal employers.
2. Please find attached as **Appendix “A”** to this report a copy of my previous report provided at the September 2018 Benchers meeting, which explains the Program’s transition from an external position to a position within the Law Society.
3. Please find attached as **Appendix “B”** to this report a copy of the briefing document included in your Bencher Orientation Manual for reference.
4. Please find an Information Sheet about the Program attached as **Appendix “C”** to this report, which can be distributed by Benchers at their individual discretion.

## Program Initiatives

5. From July 2018 to June 2019, a number of initiatives were undertaken to promote awareness of the Program including:
  - a. Setting up a booth at the PLTC fair in Vancouver in September 2018, February 2019, and June 2019<sup>1</sup>, meeting PLTC students and distributing snacks and Program materials;

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<sup>1</sup> I had fallen ill for the June 2019 fair, but members of the Practice Advice team attended on my behalf.

- b. Guest teaching session of a Professional Legal Training Course class in September 2018 on legal ethics and workplace harassment;
  - c. Speaking to students at the University of Victoria in September 2018 about the Program; and
  - d. Co-presenting with the Lawyers' Assistance Program at the CLE BC Human Rights Law Conference in November 2018 on the value proposition of equity, inclusion, and wellness in the legal profession;
  - e. Coordinating to reprise the above presentation given with the Lawyers' Assistance Program in 2020 as standalone session;
  - f. Being featured in an article for the Spring 2019 Benchers Bulletin (see attached as **Appendix "D"** to this report).
  - g. Attending Thompson Rivers University in March 2019 to speak to students on shifting perspectives on diversity and inclusion and the value proposition of inclusive work environments; and
  - h. Coordinating to give a session for CLE BC with the Deputy CLO, Gurprit Bains, on sexual misconduct in the legal profession in Fall 2019.
6. I also participated in a working group of the Law Society Equity Network that was tasked by the Federation of Law Societies to propose revisions to Code of Professional Conduct rule 6.3 (harassment and discrimination). The proposed revisions are currently under review by the Federation and not yet finalized.

## The Term in Review – Statistics

7. I can report the following information about contacts with the Program during the Term:
- a. I was contacted by 42 individuals to discuss matters, with initial contact (callers in some cases made follow up contact in a subsequent month, not captured below but described in the following paragraph) broken down by month as follows:

<b>July</b>	<b>August</b>	<b>September</b>	<b>October</b>
3	4	1	3
<b>November</b>	<b>December</b>	<b>January</b>	<b>February</b>
8	2	6	0

<b>March</b>	<b>April</b>	<b>May</b>	<b>June</b>
4	7	1	3

- b. The 42 individuals who contacted me to discuss matters resulted in 76 emails and phone calls to the Program. Some individuals contacted the Program once, others multiple times on the same or similar issues.
- c. Of the 42 individuals who contacted me, 21 of the new matters were within the mandate of the Program.
- d. Of the 21 matters that were within the mandate of Program:
  - i. I spoke to lawyers, articling students, law students, and legal administrative staff in the following numbers:

<b>Lawyers</b>	<b>Articling Students</b>	<b>Law Students</b>	<b>Legal Administrative Staff</b>
14	1	3	3

- ii. I spoke to individuals from the Greater Vancouver Area, Vancouver Island, the Interior, and outside of British Columbia in the following numbers:

<b>Greater Vancouver Area</b>	<b>Vancouver Island</b>	<b>Interior</b>	<b>Outside British Columbia</b>
16	2	2	1

- iii. I spoke to individuals about discrimination and harassment on the basis of sex, race, physical/mental impairment, gender identity/expression, criminal conviction unrelated to job duties, age, place of origin, and requests for general information in the following numbers (noting that a contact may have covered multiple subjects):

<b>Equity Issue Raised</b>	<b>Number of Times Raised</b>
Sex	9
Race	5
Physical/Mental Impairment	3
Gender Identity/Expression	2

Criminal Conviction	1
Age	2
Place of Origin	1
Information	3

8. Although the mandate of the Program includes mediating disputes if all parties consent, I did not perform any mediations during the Term.

## Term in Review – Overall Observations

9. In terms of contact content, discrimination and/or harassment on the basis of sex generated the highest volume of contacts. I anticipate this issue, sexual harassment in particular, will continue to generate a high contact volume.
10. Similar to my previous report, I received a number of contacts from members of the public that were outside the mandate of the Program. I attribute it to confusion created by the Program's title which gives the impression to the public that I can address issues involving fairness more generally. Despite these contacts being outside of the mandate of the Program, attending to these individuals still takes a significant amount of time particularly if they are frustrated or upset.
11. There also continues to be a great deal of overlap between contacts that come to the Practice Advisors and the contacts that come in through the Program. As a Practice Advisor, I give confidential advice on issues of ethics and practice management. This can include questions about personal coping and stress, workplace issues, managing relationships with other lawyers and staff, and leaving a difficult work environment, for example. These equity-related questions can arise on their own or in conjunction with a more traditional practice advice issue.
12. Acting as both Equity Ombudsperson and a Practice Advisor, I have noted a significant overlap in contact content. I took a number of calls and emails as a Practice Advisor that dealt with issues within the mandate of the Program; however, I did not track them as Program contacts as the individuals were contacting the Practice Advice department. The inquiries were often either directed or referred to me given my background in workplace law and approachable, empathetic demeanor, but were not indicative of individuals trying to contact the Program specifically. My fellow Practice Advisors also field calls and emails on these issues.
13. Accordingly, I think it is reasonable to conclude that the need for, and usage of Law Society resources regarding equity and wellness issues, is much higher than Program-

specific contacts. I had suspected the same in my last report and so, since that time, all Practice Advisors have been tracking calls on equity/wellness issues and the hypothesis has proven supportable. Indeed, the Practice Advisors had 44 inquiries related to personal coping and stress and 15 inquiries related to equity/wellness issues during the Term.

## Looking Forward

14. Particularly in light of the number of out of mandate contacts from the public, the title of Equity Ombudsperson needs to be adjusted to reflect the transition of the Program being carried out by an external party to an internal program at the Law Society and the specific issues to which the program responds.
15. Given the overlap in content between the requests received by Practice Advisors and the Program, along with the integration of the Program within the Law Society, I have considered and concluded that the position does not require two titles and is actually one position with two facets - for example, a Practice and Equity Advisor with a focus on equity and wellness issues.
16. Members continue to seek support on issues of equity and wellness and I am heartened by the important role the newly formed Practice Support Department does and will continue to play in assisting the profession with equity and wellness.



## **2017 Annual/2018 Interim Report**

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### **Equity Ombudsperson Program**

Claire Marchant (Equity Ombudsperson)

August 29, 2018

Prepared for: Benchers

Prepared by: Claire Marchant, Practice Advisor/Equity Ombudsperson

Purpose: Information



## Introduction

1. The purpose of this report is to provide a review of the work undertaken as part of the Law Society of British Columbia (“**Law Society**”) Equity Ombudsperson Program (the “**Program**”) from January 1, 2017 to June 30, 2018 (the “**Term**”).
2. This report will provide anonymized data about the volume and nature of contact received by the Program, in addition to describing the other work undertaken by the Program during the Term.

## Program Transition

3. 2017 represented a year of transition for the Program. From inception in 1995, the Program was operated external to the Law Society. From May 1, 2000 to September 30, 2017, the position of Equity Ombudsperson was held by Ann Chopra, an external contractor independent of the Law Society. Please find attached as **Appendix “A”** to this report a background document on the Program up to 2017 that was attached to Ms. Chopra’s 2015 report to the Benchers for context.
4. On January 27, 2017, the Benchers decided unanimously to bring the Program in house as part of the Practice Advice Department of the Law Society. Subsequent to that decision, the position of “Practice Advisor/Equity Ombudsperson” was created within the Practice Advice Department. Please find attached as **Appendix “B”** to this report the job description for the position of “Practice Advisor/Equity Ombudsperson”.
5. Ms. Chopra served as Equity Ombudsperson until September 30, 2017. Accordingly, I am reporting on behalf of Ms. Chopra on the Program from January 1, 2017 to September 30, 2017.
6. I commenced my role at the Law Society on August 28, 2017, so am reporting on the Program from that date through June 30, 2018.

## Clarifying the Mandate

7. Upon consideration, consultation with Law Society staff and Ms. Chopra, and review of materials available regarding the Program’s history, my first priority was to clarify the mandate of the Program to allow it to operate effectively within the Law Society framework.

8. In September 2017, I attended an Ombuds Training Program operated by the Osgoode Hall Law School of York University and the Forum of Canadian Ombudsmen in Toronto, Ontario. What I learned during this course of study further underscored the importance of clarifying the Program's mandate given the many differences in its functionality, as compared to the role of a traditional Ombuds. For example, a key consideration has been how the Program may need to change now that it is no longer independent of the Law Society.
9. As a first step in clarifying the mandate, I consulted with the Equity and Diversity Advisory Committee (the "**Advisory Committee**") in October 2017 to seek its input on my proposed parameters for the Program.
10. With the Advisory Committee's input, a new background document (amongst other resources discussed below) was included in the 2018 Benchers Orientation Manual that reflects the initial steps taken to clarify the Program's mandate. Please find attached as **Appendix "C"** to this report a copy of the briefing document included in your Bencher Orientation Manual for reference.
11. From October 2017 through June 30, 2018, the Program operated within this "first iteration" mandate, clarified to test its viability.
12. Further clarifying the mandate of the Program remains a high priority.

## Program Awareness Initiatives

13. From September 2017 to June 2018, a number of initiatives were undertaken to promote awareness of the Program and myself as Equity Ombudsperson, including:
  - a. Updating materials about the Program on the Law Society website;
  - b. Creating an Information Sheet about the Program (please find attached as **Appendix "D"** to this report a copy of the Information Sheet, which can be distributed at Bencher's individual discretion);
  - c. Updating the PLTC written materials and teaching notes on the Program;
  - d. Attending the PLTC fair in Vancouver in September 2017, meeting PLTC students and distributing snacks and Program materials;

- e. Speaking as a part of a panel on workplace sexual harassment at a Women Lawyers Forum event in October 2017;
- f. Updating the CLE BC online workplace sexual harassment course material and recording revised video clips for the course;
- g. Creating a video about the Program for Mapping Her Path to show at events;
- h. Speaking at the American Bar Association mid-year meeting in February 2018 on the value proposition of diversity and inclusion;
- i. Attending the PLTC fair in Vancouver in February 2018, meeting PLTC students and distributing snacks and Program materials;
- j. Attending the Law Society Equity Network meeting in May 2018;
- k. Speaking at a Women in Law event in May 2018 about the Program;
- l. Attending the PLTC fair in Vancouver in June 2018, meeting PLTC students and distributing snacks and Program materials;
- m. Speaking to other members of the legal community interested in equity issues, including Mapping Her Path, WLF, and the BC Paralegals Association;
- n. Attending Canadian Bar Association section meetings on equity-related topics;
- o. Coordinating with Thompson Rivers University to attend and speak to students in September 2018;
- p. Coordinating with the University of Victoria to attend and speak to students in September 2018; and
- q. Coordinating with the Lawyers Assistance Program to co-present at the CLEBC Human Rights Law Conference in November 2018 on the value proposition of equity, inclusion, and wellness in the legal profession.

## 2017 in Review – Statistics

14. Please find attached as **Appendix “E”** to this report the statistics provided by Ms. Chopra from January 1, 2017 to September 30, 2017 on contact with the Program.

15. I gathered my own data from August 28, 2017 to June 30, 2018 and can report the following in regard to contact with the Program:

- a. I was contacted by 32 individuals to discuss matters, with initial contact (callers in some cases made follow up contact in a subsequent month, not captured below but described in the following paragraph) broken down by month as follows:

<b>September</b>	<b>October</b>	<b>November</b>	<b>December</b>
1	6	5	4
<b>January</b>	<b>February</b>	<b>March</b>	<b>April</b>
4	4	2	2
<b>May</b>	<b>June</b>		
2	2		

- b. The 32 individuals who contacted me to discuss matters resulted in 65 emails and phone calls to the Program. Some individuals contacted the Program once, others multiple times on the same or similar issues.
- c. Of the 32 individuals who contacted me, 22 of the new matters were within the mandate of the Program.
- d. Of the 22 matters that were within the mandate of Program:
- i. I spoke to lawyers, articling students, law students, and legal administrative staff in the following numbers:

<b>Lawyers</b>	<b>Articling Students</b>	<b>Law Students</b>	<b>Legal Administrative Staff</b>
17	3	1	1

- ii. I spoke to individuals from the Greater Vancouver Area, Vancouver Island, the Interior, and outside of British Columbia in the following numbers:

<b>Greater Vancouver Area</b>	<b>Vancouver Island</b>	<b>Interior</b>	<b>Outside British Columbia</b>
16	3	2	1

- iii. I spoke to individuals about discrimination and harassment on the basis of sex, race, physical/mental impairment, gender identity/expression, criminal conviction unrelated to job duties, general policy questions, and requests for general information in the following numbers (noting that a contact may have covered multiple subjects):

<b>Equity Issue Raised</b>	<b>Number of Times Raised</b>
Sex	9
Race	5
Physical/Mental Impairment	3
Gender Identity/Expression	1
Unrelated Criminal Conviction	2
Policy	2
Information	3
N/A	1

- iv. I spoke to 8 people about a workplace issue. Of the 8 contacts, 4 were from medium-sized firms (10-50 lawyers), 2 were from small firms (less than 10 lawyers), and 2 were from the government.

16. Although the mandate of the Program includes mediating disputes if all parties consent, I did not perform any mediations during the Term. It also appears that Ms. Chopra did not perform any mediations during the Term.

## 2017 in Review – Overall Observations

17. As you will see in **Appendix “E”**, Ms. Chopra did not identify any new trends.

18. In terms of contact content, discrimination and/or harassment on the basis of sex generated the highest volume of contacts. I anticipate this issue, sexual harassment in particular, will continue to generate a higher contact volume given the #metoo and #timesup movements.
19. In 2018, I received a number of calls from members of the public that were outside the mandate of the Program. I attribute this to being a side effect of the efforts made to promote the Program publicly. I also attribute it to confusion created by the Program's title which gives the impression to the public that I can deal with issues involving fairness more generally.
20. Overall, contact volume was relatively consistent over the course of the Program transition from Ms. Chopra to me in 2017. Although the volume of calls in the first part of 2018 is overall less than what was received by the Program in the first part of 2017, I believe this is attributable, at least in part to the overlap between calls received as a Practice Advisor and calls received as Equity Ombudsperson, explored in more detail in the next paragraph.
21. As a Practice Advisor, I give confidential advice on issues of ethics and practice management. This can include questions about personal coping and stress, workplace issues, managing relationships with other lawyers and staff, and leaving a difficult work environment, for example. These equity-related questions can arise on their own or in conjunction with a more traditional practice advice issue. Acting as both Equity Ombudsperson and a Practice Advisor, I noted a significant overlap in contact content. I took a number of calls and emails as a Practice Advisor that dealt with issues within the mandate of the Program; however, I did not track them as Program contacts as the individuals were contacting the Practice Advice department. The calls were often either directed or referred to me given by background in workplace law and approachable, empathetic demeanor, but were not indicative of individuals trying to contact the Program specifically. My fellow Practice Advisors also field calls and emails on these issues. Accordingly, I think it is reasonable to conclude that the need for, and usage of Law Society resources regarding equity and wellness issues, is much higher than Program-specific contacts.

## Looking Forward

22. In addition to clarifying the current mandate and increasing awareness about the Program, I also have spent a significant amount of time contemplating the future of the Program and how it may need to change now that it is internal to the Law Society.

23. The overlap in content between the requests received by Practice Advice and the Program, along with the integration of the Program within the Law Society, have lead me to consider whether the position actually needs two titles, or whether the position represents two facets of the same function (for example, a Practice Advisor with a focus on equity and wellness issues).
24. The title of Equity Ombudsperson needs to be adjusted to reflect the transition of the Program being carried out by an external party to an internal program at the Law Society. The hope here is to account for the confusion the title creates with members of the public and clarify the role for callers within the mandate of the Program.
25. These are issues that I continue to consider. Overall, I am happy with what was accomplished with the Program and look forward to reporting on how we can build on that success.

**I. APPENDIX A: Background to the Program- Prepared by LSBC - *Provided for New Benchers***

Background

The Law Society of British Columbia (the "Law Society") launched the Discrimination Ombudsperson program in 1995, the first Canadian law society to do so. It is now referred to as the Equity Ombudsperson Program, (the "Program") to reflect its pro-active and positive approach. The purpose of the program was to set up an informal process at arms-length to the Law Society, which effectively addressed the sensitive issues of discrimination and harassment in the legal profession as identified in the various gender and multiculturalism reports previously commissioned by the Law Society.

In the past thirteen years, the Program has been challenged with funding. Accordingly, it has undergone a number of reviews and revisions to address program efficiency, cost-effectiveness and the evolving understanding of the needs of the profession. In 2005, ERG Research Group ("ERG") was retained to conduct an independent study of the Program. ERG concluded that the complainants who accessed the Program "were overwhelmingly satisfied with the way the complaint or request was handled."

The Program has been divided into the following five (5) key functions:

1. Intake and Counseling: receiving complaints from, providing information to, and discussing alternative solutions regarding complaints with members, articled students, law students and support staff working for legal employers;
2. Mediation: resolving complaints informally with the consent of both the complainant and the respondent;
3. Education: providing information and training to law firms about issues of harassment in the workplace;
4. Program Design: at the request of a law firm, assisting in the development and implementation of a workplace or sexual harassment policy; and
5. Reporting: collecting statistics on the types of incidences and their distribution in the legal community, of discrimination or harassment and preparing a general statistical report to the Law Society, on an annual basis.

The original intention of the Law Society was to apportion these key functions among several parties, as follows:

- A. The Ombudsperson would be responsible for: 1. Intake and Counselling and 5. Reporting
- B. A Panel of Independent Mediators would be responsible for: 2. Mediation
- C. The Law Society and the Ombudsperson would both be responsible for: 3. Education and 4. Program Design

From a practical perspective, the above responsibilities have not been apportioned to the intended parties.



With regard to education, the Law Society is not actively involved, other than to distribute model policies on demand. Further, from an operational side, it has become quite evident that it is very impractical to call on mediators from a roster. When a situation demands attention, it is on an expedited and immediate basis. Further, no evidence exists to date that there is a need for a mediator on a regular basis. For example, over the last two years mediators were called on four occasions but they were unavailable due to various reasons: delay in returning the call; a conflict made them unable to represent the client; one did not have the capacity to take the work; and another was on vacation. Accordingly, it was concluded that it was challenging to retain a qualified mediator with the requisite expertise, in an appropriate length of time. The costs and inefficiencies to retain a mediator to address highly stressed, emotional and potentially explosive situations was also a concern and consequently the Ombudsperson has been directly handling the conflict by using her mediation skills. As a result, all components of the Program are currently being handled, primarily, by the Ombudsperson.

### **Description of Service since 2006**

The Equity Ombudsperson:

- Provides confidential, independent and neutral assistance to lawyers, support staff working for legal employers, articling students and clients who have concerns about any kind of discrimination or harassment. The Ombudsperson **does not** disclose to anyone, including the Law Society, the identity of those who contact her about a complaint or the identity of those about whom complaints are made;
- Provides mediation services to law firms when required to resolve conflict or issues on an informal and confidential basis;
- Is available to the Law Society as a general source of information on issues of discrimination and harassment as it relates to lawyers and staff who are engaged in the practice of law. From a practical perspective, the Ombudsperson is available to provide information generally, where relevant, to any Law Society task force, committee or initiative on the forms of discrimination and harassment;
- Delivers information sessions on the Program to PLTC students, law students, target groups, CBA sub-section meetings and other similar events;
- Provides an annual report to the Law Society. The reporting consists of a general statistical nature in setting out the number and type of calls received;
- Liaises with the Law Society policy lawyer in order to keep her informed of the issues and trends of the Program; and
- Provides feedback sheets for the Program to callers who have accessed the service.

### **Objective of the Program**

The objective of the Program is to resolve problems. In doing so, the Equity Ombudsperson maintains a neutral position and does not provide legal advice. She advises complainants about the options available to them, which include filing a formal complaint with the Law Society or with the Human Rights Tribunal; commencing a civil action, internal firm process, or having the Ombudsperson attempt to resolve informally or mediate a discrimination or harassment dispute.

The Equity Ombudsperson is also available to consult with and assist any private or public law office, which is interested in raising staff awareness about the importance of a respectful workplace environment. She is available to assist law firms in implementing office policies on parental leave, alternative work schedules, harassment and a respectful workplace. She can provide educational seminars for members of firms, be available for personal speaking engagements and informal meetings, or can talk confidentially with a firm about a particular problem. The services of the Equity Ombudsperson are provided free of charge to members, staff, articling students and law students.

Equity Ombudsperson programs have been a growing trend among Canadian law societies since 1995. Currently the Law Societies of British Columbia, Alberta, Manitoba, Ontario and Saskatchewan have Equity Ombudsperson type positions. The Nova Barristers' Society has a staff Equity Officer who fulfills a similar role.

As these law societies have established and publicized these services, it has assisted staff and lawyers, from a practical perspective, to access information and resources to assist them in learning about their options, so that they are in a position to consider and take the appropriate steps to deal with the issues of discrimination and harassment. Further, the establishment of the Program continues to send a positive and powerful reminder to the legal profession about the importance of treating everyone equally, with respect and dignity. Achieving this goal is crucial to ensure a respectful and thriving legal profession.

# Form

The Law Society  
of British Columbia



845 Cambie Street, Vancouver, BC, Canada V6B 4Z9  
t 604.669.2533 | toll-free 1.800.903.5300  
f 604.687.0135 | TTY 604.443.5700  
lawsociety.bc.ca

## Job Description

### PART A: Position information

**Job Title:** Staff Lawyer, Practice Advice - Equity Ombudsperson

**Department:** Practice Advice

**Manager:** Manager, Standards, Professional Development and Practice Advice

### PART B: Job Description

The Staff Lawyer, Practice Advice - Equity Ombudsperson has a combined role within the Practice Advice department.

The focus of the Practice Advisor role is to provide confidential ethics and practice management advice to lawyers and articling students, including determining appropriate professional conduct, assisting in the resolution of professional conflicts, and developing practice support resource materials.

The focus of the Equity Ombudsperson role is to provide confidential advice, information and assistance to lawyers, support staff and articling students on issues of discrimination or harassment in the context of the practice of law, including developing related practice support resource materials.

The Practice Advisor and Equity Ombudsperson role requires frequent contact with lawyers and articling students.

The Practice Advice and Equity Ombudsperson duties include:

- Communication with the profession.
- Intake, advice and intervention:
  - Providing information, advice, and assistance in response to inquiries.
  - Receiving inquiries regarding discrimination or harassment.
  - Mediating discrimination or harassment concerns informally with the consent of the complainant and respondent.
- Preparing articles for publishing in the Benchers Bulletin and E-Brief.
- Developing and updating practice support materials.
- Preparing and presenting speaking engagements and organizing courses.
- Analyzing issues of concern to lawyers and making recommendations for action such as changes to the Law Society Rules and the Code of Professional Conduct for BC.
- Equity Ombudsperson program reporting includes providing annual reports to the Manager, Standards, Professional Development and Practice Advice, the Benchers, and the Equity and Diversity Advisory Committee, including statistical data on frequency of program use, types of inquiries dealt with, geographical location of callers, outcomes of inquiries (i.e. resolved or unresolved) and any other pertinent non-confidential data.
- Equity Ombudsperson program education and policy development includes

- Assisting the Law Society in the development of the content of its equity and diversity initiatives including educational sessions, publications and policy development.
- Receiving and coordinating requests for educational sessions regarding equity, diversity, and inclusion, and conducting such sessions.
- Such other duties as the Manager, Standards, Professional Development and Practice Advice may require.

The nature of the dual role requires significant knowledge of practicing concepts, a high degree of autonomy, self-direction, and a comprehensive understanding of the Law Society Rules and the *Code of Professional Conduct for BC*. The Staff Lawyer, Practice Advice – Equity Ombudsperson operates with the general oversight of the Manager, Standards, Professional Development and Practice Advice.

### **PART C: Qualifications**

Practising membership in the Law Society of BC or eligibility for membership. A minimum of five years of recent practice experience, including extensive experience in resolving discrimination and harassment concerns. Expertise in the field of equity, diversity and inclusion. Expertise in mediation and conflict resolution. A high level of knowledge and understanding of employment law and of human rights theory, legislation, and policy. Superior writing and excellent interpersonal, communication, and presentation skills. Ability to meet changing deadlines and work in highly stressful situations.

# Equity Ombudsperson

## Objective

The Equity Ombudsperson, Claire Marchant, assists individuals and employers with resolving concerns about discrimination and harassment.

Lawyers, articulated students, law students and support staff of legal employers are all free to contact the Equity Ombudsperson. The service is voluntary, confidential and free to participants.

Claire is an employee of the Law Society of British Columbia in the Practice Advice department. Calls to her will remain strictly confidential, protected by the same measures that safeguard the confidentiality of all calls to Practice Advisors.

## Operations

The Equity Ombudsperson is responsible for:

- a. Intake and advice: receiving complaints, providing information, and discussing options.
- b. Mediation: resolving complaints informally with the consent of both the complainant and respondent.
- c. Reporting: providing statistical reports on the incidents of discrimination and harassment dealt with by the Equity Ombudsperson, as well as the number of proactive measures undertaken by the Equity Ombudsperson (such as educational presentations, policy development, etc.);
- d. Education: collaborating with Law Society staff in developing the content of the Law Society's educational initiatives to prevent discrimination and harassment in the legal profession; and
- e. Program design: assisting Law Society staff in the development of model equity and diversity policies.

## What can you do as Benchers to support this program?

- Some lawyers may contact their local Benchers for assistance with concerns regarding discrimination or harassment. Benchers may refer such inquiries to the Equity

Ombudsperson. Claire may be reached directly at 604.605.5303 or [equity@lsbc.org](mailto:equity@lsbc.org). Claire can also be reached outside business hours on her cell phone at 236.888.2133. Benchers may also consult with the Equity Ombudsperson prior to providing information to the lawyer.

- The Equity Ombudsperson will make a short document outlining the program and her services available to Benchers. Your support in providing this document to lawyers, articulated students, law students, and support staff of legal employers would much appreciated. For example, you may wish to provide the document to articling students during Bencher interviews.
- Benchers are welcome to review the online practice resources made available to lawyers by the department. The information can be accessed through the [Support and Resources for Lawyers](#) section of the website under the Equity Ombudsperson heading.

## Key Performance Measures

- The Equity Ombudsperson joined the Practice Advice Department in August 2017; accordingly, Key Performance Measures will be developed for 2018.



# Information

## Equity Ombudsperson Program

*The Law Society provides the legal profession in British Columbia with the services of an Equity Ombudsperson, who can assist with resolving concerns about discrimination and discriminatory harassment.*

### Who can contact the Equity Ombudsperson?

Lawyers, articulated students, law students and support staff of legal employers are all free to contact the Equity Ombudsperson.

The service is voluntary, confidential and free to participants.

### Who is the Equity Ombudsperson?

Claire Marchant is the Equity Ombudsperson. Claire is an employee of the Law Society of British Columbia in the Practice Advice department. Calls to her will remain strictly confidential, protected by the same measures that safeguard the confidentiality of all calls to Practice Advisors.

### What is discrimination?

Discrimination may involve unwelcome comments or actions related to:

- Race
- Colour
- Ancestry
- Place of origin
- Political belief
- Religion
- Marital status
- Family status
- Physical impairment
- Mental health issue
- Sex
- Sexual orientation
- Gender identity or expression

- Age
- Conviction of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

It is the impact of the behaviour — not the intention behind it — that determines if the behaviour is discriminatory.

## **What is discriminatory harassment?**

Discriminatory harassment can take many forms, including:

- Name-calling
- Racial slurs
- Religious jokes
- Sexual harassment
- Sexual harassment is a form of discrimination based on sex and may include:
  - Unwanted touching, sexual flirtation, advances or propositions
  - Leering
  - Suggestive comments about a person's sexuality or sexual orientation
  - Unwanted questions about a person's sex life
  - Persistent unwanted contact or attention after the end of a consensual relationship.

## **What can the Equity Ombudsperson do to help?**

- Intake and Advice: Receive inquiries, provide information, and discuss options.
- Mediation: Resolve concerns informally with the consent of both the complainant and respondent.
- Reporting: Provide anonymized statistical reports on the incidents of discrimination and discriminatory harassment dealt with by the Equity Ombudsperson, as well as the proactive measures undertaken by the Equity Ombudsperson to prevent discrimination and discriminatory harassment in the legal profession.

## **Contact the Equity Ombudsperson**

You can reach Equity Ombudsperson Claire Marchant at [equity@lsbc.org](mailto:equity@lsbc.org), 604.605.5303, or 236.888.2133.



## September 30<sup>th</sup> 2017 CALLS OMBUDS SUMMARY

TOTAL CALLS: 59 new matter calls

NEW CONTACTS in mandate: 55

OUTSIDE OF MANDATE: 4

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Total calls	In mandate
4	4	8	7	3	6	10	7	10	59	55

### MEANS OF CONTACT:

MAIL:0

EMAIL: 20

PHONE: 39 (three in person of these for initial contact)

VANCOUVER	76
VICTORIA	31
OUTSIDE LOWER MAINLAND/VICTORIA	54
OUTSIDE MANDATE	8
Total calls (callers could call two to three times on matter- further there were three in person meetings for initial contact)	<b>161</b> in mandate

### PROFILE DISTRIBUTION- mandate 161

Associates	Partners	Students	Articling Students	Support Staff
25	19	29	55	33

### GENDER- mandate 161

FEMALE	MALE
101	60

### SIZE OF FIRM (percent distribution of 161 calls)

SMALL	MEDIUM	LARGE
39 %	30%	31%

GROUPS OF DISCRIMINATION: mandate initial calls of 55 in mandate and distribution on the issues.

SEX	POLICY	WORKPLACE	RACE	DISABILITY	AGE	SEX ORIENT	ETHNIC	Other/transi tion info of program
21	8	11	5	2	0	1	2	5

STATS WERE NOT MAINTAINED SPECIFICALLY ON ALL SERVICES PROVIDED.  
OMBUDS PERSON WAS NOT INTENDING ON RENDERING AN ANNUAL REPORT.

*INFORMATION AND SPECIFIC POLICY CONCERN AS NOTED.*

*5 CALLS ON THE NATURE OF TRANSITION.*

*No new trends identified.*

*No further outreach conducted by ombudsperson*

MORE CALLERS MET IN PERSON more as they were advised of my departure and change in ombudsperson.

Termination of Program:

Line disconnected

ALL INTAKE /NOTES (practice is to destroy on a monthly basis) Please note all emails deleted and trash cleaned.

All notes shredded.

Pamphlets delivered/ returned to LSBC.

# Equity Ombudsperson

## Objective

The Equity Ombudsperson, Claire Marchant, assists individuals and employers with resolving concerns about discrimination and harassment.

Lawyers, articulated students, law students and support staff of legal employers are all free to contact the Equity Ombudsperson. The service is voluntary, confidential and free to participants.

Claire is an employee of the Law Society of British Columbia in the Practice Advice department. Calls to her will remain strictly confidential, protected by the same measures that safeguard the confidentiality of all calls to Practice Advisors.

## Operations

The Equity Ombudsperson is responsible for:

- a. Intake and advice: receiving complaints, providing information, and discussing options.
- b. Mediation: resolving complaints informally with the consent of both the complainant and respondent.
- c. Reporting: providing statistical reports on the incidents of discrimination and harassment dealt with by the Equity Ombudsperson, as well as the number of proactive measures undertaken by the Equity Ombudsperson (such as educational presentations, policy development, etc.);
- d. Education: collaborating with Law Society staff in developing the content of the Law Society's educational initiatives to prevent discrimination and harassment in the legal profession; and
- e. Program design: assisting Law Society staff in the development of model equity and diversity policies.

## What can you do as Benchers to support this program?

- Some lawyers may contact their local Benchers for assistance with concerns regarding discrimination or harassment. Benchers may refer such inquiries to the Equity

Ombudsperson. Claire may be reached directly at 604.605.5303 or [equity@lsbc.org](mailto:equity@lsbc.org). Claire can also be reached outside business hours on her cell phone at 236.888.2133. Benchers may also consult with the Equity Ombudsperson prior to providing information to the lawyer.

- The Equity Ombudsperson will make a short document outlining the program and her services available to Benchers. Your support in providing this document to lawyers, articulated students, law students, and support staff of legal employers would much appreciated. For example, you may wish to provide the document to articling students during Bencher interviews.
- Benchers are welcome to review the online practice resources made available to lawyers by the department. The information can be accessed through the [Support and Resources for Lawyers](#) section of the website under the Equity Ombudsperson heading.

## **Key Performance Measures**

- The Equity Ombudsperson joined the Practice Advice Department in August 2017; accordingly, Key Performance Measures will be developed for 2018.



# Information

## Equity Ombudsperson Program

*The Law Society provides the legal profession in British Columbia with the services of an Equity Ombudsperson, who can assist with resolving concerns about discrimination and discriminatory harassment.*

### Who can contact the Equity Ombudsperson?

Lawyers, articulated students, law students and support staff of legal employers are all free to contact the Equity Ombudsperson.

The service is voluntary, confidential and free to participants.

### Who is the Equity Ombudsperson?

Claire Marchant is the Equity Ombudsperson. Claire is an employee of the Law Society of British Columbia in the Practice Advice department. Calls to her will remain strictly confidential, protected by the same measures that safeguard the confidentiality of all calls to Practice Advisors.

### What is discrimination?

Discrimination may involve unwelcome comments or actions related to:

- Race
- Colour
- Ancestry
- Place of origin
- Political belief
- Religion
- Marital status
- Family status
- Physical impairment
- Mental health issue
- Sex
- Sexual orientation
- Gender identity or expression

- Age
- Conviction of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

It is the impact of the behaviour — not the intention behind it — that determines if the behaviour is discriminatory.

## **What is discriminatory harassment?**

Discriminatory harassment can take many forms, including:

- Name-calling
- Racial slurs
- Religious jokes
- Sexual harassment
- Sexual harassment is a form of discrimination based on sex and may include:
  - Unwanted touching, sexual flirtation, advances or propositions
  - Leering
  - Suggestive comments about a person's sexuality or sexual orientation
  - Unwanted questions about a person's sex life
  - Persistent unwanted contact or attention after the end of a consensual relationship.

## **What can the Equity Ombudsperson do to help?**

- Intake and Advice: Receive inquiries, provide information, and discuss options.
- Mediation: Resolve concerns informally with the consent of both the complainant and respondent.
- Reporting: Provide anonymized statistical reports on the incidents of discrimination and discriminatory harassment dealt with by the Equity Ombudsperson, as well as the proactive measures undertaken by the Equity Ombudsperson to prevent discrimination and discriminatory harassment in the legal profession.

## **Contact the Equity Ombudsperson**

You can reach Equity Ombudsperson Claire Marchant at [equity@lsbc.org](mailto:equity@lsbc.org), 604.605.5303, or 236.888.2133.

# The Law Society helps address concerns about sexual harassment in the legal profession

OVER THE PAST two years, there has been a significant shift in how the public talks about sexual harassment. The #MeToo movement was a game changer. Many felt for the first time that they were able to speak publicly about personal experiences with sexual harassment. The movement began by shining a spotlight on the entertainment and media world, but it has gone on to reveal sexual harassment in multiple sectors.

There is no reason to believe that the legal profession is immune. Since awareness was raised by the #MeToo movement, the Law Society has seen a modest increase in complaints. However, members of the profession might fear speaking out for a number of reasons, including fear of being isolated and stigmatized or concern about possible retribution.

The Law Society wants to ensure that those who have experienced sexual harassment, which is but one form of sexual misconduct, know their options and are aware of the support that is available to them.

## UNDERSTANDING THE PROBLEM

Sexual harassment is discrimination based on sex. It comes in many forms, including unwanted touching, flirtation, advances or propositions. It also includes such behaviour as leering, suggestive comments, persistent unwanted contact or attention after the end of a consensual relationship. Sexual harassment often involves abuse of power, which makes it more difficult for individuals to come forward.

A 2014 Angus Reid poll concluded that three in 10 Canadians received unwelcome sexual advances, requests for sexual favours or sexually charged talk while at work. Women were almost four times as likely to have been harassed as men. That poll found that four in five victims never reported the behaviour to their employers. Many said they preferred to deal with the problem on their own. Others said they were afraid of losing their job or hurting their career. Some were reluctant to bring a complaint for fear of retaliation, while others feared having to testify at a hearing and being cross-examined on sensitive matters.

## The equity ombudsperson: A resource for lawyers and law firms



To assist in resolving workplace harassment and encourage fair workplace practices, the Law Society provides BC law firms with the services of an equity ombudsperson, who confidentially helps individuals and law firms resolve concerns regarding discrimination and harassment and promoting a healthy work environment.

Calls to the equity ombudsperson remain strictly confidential, protected by the same measures that safeguard the confidentiality of all calls to practice advisors. Lawyers, articulated students, law students and support staff of legal employers may contact the equity ombudsperson.

For free, confidential advice, contact the equity ombudsperson, Claire Marchant, at [equity@lsbc.org](mailto:equity@lsbc.org) or 604.605.5303. For more information about the program, see our website at Support and Resources for Lawyers > [Lawyer Wellness and Personal Support](#). ♦

A 2018 survey of the legal profession done by the New Zealand Law Society found similar results: whereas 18 per cent of lawyers reported experiencing a form of harassment, just 12 per cent of those had formally reported it or made a complaint about it.

## FOSTERING POSITIVE WORK ENVIRONMENTS

Proactively addressing these issues starts at law firms themselves. A good starting point is a formal policy that describes unacceptable workplace behaviour and establishes a formal complaints process. The Law Society offers a [Respectful Workplace Guide](#) to help draft such a policy.

Ongoing training is also an important part of fostering a positive workplace culture. Regularly training all lawyers and staff on workplace harassment policies ensures that everyone is aware of unacceptable behaviour and of the available resources.

Leadership also plays an important

role in fostering a healthy workplace. Individuals in positions of authority are the ones who ultimately are the driving force behind a culture shift.

## TAKING ACTION

When sexual harassment does occur, there are several recourses. A respectful workplace policy provides a mechanism for resolving complaints internally. Additionally, individuals may make a complaint to the Human Rights Tribunal or even make a criminal complaint to the police.

A complaint may also be made to the Law Society. The *Code of Professional Conduct for British Columbia* specifically prohibits lawyers from sexually harassing any person and also includes broader provisions requiring that lawyers act honourably and with dignity, and that they be courteous and civil in the course of their practice.

*continued on page 14*

a cloud-based storage provider,<sup>12</sup> you may wish to delete cloud-based applications before crossing the border and reinstall afterwards. Similarly, client contact and calendar information can be deleted from smart phones and subsequently restored through internet services. Contact your IT professionals about how to securely reinstall deleted applications.

12. Use encryption and secure passwords. Use two-factor authentication to control access to your accounts. It will not deter initial access to your electronic device during a border search, but in the event that your electronic device is seized for further examination, protected accounts may not be accessible.<sup>13</sup>
13. If a CBSA officer retains or accesses your device, get a receipt and make sure that you have a detailed description of the device including make, model and serial number.
14. If you refuse to provide your device's password to allow examination or if there are technical difficulties preventing a CBSA officer from examining the device, the CBSA officer may detain the device for examination by an expert trained in forensic examinations.<sup>14</sup> Under the 2015 operational bulletin, until further instructions are

issued, CBSA officers have been advised not to arrest a traveller for hindering solely for refusing to provide a password; a restrained approach is to be adopted until the matter is settled in ongoing court proceedings.<sup>15</sup> It may be advisable to seek legal advice if you anticipate refusing to provide the password to your device to a CBSA officer.

15. Consider applying for a Nexus pass. Nexus is run jointly by the CBSA and CPB. While having a pass does not mean you will not be searched, low-risk, pre-approved travellers into Canada and the US enjoy expedited clearance at participating US and Canadian airports, land and marine border crossings.

For questions or comments, please contact Barbara Buchanan, QC at [bbuchanan@lsbc.org](mailto:bbuchanan@lsbc.org) or 604.697.5816. ❖

#### Endnotes:

1. Paralegals, accountants, bookkeepers, information technology professionals, etc. may have privileged information on their devices.
2. Barbara Buchanan, QC, "Client confidentiality – think twice before taking your laptop or smart phone across border" (*Benchers' Bulletin*, Spring 2017) online: Law Society of British Columbia at 11.

3. BC Civil Liberties Association, *supra* note 5 at 49.

4. *Ibid* at 24-25.

5. This will prevent any new incoming texts, emails, calls and other communications from your applications.

6. Canadian Border Services Agency, Operational Bulletin PRG-2015-31, Examination of Digital Devices and Media at the Port of Entry – Interim Guidelines, 30 June 2015, *supra* note 7; US Customs and Border Protection, CBP Directive No. 3340-049A, *supra* note 27.

7. Goodale, *supra* note 7.

8. CCA, *supra* note 2, s 99.2(3).

9. *Ibid*, s 99.2(4).

10. A client's needs and expectations are ideally explored at the beginning of the solicitor-client relationship and dealt with in the retainer agreement. Consider asking simple questions such as whether it is acceptable to share the name of the client and to disclose the purpose of the retainer.

11. BC Civil Liberties Association, *supra* note 6 at 42-44.

12. The Law Society of BC has a Cloud Computing Checklist (May 2017) and Law Society Rules 10-3 and 10-4 regarding cloud storage providers, standards and security.

13. *Supra* note 6 at 46.

14. *Customs Act*, RSC 1985, c 1 (2nd Supp), s 101.

15. *Supra* note 7 and *Customs Act*, s. 153.1.

#### Sexual harassment ... from page 7

The Law Society's Professional Conduct group handles sexual harassment investigations in a fair, sensitive and respectful manner. In most cases, the investigating lawyer will meet in person with the complainant and other witnesses to conduct interviews and obtain the subject lawyer's response to the conduct concerns and gather relevant documentary evidence. The investigation concludes with an assessment of whether there is sufficient evidence of misconduct to warrant further disciplinary proceedings.

A complaint may lead to a citation. Investigations into sexual harassment have

also resulted in conduct reviews. A conduct review is a formal meeting ordered by the Discipline Committee and conducted by a two-person panel. It is a serious disciplinary outcome and becomes a part of a lawyer's professional conduct record. The complainant is not required to participate in a conduct review, and confidentiality is protected, as the summary of the review is published anonymously.

While the Law Society recognizes that there are barriers to filing a complaint, such as a fear of retaliation, Law Society Rule 3-3(1) and section 87 of the *Legal Profession Act* require that lawyers and witnesses maintain confidentiality throughout the complaint process. There

are several ways to file a complaint about professional misconduct involving sexual harassment. For details, see How to File a Complaint on the Law Society website. Questions on the complaint process can be directed to Gurprit Bains, manager, investigations, monitoring and enforcement at [GBains@lsbc.org](mailto:GBains@lsbc.org), or Karen Mok, manager, intake and early resolution at [KMok@lsbc.org](mailto:KMok@lsbc.org).

The Law Society takes sexual harassment complaints seriously, and aims to ensure that any inappropriate conduct is not repeated and that the public has confidence in the high standards the Law Society expects of the profession. ❖





## **2017 Annual/2018 Interim Report**

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### **Equity Ombudsperson Program**

Claire Marchant (Equity Ombudsperson)

August 29, 2018

Prepared for: Benchers

Prepared by: Claire Marchant, Practice Advisor/Equity Ombudsperson

Purpose: Information

## Introduction

1. The purpose of this report is to provide a review of the work undertaken as part of the Law Society of British Columbia (“**Law Society**”) Equity Ombudsperson Program (the “**Program**”) from January 1, 2017 to June 30, 2018 (the “**Term**”).
2. This report will provide anonymized data about the volume and nature of contact received by the Program, in addition to describing the other work undertaken by the Program during the Term.

## Program Transition

3. 2017 represented a year of transition for the Program. From inception in 1995, the Program was operated external to the Law Society. From May 1, 2000 to September 30, 2017, the position of Equity Ombudsperson was held by Ann Chopra, an external contractor independent of the Law Society. Please find attached as **Appendix “A”** to this report a background document on the Program up to 2017 that was attached to Ms. Chopra’s 2015 report to the Benchers for context.
4. On January 27, 2017, the Benchers decided unanimously to bring the Program in house as part of the Practice Advice Department of the Law Society. Subsequent to that decision, the position of “Practice Advisor/Equity Ombudsperson” was created within the Practice Advice Department. Please find attached as **Appendix “B”** to this report the job description for the position of “Practice Advisor/Equity Ombudsperson”.
5. Ms. Chopra served as Equity Ombudsperson until September 30, 2017. Accordingly, I am reporting on behalf of Ms. Chopra on the Program from January 1, 2017 to September 30, 2017.
6. I commenced my role at the Law Society on August 28, 2017, so am reporting on the Program from that date through June 30, 2018.

## Clarifying the Mandate

7. Upon consideration, consultation with Law Society staff and Ms. Chopra, and review of materials available regarding the Program’s history, my first priority was to clarify the mandate of the Program to allow it to operate effectively within the Law Society framework.

8. In September 2017, I attended an Ombuds Training Program operated by the Osgoode Hall Law School of York University and the Forum of Canadian Ombudsman in Toronto, Ontario. What I learned during this course of study further underscored the importance of clarifying the Program's mandate given the many differences in its functionality, as compared to the role of a traditional Ombuds. For example, a key consideration has been how the Program may need to change now that it is no longer independent of the Law Society.
9. As a first step in clarifying the mandate, I consulted with the Equity and Diversity Advisory Committee (the "**Advisory Committee**") in October 2017 to seek its input on my proposed parameters for the Program.
10. With the Advisory Committee's input, a new background document (amongst other resources discussed below) was included in the 2018 Benchers Orientation Manual that reflects the initial steps taken to clarify the Program's mandate. Please find attached as **Appendix "C"** to this report a copy of the briefing document included in your Bencher Orientation Manual for reference.
11. From October 2017 through June 30, 2018, the Program operated within this "first iteration" mandate, clarified to test its viability.
12. Further clarifying the mandate of the Program remains a high priority.

## Program Awareness Initiatives

13. From September 2017 to June 2018, a number of initiatives were undertaken to promote awareness of the Program and myself as Equity Ombudsperson, including:
  - a. Updating materials about the Program on the Law Society website;
  - b. Creating an Information Sheet about the Program (please find attached as **Appendix "D"** to this report a copy of the Information Sheet, which can be distributed at Bencher's individual discretion);
  - c. Updating the PLTC written materials and teaching notes on the Program;
  - d. Attending the PLTC fair in Vancouver in September 2017, meeting PLTC students and distributing snacks and Program materials;

- e. Speaking as a part of a panel on workplace sexual harassment at a Women Lawyers Forum event in October 2017;
- f. Updating the CLE BC online workplace sexual harassment course material and recording revised video clips for the course;
- g. Creating a video about the Program for Mapping Her Path to show at events;
- h. Speaking at the American Bar Association mid-year meeting in February 2018 on the value proposition of diversity and inclusion;
- i. Attending the PLTC fair in Vancouver in February 2018, meeting PLTC students and distributing snacks and Program materials;
- j. Attending the Law Society Equity Network meeting in May 2018;
- k. Speaking at a Women in Law event in May 2018 about the Program;
- l. Attending the PLTC fair in Vancouver in June 2018, meeting PLTC students and distributing snacks and Program materials;
- m. Speaking to other members of the legal community interested in equity issues, including Mapping Her Path, WLF, and the BC Paralegals Association;
- n. Attending Canadian Bar Association section meetings on equity-related topics;
- o. Coordinating with Thompson Rivers University to attend and speak to students in September 2018;
- p. Coordinating with the University of Victoria to attend and speak to students in September 2018; and
- q. Coordinating with the Lawyers Assistance Program to co-present at the CLEBC Human Rights Law Conference in November 2018 on the value proposition of equity, inclusion, and wellness in the legal profession.

## 2017 in Review – Statistics

14. Please find attached as **Appendix “E”** to this report the statistics provided by Ms. Chopra from January 1, 2017 to September 30, 2017 on contact with the Program.

15. I gathered my own data from August 28, 2017 to June 30, 2018 and can report the following in regard to contact with the Program:

- a. I was contacted by 32 individuals to discuss matters, with initial contact (callers in some cases made follow up contact in a subsequent month, not captured below but described in the following paragraph) broken down by month as follows:

<b>September</b>	<b>October</b>	<b>November</b>	<b>December</b>
1	6	5	4
<b>January</b>	<b>February</b>	<b>March</b>	<b>April</b>
4	4	2	2
<b>May</b>	<b>June</b>		
2	2		

- b. The 32 individuals who contacted me to discuss matters resulted in 65 emails and phone calls to the Program. Some individuals contacted the Program once, others multiple times on the same or similar issues.
- c. Of the 32 individuals who contacted me, 22 of the new matters were within the mandate of the Program.
- d. Of the 22 matters that were within the mandate of Program:
- i. I spoke to lawyers, articling students, law students, and legal administrative staff in the following numbers:

<b>Lawyers</b>	<b>Articling Students</b>	<b>Law Students</b>	<b>Legal Administrative Staff</b>
17	3	1	1

- ii. I spoke to individuals from the Greater Vancouver Area, Vancouver Island, the Interior, and outside of British Columbia in the following numbers:

<b>Greater Vancouver Area</b>	<b>Vancouver Island</b>	<b>Interior</b>	<b>Outside British Columbia</b>
16	3	2	1

- iii. I spoke to individuals about discrimination and harassment on the basis of sex, race, physical/mental impairment, gender identity/expression, criminal conviction unrelated to job duties, general policy questions, and requests for general information in the following numbers (noting that a contact may have covered multiple subjects):

<b>Equity Issue Raised</b>	<b>Number of Times Raised</b>
Sex	9
Race	5
Physical/Mental Impairment	3
Gender Identity/Expression	1
Unrelated Criminal Conviction	2
Policy	2
Information	3
N/A	1

- iv. I spoke to 8 people about a workplace issue. Of the 8 contacts, 4 were from medium-sized firms (10-50 lawyers), 2 were from small firms (less than 10 lawyers), and 2 were from the government.

16. Although the mandate of the Program includes mediating disputes if all parties consent, I did not perform any mediations during the Term. It also appears that Ms. Chopra did not perform any mediations during the Term.

## 2017 in Review – Overall Observations

17. As you will see in **Appendix “E”**, Ms. Chopra did not identify any new trends.

18. In terms of contact content, discrimination and/or harassment on the basis of sex generated the highest volume of contacts. I anticipate this issue, sexual harassment in particular, will continue to generate a higher contact volume given the #metoo and #timesup movements.
19. In 2018, I received a number of calls from members of the public that were outside the mandate of the Program. I attribute this to being a side effect of the efforts made to promote the Program publicly. I also attribute it to confusion created by the Program's title which gives the impression to the public that I can deal with issues involving fairness more generally.
20. Overall, contact volume was relatively consistent over the course of the Program transition from Ms. Chopra to me in 2017. Although the volume of calls in the first part of 2018 is overall less than what was received by the Program in the first part of 2017, I believe this is attributable, at least in part to the overlap between calls received as a Practice Advisor and calls received as Equity Ombudsperson, explored in more detail in the next paragraph.
21. As a Practice Advisor, I give confidential advice on issues of ethics and practice management. This can include questions about personal coping and stress, workplace issues, managing relationships with other lawyers and staff, and leaving a difficult work environment, for example. These equity-related questions can arise on their own or in conjunction with a more traditional practice advice issue. Acting as both Equity Ombudsperson and a Practice Advisor, I noted a significant overlap in contact content. I took a number of calls and emails as a Practice Advisor that dealt with issues within the mandate of the Program; however, I did not track them as Program contacts as the individuals were contacting the Practice Advice department. The calls were often either directed or referred to me given by background in workplace law and approachable, empathetic demeanor, but were not indicative of individuals trying to contact the Program specifically. My fellow Practice Advisors also field calls and emails on these issues. Accordingly, I think it is reasonable to conclude that the need for, and usage of Law Society resources regarding equity and wellness issues, is much higher than Program-specific contacts.

## Looking Forward

22. In addition to clarifying the current mandate and increasing awareness about the Program, I also have spent a significant amount of time contemplating the future of the Program and how it may need to change now that it is internal to the Law Society.

23. The overlap in content between the requests received by Practice Advice and the Program, along with the integration of the Program within the Law Society, have lead me to consider whether the position actually needs two titles, or whether the position represents two facets of the same function (for example, a Practice Advisor with a focus on equity and wellness issues).
24. The title of Equity Ombudsperson needs to be adjusted to reflect the transition of the Program being carried out by an external party to an internal program at the Law Society. The hope here is to account for the confusion the title creates with members of the public and clarify the role for callers within the mandate of the Program.
25. These are issues that I continue to consider. Overall, I am happy with what was accomplished with the Program and look forward to reporting on how we can build on that success.



**I. APPENDIX A: Background to the Program- Prepared by LSBC - *Provided for New Benchers***

Background

The Law Society of British Columbia (the "Law Society") launched the Discrimination Ombudsperson program in 1995, the first Canadian law society to do so. It is now referred to as the Equity Ombudsperson Program, (the "Program") to reflect its pro-active and positive approach. The purpose of the program was to set up an informal process at arms-length to the Law Society, which effectively addressed the sensitive issues of discrimination and harassment in the legal profession as identified in the various gender and multiculturalism reports previously commissioned by the Law Society.

In the past thirteen years, the Program has been challenged with funding. Accordingly, it has undergone a number of reviews and revisions to address program efficiency, cost-effectiveness and the evolving understanding of the needs of the profession. In 2005, ERG Research Group ("ERG") was retained to conduct an independent study of the Program. ERG concluded that the complainants who accessed the Program "were overwhelmingly satisfied with the way the complaint or request was handled."

The Program has been divided into the following five (5) key functions:

1. Intake and Counseling: receiving complaints from, providing information to, and discussing alternative solutions regarding complaints with members, articled students, law students and support staff working for legal employers;
2. Mediation: resolving complaints informally with the consent of both the complainant and the respondent;
3. Education: providing information and training to law firms about issues of harassment in the workplace;
4. Program Design: at the request of a law firm, assisting in the development and implementation of a workplace or sexual harassment policy; and
5. Reporting: collecting statistics on the types of incidences and their distribution in the legal community, of discrimination or harassment and preparing a general statistical report to the Law Society, on an annual basis.

The original intention of the Law Society was to apportion these key functions among several parties, as follows:

- A. The Ombudsperson would be responsible for: 1. Intake and Counselling and 5. Reporting
- B. A Panel of Independent Mediators would be responsible for: 2. Mediation
- C. The Law Society and the Ombudsperson would both be responsible for: 3. Education and 4. Program Design

From a practical perspective, the above responsibilities have not been apportioned to the intended parties.

With regard to education, the Law Society is not actively involved, other than to distribute model policies on demand. Further, from an operational side, it has become quite evident that it is very impractical to call on mediators from a roster. When a situation demands attention, it is on an expedited and immediate basis. Further, no evidence exists to date that there is a need for a mediator on a regular basis. For example, over the last two years mediators were called on four occasions but they were unavailable due to various reasons: delay in returning the call; a conflict made them unable to represent the client; one did not have the capacity to take the work; and another was on vacation. Accordingly, it was concluded that it was challenging to retain a qualified mediator with the requisite expertise, in an appropriate length of time. The costs and inefficiencies to retain a mediator to address highly stressed, emotional and potentially explosive situations was also a concern and consequently the Ombudsperson has been directly handling the conflict by using her mediation skills. As a result, all components of the Program are currently being handled, primarily, by the Ombudsperson.

### **Description of Service since 2006**

The Equity Ombudsperson:

- Provides confidential, independent and neutral assistance to lawyers, support staff working for legal employers, articling students and clients who have concerns about any kind of discrimination or harassment. The Ombudsperson **does not** disclose to anyone, including the Law Society, the identity of those who contact her about a complaint or the identity of those about whom complaints are made;
- Provides mediation services to law firms when required to resolve conflict or issues on an informal and confidential basis;
- Is available to the Law Society as a general source of information on issues of discrimination and harassment as it relates to lawyers and staff who are engaged in the practice of law. From a practical perspective, the Ombudsperson is available to provide information generally, where relevant, to any Law Society task force, committee or initiative on the forms of discrimination and harassment;
- Delivers information sessions on the Program to PLTC students, law students, target groups, CBA sub-section meetings and other similar events;
- Provides an annual report to the Law Society. The reporting consists of a general statistical nature in setting out the number and type of calls received;
- Liaises with the Law Society policy lawyer in order to keep her informed of the issues and trends of the Program; and
- Provides feedback sheets for the Program to callers who have accessed the service.

### **Objective of the Program**

The objective of the Program is to resolve problems. In doing so, the Equity Ombudsperson maintains a neutral position and does not provide legal advice. She advises complainants about the options available to them, which include filing a formal complaint with the Law Society or with the Human Rights Tribunal; commencing a civil action, internal firm process, or having the Ombudsperson attempt to resolve informally or mediate a discrimination or harassment dispute.

The Equity Ombudsperson is also available to consult with and assist any private or public law office, which is interested in raising staff awareness about the importance of a respectful workplace environment. She is available to assist law firms in implementing office policies on parental leave, alternative work schedules, harassment and a respectful workplace. She can provide educational seminars for members of firms, be available for personal speaking engagements and informal meetings, or can talk confidentially with a firm about a particular problem. The services of the Equity Ombudsperson are provided free of charge to members, staff, articling students and law students.

Equity Ombudsperson programs have been a growing trend among Canadian law societies since 1995. Currently the Law Societies of British Columbia, Alberta, Manitoba, Ontario and Saskatchewan have Equity Ombudsperson type positions. The Nova Barristers' Society has a staff Equity Officer who fulfills a similar role.

As these law societies have established and publicized these services, it has assisted staff and lawyers, from a practical perspective, to access information and resources to assist them in learning about their options, so that they are in a position to consider and take the appropriate steps to deal with the issues of discrimination and harassment. Further, the establishment of the Program continues to send a positive and powerful reminder to the legal profession about the importance of treating everyone equally, with respect and dignity. Achieving this goal is crucial to ensure a respectful and thriving legal profession.

# Form

The Law Society  
of British Columbia



845 Cambie Street, Vancouver, BC, Canada V6B 4Z9  
t 604.669.2533 | toll-free 1.800.903.5300  
f 604.687.0135 | TTY 604.443.5700  
lawsociety.bc.ca

## Job Description

PART A: Position information	
<b>Job Title:</b>	Staff Lawyer, Practice Advice - Equity Ombudsperson
<b>Department:</b>	Practice Advice
<b>Manager:</b>	Manager, Standards, Professional Development and Practice Advice
PART B: Job Description	
<p>The Staff Lawyer, Practice Advice - Equity Ombudsperson has a combined role within the Practice Advice department.</p> <p>The focus of the Practice Advisor role is to provide confidential ethics and practice management advice to lawyers and articling students, including determining appropriate professional conduct, assisting in the resolution of professional conflicts, and developing practice support resource materials.</p> <p>The focus of the Equity Ombudsperson role is to provide confidential advice, information and assistance to lawyers, support staff and articling students on issues of discrimination or harassment in the context of the practice of law, including developing related practice support resource materials.</p> <p>The Practice Advisor and Equity Ombudsperson role requires frequent contact with lawyers and articling students.</p> <p>The Practice Advice and Equity Ombudsperson duties include:</p> <ul style="list-style-type: none"> <li>• Communication with the profession.</li> <li>• Intake, advice and intervention: <ul style="list-style-type: none"> <li>• Providing information, advice, and assistance in response to inquiries.</li> <li>• Receiving inquiries regarding discrimination or harassment.</li> <li>• Mediating discrimination or harassment concerns informally with the consent of the complainant and respondent.</li> </ul> </li> <li>• Preparing articles for publishing in the Benchers Bulletin and E-Brief.</li> <li>• Developing and updating practice support materials.</li> <li>• Preparing and presenting speaking engagements and organizing courses.</li> <li>• Analyzing issues of concern to lawyers and making recommendations for action such as changes to the Law Society Rules and the Code of Professional Conduct for BC.</li> <li>• Equity Ombudsperson program reporting includes providing annual reports to the Manager, Standards, Professional Development and Practice Advice, the Benchers, and the Equity and Diversity Advisory Committee, including statistical data on frequency of program use, types of inquiries dealt with, geographical location of callers, outcomes of inquiries (i.e. resolved or unresolved) and any other pertinent non-confidential data.</li> <li>• Equity Ombudsperson program education and policy development includes</li> </ul>	

- Assisting the Law Society in the development of the content of its equity and diversity initiatives including educational sessions, publications and policy development.
- Receiving and coordinating requests for educational sessions regarding equity, diversity, and inclusion, and conducting such sessions.
- Such other duties as the Manager, Standards, Professional Development and Practice Advice may require.

The nature of the dual role requires significant knowledge of practicing concepts, a high degree of autonomy, self-direction, and a comprehensive understanding of the Law Society Rules and the *Code of Professional Conduct for BC*. The Staff Lawyer, Practice Advice – Equity Ombudsperson operates with the general oversight of the Manager, Standards, Professional Development and Practice Advice.

### **PART C: Qualifications**

Practising membership in the Law Society of BC or eligibility for membership. A minimum of five years of recent practice experience, including extensive experience in resolving discrimination and harassment concerns. Expertise in the field of equity, diversity and inclusion. Expertise in mediation and conflict resolution. A high level of knowledge and understanding of employment law and of human rights theory, legislation, and policy. Superior writing and excellent interpersonal, communication, and presentation skills. Ability to meet changing deadlines and work in highly stressful situations.

# Equity Ombudsperson

## Objective

The Equity Ombudsperson, Claire Marchant, assists individuals and employers with resolving concerns about discrimination and harassment.

Lawyers, articulated students, law students and support staff of legal employers are all free to contact the Equity Ombudsperson. The service is voluntary, confidential and free to participants.

Claire is an employee of the Law Society of British Columbia in the Practice Advice department. Calls to her will remain strictly confidential, protected by the same measures that safeguard the confidentiality of all calls to Practice Advisors.

## Operations

The Equity Ombudsperson is responsible for:

- a. Intake and advice: receiving complaints, providing information, and discussing options.
- b. Mediation: resolving complaints informally with the consent of both the complainant and respondent.
- c. Reporting: providing statistical reports on the incidents of discrimination and harassment dealt with by the Equity Ombudsperson, as well as the number of proactive measures undertaken by the Equity Ombudsperson (such as educational presentations, policy development, etc.);
- d. Education: collaborating with Law Society staff in developing the content of the Law Society's educational initiatives to prevent discrimination and harassment in the legal profession; and
- e. Program design: assisting Law Society staff in the development of model equity and diversity policies.

## What can you do as Benchers to support this program?

- Some lawyers may contact their local Benchers for assistance with concerns regarding discrimination or harassment. Benchers may refer such inquiries to the Equity

Ombudsperson. Claire may be reached directly at 604.605.5303 or [equity@lsbc.org](mailto:equity@lsbc.org). Claire can also be reached outside business hours on her cell phone at 236.888.2133. Benchers may also consult with the Equity Ombudsperson prior to providing information to the lawyer.

- The Equity Ombudsperson will make a short document outlining the program and her services available to Benchers. Your support in providing this document to lawyers, articulated students, law students, and support staff of legal employers would much appreciated. For example, you may wish to provide the document to articling students during Bencher interviews.
- Benchers are welcome to review the online practice resources made available to lawyers by the department. The information can be accessed through the [Support and Resources for Lawyers](#) section of the website under the Equity Ombudsperson heading.

## Key Performance Measures

- The Equity Ombudsperson joined the Practice Advice Department in August 2017; accordingly, Key Performance Measures will be developed for 2018.



# Information

## Equity Ombudsperson Program

*The Law Society provides the legal profession in British Columbia with the services of an Equity Ombudsperson, who can assist with resolving concerns about discrimination and discriminatory harassment.*

### Who can contact the Equity Ombudsperson?

Lawyers, articulated students, law students and support staff of legal employers are all free to contact the Equity Ombudsperson.

The service is voluntary, confidential and free to participants.

### Who is the Equity Ombudsperson?

Claire Marchant is the Equity Ombudsperson. Claire is an employee of the Law Society of British Columbia in the Practice Advice department. Calls to her will remain strictly confidential, protected by the same measures that safeguard the confidentiality of all calls to Practice Advisors.

### What is discrimination?

Discrimination may involve unwelcome comments or actions related to:

- Race
- Colour
- Ancestry
- Place of origin
- Political belief
- Religion
- Marital status
- Family status
- Physical impairment
- Mental health issue
- Sex
- Sexual orientation
- Gender identity or expression



- Age
- Conviction of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

It is the impact of the behaviour — not the intention behind it — that determines if the behaviour is discriminatory.

## **What is discriminatory harassment?**

Discriminatory harassment can take many forms, including:

- Name-calling
- Racial slurs
- Religious jokes
- Sexual harassment
- Sexual harassment is a form of discrimination based on sex and may include:
  - Unwanted touching, sexual flirtation, advances or propositions
  - Leering
  - Suggestive comments about a person's sexuality or sexual orientation
  - Unwanted questions about a person's sex life
  - Persistent unwanted contact or attention after the end of a consensual relationship.

## **What can the Equity Ombudsperson do to help?**

- Intake and Advice: Receive inquiries, provide information, and discuss options.
- Mediation: Resolve concerns informally with the consent of both the complainant and respondent.
- Reporting: Provide anonymized statistical reports on the incidents of discrimination and discriminatory harassment dealt with by the Equity Ombudsperson, as well as the proactive measures undertaken by the Equity Ombudsperson to prevent discrimination and discriminatory harassment in the legal profession.

## **Contact the Equity Ombudsperson**

You can reach Equity Ombudsperson Claire Marchant at [equity@lsbc.org](mailto:equity@lsbc.org), 604.605.5303, or 236.888.2133.

**September 30<sup>th</sup> 2017 CALLS OMBUDS SUMMARY**

TOTAL CALLS: 59 new matter calls

NEW CONTACTS in mandate: 55

OUTSIDE OF MANDATE: 4

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Total calls	In mandate
4	4	8	7	3	6	10	7	10	59	55

MEANS OF CONTACT:

MAIL:0

EMAIL: 20

PHONE: 39 (three in person of these for initial contact)

VANCOUVER	76
VICTORIA	31
OUTSIDE LOWER MAINLAND/VICTORIA	54
OUTSIDE MANDATE	8
Total calls (callers could call two to three times on matter- further there were three in person meetings for initial contact)	<b>161</b> in mandate

PROFILE DISTRIBUTION- mandate 161

Associates	Partners	Students	Articling Students	Support Staff
25	19	29	55	33

GENDER- mandate 161

FEMALE	MALE
101	60

SIZE OF FIRM (percent distribution of 161 calls)

SMALL	MEDIUM	LARGE
39 %	30%	31%

GROUPS OF DISCRIMINATION: mandate initial calls of 55 in mandate and distribution on the issues.

SEX	POLICY	WORKPLACE	RACE	DISABILITY	AGE	SEX ORIENT	ETHNIC	Other/transi tion info of program
21	8	11	5	2	0	1	2	5

STATS WERE NOT MAINTAINED SPECIFICALLY ON ALL SERVICES PROVIDED.  
OMBUDS PERSON WAS NOT INTENDING ON RENDERING AN ANNUAL REPORT.

*INFORMATION AND SPECIFIC POLICY CONCERN AS NOTED.*

*5 CALLS ON THE NATURE OF TRANSITION.*

*No new trends identified.*

*No further outreach conducted by ombudsperson*

MORE CALLERS MET IN PERSON more as they were advised of my departure and change in ombudsperson.

Termination of Program:

Line disconnected

ALL INTAKE /NOTES (practice is to destroy on a monthly basis) Please note all emails deleted and trash cleaned.

All notes shredded.

Pamphlets delivered/ returned to LSBC.

# Equity Ombudsperson

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- Gender identity or expression

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## **Contact the Equity Ombudsperson**

You can reach Equity Ombudsperson Claire Marchant at [equity@lsbc.org](mailto:equity@lsbc.org), 604.605.5303, or 236.888.2133.

# The Law Society helps address concerns about sexual harassment in the legal profession

OVER THE PAST two years, there has been a significant shift in how the public talks about sexual harassment. The #MeToo movement was a game changer. Many felt for the first time that they were able to speak publicly about personal experiences with sexual harassment. The movement began by shining a spotlight on the entertainment and media world, but it has gone on to reveal sexual harassment in multiple sectors.

There is no reason to believe that the legal profession is immune. Since awareness was raised by the #MeToo movement, the Law Society has seen a modest increase in complaints. However, members of the profession might fear speaking out for a number of reasons, including fear of being isolated and stigmatized or concern about possible retribution.

The Law Society wants to ensure that those who have experienced sexual harassment, which is but one form of sexual misconduct, know their options and are aware of the support that is available to them.

## UNDERSTANDING THE PROBLEM

Sexual harassment is discrimination based on sex. It comes in many forms, including unwanted touching, flirtation, advances or propositions. It also includes such behaviour as leering, suggestive comments, persistent unwanted contact or attention after the end of a consensual relationship. Sexual harassment often involves abuse of power, which makes it more difficult for individuals to come forward.

A 2014 Angus Reid poll concluded that three in 10 Canadians received unwelcome sexual advances, requests for sexual favours or sexually charged talk while at work. Women were almost four times as likely to have been harassed as men. That poll found that four in five victims never reported the behaviour to their employers. Many said they preferred to deal with the problem on their own. Others said they were afraid of losing their job or hurting their career. Some were reluctant to bring a complaint for fear of retaliation, while others feared having to testify at a hearing and being cross-examined on sensitive matters.

## The equity ombudsperson: A resource for lawyers and law firms



To assist in resolving workplace harassment and encourage fair workplace practices, the Law Society provides BC law firms with the services of an equity ombudsperson, who confidentially helps individuals and law firms resolve concerns regarding discrimination and harassment and promoting a healthy work environment.

Calls to the equity ombudsperson remain strictly confidential, protected by the same measures that safeguard the confidentiality of all calls to practice advisors. Lawyers, articulated students, law students and support staff of legal employers may contact the equity ombudsperson.

For free, confidential advice, contact the equity ombudsperson, Claire Marchant, at [equity@lsbc.org](mailto:equity@lsbc.org) or 604.605.5303. For more information about the program, see our website at Support and Resources for Lawyers > [Lawyer Wellness and Personal Support](#). ♦

A 2018 survey of the legal profession done by the New Zealand Law Society found similar results: whereas 18 per cent of lawyers reported experiencing a form of harassment, just 12 per cent of those had formally reported it or made a complaint about it.

## FOSTERING POSITIVE WORK ENVIRONMENTS

Proactively addressing these issues starts at law firms themselves. A good starting point is a formal policy that describes unacceptable workplace behaviour and establishes a formal complaints process. The Law Society offers a [Respectful Workplace Guide](#) to help draft such a policy.

Ongoing training is also an important part of fostering a positive workplace culture. Regularly training all lawyers and staff on workplace harassment policies ensures that everyone is aware of unacceptable behaviour and of the available resources.

Leadership also plays an important

role in fostering a healthy workplace. Individuals in positions of authority are the ones who ultimately are the driving force behind a culture shift.

## TAKING ACTION

When sexual harassment does occur, there are several recourses. A respectful workplace policy provides a mechanism for resolving complaints internally. Additionally, individuals may make a complaint to the Human Rights Tribunal or even make a criminal complaint to the police.

A complaint may also be made to the Law Society. The *Code of Professional Conduct for British Columbia* specifically prohibits lawyers from sexually harassing any person and also includes broader provisions requiring that lawyers act honourably and with dignity, and that they be courteous and civil in the course of their practice.

*continued on page 14*



a cloud-based storage provider,<sup>12</sup> you may wish to delete cloud-based applications before crossing the border and reinstall afterwards. Similarly, client contact and calendar information can be deleted from smart phones and subsequently restored through internet services. Contact your IT professionals about how to securely reinstall deleted applications.

12. Use encryption and secure passwords. Use two-factor authentication to control access to your accounts. It will not deter initial access to your electronic device during a border search, but in the event that your electronic device is seized for further examination, protected accounts may not be accessible.<sup>13</sup>
13. If a CBSA officer retains or accesses your device, get a receipt and make sure that you have a detailed description of the device including make, model and serial number.
14. If you refuse to provide your device's password to allow examination or if there are technical difficulties preventing a CBSA officer from examining the device, the CBSA officer may detain the device for examination by an expert trained in forensic examinations.<sup>14</sup> Under the 2015 operational bulletin, until further instructions are

issued, CBSA officers have been advised not to arrest a traveller for hindering solely for refusing to provide a password; a restrained approach is to be adopted until the matter is settled in ongoing court proceedings.<sup>15</sup> It may be advisable to seek legal advice if you anticipate refusing to provide the password to your device to a CBSA officer.

15. Consider applying for a Nexus pass. Nexus is run jointly by the CBSA and CPB. While having a pass does not mean you will not be searched, low-risk, pre-approved travellers into Canada and the US enjoy expedited clearance at participating US and Canadian airports, land and marine border crossings.

For questions or comments, please contact Barbara Buchanan, QC at [bbuchanan@lsbc.org](mailto:bbuchanan@lsbc.org) or 604.697.5816. ♦

#### Endnotes:

1. Paralegals, accountants, bookkeepers, information technology professionals, etc. may have privileged information on their devices.
2. Barbara Buchanan, QC, "Client confidentiality – think twice before taking your laptop or smart phone across border" (*Benchers' Bulletin*, Spring 2017) online: Law Society of British Columbia at 11.

3. BC Civil Liberties Association, *supra* note 5 at 49.

4. *Ibid* at 24-25.

5. This will prevent any new incoming texts, emails, calls and other communications from your applications.

6. Canadian Border Services Agency, Operational Bulletin PRG-2015-31, Examination of Digital Devices and Media at the Port of Entry – Interim Guidelines, 30 June 2015, *supra* note 7; US Customs and Border Protection, CBP Directive No. 3340-049A, *supra* note 27.

7. Goodale, *supra* note 7.

8. CCA, *supra* note 2, s 99.2(3).

9. *Ibid*, s 99.2(4).

10. A client's needs and expectations are ideally explored at the beginning of the solicitor-client relationship and dealt with in the retainer agreement. Consider asking simple questions such as whether it is acceptable to share the name of the client and to disclose the purpose of the retainer.

11. BC Civil Liberties Association, *supra* note 6 at 42-44.

12. The Law Society of BC has a Cloud Computing Checklist (May 2017) and Law Society Rules 10-3 and 10-4 regarding cloud storage providers, standards and security.

13. *Supra* note 6 at 46.

14. *Customs Act*, RSC 1985, c 1 (2nd Supp), s 101.

15. *Supra* note 7 and *Customs Act*, s. 153.1.

#### Sexual harassment ... from page 7

The Law Society's Professional Conduct group handles sexual harassment investigations in a fair, sensitive and respectful manner. In most cases, the investigating lawyer will meet in person with the complainant and other witnesses to conduct interviews and obtain the subject lawyer's response to the conduct concerns and gather relevant documentary evidence. The investigation concludes with an assessment of whether there is sufficient evidence of misconduct to warrant further disciplinary proceedings.

A complaint may lead to a citation. Investigations into sexual harassment have

also resulted in conduct reviews. A conduct review is a formal meeting ordered by the Discipline Committee and conducted by a two-person panel. It is a serious disciplinary outcome and becomes a part of a lawyer's professional conduct record. The complainant is not required to participate in a conduct review, and confidentiality is protected, as the summary of the review is published anonymously.

While the Law Society recognizes that there are barriers to filing a complaint, such as a fear of retaliation, Law Society Rule 3-3(1) and section 87 of the *Legal Profession Act* require that lawyers and witnesses maintain confidentiality throughout the complaint process. There

are several ways to file a complaint about professional misconduct involving sexual harassment. For details, see How to File a Complaint on the Law Society website. Questions on the complaint process can be directed to Gurprit Bains, manager, investigations, monitoring and enforcement at [GBains@lsbc.org](mailto:GBains@lsbc.org), or Karen Mok, manager, intake and early resolution at [KMok@lsbc.org](mailto:KMok@lsbc.org).

The Law Society takes sexual harassment complaints seriously, and aims to ensure that any inappropriate conduct is not repeated and that the public has confidence in the high standards the Law Society expects of the profession. ♦

Minister of Justice  
and Attorney General of Canada



Ministre de la Justice  
et procureur général du Canada

The Honourable / L'honorable David Lametti, P.C., Q.C., M.P. / c.p., c.r., député  
Ottawa, Canada K1A 0H8

RECEIVED  
Aug 16/19

AUG 12 2019

Ms. Nancy G. Merrill, Q.C.  
President  
The Law Society of British Columbia  
845 Cambie Street  
Vancouver BC V6B 4Z9

Dear Ms. Merrill:

Thank you for your correspondence of May 28, 2019, sent on behalf of the Law Society of British Columbia, concerning the Judicial Advisory Committee (JAC) for British Columbia. I regret the delay in responding.

I am pleased that the British Columbia JAC has been reconstituted with a full slate of members. Furthermore, I note that, as of July 2, 2019, there are only two vacancies on the Supreme Court of British Columbia, and none on the Court of Appeal. Nonetheless, the JAC continues its important work of reviewing and assessing applications, and our government continues to encourage qualified candidates to apply through the Office of the Commissioner for Federal Judicial Affairs Canada.

Thank you again for writing.

Respectfully,

The Honourable David Lametti



AUG 12 2019

Ms. Nancy G. Merrill, QC  
President  
The Law Society of British Columbia  
845 Cambie Street  
Vancouver BC V6B 4Z9

Dear Ms. Merrill:

*Nancy*

Thank you for your correspondence of June 28, 2019, regarding Bill C-75, *An Act to Amend the Criminal Code*, the *Youth Criminal Justice Act* and other Acts.

Ministry staff are currently reviewing the potential implications of the amendments to the *Criminal Code*, made by Bill C-75, including in relation to articling students and temporary articulated students acting as agent on summary conviction offences. Ministry staff will be in touch with Law Society staff to continue discussions on this matter.

I appreciate your taking the time to raise this issue with me.

Yours truly,

David Eby, QC  
Attorney General

**From:** [AG WEBFEEDBACK AG:EX](#)  
**To:** [President](#)  
**Subject:** AG File No. 561161  
**Date:** August-14-19 5:35:11 PM

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Nancy G. Merrill, QC  
President  
Law Society of British Columbia  
Email: [president@lsbc.org](mailto:president@lsbc.org)

Dear Nancy Merrill:

Thank you for your April 30, 2019 correspondence, regarding the findings of a ministry review of the Insurance Corporation of British Columbia's (ICBC) claim settlement and litigation practices. I appreciate your taking the time to share your concerns on behalf of the Law Society of British Columbia and I welcome the opportunity to respond.

The Ministry of Attorney General is continuing its ongoing work to reform auto insurance in British Columbia. The recommended reduction to the limitation period for vehicle actions is not being considered at this time.

Input from the Law Society is greatly appreciated, and if government wishes to review this recommendation in the future, staff will consider your letter and may reach out to you to discuss further as you have suggested.

Thank you again for taking the time to write.

Yours truly,

David Eby, QC  
Attorney General

Federation of Law Societies  
of Canada



Fédération des ordres professionnels  
de juristes du Canada

**Submission of the  
Federation of Law Societies of Canada  
to Immigration, Refugees, and Citizenship Canada (IRCC)**

***Amendments to the Immigration and Refugee Protection Act  
and Citizenship Act, and new College of Immigration and  
Citizenship Consultants Act.***

**August 26, 2019**

## Introduction

1. The Federation of Law Societies of Canada (“the Federation”), on behalf of its member law societies, would like to take this opportunity to comment on the Government of Canada’s new regulation making powers under recent amendments to the *Immigration and Refugee Protection Act* (“IRPA”) and the *Citizenship Act*, and the enactment of the *College of Immigration and Citizenship Consultants Act*.
2. The Federation is the national coordinating body of Canada’s 14 law societies, which are mandated by provincial and territorial statutes to regulate the country’s 125,000 lawyers, Quebec’s 3,800 notaries and Ontario’s nearly 10,500 licensed paralegals in the public interest. Among other activities, the Federation promotes the development of national standards, encourages the harmonization of law society rules and procedures, and undertakes national initiatives as directed by its members. The Federation also speaks out on issues critical to safeguarding the public’s right to an independent legal profession, the protection of solicitor-client privilege and other issues relating to the administration of justice and the rule of law.
3. As you are aware, the amendments to the IRPA and the *Citizenship Act* expand the federal government’s regulation-making powers to create new administrative penalty regimes applicable to persons who provide representation or advice, or offer to do so, in immigration or citizenship matters.<sup>1</sup> The regulations would create new monetary and non-monetary penalties that apply to these persons for violations of the IRPA and the *Citizenship Act*. The amendments also allow for new broad investigative powers. The *College of Immigration and Citizenship Consultants Act* establishes a new regulatory regime for immigration and citizenship consultants, which (once in force) will replace the existing regulatory structure. The new legislation will also create broad investigative powers for the regulatory body to monitor compliance of member consultants.
4. Immigration, Refugees and Citizenship Canada (“IRCC”) officials have advised that the federal government is in the process of developing regulations arising from the amendments to the *Citizenship Act* and IRPA. In particular, they advised of regulations to implement the administrative penalty regimes under those statutes applicable to legal professionals and regulated consultants.
5. The Federation supports the government’s efforts to improve compliance with Canada’s immigration, refugee and citizenship legislative regimes. However, the Federation is concerned that the potential regulations could infringe on the law societies’ exclusive authority to govern their members and could also have implications for protecting solicitor-client privilege. The Federation and the law societies raised these concerns in briefing sessions with IRCC officials in July 2019.

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<sup>1</sup> *Citizenship Act*, s. 27(1) (k.6)-(k.9); *Immigration and Refugee Protection Act*, s. 91.1(1)(a)-(d).

6. In light of these concerns, the Federation would like to highlight key considerations for the government to take into account in developing the regulations, namely (1) the role and powers of the law societies to ensure their members comply with their professional duties, and (2) the near absolute protection of solicitor-client privilege as recognized by the Supreme Court of Canada.

### **Administrative penalty regimes and law society regulatory autonomy**

7. The purpose of the proposed new administrative penalty regimes, as confirmed by IRCC officials<sup>2</sup>, is to enhance compliance with these laws through the use of monetary and non-monetary penalties, including publishing names of non-compliant persons and the possibility of temporarily barring representatives from filing applications.

8. Administrative penalties of general application that apply equally to all persons, including legal professionals, are not uncommon. What distinguishes the proposed regimes under the *Citizenship Act* and IRPA is the fact that they will apply uniquely to a specified category of persons: immigration and citizenship advisors, i.e. legal professionals and regulated consultants.

9. Legal professionals in Canada are regulated by the provincial and territorial law societies. A central feature of Canada's legal system is that the public has the right to obtain legal advice from, and be represented by, a legal profession that is independent of the government. For that reason, our laws provide for the self-regulation of the legal profession. The function of law societies is to regulate the legal profession in the public interest.

10. To fulfill their public interest mandate, law societies set the standards for admission to the profession and rules governing the conduct of members in their province or territory. The law societies audit and monitor the use of trust funds held by members of the profession. They also investigate complaints and discipline members of the profession who violate the professional conduct standards.

11. In order to conduct investigations, the law societies have extensive powers to inspect documents and compel disclosure of information, including those covered by solicitor-client privilege.<sup>3</sup> This ability to inspect solicitor-client privileged information is exceptional given the protection afforded this type of privilege and relates specifically to the role that law societies have in regulating the profession in the public interest.

12. Law societies are experienced, well equipped and adept at conducting investigations of their members. Members are required under their rules to cooperate with and respond to the law societies while under investigation. The courts have also recognized as an overriding principle that members of law societies are required to make full disclosure of their activities as

<sup>2</sup> Teleconference between Federation policy staff and IRCC officials (July 18, 2019).

<sup>3</sup> These powers can be found in the provincial and territorial statutes establishing the law societies. For example, see Ontario's *Law Society Act*, RSO 1990, c L.8, ss. 49.3 and 49.8(1).

legal professionals when under investigation by the relevant law society. If an investigation finds that a legal professional is guilty of violating their legal or ethical duties, the law society can take disciplinary measures, including temporary license suspensions, imposing conditions on the professional's licence, and in extreme cases disbarment. Law societies also publish names of legal professionals who have been sanctioned.

13. The law societies have an interest in allegations that a legal professional has committed a violation of the *Citizenship Act* and IRPA, or their regulations. To the extent that the proposed penalty regimes might impact the practice rights of legal professionals (e.g. barring an individual from filing immigration applications) the compliance regimes could result in duplication of investigations and disciplinary proceedings, with both the government agency and the law society spending time and resources over the same alleged misconduct. In addition, applying consequences or imposing conditions on the ability of legal professionals to practise law would infringe on the law societies' authority over self-regulation established by provincial and territorial law. Further, such measures could effectively deprive an affected legal professional of their right to be heard on behalf of their client, and interfere with a client's important right to choose their counsel.

14. Careful consideration must be given to how these regimes will operate to achieve the goal of promoting compliance without interfering with the law societies' role and authority to regulate the legal profession, or resulting in unnecessary regulatory duplication. The measures created by the regulations must not infringe on the law societies' authority over self-regulation to govern its members. We are not suggesting that lawyers ought to be immune from all enforcement and penalty powers for violating the statutory provisions or regulations simply because they are lawyers. However, to the extent that the regimes may prohibit a lawyer from providing legal services it would amount to a sanction that only the law societies may impose, which have the jurisdiction and expertise to determine what constitutes professional misconduct or conduct unbecoming a lawyer.

### **Issues relating to solicitor-client privilege**

#### *Investigative powers under the Citizenship Act and IRPA amendments*

15. The amendments to the *Citizenship Act* and IRPA provide for broad powers under the new administrative penalty regimes to enact regulations permitting the inspection of documents to verify compliance with the legislation.<sup>4</sup> In the submission of the Federation such powers are in conflict with the law of solicitor-client privilege in Canada.

16. The Supreme Court of Canada has described solicitor-client privilege as "a principle of fundamental justice and a civil right of supreme importance in Canadian law" that "must remain as close to absolute as possible if it is to retain relevance."<sup>5</sup> These statements reflect the fact

<sup>4</sup> *Citizenship Act*, s. 27(1)(k.9); IRPA, 91.1(1)(d).

<sup>5</sup> *Lavallee, Rackel & Heintz v. Canada (Attorney General)*; *White, Ottenheimer & Baker v. Canada (Attorney General)*; *R. v. Fink*, 2002 SCC 61 (CanLII) at para. 36.



that our justice system relies on full and frank communication between clients and their legal representatives. Without it, legal counsel would be unable to protect or advance the legal rights of their clients. Further, it is important to note that solicitor-client privilege belongs to the client, not the legal professional, and the privilege is maintained in the client's interest.

17. The principles of solicitor-client privilege were reaffirmed in the Supreme Court's decision in *Canada (Privacy Commissioner) v. Blood Tribe Department* ("Blood Tribe")<sup>6</sup> and more recently in *Alberta (Information and Privacy Commissioner) v. University of Calgary*.<sup>7</sup> In *Blood Tribe* the Court held that solicitor-client privilege can only be interfered with when "absolutely necessary". The Court further held that compelled disclosure to an administrative agency or officer would, in the eyes of a client as owner of the privilege, constitute an infringement of the privilege. Where other, less intrusive measures exist, the absolute necessity test is unlikely to be met. In addition, the Court has made it clear that any infringement on solicitor-client privilege must impair the privilege as minimally as possible.

#### Unique challenge for legal professionals in responding to allegations of violations

18. Obligations relating to solicitor-client privilege also create a unique challenge for lawyers and Quebec notaries in relation to administrative penalty regimes that purport to govern their professional conduct.

19. Lawyers and Quebec notaries are prohibited from disclosing information protected by solicitor-client privilege. This includes information that might be relevant to their defence of an alleged violation of the *Citizenship Act* or IRPA, or their regulations. The issue is not unique to the proposed administrative penalty regimes. With limited exceptions, lawyers and Quebec notaries face the same restriction in relation to defending themselves in other contexts of general application, including *Criminal Code* charges.

20. The administrative penalty regimes under the *Citizenship Act* and IRPA would, however, apply to a specific category of persons only: immigration and citizenship advisors, i.e. legal professionals and regulated consultants. There would be a fundamental unfairness in establishing a regime that would compromise the ability of the lawyer and Quebec notaries to defend themselves, but not that of the only other category of individuals authorized to represent individuals under the *Citizenship Act* or IRPA: consultants.

#### Investigatory powers under the College of Immigration and Citizenship Consultants Act

21. As noted above, the *College of Immigration and Citizenship Consultants Act* creates a new regulatory regime for immigration and citizenship consultants. Lawyers, Quebec notaries and Ontario paralegals are not included in the definition of immigration and citizenship consultant under the Act, but the Act nonetheless raises some concerns for the Federation and its members.

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<sup>6</sup> 2008 SCC 44 (CanLII).

<sup>7</sup> 2016 SCC 53 (CanLII).

22. The Act provides for powers to inspect, collect, use, and disclose information and documents from “any person” for the purpose of regulating immigration consultants.<sup>8</sup> Although the Act includes clear protections for “privileged information”, including those covered by solicitor-client privilege, and establishes – as a default – that inspection powers do not apply to “privileged information”, the Act allows the government to make regulations to “obtain and use” privileged information.

23. To the extent that any regulations are contemplated that would purport to authorize access to solicitor-client privileged information, the Federation reiterates the points above regarding the strict limitations set by the Supreme Court of Canada on this fundamental principle of the justice system.<sup>9</sup> In particular, the protection of solicitor-client privilege “must remain as close to absolute as possible” and the need to access that information must be shown to be “absolutely necessary”.

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<sup>8</sup> *College of Immigration and Citizenship Consultants Act*, ss. 35(1), 51(1) and (3), and 66.

<sup>9</sup> Adam M. Dodek, *Solicitor-Client Privilege* (Toronto: LexisNexis, 2014) at 253, n 379. Professor Dodek refers to solicitor-client privilege as a “substantive right of quasi-constitutional status.”

## 2020 Bencher & Executive Committee Meetings

Executive Committee	Bencher	Other Dates
Thursday, January 16	Friday, January 31	New Year's Day: Jan 1 Welcome/Farewell Dinner: Jan 31
Thursday, February 20	March 6	Family Day: Feb 17 Federation Spring Meetings: (TBD) Spring Break: March 16 – 27
Thursday, April 2	Friday, April 17	Easter: April 10 – 13
Wednesday, May 13	Saturday, May 30	Victoria Day: May 18 LSBC Bencher Retreat: May 28 – 30 LSA Retreat: June 3 – 6
Thursday, June 25	Friday, July 10	Canada Day: July 1 Commemorative Certificate Luncheon: July 8 BC Day: Aug 3
Thursday, September 10	Friday, September 25	Labour Day: Sept 7 IILACE Conference: (TBD) Rosh Hashanah: Sept 18 (sundown) – Sept 20 (sundown) Yom Kippur: Sept 27 (sundown) – Sept 28 (sundown)
Thursday, October 15	Friday, October 30	AGM: Oct 6 Thanksgiving Day: Oct 12 Federation Fall Meetings: (TBD)
Thursday, November 19	Friday, December 4	IBA Annual Conference: Nov 1 - 6 Remembrance Day: Nov 11 Bencher By-Election: Nov 16 Christmas Day: Dec 25