The Law Society of British Columbia

Agenda

Benchers

Date:	Friday, October 25, 2019
Time:	**7:30 am** Continental breakfast **8:30 am** Call to order
Location:	Bencher Room, 9th Floor, Law Society Building
Recording:	***Benchers, staff and guests should be aware that a digital audio recording is made at each Benchers meeting to ensure an accurate record of the proceedings.***

RECOGNITION & ANNOUNCEMENTS		
1	Presentation of the 2019 Law Society Indigenous Scholarship	
2	Presentation of 2019 UBC Gold Medal Award Winner	
3	Announcement by Catherine Dauvergne about new UBC Initiative Focused on Law Student Debt Relief	
GUEST PRESENTATIONS		
4	Licensed Paralegal Task Force Update	Trudi L. Brown, QC
5	Provincial Court Family Rules Update	Nancy Carter
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.		
6	Minutes of September 27, 2019 meeting (regular session)	
7	Minutes of September 27, 2019 meeting (in camera session)	
8	Minutes of 2019 Annual General Meeting held on October 2, 2019	
9	2020 Fee Schedules	
10	Election of the Executive Committee Rules	
11	Rule 4-55 - Investigation of Books, Records and Accounts	
12	Proposed Rule 5-19.1 - Extension of Time to Initiate a Review	

The Law Society of British Columbia

Agenda

EXECUTIVE REPORTS		
13	President's Report	Nancy Merrill, QC
14	CEO's Report	Don Avison
15	Briefing by the Law Society's Member of the Federation Council	Herman Van Ommen, QC
DISCUSSION		
16	Law Firm Regulation Pilot Project and Recommendations Report	Steven McKoen, QC
17	Amendments to Rule 7.1-3 and Commentary of the BC Code, including the removal of potentially stigmatizing language	Pinder Cheema, QC
18	Indigenous intercultural competence education for BC lawyers • Joint Recommendation Report of the Truth and Reconciliation Advisory Committee and the Lawyer Education Advisory Committee • Minority Report by Tony Wilson, QC	Dean Lawton, QC Michael F. Welsh, QC Tony Wilson, QC
UPDATES		
19	Financial Report – September YTD 2019	Craig Ferris, QC Jeanette McPhee
20	2018 National Discipline Standards Implementation Report	Natasha Dookie
21	Report on Outstanding Hearing & Review Decisions *(To be circulated at the meeting)*	Craig Ferris, QC
FOR INFORMATION		
22	Three Month Bencher Calendar – November to January 2020	
IN CAMERA		
23	Approval of Awards Recipients	
24	Other Business	

The Law Society of British Columbia

Minutes

Benchers

Date:	Friday, September 27, 2019	
Present:	Nancy G. Merrill, QC, President	Geoffrey McDonald
	Craig Ferris, QC, 1st Vice-President	Steven McKoen, QC
	Dean P.J. Lawton, QC, 2nd 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	Michael Lucas
	Natasha Dookie	Alison Luke
	Su Forbes, QC	Jeanette McPhee
	Mira Galperin	Claire Marchant
	Andrea Hilland	Doug Munro
	Kerryn Holt	Lesley Small
	Jeffrey Hoskins, QC	Alan Treleaven
	David Jordan	Adam Whitcombe, QC
	Jason Kuzminski	Vinnie Yuen

Guests:	Kenneth Armstrong	Vice-President, Canadian Bar Association, BC Branch
	Dr. Susan Breau	Dean of Law, University of Victoria
	The Honourable Justice Michele H. Hollins	Justice of the Court of Queen's Bench of Alberta
	April Lemoine	CFO, Courthouse Libraries BC
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University
	Caroline Nevin	CEO, Courthouse Libraries BC
	Josh Paterson	Executive Director, Law Foundation of BC
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
	Anna Summerfield	Canadian Bar Association, BC Branch

CONSENT AGENDA

1. Minutes of July 12, 2019, meeting (regular session)

The minutes of the meeting held on July 12, 2019 were approved as circulated.

2. Direction regarding Second Vice-President Election Process

The following resolution was passed unanimously and by consent.

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.

3. The 2019 Law Society Indigenous Scholarship

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that the Benchers ratify the recommendation of the Credentials Committee to award the 2019 Law Society Indigenous Scholarship to Shawnee Monchalin.

4. Anti-Money Laundering Working Group

The following resolution was passed unanimously and by consent.

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

REPORTS

5. President's Report

President Merrill announced the result of the election for the preferred candidate to nominate as the Law Society of BC member of the Federation of Law Societies of Canada Council. She congratulated Pinder K. Cheema, QC as the successful candidate.

Ms. Merrill also advised Benchers that informational videos about the upcoming Bencher Election had been posted to the Law Society website. The videos covered topics such as the mandate of the Law Society, the time commitment of Benchers and diversity. Ms. Merrill also advised that a series of videos on legal aid were in development.

Other matters reported on included Chief Justice Hinkson's concerns about workload pressures faced at the Supreme Court due to automatic bail review time frames, and concerns expressed by Chief Justice Bauman about diversity on the bench at the Court of Appeal level.

Ms. Merrill informed Benchers that Trudi Brown, QC, Chair of the Licensed Paralegal Task Force, would be providing an update at the October 25 Bencher meeting. She also reminded Benchers of the due date for nominations for the Law Society awards and encouraged people to submit nominations.

Ms. Merrill provided an overview of matters considered at the Executive Committee meeting on September 12, 2019, including consideration of the design for the Law Society awards and the award criteria, discussion of the number of Committees, Task Forces and Working Groups at the Law Society, and future consideration to be given to administrative support to be provided to the President.

Finally, Ms. Merrill reminded Benchers about Orange Shirt Day and encouraged Benchers to read her unsung heroes column posted to the Law Society website, featuring Katrina Harry.

6. CEO's Report

Mr. Avison began his report by thanking Benchers, Life Benchers and Staff Lawyers who taught ethics to PLTC students, including Lisa Hamilton, QC, Art Vertlieb, QC, Jim Vilvang, QC, Terry La Liberte, QC, Kate Bradley, Alison Kirby and Mandana Namazi.

He reported on the upcoming meetings of the Federation of Law Societies of Canada to take place mid-October in Newfoundland. The focus of the conference is on mental health and wellness, and the Law Society of BC has been involved in the planning for the conference. Michael Lucas would be chairing one of the panel discussions and Vancouver Bencher Brook Greenberg would be a lead speaker at the conference. Mr. Avison would also be participating in a session on development of the Federation's strategic plan for the next three years.

Mr. Avison reported on a meeting of the Institute of Chief Executives he attended recently in Japan. He provided an overview of the conference material, which included business models, technology and the provision of legal services by non-lawyers. There was also discussion of data mining and the use of intelligent drafting tools. He said there was a continuing interest in technology and the Law Society would need to pay close attention to these developments in the years to come. Mr. Avison also participated in a panel discussion on mental health and wellness. His view was that Canada, and in particular BC, are seen as leaders on this front, but he acknowledged there is much more work still to be done. He referred to a commitment made to other jurisdictions with fewer resources to share and help develop resources in those regions.

Mr. Avison provided an update on the status of the Cullen Commission. The Law Society has received standing to participate in the public inquiry and the Law Society has retained counsel. Other participants include individuals as well as organizations, such as RCMP, the BC Civil Liberties Association and the CBABC. Mr. Avison estimated it would still be some time before hearings would be underway and said that staff would work closely with the newly established Anti-Money Laundering Working Group.

Mr. Avison reported that plans for the 2019 Annual General Meeting were well underway and that the rule changes made in 2019 had so far shown to be effective at making the process more efficient. As the meeting agenda was not particularly controversial, he said interest in attending the remote locations at that time was modest, which led to the Executive Committee's decision to reduce the number of satellite locations. Mr. Avison reported that planning for the 2019 Bencher Election was also well underway.

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

Mr. Van Ommen was unable to attend the meeting to provide an update.

GUEST PRESENTATIONS

8. "What I've learned about my mental health and why it's important"

Ms. Merrill introduced the Honourable Justice Michele H. Hollins as the guest speaker. Ms. Hollins spoke candidly about her personal experience and journey with mental health issues and how it had impacted her life. She spoke about her experiences both as a lawyer and as a judge, and the importance of self-awareness, reducing stigma surrounding mental health issues and seeking help early. In her view, more work could be done to look at judicial stressors and mental health, as well as mental health issues faced by young lawyers entering the profession and whether they have appropriate levels of support. Benchers thanked Ms. Hollins for making time to attend the Bencher meeting and for her impactful presentation.

DISCUSSION/DECISION

9. 2020 Budget & Fees

Mr. Ferris introduced the item, followed by a presentation to Benchers on the proposed 2020 budget and fees delivered by Mr. Avison.

Mr. Avison highlighted some of the key initiatives the Law Society would be focusing on in 2020, including anti-money laundering, mental health, law firm regulation, licensed paralegals, legal aid and the work coming out of the Futures Task Force.

Some of the operational areas of focus for 2020 included an increase in citations and the number of serious files, and additional work required in relation to a possible diversion program and recidivism. Additional resources are required to meet the demands and complexity faced in the Member Services department, as well as in the Policy and *Freedom of Information and Protection of Privacy Act* area. There are also some considerable projects underway relating to the use of artificial intelligence, data analytics and a virtual desktop infrastructure for staff that will require resources. An increase in demand with the PLTC program also necessitates additional support to ensure students are able to proceed through the program without delay.

Mr. Avison reported that the Law Society's revenue is expected to be $29.3 million and expenses are expected to be $29.3 million. External organization funding remains much the same as in 2019 except for a modest increase in funding to Courthouse Libraries BC and pro bono/access to justice funding.

The proposed annual Practice fee was $1,904 ($2,289), an increase of $29.93 or 1.6%. The insurance fee would remain the same at $1,800 for full-time and $900 for part-time. This puts BC middle of the pack in terms of the membership fees charged across the country.

The following resolutions were passed unanimously.

BE IT RESOLVED THAT:

- Effective January 1, 2020, the practice fee be set at $2,289.12, pursuant to section 23(1)(a) of the *Legal Profession Act.*

BE IT RESOLVED THAT:

- the insurance fee for 2020 pursuant to section 30(3) of the Legal Profession Act be set at $1,800;
- the part-time insurance fee for 2020 pursuant to Rule 3-40(2) be set at $900; and
- the insurance surcharge for 2020 pursuant to Rule 3-44(2) be set at $1,000.

10. Fiduciary Property (Rule 3-55): Proposal to Amend Rules

Mr. Ferris introduced the item and Mr. Lucas expanded on the reasons for the proposed amendments.

Mr. Lucas advised Benchers that the Executive Committee had considered the rules relating to fiduciary property (and in particular Rule 3-55), which were created in 2015 and amended in 2016. He spoke about the history of the Rule, referring to the various rule changes relating to the use of trust accounts and fiduciary property.

Since 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 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.

Mr. Lucas drew Benchers attention to the Federation of Law Societies Model Trust Accounting Rule and new Law Society Rule 3-58.1, and approaches in other Canadian jurisdictions. Some consultation with the profession was completed earlier in the year but very few responses were received.

The Executive Committee recommended that Benchers amend Rule 3-55 by deleting Rule 3-55(6). Mr. Lucas said this will result in a requirement that fiduciary property must be held outside of a trust account. The Committee recognized 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. Consequential amendments will also be needed to Rules 3-60(4) and 3-61(3). The Committee also recommended that staff develop guidelines to assist the bar in the discharge of its responsibilities in handling fiduciary property.

The motion to approve the Executive Committee's recommendations as stated above and in the materials was carried.

11. Reporting to Law Enforcement: Proposal to Amend Rules

Mr. Ferris introduced the item and Ms. Dookie expanded on the reasons for the proposed rule change.

Ms. Dookie said it was important there be a consistent approach within the Law Society for considering when and what information should be disclosed to law enforcement. Outlined in the memorandum provided in the materials is past consideration of the issue by Benchers, policy considerations, and a review of how other law societies have dealt with the issue.

Ms. Dookie said there were two overarching rationales for disclosing information to law enforcement: (1) the role of the Law Society is to investigate issues of lawyers' conduct and not criminal offending. Disclosure to the proper authorities allows agencies to conduct the investigations needed; and (2) the proposed amendment provides for a more consistent process by having a centralized committee that is responsible for considering requests, which looks at standardized guidelines.

The Executive Committee recommended that Benchers approve the following resolutions:

- 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 reinstatement, 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.

- 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.

The motion to approve the Executive Committee's recommendations as outlined above and in the materials was carried.

12. Report of the Annual Fee Review Working Group

Mr. Lawton, Chair of the Annual Fee Review Working Group, spoke about the Reduced Practice and Insurance Fees Report provided in the materials and the work undertaken and considered by the working group since the issue was last before the Benchers. He highlighted some areas considered by the working group, including the possibility of reducing rates based on low income, and lawyers who predominantly provide pro bono legal services. He advised that the recommendation of the working group was to maintain the status quo.

Mr. Lawton advised that 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. 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.

Some Benchers expressed concerns about the conclusion reached by the working group and felt there may be other opportunities for fee reductions that had not yet been canvassed or considered. There was general agreement from Benchers that more data would be useful to assist

with analyzing the issue and that staff should do some further work on the issue and report back to Benchers at a future date.

Three areas identified for further work and consideration were: (1) the insurance fee and the possibility of a risk adjustment, (2) the practice fee being determined based on the type of law practised or the provision of a fee reduction for lawyers practising in poverty law, and (3) a recidivism surcharge.

No motion was required from the Benchers and staff were directed to complete further work and report back to the appropriate individual Committees or the Benchers as needed.

13. Law Society Awards: Design Selection, Nominations and Criteria

Ms. Hamilton provided an update to the Benchers on the new designs of the Law Society awards recognizing excellence in the legal profession. She thanked Mr. Kuzminski for his work researching and supporting the Design Selection Committee in this regard.

Ms. Hamilton also spoke about the Executive Committee's consideration of the awards criteria; in particular, that it was too narrow and should be expanded to include all current and former members of the Law Society of BC.

The motion to approve the Executive Committee's recommendation as set out below was carried.

> *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.

UPDATES

14. Equity Ombudsperson Program: 2018 Annual / 2019 Interim Report

Ms. Marchant, Equity Ombudsperson, provided an update to Benchers on the work undertaken as part of the Law Society of BC Equity Ombudsperson Program from July 1, 2018 to June 30, 2019. Her written report provided 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.

Ms. Marchant reviewed the statistics in the report during that period and noted that she was contacted by 42 individuals, which resulted in 76 emails and phone calls to the Program. Of the 42 individuals who contacted her, 21 of the new matters were within the mandate of the Program.

Ms. Marchant made some overall observations about the Program and noted that the issue of sexual harassment may continue to generate a high contact volume. She also noted a number of the contacts were outside the mandate of the Program and made some suggestions for how the role of the Equity Ombudsperson could be more clearly understood and utilized.

Benchers expressed gratitude for the work done by Ms. Marchant and for her informative presentation.

15. Report on attendance at the International Conference of Legal Regulators in Edinburgh and re-populating the pools for Tribunal Members

Mr. Ferris reported on his attendance at the International Conference of Legal Regulators in Edinburgh. Representatives from over 26 countries attended, with over 100 delegates in total. There were three themes at the conference; upholding standards, encouraging innovation and sustaining trust.

Mr. Ferris also provided an update on the work being done to repopulate the pools for Tribunal members. He said there was a diverse group of people making up the public, lawyer and Bencher pools and a recommendation to approve candidates would be considered at the next Executive Committee meeting on October 10, 2019.

16. Report on Outstanding Hearing & Review Decisions

There was no discussion on this item.

FOR INFORMATION

17. Correspondence from the Minister of Justice dated August 12, 2019

There was no discussion on this item.

18. Correspondence from the Attorney General dated August 12, 2019

There was no discussion on this item.

19. Correspondence from the Attorney General dated August 14, 2019

There was no discussion on this item.

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

There was no discussion on this item.

21. 2020 Bencher and Executive Committee Meetings Schedule

There was no discussion on this item.

22. Three Month Bencher Calendar – October to December 2019

There was no discussion on this item.

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

The Law Society of British Columbia

Minutes

Annual General Meeting

Date:	October 2, 2019
Place:	Vancouver Convention Centre, West Building, Meeting Room 211-214, 1055 Canada Place, Vancouver
Audio Conference Locations:	Kamloops, Smithers, Victoria

1. Introduction at the October 2, 2019 meeting

President Nancy Merrill, QC called the meeting to order and introduced the head table and the Chairs, Co-Chairs and Vice Chairs at the three audio-conference locations: Kamloops, Smithers, Victoria.

At the beginning of the meeting, 56 members and 1 student were in attendance, and 726 members participated in advance online voting. Combining the members who voted online and the members present in-person attendance, there were a total of 782 members in attendance and 1 student.

President Merrill declared that a quorum was present, pursuant to Rule 1-10.

2. Benchers update on proceedings since last meeting

President Merrill reported that, since the last Annual General Meeting (AGM), the Benchers have been engaged in a variety of activities and initiatives relating to the strategic plan and to other developments over the past year.

The Mental Health Task Force delivered its first interim report in November, 2018. The report made a number of recommendations relating to additional resources at the Law Society to assist those dealing with mental health and substance use issues. The Task Force has continued its work into this year and expects to provide a further report later this year.

The Benchers established a Licensed Paralegal Task Force to continue the Law Society's work in recognizing opportunities for properly educated and credentialed paralegals to provide some

legal services in areas of law where there is currently a substantial unmet need. The Task Force is chaired by Trudi Brown, QC and has been looking at how to consult with the profession and others to identify opportunities for the delivery of legal services by licensed paralegals that would benefit the public in areas where there is a substantial unmet legal need.

The Legal Aid Advisory Committee adopted a two-pronged strategy to advance the Society's efforts to improve funding for legal aid. The first strategy involved profiling the important role legal aid plays in our justice system by commissioning several videos capturing the human cost of underfunding this essential public service. The second strategy involved establishing a Law Society Legal Aid Coalition. The Coalition held its first meeting in September. The coalition is comprised of representatives from the YWCA, Elizabeth Fry Society, John Howard Society, Mosaic, West Coast Leaf, RCMP, BC Mental Health & Substance Use Services, Metis Nation and the CBABC. The goal of the coalition is to work collaboratively to increase funding for legal aid to better meet the legal needs of the most vulnerable and disadvantaged residents of BC.

President Merrill also reported that the Truth and Reconciliation Advisory Committee had been actively working to improve indigenous intercultural competence, including holding a tribunal refresher course on July 10, 2019 focused on Indigenous intercultural competence and making a targeted call for Indigenous applicants for the Law Society of BC's hearing panel pools. The Committee also supported PLTC obtaining a grant from the Law Foundation to produce intercultural competence education materials in collaboration with experts at the University of Victoria's Indigenous Law Research Unit and the University of British Columbia's Indigenous Community Legal Clinic.

The Law Firm Regulation Task Force reviewed the results of a pilot project to evaluate a law firm self-assessment tool and considered the feedback from the firms that participated in the pilot project. Overall, the responses were favourable both to the process and the content of the pilot project and the Task Force is expected later this year to recommend that the self-assessment process be extended to all firms on a rolling three year basis.

President Merrill advised that, the Honourable Justice Austin Cullen had been appointed to lead a Commission of Inquiry into Money Laundering in British Columbia. The mandate of the inquiry includes making findings of fact respecting money laundering in British Columbia, including the extent, growth, evolution and methods of money laundering in legal services. She advised the Law Society had been granted standing at the Inquiry in respect of the areas of real estate, financial institution and money services, and corporate and professional services.

President Merrill also reported that third annual Rule of Law Lecture in June of this year was a very successful event. The Right Honourable Beverley McLachlin, former chief justice of Canada, and Richard Peck, QC spoke on privacy, technology and the rule of law. The discussion was moderated by Bencher Jennifer Chow, QC. A video of the event is available on the Law Society website.

Finally, President Merrill reminded the profession that Bencher elections for all electoral districts will be held starting November 1st and that nominations close on October 15th and that the deadline had been extended to October 18th to submit nominations for the Law Society awards for leadership in legal aid, pro bono, equity, diversion and inclusion, and excellence in family law.

President Merrill concluded her report on the activities of the Benchers since the last Annual General Meeting.

3. Election of Second Vice-President for 2020

Vancouver County Bencher Brook Greenberg nominated Vancouver County Bencher Lisa Hamilton, QC for election as Second Vice-President for 2020. There being no further nominations, President Merrill declared Ms. Hamilton acclaimed as the Law Society's Second Vice-President-elect for 2020.

4. Appointment of Auditors for 2019 Fiscal Year

Rule 1-10 requires members to appoint an auditor at each AGM. As notice of the resolution that PriceWaterhouse Coopers be appointed as the Law Society auditors for the year ending December 31, 2019 was provided to the profession before the AGM, the resolution was considered moved and seconded.

The resolution to appoint PricewaterhouseCoopers as the Law Society auditor for the year ending December 31, 2019 was carried, with 699 votes in favour, 39 against, and 49 abstentions.

5. Conclusion of the meeting

There being no further business, the President declared the meeting concluded.

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC
Date: October 2, 2019
Subject: **2020 Fee Schedules**

---

1. Before the end of each calendar year, the Benchers must revise the fee schedules, which appear as schedules to the Law Society Rules, to reflect changes taking effect on the following January 1.

2. Under section 23(1)(a) of the *Legal Profession Act*, the Benchers have approved a practice fee of $2,289.12 for 2020.

3. The insurance fee was also approved at $1,800 for lawyers in full-time practice, $900 for those in part-time practice and a liability insurance surcharge of $1,000. These represent no change from the 2019 fees.

4. I attach a suggested resolution that will give effect to the change.

JGH

Attachments: resolution

2020 FEE SCHEDULES

SUGGESTED RESOLUTION:

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

1. ***In Schedule 1, by striking "***$2,260.17***" at the end of item A 1 and substituting "***$2,289.12***";***

2. ***In Schedule 2, by revising the prorated figures in the "Law Society fee" column accordingly; and***

3. ***In the headings of schedules 1, 2 and 3, by striking the year "***2019***" and substituting "***2020***".***

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: October 2, 2019
Subject: **Rule 1-41—Election of Executive Committee**

---

1. At the July 12 meeting the Benchers considered a report from the Governance Committee recommending changes to the process of election of the Executive Committee. A copy is attached for your reference.

2. The Benchers approved the following resolution:

   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.

3. The following related resolution failed:

   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.

4. The Act and Rules Committee recommends adoption of the attached draft rule amendments to give effect to the resolution that was adopted. Also attached is a suggested resolution to give effect to the amendments.

Drafting notes

5. The current Rule 1-41 deals separately with the election of the three elected benchers and the one appointed bencher to the Executive Committee. It sets out in some formal detail the election procedures for the three elected benchers and then follows with informal lack of detail on the election of the appointed bencher.

6. In keeping with the Bencher resolution, the Committee recommends combining the two in a more detailed formal provision. The proposed changes to Rules 1-41(1) and 1-50 indicate that there are four to be elected in total. In Rule 1-41, the qualification for the appointed bencher to be elected is moved from the current subrule (8) to a proposed subrule (2.1) so that it is near and parallel to the qualification provision for elected benchers.

7. As in the case of the general bencher elections and referendums, there is proposed specific authorization to conduct Executive Committee elections by electronic means.

Attachments: Governance Committee report
draft amendments
suggested resolution

JGH

The Law Society of British Columbia

Executive Committee Election Rules

Committee: Governance Committee

Steven R. McKoen, QC (Chair)
Pinder K. Cheema, QC (Vice-Chair)
Jasmin Z. Ahmad
Craig Ferris, QC
Claire Marshall
Linda I. Parsons, QC
Philip A. Riddell, QC

May 27, 2019

Prepared for:	Benchers
Prepared by:	Staff
Purpose:	Discussion/Decision

Table of Contents

Table of Contents....2
Background....3
Rule 1- 41 3
The Development of the Current Rule 3
Issues 5
Rule 1-41(1)....5
Election Methods....5
Nominations....5
Who Votes for Who....5
Recommendations 7

Background

Rule 1- 41

1. The Executive Committee is the only Law Society committee that is not populated by the President under Rule 1-49.

2. Rule 1-41 sets out a procedure for the election of three elected Benchers and a procedure for the election of one appointed Bencher to the Executive Committee.

3. For the three elected Benchers, the Rule provides that all persons elected as a Bencher for a term that includes the calendar year for which members of the Executive Committee are to be elected are eligible for election. Nominations for election to the Executive Committee must be in by November 22. If more than three Benchers are nominated, there must be an election and ballots must be returned by a date no later than December 6. All Benchers are entitled to participate in the election of the three elected Benchers.

4. For the appointed Bencher, the Rule provides that all appointed Benchers appointed for a term that includes all or part of the calendar year for which members of the Executive Committee are eligible for election. At the last regular meeting of the Benchers in each calendar year, the appointed Benchers must elect one appointed Bencher to serve as a member of the Executive Committee for the following calendar year. Only the appointed Benchers are entitled to vote in this election.

The Development of the Current Rule

5. The current Rule has its origins with the 1995 Report of the Committee on the Roles on the Executive Committee and the Treasurer's Committee (the "Role Committee").

6. That report recommended an annual election of four Benchers to the Executive Committee and that the Executive Committee be made up as follows:

   a) the Treasurer, Deputy Treasurer and Assistant Deputy Treasurer,

   b) the Assistant Deputy Treasurer-elect, if not otherwise a member of the Committee,

   c) three Benchers elected by all the Benchers, and

   d) one lay Bencher elected by the lay Benchers.

7. In support of the recommendations, the Role Committee noted that allowing all the Benchers to select the elected members of the Executive would give the Benchers more connection with the

Executive Committee and making the resulting elected Executive Committee more accountable to the Benchers as a whole.

8. The Role Committee did consider whether it was appropriate to allow the lay Bencher representative to be elected by all the Benchers, but concluded that it was more in keeping with the tradition of independence of the public input on the Benchers to allow the lay Benchers to make the choice alone. The Role Committee also suggested that the election of the Executive Committee occur at the first meeting of the Benchers in each calendar year. This would allow newly elected Benchers to participate in the process, but would allow for the establishment of a new Executive Committee early in the year. Finally, it recommended that the election be conducted by secret ballot.

9. As a result, then Rule 55 was proposed at the December 1995 Bencher meeting and adopted at the January and March1996 Bencher meetings.

10. In 1997, it was noted that while the Rule provided that all Benchers were eligible for election, except the excluded Benchers, there was no Rule providing for the selection or nomination of candidates for election. The Rules were amended to provide that all elected Benchers were candidates in the election unless *"the Bencher has instructed the Secretary in writing to delete the Bencher's name from the ballot."* While this amendment declared all elected Benchers were candidates unless they said otherwise, it left the nomination or candidacy of the lay Benchers candidates indeterminate. The 1997 amendments also provided that a ballot must be rejected unless it contains votes for the same number of candidates as there are positions to be filled, and also defined a counting method such that the candidates with the most votes, up to the number of positions to be filled, were elected.

11. In November 1998, the Benchers again made a number of amendments to the Executive Committee election rule. A specific nominating process was implemented requiring nominations to be made a last regular meeting of the Benchers in the year before the election and provided for a mail ballot in the event there were more than three nominations, which was to be returned no earlier than January 7. The amendments also provided for a resolution in the event of a tie vote.

12. The next amendments were made almost a decade later. In 2007, the Rules was amended to move the election into the year preceding the year in which the Executive Committee would serve, along with consequential changes to the nominating and voting process. The amendments also removed the specific reference to excluding the President, Vice-Presidents and lay Benchers from the election for the three Bencher members under subrule (1).

13. The next major amendment was in 2009. This reconciled the appointed Bencher election period with that for the elected Bencher positions on the Executive Committee.

Issues

Rule 1-41(1)

14. This subrule states that the Benchers must elect three Benchers to serve as members of the Executive Committee for each calendar year. As the Roles Committee recommended, there is actually an annual election of four Benchers to the Executive Committee and the Rule makes this so. While all the Benchers must elect three Benchers to serve on the Executive Committee, a subset of the Benchers must elect a fourth Bencher to serve on the Executive Committee. As a result, the subrule should say that the Benchers must elect four Benchers to serve as members of the Executive Committee.

Election Methods

15. The vote, if required, for the three elected Benchers is conducted by ballot, which must be returned no later than December 6. Although not expressly stated, the Rule contemplates that ballots will be made available to all Benchers sometime between November 22 and no later than December 6.

16. The vote, if required, for the appointed Bencher is also to be conducted by ballot but the vote must occur at the last regular meeting of the Benchers in each calendar year and appointed Benchers must be present at the meeting to participate.

17. The discrepancy in the voting methods is difficult to justify on a principled basis. While all Benchers in office on the date set for return of ballots are eligible to vote for up to close to two weeks, during which both elected and appointed Benchers have the opportunity to complete a ballot and return it, the vote for the appointed Bencher is limited to Benchers present at the last Bencher meeting of the year and must be completed on that day.

Nominations

18. The Rule 1-41(3) provides that nominations for election to the Executive Committee must be made by November 22. While stated broadly enough to encompass nominations for the appointed Bencher position as well as the elected Bencher positions, the placement of this subrule immediately following Rule 1-41(2) dealing with eligibility for election as an elected Bencher does tend to hide this fact.

Who Votes for Whom

19. The final consideration is the asymmetry in the voting. Under the Rule, all Benchers, elected and appointed, may vote for up to 3 candidates for the elected Bencher seats on the Executive Committee. However, only the appointed Benchers vote for the single appointed Bencher seat.

20. The Role Committee commented on their decision to recommend the asymmetry in voting.

> *It might also be appropriate to allow the lay Bencher representative to be elected by all the Benchers, but it is more in keeping with the tradition of independence of the public input on the Benchers to allow the lay Benchers to make the choice alone.*
>
> *Three other Benchers would then be elected by all the Benchers, including the Treasurer's Committee and the lay Benchers. The inclusion of lay Benchers in this electorate would be consistent with section 6(3) of the Legal Profession Act which gives lay Benchers "all the rights and duties of an elected Benchers." Also, it might be perceived as inconsistent with the spirit of lay participation to deny the lay Benchers a say in the election of almost half of the Executive Committee.*

21. At the Bencher meeting in December 1995, it was suggested that it should not appear that the lawyers among the Benchers were choosing the member of the public who participates at that level. The lay Benchers should make that decision themselves

22. The reference to section 6(3) of the Act[1] by the Roles Committee highlights the issue here. While some distinctions are made throughout the Act and Rules between elected and appointed Benchers, all Benchers have the same rights and duties.

23. In particular, section 4(2) does not say *"The **elected benchers** govern and administer the affairs of the society and may take any action they consider necessary for the promotion, protection, interest or welfare of the society."* It says *"The **benchers** govern and administer the affairs of the society and may take any action they consider necessary for the promotion, protection, interest or welfare of the society."* Given that broad statement of authority, drawing a distinction between the role of an elected Bencher and the role of an appointed Bencher should only be made if necessary to accomplish some particular end that requires making that distinction.

24. Rule 1-50(1) requires that the Executive Committee must have one appointed Bencher as a member. While the nomination for that appointed Bencher position is obviously limited to appointed Benchers, the original concern about limiting voting for that position to the appointed Benchers in keeping with the tradition of independence of the public input on the Benchers seems out of place in 2019.

[1] Now section 5(3)

Recommendations

25. The Committee makes the following recommendations regarding the Executive Committee election:

    a. Amend Rule 1-41(1) to recognize that there are four Benchers to be elected under the Rule.

    b. 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.

    c. Clarify the processes for nominating elected and appointed Benchers such that they are consistent.

    d. While the elected and appointed Benchers would continue to nominate their respective candidates, if a vote for the elected Bencher and appointed Bencher positions on the Executive is required, all Benchers, elected and appointed, would eligible to vote for all four positions.

LAW SOCIETY RULES

PART 1 – ORGANIZATION

Division 1 – Law Society

Elections

Election of Executive Committee

1-41 (1) The Benchers must elect ~~3~~ 4 Benchers to serve as members of the Executive Committee for each calendar year as follows:~~.~~

(a) 3 elected Benchers;

(b) 1 appointed Bencher.

(2) A~~ll~~ person~~s~~ elected as a Bencher for a term that includes the calendar year for which members of the Executive Committee are to be elected ~~are~~ is eligible for election under subrule (1) (a).

(2.1) A Bencher reappointed as a Bencher, or eligible to be reappointed as a Bencher, for a term that includes the calendar year for which members of the Executive Committee are to be elected is eligible for election under subrule (1) (b).

(3) A Bencher who is eligible for election under subrule (1) may become a candidate by notifying the Executive Director in writing ~~Nominations for election to the Executive Committee must be made~~ by November 22.

(4) If there are more ~~than 3 Benchers are nominated under subrule (3)~~candidates than there are positions to be elected, the Executive Director must conduct a ballot.

(5) The Executive Director must specify a date no later than December 6 for the return of the ballots, and a ballot returned after that date is not valid.

(6) ~~All~~ Benchers in office on the date specified under subrule (5) are eligible to vote for the Executive Committee~~.~~ as follows:

(a) all Benchers are eligible to vote for elected Benchers;

(b) appointed Benchers are eligible to vote for appointed Benchers.

(7) [rescinded]~~At the last regular meeting of the Benchers in each calendar year, the appointed Benchers must elect one appointed Bencher to serve as a member of the Executive Committee for the following calendar year.~~

(8) [moved to (2.1)]~~All Benchers appointed, or eligible to be appointed, for a term that includes all or part of the calendar year for which members of the Executive~~

LAW SOCIETY RULES

~~Committee are to be elected are eligible for election to the Executive Committee under subrule (7).~~

(9) [rescinded]~~All appointed Benchers present are entitled to vote for the member of the Executive Committee under subrule (7).~~

(10) If a vote is required for an election under this rule,

(a) it must be conducted by secret ballot,

(b) a ballot must be rejected if it contains votes for more candidates than there are positions to be filled, and

(c) when more than one Bencher is to be elected, the candidates with the most votes, up to the number of positions to be filled, are elected.

(11) If, because of a tie vote or for any other reason, the Benchers fail to elect ~~3~~ 4 members of the Executive Committee under subrule (1), or if a vacancy occurs in any position elected under this rule, the Benchers or the appointed Benchers, as the case may be, must hold an election to fill the vacancy at the next regular meeting of the Benchers.

(12) The Executive Director may conduct an election for members of the Executive Committee partly or entirely by electronic means.

(13) This rule applies, with the necessary changes and so far as applicable, to an election conducted partly or entirely by electronic means.

Division 2 – Committees

Executive Committee

1-50 The Executive Committee consists of the following Benchers:

(a) the President;

(b) the First and Second Vice-Presidents;

(c) the Second Vice-President-elect, if not elected under paragraph (d);

(d) ~~3~~ 4 other Benchers elected under Rule 1-41~~ (1)~~ *[Election of Executive Committee]*~~;~~

~~(e) one appointed Bencher elected under Rule 1-41 (7)~~.

LAW SOCIETY RULES

PART 1 – ORGANIZATION

Division 1 – Law Society

Elections

Election of Executive Committee

1-41 (1) The Benchers must elect 4 Benchers to serve as members of the Executive Committee for each calendar year as follows:

(a) 3 elected Benchers;

(b) 1 appointed Bencher.

(2) A person elected as a Bencher for a term that includes the calendar year for which members of the Executive Committee are to be elected is eligible for election under subrule (1) (a).

(2.1) A Bencher reappointed as a Bencher, or eligible to be reappointed as a Bencher, for a term that includes the calendar year for which members of the Executive Committee are to be elected is eligible for election under subrule (1) (b).

(3) A Bencher who is eligible for election under subrule (1) may become a candidate by notifying the Executive Director in writing by November 22.

(4) If there are more candidates than there are positions to be elected, the Executive Director must conduct a ballot.

(5) The Executive Director must specify a date no later than December 6 for the return of the ballots, and a ballot returned after that date is not valid.

(6) Benchers in office on the date specified under subrule (5) are eligible to vote for the Executive Committee as follows:

(a) all Benchers are eligible to vote for elected Benchers;

(b) appointed Benchers are eligible to vote for appointed Benchers.

(7) [rescinded]

(8) [moved to (2.1)] (9) [rescinded]

(10) If a vote is required for an election under this rule,

(a) it must be conducted by secret ballot,

(b) a ballot must be rejected if it contains votes for more candidates than there are positions to be filled, and

LAW SOCIETY RULES

(c) when more than one Bencher is to be elected, the candidates with the most votes, up to the number of positions to be filled, are elected.

(11) If, because of a tie vote or for any other reason, the Benchers fail to elect 4 members of the Executive Committee under subrule (1), or if a vacancy occurs in any position elected under this rule, the Benchers or the appointed Benchers, as the case may be, must hold an election to fill the vacancy at the next regular meeting of the Benchers.

(12) The Executive Director may conduct an election for members of the Executive Committee partly or entirely by electronic means.

(13) This rule applies, with the necessary changes and so far as applicable, to an election conducted partly or entirely by electronic means.

Division 2 – Committees

Executive Committee

1-50 The Executive Committee consists of the following Benchers:

(a) the President;

(b) the First and Second Vice-Presidents;

(c) the Second Vice-President-elect, if not elected under paragraph (d);

(d) 4 other Benchers elected under Rule 1-41 *[Election of Executive Committee]*.

EXECUTIVE COMMITTEE ELECTION

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules

1. By rescinding subrules (1) to (4) and (6) to (9) of Rule 1-41 and substituting the following:

(1) The Benchers must elect 4 Benchers to serve as members of the Executive Committee for each calendar year as follows:

(a) 3 elected Benchers;

(b) 1 appointed Bencher.

(2) A person elected as a Bencher for a term that includes the calendar year for which members of the Executive Committee are to be elected is eligible for election under subrule (1) (a).

(2.1) A Bencher reappointed as a Bencher, or eligible to be reappointed as a Bencher, for a term that includes the calendar year for which members of the Executive Committee are to be elected is eligible for election under subrule (1) (b).

(3) A Bencher who is eligible for election under subrule (1) may become a candidate by notifying the Executive Director in writing by November 22.

(4) If there are more candidates than there are positions to be elected, the Executive Director must conduct a ballot.

(6) Benchers in office on the date specified under subrule (5) are eligible to vote for the Executive Committee as follows:

(a) all Benchers are eligible to vote for elected Benchers;

(b) appointed Benchers are eligible to vote for appointed Benchers.

(12) The Executive Director may conduct an election for members of the Executive Committee partly or entirely by electronic means.

(13) This rule applies, with the necessary changes and so far as applicable, to an election conducted partly or entirely by electronic means.

2. By rescinding paragraphs (d) and (e) of Rule 1-50 and substituting the following:

(d) 4 other Benchers elected under Rule 1-41 *[Election of Executive Committee]*

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To:	Benchers
From:	Jeffrey G. Hoskins, QC for Act and Rules Committee
Date:	October 1, 2019
Subject:	**Rule 4-55—Investigation of books, records and accounts**

---

1. At the July 12 meeting the Benchers considered a report from the Executive Committee recommending changes in the rule governing forensic audits of lawyers' books, records and accounts under Rule 54-55. I attach a copy of the report for your reference.

2. These are the recommendations of the Executive Committee, which the Benchers approved in principle:

    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.

3. The Act and Rules Committee recommends the adoption of the attached draft amendments to Rule 4-55 intended to implement the policy decisions of the Benchers.

Drafting notes

4. The proposed provision is intended to have the same or similar effect as other provisions for an interlocutory application and decision.

5. Note that, with the rescission of subrule (6)(a), paragraph (b) can be subsumed into the opening of the provision. That allows for the simplification of the numbering in the rest of the subrule.

6. The Committee recommends adoption of the attached suggested resolution to effect the desired changes.

Attachments: Executive Committee report
draft amendments
suggested resolution

JGH

The Law Society of British Columbia

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

June 27, 2019

Prepared for: Benchers

Prepared by: Executive Committee

Purpose: Decision

Introduction

1. This memorandum presents and analyses concerns, raised by the Investigations, Monitoring and Enforcement ("IME") department with respect to Rule 4-55, that have been considered by the Executive Committee. The concerns relate to: (1) Executive Director designations and (2) the time period allotted to a lawyer who wishes to request certain records be excluded from an investigation.

Executive Director Designations

I. Issue and Recommendation

2. Rule 4-55(1) states that:

    a. If the chair of the Discipline Committee reasonably believes that a lawyer or former lawyer may have committed a discipline violation, the chair may order that an investigation be made of the books, records and accounts of the lawyer or former lawyer, including, if considered desirable in the opinion of the chair, all electronic records of the lawyer or former lawyer.

3. Rule 4-55(6)(a) also provides that when an order is made under subrule (1) *the Executive Director must designate one or more persons to conduct an investigation*. This provision creates a specific regulatory requirement that the Executive Director designate a person to investigate after the order is made, rather than is the case in other provisions in the rules where the Executive Director is specified as the person who must investigate (for example, a complaint), which then triggers the provisions on Executive Director delegations, allowing the Executive Director to choose and, if necessary, alter the delegation without having to get a new order.

4. The IME department raised the following concerns with regard to these provisions – and in particular with the requirement that the Executive Director must specifically designate a person to conduct an investigation:

    - The requirement adds a procedural layer that serves no apparent purpose;
    - There is no corresponding requirement under section 36 of the *Legal Profession Act* (the enabling provision for Rule 4-55);
    - Compliance can be hindered by staffing changes (departure of a designated individual), which in turn could prejudice an investigation;

    and suggested that the provisions could be simplified by repealing Rule 4-55(6)(a) and amending Rule 4-55(1) to state, for example, "the chair may order that the Executive Director investigate the books, records and accounts …"

5. If this were done, Rule 4-55(3) would require a consequential amendment. Currently a lawyer must send a record exclusion request "*to a person designated* under subrule (6) [Emphasis added]. With the proposed change to subrule (6), however, such a request would instead be made *to the Executive Director*.

II. Discussion

6. The Executive Committee considered the concerns raised by the IME department as highlighted in the section above. In addition, the IME department cited an inconsistency with the process for complaint investigations. To that end, Rule 3-5(1) states that "the Executive Director may, and on the instruction of the Discipline Committee must, investigate a complaint to determine its validity." So unlike Rule 4-55 investigations, the Executive Director is not required to designate specific individuals to conduct complaint investigations.

7. Moreover, Rule 1-44.1 authorizes the Executive Director's "delegate" (defined as including staff when acting in the scope of their employment) to exercise the power and authority of the Executive Director. Hence, unlike investigations under Rule 4-55, complaint investigations can be conducted by staff without the procedural step of a designation.

8. The IME department commented, and the Executive Committee agreed, that there could be a perceived value in requiring Rule 4-55 investigators to be designated, in that the Executive Director can select whomever he/she believes would be most suitable. However, that process is not consistent with the investigation procedures under Rule 3-5. The Committee therefore agreed that it seems inefficient and unfair that, to obtain authority to conduct an investigation in the scope of their employment, certain employees are subject to an extra procedural requirement. Currently, there is a two-step process: the order must be made and the Executive Director must designate. The Committee agreed that a two-step process adds a layer of unnecessary process, and not only does it take more time at the outset, delay can also occur if a designated person leaves their position or is otherwise unavailable when required, because then a new designation needs to be recorded. That process would be obviated by appointing the Executive Director to investigate at the outset, which allows any employee contemplated under Rule 1-44.1(2) to undertake the investigation.

9. Accordingly, to enhance efficiency and ensure that investigative procedures are equitably applicable to staff, the IME department noted, and the executive Committee agreed, that it would be beneficial to amend the appropriate provisions in Rule 4-55.

Record Exclusion Request

I. Issue and Recommendation

10. Another concern raised by the IME department that was considered by the Committee relates to when a lawyer makes a request pursuant to Rule 4-55(2) to exclude personal records that are not relevant to the investigation.

11. Under Rule 4-55(3), a lawyer must make such a request within 7 days of receiving an investigation order. However, the Committee was told that IME department has observed that, on a number of occasions, lawyers have needed more time, with some taking as long as several weeks to review their records. Recognizing that in many cases a 7 day period is perhaps too short a period of time for a lawyer to be able to review all of the identified records and to make a request under Rule 4-55(3), the IME department has suggested increasing the time for making exclusion requests to within 21 days of receiving a copy of an investigation order.

12. As noted in the section above, if Rule 4-55(6) is amended, Rule 4-55(3) would need a consequential amendment that requires record exclusion requests to be made *to the Executive Director*, rather than to a designate.

II. Discussion

13. The Committee was advised that time extensions under this Rule are asked for by lawyers, and the usual practice is that such extensions are granted. In light of this, the IME department reported that a 7 day period of response might be unreasonable as lawyers are currently having some difficulty complying with that timeframe.

14. In particular, the Committee was told that it appears many lawyers faced with the requirements in Rule 4-55 cannot undertake comprehensive record reviews within one week. This is likely because the amount of records a given lawyer reviews depends on various factors, including, for example, firm size, area of practice and the nature of a complaint. Investigations are more complicated with the proliferation of electronic devices. The quantity of documents and other information that can be stored on such devices increases the complexity of orders under s. 4-55. Moreover, the practice, which is now more and more prevalent, of obtaining copies of lawyers' smartphones, which are often dual-use devices that contain a great deal of personal (and therefore not relevant to the investigation) information increases the work necessary in order to comply properly with the order. This increases the length of time if a thorough job is to be done. Added to this is that if counsel is retained (which is to be encouraged), it takes time for the lawyer investigated to bring their lawyer up to speed.

15. Of course, increasing the time limit could create incentives for a lawyer to unnecessarily prolong the process, despite being otherwise able to comply within 7 days. Even so, the

IME department noted, and the Committee agreed, that the regularity of extensions that are being granted suggests that it is unfair to maintain a rule that benefits a minority, especially since some lawyers would, despite having more time, still make requests before a longer period of time had expired.

16. Another identified concern relates to the perception that may be generated by the current practice of providing extensions. In this regard, the worry is that by frequently granting extra time so early in the investigative process, respondent lawyers could view the Law Society enforcement of the rules as being "lax." If that happens, some lawyers may develop an expectation that there should be latitude with other obligations during the investigative process. Notwithstanding that there are instances where flexibility with compliance is justified, if leeway were to be viewed as customary, the Law Society's regulatory enforcement processes could come to be viewed as more permissive than they actually are. This could cause future delays in investigations, and lead to unnecessary further conduct violations due to non-compliance with the rules. In turn, public confidence in the Law Society as a regulator would be weakened.

17. To ensure that lawyers have adequate time to review their records, and to avert any negative perceptions about the Law Society's regulatory capabilities, the Committee agreed that there is a reasonable rationale for increasing the amount of time that is allotted for making record exclusion requests. The Committee agreed that a 21 day, instead of a 7 day, period made some sense, but wanted to ensure that the new rule made it clear that extensions of the new time period would only be granted in exceptional circumstances in order to avoid the new period becoming a base from which all lawyers would seek an extension.

Summary of recommendations

18. Three recommended amendments to Rule 4-55 are suggested:

    i. Amend Rule 4-55(1) to state, for example, that "the chair may order that the Executive Director investigate the books, records and accounts."

    ii. Repeal Rule 4-55(6)(a).

    iii. 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.

Impacts

(a) Public Interest

19. The proposed amendments do not change the substantive intent of Rule 4-55. The public interest purpose of ensuring a method through which to access necessary records for regulatory purposes while also permitting privacy interests of the lawyer being investigated in personal information not bearing on the investigation remains intact. Consequently, the public interest ought not to be adversely affected by the amendments. Arguably, the proposed amendments make the rule more defensible and therefore less likely to be challenged as imposing unreasonable time limits, which can be rationalized as being in the overall public interest as well.

(b) Fairness to regulation

20. The proposed amendments will give lawyers a better opportunity to obtain advice and to make a more thorough review of their records to identify personal, non-relevant material. To that extent, the amendments are also in the interests of lawyers while not being contrary to the overall public interest.

(c) Program Impacts, costs and benefits

21. Benefits to the proposed amendments include investigators receiving fewer requests to extend the period of time permitted to make a request to exclude personal records that are not relevant to the investigation. While these are not currently made very often, as noted in the Discussion section above, each time a request is granted, an appearance could be given that the Law Society enforcement of the rules is being lax or permissive. However, faced with what might be argued as an impractical time frame, extensions are usually granted. Therefore the amendments benefit the program by creating a more practical time frame and allowing investigators to better apply the rule.

22. It is not anticipated that the proposed amendments will materially increase the costs of the investigations. They could actually decrease the costs by allowing the focus to be on production of records rather than on considerations of time periods and extensions.

Conclusion

23. The Executive Committee recommend, in principle, to amend the aforesaid rules. If the Benchers approve the recommendation, the matter will be referred to the Act and Rules Committee to prepare rules to implement the policy direction.

LAW SOCIETY RULES

PART 4 – DISCIPLINE

Investigation of books and accounts

4-55 (1) If the chair of the Discipline Committee reasonably believes that a lawyer or former lawyer may have committed a discipline violation, the chair may order that the Executive Director conduct an investigation ~~be made~~ of the books, records and accounts of the lawyer or former lawyer, including, if considered desirable in the opinion of the chair, all electronic records of the lawyer or former lawyer.

(2) When electronic records have been produced or copied pursuant to an order under this rule, the lawyer concerned may request that a specific record be excluded from the investigation on the basis that it contains personal information that is not relevant to the investigation.

(3) ~~The lawyer must make a~~A request under subrule (2) must be made to the Executive Director in writing ~~to a person designated under subrule (6)~~ within ~~7~~ 21 days ~~of~~ after the lawyer concerned ~~receiving~~ receives a copy of the order under this rule.

(3.1) In exceptional circumstances, the Executive Director may extend the time for making a request under subrule (2).

(4) An order under this rule that permits the production or copying of electronic records must provide for a method of evaluating and adjudicating exclusion requests made under subrule (2).

(5) A request under subrule (2) must be refused unless the records in question are retained in a system of storage of electronic records that permits the segregation of personal information in a practical manner in order to comply with the request.

(6) When an order is made under subrule (1), ~~the~~ the lawyer or former lawyer concerned must do the following as directed by the Executive Director:

(a) [rescinded]~~the Executive Director must designate one or more persons to conduct the investigation, and~~

(b) [rescinded]~~the lawyer or former lawyer concerned must~~

(~~i~~c) immediately produce and permit the copying of all files, vouchers, records, accounts, books and any other evidence regardless of the form in which they are kept~~,~~;

(~~ii~~d) provide any explanations ~~that the persons designated under paragraph (a)~~ required for the purpose of the investigation~~,~~;

LAW SOCIETY RULES

(~~iii~~c) assist the ~~persons designated under paragraph (a)~~Executive Director to access, in a comprehensible form, records in the lawyer's possession or control that may contain information related to the lawyer's practice by providing all information necessary for that purpose, including but not limited to

(~~A~~i) passwords, and

(~~B~~ii) encryption keys.~~, and~~

(~~iv~~7) When an order has been made under this rule, the lawyer concerned must not alter, delete, destroy, remove or otherwise interfere with any book, record or account within the scope of the investigation without the written consent of the Executive Director.

LAW SOCIETY RULES

PART 4 – DISCIPLINE

Investigation of books and accounts

4-55 (1) If the chair of the Discipline Committee reasonably believes that a lawyer or former lawyer may have committed a discipline violation, the chair may order that the Executive Director conduct an investigation of the books, records and accounts of the lawyer or former lawyer, including, if considered desirable in the opinion of the chair, all electronic records of the lawyer or former lawyer.

(2) When electronic records have been produced or copied pursuant to an order under this rule, the lawyer concerned may request that a specific record be excluded from the investigation on the basis that it contains personal information that is not relevant to the investigation.

(3) A request under subrule (2) must be made to the Executive Director in writing within 21 days after the lawyer concerned receives a copy of the order under this rule.

(3.1) In exceptional circumstances, the Executive Director may extend the time for making a request under subrule (2).

(4) An order under this rule that permits the production or copying of electronic records must provide for a method of evaluating and adjudicating exclusion requests made under subrule (2).

(5) A request under subrule (2) must be refused unless the records in question are retained in a system of storage of electronic records that permits the segregation of personal information in a practical manner in order to comply with the request.

(6) When an order is made under subrule (1), the lawyer or former lawyer concerned must do the following as directed by the Executive Director:

(a) [rescinded]

(b) [rescinded]

(c) immediately produce and permit the copying of all files, vouchers, records, accounts, books and any other evidence regardless of the form in which they are kept;

(d) provide any explanations required for the purpose of the investigation;

LAW SOCIETY RULES

(e) assist the Executive Director to access, in a comprehensible form, records in the lawyer's possession or control that may contain information related to the lawyer's practice by providing all information necessary for that purpose, including but not limited to

(i) passwords, and

(ii) encryption keys.

(7) When an order has been made under this rule, the lawyer concerned must not alter, delete, destroy, remove or otherwise interfere with any book, record or account within the scope of the investigation without the written consent of the Executive Director.

FORENSIC AUDIT RULES

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules by rescinding subrules (1), (3) and (6) of Rule 4-55 and substituting the following:

(1) If the chair of the Discipline Committee reasonably believes that a lawyer or former lawyer may have committed a discipline violation, the chair may order that the Executive Director conduct an investigation of the books, records and accounts of the lawyer or former lawyer, including, if considered desirable in the opinion of the chair, all electronic records of the lawyer or former lawyer.

(3) A request under subrule (2) must be made to the Executive Director in writing within 21 days after the lawyer concerned receives a copy of the order under this rule.

(3.1) In exceptional circumstances, the Executive Director may extend the time for making a request under subrule (2).

(6) When an order is made under subrule (1), the lawyer or former lawyer concerned must do the following as directed by the Executive Director:

(c) immediately produce and permit the copying of all files, vouchers, records, accounts, books and any other evidence regardless of the form in which they are kept;

(d) provide any explanations required for the purpose of the investigation;

(e) assist the Executive Director to access, in a comprehensible form, records in the lawyer's possession or control that may contain information related to the lawyer's practice by providing all information necessary for that purpose, including but not limited to

(i) passwords, and

(ii) encryption keys.

(7) When an order has been made under this rule, the lawyer concerned must not alter, delete, destroy, remove or otherwise interfere with any book, record or account within the scope of the investigation without the written consent of the Executive Director.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: October 1, 2019
Subject: **Proposed Rule 5-19.1—Extension of time to initiate a review**

---

1. At the July 12 meeting the Benchers considered a report from the Executive Committee recommending a change in the rules to allow the President or designate to extend the time for a party to initiate a review of a Law Society Tribunal decision. I attach a copy of the report for your reference.

2. These are the recommendations of the Executive Committee, which the Benchers approved in principle:

    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;

3. The Act and Rules Committee recommends accomplishing the Benchers' intention by adding a single new rule and without amending any existing rules.

4. The Committee recommends the following suggested resolution for adoption by the Benchers:

    BE IT RESOLVED to amend the Law Society Rules by adding the following rule:

    ### Extension of time to initiate a review

    5-19.1 (1) A party may apply to the President to extend the time within which a review may be initiated under Rule 5-19 *[Initiating a review]*.

(2) When an application is made under subrule (1), the President must

(a) refuse the extension of time, or

(b) grant the extension, with or without conditions or limitations.

(3) On an application under this rule, the President may designate another Bencher to make a determination under subrule (2).

Drafting note

5. The suggested new rule is intended to have the same or similar effect as other provisions for an interlocutory application and decision.

Attachments: Executive Committee report

JGH

The Law Society of British Columbia

Extension of time to file for a review of a decision of a hearing panel – policy issues arising from the decision in *Law Society of BC v. Johnson*

June 27, 2019

Prepared for: Benchers

Prepared by: Executive Committee

Purpose: Decision

Purpose

1. The memorandum outlines recommendations from the Executive Committee regarding three policy issues arising from the decision in *Law Society of BC v. Johnson*, 2015 LSBC 40 ("*Johnson*"), which held that a lawyer can apply to extend the period of time in which to initiate a review of a decision of a hearing panel.

2. Specifically, before the Act and Rules Committee can commence drafting a rule in response to the *Johnson* decision, the Benchers must provide guidance on the three identified policy issues. Having considered the matter, the Executive Committee recommendations described below address the following:

    - the duration of the extension of time in which a review of a hearing panel's decision can be initiated,

    - whether the rules should provide specific criteria that should be considered when evaluating whether an extension should be granted, and

    - who should be responsible for making the decision on any requests for extension of time.

Background: the decision in *Johnson*

3. The *Johnson* decision addressed the issue of whether Mr. Johnson, a lawyer, should be permitted to initiate a review of a hearing panel's decision several weeks past the 30-day statutory period for doing so.[1]

4. Neither the *Legal Profession Act* (the "*LPA*") nor the Law Society Rules explicitly provide for an extension of time to allow for late filing. In the absence of a process to extend time or dismiss the application for lateness, the matter was referred to a full quorum of the Benchers (a review panel) to determine whether the Law Society has any jurisdiction under s. 47 of the *LPA* and the Rules to extend time and, if so, whether time should be extended in Mr. Johnson's case.

5. The Benchers issued their decision in August 2015 [See *Law Society of British Columbia v. Johnson*, 2015 LSBC 40]. The majority found there was jurisdiction to extend the time to apply for a review of a decision of the hearing panel.[2] Further, based on the

[1] Section 47(1) of the *Legal Profession Act* stipulates that: "Within 30 days after being notified of the decision of a panel under section 22 (3) or 38 (5), (6) or (7), the applicant or respondent may apply in writing for a review on the record by a review board."

[2] In *Johnson*, the majority found that Rule 5-12 [*Application to vary certain orders*] allows the extension of time to file because the time limit in section 47 of the *LPA* and the Rules is a "condition" that can be varied under Rule 5-12. The Benchers also relied on case law that supported their position that an extension of the time was a matter of

application of criteria developed in the Court of Appeal in relation to the exercise of their discretion in extending time, the majority found that Mr. Johnson should be granted an extension.

6. Although the *Johnson* decision established that the time for initiating a review may be extended in the appropriate circumstances, it also revealed that both the availability of an extension of time and the procedure for applying for such an extension are not apparent in the *LPA* or the Rules. A party not familiar with Law Society jurisprudence would likely conclude that no extension is available.

7. Following the release of the *Johnson* decision, the matter was referred to the Act and Rules Committee by discipline counsel on the basis that the decision in *Johnson* required a reconsideration in the Rules.

The Problem

8. In late 2016, the Act and Rules Committee began to consider how to amend the Rules to give effect to the *Johnson* decision. On review, the Committee concluded that, although *Johnson* established that it was possible to extend the 30-day time period in which to initiate a review, the issues of when and how such an extension should operate and who should decide were not addressed in any detail in the decision.

9. The Act and Rules Committee concluded that these were policy issues that require decision by the Benchers rather than by the Act and Rules Committee.

10. The matter was referred back to policy staff. Given the number of policy issues from the strategic plan that were currently underway, and given that the power to make a request for an extension of time had been established through the hearing decision and the issue in question was simply how to reflect that decision in the rules, other matters took priority in the deployment of resources within the department. The analysis was completed earlier this year and the Executive Committee has considered the policy issues relating to Rule changes on the three key issues:

    a. the appropriate *duration* of an extension of time in which a review of a hearing panel decision can be initiated;

    b. whether the Rules should contain *criteria* that may, or must, be considered in granting or refusing an extension or whether criteria should be developed through the jurisprudence; and

practice or procedure delegated to the Benchers and about which the Benchers have made rules. See *Johnson* at paras. 46-47.

c. who the appropriate *decision maker* should be.

11. The Executive Committee's recommendations are outlined below and, if approved by the Benchers, the Act and Rules Committee will be able to continue their consideration and draft a new rule.

Discussion

Issue 1: What should be the duration of the extension of time in which to initiate a review?

12. The *Johnson* decision established that the statutorily mandated 30-day period in which to initiate a review can be extended. However, the decision did not provide any commentary as to the duration of such an extension.

13. There are two possible approaches. The first involves an approach that permits a "discretionary" or "flexible" extension, one that does not place a limit on the time period in which an extension can be sought. The second is a time-limited extension, which would limit the duration of the extension period.

Option 1: Open-ended extension

14. In the majority of statutory schemes in which a body has the power to extend the time to file for a review or appeal, *no limits* are placed on the duration of the extension period.

15. For example, the *Workers Compensation Act* permits the appeal of a final decision of a review officer within 30 days of the decision. The chair may extend the time for filing a notice of appeal. The statute does not limit the duration of this extension:

> **Time limit for appeal**
>
> **243** (1) A notice of appeal respecting a decision referred to in section 239 must be filed within 30 days after the decision being appealed was made.
>
> […]
>
> (3) On application, and where the chair is satisfied that
>
> (a) special circumstances existed which precluded the filing of a notice of appeal within the time period required in subsection (1) or (2), and
>
> (b) an injustice would otherwise result,
>
> the chair may extend the time to file a notice of appeal even if the time to file has expired.

16. Similarly, the *Health Professions Act* enables a complainant to apply to the review board for a review of an inquiry committee decision within 30 days. The statute allows for an

extension of the time, but does not establish a limit on the duration of the extension period:

> **Procedural requirements — application for review**
>
> **50.61** (4) On application, the review board may extend the time for filing an application for review under this Part, even if the time for filing an application has expired, if the review board is satisfied that special circumstances exist.

17. The *Administrative Tribunals Act* provides that an application for judicial review of a final decision of the tribunal must be commenced within 60 days of the decision being issued. Extensions of time to apply for a review may be granted. Again, the statute places no time limits on the duration of the extension:

> **Time limit for judicial review**
>
> **57** (1) Unless this Act or the tribunal's enabling Act provides otherwise, an application for judicial review of a final decision of the tribunal must be commenced within 60 days of the date the decision is issued.
>
> (2) Despite subsection (1), either before or after expiration of the time, the court may extend the time for making the application on terms the court considers proper, if it is satisfied that there are serious grounds for relief, there is a reasonable explanation for the delay and no substantial prejudice or hardship will result to a person affected by the delay.

Option 2: Time-restricted extension

18. Few legislative schemes prescribing a limit on the duration of the period in which an extension of time to initiate a review or appeal can be sought. This is clearly the less common approach in BC, where research failed to locate any examples a time-restricted extension.

19. A time-restricted extension period is, however, found in the federal *Income Tax Act*, whereby a taxpayer may apply to the Minister to extend time for serving a notice of objection to an assessment. The statute limits the extension to one year after the expiration of the period in which the notice of objection should have been filed.

> **Extension of time by Minister**
>
> **166.1** (1) Where no notice of objection to an assessment has been served under section 165, nor any request under subsection 245(6) made, within the time limited by those provisions for doing so, the taxpayer may apply to the Minister to extend the time for serving the notice of objection or making the request.
>
> **When order to be made**

> **(7)** No application shall be granted under this section unless
>
> (a) the application is made within one year after the expiration of the time otherwise limited by this Act for serving a notice of objection or making a request, as the case may be; and [..]
>
> (b) the taxpayer demonstrates that
>
> (i) within the time otherwise limited by this Act for serving such a notice or making such a request, as the case may be, the taxpayer
>
> (A) was unable to act or to instruct another to act in the taxpayer's name, or
>
> (B) had a *bona fide* intention to object to the assessment or make the request,
>
> (ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and
>
> (iii) the application was made as soon as circumstances permitted.

Recommendation

20. After analysis, the Committee recommends that there be an open-ended extension on the 30-day period in which to initiate a review of a hearing panel's decision, keeping in line with other statutory schemes in BC. The length of a delay in making the application for extension could, of course, be expected to be a factor in the exercise of the discretion sought to be exercised.

Issue 2: Should the Rules prescribe criteria for exercising discretion to grant an extension or should criteria be developed through jurisprudence?

21. In finding that an extension of time in which to initiate a review may be granted, the *Johnson* decision emphasized that the exercise of this discretion should be based on criteria that are known and understood.

22. The majority in *Johnson* applied the factors set out in *Davies v. CIBC*, (1987) 15 BCLR (2d) (CA) ("*Davies v. CIBC*"), Court of Appeal jurisprudence that guides the Court in determining whether to grant an extension of time for an appeal:

> [52] We are of the view that the exercise of the discretion should be used in a principled manner on criteria that are known and understood. The Court of Appeal criteria are appropriate guide posts and a flexible application of them is appropriate. Those criteria are:
>
> (a) whether there was a bona fide intention to appeal within the time for

bringing the appeal;
(b) when the applicants informed the respondent of their intention to appeal;
(c) whether there would be prejudice to the respondent if an extension were granted;
(d) whether there is merit in the appeal; and
(e) whether it is in the interests of justice that an extension be granted.

23. There are two possible approaches as to how the exercise of this discretion should be articulated – if at all – in the Rules themselves.

Option 1: Leave criteria to be developed in the jurisprudence

24. One approach is *not* to list criteria in the Rules to govern the exercise of discretion in relation to an extension of time, but instead, rely on the jurisprudence to develop the relevant factors.

25. Some statutory regimes that allow for extensions of time for an appeal or review take this approach. For example, the *Employment Standards Act*, which permits an appeal of the director's decision to the tribunal within 30 days, simply states that the tribunal may extend the time period for requesting the appeal even though the period has expired.[3] How this discretion is exercised is not detailed in the Act or regulations – that is, there is no list of enumerated factors that must be considered. Rather, the factors are articulated in the case law.[4]

26. The *Court of Appeal Act* is also silent as to what factors should be applied when the Court considers whether to grant an extension for bringing an appeal.[5] Rather, the criteria that guide whether an extension of time is granted are laid out in *Davies v. CIBC*, as noted above.

27. In *Johnson*, the Benchers did not provide clear reasons as to why they relied on Court of Appeal jurisprudence. However, the majority did note that, rather than applying to an internal Law Society review of a decision made by a hearing panel, lawyers also have the opportunity to appeal to the Court of Appeal under s. 28 of the *LPA*.[6] The Benchers may

[3] *Employment Standards Act, s. 109(1)(b).*
[4] See for example *Gorenshtein v. British Columbia (Employment Standards Tribunal)*, 2013 BCSC 1499 at para. 28.
[5] The Act simply states "A justice may extend or shorten the time within which an appeal to the court or application for leave to appeal may be brought. The power to extend time may be exercised even though the application for the extension or the order granting the extension is made after the expiry of the period of time in respect of which the application to extend is made." *Court of Appeal Act*, s. 10
[6] See *Johnson* at para. 44.

have been suggesting that it is advantageous to seek congruency between the two avenues for review as to the criteria that are applied when considering an extension of time.

28. Notably, the Law Society has relied on the development of jurisprudence with respect to other discretionary decisions under the Rules, such as applications for adjournments and stays of penalties.

Option 2: Enumerate criteria in the new rule

29. An alternative approach is to enumerate criteria to guide the exercise of discretion in the Rules.

30. This is the approach taken in the *Health Professions Act* and the *Workers Compensation Act*, which both stipulate a requirement for "special circumstances to exist" for granting an extension of the time to initiate a review or appeal. The *Administrative Tribunals Act* also enumerates criteria in relation to granting an extension of the time to apply for a judicial review, namely: there are serious grounds for relief, there is a reasonable explanation for the delay and no substantial prejudice or hardship will result to a person affected by the delay. As noted above, the federal *Income Tax Act* relies on enumerated criteria to grant extensions: the individual was unable to act or instruct another to act in his or her name or the individual had a *bona fide* intention to make a request for the extension of time; it would be just and equitable to grant the application, and; the application was made as soon as circumstances permitted.

31. If this option is pursued, then it should also be confirmed that the criteria in *Davies v. CIBC* are the appropriate ones. Notably, the *Johnson* decision has already set precedent in this regard by considering and applying these criteria.[7]

Recommendation

32. After analysis, the Executive Committee recommends that the criteria for exercising discretion to grant an extension should be developed through jurisprudence rather than being enumerated at the outset in the new rule. Doing so will allow for flexibility in applying the new rule and is in line with the Law Society's typical approach to other discretionary decisions under the Rules.

Issue 3: Who is the appropriate decision maker for granting an extension of time?

33. As there was no pre-existing process to extend the 30-day period in which to initiate a review, the *Johnson* matter was referred to a full quorum of seven Benchers (now replaced by a Review Board of 5 members). However, adopting rules to govern the

[7] See *Johnson* at para. 52.

granting of extensions of time can not only provide guidance to parties seeking to attain or resist an extension, it can provide a more appropriate decision-maker than a review board, which can prove unwieldy to manage.

34. Therefore, a decision needs to be made as to who the appropriate decision maker should be.

35. Currently, other preliminary decisions under the Rules are made by the President. The President is free to assign the decision to another Bencher, such as the Chambers Bencher.[8]

36. Rule 5-19(2) is the rule governing the initiation of a review of a disciplinary decision, as was the case in *Johnson*. It provides that the respondent may initiate a review by delivering a notice of review to the *President* and discipline counsel. In fact, all reviews initiated pursuant to Rule 5-19 require delivery of notice to the President. It makes sense that the President should be the individual responsible for making any decisions further to a review being initiated, such as a request for extension of time.

Recommendation

37. After analysis, the Committee recommends that the President (or President's designate) be delegated the task of making decisions on granting the extension of time, which parallels and maintains consistency with other Law Society Rules on preliminary decision-making.

Conclusion and Recommendations

38. The *Johnson* decision established that the time period for requesting review of a hearing panel's decision may be extended. Given that the availability of an extension is not evident from a plain reading of either the *LPA* or the Rules, the Rules should be amended to ensure it is clear to the profession that such an extension is possible.

39. As described above, the Committee recommends the Benchers approve in principle 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

[8] For example, the President or President's designate is responsible for making many preliminary decisions during the credentials hearings process (e.g. Rules 2-94, 2-95, 2-96) and discipline hearings process (e.g. Rules 4-35, 4-40).

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 Law Society of British Columbia

Law Firm Regulation Pilot Project and Recommendations Report

Final Report of Law Firm Regulation Task Force

Law Firm Regulation Task Force

Steve McKoen, QC, Chair
Jasmin Ahmad, Vice Chair
William Maclagan, QC
Henry Wood, QC
W. Martin Finch, QC
Angela Westmacott, QC

October 9, 2019

Prepared for: The Benchers

Prepared by: Alison Luke, Staff Lawyer, Policy and Legal Services

Purpose: Discussion

Table of Contents

Table of Contents **2**

Executive Summary **4**

Background **6**

Part 1: Pilot Project Design **8**

Objectives and design features 8

Pilot project materials and process 10

Self-Assessment Report 10

Workbook 12

Part 2: Pilot Project Results **13**

Objective 1: Evaluate firms' existing policies and processes in relation to the Professional Infrastructure Elements. 14

Objective 2: Provide the Law Society with information as to where firms have the greatest need for additional educational resources. 16

Objective 3: Test and evaluate the self-assessment tool and the process by which it is administered. 16

(a) Overall impressions of the self-assessment process 17

(b) Feedback on the mandatory Self-Assessment Report 20

(c) Feedback on the optional Workbook 22

(d) Feedback on resources 24

(e) Time spent self-assessing 26

Objective 4: Assess the staff and financial resources required to implement an impactful self-assessment process. 28

Part 3: Recommendations **29**

1. Should there be a profession-wide implementation of the self-assessment process? 30

(a) The educational value of self-assessment 30

(b) Behavioural change 31

(c) Alignment with strategic priorities in BC and beyond 33

(d) Not onerous 33

(e) Concerns with profession-wide implementation 34

2. Purpose of the self-assessment 35

3. Frequency of the assessment cycle 37

4. Timing of the assessment cycle 38

5. Modifications to the self-assessment 40

(a) Rating scale 40

(b) Goal setting 41
(c) Increased functionality 42
(d) Mandatory review of Considerations and Resources 42
6. Developing additional resources 43
7. Budgetary implications 45
Resolution and Summary of Recommendations 48
Subsequent Steps 49

Executive Summary

Following consideration by the Benchers of the Law Firm Regulation Task Force's Second Interim Report in December 2017, the Benchers approved a pilot project involving approximately 360 law firms relating to a new program of proactive regulation of law firms.

The pilot project, which utilized a self-assessment exercise to elicit information about firms' practice management systems, commenced in July 2018. Each firm in the pilot project was given three months to self-assess, through an online report provided by the Law Society, the extent to which the firm's operating policies and processes measured against eight Professional Infrastructure Elements that the Law Society had identified as key elements of effective practice management. The firms were also surveyed to seek their feedback on the self-assessment process in order to allow the Task Force to draw conclusions, and make recommendations about whether to roll-out the assessment exercise to all law firms that are required to self-assess, pursuant to the Law Society Rules.

The pilot project was overseen by the Task Force, which was tasked with reviewing the feedback provided by participating firms, and reporting this information to the Benchers, along with recommendations, with respect to the next stages of law firm regulation in BC. This report reviews the pilot project, considers the feedback received and makes recommendations.

Approximately 75% of the firms involved in the pilot, two-thirds of which were sole practitioners, submitted their self-assessment forms to the Law Society, which provided a sufficient qualitative and quantitative data set from which to analyse the project.

The vast majority of firms of all sizes (86% of sole practitioners and 91% of firms of two lawyers or more) reported having functional policies and processes in place in relation to all eight Professional Infrastructure Elements. Fewer than 5% of sole practitioners and less than 2% of firms of two lawyers or more reported, for most Elements, that they had no policies or processes in place. The highest rates reported for policies and processes being in place were for Element 7 (Ensuring responsible financial management) and Element 6 (Charging appropriate fees and disbursements), with the lowest rates reported for Element 8 (Equity, diversion and inclusion) and Element 3 (Protecting confidentiality).

A total of 68% of firms reported they took less than two hours to complete the self-assessment exercise, with 90% reporting the task took less than five hours. Approximately 85% of participating firms reported they did not find the self-assessment process onerous to complete.

The majority of firms reported that the self-assessment was a useful exercise for improving education and awareness about best practices covered by the Professional Infrastructure Elements. A majority of firms also agreed or strongly agreed that completing the self-assessment would promote action around improving policies and processes in their firm. Approximately two-thirds of participating firms agreed or strongly agreed that the content of

the self-assessment was relevant to the firm's practice, and a large majority indicated that the content of the Self-Assessment Report was clear. Nevertheless, many firms had suggestions as to how the process could be improved, as discussed in this report.

After review and consideration of the results of the pilot project, the Task Force has identified seven recommendations, the rationales for which are detailed in the Report. The Task Force seeks a resolution that these recommendations be adopted.

Recommendation 1: The Law Society commits to the profession-wide implementation of the self-assessment process.

Recommendation 2: The purpose of the self-assessment process will remain educational in nature, and information provided to the Law Society as part of the Self-Assessment Report will not be used as evidence in, or to inform the outcome of, a disciplinary action or proceeding.

Recommendation 3: Unless exempted from the requirement to self-assess under Rule 2-12.1 (2), all firms will be required to complete and submit a Self-Assessment Report to the Law Society once every three years. New firms will be required to submit their self-assessment within one year of their registration date. Firms may also be required to complete a self-assessment outside of the regular reporting period if the Executive Director considers it is in the public interest to do so.

Recommendation 4: The assessment cycle will operate on a rolling basis, in which one third of all firms that are required to self-assess under the Law Society Rules submit a Self-Assessment Report to the Law Society in each year of the three year assessment period.

Recommendation 5: The Law Society will commit to the completion of two assessment cycles of three years each in order to collect sufficient data to evaluate the impacts of the self-assessment over time. Mechanisms will be developed to ensure the continuous improvement of the self-assessment process throughout this period, including reports to the Benchers at the conclusion of each assessment cycle and ongoing opportunities for feedback from the membership.

Recommendation 6: The Self-Assessment Report will undergo several modifications to improve its format, functionality and content, including revising the rating scale, adding a goal setting component, rebuilding the Self-Assessment Report as an internally hosted web-based application and requiring firms to review the material contained in the Considerations and Resources sections of the Self-Assessment Report.

Recommendation 7: The Law Society will not develop prescribed policies and procedures, but may develop sample policies and procedures as part of the expanded set of practice resources that will be made available to all firms.

Background

1. Legal regulators have historically focused on individual lawyers, an approach that was both desirable and practical in the context of a profession dominated by sole practitioners or small firms. Although there are still a significant number of sole practitioners in British Columbia, the landscape of the legal profession has begun to shift in recent years. An increasing number of lawyers now practise in firms of two or more lawyers, and in some instances, firms can contain hundreds of members.
.
2. In larger firms, it is not uncommon for legal services to be provided by teams of lawyers under the management or direction of a lead lawyer, and many aspects of the provision of legal services, including conflicts, accounting, training and supervision are carried out at the firm level. Even in small and middle sized firms, billing and other administrative aspects of practice are often handled by the firm itself. Regulating legal entities as well as the individuals who practice in them reflects these changes within the profession, in which many regulatory requirements are now fulfilled by firms.

3. Many Canadian lawyers, ranging from sole practitioners to those employed in large national firms, are influenced by the professional and ethical infrastructure in which they work. Relatedly, there is increased awareness that law firms tend to develop distinct organizational cultures that affect the manner in which legal services are provided. Accordingly, firms can have considerable impact on, and influence over, professional values and conduct, and exercise a significant amount of power in the legal profession. In response, regulators in many jurisdictions, including the Law Society of BC, are adopting new regulatory models that both address the conduct of law firms and support firms of all sizes develop a robust professional infrastructure, including sole practitioners and small firms that may otherwise have limited practice management resources available to them.

4. Following legislative amendments to the *Legal Profession Act* in 2012, the Law Society established a Law Firm Regulation Task Force, which was mandated to recommend a framework for regulating law firms in BC. Over the last five years, the Task Force has engaged in the complex task of considering policy changes to regulation and designing a regulatory model that will support and govern the conduct of firms. Specifically, the Task Force has endeavoured to develop a program that sets target standards for ethical, professional firm practice without establishing a series of prescriptive, rule-based requirements. The result of this significant undertaking has been the creation of a regulatory framework to encourage firms to develop strong practice management systems supported by a robust set of policies and processes that address core areas of firm practice.

5. This approach, which has been variously described as "proactive", "outcomes based" and "light touch" regulation, is premised on the theory that the public is best served by a regulatory program that prevents problems from occurring in the first place, rather than one that focuses on taking punitive action once problems have occurred. As compared to more traditional modes of regulation, the enforcement of rules plays a secondary and supporting role in achieving desired outcomes. The primary focus is on the regulator providing transparency and guidance with respect to the standards to be achieved, and placing greater responsibility and accountability on firms to ensure that the standards are being met.

6. The Task Force's first report, which was presented to the Benchers in October 2016 (the "First Interim Report"),[1] outlined key rationales for adopting a proactive approach to law firm regulation and identified the basic parameters of the proposed regulatory framework. The result was the identification of eight key elements of practice management – now called the Professional Infrastructure Elements – in which firms would be responsible for implementing policies and processes that support high standards of professional, ethical firm conduct:[2]

    Element 1: Developing competent practices and effective management
    Element 2: Sustaining effective and respectful client relations
    Element 3: Protecting confidentiality
    Element 4: Avoiding and addressing conflicts of interest
    Element 5: Maintaining appropriate file and records management systems
    Element 6: Charging appropriate fees and disbursements
    Element 7: Ensuring responsible financial management
    Element 8: Equity, diversity and inclusion

7. In designing this new regulatory approach, the Task Force endorsed the development of a self-assessment process that would serve two functions. First, it would enable the Law Society to evaluate the extent to which firms were already meeting the identified standards. Second, the self-assessment would play a central role in educating firms about best practices by providing them with guidance and resources to assist them in satisfying the eight Professional Infrastructure Elements.

8. In December 2017, the Task Force released its second report (the "Second Interim Report"), which provided the Benchers with additional details on the features of the

[1] A series of ten high-level recommendations were included in the Law Firm Regulation Task Force's Interim Report, and were adopted by the Benchers in October 2016 ("First Interim Report"), online at: https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/LawFirmRegulation-2016.pdf

[2] The Professional Infrastructure Elements were designed to identify *what* firms are expected to do with respect to establishing effective practice management systems, without creating a set of prescriptive rules that tell firms *how* to specifically satisfy these Elements and achieve compliance.

regulatory framework.[3] This included defining a process for firm registration and the role of the designated firm representative, developing content and procedures in relation to the self-assessment, examining various approaches to resource development and identifying areas where new rules were necessary.

9. Although the majority of the Second Interim Report's recommendations were adopted as presented, the Benchers directed that rather than introducing the self-assessment process to the entire profession, the assessment should first be tested in a pilot project. The decision to undertake a pilot project did not represent a fundamental shift in the approach the Task Force initially envisaged for law firm regulation. Rather, it reflected a change in scale: from creating a requirement for all firms to complete the self-assessment to the initial introduction of the self-assessment to a smaller sub-set of the profession.

10. In the first half of 2018, the Law Firm Regulation Task Force therefore worked with staff to design and implement a pilot project to test the self-assessment process. As described in Part 1 of this report, in July 2018, approximately 360 firms were selected for the pilot, provided with the self-assessment materials, and given three months to complete and submit an online Self-Assessment Report to the Law Society.

11. At the conclusion of the assessment period, the results of the pilot project were analysed and summarized, as reflected in Part 2 of this report. Following the Task Force's review of this data and a series of detailed discussions of various policy issues, a final set of recommendations has been developed for the Benchers. These recommendations are outlined in Part 3 of this report.

Part 1: Pilot Project Design

Objectives and design features

12. The Task Force's first step in designing the pilot project was to clearly identify the key objectives of the initiative. The following four objectives were communicated to the Benchers during an update on law firm regulation in May 2018:[4]

    - To evaluate the extent to which firms have policies and processes in place in relation to the eight Professional Infrastructure Elements;

[3] Law Firm Regulation Task Force, Second Interim Report (December 2017) ("Second Interim Report"), online at: https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/LawFirmRegulationSecondInterimReport2017.pdf

[4] See Bencher Meeting Agenda, May 4, 2018, online at: www.lawsociety.bc.ca/Website/media/Shared/docs/about/agendas/2018-05-04_agenda.pdf

- To provide the Law Society with information as to where firms have the greatest need for additional educational resources;

- To test and evaluate the content of the self-assessment tool and the process by which it was administered by asking users to report on its utility, functionality and clarity; and

- To assess the staff and financial resources required to implement an impactful self-assessment process.

13. The Task Force also committed to reporting back to the Benchers on how these objectives had been met at the conclusion of the pilot project and making recommendations regarding future phases of law firm regulation.

14. Guided by these objectives, the Task Force developed a pilot project that included the following features:

Size: In order to obtain meaningful, representative and statistically significant results, approximately 10% of all BC firms, in addition to all of the Benchers' firms, were included in the pilot project. This resulted in approximately 360 firms initially being selected to complete the self-assessment process.

Selection of participants: Participants were randomly selected by applying an algorithm to the list of firms generated by the registration process that took into account firm size and location, to ensure representation across various sizes of firms and regions of the province. Firms were only removed from the cohort of selected participants under exceptional circumstances; for example, if inclusion would compromise the fairness of an existing Law Society process or where a sole practitioner was on the cusp of retirement.

*Requirements of participation***:** Participation was mandatory for firms that were selected, as prescribed by Law Society Rules 2-12.3 and 2-12.4. Firms were given three months to submit their completed self-assessment to the Law Society (July to October 2018).

Incentives to participate: Each lawyer contributing to their firm's Self-Assessment Report was eligible to claim up to two hours of CPD for time they personally spent on the self-assessment exercise. The Benchers agreed they would not claim CPD credit for completing their firm's self-assessment.

Use of information in the self-assessment: In its Second Interim Report, the Task Force recommended that the self-assessment tool should not be used for

disciplinary purposes.[5] Accordingly, new rules were enacted in April 2018 to ensure that the information provided to the Law Society by firms in their Self-Assessment Report was confidential and would only be used for statistical and analytical purposes.[6]

Pilot project materials and process

15. In June 2018, 337 firms were randomly selected for the self-assessment pilot project. In addition, 20 Benchers' firms were included in the pilot cohort, resulting in a total of 357 participants.

16. The designated representatives of each chosen firm were contacted and provided with the self-assessment material, which they were instructed to forward to the individual(s) tasked with completing the assessment. This material included an electronic link to the mandatory Self-Assessment Report, which firms were required to submit to the Law Society within three months, and an optional Workbook designed to assist firms complete the self-assessment process. The Workbook was intended for firm use only and was not to be submitted to the Law Society.

17. Both tools were designed to encourage firms to reflect on the extent to which they have policies and processes in place in relation to the eight Professional Infrastructure Elements and to identify those aspects of their practice management systems that were functioning well and those requiring improvement.

18. Given that one of the primary objectives of the pilot project was to test and evaluate the content of the self-assessment tools and the process by which they were administered, the Self-Assessment Report and the Workbook are discussed in more detail below.

Self-Assessment Report

19. The Self-Assessment Report[7] is an online tool that contains two parts. Part 1 is the Self-Assessment Report itself. At the outset, participants are directed to one of two versions of the Self-Assessment Report – one for sole practitioners and the other for firms of two or more lawyers.[8] In order to complete Part 1 of the Self-Assessment Report, firms were

---

[5] Second Interim Report *supra* note 3 at paras. 97-99.

[6] Law Society Rule 2-12.3 (1) From time to time, the Executive Director may require a law firm to complete and deliver a self-assessment report […] (3) All information and documents received by the Society under this rule are confidential, and no person is permitted to disclose them to any person. (4) Despite subrule (3), the Society may use information and documents received under this rule only for the purpose of statistical and other analysis regarding the practice of law.

[7] The Self-Assessment Report for both firms of two or more lawyers, and for sole practitioners, can be accessed at: https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/LawFirm/PilotProjectReport-AppA.pdf

[8] This two-stream approach was adopted to respond to Benchers' concerns that some aspects of the original, singular self-assessment were not well suited to sole practitioners. The two versions of the self-assessment contain similar

required to review each of the Professional Infrastructure Elements and the associated list of Indicators.[9].

20. For example, in relation to Element 1, firms were required to view the following materials :

> **Element 1: DEVELOPING COMPETENT PRACTICES AND EFFECTIVE MANAGEMENT**
>
> ***Objective: Ensure the delivery of quality and timely legal services by persons with appropriate skills and competence***
>
> **Indicator 1**: Do lawyers and staff have sufficient training, experience and knowledge to perform their duties?
>
> **Indicator 2:** Are concerns about competence dealt with in an efficient, constructive and ethically appropriate fashion?
>
> **Indicator 3:** Are the delivery, review and follow up of legal services provided in a manner that avoids delay?
>
> **Indicator 4:** Are lawyers and staff adequately supervised and managed in their delivery of legal services?
>
> **Indicator 5:** Has consideration been given to putting in place plans for the departure of lawyers from the firm?

21. Following a review of this mandatory content, firms had the option to view a list of more detailed Considerations, which contained a comprehensive set of guidance and suggestions for best practices relating to each Indicator, as well as a set of hyperlinked resources. During the pilot, firms could choose to skip over this material.

22. Once the mandatory and, if desired, the optional materials were reviewed, the firm was required to evaluate the extent to which it had policies and processes in place in relation to the Professional Infrastructure Element on a four point scale. This exercise was repeated for each of the eight Elements.

23. Once participants completed this assessment, they were directed to Part 2 of the report, which contained a series of survey-type questions seeking feedback on "user experience"

---

material and follow the same structure. However, the version for sole practitioners has been modified to better reflect the practice realities of working alone and is slightly shorter in length.

[9] The complete list of the Elements, Objectives and Indicators can be viewed at: https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/LawFirm/PilotProjectReport-AppB.pdf

with the self-assessment tool. This included questions regarding whether the self-assessment process improved firms' education and awareness of best practices; how long the assessment took and whether the exercise was perceived as onerous; and views on the clarity, functionality and content of the self-assessment tools and the sufficiency of the resources.

Workbook

24. The Workbook is a supplemental resource that combines all the material found in the online Self-Assessment Report into a single PDF document that can be downloaded, saved and printed. Mirroring the format of the Self-Assessment Report, there are two versions of the Workbook: one for sole practitioners and one for all other firms.[10]

25. The Workbook also contains an additional section that invites firms to record their strengths and challenges in relation to each Professional Infrastructure Element.[11] Notably, this section is not included in the online Self-Assessment Report.

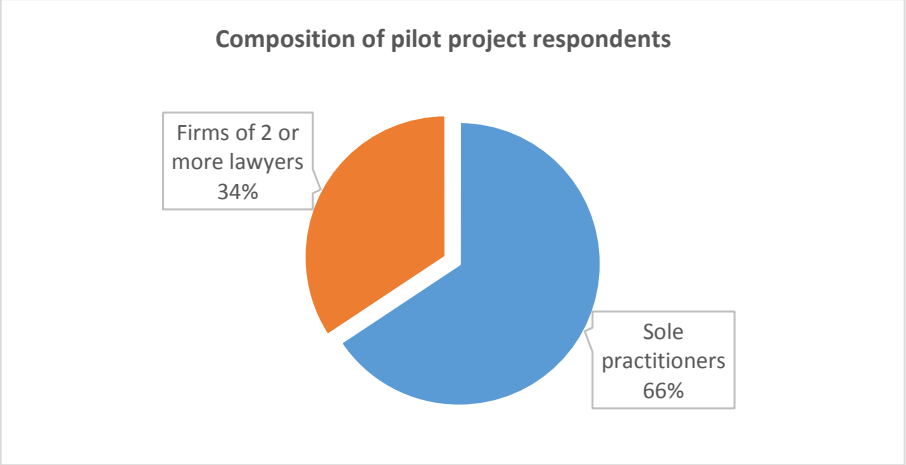
26. The goal of the Workbook is to provide firms with an additional, optional resource designed to support and promote meaningful reflection on their practice management systems and, in doing so, assist firms in completing the mandatory Self-Assessment Report. Firms participating in the pilot were given examples of how the Workbook could be used, including: reviewing the Workbook in advance of completing the Self-Assessment Report to get a sense of the nature and scope of the assessment exercise; using the Workbook to create a "working copy" of the assessment before completing the online exercise or to document a baseline from which progress could be measured; and/or building on the Workbook's guidance and resources to create a set of practice management materials for the firm.

[10] The Workbook can be accessed at: https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/LawFirm/PilotProjectReport-AppC.pdf. To avoid duplication, only the version of the Workbook for firms for two or more lawyers is included.

[11] This approach flows from Recommendation 11 of the Second Interim Report *supra* note 3 at 26: "Adopt a two-pronged approach to the self-assessment entailing the development of a short, formal self-assessment tool that firms must submit to the Law Society, and a longer, more detailed confidential workbook that will enable firms to work through the self-assessment material in more detail. Both of these tools will be available online."

Part 2: Pilot Project Results

27. At the conclusion of the pilot project, 267 firms had submitted their Self-Assessment Report to the Law Society, resulting in a completion rate of 75%. Approximately two-thirds of completed self-assessments were from sole practitioners and one-third were from firms comprising two or more lawyers.



28. Importantly, for the purposes of understanding the analysis to follow, all statistics and graphics cited in this report are based on the responses of firms that completed a self-assessment and do not account for those firms that were chosen for the pilot but did not submit their Self-Assessment Report to the Law Society.

29. Although not all firms submitted their self-assessment by the required deadline, staff proceeded with the analysis on the basis that compliant firms had provided sufficient qualitative and quantitative data from which trends and themes emerged. There was also concern that the time required to bring the remaining firms into compliance would significantly delay the Task Force's recommendations on future phases of law firm regulation.

30. The results of the pilot project have been grouped in manner that corresponds to its four objectives, as detailed below.

Objective 1: Evaluate firms' existing policies and processes in relation to the Professional Infrastructure Elements.

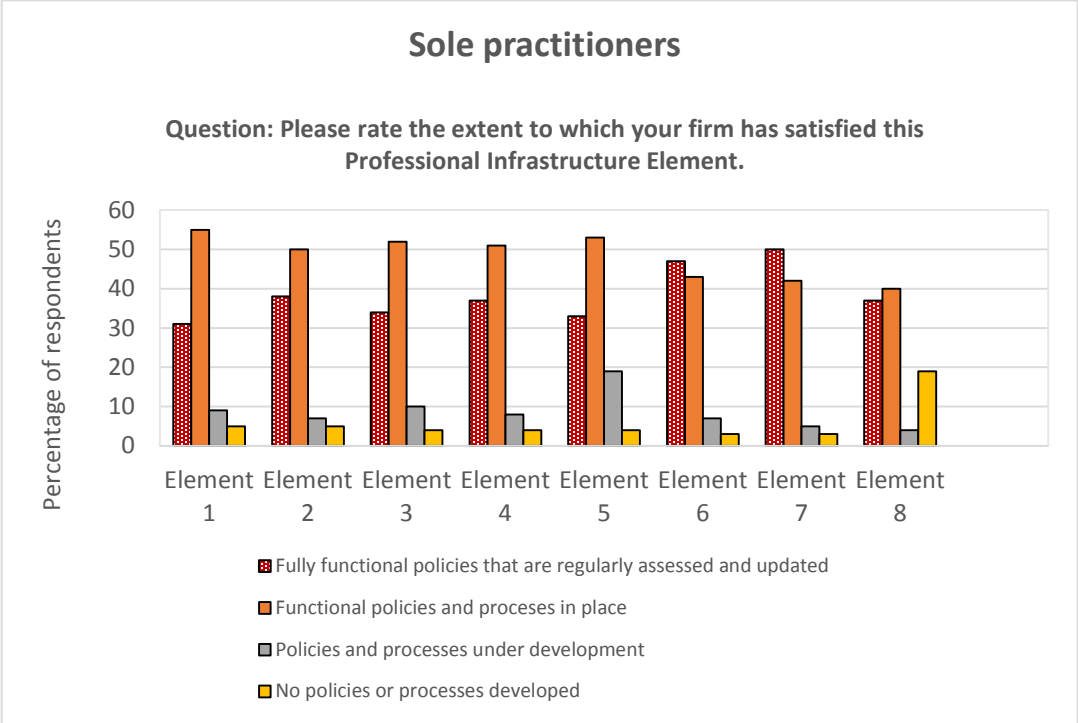
31. Following a review of the material linked to each Professional Infrastructure Element in the Self-Assessment Report, firms were required to evaluate their performance in relation to each Element on a four point scale.

    1 - Policies and processes have not yet been developed
    2 - Policies and processes are under development but not all are functional
    3 - Policies and processes are in place and are functional
    4 - Policies and processes are fully functional and regularly assessed and updated

32. The goal of this evaluative exercise was two-fold: 1) to promote education and awareness within firms by encouraging reflection on existing firm policies and processes, and 2) to enable the Law Society to evaluate the extent to which firms are currently addressing the eight Professional Infrastructure Elements.

33. The vast majority of firms of all sizes reported having functional policies and processes in place in relation to each of the Professional Infrastructure Elements. Specifically, averaged across all eight Professional Infrastructure Elements, 86% of sole practitioners and 91% of firms of two or more lawyers reported having functional policies and processes in place, while 8% of firms of all sizes reported having policies and processes under development, but not yet in place.

34. Again, averaged across all of the Elements, less than 5% of sole practitioners and less than 2% of larger firms reported that they had not developed any policies or processes, with the exception of Element 8 (Equity, diversity and inclusion). For this Element, a total of 19% of sole practitioners and 4% of firms of two or more lawyers reported an absence of policies or processes.



35. However, despite most respondent firms having functional policies and processes in place, when averaged across the eight Professional Infrastructure Elements, less than half (40%)

reported that their policies and processes were "fully functional and regularly assessed and updated." This suggests that even when firm policies are in place, they may not be fully operational or subject to regular review.

36. Respondent firms of all sizes reported the highest rates of functional policies and processes in relation to the financial aspects of practice, namely: Element 7 (Ensuring responsible financial management) and Element 6 (Charging appropriate fees and disbursements).

37. Both sole practitioners and larger firms reported the lowest levels of functional policies and processes in relation to Element 8 (Equity, diversity and inclusion) and Element 3 (Protecting confidentiality).

Objective 2: Provide the Law Society with information as to where firms have the greatest need for additional educational resources.

38. The Self-Assessment Report asked firms to identify those practice areas in which the availability of additional resources would be beneficial. The feedback received indicates firms have a strong interest in the Law Society developing practice resources across all eight Professional Infrastructure Elements. Topics that generated the most interest from firms include:

    - Succession planning
    - Protection of electronic data
    - Confidentiality related-materials including, confidentiality in the context of space sharing agreements, developing confidentiality and privacy policies and addressing privacy breaches
    - Developing an information management policy
    - Retainer agreements
    - Identifying conflicts of interest
    - Data security measures
    - Insurance coverage
    - Electronic transfers from trust
    - Intercultural competency

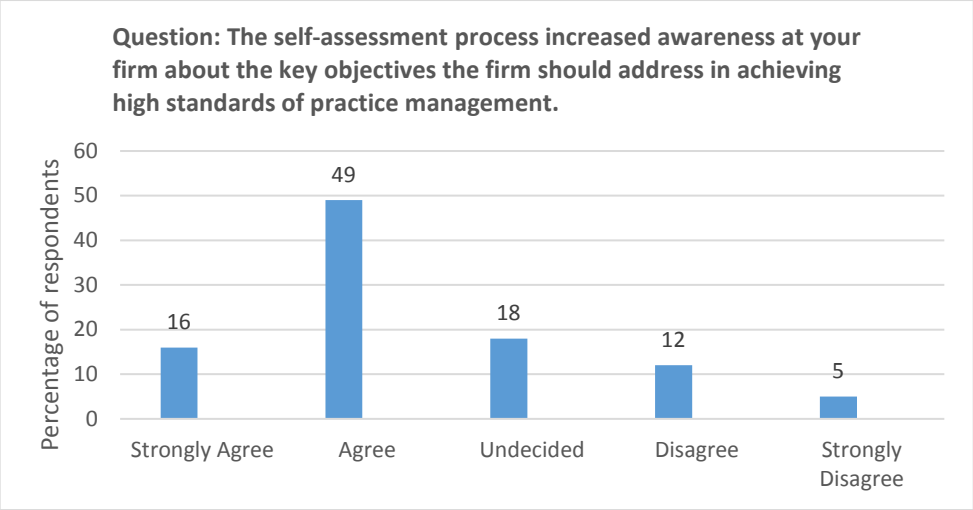
Objective 3: Test and evaluate the self-assessment tool and the process by which it is administered.

39. In the second part of the Self-Assessment Report, firms were asked a series of questions about the content and functionality of the self-assessment tool and about the time and effort required to complete the self-assessment exercise.

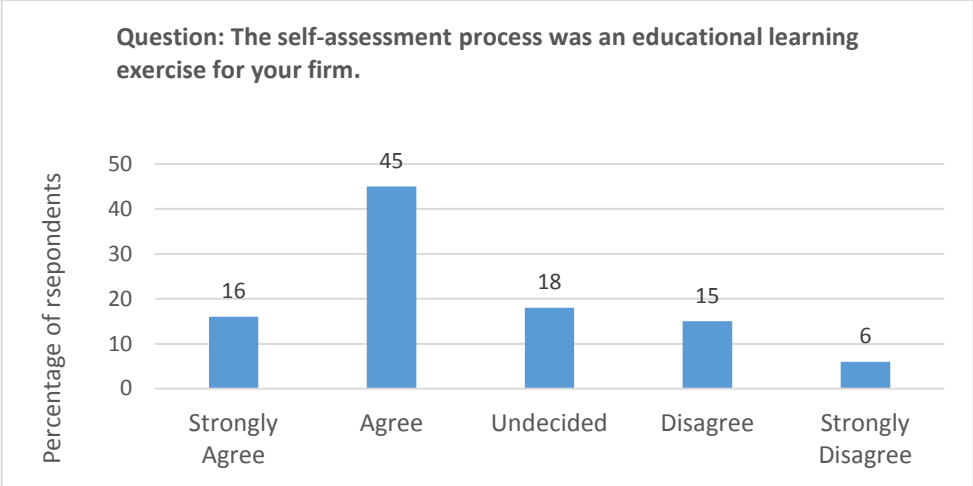
(a) Overall impressions of the self-assessment process

40. The majority of firms reported that the self-assessment was a useful exercise for improving their education and awareness about best practices in the areas covered by the Professional Infrastructure Elements.[12]

41. Approximately two-thirds of respondent firms either agreed (49%) or strongly agreed (16%) that the self-assessment process increased awareness at the firm regarding the practice management objectives the firm should strive to achieve.

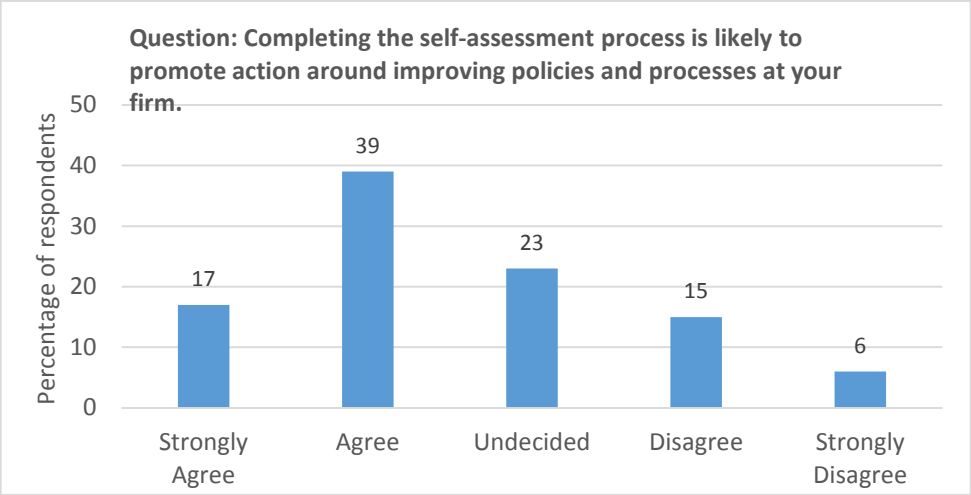


42. Slightly more than 60% of respondents either agreed (45%) or strongly agreed (16%) that the self-assessment process was an educational learning exercise.



[12] The pilot was designed to solicit firms' *opinions* on the effectiveness of the self-assessment process in improving education and awareness and changing firm behaviour. Evaluating the self-assessment tool's ability to effect actual attitudinal or behavioural change was not an objective of the pilot project, given the lengthy timeframes required to complete such a study.

43. Approximately 56% of respondents either agreed (39%) or strongly agreed (17%) that completing the self-assessment would promote action around improving policies and processes at their firm.



44. Most of the written comments from firms regarding the educational impact of the self-assessment were positive. The following remarks are illustrative:

> *"I found this to be a very useful exercise, and far less time consuming than I was anticipating. It has been helpful in drawing my attention to areas that can be looked at and improved, and directing me to resources that can assist in developing and improving these areas"*
>
> *"The key element is awareness of best practices, and that is the foundation of improving education. This exercise is very helpful."*
>
> *"I appreciate the Law Society expending the time and effort to complete an exercise like this. I think it is useful to have reason to slow down and think about how our practices are run…."*
>
> *"The survey was an opportunity for me to think about other ways I would want to improve my business and law practice. The work book was very useful in providing an overall review of the matters. The sources listed in the survey were very helpful. I reviewed them just to allow myself to become more aware of the issues. This was a worthwhile exercise. Thank you."*

"The Self-Assessment reflected on some of the areas of practice in a way that brought more in-depth understanding of those areas."

"For what it's worth, when faced with this exercise, I felt like it was likely a useless pain in the ass, but have found it a very useful/illuminating one. I feel that we enter the practice of law well alerted and prepared for these various elements and as a practice is developed over the years (decades!) those aspects are shared with staff only on a piecemeal basis absent clearly set out policies and effective, comprehensive training that would certainly be of value."

"The self-assessment was a somewhat humbling exercise. I am grateful for the increase in my awareness of the issues raised and how to sort them out."

" ...I found it to be a very helpful exercise...I also found it to be motivational in the sense that it reinforces the adage that there's always room for improvement and it forces you to sit back and review things that otherwise might have fallen through the cracks."

"It is a respectful way to ensure that law firms are addressing practice management in a way that will support clients and those who work in law firms. This is very good initiative I am grateful for the additional support and resources"

"This exercise was a positive experience because being reminded of best practices in various areas of our operations is always helpful. It was also useful in that considering the various subjects raised in this process, reassured that we are focusing on all of these important areas and constantly trying to ensure we improve our practices"

"The Self-Assessment Report provides not only an opportunity but a guideline to the firm to review its current practice management systems from various aspects, which is definitely helpful to the firm's practice management"

45. A small number of respondents commented that the self-assessment did not result in learning or improve awareness about best practices. Generally, the feedback from these firms — most of whom were sole practitioners or two person firms without staff — was that the self-assessment lacked applicability to their specialized practice or practice structure (e.g. no employees):

"*My firm is very focused on a small area of law and as such, the survey was not as meaningful as it might be with a firm practising in a large array of legal topics."*

"I am a sole practitioner with no employees and a small handful of clients. This exercise was not particularly applicable to my practice."

"…this firm has been practising for 36 years exclusively in the area of family law…while the process may have some value to sole practitioners it has no value in my case."

46. However, a similar number of firms with small and/or specialized practices commented that the self-assessment was a useful exercise:

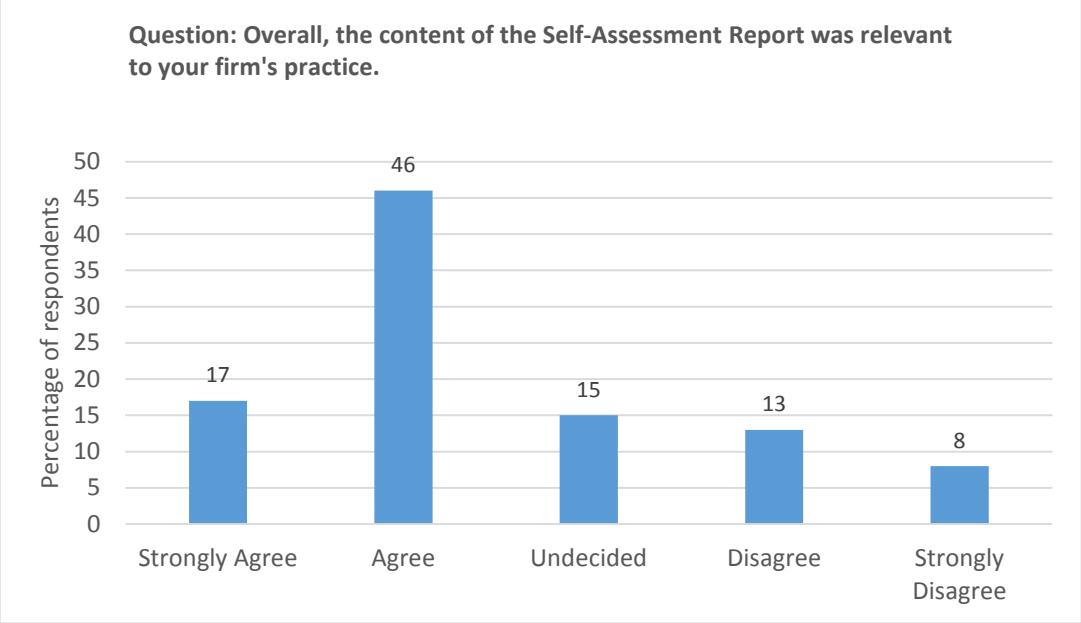
"I practice alone out of my home without a secretary. I don't really have firm policies, I have standards of practice that I attempt to adhere to. The self-assessment report was useful in reminding me that I can do better."

"The self-assessment survey was very effective as a refresher exercise to maintain the high standard of practice management. I carry on a limited practice [...] I find these resources provide excellent policies and processes…"

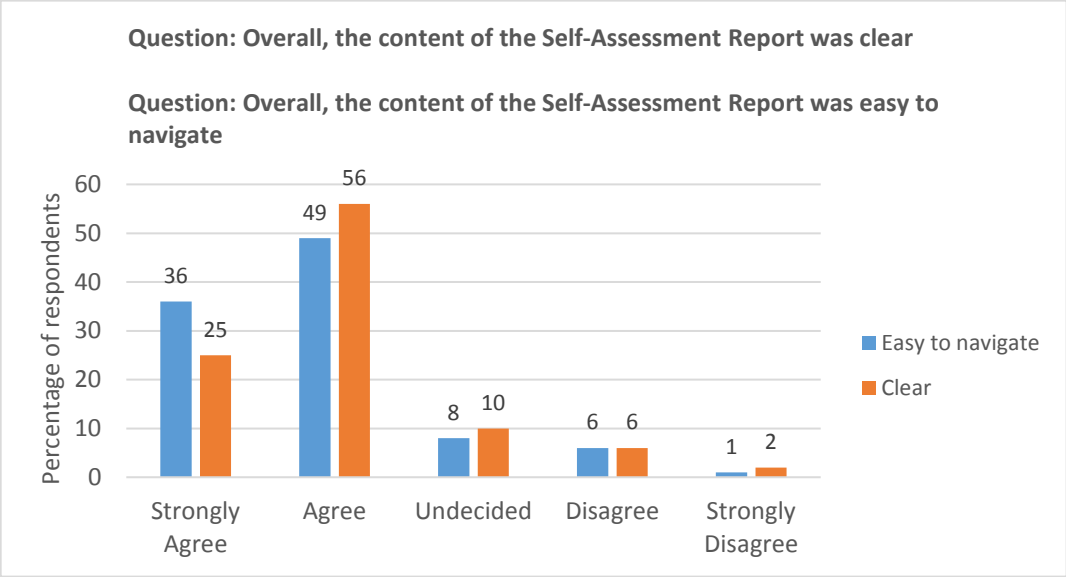
"I am a sole practitioner and have been for most of my [42 year] law career. Parts of the assessment would have helped me from the start."

(b) Feedback on the mandatory Self-Assessment Report

47. Sixty-three percent of respondents either agreed (46%) or strongly agreed (17%) that the content of the Self-Assessment Report was relevant to their firm's practice.



48. The majority of respondents (81%) also indicated that the content of the Self-Assessment Report was clear. Similarly, a total of 85% of respondents agreed (36%) or strongly agreed (49%) that the self-assessment was easy to navigate.



49. Many firms provided suggestions as to how the Self-Assessment Report could be improved. Several themes emerged from these written comments, as detailed below:

    - Additional clarification is necessary with respect to whether to policies and processes need to be in written form, particularly for sole practitioners with no staff or co-workers (8 comments)

    - The descriptors/categories used in the rating scale were difficult to understand and/or should be more nuanced (e.g. more points on the scale, provide a rating scale for each Indicator or each Consideration) (6 comments)

    - The self-assessment would benefit from more questions, goal setting and/or less optional content (4 comments)

    - The inability to download, print and review the Self-Assessment Report before submitting it to the Law Society was limiting (3 comments)

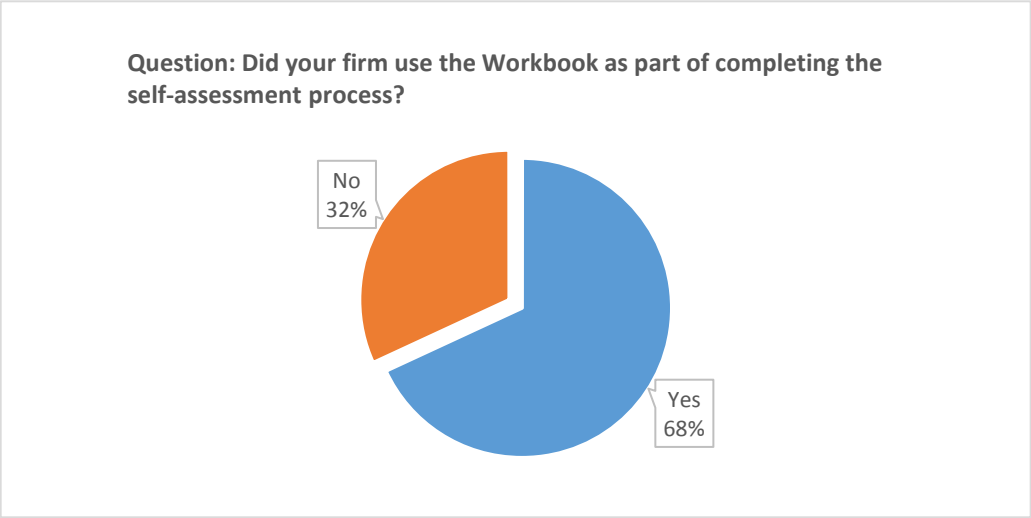
50. Notably, less than 1% of respondents (2 firms in total) expressed opposition to the inclusion of Element 8 (Equity, diversity and inclusion). This lack of concern is notable given that Element 8 was the subject of considerable discussion by both the Task Force and Benchers during the development of the self-assessment.[13]

[13] The inclusion of Element 8 in the self-assessment was debated by the Law Firm Regulation Task Force over a two year period (2016 and 2017), with the Task Force ultimately recommending that, as was the case in other jurisdictions

51. A small minority of respondents (7%) characterized the self-assessment as a poor use of firm time and/or resources. Only two firms specifically stated that the Law Society should not be regulating firms. It is notable, however, that 25% of firms have not submitted their self-assessment.

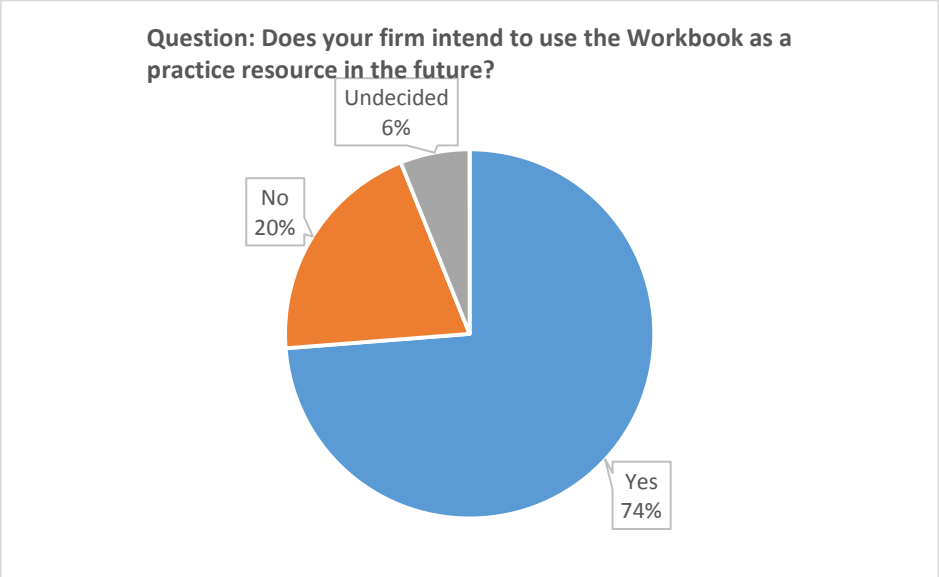
(c) Feedback on the optional Workbook

52. Firms were also specifically asked about the utility of the optional Workbook, separate and apart from the questions about the mandatory online Self-Assessment Report. The results reveal that over two-thirds of respondents reported using the Workbook in the course of completing the self-assessment process.



53. Of those that used the Workbook, 90% reported that it assisted their firm in completing the self-assessment exercise. Additionally, approximately 74% of respondents indicated that they planned to use the Workbook as a practice resource in the future.

implementing law firm regulation, a discrete Element should be devoted to equity, diversity and inclusion. In December 2017, the Benchers approved this recommendation and Element 8 was added to the self-assessment. The current wording of Element 8 is the product of the collaborative efforts of the Task Force and the Equity and Diversity Advisory Committee. See Second Interim Report *supra* note 3 at 22-25.



54. The written comments reflect that most firms found the Workbook to be a valuable resource. For example:

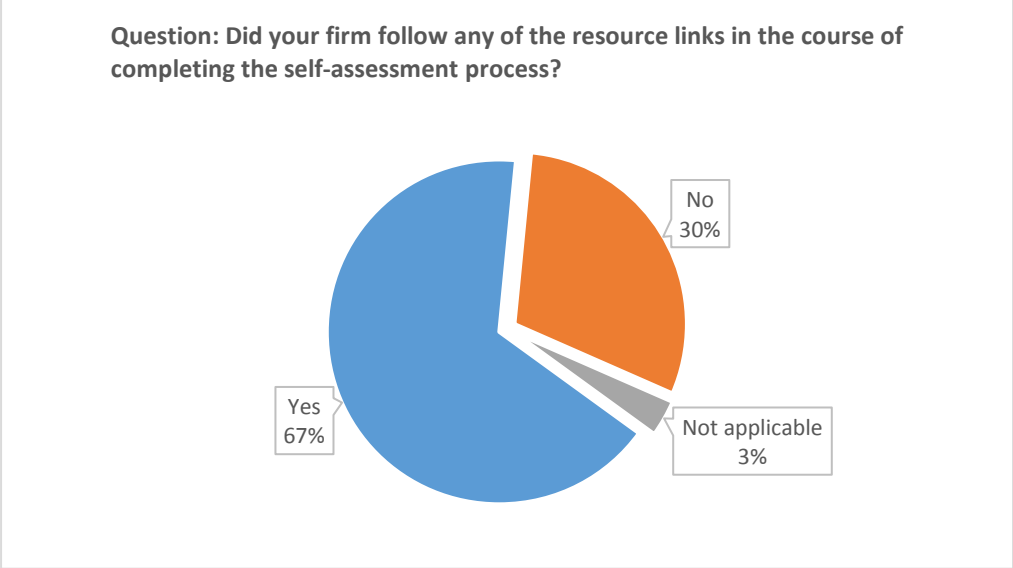
> "*The Workbook is essentially the perfect template for improving the firm's policy manual.*"
>
> *"The Workbook is a great guide to assist users reviewing policies and procedures."*
>
> *"Overall, the resources and Workbook are very detailed and instructive to the firm's practice."*
>
> *"Highly recommend ensuring that the Workbook be considered an integral part of the self-assessment process."*
>
> *"Our office finds the Workbook to be a terrific resource and will be using it now as a guide to build on the procedure we already have in place. Thank you."*
>
> *"The resources and Workbook are a very comprehensive source of information. In the future they will serve to simplify finding and accessing an area of concern as well as educating one to be aware of potential areas of concern."*
>
> *"I found the Workbook to be very helpful and will be highlighting portions of it to educate/remind our team of what consideration should be made on each file, etc."*

55. Very few firms (less than 5% of written comments) expressed specific concerns with the Workbook. Of those firms that raised concerns, most remarked that the material was not relevant to their practice.

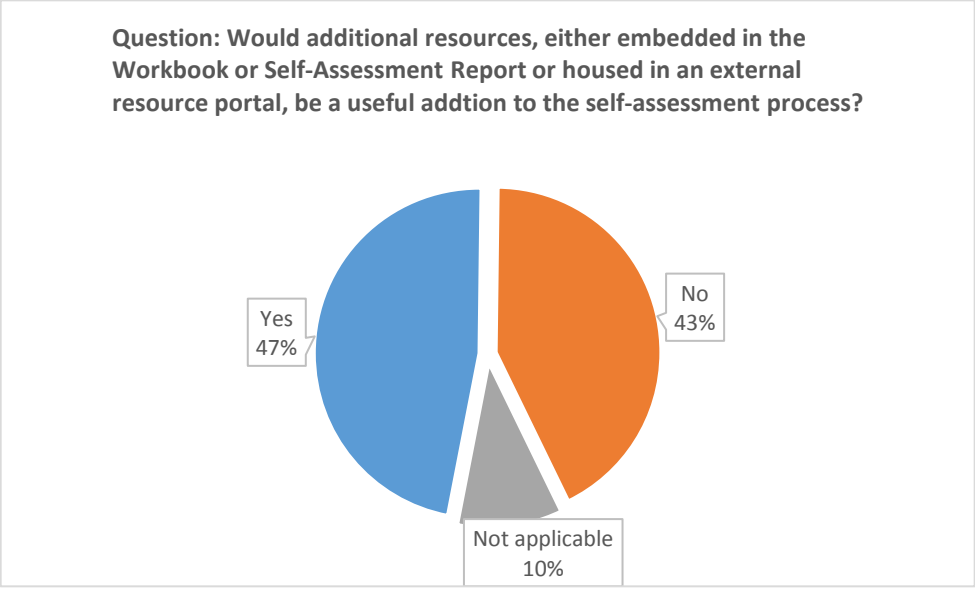
(d) Feedback on resources

56. In both the Self-Assessment Report and the Workbook, each Indicator is supported by a set of hyperlinked resources designed to assist firms to reflect on, and to work to improve their policies and processes in relation to the Professional Infrastructure Elements.

57. The pilot revealed that approximately two-thirds of firms reported that they utilized at least some of these resources, either in the Workbook or in the online Self-Assessment Report, when completing their self-assessment. As noted earlier, 74 % of respondents also indicated they intended to use the Workbook as a practice resource in the future.



58. With respect to additional resource development, although 64% of respondents felt that the resources provided in the self-assessment were sufficient, nearly half of firms indicated that additional resources would be useful.



59. Firms' written comments regarding the resources were generally positive:

> *"While I have always taken great steps to utilize resources available with the Law Society of BC to assist my firm in improving our practice processes, I found the self-assessment process to be particularly valuable in refreshing myself of the significant supports that are available online [...] During the self-assessment I made note of a number of resources and checklists that I will go back to on a regular basis to refresh and improve the processes I currently have in place or where there may be inadequacies or areas for improvement within my firm. A very valuable resource indeed."*

> *"The resources were a useful one-stop-shop of available material with respect to each of the 8 Elements. I expect to refer to them again when relevant practice questions arise."*

> *"Detailed lists of resources in connection with each process and ready access to them is very useful."*

> *"I found this self-assessment process to be particularly valuable in refreshing myself of the significant supports that are available online. There were materials that I was not aware of that I found particularly helpful[...] During the self-assessment, I made note of a number of resources and checklists that I will go back to on a regulator basis to refresh and improve the process I currently have in place or where there may be inadequacies or areas for improvement within my firm. A very valuable resource indeed."*

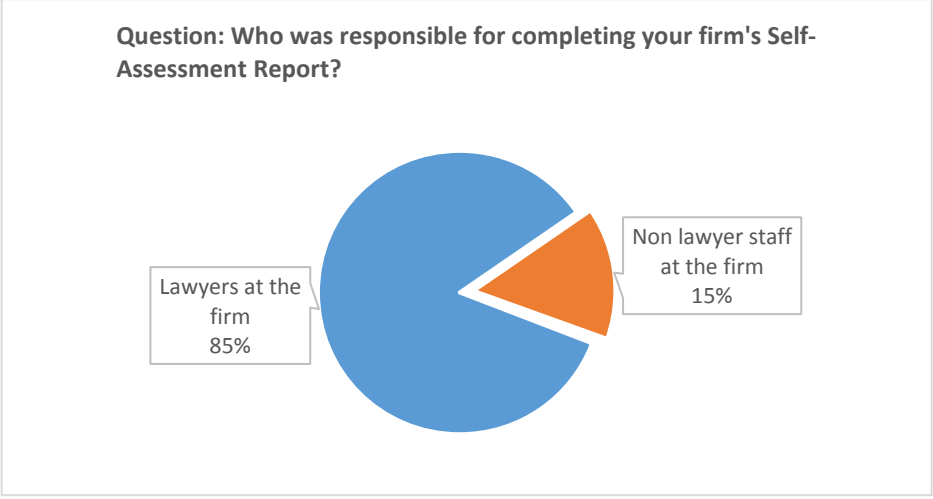
60. Many firms provided feedback on how the self-assessment's resource and support functions could be improved. Several themes emerged in this regard:

    - A desire for the Law Society to create standardized written policies and best practices (10 comments)
    - The ability for firms to continually access resources, including through an online portal (7 comments)
    - An appetite for Law Society or CLE-BC training on each of the 8 Professional Infrastructure Elements (e.g. yearly seminar, regular e-reminders, online training courses, mandatory course for firms) (5 comments)
    - The provision of examples or recommendations from the Law Society on how to implement an overall "improvement plan" for the firm (2 comments)
    - Establishing a mentorship program for new firms (2 comments)

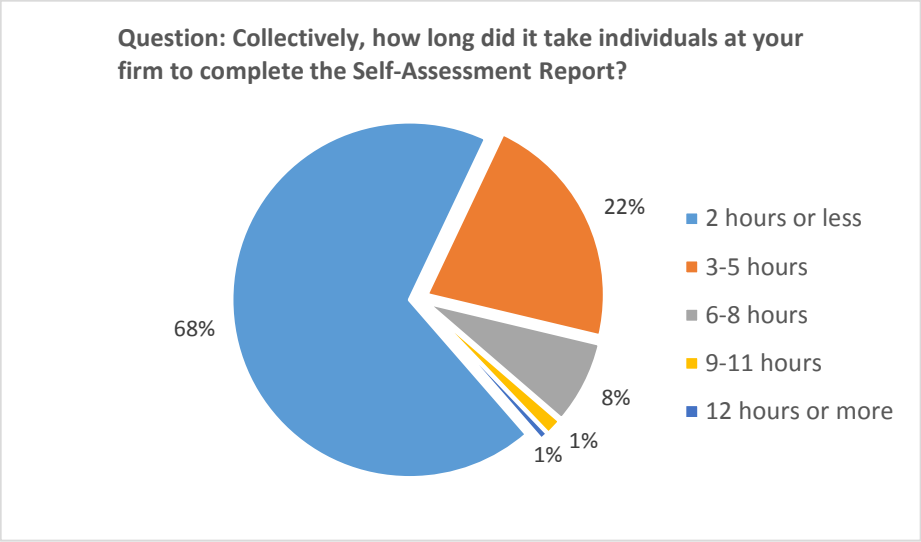
61. Many firms also identified specific areas in which additional practice resources would assist the firm.

(e) Time spent self-assessing

62. The majority of firms (85%) indicated that the self-assessment exercise was completed by a lawyer at the firm. Approximately 15% of respondents indicated a non-lawyer staff (eg. administrator, office manager, human resources) completed their firm's self-assessment.



63. A total of 68% of respondent firms took two hours or less to complete the self-assessment, with approximately 90% of firms taking five hours or less to complete the exercise.



64. Approximately 85% of respondent firms reported that they did not find the self-assessment processes onerous. Notably, a number of respondents remarked on how quickly they completed the self-assessment:

> *"This process took way less time than anticipated. Please let me know if I missed something."*
>
> *"I thought it would be far worse so I put off doing it."*
>
> *"...overall the process was not onerous and we found it beneficial to review our existing practices, policies and procedures under the lens of this assessment."*
>
> *"We are a very small firm (2 lawyers, 2 staff) and the questions were actually quite easy to answer without reference to additional materials."*

65. Related to the time it took firms to complete their evaluation, the pilot revealed that the majority of firms did not view the optional material contained in the online Self-Assessment Report. When averaged across all eight Professional Infrastructure Elements, less than half of sole practitioners reviewed the optional Considerations and Resources linked to each Element in the online tool, and less than a third of firms of two or more lawyers viewed this online content.

66. These results are notable, given that this material — which makes up the bulk of the online Self-Assessment Report — was designed to provide firms with a robust body of guidance and suggestions to aid them in their evaluation of firm policies and processes when working through the mandatory portion of the self-assessment exercise. The results

indicate, however, that the majority of firms skipped over this guidance and the associated resources in the online self-assessment tool.

Objective 4: Assess the staff and financial resources required to implement an impactful self-assessment process.

67. Collectively, the data collected during the pilot project provides the Law Society with some early indications about the staffing and financial resources that would be necessary to support a profession-wide implementation of the self-assessment that would extend the exercise to approximately 3,500 firms.

68. After assessing the data, staff have been able to prepare an outline of how the various Law Society departments would work together to support a profession-wide initiative:

Resource curation and development

- updating existing resources in the self-assessment and monitoring for continued relevance
- developing additional resources for the self-assessment
- identifying areas where new resources are required
- ensuring consistency between resources in the Workbook and the online Self-Assessment Report

Operational support for the delivery of the self-assessment

- establishing dedicated staff to:
  - maintain a schedule of firms completing the self-assessment each year
  - monitor a dedicated email account to manage law firm regulation-related communications
  - respond to firms' inquiries about the self-assessment process and provide support, as required
  - monitor and follow-up with firms that miss reporting deadlines
  - record and analyse data from completed self-assessments
  - liaise with IT, policy and communications departments

Technology and content management support

- migrating the Self-Assessment Report from a survey-based platform to an internally hosted web-based platform with improved functionality
- converting the Workbook into a fully-functional electronic tool

- maintaining the technical aspects of the self-assessment tools and associated resources (e.g. ensuring all links remain active, uploading new resources, making changes to online content)
- developing an online resource portal

Communications and education

- developing a comprehensive communications plan to support profession-wide implementation, including:
  - developing educational materials to support the self-assessment process (e.g. videos, modules, FAQs)
  - ensuring that the profession continues to receive information about the purpose, content and requirements of the self-assessment process
  - promoting the Law Society of BC's work on the self-assessment to other bodies and jurisdictions

Policy support

- providing ongoing research and policy analysis on law firm regulation-related issues
- overseeing the development of new rules or amendments existing rules
- participating in ongoing pan-Canadian collaboration on law firm regulation
- assisting with an evaluation of the impact of the self-assessment process on firm practice and the public interest, more generally

Part 3: Recommendations

69. The completion of the pilot project has been a critically important step in the evolution of law firm regulation in BC, providing the Law Society with a robust body of data with which to evaluate the impact of the self-assessment process, and to consider recommendations.

70. The Task Force has met on three occasions over the course of 2019 to discuss the results of the pilot project and to develop a series of recommendations on the next phase of law firm regulation for BC.

71. In assessing the various options or approaches, the Task Force has considered and applied a number of evaluation criteria, including the public interest, member perceptions and relations, public perceptions and relations, legal authority and program impacts and costs, which are discussed in the course of the recommendations described below.

72. After completing its assessment of the evaluation criteria, the Task Force identified seven recommendations, which are presented to the Benchers for discussion and decision.

1. Should there be a profession-wide implementation of the self-assessment process?

73. With the conclusion of the pilot project, the Benchers are now in a position to re-evaluate the Task Force's earlier recommendation (previously presented in the Second Interim Report), that the requirement for firms to self-assess be introduced to the entire profession.

74. As discussed in Part 2 of this report, the results of the pilot project suggest that firms have some policies and processes in place in relation to the eight Professional Infrastructure Elements. The data also suggests, however, that there is room for improvement, in terms of encouraging firms to both develop and regularly update policies and processes in these areas.

75. The results also confirm that the majority of pilot project participants found the self-assessment to be a useful learning activity. Most firms reported that both the mandatory Self-Assessment Report and the optional Workbook were relevant, clear and easy to navigate, and that the self-assessment exercise was valuable in terms of improving education and awareness at the firm about best practices and motivating firms to review their policies and processes. Very few firms reported that the self-assessment process was onerous, with the majority of participants taking less than two hours to complete the exercise.

76. Following a comprehensive review of the pilot project results and other materials previously considered by the Task Force, the Task Force recommends that the self-assessment process be rolled out across the profession for the reasons discussed below.

(a) The educational value of self-assessment

77. The majority of pilot project respondents reported that the self-assessment exercise had educational value (61%) and raised awareness at the firm about best practices (65%). These results suggest that if the self-assessment were implemented on profession-wide basis in BC, the majority of firms would experience direct educational benefits from completing the exercise.

78. The correlation between self-assessing and firm learning has been observed in other jurisdictions. Australian researchers found, for example, that the majority of law firms that completed a self-assessment process reported that it was a learning exercise.[14] Similarly, in

[14] Susan Fortney and Tahlia Gordon, "Adopting law firm management systems to survive and thrive: A study of the Australian approach to management-based regulation" (2012) 10 U. St. Thomas L.J. 152 ("Fortney and Gordon"), online at: http://ir.stthomas.edu/cgi/viewcontent.cgi?article=1298&context=ustlj. Notably, there was no statistically

Nova Scotia's self-assessment pilot project, approximately half of participants reported they learned something new as a result of self-assessing, while the other half of participants identified value in being reminded of system deficiencies of which they were aware, but had not yet taken action on.[15]

(b) Behavioural change

79. The majority of pilot project participants also reported that completing the self-assessment exercise was likely to motivate behavioural change within the firm, with only 20% of the firms indicating that the exercise would not result in changes to internal policies or processes.[16]

80. The pilot project results also suggest that many firms would benefit from additional attention to, or focus on, their practice management systems. Although the majority of firms reported having functional policies and processes in place in relation to the eight Professional Infrastructure Elements, averaged across the Elements, only 40% of firms reported their policies were fully functional and regularly assessed and updated. A percentage of firms indicated that some of their policies were still under development, while others reported they had not developed any policies or processes in relation to some of the Professional Infrastructure Elements. This is concerning given that the Elements represent core areas of professional, ethical firm practice.

81. The pilot project demonstrates that the act of completing the self-assessment may catalyze the development of, or improvements to, firms' policies and processes in the areas covered by the Professional Infrastructure Elements. Alternatively, firms that are not required to self-assess may be less likely to be aware of, or motivated to address gaps in, their practice management structures.

82. Notably, Australian researchers have observed *actual* changes in law firm behaviour following the completion of a self-assessment exercise. In New South Wales, where some firms were subject to a regulatory requirement to demonstrate they had implemented "appropriate management systems," firms completed an assessment form based on ten key objectives that are similar to BC's eight Professional Infrastructure Elements.[17] In studying

---

significant difference related to firm size and the respondents' opinions of the learning value of the self-assessment, suggesting that regardless of firm size, the majority of the respondents recognized the educational value of completing the self-assessment process.

[15]Nova Scotia Barristers' Society, "Legal Services Support Pilot Project Final Report" (June 6, 2017) ("NSBS Final Pilot Project Report").

[16] Approximately 60% of respondents felt it was likely that the self-assessment would promote action around improving firm policies and processes and a further 20% were undecided.

[17] Incorporated legal practices (ILPs) were required to positively demonstrate that they had implemented appropriate management systems (AMS). Although the legislation was silent on what constituted AMS and how ILPs should demonstrate they had them in place, the NSW Legal Services Commissioner, working with various stakeholders, developed the concept of ten key objectives that were considered to constitute AMS and from those key objectives,

the effects of the self-assessment process, researchers found that of those firms that indicated they were not in compliance with the ten objectives at the time of their initial self-assessment, about half became compliant within three months of self-assessing.[18]

83. The Australian studies also showed that the complaint rate for each firm after completing the self-assessment was one third the complaint rate of the same practice before self-assessing, and one third the complaint rate of firms that were not required to self-assess.[19]

84. A follow-up empirical study was conducted to explore *why* there had been such a dramatic reduction in client complaints for firms that self-assessed.[20] The study found that almost three-quarters of firms revised their firm systems, policies or procedures as a result of going through the self-assessment process. Other steps taken by firms in connection with the completion of the first self-assessment process included adopting new systems, policies or procedures, strengthening firm management, implementing more training, seeking guidance from the regulator or another person or organization and hiring a consultant to assist in policy development.[21] This data sheds some light on why, perhaps, the self-assessment process seemed to make a difference.[22]

85. The Task Force was not, however, able to ascertain whether this behavioural change was sustained over time. Due to changes in New South Wales' legislative scheme in 2015,[23] firms are no longer required to demonstrate they have implemented and maintained appropriate management systems. As such, firms are no longer self-assessing, and there have been no further academic studies on the self-assessment process.[24]

---

devised a self-assessment form (Communications with Louise Baber, Practice Compliance Officer of the Legal Services Commissioner in New South Wales, June 2019).

[18] Christine Parker, Tahlia Gordon, and Steve Mark "Regulating law firm ethics management: An empirical assessment of an innovation in regulation of the legal profession in New South Wales" (2010) 37(3) Journal of Law and Society 446 at 493, online at: https://www.researchgate.net/publication/228192433_Regulating_Law_Firm_Ethics_Management_An_Empirical_Assessment_of_the_Regulation_of_Incorporated_Legal_Practices_in_NSW (“Parker, Gordon and Mark”).

[19] *Ibid.*

[20] Fortney and Gordon *supra* note 14.

[21] *Ibid.* at 173.

[22] For a review of the Australian studies, see Laurel S. Terry, “The power of lawyer regulators to increase client and public protection through adoption of a proactive regulation system” (2016) Lewis & Clark L. Rev 717 at 728, online at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2865337.

[23] Email communications with Tahlia Gordon, May 2019. Ms. Gordon indicated that the legislative changes were political in nature and not the result of concerns about the effectiveness of the requirement.

[24] Email communications with Louise Baber *supra* note 17. Since the legislative change, only firms that have been given a management systems direction following an audit or investigation are subject to a positive obligation to demonstrate they have put appropriate management systems in place. In the reporting year from July 2018 to June 2019, out of the ten law practices audited, management systems directions have only been issued to three practices. No management system directions have been issued following an investigation.

(c) Alignment with strategic priorities in BC and beyond

86. The profession-wide implementation of the self-assessment process addresses two of the Law Society's current strategic priorities, as articulated in the 2018-2020 Strategic Plan, namley: i) mitigating risk, preventing misconduct and improving regulatory outcomes by examining "proactive" or "outcomes focused" methods of regulation to complement the disciplinary process, and ii) enhancing the regulatory oversight of firms.[25]

87. In this regard, the self-assessment has the potential to leverage the benefits that strong, positive, ethical and professional firm cultures can have on the practice of law, and to simultaneously reduce instances of unprofessional behaviour. Additionally, encouraging firms to engage in the self-assessment process demonstrates, to all stakeholders, the Law Society's commitment to enhancing firms' accountability in meeting high practice standards, to the benefit of the public interest. The positive feedback from the pilot project also reflects buy-in from many lawyers, which brings additional strength and momentum to the initiative.

88. The Task Force observes that other Canadian law societies have continued to move forward with the development of their self-assessment tools as part of a number of evolving entity regulation initiatives. This work includes ongoing consultations on Ontario's Practice Assessment tool, the completion of self-assessment pilot projects in Alberta, Saskatchewan and Manitoba, and the profession-wide implementation of Nova Scotia's self-assessment tool.[26] Advancing with law firm regulation would put the Law Society of BC at the forefront of this national shift toward proactive entity regulation.

(d) Not onerous

89. At various junctures, some Benchers have expressed concern that the self-assessment process could create a significant burden for firms in terms of the time and financial resources required to complete the exercise.

90. The results of the pilot confirm, however, that completing the self-assessment in its current form was not difficult for the large majority of firms. Approximately 85% of respondents reported that it was not an onerous process. Numerous written comments reflect that although some firms perceived the self-assessment process to be burdensome at the outset,

---

[25] Law Society of BC 2018-2020 Strategic Plan, online at: https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/StrategicPlan_2018-2020.pdf

[26] See the Law Society of Ontario's Practice Assessment, online at: https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/c/cber-practice-assessment.pdf; Nova Scotia Barristers' Society, Framework for Legal Services Regulation, online at: https://www.nsbs.org/management-systems-ethical-legal-practice-mselp; Prairie Law Societies Law Firm Practice Management Assessment Tool, https://www.lawsocietylistens.ca/4074/documents/7970 .

once they began working through the Self-Assessment Report, they found this was not the case.

91. This observation is reinforced by the finding that most respondents took less than two hours to complete the self-assessment, with the majority of firms reporting that they found the time spent on the exercise to be useful.

(e) Concerns with profession-wide implementation

92. Given the positive feedback of the pilot project participants, the results of Australian studies, the pan-Canadian movement toward the regulation of firms and the Task Force's general observations – informed by the pilot project results – regarding the potential for the self-assessment tool to effect positive change within firms, the Task Force has limited concerns with respect to initiating a profession-wide self-assessment process.

93. The Task Force does, however, highlight the following issues, which may warrant further consideration by the Benchers as part of their discussion and decision-making process.

94. First, it is notable that 25% of firms selected for the pilot project did not complete the self-assessment. The Task Force is of the view that even when this non-response rate is accounted for, the pilot project's positive and neutral results reflect that overall, the profession did not have a negative experience with, or reaction to, the self-assessment. However, this level of non-compliance signals that introducing a requirement to self-assess may result in some resistance from a portion of the membership. As a result, the Law Society will likely have to devote time and resources to communication efforts in advance of implementation, as well as following-up with firms that do not submit their Self-Assessment Report in a timely fashion.

95. Second, the results of the pilot project demonstrate that the profession-wide implementation of the self-assessment process will require the commitment of significant financial and human resources by the Law Society over the short to medium term. This includes investments in resource curation and development, operational support for the delivery of the self-assessment, technology and content management support, communication and education outreach and ongoing policy support. These costs, which are estimated to be in excess of $600,000 over the next seven years, are discussed in detail in the last section of this report.[27]

96. Although the pilot project results suggest that the self-assessment process has the potential to assist thousands of firms improve their practice management systems, the outcomes, in terms of improved client service and a reduction in complaints, are not guaranteed.

[27] For a discussion of the budgetary implications of introducing the self-assessment process to the entire profession, see page 45 of this report.

97. As noted above, the Australian research does not confirm whether the educational benefits of the self-assessment, and the resulting behavioural change within firms, is sustained over time. Additionally, although researchers established a correlation between the reduction in complaint rates and the act of completing the self-assessment process, they also found the extent to which the self-assessing firms reported they had policies in place did not impact on the complaint rate.[28] Researchers also observed that complaints are an imperfect indicator of professional, ethical firm behaviour.[29]

98. Finally, although the Australian studies show that a number of firms revised their policies or processes following the completion of the self-assessment, the research did not include a qualitative evaluation of policy implementation; for example, whether the firm followed the policy or process once it was developed or how robust the policy was.

99. Given the paucity of empirical data and the limited experience of other regulators with the regulation of law firms, the Task Force recognizes that the self-assessment process is somewhat experimental. However, notwithstanding these uncertainties, the self-assessment provides the Law Society with a unique opportunity to test the effectiveness of proactive regulation by providing thousands of firms with an educational tool that has the potential to improve their practice management systems, to the benefit of not only the firms and their lawyers, but also, to clients and the public interest, more generally. As such, the Task Force is of the view that committing to the profession-wide implementation of the self-assessment process is a worthwhile expenditure of Law Society resources.

Recommendation 1: The Law Society commits to the profession-wide implementation of the self-assessment process.

100. If this recommendation is approved, the Task Force also presents a number of ancillary recommendations related to the purpose of the self-assessment, the frequency of the assessment cycle, the structure and content of the self-assessment tool and the use of model policies. Each of these issues are canvassed below.

2. Purpose of the self-assessment

101. As outlined in the Second Interim Report, the self-assessment process has, to date, been envisaged as a mechanism for helping firms identify practice management systems that require improvement and supporting firms' proactive efforts to address these deficiencies

[28] "Overall, we have not been able to identify any effect of the actual level of self-assessment rating on rate of complaints. Rather, our results strongly indicate that the mere fact of going through the self-assessment process makes a difference to ILP's performance on complaints, regardless of the actual rating they give themselves" (Parker, Gordon and Mark *supra* note 18 at 29).
[29] Parker, Gordon and Mark *supra* note 18at 16.

or weaknesses, not to measure compliance with new standards or discipline those that fall short.[30]

102. In 2018, new rules were enacted to reassure firms that the information they provided to the Law Society in the Self-Assessment Report would not lead to disciplinary action.[31] The Nova Scotia Barristers' Society adopted a similar approach as part of their self-assessment process.[32] Both jurisdictions recognize the tension between the self-assessment's potential regulatory and educational functions, such that the possibility of disciplinary action may deter firms from being fully transparent when self-assessing and erode some of the educational benefits of the exercise.

103. The pilot project confirmed that the self-assessment tool is, in fact, fulfilling its intended purpose and served a valuable educational function for many firms. In addition to over 60% of respondents agreeing that the self-assessment process was an educational exercise, a similar number of firms indicated that completing the self-assessment would promote action around improving policies and processes at the firm, and nearly three-quarters of respondents reported that they would use the self-assessment tool as a resource in the future.

104. The educational benefits of the self-assessment tool also extend to the regulator, by enhancing the Law Society's understanding of how it can support firms in improving their practice management systems. For example, if the self-assessment exercise reveals that a significant number of firms lack policies and processes in relation to one of the Professional Infrastructure Elements, the Law Society can respond by developing additional resources to support firms in this area.

105. Accordingly, the purpose of the self-assessment should remain educational in nature. Although it is mandatory to complete the Self-Assessment Report, the information contained therein is not to be used as evidence in, or to inform the outcome of, a disciplinary action or proceeding.

Recommendation 2: The purpose of the self-assessment process will remain educational in nature, and information provided to the Law Society as part of the Self-Assessment Report

[30] Second Interim Report *supra* note 3 at 14: "The 2016 Interim Report recommended the adoption of the self-assessment process to monitor compliance. The Task Force's views have evolved since this recommendation was made, and the focus has shifted to ensuring that the tool is developed in manner that reflects its primary purpose as a learning tool in relation to the development and maintenance of a firm's professional infrastructure. Recommendation 7: The primary objective of the self-assessment tool is to provide firms with educational tools and resources that will assist firms in meeting the standards set by the Professional Infrastructure Elements."
[31] Law Society Rule 2-12.3.
[32] Nova Scotia Barristers' Society Regulations at 4.9.6, online at : https://www.nsbs.org/sites/default/files/cms/menu-pdf/CurrentRegs.PDF "If a self-assessment indicates that a law firm or sole practitioner does not have in place appropriate policies, practices, and systems to support the elements for a management system for ethical legal practice, such reporting will not result in an investigation pursuant to subregulation 9.2.1."

will not be used as evidence in, or to inform the outcome of, a disciplinary action or proceeding.

106. The Task Force also notes that should there be a shift toward a more "regulatory" approach – which it does not support – the Law Society would need to undertake significant policy work to determine how the self-assessment could be integrated into the Law Society's investigatory and disciplinary processes. It would also require amendments to the Law Society Rules and intensive communications efforts to articulate the rationale for, and impact of, this change in approach.

3. Frequency of the assessment cycle

107. The frequency with which firms will be required to submit a Self-Assessment Report to the Law Society is a critical design feature of the self-assessment process. The Law Society Rules currently provide a great deal of flexibility in this regard, granting the Executive Director with the authority to require a law firm to complete a self-assessment at any time, provided that the firm receives three months' notice.[33] Going forward, both firms and the Law Society will require greater certainty with respect to how often firms are required to self-assess.

108. The Task Force has observed that the assessment cycle must be frequent enough to motivate firms to continually reflect on, and modify their policies and processes in relation to the Professional Infrastructure Elements, while allowing sufficient time to make meaningful improvements between cycles. The reporting interval must also be frequent enough to enable the Law Society to regularly update the self-assessment tools and to monitor whether the self-assessment exercise results in a reduction of complaints against firms over time — a key metric for evaluating the success of the tool in changing firms' behaviour.

109. Conversely, the reporting interval must not be so short as to create unrealistic expectations regarding firms' ability and willingness to undertake a rigorous review of their policies and processes, or to negatively impact the Law Society's responsiveness with respect to firms' requests for guidance and support.

110. Various reporting intervals were considered by the Task Force. A five year assessment cycle was determined to be too lengthy, making it difficult for the Law Society to make substantive changes to the self-assessment process or measure a reduction in complaints for at least five years, following the completion of the first self-assessment cycle. Given that the self-assessment process is a new undertaking requiring significant resources, an

[33] Law Society Rule 2-12.3.

evaluation of its impact should occur sooner rather than later. On the other hand, the Task Force considers a two year assessment cycle to be too frequent, creating unnecessary administrative burdens for both firms and the Law Society.

111. The Task Force is of the view that a three year assessment cycle strikes an appropriate balance: it is frequent enough to ensure regular reflection on practice management structures, while providing firms adequate time to make improvements between cycles.[34] Additionally, the Task Force recommends that at the outset, the Law Society commit to completing two assessment cycles, as to establish both a "baseline" and a subsequent set of reporting data from which any changes in complaint rates, or other positive or negative impacts of the self-assessment process, can be evaluated.

112. The Task Force also supports an approach in which new firms are required to complete and submit a self-assessment to the Law Society within a year of registration. Additionally, the Task Force recommends that the Executive Director have the discretion to require firms to complete a self-assessment outside of the regular reporting period, when it is in the public interest to do so. A new rule, and supporting policy outlining factors to consider in making such an assessment, will be required.

Recommendation 3: Unless exempted from the requirement to self-assess under Rule 2-12.1 (2), all firms will be required to complete and submit a Self-Assessment Report to the Law Society once every three years. New firms will be required to submit their self-assessment within one year of their registration date. Firms may also be required to complete a self-assessment outside of the regular reporting period if the Executive Director considers it is in the public interest to do so.

4. Timing of the assessment cycle

113. The Task Force has also considered two different options for a three year assessment cycle: a "rolling" and a "non-rolling" reporting scheme.

114. Under a non-rolling reporting scheme, all of the approximately 3,500 firms that are required to self-assess under the Law Society Rules[35] would be required to complete the self-assessment in the first year of the assessment cycle. In the following two years of the

[34] The Nova Scotia Barristers' Society has also adopted a three year assessment cycle for its self-assessment process, and provides the Executive Director with the discretion to order firms to report more frequently in some circumstances. See Regulation 4.9.3 and 4.9.4, online at: https://nsbs.org/sites/default/files/cms/menu-pdf/CurrentRegs.PDF

[35] Law Society Rule 2-12.1(2) exempts certain types of firms from the requirement to self-assess, namely: a public body such as government or a Crown corporation, a corporation that is not a law corporation, or a law corporation that provides legal services solely as part of another law firm as a partner, associate or employee of the firm.

first assessment cycle, only new firms would self-assess. In year four, which marks the commencement of the second assessment cycle, all of the original 3,500 firms would again be required to self-assess.

115. In contrast, under a rolling reporting scheme only one third of firms (approximately 1,160 firms) would be required to complete the self-assessment each year. As such, at the end of the first three year assessment cycle, all 3,500 firms will have completed the self-assessment. One third of firms would once again be required to complete the self-assessment in each of the three years of the second assessment cycle.

116. The Task Force recommends the latter "rolling" approach to reporting for a number of reasons. First, the more staggered the reporting, the fewer the number of self-assessments that must be distributed, collected and analysed at a single point in time, reducing administrative and operational pressures on the Law Society. Additionally, requiring only a portion of firms to complete the self-assessment increases the Law Society's capacity to support individual firms through the assessment process, as compared to a cycle in which all firms in the province are completing their self-assessments simultaneously.

Recommendation 4: The assessment cycle will operate on a rolling basis, in which one third of all firms that are required to self-assess under the Law Society Rules submit a Self-Assessment Report to the Law Society in each year of the three year assessment period.

117. The Task Force notes that if there were disciplinary implications for failing to have policies and processes in place in relation to the Professional Infrastructure Elements, it might be necessary to require all firms to complete the assessment at once. However, as the Task Force recommends that the self-assessment be used only as an educational tool, there is no imperative to require all firms to complete the exercise at precisely the same time.

118. Further, given the somewhat experimental nature of the self-assessment, the staggered approach to reporting provides the Law Society with more flexibility to make modifications to the tool with each successive cohort of firms that complete the exercise, creating greater opportunities for continuous improvement.

119. In this vein, the Task Force recommends that mechanisms are employed that enable all Law Society Committees to bring forward issues or topics that might be beneficial for inclusion in revised, future versions of the Self-Assessment Report, and that the Benchers receive regular reports on the self-assessment process, including at the conclusion of each reporting cycle. The membership should also have opportunities to provide feedback to the Law Society on the self-assessment process, including in relation to the impact of modifications to the self-assessment tools and the process by which the assessment is administered.

120. Importantly, the Task Force recommends that the Law Society commit to two consecutive three year assessment cycles on the basis that at a minimum, this amount of time will be required for themes and trends to emerge from the self-assessment process.

121. In the first assessment cycle, both firms and the Law Society will create a "baseline" data set from which future improvements to practice management systems or, perhaps, a reduction in complaints or other metrics, could be measured. Without the comparative data that will be collected in the second assessment cycle, it will be difficult for the Law Society to evaluate the extent to which the self-assessment has a lasting impact on firm learning or conduct.

Recommendation 5: The Law Society will commit to the completion of two assessment cycles of three years each in order to collect sufficient data to evaluate the impacts of the program over time. Mechanisms will be developed to ensure the continuous improvement of the self-assessment process throughout this period, including reports to the Benchers at the conclusion of each assessment cycle and ongoing opportunities for feedback from the membership.

5. Modifications to the self-assessment

122. As previously discussed, the results of the pilot project indicate that the majority of firms found completing the Self-Assessment Report and utilizing the Workbook to be a useful exercise, and that the materials were, and will continue to be, a helpful resource. Over 80% of respondents also indicated that the content of the Self-Assessment Report was clear and easy to navigate.

123. The pilot project also highlighted a number of possible changes to the format, functionality and content of the Self-Assessment Report and Workbook that could improve the utility of both tools. This feedback has informed the Task Force's recommendation, described below, that a series of modifications are made to the tools prior to the profession-wide implementation of the self-assessment process.

(a) Rating scale

124. Currently, the Self-Assessment Report requires firms to evaluate the extent to which they have satisfied each Professional Infrastructure Element on a four point scale.[36] Some pilot project participants expressed, however, that the rating scale is not descriptive enough, nor is it applied at a sufficiently detailed level within the assessment to enable firms to provide

[36] The four point scale is currently described as: (1) Policies and processes have not been developed (2) Policies and processes are under development but are not functional (3) Policies and processes are functional (4) Policies and processes are fully functional and regularly assessed and updated.

an accurate evaluation of the extent to which they have developed and implemented policies and processes in relation to key areas of professional, ethical firm practice.

125. For example, under Professional Infrastructure Element 3: Protecting confidentiality, firms may have excellent security measures in place to protect physical data (Indicator 3), but may have weak systems in relation to electronic data (Indicator 4). This important distinction is lost when a firm is only required to rate their performance in relation to the Element more globally.

126. To address this concern, the Task Force recommends that the rating scale be refined to include additional or more nuanced descriptors that will improve firms' ability to evaluate the strength of their policies and processes. Additionally, the Task Force recommends that firms are required to evaluate their performance in relation to each Indicator, rather than at the higher level of the Professional Infrastructure Element, as is currently the case. This approach is expected to improve the extent to which firms can document more specific areas within an Element where there are deficiencies in firm policies or processes.[37]

(b) Goal setting

127. A number of pilot project participants suggested it would be beneficial to add a section to the Self-Assessment Report asking firms to identify areas of strength as well as those areas in which the firm could improve their practice management systems. The Task Force had previously discussed this approach, noting in the Second Interim Report that prior to the profession-wide implementation of the self-assessment process, additional consideration would be given to whether the Self-Assessment Report should require firms to identify areas that would benefit from more robust policies and processes.[38]

128. In addition to focusing firms on prioritizing work on a specific sets of policies and procedures, goal setting enhances both the reflective and forward looking nature of the self-assessment exercise by requiring firms to document weaknesses or limitations in their practice management systems and to proactively set targets for making improvements in these areas.

129. Other regulators have also recognized the benefits of this approach. For example, Nova Scotia's final report on its self-assessment pilot project highlighted concerns about the absence of a goal setting component in an early version of their self-assessment, observing that unless firms are asked to identify specific areas needing attention, there will be less follow-through on effecting improvements.[39] A goal-setting component has since been

[37] Notably, some portions of Ontario's Practice Assessment ask firms to evaluate their performance in relation to each Indicator (moderate detail) on a five point scale. Nova Scotia's Workbook asks firms to rate their performance in relation to each Consideration (very detailed) on a four point scale.
[38] Second Interim Report *supra* note 3 at para. 66.
[39] NSBS Final Pilot Project Report *supra* note 15 at 8, 10.

incorporated into Nova Scotia's self-assessment tool. Alberta and Manitoba's draft self-assessment tools go further, asking firms to outline a plan for improvement, including target dates, for each of its seven "Management Principles."[40]

130. As with other aspects of the self-assessment exercise, ongoing opportunities for feedback from the membership on the value of the goal setting component of the Self-Assessment Report should be provided.

(c) Increased functionality

131. Given the evolving complexity of the self-assessment and the number of firms that will be required to complete the exercise, the current Self-Assessment Report must make the transition from an externally hosted survey platform to an internally hosted web-based application that is well integrated into the Law Society's information systems.

132. This shift will create two opportunities. First, it will enable the Law Society to make a number of improvements to the functionality of the self-assessment tools. This includes enabling users to move easily between sections of the Self-Assessment Report and to review, save and download their assessment before submitting it to the Law Society; to provide better linkages between the Self-Assessment Report and the Workbook, and between the Elements, Indicators, Considerations and Resources within each of these documents; and to re-create the Workbook as a fully functional electronic tool.

133. Second, it will enable the virtually seamless integration of data from the Self-Assessment Report into the Law Society's Information System (LSIS), which will greatly improve the ability to run reports, analyse data and track completion. The Task Force recommends that these changes are introduced prior to the profession-wide implementation of the self-assessment process.

(d) Mandatory review of Considerations and Resources

134. As the Self-Assessment Report is currently designed, firms are required to review the eight Professional Infrastructure Elements and their associated Indicators as they advance through the online tool, while viewing other content, including the detailed list of Considerations and Resources related to each Element and Indicator, is optional. The results of the pilot project reveal that when given the choice, most firms do not review these optional materials in the online tool.

135. Although the Professional Infrastructure Elements and Indicators identify high-level aspects of professional, ethical firm practice, it is, in fact, the set of optional Considerations

[40] Prairie Law Societies Law Firm Practice Management Assessment Tool *supra* note 26. The Law Society Saskatchewan conducted telephone interviews with participants rather than including a section in their self-assessment tool for firms to identify strengths, weaknesses and goals.

and Resources that provide the detailed guidance regarding the types of policies, practices, processes, methods, steps and systems that a prudent law firm should have in place to support a robust set of practice management systems. Indeed, the pilot project indicated that if viewed, participants regarded the material contained in the Considerations and Resources sections of the tool as being valuable, with 90% of respondents reporting that this guidance assisted their firm in completing the self-assessment.

136. As such, the Task Force observes that the current format of the Self-Assessment Report, in which the majority of the guidance material is optional, does not optimize the tool's potential for facilitating reflection on the full breadth of firms' practice management systems.

137. Given the valuable nature of this guidance material, paired with the observation that the self-assessment process is less onerous than many expected, the Task Force recommends shifting the Considerations and Resources from optional to mandatory reading in the online tool.

138. Importantly, requiring firms to view this material in the course of completing their Self-Assessment Report does not require firms to address each Consideration or use each Resource; it would simply ensure that firms are exposed to this information. Firms will have the ability to determine how extensively to engage with this material, which may vary as users move through the various sections of the Self-Assessment Report.

139. The Task Force is of the view that any increase in the time it takes firms to complete the self-assessment as the result of this new, mandatory material is justified by the potential benefits to firms of reviewing additional information. Notwithstanding these benefits, future reviews of the self-assessment process should include an evaluation of whether the increase in mandatory content significantly impacts on the amount of time it takes firms to complete the self-assessment exercise and how onerous firms perceive the self-assessment process to be.

Recommendation 6: The Self-Assessment Report will undergo several modifications to improve its format, functionality and content, including revising the rating scale, adding a goal setting component, rebuilding the Self-Assessment Report as an internally hosted web-based application and requiring firms to review the material contained in the Considerations and Resources sections of the Self-Assessment Report.

6. Developing additional resources

140. One of the key goals of introducing the self-assessment to the entire profession is to ensure all firms have access to educational tools and resources that facilitate reflection on their

practice management systems and encourage proactive efforts to address practice concerns. Maintaining high-quality resources that support the self-assessment process is therefore key to law firm regulation's success.

141. The pilot project results indicate strong support for the Law Society playing an active role in developing and curating practice resources for the profession as part of law firm regulation. Although many participants reported that the resources contained in the self-assessment were sufficient, a similar number of firms indicated that more resources would be useful.[41]

142. The pilot project also provided the Law Society with an opportunity to hear directly from firms about the specific areas in which more resources would be of assistance. The Task Force recommends the Law Society prioritize the development of additional practice resources in these areas over a one year period prior to the initiation of the first assessment cycle, and continue to develop additional resources over the course of future assessment cycles.

143. The pilot project also indicated support for the development of a web-based resource portal, hosted by the Law Society, where firms could access resources outside of their designated period of self-assessment.[42] This approach was previously approved by the Benchers as one of the recommendations contained in the Second Interim Report.[43]

144. The Task Force has given detailed consideration to the issue of whether the Law Society should create model policies for firms as part of its resource development efforts. As part of this work, the Task Force revisited the Benchers' previous decision not to accept the 2017 recommendation that model policies be included in the piloted version of the self-assessment, and the direction that instead, the Law Society would develop "educational resources," which were understood not to include model policies.[44]

---

[41] To date, the vast majority of the resources contained in the self-assessment have been developed in-house to ensure that the Law Society retains control over the quality, content and accessibility of the resources. Limiting the resource set in this manner was also thought to safeguard against the self-assessment being overloaded with resources. Externally sourced resources were only included where there were no appropriate existing Law Society resources.

[42]The proposal to develop a resources portal has previously been considered and supported by the Task Force. See the Second Interim Report *supra* note 3 at 31. Nova Scotia has recently created a portal on their website with links to all the resources that support the self-assessment tool.

[43] Second Interim Report *supra* note 3: Recommendation 14: The Law Society will act as a curator of a variety of resources for the self-assessment tool, develop an independent resource portal and encourage the sharing of resources and best practices.

[44] The December 2017 Bencher minutes read "[...] Ms. Merrill then moved (seconded by Mr. Ferris) the approval of a resolution that Benchers adopt recommendations 1 – 9, 11, 14, 16 and 17, and adopt recommendations 12 and 13 of the said Report, but replace the phrase "model policies" in each recommendation with the phrase "educational resources"[…]"

145. The Task Force notes that a number of pilot project participants expressed a desire for model policies, as to ensure that all firms have access to high quality guidance on best practices. Auguring against the development of model policies, however, are concerns about firms defaulting to sample policies, or adopting them in an unconsidered manner, rather than carefully considering the appropriate approach for their specific practice context.

146. Given the great variability in firm size, structure and areas of specialization, a one-size-fits-all approach to policies would not suffice, nor is it feasible for the Law Society to develop a suite of policies that could satisfy the diverse needs of over 3,500 firms. A commitment to developing multiple model policies on each of the dozens of topics contained in the self-assessment would necessitate a period of intensive resource development that would greatly delay the implementation of the self-assessment process and significantly increase costs.

147. Concerns have also been raised that model policies could create the perception that the Law Society is utilizing the self-assessment process as a means of regulating to the standard of the model policy. As discussed previously, the self-assessment has been specifically designed as an educational tool that encourages firms to reflect on and improve their practice management systems, not as a mechanism for establishing a set of standard policies that firms are required to implement. As such, the Task Force recommends that the Law Society does not develop model policies for firms as part of law firm regulation.

148. Accordingly, the Law Society will not develop prescribed policies and procedures, but may develop sample policies and procedures as part of the expanded set of practice resources that will be available to firms through the self-assessment process.

Recommendation 7: The Law Society will not develop prescribed policies and procedures, but may develop sample policies and procedures as part of the expanded set of practice resources that will be available to all firms.

7. Budgetary implications

149. Implementing the self-assessment process in accordance with the recommendations contained in this report will engage five Law Society departments:

- the Practice Standards and Practice Advice Departments will be responsible for undertaking resource curation and development for the self-assessment tool;

- the Member Services Department will be responsible for providing operational support for the delivery of the self-assessment process;

- the Information Services Department with be responsible for technology and content management support for the self-assessment tool;

- the Communications Department will be responsible for law firm regulation related communications; and

- the Policy Department will be responsible for providing policy analysis and rule amendments, as required.

150. Given the scope and scale of this initiative, the self-assessment process will require a significant commitment of financial and human resources, particularly in relation to resource curation, development and maintenance; technology support for building and maintaining an online self-assessment; and the operational support required for the successful delivery of the self-assessment.

151. The Task Force has relied on estimates provided by senior staff in each of the affected program areas with respect to the costs associated with preparing the self-assessment tools for profession-wide implementation and overseeing the process through the first two assessment cycles. These budgetary estimates are based on the following assumptions:

- Following the Benchers' approval of the recommendations contained in this report, the Information Services Department will migrate the Self-Assessment Report to an internally hosted, web-based application with improved functionality and develop an online resource portal.

- The Practice Standards and Practice Advice Departments will create a set of additional practice resources for the self-assessment and update existing resources

- The Communications Department will develop a comprehensive communications plan to support profession-wide implementation, as to ensure that the profession receives information about the purpose and requirements of the self-assessment process.

- The Policy Department will support the transition to implementation, oversee the development of new rules and participate in on-going pan-Canadian collaboration on law firm regulation.

- In addition to maintaining the law firm registration system, the Member Services Department will establish dedicated staff to oversee the operational aspects of the delivery of the self-assessment, including: administering the self-assessment in accordance with the reporting cycle; responding to firms inquiries about, and provide support for, the assessment process; monitoring and following-up with firms that have missed reporting deadlines; recording data from completed self-

assessments and assisting with the analysis of results; and liaising with other departments with respect to potential updates or modifications to the self-assessment tools or processes.

- Ongoing work will be required to identify and develop additional resources for the self-assessment and maintain the technical aspects of the online tools.

- At the conclusion of the each assessment cycle, further analysis will be undertaken with a view to determining the impact of the self-assessment process on firm learning and conduct, as well as the Law Society's ability to enhance the protection of the public interest.

152. It is anticipated that the overall cost associated with readying the self-assessment for profession-wide implementation and completing two consecutive three year assessment cycles, as recommended by the Task Force, will be approximately $645,000.

153. Many of these costs ($165,000) are associated with the resource development and technology support that will occur in advance of the commencement of the first assessment cycle. Once the self-assessment is ready for implementation, the costs will be approximately $80,000 per year, for each year of the assessment cycle ($480,000 total for two consecutive three year assessment cycles).

154. These costs are further broken down as follows:

- An additional FTE lawyer position ($130,000) will be required for a one year period of intensive resource development in advance of the profession-wide implementation of the self-assessment.[45] Given the short duration of this phase of resource development, it is expected that this work would be completed through a contract, rather than hiring an additional, permanent Law Society employee.

- The delivery and operational oversight of the self-assessment will require a dedicated permanent FTE position at a cost of $60,000 per year ($360,000 total over the course of two consecutive three year assessment cycles).

- Approximately $35,000 will be required to make the recommended technology-related modifications to the self-assessment and to create an online resource portal prior to the commencement of the first assessment cycle.

- Approximately $5,000 will be required for technology and content management support during each year of the assessment cycle ($30,000 total over the course of two consecutive three year assessment cycles).

[45] Notably, if only one new resource is developed per Indicator (a 10% increase in the number of resources) 26 new resources must be developed over the next year.

- No additional costs are expected in relation to communications initiatives in advance of, or following the implementation of the self-assessment process.

- Approximately $5,000 per year will be required to provide the requisite policy support ($30,000 total over the course of two consecutive three year assessment cycles)

155. Although Australian studies suggest that a reduction in complaints can be expected following the implementation of the self-assessment process, it is not possible to predict, with any accuracy, the extent of this reduction and any costs savings that may result.

Resolution and Summary of Recommendations

156. The following resolution is presented to the Benchers for discussion and decision:

The Benchers adopt the following seven recommendations of the Law Firm Regulation Task Force, as contained in this report, namely:

Recommendation 1: The Law Society commits to the profession-wide implementation of the self-assessment process.

Recommendation 2: The purpose of the self-assessment process will remain educational in nature, and information provided to the Law Society as part of the Self-Assessment Report will not be used as evidence in, or to inform the outcome of, a disciplinary action or proceeding.

Recommendation 3: Unless exempted from the requirement to self-assess under Rule 2-12.1 (2), all firms will be required to complete and submit a Self-Assessment Report to the Law Society once every three years. New firms will be required to submit their self-assessment within one year of their registration date. Firms may also be required to complete a self-assessment outside of the regular reporting period if the Executive Director considers it is in the public interest to do so.

Recommendation 4: The assessment cycle will operate on a rolling basis, in which one third of all firms that are required to self-assess under the Law Society Rules submit a Self-Assessment Report to the Law Society in each year of the three year assessment period.

Recommendation 5: The Law Society will commit to the completion of two assessment cycles of three years each in order to collect sufficient data to evaluate the impacts of the

self-assessment over time. Mechanisms will be developed to ensure the continuous improvement of the self-assessment process throughout this period, including reports to the Benchers at the conclusion of each assessment cycle and ongoing opportunities for feedback from the membership.

Recommendation 6: The Self-Assessment Report will undergo several modifications to improve its format, functionality and content, including revising the rating scale, adding a goal setting component, rebuilding the Self-Assessment Report as an internally hosted web-based application and requiring firms to review the material contained in the Considerations and Resources sections of the Self-Assessment Report.

Recommendation 7: The Law Society will not develop prescribed policies and procedures, but may develop sample policies and procedures as part of the expanded set of practice resources that will be available to all firms.

Subsequent Steps

157. If the Benchers approve Recommendation 1, in which the Law Society commits to the profession-wide implementation of the self-assessment process, the Law Society must ready itself for the introduction of the self-assessment process to approximately 3,500 firms in BC. This will involve a year of intensive resource development and the modification of the self-assessment tools as described in Recommendations 6 and 7. This work is expected to begin in 2020.

158. Once the proposed changes to the self-assessment tools are complete, the first assessment cycle will commence, pursuant to Recommendations 2 and 3, and one third of all eligible law firms will be required to complete and submit a Self-Assessment Report to the Law Society each year, for a three year period.

159. An interim report will be issued to the Benchers at the conclusion of the first three year assessment cycle, following which, the second three year assessment cycle will commence. At the conclusion of the second assessment cycle, the Law Society will have sufficient data to evaluate the impact of the self-assessment process on firm learning, conduct and the protection of the public interest.

160. A schematic of this implementation schedule is provided below.

	1/3rd of firms assess	1/3rd of firms assess	1/3rd of firms assess	Report to Benchers	1/3rd of firms assess	1/3rd of firms assess	1/3rd of firms assess	
2020	**2021**	**2022**	**2023**		**2024**	**2025**	**2026**	**2027**
Resource development & finalizing the self-assessment	First Assessment period				Second Assessment period			Evaluation of self-assessment process and report to Benchers

161. At the conclusion of this seven year process, the Law Society will be well situated to make evidence-based recommendations to the Benchers about future phases of law firm regulation.

162. Finally, the profession-wide implementation of the self-assessment process signifies the completion of the Task Force's mandate to "recommend a framework for the regulation of law firms." As the Task Force has now concluded its work, a decision should be made to ensure that a group is tasked with reporting to the Benchers, likely annually, on the impacts of the self-assessment process specifically, and the regulation of law firms more broadly.

The Law Society of British Columbia

Memo

To:	Benchers
From:	Ethics Committee
Date:	September 20, 2019
Subject:	Amendments to Rule 7.1-3 and Commentary of the Code of Professional Conduct for British Columbia ("BC Code"), including removal of potentially stigmatizing language

---

Note: *In addition to offering the text below, which is provided initially only for discussion, the Ethics Committee intends that before its recommendations are proposed for adoption, it will be able to update the Benchers on the status of anticipated communications with a representative of the Provincial Government, regarding the nature and purpose of these changes to the 'Duty to Report' rule and Commentary.*

The purpose of this memorandum is to recommend that BC Code rule 7.1-3, the "Duty to Report" rule, be amended, in part following similar amendment to remove potentially stigmatizing language from the text of the Model Code of Professional Conduct. However, following the Benchers' direction to reconsider the potential scope of amendments to these provisions, and following consultation with, and input from, members of the Mental Health Task Force, the Ethics Committee is now recommending amendments that go beyond the changes to the Model Code, to remove additional potentially stigmatizing language, and to address the concern that the existing Commentary might have a repressive effect on those in need and considering seeking assistance and a negative impact on the counselling support relationships available to those in need of assistance. In the latter regard, a significant change involves the removal of a reminder for lawyer-counsellors that information obtained in the course of their counselling activities may need to be reported to the Law Society, and replacement with an express exemption for lawyer-counsellors from the duty to report such information, obtained through confidential counselling relationships that are provided through Law Society-approved service providers.

Some of the recommended amendments would move the BC Code's provisions closer to matching the form and content of the Model Code's corresponding provisions. However, those that go beyond the changes introduced to the Model Code would place the Law Society in a leading position, in asserting that improving the prospect of assistance available to lawyers who face mental health challenges is compatible with and supportive of the public interest in the administration of justice.

The Resolution described below makes reference to a red-lined version of the relevant BC Code provisions, in order to illustrate the changes in moving from the existing provisions to the recommended resulting provisions. For ease of reading, a clean copy showing just the recommended resulting provisions is provided immediately following the red-lined version and before the Background information and supporting discussion below.

Resolution

Be it resolved that:

> The text of rule 7.1-3 of the BC Code and the text of the rule's associated Commentary be amended to reflect the changes indicated in the red-lined version of the rule and Commentary presented below.

Red-lined version of BC Code rule 7.1-3 and Commentary:

Duty to report

7.1-3 Unless to do so would involve a breach of solicitor-client confidentiality or privilege, a lawyer must report to the Society, in respect of that lawyer or any other lawyer:

(a) a shortage of trust monies;

(a.1) a breach of undertaking or trust condition that has not been consented to or waived;

(b) the abandonment of a law practice;

(c) participation in criminal activity related to a lawyer's practice;

(d) ~~the mental instability of a lawyer of such a nature that the lawyer's clients are likely to be materially prejudiced~~[deleted];

(e) conduct that raises a substantial question as to ~~another lawyer's~~the honesty, trustworthiness, or competency ~~as~~ of a lawyer; and

(f) any other situation in which a lawyer's clients are likely to be materially prejudiced.

Commentary

[1] Unless a lawyer who departs from proper professional conduct or competence is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is, therefore, proper (unless it

is privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these rules. If a lawyer is in any doubt whether a report should be made, the lawyer should consider seeking the advice of the Society directly or indirectly (e.g., through another lawyer). In all cases, the report must be made without malice or ulterior motive.

[2] Nothing in this ~~paragraph~~ rule is meant to interfere with the lawyer-client relationship. ~~In all cases, the report must be made without malice or ulterior motive.~~

[3] ~~Often, instances of improper~~A variety of stressors, physical, mental or emotional conditions, disorders or addictions may contribute to instances of conduct ~~arise from emotional, mental or family disturbances or substance abuse~~described in this rule. Lawyers who ~~suffer from~~face such ~~problems~~ challenges should be encouraged by other lawyers to seek assistance as early as possible.

[4] The Society supports professional support groups in their commitment to the provision of confidential counselling. Therefore, lawyers acting in the capacity of counsellors for professional support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity or competence hearing without the consent of the lawyer from whom the information was received in the course of such confidential counselling. A lawyer serving in the capacity of a peer support or counsellor in the Lawyers Assistance Program, or another Law Society approved peer assistance program, is not required to report any information concerning another lawyer acquired in the course of providing peer assistance. The potential disclosure of these communications is not subject to requirement by the Law Society. Such disclosure can only be required by law or a court but is permissible if the lawyer-counsellor believes on reasonable grounds that there is an imminent risk of death or serious harm and disclosure is necessary to prevent the death or harm.~~Notwithstanding the above, a lawyer counselling another lawyer has an ethical obligation to report to the Society upon learning that the lawyer being assisted is engaging in or may in the future engage in serious misconduct or in criminal activity related to the lawyer's practice. The Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.~~

Clean copy revised version of BC Code rule 7.1-3 and Commentary

Duty to report

7.1-3 Unless to do so would involve a breach of solicitor-client confidentiality or privilege, a lawyer must report to the Society, in respect of that lawyer or any other lawyer:

(a) a shortage of trust monies;

(a.1) a breach of undertaking or trust condition that has not been consented to or waived;

(b) the abandonment of a law practice;

(c) participation in criminal activity related to a lawyer's practice;

(d) [deleted];

(e) conduct that raises a substantial question as to the honesty, trustworthiness, or competency of a lawyer; and

(f) any other situation in which a lawyer's clients are likely to be materially prejudiced.

Commentary

[1] Unless a lawyer who departs from proper professional conduct or competence is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is, therefore, proper (unless it is privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these rules. If a lawyer is in any doubt whether a report should be made, the lawyer should consider seeking the advice of the Society directly or indirectly (e.g., through another lawyer). In all cases, the report must be made without malice or ulterior motive.

[2] Nothing in this rule is meant to interfere with the lawyer-client relationship.

[3] A variety of stressors, physical, mental or emotional conditions, disorders or addictions may contribute to instances of conduct described in this rule. Lawyers who face such challenges should be encouraged by other lawyers to seek assistance as early as possible.

[4] The Society supports professional support groups in their commitment to the provision of confidential counselling. Therefore, lawyers acting in the capacity of counsellors for professional support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity or competence hearing without the consent of the lawyer from whom the information was received in the course of such confidential counselling. A lawyer serving in the capacity of a peer support or counsellor in the Lawyers Assistance Program, or another Law Society approved peer assistance program, is not required to report any information concerning another lawyer acquired in the course of providing peer assistance. The potential disclosure of these communications is not subject to requirement by the Law Society. Such disclosure can only be required by law or a court but is permissible if the lawyer-counsellor believes on reasonable grounds that there is an imminent risk of death or serious harm and disclosure is necessary to prevent the death or harm.

Background

The Ethics Committee most recently brought the prospect of amending rule 7.1-3 and Commentary before the Benchers at the November 2018 Benchers Meeting. For reference, the Ethics Committee's August 28, 2018 memorandum to the Benchers is provided as "**Attachment A**" below. At approximately the same time, the Mental Health Task Force presented an interim report that recommended eliminating the stigmatizing language and approaches of rule 7.1-3 and associated Commentary. Following discussion at the Bencher table, the then proposed amendments to rule 7.1-3 were referred back to the Ethics Committee for further consideration and to be returned to the Bencher table at a later date. The Benchers' discussion expressly contemplated communications or consultation between the Ethics Committee and the Mental Health Task Force for the purpose of considering a more comprehensive amendment recommendation.

In January 2019, the Chair of the Mental Health Task Force was appointed as a member of the Ethics Committee. Subsequently, two other members of the Task Force attended a portion of the Ethics Committee's April 4th meeting, in order to provide their views on what changes should be made to rule 7.1-3 and Commentary. The input of the Task Force members was welcomed and the Ethics Committee did and does thank them for their assistance in its reconsideration of the "Duty to Report" provisions.

For that April 4th meeting, the Task Force provided a very helpful memorandum dated March 1, 2019, reviewing the Ethics Committee's amendment recommendations and providing the Task Force's views in highlighted text insertions after each section of the relevant Code provisions. For reference, the Task Force's memorandum of March 1, 2019, is provided as "**Attachment B**" below. The various text insertions throughout the memorandum confirm that the Task Force agreed with the Ethics Committee on most of its recommended amendments.

The two most significant points of difference that were raised by the Task Force involved changes to the proposed wording of Commentary [3] and the proposed wording of the new Commentary [4] paragraph. In each of these instances, the Task Force's memorandum provided alternative suggestions.

With respect to Commentary [3], the Task Force proposed "less stigmatizing" language in order to avoid an unnecessary suggestion of a causal relationship between mental health conditions and problematic conduct. The Ethics Committee agreed that it could accept the Task Force's suggested language for Commentary [3] without loss of regulatory effect or conduct guidance from the provision. Accordingly, the language proposed by the Task Force for Commentary [3] is incorporated into the amendment recommendation set out above.

With respect to Commentary [4], although the Task Force's memorandum suggested some alternative wording for the sentence affirming lawyer-counsellors' duty to report under rule 7.1-

3, it expressed a stronger preference for the removal of that sentence altogether, in addition to the deletion of the final two sentences of the paragraph, which referred to lawyer-counsellors' duties to report in the face of "attempts at rehabilitation." In discussing the Task Force's view of Commentary [4], the Ethics Committee was inclined to agree and accept the proposed deletions. However, the Committee's view was that Commentary [4] should provide guidance for both lawyer-counsellors and lawyers in need of assistance, which would be broadly supportive of open, candid, and effective communications within the counselling relationship and would recognize the importance of reliable confidentiality, for both the one seeking assistance and the lawyer counsellor who is offering it. Accordingly, the Ethics Committee was interested in including in Commentary [4] a statement that would effectively exempt lawyer-counsellors from the duty to report, provided that the information in question was received in the course of a counselling relationship established through a Law Society-approved counselling service provider.

A research component of the Committee's work included reviewing a compilation of provisions on "Confidentiality for Lawyer Impairment Programs," which covered relevant source provisions from 51 jurisdictions in the United States. While this material was not updated recently and was not entirely univocal on the point, a significant number of US legal jurisdictions appeared to have effectively exempted their lawyer-counsellors from any applicable duty to report confidential information obtained in the course of their counselling work. Sample statements would include California's "All communications with mental health professionals in this state are confidential (*Business and Professions Code*)," and Wisconsin's "This rule does not require disclosure of the following … (2) information acquired by … a member of any committee or organization approved by any bar association to assist ill or disabled lawyers where such information is acquired in the course of assisting ill or disabled lawyers (Rule 8.3(c)(2)(i) of *Rules of Professional Conduct for Attorneys*).

Much of the remainder of the Committee's work on Commentary [4] was divided between considering potential objections to the amendment it was contemplating and settling on acceptable wording for the exemption statement. On the latter point the Committee considered and rejected versions of the exemption statement that made reference to solicitor-client privilege and to the BC Code's confidentiality provisions found in Chapter 3.3. Through its discussion, the prevailing view of the Committee was that the counselling relationship did not necessarily involve the provision of legal services and thus was not essentially a solicitor-client relationship. Absent a solicitor-client relationship, the Committee was concerned that solicitor-client privilege might not apply and the confidentiality provisions of Chapter 3.3 might not be attracted to information disclosed in the counselling context. In addition, the Committee preferred to recommend a version of Commentary [4] that is helpful and self-contained and does not send its reader to sort out the meaning and application of provisions located elsewhere in the Code. The Committee is satisfied with its present recommendation in that regard.

With respect to potential objections to the specific exemption from the duty to report, the Committee was most concerned to consider that the exemption might be viewed in terms of the Law Society's giving up its expectation of access to information that has regulatory importance and may have a bearing on the Society's ability to meet its public interest mandate. If the provision of important and otherwise inaccessible information, as a result of a compelling duty to report, were a material element of regulatory activity, there would be a question of how that might weigh on the balance. At the same time, the Committee was aware that access to effective counselling relationships, and the reliable confidentiality that may be a foundation for such relationships, can be viewed as a "lawyers' interest" issue.

However, in the Committee's view, each of these observations can be effectively answered. The other side of the balance is not empty. There is a material public interest benefit to having lawyers who might need counselling assistance obtain that assistance most effectively and in as many instances as possible. Recognition of this reality is an important component of the Law Society's support for the Lawyers' Assistance Program from the outset. Just as effective counselling relationships may be beneficial to the lawyers who participate in them, they are at the same time beneficial to the public interest. In the committee's view, reliable confidentiality is essential to an effective counselling relationship. Any significant concern about confidentiality can be expected to act as a disincentive for those who may be understandably reluctant to seek the help they need. The resulting effect of that disincentive may be that the circumstances in which lawyers engage in harmful behavior are perpetuated and the resulting harms amplified, beyond what results might have been if the disincentives had been removed and effective counselling had begun earlier.

The Committee's understanding is that the reporting to the Law Society of information obtained from an approved counselling relationship is an extremely rare event, if ever it happens at all. The lack of known examples of such reports is understandable. On one hand, the lawyer-counsellors, who are motivated to provide the most effective assistance they can, will know that reporting a lawyer who has been candid with the counsellor will have a destructive effect on the very prospect of assistance from the counselling relationship. The breach of trust in such circumstances may be counted as irreparable. On the other hand, many lawyers in need of assistance who may be concerned about confidentiality (which probably includes all lawyers in need of assistance) will be aware that, according to the Code of Professional Conduct, being candid about one's harmful activities may trigger a lawyer-counsellor's duty that one should be reported. The natural response to such an understanding might be expected to be a lack of candour and honesty in the counselling context. And a natural consequence of such lack of candour and honesty would be a reduced prospect of beneficial effect from the counselling. Regardless of whether the lack of such reports arises from the counsellor's reluctance to undermine the relationship or from concealment and dishonesty on the part of the lawyer seeking assistance, the result is likely to be that the duty to report such information is ineffective. The associated expectation that asserting the duty will lead to lawyer-counsellors' reporting of

important information to the Law Society is not well-founded. On the other hand, the damage caused by the assertion of a duty to report with respect to such relationships and information, the disincentives to candour, to seeking assistance, and to effective counselling relationships, are real and may be material and contrary to the public interest.

Accordingly, the Ethics Committee has concluded that the described specific exemption from the duty to report is warranted in support of better assistance for lawyers who need it and in support of the public interest, which is most likely to be harmed, if lawyer's who could otherwise be helped do not seek and receive the assistance they need.

Conclusion

Upon considering the rationale of removing unnecessary and potentially stigmatizing language from the text of the BC Code, upon considering the input and advice of members of the Mental Health Task Force, and upon weighing the relative merits of either asserting the duty to report over lawyer-counsellors who provide counselling through approved service providers or specifically exempting them from such requirement, the Ethics Committee recommends the above described amendments to BC Code rule 7.1-3 and Commentary for adoption by the Benchers.

[**Attachment A**: DM# 2030701]

[**Attachment B**: DM# 2245460]

[End of Memorandum.]

The Law Society of British Columbia

Memo

To:	Benchers
From:	Ethics Committee
Date:	August 28, 2018
Subject:	Amendments to Rule 7.1-3 and Commentary of the Code of Professional Conduct for British Columbia ("BC Code"), including removal of potentially stigmatizing language

---

The purpose of this memorandum is to recommend that BC Code rule 7.1-3, the "Duty to Report" rule, be amended, following similar amendment of the Model Code of Professional Conduct by the Federation of Law Societies of Canada, to remove certain potentially stigmatizing language from the text of the rule and the accompanying Commentary. In addition, minor amendments to the text of the rule itself are recommended in order to improve clarity with respect to its application.

A further benefit of the recommended amendments is that they would move the BC Code's provision substantially closer to matching the form and content of the Model Code's corresponding provision, thus serving the objective of moving toward more transparently unified standards of professional conduct for lawyers across Canada.

Notwithstanding the intended removal of the potentially stigmatizing language and the minor changes to improve the rule's clarity of application, the Ethics Committee is not suggesting that the recommended amendments would amount to substantive changes in the regulatory effect of the existing BC Code rule.

Resolution

Be it resolved that:

> The text of rule 7.1-3 of the BC Code and the text of the rule's associated Commentary be amended to reflect the changes indicated in the red-lined version of the rule and Commentary presented below.

Red-lined version of BC Code rule 7.1-3 and Commentary:

Duty to report

7.1-3 Unless to do so would involve a breach of solicitor-client confidentiality or privilege, a lawyer must report to the Society, in respect of that lawyer or any other lawyer:

(a) a shortage of trust monies;

(a.1) a breach of undertaking or trust condition that has not been consented to or waived;

(b) the abandonment of a law practice;

(c) participation in criminal activity related to a lawyer's practice;

(d) ~~the mental instability of a lawyer of such a nature that the lawyer's clients are likely to be materially prejudiced~~[deleted];

(e) conduct that raises a substantial question as to ~~another lawyer's~~the honesty, trustworthiness, or competency ~~as~~ of a lawyer; and

(f) any other situation in which a lawyer's clients are likely to be materially prejudiced.

Commentary

[1] Unless a lawyer who departs from proper professional conduct or competence is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is, therefore, proper (unless it is privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these rules. If a lawyer is in any doubt whether a report should be made, the lawyer should consider seeking the advice of the Society directly or indirectly (e.g., through another lawyer). In all cases, the report must be made without malice or ulterior motive.

[2] Nothing in this ~~paragraph~~ rule is meant to interfere with the lawyer-client relationship. ~~In all cases, the report must be made without malice or ulterior motive.~~

[3] ~~Often, i~~Instances of ~~improper~~ conduct described in this rule can arise from a variety of stressors, physical, mental or emotional~~, mental or family disturbances or substance abuse~~ conditions, disorders or addictions. Lawyers who ~~suffer from such problems~~face such challenges should be encouraged by other lawyers to seek assistance as early as possible. ~~The Society supports professional support groups in their commitment to the provision of confidential counselling. Therefore, lawyers acting in the capacity of counsellors for professional support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity or competence hearing without the consent of the lawyer from whom the~~

~~information was received. Notwithstanding the above, a lawyer counselling another lawyer has an ethical obligation to report to the Society upon learning that the lawyer being assisted is engaging in or may in the future engage in serious misconduct or in criminal activity related to the lawyer's practice. The Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.~~

[4] The Society supports professional support groups, such as the Lawyers Assistance Program, in their commitment to the provision of confidential counselling. Therefore, lawyers providing peer support for professional support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity or competence hearing without the consent of the lawyer from whom the information was received. Notwithstanding the above, a lawyer counselling another lawyer has an ethical obligation to report to the Society upon learning that the lawyer being assisted is engaging in serious misconduct or in criminal activity related to the lawyer's practice or that there is a substantial risk that the lawyer may in the future engage in such conduct or activity. The Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.

Background

Motivated primarily by a concern to eliminate or improve the text of the Model Code of Professional Conduct, where it might unnecessarily have a stigmatizing effect on some of the lawyers to whom the provision might apply, the Standing Committee on the Model Code recommended and Federation Council adopted certain amendments to Rule 7.1-3 and associated Commentary in late 2016. Following such amendment, the Model Code's version of the Rule and Commentary reads as follows:

Duty to Report

7.1-3 Unless to do so would be unlawful or would involve a breach of solicitor-client privilege, a lawyer must report to the Society:

(a) the misappropriation or misapplication of trust monies;
(b) the abandonment of a law practice;
(c) participation in criminal activity related to a lawyer's practice;
(d) conduct that raises a substantial question as to another lawyer's honesty, trustworthiness, or competency as a lawyer;
(e) conduct that raises a substantial question about the lawyer's capacity to provide professional services; and
(f) any situation in which a lawyer's clients are likely to be materially prejudiced.

Commentary

[1] Unless a lawyer who departs from proper professional conduct or competence is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is, therefore, proper (unless it is privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these rules. If a lawyer is in any doubt whether a report should be made, the lawyer should consider seeking the advice of the Society directly or indirectly (e.g., through another lawyer). In all cases, the report must be made without malice or ulterior motive.

[2] Nothing in this rule is meant to interfere with the lawyer-client relationship.

[3] Instances of conduct described in this rule can arise from a variety of stressors, physical, mental or emotional conditions, disorders or addictions. Lawyers who face such challenges should be encouraged by other lawyers to seek assistance as early as possible.

[4] The Society supports professional support groups, such as the [Lawyers' Assistance Program and the Risk and Practice Management Program], in their commitment to the provision of confidential counselling. Therefore, lawyers providing peer support for professional support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity or competence hearing without the consent of the lawyer from whom the information was received. Notwithstanding the above, a lawyer counselling another lawyer has an ethical obligation to report to the Society upon learning that the lawyer being assisted is engaging serious misconduct or in criminal activity related to the lawyer's practice or there is a substantial risk that the lawyer may in the future engage in such conduct or activity. The Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.

In contrast to the Model Code's amended provision, the present version of the BC Code's rule 7.1-3, with potentially stigmatizing language unchanged, reads as follows:

Duty to report

7.1-3 Unless to do so would involve a breach of solicitor-client confidentiality or privilege, a lawyer must report to the Society:

(a) a shortage of trust monies;

(a.1) a breach of undertaking or trust condition that has not been consented to or waived;

(b) the abandonment of a law practice;

(c) participation in criminal activity related to a lawyer's practice;

(d) the mental instability of a lawyer of such a nature that the lawyer's clients are likely to be materially prejudiced;

(e) conduct that raises a substantial question as to another lawyer's honesty, trustworthiness, or competency as a lawyer; and

(f) any other situation in which a lawyer's clients are likely to be materially prejudiced.

Commentary

[1] Unless a lawyer who departs from proper professional conduct is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is, therefore, proper (unless it is privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these rules. If a lawyer is in any doubt whether a report should be made, the lawyer should consider seeking the advice of the Society directly or indirectly (e.g., through another lawyer).

[2] Nothing in this paragraph is meant to interfere with the lawyer-client relationship. In all cases, the report must be made without malice or ulterior motive.

[3] Often, instances of improper conduct arise from emotional, mental or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek assistance as early as possible. The Society supports professional support groups in their commitment to the provision of confidential counselling. Therefore, lawyers acting in the capacity of counsellors for professional support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity or competence hearing without the consent of the lawyer from whom the information was received. Notwithstanding the above, a lawyer counselling another lawyer has an ethical obligation to report to the Society upon learning that the lawyer being assisted is engaging in or may in the future engage in serious misconduct or in criminal activity related to the lawyer's practice. The Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.

Conclusion

Upon considering the rationale of removing unnecessary and potentially stigmatizing language from the text of the BC Code and upon considering the related amendments to the corresponding

provision of the Model Code, the Ethics Committee recommends the above described amendments to BC Code rule 7.1-3 for adoption by the Benchers.

The Law Society of British Columbia

Memo

To: Ethics Committee
From: Mental Health Task Force
Date: March 1 2019
Subject: Mental Health Task Force proposed wording for *BC Code* provision 7.1-3 and Commentary

---

1. The Mental Health Task Force proposes the following amendments to *BC Code* provision 7.1-3 and its associated commentary. Deleted text is marked with a strike-through. Added text is redlined. Notes supporting or explaining the various changes are italicized and highlighted.

2. The Task Force welcomes consultation with the Ethics Committee on these proposed changes at its April Committee meeting.

Duty to report

7.1-3 Unless to do so would involve a breach of solicitor-client confidentiality or privilege, a lawyer must report to the Society , in respect of that lawyer or any other lawyer:

[NOTE: This change was suggested by the Ethics Committee and the Mental Health Task Force agrees]

(a) a shortage of trust monies;

(a.1) a breach of undertaking or trust condition that has not been consented to or waived;

(b) the abandonment of a law practice;

(c) participation in criminal activity related to a lawyer's practice;

~~(d) the mental instability of a lawyer of such a nature that the lawyer's clients are likely to be materially prejudiced;~~

[NOTE: This deletion was suggested by the Ethics Committee on the basis that the language is stigmatizing and the Mental Health Task Force agrees]

(e) conduct that raises a substantial question as to another lawyer's honesty, trustworthiness, or competency ~~as~~ about a lawyer; ~~and~~

[NOTE: This change was suggested by the Ethics Committee and the Mental Health Task Force agrees]

(e.1) conduct that raises a substantial question about the lawyer's capacity to provide professional services; and

[NOTE: the addition of e.1 would bring the BC Code into alignment with the Model Code. While there may be some overlap, some impairments go beyond simply affecting competency, trustworthiness or honesty and go to the core of the lawyer's capacity]

(f) any other situation in which a lawyer's clients are likely to be materially prejudiced.

Commentary

[1] Unless a lawyer who departs from proper professional conduct is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is, therefore, proper (unless it is privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these rules. If a lawyer is in any doubt whether a report should be made, the lawyer should consider seeking the advice of the Society directly or indirectly (e.g., through another lawyer). In all cases, the report must be made without malice or ulterior motive.

[NOTE: This change was suggested by the Ethics Committee, the Mental Health Task Force agrees]

[2] Nothing in this ~~paragraph~~ rule is meant to interfere with the lawyer-client relationship. ~~In all cases, the report must be made without malice or ulterior motive.~~

[NOTE: This change was suggested by the Ethics Committee, the Mental Health Task Force agrees]

[3] A variety of stressors, physical, mental or emotional conditions, disorders or addictions may contribute to instances of ~~Often, instances of improper~~ conduct ~~arise from emotional, mental or family disturbances or substance abuse~~ described in this rule. Lawyers who ~~suffer from~~ face such ~~problems~~ challenges should be encouraged by other lawyers to seek assistance as early as possible.

[NOTE: This language is less stigmatizing than the text proposed by the Ethics Committee by not suggesting that conduct 'arises' from mental health (or other) conditions, but that these conditions 'may contribute to' conduct issues; that is, there is no causative relationship between a mental health condition and problematic conduct]

[4] The Society supports professional support groups in their commitment to the provision of confidential counselling. ~~Therefore~~,[While lawyers acting in the capacity of counsellors for professional support groups must report conduct enumerated in 7.1-3 unless to do so would involve a breach of confidentiality or privilege,] these lawyers will not be called by the Society or by any investigation committee to testify at any conduct, capacity or competence hearing without the consent of the lawyer from whom the information was received in the course of such confidential counselling. ~~Notwithstanding the above, a lawyer counselling another lawyer has an ethical obligation to report to the Society upon learning that the lawyer being assisted is engaging in or may in the future engage in serious misconduct or in criminal activity related to the lawyer's practice. The Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.~~

[Note: The Mental Health Task Force would prefer not to include the bracketed text "While lawyers acting in the capacity of counsellors for professional support groups must report conduct enumerated in 7.1-3 unless to do so would involve a breach of confidentiality or privilege," but could accept this inclusion if the Ethics Committee were of the view it was required for context. The removal of the latter half of Commentary note 4 addresses the following concerns of the Mental Health Task Force:]

159. This language is problematic on several fronts. First, it is not reasonable or necessary to require lawyer-counsellors to report a substantial risk relating to another lawyer's *future* behaviour. In addition to the fact that no lawyer can make an accurate assessment as to how current behaviours relate to potential future action, this Commentary also results in lawyer-counsellors being the only lawyers that are required to speculate about, and report on the possible future conduct of another lawyer. For example, the rule itself requires lawyers to report another lawyer's *participation* in a criminal activity, not their possible *future participation* in such activity.

160. Even if lawyer-counsellors were to report potential, future misconduct it is unclear to the Task Force what real value such a report would have to the Law Society and how this information could be used.

161. This portion of the Commentary also suggests that lawyers seeking help for substance use or mental health issues are more likely than other lawyers to engage in criminal activity or other serious misconduct. Absent this assumption, there would be no need to "remind" lawyer-counsellors of the reporting obligations that apply to all lawyers under rule 7.1-3, or to add to these requirements by also including references to present and future "serious misconduct," neither of which are referenced in the main body of the rule. Given that there is no empirical evidence that applicants' mental health histories are significantly predictive of future misconduct, this approach is misguided and stigmatizing.[87]

162. In addition to seeing little benefit to requiring lawyer-counsellors to report the risk of future misconduct, the Task Force believes that imposing this additional, onerous obligation may dissuade lawyers from seeking, or volunteering to provide assistance through programs such as LAP. The risk of a *mandatory* requirement to report potential future conduct may have a chilling effect on use of peer support programs and sends yet another stigmatizing message to the profession.

163. Finally, it is unnecessary to remind lawyers that "the Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation." This phrasing suggests that those involved in rehabilitative efforts require a specific and additional reminder that their circumstances are not a justification for criminal activities or other serious misconduct. Presumably this is based on the faulty assumption that those dealing with mental health and substance use issues are at a higher risk of misconduct, or are more likely to use their condition as an excuse for such conduct.

The Law Society of British Columbia

Indigenous intercultural competence education for BC lawyers

Joint Recommendation Report of the Truth and Reconciliation Advisory Committee and the Lawyer Education Advisory Committee

Truth and Reconciliation Advisory Committee:

Dean Lawton, QC (Co-Chair)
Michael McDonald, QC (Co-Chair)
Martin Finch, QC
Katrina Harry
Claire Marshall
Karen Snowshoe
Ardith Walkem, QC
Rosalie Yazzie

Lawyer Education Advisory Committee:

Tony Wilson, QC (Chair)
Sarah Westwood (Vice-Chair)
Barbara Cromarty
Celeste Haldane
Rolf Warburton
Michael Welsh, QC
Heidi Zetzsche

October 10, 2019

Prepared for: The Benchers

Prepared by: Andrea Hilland and Alison Luke

Table of Contents

Table of Contents 2
Executive Summary 3
Resolution 4
Background 4
Process 8
Addressing Matters Identified by the TRC 10
The Proposed Model 13
Mandatory or Optional Training 16
Option 1 17
Option 2 19
Budgetary Implications 21
Recommendations 22
Subsequent Steps 23

Executive Summary

1. The Law Society has identified intercultural competence training for BC lawyers as a central priority in its work to advance reconciliation, and has the statutory authority to introduce educational initiatives to achieve this goal. Over the last several years, both the Truth and Reconciliation Advisory Committee and the Lawyer Education Advisory Committee have recognized their overlapping roles in advancing lawyer education in relation to intercultural competence and have worked together to develop a joint recommendation to the Benchers in this regard.

2. Both the Truth and Reconciliation and the Lawyer Education Advisory Committees agree that providing lawyers with some form of Indigenous intercultural competence training and education is an integral part of the Law Society's response to the Truth and Reconciliation Commission's Call to Action 27 and one that requires action.

3. The Committees unanimously support the development of an online Indigenous intercultural competence course (the "Course") composed of a series of modules that would cover the topics identified in Call to Action 27 and additional topics identified by the Truth and Reconciliation Advisory Committee, as detailed in this report.

4. All members of the Truth and Reconciliation Advisory Committee and the majority of the Lawyer Education Advisory Committee recommend that the Course should be a mandatory requirement outside of the continuing professional development ("CPD") program, on the basis that the objectives of intercultural competence education, including reconciliation, cannot be fully achieved unless all lawyers have a baseline understanding of the skills and topics identified in Call to Action 27.

5. Holding a different perspective, a minority of the Lawyer Education Advisory Committee recommends that instead of establishing the Course as a mandatory standalone requirement outside of the CPD program, the Course should be optional, with the incentive of providing "ethics and professionalism" accreditation within the CPD program. This approach aims to encourage and facilitate lawyers' participation in Indigenous intercultural competence education without mandating that all practitioners must complete a minimum number of training hours.

6. The Benchers are presented with these two options, for mandatory or optional Indigenous intercultural competence training, and a series of supporting policy rationale, for discussion and decision.

Resolution

7. The Benchers adopt the joint recommendation of the Truth and Reconciliation Advisory Committee and the majority of the Lawyer Education Advisory Committee that:

> The Law Society develop, in consultation with subject-matter experts, an online Course composed of a series of modules that cover the Topics identified in this joint recommendation report. The modules will be provided to lawyers at no cost, and must be completed by all full and part time practising lawyers in BC, within two years of the Course being made available. This new requirement will be established outside of the CPD program, however CPD credit hours will be provided for time spent completing the Course.

Background

8. On June 2, 2015, the Truth and Reconciliation Commission of Canada ("TRC") released its Report and Calls to Action to redress the legacy of residential schools and to offer guidance for reconciliation. The TRC defines "reconciliation" as:

> . . . establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples in this country. In order for that to happen, there has to be awareness of the past, an acknowledgement of the harm that has been inflicted, atonement for the causes, and action to change behaviour.[1]

9. The TRC stated that Canada's treatment of Indigenous peoples amounts to cultural genocide:

> For over a century, the central goals of Canada's Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada. The…policy…can best be described as "cultural genocide."[2]

10. The TRC reported that law was used to facilitate Canada's assimilationist policies. As a result:

> Many Indigenous people have a deep and abiding distrust of Canada's political and legal systems because of the damage they have caused. They often see Canada's legal system as being an arm of a Canadian governing structure that has been diametrically opposed to their interests. Not only has Canadian law generally not protected Indigenous land rights, resources, and governmental authority, despite court judgments, but it has also allowed,

---

[1] *Honouring the Truth, Reconciling for the Future Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (The Truth and Reconciliation Commission of Canada, 2015) [*TRC Summary Report*] at 6.
[2] *Ibid* at 1.

> and continues to allow, the removal of Indigenous children through [residential schools] and [the] child-welfare system.... As a result, law has been, and continues to be, a significant obstacle to reconciliation.[3]

11. The TRC also acknowledged the potential of law to advance reconciliation:

> In Canada, law must cease to be a tool for the dispossession and dismantling of Aboriginal societies. It must dramatically change if it is going to have any legitimacy within First Nations, Inuit, and Métis communities. Until Canadian law becomes an instrument supporting Aboriginal peoples' empowerment, many Aboriginal people will continue to regard it as a morally and politically malignant force. A commitment to truth and reconciliation demands that Canada's legal system be transformed. It must ensure that Aboriginal peoples have greater ownership of, participation in, and access to its central driving forces.[4]

12. The TRC also stated that some lawyers were deficient in their provision of legal services with respect to residential school claims, highlighting the need for lawyers to develop greater understanding of Indigenous history and culture, including the legacy of residential schools:

> The criminal prosecution of abusers in residential schools and the subsequent civil lawsuits were a difficult experience for Survivors. The courtroom experience was made worse by the fact that many lawyers did not have adequate cultural, historical, or psychological knowledge to deal with the painful memories that the Survivors were forced to reveal. The lack of sensitivity that lawyers often demonstrated in dealing with residential school Survivors resulted, in some cases, in the Survivors not receiving appropriate legal service. These experiences prove the need for lawyers to develop a greater understanding of Aboriginal history and culture as well as the multi-faceted legacy of residential schools.[5]

13. Accordingly, the TRC's Call to Action 27 states:

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

14. The Law Society is well positioned to respond to the TRC's call to action that lawyers receive appropriate cultural competence training. The Society's statutory mandate reflects its authority

---

[3] *Ibid* at 202.
[4] *Ibid* at 205.
[5] *Ibid* at 215.

to ensure lawyers are competent and to set educational requirements and competence standards for lawyers in British Columbia:

> 3. It is the object and duty of the society to uphold and protect the public interest in the administration of justice by
>
> (a) preserving and protecting the rights and freedoms of all persons,
> (b) ensuring the independence, integrity, honour and competence of lawyers,
> (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
> (d) regulating the practice of law, and
> (e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.[6]

15. Additionally, the *Legal Profession Act* provides the Benchers with the authority to "take any steps they consider advisable to promote and improve the standard of practice by lawyers."[7]

16. The *Code of Professional Conduct for British Columbia* (the "*BC Code*") recognizes that competency is critical to professional, ethical practice, and requires legal services undertaken on a client's behalf to be performed to the standard of a competent lawyer.[8] The *BC Code* defines "competent lawyer" as "a lawyer who has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client and the nature and terms of the lawyer's engagement."[9]

17. Intercultural competence refers to an ability to interact effectively with people of different cultures, and a willingness to understand and respect their differences.[10] In relation to legal services, intercultural competence requires the ability to properly understand client instructions, an appreciation of the client's social context, and an awareness of systemic factors that may have implications for a client's legal issues1.[11] Effective intercultural competence goes beyond knowledge to include self-reflection, positional awareness, interpersonal skills, critical thinking, attitudinal consciousness, and behavioural change.[12]

---

[6] *Legal Profession Act*, s. 3.
[7] *Legal Profession Act*, s 28.
[8] *BC Code*, s. 3.1-2.
[9] *BC Code*, s. 3.1-1.
[10] Robert Wright, *Aspiring to Cultural Competence: The Why, What and How for Lawyers*, https://slideplayer.com/slide/13310318/ at slide 6.
[11] Rose Voyvodic, "Advancing the Justice Ethic through Cultural Competence," (available online: https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/f/fourthcolloquiumvoyvodic.pdf).
[12]

18. In addition to these factors, Indigenous intercultural competence requires that lawyers be able to comprehend the implications of the unique worldviews, histories, and current realities of Indigenous people, in order to provide effective legal services in a respectful way and to understand how Canadian law has been used in different ways to the detriment of Indigenous peoples. Indigenous intercultural competence education also involves learning about Indigenous perspectives on Canadian history and laws to enhance lawyers' understanding of the legal system.

19. At the October 30, 2015 Bencher meeting, the Benchers unanimously agreed that addressing the challenges identified in the TRC Report is one of the most critical issues facing the legal system, and acknowledged that the Law Society has a moral and ethical obligation to advance truth and reconciliation. Therefore, the Benchers decided to take immediate action to demonstrate their commitment to respond meaningfully to the TRC Calls to Action that are within the purview of the Law Society. The Truth and Reconciliation Advisory Committee was established shortly thereafter and has continued to move this important work forward.

20. The Law Society's work to advance reconciliation has largely focused on Call to Action 27, and its emphasis on lawyer education, given that this was the only recommendation aimed directly at law societies. Accordingly, the Law Society has identified cultural competence training of lawyers in British Columbia as a central priority, as reflected in the following strategic documents:

    a. The Law Society's Strategic Plan for 2018-2020, which states: "We will identify and implement appropriate responses to the Calls to Action from the Report of the Truth and Reconciliation Commission by encouraging all lawyers in British Columbia to take education and training in areas relating to Aboriginal law."

    b. The Truth and Reconciliation Advisory Committee's Terms of Reference, which specify that a key goal of the Committee is: "to support the Law Society in its efforts to…improve cultural competence training for lawyers in British Columbia to recognize and respond to the diverse legal service needs of Indigenous people, and to understand the relevance and applicability of Indigenous laws within the Canadian legal system."[13]

    c. The Law Society of BC's Truth and Reconciliation Action Plan, which indicates: "The Law Society of British Columbia will improve the intercultural competence of Law Society Benchers, staff, and committee members, and all lawyers and Admission Program candidates in British Columbia by mandating Indigenous intercultural

[13] The Benchers endorsed the Terms of Reference at the September 30, 2016 Benchers meeting.

competence education for all Law Society Benchers, staff, and committee members, and all lawyers and Admission Program candidates in British Columbia."[14]

21. Collectively, these documents – in addition to Call to Action 27 – clearly commit the Law Society to improve the intercultural competence of lawyers in BC. In recent years, both the Truth and Reconciliation Advisory Committee and the Lawyer Education Advisory Committee have been tasked with exploring the question of how this goal might best be achieved.

Process

22. The Truth and Reconciliation Advisory Committee and the Lawyer Education Advisory Committee have recognized their overlapping roles in advancing lawyer education in relation to intercultural competence. The Committees have each discussed Call to Action 27 and the importance of intercultural competence education for lawyers in advancing reconciliation. What follows is a timeline that briefly summarizes the history of this work.

23. At the December 4, 2015 Bencher meeting, the Benchers resolved to create a Steering Committee, comprising Executive Committee members and Indigenous representatives, to develop the mandate and terms of reference for a permanent advisory committee to advise the Benchers on the TRC Calls to Action. In July 2016, the Benchers unanimously endorsed the creation of a permanent Truth and Reconciliation Advisory Committee.

24. In November 2017, the Law Society, in collaboration with the Continuing Legal Education Society of BC, held a Truth and Reconciliation Symposium where over 450 participants, including lawyers, judges, academics and representatives from Indigenous organizations, shared their ideas on what actions the Law Society could undertake to facilitate reconciliation. Numerous participants suggested improving intercultural competence education for lawyers as a starting point for the Law Society's reconciliation efforts.

25. In December 2017, the Lawyer Education Advisory Committee released its final report on its review of the CPD program. As recommended in the report, the Benchers endorsed several changes to the CPD eligibility criteria that increased the accreditation of programming with Indigenous content.

26. In particular, programming that addresses "multicultural, diversity and equity issues that arise within the legal context" was added to the list of topics that may be counted toward the "practice management" requirement.[15] This permits Indigenous intercultural competence

---

[14] See Truth and Reconciliation Action Plan, enumerated point 4.1. Online at: https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/TruthandReconciationActionPlan2018.pdf

[15] All practising lawyers in BC, both full-time and part-time, must complete 12 hours of accredited CPD within the calendar year. At least two of the 12 hours must pertain to any combination of professional responsibility and ethics and practice management (commonly known as the "ethics" requirement).

education to be eligible for "practice management" or "ethics" credit. The new subject matter "educational activities that address knowledge primarily within the practice scope of other professions and disciplines, but are sufficiently connected to the practice of law," was also added to the CPD program. This allows accreditation of a number of topics that would fall within the ambit of Call to Action 27, including the history and legacy of residential schools.

27. The report confirmed that substantive law on issues such as treaties, Aboriginal rights, title and governance, legislation and international legal instruments related to Indigenous peoples would continue to be recognized for credit under the CPD program. The report also acknowledged that these outcomes represented a first step, and recommended exploring, in consultation with the Truth and Reconciliation Advisory Committee, how lawyer education could be further utilized as tool for advancing reconciliation.[16]

28. During this period, the Truth and Reconciliation Advisory Committee also developed a Truth and Reconciliation Action Plan, which was endorsed by the Benchers on July 13, 2018. The Truth and Reconciliation Action Plan specifies that the Law Society "will improve the intercultural competence of all lawyers in BC by mandating Indigenous intercultural competence education."[17]

29. Determining how to establish a baseline of intercultural competence for BC lawyers has been a central focus for the Truth and Reconciliation Advisory Committee in 2019. In the course of this work, the Committee has considered the meaning of Indigenous intercultural competence, the topics that should be included to form a baseline of intercultural competency, and who should be required to participate in intercultural competence training.

30. After deliberation, the Truth and Reconciliation Advisory Committee reached a consensus that, in their view, the Law Society should implement mandatory, Indigenous-specific intercultural competence training for all lawyers in BC. To articulate the nuances of this position, the Truth and Reconciliation Advisory Committee prepared a memorandum outlining the objectives, rationales, and possible approaches for mandating this training. The memorandum was shared with the Lawyer Education Advisory Committee and discussed during a joint meeting of both Committees on May 2, 2019. The goal of the meeting was to consider and collaborate on the development of a joint recommendation on the role of lawyer education in advancing the Law Society's commitment to reconciliation more generally, and intercultural competence training, specifically.

---

[16] See Recommendation 26 of the Final CPD Report of the Lawyer Education Advisory Committee (December 8, 2017) at p. 49, online at: https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/LawyerEd-CPD_2017.pdf

[17] See Truth and Reconciliation Action Plan, enumerated point 4.1, online at: https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/TruthandReconciationActionPlan2018.pdf

31. The Lawyer Education Advisory Committee met on June 5, 2019 and affirmed that it agreed with many of the views presented by the Truth and Reconciliation Advisory Committee, and provided further input on a potential model of intercultural competence education that incorporated the principles agreed upon at the joint meeting. As part of this discussion, the Committee canvassed a range of issues, including clarifying the objectives of intercultural competence education, defining the content and scope of intercultural competence education, establishing who should receive intercultural competence education and exploring whether intercultural competence education should be voluntary or mandatory, as well as whether it should fall within, or exist outside of, the CPD program. The Committee also discussed possible delivery methods for intercultural competence education and the appropriate amount and frequency of the proposed training.

32. The Lawyer Education Advisory Committee subsequently developed a draft recommendation incorporating the views articulated by both Committees and outlined a proposed model for intercultural competence education in BC. On July 11, 2019, the Committees met separately to discuss the draft recommendation. At their respective meetings:

    a. The Truth and Reconciliation Advisory Committee expressed its support for the draft recommendation.

    b. With the understanding that the Truth and Reconciliation Advisory Committee was supportive of the proposed model, the Lawyer Education Advisory Committee engaged in a further discussion to refine the draft recommendation.

33. On September 26, 2019, a second joint meeting was held to finalize the recommendation prior to its presentation to the Benchers.

Addressing Matters Identified by the TRC

34. The release of the TRC Report and Calls to Action ignited an era of reconciliation. The Report brought attention to Canada's history of colonialism that was facilitated by assimilationist laws and policies that were based on notions of Indigenous inferiority and European superiority. Such laws and policies facilitated discrimination against Indigenous peoples, and have resulted in ongoing disparities between Indigenous peoples and the broader Canadian society.[18] These past and present inequalities have led Indigenous peoples to have a deep and abiding distrust of Canada's legal system,[19] and constitute a stain on Canada's claim to be a leader in the protection of human rights among the nations of the world.[20] The fundamental problem is that the role of Canadian law in generating and maintaining disparities between Indigenous peoples

[18] *TRC Summary Report, supra* note 1 at 135.
[19] *Ibid* at 202.
[20] *Ibid* at 183.

and the broader Canadian society undermines public confidence in the administration of justice.

35. While identifying past harms caused by law, the TRC acknowledged the potential of law and the legal system to be a driving force for reconciliation. The TRC observed that reconciliation will require the legal system to be transformed, not only for the benefit of Indigenous peoples, but also to improve Canada's national and international reputation in relation to human rights. The Law Society acknowledges that reconciliation with respect to the legal system is a component of the Law Society's mandate to uphold the public interest in the administration of justice.

36. Because lawyers are integral to the development, interpretation, and application of laws, transformation of the legal system to further reconciliation will be contingent on lawyers. The Law Society expects that improving the intercultural competence of lawyers will help to advance reconciliation in relation to the legal system in British Columbia, and will be a step toward implementing, in a significant and meaningful way, Call to Action 27 from the TRC Report.

37. In the age of reconciliation, lawyer competence necessarily includes Indigenous intercultural competence. As a basis for truth and reconciliation, all lawyers in BC should understand the legal history of the province in which they live and work. In British Columbia, historical colonial laws were effected by a unilateral assertion by the Crown, based on notions of European superiority and Indigenous inferiority. The TRC has emphasized that reconciliation will require the repudiation of the concepts that were used to justify European sovereignty over Indigenous peoples and lands.[21] Intercultural competence training is intended to inspire lawyers to think critically about the legal history of British Columbia and the ongoing repercussions of this history within the current legal system.

38. The legal history of Canada includes principles and concepts from Indigenous law. There are precedents within the Canadian legal system for the recognition and application of Indigenous laws.[22] Intercultural competence training is meant to improve lawyers' knowledge of Indigenous laws, and the potential relevance and applicability of these laws within the Canadian legal system.

39. Understanding the role of law throughout Canada's history and the continuing implications of the colonial legal system for Indigenous people will also help to increase lawyers' empathy and

---

[21] TRC Recommendations 45, 46, 47 and 49. For example, recommendation 47 states: "We call upon federal, provincial, territorial, and municipal governments to repudiate concepts used to justify European sovereignty over Indigenous peoples and lands, such as the Doctrine of Discovery and *terra nullius*, and to reform those laws, government policies, and litigation strategies that continue to rely on such concepts." See *TRC Summary Report*, *supra* note 1.

[22] *Connolly v. Woolrich*, [1867] Q.J. No. 1, *The Queen v. Nan-e-quis-a-ka* (1889), 1 Terr. L.R. 211 (N.W.T.S.C.), *R. v. Côté*, [1996] 3 SCR 139.

awareness in relation to the disparities between Indigenous peoples and the broader Canadian society. The Law Society anticipates that increased empathy and awareness on the part of lawyers will enhance the quality and delivery of legal services, and improve Indigenous peoples' experiences with, and perceptions of, the legal system.

40. Intercultural competence education is also intended to improve lawyer competence in general. The TRC reported that the shortcomings of some lawyers in residential school claims resulted in some Survivors not receiving appropriate legal service.[23] Although many lawyers do not practise in areas of law with high Indigenous usage rates, all lawyers should be aware of the possibility that Indigenous issues may affect legal matters in a broad range of areas of law, including but not limited to: human rights, administrative law, Aboriginal and treaty rights, lands and resources, real estate, commercial law, taxation, family (including child welfare) law, wills and estates, intellectual property, civil litigation, immigration law and criminal law. Even in areas of practice where Indigenous issues rarely arise, it is important for all lawyers to be capable of identifying when an Indigenous issue may be relevant to a legal matter, and responding appropriately.

41. Another objective of intercultural competence training is to increase respect for – and reduce subconscious biases against – Indigenous legal professionals in BC. The Law Society's Report from 2000 entitled "Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers"[24] revealed that presumptions of Indigenous inferiority, both in law schools and in the legal profession, have negatively affected Indigenous law students and lawyers in BC. More recently, Indigenous lawyers shared their experiences of racism within the legal profession in British Columbia in the mini-documentary video, "*But I was wearing a Suit*".[25] These examples demonstrate the need for enhanced intercultural competence education.

42. A significant goal of intercultural competence training is therefore to increase the legal profession's regard for Indigenous lawyers, articled students, and law students to further the Law Society's efforts to foster the recruitment, retention, and advancement of Indigenous legal professionals in BC. These efforts are in line with the TRC's observation that reconciliation will require Indigenous peoples to "have greater ownership of, participation in, and access to the central driving forces of the Canadian legal system."[26] Further, the enhanced contributions of Indigenous people in the legal profession is intended to help to imbue Indigenous worldviews and perspectives throughout the legal system.

43. Lawyers also play an important role in broader civil society, independent of legal practice. Lawyers often hold leadership positions with corporations, societies, non-profit, and

---

[23] *TRC Summary Report, supra* note 1 at 215.
[24] https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/AboriginalReport.pdf .
[25] Co-produced by the Law Society and the Continuing Legal Education Society of BC in 2017, available online: https://www.youtube.com/watch?v=HTG7fi-5c3U.
[26] *TRC Summary Report, supra* note 1 at 205.

community organizations. Their views about society, politics, and social issues are often well-respected and influential among families, friends, and social networks. In all of these roles, the Indigenous intercultural competency of all lawyers – even lawyers whose practices never require them to directly grapple with Indigenous issues or clients – becomes important to the overall reconciliation between Indigenous and non-Indigenous peoples in Canada.

44. All of the above-mentioned aspects of intercultural competence education are geared not only toward improving lawyer competence and advancing reconciliation, but also to the Law Society's broader objective of upholding and protecting the public interest in the administration of justice.

The Proposed Model

45. Both Committees agree that providing lawyers with some form of intercultural competence training is an integral part of the Law Society's response to Call to Action 27 and one that requires concrete action. There is unanimous support for the development of an online Indigenous intercultural competence course (the "Course") composed of a series of modules that would cover the topics identified in Call to Action 27 and additional topics identified by the Truth and Reconciliation Advisory Committee, as listed below.

46. The Course would be funded and developed by the Law Society, in consultation with subject-matter specialists, and would be provided to lawyers free of charge. Although the Course would be independent of the CPD program, lawyers would be able to claim CPD credit for the time spent taking the Course.

47. At the outset, the Course should be framed in the broader context of a vision for a multi-phased intercultural competence education program, which is responsive to the concern that a "check-the-box" approach to intercultural competence education is not sufficient to achieve the objectives of the training, as articulated above. Intercultural competence demands more than simply acquiring new knowledge; it also requires developing new skills and changing attitudes. Achieving this learning and attitudinal change in a meaningful way will take time.

48. Accordingly, in the first phase of the educational program, the focus would be on establishing baseline knowledge for all lawyers in respect of the topics and skills identified in Call to Action 27 and several related areas identified by the Truth and Reconciliation Advisory Committee. Although many lawyers may already have some exposure to some matters identified in Call to Action 27 (e.g. through their practice areas, or as recent graduates of the Professional Legal Training Course or law school), the Course is intended to ensure that a baseline of information will be conveyed to all lawyers in the province. As this first phase progresses, the Law Society will assess the Course's effectiveness and develop proposals for subsequent phases of training. A discussion of potential future phases of intercultural competence education is provided in the final section of this report.

49. During the first phase, the Course would be specifically Indigenous in focus, rather than addressing intercultural competence more generally, given that Call to Action 27 is the key driver for introducing intercultural competence training for lawyers in BC. The goal behind Call to Action 27 might lose its intensity if intercultural competence training were initially broadened to a non-Indigenous focus during the first phase. This is not to say, however, that broad based intercultural competence training would be ignored; rather it would continue to be encouraged through the CPD program.[27]

50. The Committees both recognize that Indigenous intercultural competence is a broad and complex concept. It includes an appreciation of Indigenous worldviews, perspectives, legal systems, and laws; the diversity among Indigenous populations and other regionally significant information; and the unique legal context of Indigenous peoples in Canada, including the constitutional recognition of, and specific legislation in relation to, Indigenous peoples. It also includes an understanding of the history of the colonization of Canada and the ongoing repercussions of the colonial legacy; the systemic discrimination against, and racism experienced by, Indigenous peoples; and the international legal principles that apply to Indigenous peoples in Canada.

51. To address the core aspects of Indigenous intercultural competence, the Course would address the content of Call to Action 27 and include the following topics (collectively, the "Topics"):

    i. The meaning and purpose of reconciliation;
    ii. The history and legacy of residential schools (including day schools, the "60s Scoop", and ongoing overrepresentation of Indigenous children in the child welfare system);
    iii. The disproportionate victimization of Indigenous people (including murdered and missing Indigenous women and girls);
    iv. The overrepresentation of Indigenous people in the criminal justice system (including Indigenous principles of sentencing);
    v. The United Nations Declaration on Rights of Indigenous Peoples;
    vi. Treaties and Aboriginal rights;
    vii. Indigenous law;
    viii. The history of Aboriginal-Crown relations;
    ix. Specific legislation regarding Indigenous peoples in Canada (including unequal treatment of Indigenous women under the *Indian Act*);
    x. Skills-based training in:
        a. Intercultural competency;
        b. Conflict resolution;

[27] As mentioned above, programming that addresses "multicultural, diversity and equity issues that arise within the legal context" may be counted toward the "ethics" requirement under the CPD program. (CPD Review Report, *supra* note 19).

c. Human rights;
d. Anti-racism; and

xi. Trauma-informed service provision.

52. The objectives of the Course would be to:

i. respond directly to Call to Action 27 to ensure that lawyers receive intercultural competence training;
ii. make progress toward the implementation of the Law Society's Truth and Reconciliation Action Plan, which calls for mandatory intercultural competence education for all lawyers in BC;
iii. increase the legal profession's respect for Indigenous peoples and their perspectives, including Indigenous lawyers;
iv. enrich the legal profession's comprehension of the relevance and applicability of Indigenous laws within the Canadian legal system;
v. ensure that the legal profession understands how Canadian laws have been, and continue to be used to the detriment of Indigenous peoples in various ways;
vi. foster the legal profession's ability to recognize and respond to the diverse legal service needs of Indigenous people;
vii. enhance Indigenous engagement with the Canadian legal system;
viii. improve outcomes for Indigenous people in the Canadian legal system; and
ix. recognize that in the "age of reconciliation" lawyer competence necessarily includes intercultural competence.

All of these objectives are aimed at advancing reconciliation in furtherance of the Law Society's mandate to uphold and protect the public interest in the administration of justice.

53. In considering the appropriate amount of Indigenous intercultural competence education for lawyers, there is a need to strike a balance between devoting sufficient time to the Topics, so as to create a baseline understanding of these issues, and the amount of time lawyers can reasonably be expected to commit to additional training. It is estimated that six hours, to be completed within a two year period, would be an appropriate amount of time to meaningfully address the Topics. Notably, six hours of training is similar to other educational requirements for BC lawyers that have been established outside of the CPD program.[28]

54. The proposed model offers a number of benefits.

[28] Both the online Practice Management Course (Law Society Rule 3-28) and the training that family law arbitrators, mediators and parenting coordinators must take to maintain accreditation (Law Society Rules 3-35 to 3-38) are mandatory six hour educational requirements that are independent of the CPD program.

55. The Course would cover the broad range of Topics within a specific timeframe. The Law Society would work with subject matter experts to develop the curriculum and ensure that baseline knowledge covered by the Topics is being conveyed effectively. Additionally, the content would be broken down into a number of online modules. This modular approach would facilitate self-paced learning by lawyers, and would make it easier for the Law Society to update and revise the content as appropriate.

56. The modules would be delivered online, on the basis that an electronic tool is the most efficient and effective way to ensure the Course is accessible to every lawyer in BC.[29] The Law Society would fund the development of the modules, and make them available to all members free of charge. This approach would ensure that training is provided in a timely and cost-effective manner, and in a way that does not disadvantage any members of the profession who may struggle to pay for, or otherwise attend, intercultural competence training.

57. The Course would also be a standalone course, but eligible for credit within the CPD program. In creating a standalone Course, the Law Society will retain greater control over the content of the programming, so as to ensure that a standardized baseline of knowledge is acquired by BC lawyers within a defined period of time. Given the breadth of Topics, the number of additional CPD hours that could reasonably be added to, or devoted within, the existing 12 hour CPD requirement would be insufficient to cover the required material.[30]

58. Additionally, the proposed approach would neither result in any annual increase in the CPD requirement, nor would it commit any of the existing CPD hours to Indigenous intercultural competence training. CPD credit (including credit for the two hour "ethics" component of the CPD requirement) would be granted for completing modules, following the approach employed for the Law Society's Practice Management Course.

Mandatory or Optional Training

59. All members of the Truth and Reconciliation and Lawyer Education Advisory Committees unanimously recommend that the Law Society should develop an online Indigenous intercultural competence Course that covers all of the Topics, and make it freely available to every lawyer in British Columbia. The only divergence in opinion is whether the Course should be mandatory or optional for lawyers.

---

[29] There are over 12,000 practicing lawyers and over 1,500 non-practicing lawyers in BC.

[30] For example, if lawyers were required to complete one hour of continuing education with Indigenous content each year (either within the existing 12 hour CPD requirement, or by adding an additional hour), and had the flexibility to count any Indigenous content toward the requirement, it would be difficult (if not impossible) for most lawyers to gain exposure to all of the Topics.

60. All members of the Truth and Reconciliation Advisory Committee and the majority of the Lawyer Education Advisory Committee recommend that the Course should be mandatory. A minority of the Lawyer Education Advisory Committee recommends that the Course be accredited toward the mandatory two hour "ethics" component of the CPD program, and made optional so that lawyers are encouraged, but not compelled, to take intercultural competence training as part of their "ethics" requirement.

Option 1

61. Option 1 is to establish, through the Law Society rules, that the completion of the Course is mandatory for all BC lawyers, regardless of their year of call or whether they are part time or full time practitioners.[31] This option is recommended by all members of the Truth and Reconciliation Advisory Committee and the majority of the Lawyer Education Advisory Committee.

62. Those in support of Option 1 draw on both the TRC Action Plan and the Law Society's Strategic Plan for guidance. Both of these documents reference "all lawyers" when addressing the need for intercultural competence education. The mandatory nature of this training is also reflected in the language of Call to Action 27, which directs that law societies "ensure" that lawyers receive intercultural competence training, and item 4(i) of the TRC Action Plan which "mandates" Indigenous intercultural competence training for all lawyers.

63. Guided by these documents, and recognizing that the objectives of intercultural competence education, including reconciliation, cannot be fully achieved unless all lawyers have a baseline understanding of the topics and skills identified in Call to Action 27, Option 1 is a proposal for the Law Society to introduce a mandatory Indigenous intercultural competence educational requirement for all practising lawyers in BC. Lawyers would be required to complete the six hour Course over a two year timeframe. Although the requirement would exist outside of the CPD program, time spent on the Course could be counted toward CPD "ethics" requirements.[32]

64. Those in support of Option 1 are strongly of the view that the Law Society's efforts toward reconciliation will be less effective if only those lawyers who "opt in" participate in intercultural competence training, and are concerned that an optional approach may only engage those practitioners who already have an interest in, or awareness of, Indigenous issues.

---

[31] "All lawyers" includes Indigenous lawyers.

[32] Permitting lawyers to complete the training over a two year period would provide practitioners with some flexibility as to when they participate in intercultural competency training. This flexibility is further enhanced by the relatively new CPD rule that permits lawyers to carry-over of six CPD credits from one year to the next.

65. The Committees considered whether the educational requirement should only apply to lawyers who practise certain areas of law or in particular geographic areas. The Committee members in support of Option 1 rejected these approaches in favour of a universally applicable mandatory requirement that avoids any real or perceived inequities that may arise from introducing a requirement that only applies to a subset of the membership. There was some concern that an approach in which only some lawyers are required to complete intercultural competence training may disproportionately affect certain groups or create disincentives to work in certain practice areas or locations, with unintended negative outcomes for Indigenous people.

66. Other problems with imposing a requirement on a subset of the profession were canvassed, including the concern that the Law Society does not track lawyers' practice areas or client bases and as such, lacks the information necessary to determine which lawyers might be subject to a new requirement (e.g. based on practice area or geographic area). Creating a system to collect and monitor this information would be complex and costly. Additionally, as the Law Society does not currently certify lawyers for specialized practice areas, establishing a system in which intercultural competence becomes a condition of practice would have considerable logistical and cost implications.

67. Introducing a mandatory intercultural competence requirement with an exclusively Indigenous-specific focus may be controversial. Although a proportion of the membership is likely to be supportive of the new requirement, it may also be met with resistance by some lawyers who are of the view that Call to Action 27, and reconciliation more generally, are not directly, or even indirectly, relevant to their legal practice. Others may suggest that an Indigenous focus is too narrow, and that the requirement should be expanded to intercultural competency more broadly, given the diverse and multicultural client base of many lawyers. The Committees have some concern that this opposition may shift the discussion away from reconciliation and toward controversy about what some lawyers may regard as an overly prescriptive educational requirement.

68. To address this concern, a communications campaign would be required to clearly articulate to the membership why Indigenous intercultural competence training, specifically, is relevant to all lawyers. The communications must show the link between lawyers, as key participants in the legal system, competency and the process of reconciliation. Additionally, the educational program itself should include material that clearly demonstrates why learning about these issues is an essential aspect of lawyer competence in BC.

69. Concern about opposition to the introduction of an Indigenous intercultural competence educational requirement is also mitigated by the fact that under the *Legal Profession Act*, the Law Society has the legislative authority to establish standards and programs for the education and competence of lawyers as part of its duty to protect the public interest in the administration

of justice. Requiring lawyers to participate in training activities that enhance their competence serves both the public interest and enhances confidence in the legal profession.[33]

70. Additional public interest benefits may include improved provision of legal services to both Indigenous and non-Indigenous clients and improved public perceptions of both the Law Society's regulation of the profession and the legitimacy and fairness of the legal system and the administration of justice.

Option 2

71. Option 2, which is supported by a minority of the Lawyer Education Advisory Committee, is to ensure that completion of the Course is eligible for credit within the two-hour "ethics" component of the CPD, which is mandatory for all lawyers in the province. This would encourage, rather than require, lawyers to take intercultural competency training. If this option were pursued by the Benchers, the development of additional incentives may also be considered.

72. Under Option 2, the Law Society would still develop a series of online modules covering the Topics and ensure this programming is accessible to the membership free of charge. However, rather than establishing the modules as a mandatory standalone requirement outside of the CPD program, they would be eligible (but not required) for CPD credit under lawyers' existing, mandatory two-hour "ethics and professionalism" CPD requirement. If the Course is six hours long, and lawyers are given three years (rather than two years, as proposed in Option 1) to complete it, then lawyers could count the time spent on the Course toward their annual two hour "ethics" requirements over a three year period. The goal would be to encourage and facilitate lawyers' participation in this Indigenous intercultural competence education without mandating that all practitioners must complete a minimum number of training hours in this area over a certain period of time.

73. The minority view is that this approach will achieve many of the objectives of intercultural competence training, as listed earlier in this report, and is compatible with Law Society's strategic priorities in relation to truth and reconciliation. Specifically, the 2018-2020 Strategic Plan speaks to "encouraging" all lawyers in BC to take education and training in areas relating

---

[33] A similar observation was made by the Supreme Court of Canada in *Green v. Law Society of Manitoba*, 2017 SCC 20 at para. 3 in the relation to CPD "The Law Society is required by statute to protect members of the public who seek to obtain legal services by establishing and enforcing educational standards for practising lawyers. CPD programs serve this public interest and enhance confidence in the legal profession by requiring lawyers to participate, on an ongoing basis, in activities that enhance their skills, integrity and professionalism." This sentiment equally applicable to mandatory educational requirements that exist outside of a CPD program.

to Aboriginal law. This approach is also within the purview of the Law Society's authority pursuant to s. 3(c) and s. 28 of the *Legal Profession Act.*[34]

74. Option 2 is responsive to the concern that requiring all lawyers in the province to complete Indigenous intercultural competency education is overcasting the net because many lawyers have no Indigenous clients, and do not come across Indigenous issues in their practice areas. Mandating a program that has little or no perceived value to them in their practices may cause a reaction that could undermine the Law Society's efforts toward reconciliation. Some concerns have been raised that although some lawyers will greatly benefit from participating in Indigenous intercultural competence training, others will be of the view that the topics and skills addressed in Call to Action 27 have no direct or indirect connection to their delivery of legal services.

75. It may, therefore, be in the public interest to ensure that the finite amount of time a lawyer has to devote to continuing education is allocated to learning that is directly relevant to their practice, based on the lawyer's evaluation of their educational needs.

76. Further, a mandatory requirement does not align with the increasingly liberalized approach to continuing legal education, as reflected in the Bencher approval of the majority of the recommendations in the Lawyer Education Advisory Committee final CPD review report in 2017.[35] In recent years, the CPD program has made a marked shift toward providing lawyers with greater flexibility as to when and how they satisfy their learning requirements. The Law Society trusts that lawyers will make wise choices in selecting programming that will improve their professional competence, which may – or may not – require further training in relation to Indigenous intercultural competence.

77. Notably, at this point in time, no other Law Society has taken the step of introducing mandatory Indigenous intercultural competence training for all lawyers. There is a risk that imposing a mandatory requirement could create controversy that moves the profession further away from reconciliation rather than towards it. Therefore, the minority encourages caution before using regulatory requirements to impose mandatory education.

78. On the other hand, the supporters of Option 1 see this as an opportunity for the Law Society of BC to be a leader on this issue. British Columbia's position is unique in Canada. Other than a couple of historic treaties and a few modern day treaties, the vast majority of British Columbia's lands and waters are not yet subject to treaties with Indigenous peoples. As a result of this unique context, a number of lead cases on Indigenous issues have originated in British

[34] *Supra* notes 6 and 7.

[35] CPD Review Report, *supra* note 19.

Columbia (examples include the *Calder*,[36] *Delgamuukw*,[37] and *Tsilh'qotin*[38] decisions regarding Aboriginal title, the *Sparrow*[39] decision on Aboriginal rights, and the *Haida*[40] and *Taku*[41] decisions regarding consultation.) Accordingly, the Law Society should support lawyers in this province in developing greater expertise and capacity in relation to Indigenous legal issues.

79. Option 2 may, however, generate criticism on a number of fronts. Adopting an intercultural competence option, rather than a requirement, may be challenged on the basis that if fails to align with the Law Society's TRC Action Plan, which refers to "mandating" Indigenous intercultural competence training for all lawyers, and Call to Action 27, which calls upon law societies to "ensure" lawyers receive intercultural competence training. Both of these provisions are grounded in the moral imperative for lawyers to advance reconciliation,[42] and the need for the Law Society to protect the public interest. Optional training may be perceived as falling short of these responsibilities.

80. Given the similarities between Option 2 and the recommendation presented to, and subsequently rejected by, the Benchers in 2015,[43] this approach may also face considerable opposition from the Indigenous bar and others. Additionally, intercultural competence training, more broadly, is already eligible for CPD "ethics" credits.

Budgetary Implications

81. The Practice Support Department currently operates four online courses – Practice Management Course, Practice Refresher Course, Communications Toolkit, and Legal Research Essentials.

---

[36] [1973] SCR 313.
[37] [1997] 3 SCR 1010.
[38] 2014 SCC 44.
[39] [1990] 1 SCR 1075.
[40] 2004 SCC 73.
[41] 2004 SCC 74.
[42] As mentioned above, the TRC reported that the law has been a mechanism for discrimination, and has the potential to be a driving force for reconciliation. Given that lawyers are integral to the development, interpretation and application of laws, the transformation of the legal system in furtherance of reconciliation will depend, to a great extent, on them.
[43] At the December 4, 2015 Bencher meeting, the Lawyer Education Advisory Committee put forward a resolution to amend the CPD requirements to add "appropriate cultural competency training" to the list of optional topics that are eligible for credit under the "ethics" component of the CPD program The proposal was not to make such training mandatory, but rather, to provide an incentive for lawyers to take optional training in areas with Indigenous content by ensuring this programming was eligible to fulfill the "ethics" requirement. Although the resolution passed unanimously, two Indigenous lawyers in attendance expressed their dissatisfaction with this approach on the basis that it was not sufficiently responsive to the TRC's Calls to Action, and was developed without Indigenous input. The Benchers subsequently retracted the resolution, acknowledging that the resolution was premature, and committed to engaging with Indigenous leaders (including Indigenous judges, lawyers, and legal academics) for guidance in the development of a meaningful and effective response to Call to Action 27.

Earlier in 2019, the Law Society purchased a new online course platform to improve the quality of the existing online courses and allow for expanded course offerings. The 2020 budget, to be considered by the Benchers on September 27, includes the cost of setting up the new online site for existing courses, new course development, and annual user fees of $98,000 for an estimated 3,500 members to access the online courses in 2020.

82. The estimated cost to develop and deliver a Phase I intercultural competence online course will total approximately $330,000 for the 2020 and 2021 fiscal years. This estimate is based on three categories of expense:

- Course licensing fees: $280,000 to be added in 2021

  The Law Society's new license with the Desire2Learn (D2L) learning management system charges an annual user fee of $28 per member to access the intercultural competence online course and any other Law Society online course. The current hosting agreement provides for access in 2020 for an estimated 3,500 users of the existing courses. In 2021, a mandatory Phase I intercultural competency course would add a $280,000 expense for approximately 10,000 more users, at $28 each.

- Subject matter expertise: $25,000

  A consultant with subject matter expertise would be contracted to research and write the Phase I course content.

- Instructional design: $25,000

  Once the Phase I course content is prepared, an expert in instructional design would edit the material, draft learning objectives, prepare learning elements, and develop a testing component.

83. The Practice Support department would absorb an in-kind staff contribution to install the course, pilot test it, set it for general release, and maintain it.

84. When Phase II course development begins, in 2021 or subsequently, the post-2020 budgets should together include an additional $50,000 for subject matter expertise and instructional design.

Recommendations

85. The following recommendations are presented to the Benchers for discussion and decision:

Recommendation 1: The members of the Truth and Reconciliation Advisory Committee and the Lawyer Education Advisory Committee unanimously recommend that the Benchers

endorse the Law Society developing an online Course comprising a series of modules that will cover the Topics identified in this report, and will be accessible to all BC lawyers at no cost.

Recommendation 2: All members of the Truth and Reconciliation Advisory Committee and the majority of the Lawyer Education Advisory Committee recommend Option 1 to the Benchers: that completion of the Course will be mandatory for all practising lawyers in BC.

Subsequent Steps

86. If Recommendation 1 is approved by the Benchers, the Law Society will work with subject matter experts to develop the content of the Indigenous intercultural competence programming in 2020, with the goal of introducing the finalized set of online modules to the profession in 2021.

87. If Recommendation 2 is approved, a new Law Society rule will be drafted to establish that the Course is mandatory for all lawyers in BC. If Recommendation 2 is not approved, the Course will be eligible for credit within the two-hour "ethics" component of the CPD, which is mandatory for all lawyers in the province. Further work would be required by the Committees to determine whether any additional mechanisms are required to further encourage lawyers to take this Course within the CPD program.

88. As discussed at the beginning of this report, the proposed Course does not represent the totality of the Law Society's efforts to address the Calls to Action. Rather, it is step along a continuum of learning that will, over time, advance reconciliation. The Course is envisaged as the first step in a multi-phased approach to improving the intercultural competence of BC lawyers.

89. As lawyers complete the Course, the Law Society will evaluate the results of Indigenous intercultural competence training using various methods, including the following:

    i. reviewing the timeliness of the completion rate of the Course;
    ii. seeking lawyers' comments with respect to whether there are any areas where they feel additional learning is required;
    iii. modifying the CPD declaration to inquire how many lawyers are completing the Course, and how many CPD hours contain Indigenous content that lawyers are taking outside of the Course;
    iv. encouraging CPD providers to track attendance in programming with Indigenous content, as well as the amount of Indigenous content that is included within the general programming;
    v. following developments in other jurisdictions, and at the Federation of Law Societies, with respect to Indigenous intercultural competence education;

vi. assessing the Law Society's progress on other aspects of the TRC Action Plan, including the development of intercultural competence educational resources;
vii. assessing what steps to take relating to the National Inquiry into Missing and Murdered Indigenous Women and Girls Report, including in particular Call to Justice 10.1 for training lawyers who participate in the criminal justice system (e.g. considering whether specialized training for certain practice areas is required); and
viii. accounting for related learning by Canadian law school graduates and National Committee on Accreditation Certificate holders.

90. Following this review and analysis, further recommendations will be made to the Benchers in relation to:

i. the extent to which lawyers should receive additional mandatory or optional intercultural competence training;
ii. whether such training should be a part of, or independent from, the CPD program;
iii. the focus of any future education (e.g. skills-based training, additional knowledge, expanding the content to address intercultural competence more broadly);
iv. how to advance social awareness in addition to advancing baseline knowledge;
v. how any additional education will be delivered; and
vi. whether the Law Society or external providers will develop additional free or paid intercultural competence programming.

MINORITY REPORT

Indigenous Intercultural Competence Education for BC Lawyers

Joint Recommendation Report of the Truth and Reconciliation Advisory Committee and the Lawyer Education Advisory Committee

Tony Wilson, QC
Chair
Lawyer Education Advisory Committee

October 7, 2019

INTRODUCTION AND SUMMARY

1. As Chair of Lawyer Education Advisory Committee, I am in agreement with much of the Joint Recommendation Report of the Truth and Reconciliation Commission Advisory Committee and the Lawyer Education Advisory Committee (the "Joint Report"). The members of each committee, together with their respective staff members (particularly Andrea Hilland and Alison Luke) have done a thorough, balanced, well-reasoned and comprehensive report for the Benchers to consider so that an informed decision can be made at the December 2019 Bencher meeting with respect to the issue of mandatory intercultural competency education.

2. I have no issue with the Objectives of the Course referred to in paragraph 52 (i) to (ix), nor do I have a problem with the topics to be covered in the Course, outlined in paragraph 51 (i) to (xi).

3. I have no issue with the current time requirement of the Course (6 hours).

4. The fact that the Law Society will develop the Course internally, and that there will be no charge to members for completing the Course, will go a long way to ensuring “buy in” from the membership.

5. I would gladly take and complete the 6-hour Course, even if it were optional.

6. I believe that many law firms, particularly those who do First Nations related work, will require their lawyers to complete the Course as part of their continued employment, (or pursuant to their partnership agreements) and in such case, the Course would be mandatory as a term of employment or partnership, as the case may be. I have no problem with that. If one's employer or partners require a lawyer to complete particular program of study as a term of one's employment (or as a condition to entering the partnership), then the lawyer must satisfy that obligation.

7. I only write this Minority Report because I have a strong difference of opinion with the other members of the Lawyer Education Advisory Committee and the Truth and Reconciliation Advisory Committee with respect to the Law Society requiring all lawyers in British Columbia to successfully complete six hours of Indigenous Cultural Competency Training **on a mandatory basis, no matter what their area of practice is; even if it is of no practical value to the lawyer or their legal practice**.

8. I appreciate the fact that virtually all the members of each Committee are in favor of the Joint Recommendation. I commend the members of each Committee for taking the position that the Law Society should show leadership on this issue. However, I believe it is within

our "public interest mandate" to consider an approach where the Law Society does not compel every lawyer British Columbia to take the Course on a mandatory basis as a condition of their license to practice law in B.C.; conceivably fining, suspending or even disbarring those who do not. Certainly, some form of discipline will be the logical outcome for those lawyers who do not complete the mandatory Course.

9. Contrary to the conclusions of the Joint Report, I believe that the majority of the Objectives can be accomplished by incorporating the Course within the mandatory ethics component of Continuing Professional Development ("CPD"), and incentivizing British Columbia lawyers to complete the Course as part of "Ethics and Professionalism" rather than compelling lawyers to complete a course that may have no value or bearing on their practice areas.

10. Notwithstanding the Law Society's legal ability to require all lawyers in British Columbia to successfully complete a 6-hour course in Indigenous Intercultural Competency [1], a mandatory program may not be particularly well received by some members of the profession who do not do any First Nations work. Conceivably, if there is sufficient opposition by those who believe that such a program serves no value to them in their practice, the Law Society could find itself at odds with a profession emboldened by both the Trinity Western University experience in 2014, and by the repeal of the mandatory Statement of Principles by the Law Society of Ontario on September 11, 2019.

11. An emboldened membership in British Columbia could well set back the legitimate and necessary moves towards reconciliation with First Nations. On the other hand, incentivizing the membership to complete Course within the already mandatory ethics and professional responsibility component of CPD would avoid this possible outcome.

12. In a post-TWU world, our Law Society should not underestimate the reality that emboldened members have remedies available to them under the Legal Profession Act, (such as petition, calling for an SGM and a referendum) if enough of them strongly disagree with the Law Society, despite how noble our intentions may be. Likewise, in the post-SOP world, Canadian Law Societies should be circumspect and cautious before going down a path where the Law Societies are, even with the best of intentions, mandating what lawyers should believe.

[1] Green v. Law Society of Manitoba 2017 SCC 20, [2017] 1 S.C.R. 360

BACKGROUND

13. TRC Call to Action #27, states as follows

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

(for convenience, I will collectively call these topic areas "Indigenous Intercultural Competency Training")

14. It is important to recognize that TRC Call to Action #27 does not specify that all lawyers receive Indigenous Intercultural Competency Training on a mandatory basis. Call to Action #27 only calls on Law Societies to ensure that lawyers received appropriate Intercultural Competency Training. It is the Benchers who decided to make Indigenous Intercultural Competency Training mandatory. Indeed, the Benchers accepted the recommendations of the Truth and Reconciliation Action Plan of May, 2018 which called for mandating:

> *"…Indigenous intercultural competence education for all Law Society Benchers, staff, and committee members,* ***and all lawyers and Admission Program candidates in British Columbia****"*
>
> [highlighting is mine]

15. I should also point out that the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Report ("MMIWG"), released on June 3, 2019 did not call for mandatory Indigenous Intercultural Competency Training for all lawyers regardless of their practice areas, but rather, **called for mandatory intensive and periodic training of Crown attorneys, defense lawyers, court staff and all who participate in the criminal justice system.** Like TRC Call to Action #27, the MMIWG inquiry had the opportunity to call for mandatory Indigenous Intercultural Competency Training of all lawyers, regardless of their practice areas, but it did not.

CURRENT INDIGENOUS INTERCULTURAL COMPETENCY TRAINING

16. Many would argue that Indigenous law topics are already mandatory in British Columbia and that new lawyers in B.C. receive fairly compressive exposure to Indigenous law issues in law school and PLTC. Indeed, British Columbia law schools are currently incorporating significant intercultural competency training respecting the history and legacy of residential schools, the UN Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal

Rights, Indigenous Law and Aboriginal-Crown relations on a mandatory basis pursuant to TRC Call to Action #28. In 2018, the Council of Canadian Law Deans published a summary of initiatives that Canadian Law Schools had initiated to respond to the Truth and Reconciliation Calls to Action. The full report is available here. https://ccld-cdfdc.ca/wp-content/uploads/2018/07/CCLD-TRC-REPORT-V2.pdf

17. In summary, this is what BC's three Law Schools had instigated, circa 2017[2]:

    a. Allard School of Law at the University British Columbia. Allard has a long-standing Indigenous Legal Studies program focused on admissions and cultural support and aims to admit 20 Indigenous students each year (in a class of 195). For most non-Indigenous students, this is the most Indigenous community they have ever encountered. There are Indigenous students in almost every classroom, student club, or faculty gathering. Faculty includes 4 tenured or tenure track members who are Indigenous. Several Indigenous members of the legal profession in Vancouver regularly teach for us as Adjunct professors. For twenty years, Allard Law students have staffed the Law School's Indigenous Community Legal Clinic. The clinic serves hundreds of Indigenous clients every year, including approximately 400 full representation files, with 21 student clinicians in each twelve-month period. Beginning in 2011-12, all first year students were required to take a mandatory course in first year on Aboriginal and treaty rights, as a component of their Canadian constitutional law requirement. This is a two-credit course. Following the release of the TRC report, Allard worked on the following new initiatives:
        - an external advisory committee, comprised of eight Indigenous lawyers based in and around Vancouver, to assist Allard with this project
        - designed and piloted a cultural competency certificate program that is running in eight modules throughout the academic year this year with the objective of developing two streams of cultural competency training for Allard students: a mandatory stream for all students and an optional stream for students with a motivation to dig a bit deeper
        - strengthening the academic support programming of Allard's Indigenous Legal Studies Program.
        - changed the format of Indigenous orientation camp held each September every year so that more students can participate.
        - dedicated class time in Allard's mandatory Public Law class to teach about this history of Indian residential schools and the TRC.
        - expanding the Indigenous Community Legal Clinic to 30 student positions annually.

    b. Thompson Rivers University Law School ("TRU").

[2] This is a summary only, extrapolated from the information provided to Council of Canadian Law Deans by each Law School in approximately 2017, and edited by me for brevity and relevance. There is no intention here to minimize or understate the considerable efforts by BC's Law Schools to deal proactively with Call for Action #28

- TRU's approach to implementing Call to Action #28 of the Truth and Reconciliation Commission is grounded in Secwepemcul'ecw (the territory of the Secwepemc Nation that includes Kamloops), with efforts to incorporate Secwepemc knowledge and history into TRU's program since its first year of operation in 2011. TRU Law adopted a statement committing it to implementing Call to Action #28 in July 2015. Initial work included surveying existing content across the curriculum and has since focused on specific efforts to address the biggest gaps and to take students out of the classroom to learn about Indigenous history, rights, culture, and law as well as the residential experience from Secwepemc partners.

- The annual 1L class visit to the former Kamloops Indian Residential School (KIRS) and Secwepemc Museum and Heritage Park has become an important feature of TRU Law School's program. The former KIRS is located across the South Thompson River from downtown. The Tk'emlúps te Secwepemc (TtS) offices are now located in this building along with the First Nations Tax Commission and other local services. The program has evolved from a contextual introduction to the Aboriginal rights and title portions of the 1st year Constitutional and Property Law courses, to a stand-alone program focusing on the residential school experience. It is integrated into the program with introductory and debriefing classes as part of the mandatory Legal Perspectives course. Learning objectives include knowledge of residential schools as an intergenerational experience, ongoing relevance and impacts of the experience, empathy to practicing law and reconciliation, and the knowledge foundations for anti-racism and cross- cultural skills. The one-day visit has become a full partnership with TtS, with leadership from Councillor Viola Thomas, who carries the education portfolio and worked with the TRC. The day involves speakers, tours of the building, and a visit to the Secwepemc Museum, which houses artefacts from Secwepemc culture and the residential school. Students have the opportunity to learn from survivors directly. Feedback from past visits has indicated that this has been a unique and eye-opening learning experience for our students.

- TRU Law plans to build the site-visits into the second and third year programs on a permanent basis, with learning objectives that focus on other aspects of Call to Action #28 that are not already covered in other mandatory courses.

- In Fall 2017, TRU Law held the first 2nd year site visit to Pipsell/Jacko Lake with a focus on Indigenous law, anti-racism and cross-cultural skills. Through this 3-year program, TRU Law aims to equip students with the knowledge, skills and disposition required to contribute to reconciliation in their legal careers.

- Individual faculty members have also worked to increase and incorporate Indigenous perspectives, Aboriginal and Indigenous law content into their individual courses some of which are mandatory. Efforts include guest speakers, student presentations, Indigenous Law Students' Association events, site visits to Tk'emlups reserve and salmon fisheries in Secwepemc territory, working with Kamloops-based experts from the First Nations Tax Commission and regular visits

to the First Nations Court sitting in Kamloops. The Faculty has also hired a local Indigenous lawyer and TRU Alumna to work with and support Indigenous students in TRU's program as well as to advise the Faculty on future efforts in this regard.

c. University Victoria Law School (UVic)

- UVic's compulsory, full-time, two-week introductory Legal Process class includes a half-day introduction to Indigenous legal traditions, and two mornings devoted to the history and legacy of residential schools and the TRC Calls to Action. In 2017, all first-year students participated in the KAIROS Blanket Exercise adapted for law students.
- 1/3 to 1⁄2 of all first-year students participate in the Aboriginal Cultural Awareness Camp, a 3 to 4 day residential camp held within and delivered in collaboration with a local First Nation.
- Substantial Indigenous content including Indigenous legal traditions, the history and legacy of residential schools, Treaties and Aboriginal rights, and Aboriginal-Crown relations is incorporated into compulsory courses in Constitutional Law, Criminal Law, Law, Legislation & Policy, Legal Research & Writing, Property, Torts, Administrative Law, Business Associations and Legal Ethics & Professionalism, and elective courses such as Family Law, Intellectual Property, International Human Rights and Dispute Resolution and Taxation.
- Courses specifically focused on Aboriginal peoples and the laws include (but are not limited to) Indigenous Lands, Rights and Governance, new courses in Critical Issues in Restorative Justice and First Nations Taxation, and a ground-breaking intensive summer course in Indigenous Legal Methodologies.
- The Faculty's Academic and Cultural Support Program ("Amicus Program") provides direct support for Indigenous students, and organizes seminars and workshops on matters bearing on intercultural competency, conflict resolution, human rights, and anti-racism.
- The Faculty's Indigenous Law Research Unit works with Indigenous communities researching those peoples' legal traditions. This work develops curricula for teaching Indigenous law and trains students in how to work with Indigenous communities in the development of their law.
- UVic Law is working with the WSÁNEĆ School Board to offer a semester-long intensive field course in the Re-emergence of WSÁNEĆ law in the fall 2018 term.
- The JD/JID transystemic dual degree program in Canadian Common Law and Indigenous Legal Orders was approved by the university's Senate and Board of Governors. Inseparable from the JD/JID program is the Indigenous Legal Lodge, a national forum for critical engagement, debate, learning, public education, and partnership on Indigenous legal traditions and their refinement, and reconstruction. The JD/JID program and the Indigenous Legal Lodge directly respond to TRC Calls 28 and 50. Their establishment is a faculty and university priority

18. Students within the Law Society's mandatory Professional Legal Training Course ("PLTC") are also receiving Intercultural Competency Training that includes education in the history and legacy of residential schools. The current enrollment of PLTC is approximately 600 students per year. Currently, students must attend a workshop on the history and legacy of residential

schools and Canadian colonial laws and policies. They are also required to reflect on their previous knowledge and on their experience during the workshop. In the first week of PLTC all students attend an interactive 1.5 hour session: "Residential Schools and Colonialism Workshop." In PLTC's examinable Practice Material on Professionalism, a section "Supporting Indigenous Lawyers" that discusses the Law Society's Truth and Reconciliation Action plan is included. PLTC updated coverage of Gladue principles in the Activity Plans, and added more on it in the examinable Criminal Practice Material. Material on Grand Chief Ed John's report on Indigenous child welfare is included in PLTC's examinable Family Practice Material (chapter 8), and the examinable Family Practice Material print includes further updates reflecting changes to both provincial and federal law that impact Indigenous child welfare. PLTC also added more information on the Royal Proclamation and the history of Aboriginal title which is examinable in the Real Estate Practice Material. PLTC is working with the Indigenous Law Research Unit at UVic and with UBC law faculty to develop course materials on Indigenous laws and intercultural competence.

OTHER CANADIAN LAW SOCIETIES

At this point in time, no other Law Society has taken the step of introducing Indigenous intercultural competence training for all lawyers on a mandatory basis. A summary of all Canadian law societies on this issue (as of June, 2019) is summarized below:

- **Alberta** is creating a larger education program for all Law Society Members offered by the Law Society. It is currently incentivising but not yet mandating CPD on Indigenous issues and is adding TRC content to CPLED, its bar admission course.

- **Saskatchewan** is offering CPD on Indigenous issues. TRC related CPD activities qualify for ethics hours. As well, they have revised the criteria for "Ethics Hours" in their CPD Policy to specifically include cultural competency training. Saskatchewan's Admissions & Education Committee considered whether TRC training should be mandatory for all members, but ultimately decided it would not be mandatory but should be offered at a discounted registration price. (Incentivising but not yet mandating CPD on Indigenous issues.) As with Alberta, TRC content is being added to CPLED.

- **Manitoba** has general recommendations that support Calls to Action #27 and #28 in terms of cultural competence education for Law Society staff, Benchers and Committee as well as practising members. They are integrating Indigenous issues throughout CPD courses, and incentivising but not yet mandating CPD on Indigenous issues. The possibility of mandating cultural competence training is still on the table but before that decision is made the committee would like to have a better understanding of what cultural competence means. As with Alberta and Saskatchewan, TRC content is being added to CPLED

- **Ontario** has mandatory CPD on equality, diversity and inclusion (not specifically on Indigenous intercultural competence). Lawyers in Ontario are required to complete three hours of accredited programming focused on equality, diversity and inclusion by the end of 2020. Lawyers will be required to complete one EDI hour per year of accredited programming thereafter. Ontario has an optional a Certified Specialist designation in Indigenous Legal Issues.

- **Quebec** is considering mandatory CPD on Indigenous issues based on geographic location. Lawyers who are providing legal services in regions of the province with high Indigenous populations may have Indigenous intercultural competence training requirements. [The Barreau du Quebec has increased its regional CLE offerings related to TRC issues and has added TRC content to the Bar admission program. However, there are no plans yet for mandatory CPD relating to TRC.

- **Nova Scotia** may require mandatory CPD on Indigenous issues, but only based on area of practice. Accordingly, lawyers who are practicing in areas of law that have a high number of Indigenous clients might be required to have Indigenous intercultural competence training. Nova Scotia has not yet made decisions or plans about mandatory CPD relating to Indigenous issues. Nova Scotia is adding TRC content to its bar admission program.

- **New Brunswick** is working on developing a plan to meet the requirements of Recommendation # 27 in conjunction with Recommendation # 28. They are surveying members to determine their knowledge of Aboriginal rights, and consulting with First Nations to develop educational components. It's not clear whether the education will be mandatory.

- **Prince Edward Island** held a training session on TRC and the Calls to Action in February 2019 in conjunction with a meeting of the membership. Although it was not mandatory, members were strongly encouraged to attend. PEI's Law Society has formed a committee, which would like to make TRC-related CPD mandatory, however no decision has been made yet.

- **Newfoundland** would like to provide more CPD on Indigenous issues, but has not yet considered mandating such courses.

- **Nunavut** supports mandatory CPD. However, mandatory 12 hours of CPD does not include a TRC-related requirement. Its bar admission program has required readings in intercultural competency. The Law Society is working with the Pirurvik Centre in Iqaluit to develop its own cultural competency training with an online component to make it accessible to all the membership. The Law Society has a framework that it is using as a foundation.

- **NWT** amended the reading requirement for new applicants for membership under mobility to include the recommendations of the TRC and other publications from the TRC. In addition, the CPD committee and members of the Indigenous Bar in the NWT are developing a CPD on the history and recommendations of the TRC to be offered annually, but the CPD is not mandatory.

- The **Yukon** is promoting (but not requiring) a program entitled "Yukon First Nation 101". The course is organized into five modules, each focused on a different aspect of Yukon First Nations:
  Module 1 – Regional cultural competence
  Module 2 – Linguistic groups, Traditional Territories
  Module 3 – Impacts of contact and colonization
  Module 4 – Historical events and Yukon agreements
  Module 5 Yukon First Nations today: culture and values

THE BENEFITS OF OPTION 2 OVER OPTION 1

19. Option 1 will establish, through the Law Society rules, mandatory completion of the Course for all B.C. Lawyers, regardless of their year of call or whether they are part time or full time practitioners. Logically, if a member refuses to complete or otherwise fails the Course, disciplinary action could be taken against the lawyer in the same way that the Law Society can discipline a member for failure to complete their requisite number of CPD credits per year. In short, a lawyer who refuses or fails to complete the mandatory Course could conceivably face fines, suspension or even disbarment.

20. On the other hand, Option 2 provides that completion of the Course is eligible for credit within the two-hour "Ethics" component of the CPD, which is mandatory for all lawyers in the province. Option 2 encourages, rather than compels, lawyers to take Indigenous Intercultural Competency Training. Under Option 2, the Law Society would still develop a series of online modules covering the Topics and ensure this programming is accessible to the membership free of charge. However, rather than establishing the modules as a mandatory stand-alone requirement outside of the CPD program and compelling lawyers to take the Course, lawyers would be eligible (but not required) to obtain CPD credit under lawyers' existing, mandatory two-hour "Ethics And Professionalism" CPD requirement. Conceivably, if the Course is six hours long, lawyers could be given three years (rather than two years, as proposed in Option 1) to complete it, and then lawyers could count the time spent on the Course toward their annual two hours "ethics" requirements over a three year period.

21. Alternatively, the six hours could be "straddled" to include CPD Ethics credits and non-ethics credits.

22. I would suggest that the "Ethics and Professionalism" be renamed "Ethics, Professionalism and Cultural Competency" to acknowledge the change in focus.

23. I believe that lawyers should be strongly incentivized to take Indigenous Intercultural Competency Training offered by the Law Society. This could be done by giving additional "weight credits" to the Course. (For example, three hours of ethics or other CPD credits for every one hour of Indigenous Intercultural Competency Training). But these are details that would be worked out over time.

24. At the "10,000 foot level", the objective of Option 2 over Option 1 is to encourage, incentivize and facilitate lawyers' participation in Indigenous Intercultural Competency Training without forcing all B.C. lawyers to complete the Course; (and by logical extension, penalizing those lawyers who do not with fines, suspension or even disbarment.)

25. I would prefer that lawyers **willingly** take Indigenous Intercultural Competency Training because they are interested in the Course, or they think it will be valuable for their practice areas, or they are incentivized to take it because it is "over-weighted" when compared to other CPD eligible courses that are available in the first two or three years of the program.

26. Option 2 is consistent with Call or Action #27 that calls upon Law Societies "**to *ensure that lawyers receive appropriate cultural competency training".*** We satisfy this objective by ensuring that new B.C. Lawyers receive Indigenous Intercultural Competency Training through PLTC. Option 2 would further satisfy this objective by including Indigenous Intercultural Competency Training within the mandatory Ethics component of CPD. Option 2 is compatible with Law Society's strategic priorities in relation to truth and reconciliation. Specifically, the 2018-2020 Strategic Plan speaks to "**encouraging"** all lawyers in BC to take education and training in areas relating to Aboriginal law. This approach is also within the purview of the Law Society's authority pursuant to s. 3(c) and s. 28 of the *Legal Profession Act.*

27. Option 2 is responsive to the concern that requiring all lawyers in the province to complete Indigenous intercultural competency education on a mandatory basis is "overreaching" "overcasting the net" or even "mission creep" by the Law Society. Many lawyers have no Indigenous clients, and do not come across Indigenous issues in their practice areas. Mandating a program that has little or no perceived value to them in their practices may cause a reaction that could undermine the Law Society's efforts toward reconciliation. Although many lawyers could greatly benefit from participating in Indigenous Intercultural Competence Training, others will be of the view that the topics and skills addressed in Call to Action #27 have no direct or indirect connection to their delivery of legal services.

28. It may, therefore, be in the public interest to ensure that the finite amount of time a lawyer has to devote to continuing education is allocated to learning that is directly relevant to their practice, based on the lawyer's evaluation of their own educational needs.

29. Further, a mandatory requirement does not align with the increasingly liberalized approach to continuing legal education, as reflected in the Bencher approval of the majority of the recommendations in the Lawyer Education Advisory Committee final CPD review report in 2017. In recent years, the CPD program has made a marked shift toward providing lawyers with greater flexibility as to when and how they satisfy their learning requirements. The Law Society trusts that lawyers will make wise choices in selecting educational programming that will improve their professional competence, which may – or may not – require further training in relation to Indigenous intercultural competence.

30. There is a risk that imposing a mandatory requirement could create controversy that moves the profession further away from reconciliation rather than towards it. Although it is arguable that the Law Society of Ontario showed leadership by requiring that all lawyers in Ontario to "*adopt and abide by and individual statement of principles that acknowledges their obligation to promote equality, diversity and inclusion generally and in their behavior towards colleagues, employees clients and the public*", enough lawyers in Ontario objected to the mandatory prescriptive nature of the Statement of Principles that a well-organized slate of candidates for Bencher campaigned to repeal the SOP, won, and displaced 19 benchers running for re-election who supported the SOP. This resulted in the repeal of the SOP in September, 2019.

31. Perhaps the Law Society of Ontario miscalculated the consequences of mandating the Statement of Principles for all Ontario lawyers. The LSO was also euphemistically accused of "overreaching", "overcasting the net" and "mission creep" when it mandated the SOP. A colleague of mine in large Toronto firm put the SOP issue this way to me: *"I totally agree to promote equality, diversity, and inclusion towards colleagues, employees, clients and the public, **but I don't want my regulator to compel me to do so and effectively threaten to suspend or disbar me if I don't.**"* Similarly, it's conceivable that some members of our profession could feel the same way and object to mandatory Indigenous Intercultural Competency Training even though they would be happy to complete such training if it were on a voluntary basis and incentivized.

32. The risk is that mandatory Indigenous Intercultural Training could be overturned by the membership. I believe the process works this way: if a resolution by the members against mandatory Indigenous Intercultural Competency Training passes at a general meeting, and a resolution to that effect is not implemented within 12 months by the Benchers, all that is required is a petition signed by 5% of the membership (approximately 650 lawyers) calling for a referendum on the resolution. Thus, if a sufficient number of emboldened members reject **mandatory** Indigenous Cultural Competency Training, the referendum process could be triggered; dividing the membership as TWU divided it in 2014.

33. This is not helpful for reconciliation, and I would urge Benchers to consider Option 2 instead of Option 1. I believe lawyers in British Columbia would rather be persuaded to

take the Course of their own volition than compelled to take it by their Regulator because they could face fines, suspension and disbarment if they do not. Lawyers are independent thinkers. Lawyers are generally resistant to being told what to do. We lawyers are in the persuasion business. Instead of forcing every lawyer in British Columbia to take Indigenous Intercultural Competency Training no matter what their practice area is, let's persuade the membership that completing the Course is a more attractive option than other educational options available to them; particularly if the completion of the Course is incentivized by the Law Society.

.

The Law Society of British Columbia

Quarterly Financial Report

September 30, 2019

Prepared for: Finance & Audit Committee Meeting – October 24, 2019
Bencher Meeting – October 25, 2019

Prepared by: The Finance Department

Quarterly Financial Report – to the end of September 2019

Attached are the financial results and highlights to the end of September 2019.

General Fund

General Fund (excluding capital and TAF)

On a year to date basis, the General Fund operations resulted in a positive variance to budget mainly due to additional practice fees, PLTC revenue and the receipt of D&O insurance recoveries for legal fees. There have also been expense savings, primarily with external counsel fees.

Revenue

Revenue to date was $22.0 million, $1.6 million (8%) over budget, due primarily to higher than expected practice fees, PLTC revenues and D&O insurance recoveries. It should be noted that a large portion of the D&O insurance recoveries were budgeted in 2020, but this recovery has been received in 2019 ($512,000), so this will be a timing difference for the 2020 budget.

Operating Expenses

Operating expenses to date were $18.3 million, $1.9 million (9%) below budget primarily due to both permanent savings and timing differences in external counsel fees. For Discipline, external counsel fees are lower as some file work is being performed in house, and some hearings are on the written record. In addition, there are timing differences as a number of hearings have been delayed to 2020. There are also some timing differences in other expenses.

2019 Forecast - General Fund (excluding capital and TAF)

At this time, we are forecasting to be ahead of budget in key revenue areas, including practice fee revenue, PLTC student revenues, and D&O insurance recoveries, along with expense savings, mainly in external counsel fees.

Total revenue is projected to be ahead of budget by $1.5 million (5.5%) and expenses are projected to be lower than budget by $1.3 million (5%), with a total positive variance of $2.8 million. As there was a deficit budget of $1.2 million for 2019, the 2019 forecast is a surplus of $1.6 million.

Operating Revenue

Revenue is projected to be ahead of budget by $1.5 million (5.5%).

Practice fee revenue is projected to be ahead of budget by $336,000, projecting 12,575 FTE lawyers, compared to a budget of 12,383. There is a significant increase in the number of PLTC students, resulting in increased PLTC revenue of $347,000. Additionally, we have received $685,000 in D&O insurance recoveries, most of which was budgeted in the 2020 budget year. We are also projecting higher interest income of $75,000 due to higher cash balances held.

Operating Expenses

Operating expenses are projected to have a positive variance of $1.4 million (5%) for the year. Savings primarily relate to external counsel fees, which are difficult to project and can vary greatly from year to year.

With the increased number of citations in 2018, Discipline budgeted $2.0 million in external counsel fees for 2019, of which $1.1 million was to be funded through reserve spending. Total Discipline external counsel fees are now projected at $1.6 million, resulting in a positive variance of $405,000 to budget. Additional external counsel fee savings of $305,000 are projected in the remaining regulation departments, primarily related to legal defence, partially offset by additional IME file costs. There was also a $200,000 contingency for external counsel fees which is not expected to be used. External forensic accounting fees will be $250,000 lower as all files have been done in-house, and HR recruitment and consulting costs will be lower by $130,000. There will be $100,000 in savings with reduced meeting and travel costs for Benchers and staff. Law Firm Regulation policy work was budgeted for $100,000 in 2019, but this has been deferred to 2020. All of these savings are partially offset by an increase in PLTC costs of $155,000 related to the increase in students, and additional compensation costs of $200,000.

TAF-related Revenue and Expenses

At September 30, 2019, TAF revenue is $2.7 million, $300,000 (10%) below the budget due to a decrease in real estate unit sales. The Canadian Real Estate Association is expecting more favorable results for the remainder of the year and is currently forecasting a decrease of 5.4% in unit sales for British Columbia for 2019. We are forecasting to be below budget for the year by a similar percentage.

Trust assurance program costs are expected to be close to budget by year end.

Special Compensation Fund

In 2017, pursuant to Section 50 of the Legal Profession Amendment Act, the unused reserves of the Special Compensation Fund was transferred to the Lawyers Insurance Fund, with a small amount held back to pay for anticipated costs related to document production for past files which is expected to continue to the end of the year.

Lawyers Insurance Fund

Year to date LIF assessment revenues are $12.2 million, slightly ahead of budget.

LIF operating expenses are $5.0 million compared to a budget of $6.4 million, with savings primarily related to staff vacancies, and a reduced requirement for external counsel fees.

The market value of the LIF long term investment portfolio is $186.7 million at September 30, 2019. The LIF long term investment portfolio return for the first 9 months of the year was 11.55%, compared to the benchmark return of 10.28%. This is significantly higher than the budgeted returns of 5% for the year, resulting in additional investment income to date.

The Law Society of British Columbia

Summary of Financial Highlights - Sept 2019
($000's)

2019 General Fund Results - YTD Sept 2019 (Excluding Capital Allocation & Depreciation)

	Actual	Budget	$ Var	% Var
Revenue (excluding Capital)				
Practice fees	16,683	16,255	428	3%
PLTC and enrolment fees	1,435	1,136	299	26%
Electronic filing revenue	570	631	(61)	-10%
Interest income	484	384	100	26%
Credentials & membership services	558	524	34	6%
Fines, penalties & recoveries	1,098	400	699	175%
Other revenue	196	161	35	22%
Building revenue & tenant cost recoveries	1,022	979	44	4%
	22,047	20,469	1,579	8%
Expenses (excl. dep'n)	18,282	20,195	1,914	9%
	3,766	274	3,492	

2019 General Fund Year End Forecast (Excluding Capital Allocation & Depreciation)

Practice Fee Revenue	**Avg # of Members**
2015 Actual	11,378
2016 Actual	11,619
2017 Actual	11,849
2018 Actual	12,223
2019 Budget	**12,383**
2019 Forecast	**12,575**

	Variance
Revenue	
Practice fee revenue ahead of budget, additional 192 lawyers over budget	336
PLTC revenue projected to be ahead of budget, projecting 642 students vs 540 budget	347
D&O Insurance Recoveries- $512,000 re: timing of recoveries budgeted in 2020 - timing	685
Interest Income - higher cash balances	75
Other	12
	1,455
Expenses	
Savings in external fees related to:	
Discipline external counsel fees - lower hearing costs	405
Regulation external counsel fees based on fewer files - mainly legal defence off set by additional IME files	305
External counsel fees - contingency not used	180
Forensic accounting fees - files done internally	250
HR savings in recruitment and consultants costs	130
Law Firm Regulation - policy development deferred to 2020	100
Benchers & staff - savings in meetings and travel costs	100
Members Manual and Benchers Bulletin - print savings as no longer in paper form	60
Information Services - lower software maintenance costs	50
Building property taxes and utilities - lower costs	45
E-Billing - reduced mailing costs	20
General Office- liability insurance savings	20
Other	60
Additional compensation costs	(200)
Higher PLTC expenses related to higher student numbers	(155)
	1,370
2019 General Fund Variance to Budget	2,825

Trust Assurance Program Actual

	2019 Actual	2019 Budget	Variance	% Var
TAF Revenue	2,732	3,031	(299)	-9.9%
Trust Assurance Department	2,379	2,492	113	4.5%
Net Trust Assurance Program	353	539	(186)	

2019 Lawyers Insurance Fund Long Term Investments - YTD Sept 2019* *Before investment management fees*

Performance	11.55%
Benchmark Performance	10.28%

The Law Society of British Columbia
General Fund
Results for the 9 Months ended September 30, 2019
($000's)

	2019 Actual	2019 Budget	$ Variance	% Variance
Revenue				
Membership fees **(1)**	18,895	18,443	452	2%
PLTC and enrolment fees	1,389	1,505	(116)	-8%
Electronic filing revenue	570	631	(61)	-10%
Fines, penalties and recoveries	342	299	43	14%
Application fees	510	456	54	12%
Interest income	484	384	100	26%
Other revenue	1,047	340	707	208%
Building Revenue & Recoveries	1,022	978	44	4%
Total Revenues	24,259	23,036	1,223	5.3%
Expenses				
Regulation	7,868	8,907	1,039	12%
Education and Practice	3,231	3,510	279	8%
Corporate Services	2,245	2,262	17	1%
Bencher Governance and Board Relations and Events	889	1,009	120	12%
Communications and Information Services	1,523	1,571	48	3%
Policy and Legal Services	1,519	1,873	354	19%
Occupancy Costs	1,322	1,468	146	10%
Depreciation	757	937	180	19%
Total Expenses	19,354	21,537	2,183	10.1%
General Fund Results before Trust Assurance Program	**4,905**	**1,499**	**3,406**	
Trust Assurance Program (TAP)				
TAF revenues	2,732	3,031	(299)	100%
TAP expenses	2,379	2,491	112	4.5%
TAP Results	**353**	**540**	**(187)**	34.6%
General Fund Results including Trust Assurance Program	**5,258**	**2,040**	**3,217**	

(1) Membership fees include capital allocation of $2.212m (Capital allocation budget = $2.212m)

The Law Society of British Columbia
General Fund - Balance Sheet
As at September 30, 2019
($000's)

	Sep 30 2019	Sep 30 2018
Assets		
Current assets		
Cash and cash equivalents	7,189	2,104
Unclaimed trust funds	2,137	1,983
Accounts receivable and prepaid expenses	2,118	879
Due from Lawyers Insurance Fund	14,723	16,665
	26,168	21,631
Property, plant and equipment		
Cambie Street property	12,359	12,865
Other - net	1,791	1,588
	14,149	14,454
Long Term Loan	365	276
	40,682	**36,361**
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	2,107	1,960
Liability for unclaimed trust funds	2,137	1,983
Current portion of building loan payable	500	500
Deferred revenue	6,360	5,846
Deferred capital contributions	-	1
Deposits	56	58
	11,160	10,347
Building loan payable	600	1,100
	11,760	11,447
Net assets		
Capital Allocation	3,192	2,167
Unrestricted Net Assets	25,730	22,747
	28,922	24,914
	40,682	**36,361**

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
Results for the 9 Months ended September 30, 2019
($000's)

	Invested in Capital	*Working Capital*	Unrestricted Net Assets	Trust Assurance	Capital Allocation	2019 Total	Year ended 2018 Total
	$	$	$	$	$	$	$
Net assets - At Beginning of Year	12,919	5,623	18,542	2,955	2,167	23,664	20,997
Net (deficiency) excess of revenue over expense for the period	(1,073)	3,767	2,694	353	2,212	5,258	2,667
Contribution to LIF				-		-	
Repayment of building loan	500	-	500	-	(500)	-	-
Purchase of capital assets:						-	
LSBC Operations	506	-	506	-	(506)	-	-
845 Cambie	180	-	180	-	(180)	-	-
Net assets - At End of Period	**13,032**	**9,390**	**22,422**	**3,308**	**3,193**	**28,922**	**23,664**

The Law Society of British Columbia
Special Compensation Fund
Results for the 9 Months ended September 30, 2019
($000's)

	2019 Actual	2019 Budget	$ Variance
Revenue			
Annual assessment	-	-	-
Recoveries	-	-	-
Interest income	2	-	2
Loan interest expense			
Other income	-	-	-
Total Revenues	**2**	**-**	**2**
Expenses			
Claims and costs, net of recoveries	67	-	67
Administrative and general costs	-	-	-
			-
Total Expenses	**67**	**-**	**67**
Special Compensation Fund Results	**(65)**	**-**	**(65)**

Special Compensation Fund - Balance Sheet
As at September 30, 2019
($000's)

	Sep 30 2019	Sep 30 2018
Assets		
Current assets		
Due from Lawyers Insurance Fund	94	269
	94	**269**
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	-	-
Net assets		
Unrestricted net assets	94	269
	94	**269**

The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
Results for the 9 Months ended September 30, 2019
($000's)

	2019	Year ended 2018
	$	$
Unrestricted Net assets - At Beginning of Year	159	276
Net excess of revenue over expense for the period	(65)	- (117)
Unrestricted Net assets - At End of Period	**94**	**159**

The Law Society of British Columbia
Lawyers Insurance Fund
Results for the 9 Months ended September 30, 2019
($000's)

	2019 Actual	2019 Budget	$ Variance	% Variance
Revenue				
Annual assessment	12,240	12,053	187	2%
Investment income	19,874	6,475	13,399	207%
Other income	20	60	(40)	-67%
Total Revenues	32,134	18,588	13,546	72.9%
Expenses				
Insurance Expense				
Provision for settlement of claims	12,898	12,898	-	0%
Salaries and benefits	2,159	2,608	449	17%
Contribution to program and administrative costs of General Fund	994	1,036	42	4%
Insurance	256	350	94	27%
Office	436	981	545	56%
Actuaries, consultants and investment brokers' fees	580	698	118	17%
Premium taxes	-	8	8	100%
Income taxes	-	4	4	100%
	17,323	18,583	1,260	7%
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	529	679	150	22%
Total Expenses	17,852	19,262	1,410	7.3%
Lawyers Insurance Fund Results	**14,282**	**(674)**	**14,956**	

The Law Society of British Columbia
Lawyers Insurance Fund - Balance Sheet
As at September 30, 2019
($000's)

	Sep 30 2019	Sep 30 2018
Assets		
Cash and cash equivalents	11,465	12,983
Accounts receivable and prepaid expenses	346	440
Current portion General Fund building loan	500	500
LT Portion of Building Loan	600	1,100
Investments	186,673	172,549
	199,584	**187,572**
Liabilities		
Accounts payable and accrued liabilities	1,475	661
Deferred revenue	3,878	3,798
Due to General Fund	14,723	16,665
Due to Special Compensation Fund	95	200
Provision for claims	77,432	72,939
Provision for ULAE	10,779	9,601
	108,381	103,865
Net assets		
Internally restricted net assets	17,500	17,500
Unrestricted net assets	73,703	66,208
	91,203	83,708
	199,584	**187,572**

The Law Society of British Columbia
Lawyers Insurance Fund - Statement of Changes in Net Assets
Results for the 9 Months ended September 30, 2019

	Unrestricted	Internally Restricted	2019 Total	2018 Total
	$	$	$	$
Net assets - At Beginning of Year	59,421	17,500	76,921	84,248
Net excess of revenue over expense for the period	14,282	-	14,282	(7,327)
Net assets - At End of Period	**73,703**	**17,500**	**91,203**	**76,921**

The Law Society of British Columbia

Memo

To: The Benchers
From: Natasha Dookie, Chief Legal Officer
Date: October 9, 2019
Subject: 2018 National Discipline Standards Implementation Report

Background

1. The National Discipline Standards were developed as a Federation of Law Societies of Canada initiative to create uniformly high standards for all stages of the processing of complaints and disciplinary matters. They are aspirational. The standards that were in effect for 2018 Attachment 1.

2. The National Discipline Standards Standing Committee has produced an Implementation Report for 2018. That report is Attachment 2.

Notables in the Implementation Report

3. None of the Canadian law societies met all of the standards in 2018.

4. Progress has been made by law societies in meeting the standards since they were officially implemented on January 1, 2015. In 2015, the average for all law societies for all standards was 72%. For 2018, the average was 78%.

5. Our performance as against the standards exceeded the national averages:

	2016	**2017**	**2018**
LSBC	86%	84%	83%
Average of all Law Societies	79%	76%	78%

We met:

- 18/21 standards in 2016
- 18.5/22 standards in 2017; and,
- 19/23 standards in 2018.

6. The standards we did not meet in 2018 were:

a. Standard 2 (acknowledgment of 100% of written complaints within three days) – only 57% of law societies met this standard in 2018. Due to an administrative error in processing 3 of the 942 new complaints received, we achieved 99.68% compliance with this standard.

b. Standard 7 (90% of hearings to be commenced within 12 months of the citation being authorized). as previously reported, due to staffing issues and an increase in the number of citations over the past couple of years, we were unable to meet this standard in 2018. Only 54% of Law Societies were able to meet this standard in 2018.

c. Standard 8 (90% of hearing panel decisions to be rendered within 90 days of the last submissions) – only 45% of law societies were able to meet this standard in 2018. We achieved 70%.

d. Standard 19 states that there shall be a directory available with easily accessible information on discipline history for each lawyer. In 2016, changes were made to Lawyer Lookup to allow easy access to post-September 2003 discipline history. Changes will need to be made to put pre-September 2003 decisions online in order to fully meet this standard.

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

NATIONAL DISCIPLINE STANDARDS

(Approved June 2016)

Timeliness

1. T**elephone inquiries:**
   75% of telephone inquiries are acknowledged within one business day and 100% within two business days.

2. **Written complaints:**
   100% of written complaints are acknowledged in writing within three business days.

3. **Timeline to resolve or refer complaint:**
   (a) 80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months.

   90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.

   (b) Where a complaint is resolved and the complainant initiates an internal review or internal appeal process:
   80% of all internal reviews or internal appeals are decided within 90 days.

   90% of all internal reviews or internal appeals are decided within 120 days.

   (c) Where a complaint has been referred back to the investigation stage from an internal review or internal appeal process:
   80% of those matters are resolved or referred for a disciplinary or remedial response within a further 12 months.

   90% of those matters are resolved or referred for a disciplinary or remedial response within a further 18 months.

4. **Contact with complainant**
   For 90% of open complaints there is contact with the complainant at least once every 90 days during the investigation stage.

5. **Contact with lawyer or Québec notary:**
   For 90% of open complaints there is contact with the lawyer or Québec notary at least once every 90 days during the investigation stage.

...../2

NATIONAL DISCIPLINE STANDARDS

(Approved June 2016)

Hearings

6. 75% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 60 days of authorization.

   95% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 90 days of authorization.

7. 75% of all hearings commence within 9 months of authorization.

   90% of all hearings commence within 12 months of authorization.

8. Reasons for 90% of all decisions are rendered within 90 days from the last date the panel receives submissions.

9. Each law society will report annually to its governing body on the status of the standards.

Public Participation

10. There is public participation at every stage of discipline; e.g. on all hearing panels of three or more; at least one public representative; on the charging committee, at least one public representative.

11. There is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee.

Transparency

12. Hearings are open to the public.

13. Reasons are provided for any decision to close hearings.

14. Notices of charge or citation are published promptly after a date for the hearing has been set.

15. Notices of hearing dates are published at least 60 days prior to the hearing, or such shorter time as the pre-hearing process allows.

16. There is an ability to share information about a lawyer or Québec notary who is a member of another law society with that other law society when an investigation is underway in a manner that protects solicitor-client privilege, or there is an obligation on the lawyer or Québec notary to disclose to all law societies of which he/she is a member that there is an investigation underway.

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

...../3

NATIONAL DISCIPLINE STANDARDS
(Approved June 2016)

Accessibility

18. A complaint help form is available to complainants.

19. There is a directory available with status information on each lawyer or Québec notary, including easily accessible information on discipline history.

Qualification of Adjudicators and Volunteers

20. There is ongoing mandatory training for all adjudicators, including training on decision writing, with refresher training no less often than once a year and the curriculum for mandatory training will comply with the national curriculum if and when it is available.

21. There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.

Standing Committee on National Discipline Standards

2018 IMPLEMENTATION REPORT

July 2019

Introduction

1. The National Discipline Standards are aspirational in nature. They are designed to promote uniformly high benchmarks for complaint and discipline processes for members of the legal profession. It was recognized from the outset of the project that not all law societies would be able to achieve all of the standards and there are various reasons for their inability to do so. For example, legislation may prohibit standards from being met or the law society's discipline scheme may render certain standards inapplicable. Also, fluctuating staff resources and volume of matters may have an impact on the ability to meet certain standards. Law societies chose to set challenging standards with the goal that they would promote a culture of performance improvement, including recognition and adoption of best practices.

2. The Standing Committee on National Discipline Standards (the "Standing Committee") monitors the implementation of the standards and recommends amendments as required.

3. Law societies are asked to provide annual status reports to the Standing Committee for the purpose of monitoring progress on meeting the standards and to ascertain whether the standards are reasonable and achievable in practice. The annual status reports help to identify challenges in meeting the standards and where changes are required.

Purpose of the Implementation Report

4. This Implementation Report is prepared for internal law society use and distribution only. It is the third report prepared by the Standing Committee since the standards were implemented in 2015. It provides a high-level analysis of law society performance against the standards in 2018, including notable changes from 2017 (and previous years where appropriate). Where it is not possible to draw trends or issues, this report flags observations about law society performance or responses that may be of interest to the law societies.

Background

5. The National Discipline Standards project grew out of a recognition and desire to strengthen and harmonize the ways in which complaint and discipline processes are dealt with across the country. The project was launched in 2010.

6. Twenty three standards were pilot tested between 2012 and 2014. The pilot phase resulted in refinements to the standards. In April, 2014, the Federation Council approved 21 standards relating to timeliness, public participation, transparency, accessibility, and the qualification and training of adjudicators and investigators. The standards were officially implemented across all law societies on January 1, 2015.

7. In June 2016, Council approved revisions to Standards 3 and 9. The standards are here.

8. In June 2018, Council approved further revisions including the addition of two new standards – on early resolution and interim measures – and revisions to Standards 16 and 20, resulting in the reordering of the Standards, which now number 23. The revised National Discipline Standards took effect on January 1, 2019 and can be found here. These changes are not included in this report since the analysis is based on reporting from the 2018 calendar year.

How to Read the Implementation Report

9. This report should be understood in the context of the aspirational nature of the standards and the obstacles to meeting the standards, many of which are outside law societies' control.

10. A review of the data must also take into account the relatively small sample size (i.e. 14 jurisdictions) and the reality that a number of the standards are either inapplicable to, or elicit few matters, for the smaller jurisdictions. As such, any small change, for example one outlier case, can skew the data significantly. Also, law societies were often very close to meeting a standard but because the threshold was not met (e.g. 98% of complaints were acknowledged within 3 days but not 100% for Standard 2), the standard was recorded as 'not met'. The fact that a standard was almost met is not captured in the data analysis. For these reasons law societies should be cautious not to draw too many conclusions from this data without a deeper analysis of why changes have occurred.

Law Society Annual Status Reports

11. Law societies are provided with an annual report template early in the calendar year that requests data from January to December of the previous year. It seeks information about whether law societies met the standards or if the standards were applicable, and information about why a standard was not met.

12. For the 2018 reporting, the template was revised to include a column that seeks information about what actions law societies are taking or have planned in response to any standards reported as "unmet". This was done so the committee could get a better sense of law societies' progress in working towards meeting the standards.

13. All fourteen law societies submitted their annual report for 2018.

Analysis Methodology

14. This report sought law society responses on the 21 standards in effect in 2018. The analysis identifies which standards were met or not met and why. Appendix A provides the overall number of standards met by each law society in each year and the corresponding percentage calculation. This information is captured in the second row entitled "overview of performance".

15. Appendix A also provides a comparative snapshot of overall performance by standard. This information is captured in the last column entitled "standard totals". The chart makes it easy to compare performance on the standards at a glance from year to year and across law societies[1]. A check mark indicates that the standard was met; an "x" indicates that it was not. For standards with two components, a check mark and an "x" indicate that only one part of the standard was met.

[1] However, please note that due to amendments approved by Federation Council in June 2018, it may not be possible to do a year to year comparison for some standards next year.

16. In addition, not all law societies report on all the standards each year. In some cases, a standard is not applicable, which is represented in the chart as “N/A”. For example, if a law society had no hearings in the year in question, all of the standards that deal with hearings will be marked “not applicable”. In 2018 ten law societies reported one or more standards as not applicable, which is the same as in 2017 but an increase from seven in 2016. When a standard is marked as not applicable, it is removed from the performance calculations to avoid skewing the results.

General Findings

17. This section provides an overview of law society performance globally from 2016 to 2018. Information is also provided on trends in meeting the standards and variances in performance from year to year. This more detailed information may be of greatest interest to those individuals working directly with the standards. Reporting from 2015 has not been included in this analysis as several changes have been made to the standards since that time.

18. In 2018, law societies met on average 78% of all standards. This represents an increase from 2017 (76%) but a decrease since 2016 (79%). It is worth noting however, that only 13 law societies reported in 2016, which may account for the difference.

19. Since implementation of the standards in 2015, no law society has met all of the standards in their entirety.

20. As with past years, there were fluctuations in law societies’ progress in meeting the standards between 2017 and 2018. Law societies showed improvement in meeting seven standards (3(b), 4, 6, 7, 11, 16, and 17), a decrease in meeting six standards (1, 3(c), 5, 8, 20, and 21) and no change in meeting the remaining ten standards. Of the seven standards where improvements were made, the most significant change was to standard 16 (i.e. an increase of 39%) where only one law society reported being unable to meet it in 2018 (up from 7 in 2017). This may be attributed in part to the new model rule developed by the Standing Committee in 2018. Generally speaking, the decreases in meeting standards were minor and in many cases were due to administrative or process changes, or things outside of a law society’s control.

Standards Met by Most Law Societies

21. Standard 18 (accessible complaint help form) is the only standard that has been meet by all fourteen law societies since 2016.

22. In addition, since 2016 the following standards have been consistently met by all law societies that deemed them applicable: Standard 12 (hearings open to public), Standard 13 (reasons for decision to close hearing), Standard 14 (publication of notice of charge or citation), and Standard 15 (publication of notice of hearing dates).

23. As has been reported in prior years, the following standards have been met by all but one or two law societies (where they were deemed applicable): Standard 1 (telephone inquiries), Standard 9 (annual reporting to governing body), and Standard 11 (complaints review process). Standards 16 (ability to share information) and 17 (ability to report to police) fell in this category for the 2018 reporting year as there was an increase in the number of law societies that were able to meet them, as mentioned above. It is anticipated that Standard 2 will fall into

this category for the 2020 reporting year as a result of the Council-approved change to the standard in June 2019.

Most Challenging Standards

24. The most challenging standard for law societies to meet in 2018 was Standard 8 (time line for reasons for decisions). Only five out of eleven law societies were able to meet the standard (45%) which is a change from six out of 10 (60%) law societies in 2017. The reasons for not being able to meet the standard varied (e.g. reduction in size of review board, changes in reporting process, lack of control over review panel). Of the five law societies that failed to meet the standard, two missed the mark by 5% or less (i.e. one case fell outside of the window). These responses seem to suggest that law societies are not experiencing significant challenges with meeting Standard 8 generally speaking, but rather their shortfall was attributable to process changes or factors lying out of their control. Moreover many have already put their minds to what they will do to remedy these challenges for next year.

25. The second most challenging standard to meet was Standard 7 (time line for commencement of hearings). This standard was the most challenging to meet in 2017. In both the 2017 and 2018 reporting years only five of twelve law societies were able to meet both parts of the standard. Including those law societies that partially met the standard, the overall performance increased slightly from 50% to 54% in 2018. The reasons provided for not meeting the standard are largely due to delays caused by the parties, but one law society also cited resource challenges. It may be worth exploring these challenges further and discussing whether there are tools that could be developed to assist these law societies.

Notable Trends / Observations

26. There were a few cases in which a law society set its own standard (or target) that differed from the National Discipline Standard. Nova Scotia reported meeting part one of Standard 1 (75% of telephone inquiries are acknowledged within one business day) in 2017 and 2016 but in 2018 they reported this standard as unmet because their standard is two business days. This is a new development due to an increase in the incidence of calls from high conflict personalities. Nova Scotia has indicated that, as a result, they are aiming to return calls within three days, and have amended their process to permit the return of calls via email to reduce the amount of time dedicated to repeat callers.

27. Similarly, Ontario has repeatedly reported for Standards 4 (for 90% of open complaints there is contact with complainant at least once every 90 days) and 5 (for 90% of open complaints there is contact with lawyer or notary at least once every 90 days) that their target for making contact is once every 120 to 150 days.

28. Between 2016 and 2018 there appeared to be some confusion with reporting on Standard 19 (law society directory for information on discipline history) whereby some members reported this standard as “unmet” when other law societies in the same situation reported the standard as “met”. The work of the database subcommittee, once finalized, should help to clarify the criteria for when this standard is met and not met for future reporting.

29. Reporting on Standard 20 (mandatory adjudicator training) highlighted that three of the six law societies that did not meet the standard are looking into purchasing the Law Society of Alberta’s adjudicator training curriculum. The Alberta curriculum has been designed to meet the

National Adjudicator Training Curriculum, enabling law societies to meet Standard 20. This is a great example of how law societies can assist one another in meeting the standards, and benefit from each other's work or experience.

30. The new reporting column in the 2018 template labeled "actions taken or planned" was a helpful tool for the purposes of this analysis. Generally it highlighted that where challenges remain, law societies are committed to identifying or implementing solutions to be able to meet the standards. It also provided more context around what the challenges are, which may be useful to the Standing Committee when reviewing the standards. Here are some examples of law society responses in this column broken down by theme:

- No action is required (i.e. exceptional circumstance or unusual case).
- Law society is changing its processes, adding or improving training, hiring more staff, etc.
- Law society is continually working towards the goal, making changes that improve efficiency or optimize resources, or looking for ways to improve.
- Law society has planned to conduct a review, assessment, system upgrade, etc.
- The challenge is outside of the law society's control or due to insufficient resources.
- Law society needs a legislative amendment to meet the standard.
- Law society is looking to borrow other law society's work.

31. Overall, the law societies' progress in meeting the standards between 2017 and 2018 has remained consistent, which suggests that the National Discipline Standards project has hit a period of stability. While there may be fluctuations from year-to-year in a law society's ability to meet the standards, the existence of the standards has generally resulted in law society process and performance enhancements. As the National Discipline Standards project evolves, the Standing Committee has recognized there is merit in identifying tools, model rules, best practices or other resources to better support law societies in meeting the standards that continue to present challenges.

Appendix A - National Discipline Standards Implementation Report 2016-2018

This summary highlights the law societies' progress in meeting the discipline standards in the last three years of implementation. It is based on the data contained in law societies' 2016, 2017 and 2018 annual reports.

		LSBC	LSA	LSS	LSM	LSO	BQ	CNQ	LSNB	LSPEI	NSBS	LSNL	LSY	LSNWT	LSN	STANDARD TOTALS	
Overview of Performance by Law Societies	**2018**	**83%** 19/23	**76%** 17.5/23	**73%** 16/22	**83%** 19/23	**75%** 16.5/22	**68%** 15/22	**88%** 19.5/22	**73%** 15/20.5	**80%** 16/20	**91%** 21/23	**90%** 17/19	**80%** 12/15	**89%** 17/19	**40%** 6/15	**Average:**	**78%**
	2017	84% 18.5/22	83% 19/23	80% 17.5/22	83% 19/23	70% 15.5/22	61% 13.5/22	80% 18.5/23	61% 13.5/22	86% 18/21	93% 21.5/23	83% 16.5/20	86% 12/14	76% 13/17	41% 4.5/11	Average:	76%
	2016	86% 18/21	81% 17/21	81% 17/21	80% 16/20	74% 15.5/21	73% 14.5/20	71% 15/21	50% 10/20	88% 18.5/21	98% 19.5/20	83% 16.5/20	79% 11/14	84% 16/19	Not Available	Average:	79%
Standard 1	**2018**	√	√	√	√	√	√	√	√	√	X	√	√	√	X	**12/14**	**86%**
Telephone inquiries	2017	√	√	√	√	√	√	√	√	√	√/X	√	√	√	X/√	13/14	(93%)
	2016	√	√	√	√	√	√	√	√	√	√/X	√	√	√		12.5/13	(96%)
Standard 2	**2018**	X	√	X	√	√	X	√	X	X	X	√	√	√	√	**8/14**	**(57%)**
Written complaints	2017	√	√	X	√	√	X	√	X	√	X	X	√	X	√	8/14	(57%)
	2016	√	√	X	√	√	√	√	X	√	√	√	√	X		10/13	(77%)
Standard 3 Timeline to resolve or refer complaint (amended starting 2017)	2016	√	√	√	√	X	√/X	X	√	√	√	√	√	X		9.5/13	(73%)
Standard 3 a)	**2018**	√	X/√	√	√	√	√	√/X	X/√	√	√	√	√	√	√	**12.5/14**	**89%**
Complaint resolved or referred for a disciplinary or remedial response	2017	√	√	√	√	X	√	√/X	√	√	√	√	√	√	√	12.5/14	(89%)
Standard 3 b)	**2018**	√	X	√	√	X	√	√	X	√	√	N/A	√	N/A	N/A	**8./11**	**73%**
Complaint initiates an internal review or appeal	2017	√	X	√	√	X	X	√	X	√	√	N/A	N/A	N/A	N/A	6/10	(60%)

Legend: √ = Standard Met - X = Standard Not Met - N/A = Standard Not Applicable (e.g. no hearings held in year)

Appendix A - National Discipline Standards Implementation Report 2016-2018

This summary highlights the law societies' progress in meeting the discipline standards in the last three years of implementation. It is based on the data contained in law societies' 2016, 2017 and 2018 annual reports.

		LSBC	LSA	LSS	LSM	LSO	BQ	CNQ	LSNB	LSPEI	NSBS	LSNL	LSY	LSNWT	LSN	STANDARD TOTALS	
Standard 3 c)	**2018**	√	√	N/A	√	X/√	√	√	N/A	N/A	√	N/A	N/A	N/A	N/A	**6.5/7**	**93%**
Complaint referred back to investigation from an internal review or appeal	2017	N/A	√	N/A	√	√	√	√	√	N/A	√	N/A	N/A	N/A	N/A	7/7	(100%)
Standard 4	**2018**	√	√	X	X	X	X	√	√	√	√	√	√	√	X	**9./14**	**64%**
Contact with complainant	2017	√	√	√	X	X	X	√	X	√	√	√	√	X	X	8/14	(57%)
	2016	√	√	√	X	X	√	√	√	√	√	√	√	√		11/13	(85%)
Standard 5	**2018**	√	√	X	X	X	X	√	X	√	√	√	√	√	X	**8/14.**	**57%**
Contact with lawyer or Québec notary	2017	√	√	√	X	X	X	√	X	√	√	√	√	N/A	X	8/13	(62%)
	2016	√	√	√	X	X	X	√	√	√	√	√	√	N/A		9/12	(75%)
Standard 6	**2018**	√	√	√	X	√/X	√	√	X	N/A	√	X	N/A	N/A	N/A	**6.5/10**	**65%**
Issuance of citations or notices of hearings	2017	√	√	√/X	X	√/X	√	√	X	X	√	X	N/A	√	N/A	7/12	(58%)
	2016	√	√	√	X	√/X	√	√	X	X/√	√	X	N/A	√		8/12	(67%)
Standard 7	**2018**	X	X	√	X	√/X	√	√	X	X	√	√	N/A	√	N/A	**6.5/12**	**54%**
Commencement of hearings	2017	X/√	X	√	X	X	√	√	X	X	√	X/√	N/A	√	N/A	6/12	(50%)
	2016	√	X	√	√	X	√	√	X	√	N/A	X/√	N/A	√		7.5/11	(68%)
Standard 8	**2018**	X	X	X	√	X	X	√	√	N/A	√	√	N/A	X	N/A	**5/11.**	**45%**
Reasons for decisions	2017	X	√	X	√	X	X	√	√	N/A	√	√	N/A	N/A	N/A	6/10	(60%)
	2016	X	X	√	√	X	X	√	X	√	√	√	N/A	√		7/12	(58%)

Legend: √ = Standard Met - X = Standard Not Met - N/A = Standard Not Applicable (e.g. no hearings held in year)

Appendix A - National Discipline Standards Implementation Report 2016-2018

This summary highlights the law societies' progress in meeting the discipline standards in the last three years of implementation. It is based on the data contained in law societies' 2016, 2017 and 2018 annual reports.

		LSBC	LSA	LSS	LSM	LSO	BQ	CNQ	LSNB	LSPEI	NSBS	LSNL	LSY	LSNWT	LSN	STANDARD TOTALS	
Standard 9	**2018**	√	√	√	√	√	√	√	√	√	√	√	√	√	X	**13/14**	**93%**
Annual reporting to governing body	2017	√	√	√	√	√	√	√	√	√	√	√	√	√	X	13/14	(93%)
	2016	√	√	√	√	√	√	√	X	√	√	√	√	√		12/13	(92%)
Standard 10	**2018**	√	√	X	√	√	X	X	√	√	√	√	√	√	X	**10/14.**	**71%**
Public Participation	2017	√	√	X	√	√	X	X	√/X	√	√	√	√	N/A	N/A	8.5/12	(71%)
	2016	√	√	X	√	√	X	X	X	√	√	√	√	√		9/13	(69%)
Standard 11	**2018**	√	√	X	√	√	√	√	√/N/A	√	√	N/A	√	√	X	**10.5/12.5**	**84%**
Complaints review process	2017	√	√	X	√	√	√	√	X	√	√	N/A	√	√	N/A	10/12	(83%)
	2016	√	√	X	√	√	√	√	X	√	√	N/A	√	√		10/12	(83%)
Standard 12	**2018**	√	√	√	√	√	√	√	√	√	√	√	N/A	√	√	**13/13**	**(100%)**
Hearings open to public	2017	√	√	√	√	√	√	√	√	√	√	√	N/A	√	√	13/13	(100%)
	2016	√	√	√	√	√	√	√	√	√	√	√	N/A	√		12/12	(100%)
Standard 13	**2018**	√	√	√	√	√	√	√	√	√	√	N/A	N/A	N/A	N/A	**10./10**	**(100%)**
Reasons for decision to close hearings	2017	√	√	√	√	√	√	√	√	√	√	√	N/A	N/A	N/A	11/11	(100%)
	2016	√	√	√	N/A	√	√	√	√	√	√	√	N/A	N/A		10/10	(100%)
Standard 14	**2018**	√	√	√	√	√	√	√	√	√	√	√	N/A	√	N/A	**12/12**	**(100%)**
Publication of notices of charge or citation	2017	√	√	√	√	√	√	√	√	√	√	√	N/A	√	N/A	12/12	(100%)
	2016	√	√	√	√	√	√	√	√	√	√	√	N/A	√		12/12	(100%)

Legend: √ = Standard Met - X = Standard Not Met - N/A = Standard Not Applicable (e.g. no hearings held in year)

Appendix A - National Discipline Standards Implementation Report 2016-2018

This summary highlights the law societies' progress in meeting the discipline standards in the last three years of implementation. It is based on the data contained in law societies' 2016, 2017 and 2018 annual reports.

		LSBC	LSA	LSS	LSM	LSO	BQ	CNQ	LSNB	LSPEI	NSBS	LSNL	LSY	LSNWT	LSN	STANDARD TOTALS	
Standard 15	**2018**	√	√	√	√	√	√	√	√	√	√	√	N/A	√	N/A	**12/12**	**(100%)**
Publication of notices of hearing dates	2017	√	√	√	√	√	√	√	√	√	√	√	N/A	√	N/A	12/12	(100%)
	2016	√	√	√	√	√	√	√	√	√	√	√	N/A	√		12/12	(100%)
Standard 16	**2018**	√	X	√	√	√	√	√	√	√	√	√	√	√	√	**13/14**	**93%**
Ability to share information with other law societies	2017	X	X	√	√	√	X	X	X	√	√	√	√	X	N/A	7/13	(54%)
	2016	X	X	√	√	√	X	X	X	√	√	X	√	X		6/13	(46%)
Standard 17	**2018**	√	√	√	√	√	√	√	√	√	√	√	X	√	X	**12/14.**	**86%**
Disclosure to police about criminal activity	2017	√	√	√	√	√	X	X	√	√	√	√	X	√	N/A	10/13	(77%)
	2016	√	√	√	√	√	√	X	X	√	√	√	X	√		10/13	(77%)
Standard 18	**2018**	√	√	√	√	√	√	√	√	√	√	√	√	√	√	**14/14**	**(100%)**
Accessible complaint help form	2017	√	√	√	√	√	√	√	√	√	√	√	√	√	√	14/14	(100%)
	2016	√	√	√	√	√	√	√	√	√	√	√	√	√		13/13	(100%)
Standard 19	**2018**	X	X	√	√	√	X	X	√	√	√	√	√	√	√	**10/14**	**(71%)**
Availability of status information directory	2017	X	X	√	√	√	√	√	√	X	√	√	√	√	X	10/14	(71%)
	2016	X	X	√	√	√	√	X	X	X	√	√	√	√		8/13	(61%)
Standard 20	**2018**	√	√	√	√	√	√/X	√	√	X	√	X	X	X	X	**8.5/14.**	**60%**
Ongoing mandatory training for adjudicators	2017	√	√	√	√	√	√/X	√	√	√	√	X	√	X	X	10.5/14	(75%)
	2016	√	√	X	√	√	X	√	√	X	√	X	X	√		8/13	(62%)

Legend: √ = Standard Met - X = Standard Not Met - N/A = Standard Not Applicable (e.g. no hearings held in year)

Appendix A - National Discipline Standards Implementation Report 2016-2018

This summary highlights the law societies' progress in meeting the discipline standards in the last three years of implementation. It is based on the data contained in law societies' 2016, 2017 and 2018 annual reports.

		LSBC	LSA	LSS	LSM	LSO	BQ	CNQ	LSNB	LSPEI	NSBS	LSNL	LSY	LSNWT	LSN	STANDARD TOTALS	
Standard 21	**2018**	√	√	√	√	N/A	N/A	N/A	N/A	X	√	√	X	√	X	**7/10.**	**70%**
Mandatory volunteer orientation	2017	√	√	√	√	N/A	N/A	X	N/A	√	√	√	X	√	X	8/11	(73%)
	2016	√	√	√	√	√	N/A	X	N/A	√	√	√	X	√		9/11	(82%)

Legend: √ = Standard Met - X = Standard Not Met - N/A = Standard Not Applicable (e.g. no hearings held in year)