



# Agenda

## Benchers

Date: Friday, December 6, 2019

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

**8:00 am** Call to order

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

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

### CONSENT AGENDA:

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

1	Minutes of October 25, 2019 meeting (regular session)
2	Minutes of October 25, 2019 meeting (in camera session)
3	Rules 3-99 and 3-107 – Client Identification and Verification
4	Rule 5-24.1 – Preparation and Delivery of Record
5	Rule 3-3 et al. – Disclosure to Law Enforcement
6	Rule Amendments to Implement <i>Legal Profession Act</i> Amendments Concerning Insurance and Indemnity Provisions
7	BC Code Amendments Required to Follow Legislation Changes Affecting the Lawyers Insurance Fund (LIF)
8	Equity, Diversity and Inclusion Advisory Committee Name and Terms of Reference
9	Approval of Revised Bencher, Committee Member, Hearing Panellist and Other Volunteer Expense Reimbursement Policies
10	2020 Committees, Task Forces and Working Groups

### EXECUTIVE REPORTS

11	President's Report	Nancy Merrill, QC
12	CEO's Report	Don Avison



# Agenda

<b>UPDATES</b>		
13	Licensed Paralegal Task Force Update	Trudi L. Brown, QC
14	Enterprise Risk Management Plan - 2019 Update	Craig Ferris, QC
15	Report on Outstanding Hearing & Review Decisions <i>(To be circulated at the meeting)</i>	Craig Ferris, QC
<b>DECISION</b>		
16	Report from the Governance Committee	Steven McKoen, QC
17	Recommendation to Adopt Changes to the Statement of Investment Policies and Procedures (SIPP)	Craig Ferris, QC
18	Amendments to Rule 7.1-3 and Commentary of the BC Code, including the removal of potentially stigmatizing language	Pinder Cheema, QC
19	Joint Recommendation Report of the Truth and Reconciliation Advisory Committee and the Lawyer Education Advisory Committee on Indigenous intercultural competence education for BC Lawyers	Dean Lawton, QC Michael F. Welsh, QC
<b>FOR INFORMATION</b>		
20	Year-End Advisory Committee Reports: <ul style="list-style-type: none"> <li>• Equity, Diversity and Inclusion Advisory Committee</li> <li>• Legal Aid Advisory Committee</li> <li>• Access to Legal Services Advisory Committee</li> <li>• Lawyer Education Advisory Committee</li> <li>• Rule of Law and Lawyer Independence Advisory Committee</li> <li>• Truth and Reconciliation Advisory Committee</li> <li>• Mental Health Task Force</li> </ul>	
21	Three Month Bench Calendar – December to February 2020	



# Agenda

<b>IN CAMERA</b>	
22	Other Business



# Minutes

## Benchers

Date: Friday, October 25, 2019

Present:

Nancy G. Merrill, QC, President	Claire Marshall
Craig Ferris, QC, 1 <sup>st</sup> Vice-President	Geoffrey McDonald
Dean P.J. Lawton, QC, 2 <sup>nd</sup> Vice-President	Steven McKoen, QC
Jasmin Ahmad	Christopher McPherson, QC
Jeff Campbell, QC	Jacqui McQueen
Pinder Cheema, QC	Phil Riddell, QC
Jennifer Chow, QC	Elizabeth Rowbotham
Barbara Cromarty	Mark Rushton
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

Unable to Attend: Carolynn Ryan

Staff Present:

Don Avison	Alison Luke
Lance Cooke	Jeanette McPhee
Natasha Dookie	Claire Marchant
Su Forbes, QC	Doug Munro
Mira Galperin	Michelle Robertson
Andrea Hilland	Annie Rochette
Kerryn Holt	Lesley Small
Jeffrey Hoskins, QC	Alan Treleaven
David Jordan	Adam Whitcombe, QC
Jason Kuzminski	Vinnie Yuen
Michael Lucas	

Guests:	Kenneth Armstrong	Vice-President, Canadian Bar Association, BC Branch
	Dom Bautista	Executive Director, Law Courts Center
	Mark Benton, QC	Executive Director, Legal Services Society
	Gabriel Boothroyd- Roberts	UBC Gold Medal Award Winner
	Nancy Carter	Executive Director, Family Policy, Legislation and Transformation - Ministry of Attorney General
	Dr. Catherine Dauvergne	Dean of Law, University of British Columbia
	Dr. Cristie Ford	Associate Dean, Research and the Legal Profession, Peter A. Allard School of Law, University of British Columbia
	Katrina Harry	Legal Services Society
	Isabel Jackson	Aboriginal Lawyers Forum
	Michael McDonald	Member of the Truth and Reconciliation Advisory Committee
	Shawnee Monchalin	2019 Law Society Indigenous Scholarship Winner
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University
	Josh Paterson	Executive Director, Law Foundation of BC
	Michele Ross	President & Education Chair, BC Paralegal Association
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
	Karen St. Aubin	Membership Director, Trial Lawyers Association of BC
	Sharon Sutherland	Director of Strategic Innovation, Mediate BC
	Geoff White	Board Chair, Law Foundation of BC
	Herman Van Ommen, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada

## **RECOGNITION & ANNOUNCEMENTS**

### **1. Presentation of the 2019 Law Society Indigenous Scholarship**

President Merrill presented the 2019 Law Society Indigenous Scholarship to the recipient, Shawnee Monchalin. Ms. Monchalin is Algonquin and Huron descent from her grandmother, mixed with Metis stemming from her grandfather. Ms. Monchalin began the JD program at Peter A. Allard, School of Law, in 2016, and will complete her JD at the end of 2019 with a specialization in Aboriginal Law. Ms. Monchalin has participated as a clinician in the Indigenous Community Legal Clinic during the JD program and has been a member of the Indigenous Law Student's Association every year during the JD program. Ms. Monchalin also volunteers as an ambassador for Allard Hall in reaching out to incoming or perspective Indigenous students as a point of contact, mentor or friend. Outside the legal community, Ms. Monchalin participates as a dancer in a group called Butterflies in Spirit. In January 2020, Ms. Monchalin will commence her articles at Miller Thomson, where she previously secured a position as the first Indigenous Summer Student Intern in 2017.

### **2. Presentation of 2019 UBC Gold Medal Award Winner**

President Merrill presented the 2019 UBC Gold Medal Award to Gabriel Boothroyd-Roberts. Mr. Boothroyd-Roberts earned four scholarships and awards during law school, where he specialized in Aboriginal Law and worked as a research assistant. He worked at the Indigenous Community Legal Clinic, where he interviewed and represented clients, performed legal research and provided legal advice. At the Law Society's Truth and Reconciliation Symposium in 2017, Mr. Boothroyd-Roberts presented his experiences of working at the Indigenous Community Legal Clinic. In addition to attending school and working, he volunteered for the UBC Law Students' Legal Advice Program and the Downtown Eastside's SRO Collaborative. He has a Bachelor of Arts in Geography with honours from Simon Fraser University. He is a musician, composer and business owner.

### **3. Announcement by Catherine Dauvergne about new UBC Initiative Focused on Law Student Debt Relief**

Ms. Merrill introduced Ms. Catherine Dauvergne, Dean of Peter A. Allard School of Law at UBC, and invited her to speak about the new UBC initiative focused on law student debt relief.

Ms. Dauvergne introduced the new UBC program called the *Back-end Debt Relief Pilot (BEDR)*. The program is based on a survey of UBC alumni over the past 10 years to get a picture of what law school debt looks like for young lawyers. Ms. Dauvergne noted that the BEDR will be the first and only law school program in Western Canada to address post-graduate student debt and to offer a needs-based eligibility assessment.

Ms. Dauvergne provided an outline of the process at-a-glance. Graduates can apply annually any time within ten years after their articling year. Factors taken into account include student loan obligations, some student commercial line of credit amounts, pre-law student debt, where you live, family size and after-tax income. If the applicants qualifies, UBC will cover some or all of the annual law school debt obligations with an interest-free loan (including during the articling year if students apply in their first year of articling). Ten percent of the loan is forgiven for each year a student qualifies. If a professional income increases and a person is no longer eligible, the remaining portion of the loan must be paid back, and if someone is in the program for ten years, all of the loan will be forgiven.

Ms. Dauvergne estimated approximately 27 students would be in the program each year. She confirmed people would be able to access the program while on maternity leave. Ms. Dauvergne indicated they were still developing their communications around the new program, but that they would be attending admission fairs and participating in legal education outreach. Ms. Dauvergne encouraged Benchers to share information about the program with lawyers around the province.

## **GUEST PRESENTATIONS**

### **4. Licensed Paralegal Task Force Update**

The presentation from Ms. Trudi Brown, QC was deferred to the December 6, 2019 Bencher meeting.

### **5. Provincial Court Family Rules Update**

Ms. Merrill introduced Nancy Carter, Executive Director, Ministry of Attorney General, and invited her to speak about updates to the Provincial Court Family Rules.

Ms. Carter began with an introduction about the Provincial Family Court Rules Project, which is a joint project between the Ministry and the Provincial Court. She spoke about the Family Rules Consultation Report, which is a discussion paper proposing wholesale rule reform. Consultation on the discussion paper is open until December 16, 2019 and any feedback received will go to the working group for consideration.

Ms. Carter then provided some statistics, including that 82% of people reporting a family law problem experience a related health or social problem. Adverse Childhood Experiences research also identifies situations that can damage children in the long-term, divorce/separation being one of them. The project aimed to look at how processes can be designed to minimize the impact on children.

The discussion paper proposes a conceptual model which shifts parties into early resolution. There would be a phased implementation for some of the Rules, although many Parts will apply

across the province. New Part 2 and New Part 4 will apply in designated registries (Part 2 currently applies in Victoria).

She discussed learnings and feedback from the Victoria prototype, and indicated there has been an overall positive response to the Model in terms of the benefits to families, early access to mediation and the engagement of both parties. Many parties are resolving their issues without having to proceed to court, and the process for applying for extraordinary parenting matters, protection orders and consent orders is efficient and effective.

Ms. Carter then invited questions from Benchers. Benchers encouraged tracking of the processing times and the utilization of technology in the court process, and discussed the importance of quality legal advice remaining part of the process and being accessible in the beginning stages.

## **CONSENT AGENDA**

### **6. Minutes of September 27, 2019 meeting (regular session)**

The minutes of the meeting held on September 27, 2019 were approved as circulated.

### **7. Minutes of September 27, 2019 meeting (*in camera* session)**

The minutes of the *In Camera* meeting held on September 27, 2019 were approved as circulated.

### **8. Minutes of 2019 Annual General Meeting held on October 2, 2019**

The minutes of the Annual General Meeting held on October 2, 2019 were approved as circulated.

### **9. 2020 Fee Schedules**

The following resolution was passed unanimously and by consent.

*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”.



## 10. Election of the Executive Committee Rules

The following resolution was passed unanimously and by consent.

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

**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 appointed as a Bencher, or eligible to be appointed 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*]

## 11. Rule 4-55 – Investigation of Books, Records and Accounts

The following resolution was passed unanimously and by consent.

***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.

**12. Proposed Rule 5-19.1 – Extension of Time to Initiate a Review**

The following resolution was passed unanimously and by consent.

***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).

## **REPORTS**

### **13. President's Report**

Ms. Merrill provided an update on various meetings she attended since the last Bencher meeting, including the CBA Provincial Council meeting where she gave a short presentation, the UBC Dean's Advisory Council meeting, the Federation conference in St Johns in mid-October where the theme was "wellness", and the Law Society's 2019 Annual General Meeting. She and Mr. Ferris were involved in the QC selection process, she attended the Cowichan bar meeting and along with staff and other Benchers, also attended caucus meetings in Victoria with representatives from the Liberals and the NDP, which were both very successful events. Ms. Merrill also profiled Orange Shirt Day with an unsung heroes column on the Law Society website about Katrina Harry.

Ms. Merrill indicated the first meeting of the Anti-Money Laundering Working Group would be in November, and that the second Women's Leadership Workshop would be held on November 5. The Aboriginal Lawyers' Forum Dinner is being held on November 29, and a table of ten Benchers would be attending.

Ms. Merrill provided a summary of the matters considered at the Executive Committee meeting on October 10, including the approval of a consultation initiated by the Licensed Paralegal Task Force, and discussion of a proposed Equity, Diversity & Inclusion audit, which the Executive Committee referred back to the Equity, Diversity & Inclusion Advisory Committee for further work. The Committee approved recommendations regarding hearing panel appointments.

### **14. CEO's Report**

Mr. Avison reported on the Federation meetings that took place in St Johns in mid-October and spoke about the theme of the conference; mental health and wellness. His view was that that portion of the program was very good. There was a 2019 wellbeing survey that was developed for the conference that canvassed the current state of play with respect to the medical fitness

questions and supports provided by the law societies across the provinces and territories throughout Canada. An electronic copy of the report would be provided to Benchers.

Mr. Avison said one of the key moments during the conference portion were indications from the academic community about rising student debt and the impact that is having on student's mental health. In particular, he noted it was concerning that 30% of students who are seeking assistance at the undergraduate level stop doing so when they enter law school because of concerns about having to answer the medical fitness questions on the admission form.

The portion of the program that involved the Presidents, CEOs and senior staff was more structured and focused on law firm regulation and entity regulation. A number of CEOs in the West have begun a monthly teleconference call to keep each other informed on developments in each jurisdiction.

Regarding government engagement, Mr. Avison referred to the caucus sessions that took place with the opposition caucus and with the government caucus. He had also met previously with Andrew Weaver of the Green Party. In his view, the meetings went very well.

Mr. Avison reminded Benchers about the 150<sup>th</sup> anniversary of the Courthouse Library and provided an update on the Cullen Commission, noting that the public town hall portion had commenced that week. He indicated formal hearings will not commence for some time. Senior staff and counsel for the Law Society have met with some of the Commission lawyers to discuss preliminary items. Mr. Avison was hopeful an understanding could be reached about what is required of the Law Society in so far as document retention and disclosure.

Finally, Mr. Avison spoke about the tabling of Bill 41, a bill with respect to the rights of Indigenous peoples. The Minister categorized the tabling of the bill as “a historic event”. The most significant aspect of the bill is Section 3 of the Act, where government has undertaken an obligation to “take all measures necessary to ensure that the laws of BC are consistent with the declaration” and the Minister has an obligation to provide an annual report with respect to those obligations. BC is the first jurisdiction to recognize the declaration in a formal way with legal responsibilities that flow from it. Mr. Avison said it was a profoundly significant event and Benchers would hear more about it in the coming months.

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

Mr. Van Ommen began his final report to the Benchers as the Law Society's member of the Federation Council with an overview of the four days of Federation meetings held in Newfoundland in mid-October.

The first day was dedicated to the strategic plan, where there was discussion of what the Federation ought to be doing and should stop doing. The process was not complete and

discussions would continue at the December Federation meeting. Consideration of the assessment of the NCA program would continue, as well as the focus on anti-money laundering and reconciliation. Mr. Van Ommen commented that the Federation needs to make sure what it is doing is useful to law societies across the country and said there seems to be a high degree of unanimity on the appropriate role of the Federation.

Day two of the meetings was spent on the conference, which focused on wellbeing and the role the regulator ought to play. Mr. Greenberg attended and spoke on a panel about mental health. Mr. Van Ommen commented that the issue of lawyers experiencing mental health problems is not new, but it is the way the law societies are responding that is changing. These issues are now talked about more openly and all jurisdictions are in agreement that it is important work to be doing.

On the final day of the meetings the regular council meeting took place, which dealt mainly with budgets. Mr. Van Ommen delivered a report as the Chair of the NCA Committee. He highlighted some statistics that he thought Benchers should be aware of; including that in 2018-2019 there were 2400 applications for accreditation, which is up 28% from the previous year and 300% in ten years. The number of certificates issued were the equivalent of three law schools worth of students. People entering the profession through the NCA process remains a significant issue in the legal landscape in Canada.

Mr. Van Ommen reported that the Council approved the model rule regarding lawyer technological competency. Both BC and Ontario abstained. He commented that it may be worth considering whether this is the best approach in the future, as it could have been an option not to abstain and request that further work be done to come up with an approach that would have been better supported.

## **DISCUSSION**

### **16. Law Firm Regulation Pilot Project and Recommendations Report**

Mr. McKoen spoke about the final report of the Law Firm Regulation Task Force and began with an overview of the pilot project that ran from July 2018 until December 2018, which consisted of asking a sample of 10% of law firms in BC to complete a self-assessment form focused on firms' practice management systems. The pilot project was fairly well received, although he noted that only 75% of firms responded after follow up. In 2019, the Task Force looked at the results of the pilot project, what we could learn from the project, and came up with the recommendations contained in the final report that was now being presented to Benchers.

Mr. McKoen referred to studies in Australia, which previously found that merely requiring people at law firms to go through the self-assessment process was a worthwhile exercise, and

said that 2/3 of participating firms in the BC pilot project agreed that the content of the self-assessment was relevant to their practice and that the self-assessment was a useful project to undertake. 68% of firms took less than two hours to complete the self-assessment and 90% of firms took less than five hours. Approximately 85% of participating firms reported they did not find the self-assessment process onerous to complete.

The Task Force put forward the following seven recommendations for Bencher consideration and approval:

**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.

Mr. McKoen put forward a motion that the Benchers approve all seven recommendations from the Task Force that were contained in the report, which was seconded. The motion was carried unanimously.

### **17. Amendments to Rule 7.1-3 and Commentary of the BC Code, including the removal of potentially stigmatizing language**

Ms. Cheema spoke to the item and reminded Benchers that it was on the agenda for discussion purposes only. She indicated she hoped to communicate with the government and apprise them of the changes to the rule and commentary before the issue comes before Benchers for decision at the December 6 meeting.

Ms. Cheema reminded Benchers the issue was first considered in November 2018, where Benchers opted to send the matter back to the Ethics Committee to consider changes to Rule 7.1-3. The Committee considered many iterations and the resolution for Bencher consideration is at page 157 of the materials (also reproduced below):

*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.

The changes proposed are intended to remove stigmatizing language in (d) “the mental instability of a lawyer of such a nature that the lawyer’s clients are likely to be materially prejudiced”, a change that was originally proposed by the Mental Health Task Force. She said most of the discussion centred around Commentary 4, and the idea that it is not sufficient to have a lawyer counsellor encumbered in a particular way. Ms. Cheema said it was in that context that the Committee agreed to the proposed wording in the materials under Commentary 4.

Benchers had a robust discussion about balancing lawyer wellness and removing stigma with also ensuring the public are protected and that an indication a future crime might be committed is dealt with appropriately. Overall, the Benchers’ view was that the counselling interaction only occurs because a person has sought out counselling and is trying to get help, and that maintaining a direct line of communication between the lawyer counsellor and the Law Society may create barriers to people seeking help. It was recognized that there is still the ability for lawyer counsellors to disclose information in certain circumstances, if appropriate.

Ms. Cheema said the aim of the Committee was to create a framework, not to be prescriptive about how each individual relationship with a lawyer counsellor would work.

### **18. Indigenous intercultural competence education for BC Lawyers**

Mr. Lawton, Co-chair of the Truth and Reconciliation Advisory Committee, began by introducing and speaking to the Joint Recommendation Report of the Truth and Reconciliation Advisory Committee and the Lawyer Education Advisory Committee. He gave a detailed account of the importance of this work and the path to reconciliation, reminding Benchers it can be a long and arduous process but a worthwhile one, in which education plays an important role.

Mr. Lawton said the two Committees worked together with respect to developing ideas, plans, approaches and recommendations. The proposal is to create an online course with modules, and require every lawyer to take the course over a two-year period. By requiring all lawyers to take the course, everyone will have a shared foundation and understanding. In his view, competent lawyers need to have a sound educational base with respect to all matters contained in the calls to action.

In terms of the course content, Mr. Lawton referred to the list of topics it is contemplated the course might embody. The Law Society would produce the course and ensure it is made available online for free to all BC lawyers. In his view, the course should be embraced by lawyers in BC.

Regarding the matter of whether the course should be optional or mandatory, Mr. Lawton reflected on the wording of Call to Action 27 and the use of the word “ensure”, pointing out that this did not favour an “optional” interpretation.

The two recommendations presented to the Benchers for discussion and decision are below:

**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.

Mr. Welsh, member of the Lawyer Education Advisory Committee, then spoke about the joint report presented on behalf of the two Committees. Mr. Welsh said, in the view of the majority of the Committee, optional education does not answer what the Law Society has been asked to do –



to ensure that all lawyers have a baseline of understanding. Optional education does not meet the mandate to ensure a baseline of intercultural competence for all members. Mr. Welsh also commented that he did not think that incentives were the answer either. In his view, it was not an onerous requirement that that lawyers would be required to take six hours of training over a two-year period. He said it is important to have this training be a stand-alone requirement to be a competent lawyer in BC at this time in our country's history.

Mr. McDonald, Co-chair of the Truth and Reconciliation Advisory Committee, spoke in favour of the recommendations contained in the joint report. Mr. McDonald provided an overview of the Law Society's steps towards reconciliation over the past few years. He referred to the theme "nothing about us, without us" and the internal training amongst staff and the Benchers that has taken place in recent years. In his view, it was in the public interest to make the training mandatory, as the training would involve educating people about laws and history, not people's views or opinions. The training would be about the founding peoples of Canada, and he emphasized the importance of building a knowledge base with that mindset and that approach being essential to addressing reconciliation and ensuring the public interest is met. In his view, helping lawyers understand the need for the training is a communications issue and not a question of whether or not the training should be mandatory.

Ms. Harry, a member of the Truth and Reconciliation Advisory Committee, spoke about her personal experience as an Indigenous lawyer in BC and the challenges she has faced because of a lack of awareness. In her view, it is about time that Indigenous peoples' values are recognized and that mandatory intercultural competence training is implemented. She pointed to the many existing mandatory requirements in the Law Society Rules and reiterated the view that "to ensure" does not mean optional or incentivize.

The Benchers discussed the merits and potential issues associated with approving a mandatory intercultural competence course. Some Benchers commented that a customized course would be more useful for everyone, that better communications about the training requirement and course content will assist with implementation, and that more information about the course content would be useful to assist with making a decision on the recommendations.

Other Benchers strongly supported the position outlined in the joint report and commented that some of the issues raised could be addressed in the course content and design, the course would provide baseline knowledge and information about the history of Indigenous peoples in Canada and residential schools that everyone should know, and delaying implementation of such a program is not in the best interests of the public. In particular, providing the course online, for no cost and only requiring six hours of training over a two-year period was seen as very reasonable, and at this historic time in Canada's history, approving a mandatory intercultural competence course would recognize the importance of these issues.

Mr. Wilson reviewed his minority report and suggested that the only real issue in his view is the question of whether intercultural competence training should be mandatory or optional. He referred to Call to Action 27, which says “to ensure lawyers receive appropriate training” and said he did not think this language required mandatory training. Mr. Wilson observed that many students already receive training in law school on Indigenous intercultural competence and that lawyers whose practise involves First Nations should take the course. However, he maintained there may be some lawyers for whom the course is not as relevant. His view was that lawyers could be incentivized to take the training voluntarily and suggested law firms could require it as a condition of employment. In his opinion, there would be greater buy-in from lawyers if the course was voluntary.

## **UPDATES**

### **19. Financial Report – September YTD 2019**

Ms. McPhee provided a summary of the quarterly financial report to the end of September 2019, stating that the General Fund operations resulted in a positive variance to budget due to additional practice fees, PLTC revenue and the receipt of D&O insurance recoveries for legal fees. Revenue to date was \$22.0 million, which was \$1.6 million (8%) over budget, and operating expenses to date were \$18.3 million, \$1.9 million (9%) below budget.

Ms. McPhee then provided a forecast, stating that she expects the Law Society will be ahead of budget in key revenue areas, and 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 2019 budget was based on a deficit of \$1.2 million, the 2019 forecast is a surplus of \$1.6 million.

At September 30, 2019, TAF revenue was \$2.7 million, \$300,000 (10%) below the budget, most likely due to a decrease in real estate unit sales. Trust assurance program costs are expected to be close to budget by year end.

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.

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%, which is significantly higher than the budgeted returns of 5% for the year.

## **20.2018 National Discipline Standards Implementation Report**

Ms. Dookie provided an update on the Law Society's compliance with the National Discipline Standards for the year 2018. She noted that none of the Canadian law societies met all of the standards in 2018, but that overall, law societies are making progress.

Compared to other law societies, Ms. Dookie said the Law Society of BC's performance has exceeded the national averages for the last three years. There were some issues in 2018 with complying with Standard 7 (90% of hearings to be commenced within 12 months of the citation being authorized), due to staffing issues and an increase in the number of citations over the past couple of years. However, Ms. Dookie indicated she thinks the Law Society will perform better on this standard in 2019. She said a lot of work is being done to clear the backlog on files and to keep them moving. Early in 2020, once the statistics for 2019 are available, Ms. Dookie will provide another update.

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

Mr. Ferris provided an update on outstanding hearing and review decisions. He encouraged Benchers to keep up efforts to get decisions out on time and follow up with their fellow panel members to ensure reports are completed in timely fashion.

## **FOR INFORMATION**

### **22. Three Month Bencher Calendar – November to January 2020**

There was no discussion on this item.

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

KH  
2019-10-25



# Memo

To: Benchers  
From: Jeffrey G. Hoskins, QC for Act and Rules Committee  
Date: November 6, 2019  
Subject: **Rules 3-99 and 3-107 — Client identification and verification**

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1. At the July meeting the Benchers approved the rule amendments recommended by the Act and Rules Committee to combat money laundering. Some of those changes, dealing with client identification and verification, were adopted effective January 1, 2020 to allow for preparation and transition both for the Law Society and for law firms.
2. One objective of those changes was to implement the substantive recommendations of the Federation of Canadian Law Societies, which were contained in changes to the Federation's model rules, in a way that would be compatible with the existing Law Society Rules in British Columbia.
3. The amendments adopted could be improved by adopting three more changes, to be effective along with the other changes on January 1, 2020. These would make the rules more consistent with the model rules. I attach a redlined version of the proposed minor changes, which are recommended by the Act and Rules Committee for adoption.

## Law firm fulfilling lawyer's responsibility

4. The current Rule 3-99(3) was not changed by the amendments adopted in July. That provision is this:
  - (3) In this division, the responsibilities of a lawyer may be fulfilled by the lawyer's firm, including members or employees of the firm conducting business in another Canadian jurisdiction.

5. This restricts the members of the lawyer's firm who can assist in complying with the client identification and verification rules to those located in Canada. By contrast, the recently amended model rules say this:

(2) A lawyer's responsibilities under this Rule may be fulfilled by any member, associate or employee of the lawyer's firm, wherever located.

6. The Committee recommends further amending the BC rules so that the client identification and verification responsibilities can be carried on by the firm outside Canada where appropriate.

## Retention of documents

7. The Committee recommends two small changes to Rule 3-107 [Record keeping and retention] to make it more effective and bring it into line with the model rules.
8. Rule 3-107, as amended effective 2020, requires lawyers to retain the information and documents obtained in the client identification and verification process for a proscribed period. This is done by referring to specific rules that impose requirements to obtain certain information and documents.
9. However, the rule would not require lawyers and law firms to retain information obtained about the source of the money involved in a transaction. The proposed rule refers to Rule 3-102(2) [Requirement to verify client identity]. That excludes subrule (1), which is the requirement to obtain information on source of money.
10. The Act and Rules Committee recommends deleting "(2)" from the proposed amended rule, which would make it applicable to all of the information and documents required under the rule, including source of money documents. The rest of 3-102 is specific requirements when verifying client identity.
11. The list of provisions referred to in Rule 3-107 also does not include the new Rule 3-110 [Monitoring], which requires lawyers to monitor the accuracy of information obtained while acting for clients. Presumably, monitoring would involve obtaining information and documents that ought to be retained for audit and other purposes. The omission appears to be an oversight, which the Committee recommends be remedied by adding that provision to the list.

# LAW SOCIETY RULES

## PART 3 – PROTECTION OF THE PUBLIC

### Division 11 – Client Identification and Verification

#### Application

- 3-99** (3) In this division, the responsibilities of a lawyer may be fulfilled by the lawyer's firm, including members or employees of the firm ~~conducting business in another Canadian jurisdiction~~ wherever located.

#### Record keeping and retention

- 3-107** (3) A lawyer must retain a record of the information, with applicable dates, and any documents obtained or produced for the purposes of
- (a) Rule 3-100 [*Requirement to identify client*],
  - (b) Rule 3-103 [*Requirement to identify directors, shareholders and owners*],
  - (c) Rule 3-102-~~(2)~~ [*Requirement to verify client identity*], ~~or~~
  - (d) Rule 3-104 [*Use of an agent for client verification*], ~~or~~ or
  - (e) Rule 3-110 [*Monitoring*].

# LAW SOCIETY RULES

## PART 3 – PROTECTION OF THE PUBLIC

### Division 11 – Client Identification and Verification

#### Application

- 3-99** (3) In this division, the responsibilities of a lawyer may be fulfilled by the lawyer's firm, including members or employees of the firm wherever located.

#### Record keeping and retention

- 3-107** (3) A lawyer must retain a record of the information, with applicable dates, and any documents obtained or produced for the purposes of
- (a) Rule 3-100 [*Requirement to identify client*],
  - (b) Rule 3-103 [*Requirement to identify directors, shareholders and owners*],
  - (c) Rule 3-102 [*Requirement to verify client identity*],
  - (d) Rule 3-104 [*Use of an agent for client verification*], or
  - (e) Rule 3-110 [*Monitoring*].

**CLIENT IDENTIFICATION AND VERIFICATION****SUGGESTED RESOLUTION:**

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

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

- (3) In this division, the responsibilities of a lawyer may be fulfilled by the lawyer's firm, including members or employees of the firm wherever located..

**2. In Rule 3-107, by rescinding subrule (3) and substituting the following:**

- (3) A lawyer must retain a record of the information, with applicable dates, and any documents obtained or produced for the purposes of
- (a) Rule 3-100 [*Requirement to identify client*],
  - (b) Rule 3-103 [*Requirement to identify directors, shareholders and owners*],
  - (c) Rule 3-102 [*Requirement to verify client identity*],
  - (d) Rule 3-104 [*Use of an agent for client verification*], or
  - (e) Rule 3-110 [*Monitoring*]..

**REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT**





# Memo

To: Benchers  
From: Jeffrey G. Hoskins, QC for Act and Rules Committee  
Date: November 6, 2019  
Subject: **Rule 5-24.1—Preparation and delivery of record**

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1. In 2016, the Benchers enacted Rule 5-24.1, which makes the party initiating a review of a hearing panel decision responsible for preparing the “record” on which the review will be conducted. That requires the preparation of nine copies of the record, which are to be delivered eight copies to the President, i.e., the hearing registry, and one to the other party.
2. The number was arrived at on the basis that a review board, at the time, comprised seven adjudicators. One more copy was required for the Tribunal records.
3. However, since that time, the Benchers have adopted a policy reducing the number sitting on a review board to five. Accordingly, the Act and Rules Committee recommends that the rule be amended to reduce the number of copies of the record to be delivered to the hearing registry to six.
4. This is the proposed change:

**5-24.1** (1) Within 60 days of delivering a notice of review, the party initiating the review must prepare the record for the review in accordance with the relevant rule and deliver

  - (a) ~~8~~6 copies to the President, and
  - (b) 1 copy to the other party.
5. The Act and Rules Committee recommends adoption of the following:

**SUGGESTED RESOLUTION:**

*BE IT RESOLVED to amend the Law Society Rules in Rule 5-24.1 (1) by rescinding paragraph (a) and substituting the following:*

- (a) 6 copies to the President, and.

**REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT**

JGH



# Memo

To: Benchers  
From: Jeffrey G. Hoskins, QC for Act and Rules Committee  
Date: November 6, 2019  
Subject: **Rule 3-3 et al.—Disclosure to law enforcement**

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1. At the September meeting the Benchers considered a memorandum from the Executive Committee recommending changes in the rules governing disclosure to law enforcement authorities of possible evidence of criminal activity obtained in Law Society investigations and other activity.
2. These are the recommendations of the Executive Committee, which were approved by the Benchers in principle:
  - 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;
3. I attach a draft of amendments to the relevant rules recommended by the Act and Rules Committee to implement the policy decision of the Benchers. There is also a suggested resolution to give effect to the amendments.

## Drafting note

4. In the current rules, various committees are charged with consenting to the disclosure of information. Where the committee is not currently the Discipline Committee, that committee is substituted. The language of the various provisions is made simpler and more consistent.

Attachments: Executive Committee report  
drafts  
resolution

The Law Society  
of British Columbia



# Reporting to Law Enforcement: Proposal to Amend Rules

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**Executive Committee**

September 5, 2019

Prepared for: The Benchers

Purpose: Decision

## I. Issue

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

## II. The Current Process

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

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

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

### III. Past Consideration by the Benchers

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

### IV. Key comparisons: Rules and Practices

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

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

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

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

## V. Options

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

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

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

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

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

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

## VI. Discussion

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

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

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



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

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

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

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

*Who Exercises the Discretion?*

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

*Which Committee?*

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

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

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

#### Hearing Decisions

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

#### Guidelines

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

## **VII. Recommendation**

39. After consideration, the Executive Committee recommends that:

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

agencies that have been gathered in the course of a complaint investigation, a practice standards investigation an application for admission, enrolment or 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.

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

MDL/al

# LAW SOCIETY RULES

## PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

### Division 2 – Admission and Reinstatement

#### Application for enrolment, admission or reinstatement

#### Disclosure of information

- 2-53 (4) With the consent of the ~~Credentials-Discipline~~ Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that ~~the Committee reasonably believes~~ may ~~disclose~~be evidence of an offence.

## PART 3 – PROTECTION OF THE PUBLIC

### Division 1 – Complaints

#### Confidentiality of complaints

- 3-3 (1) No one is permitted to disclose any information or records that form part of the investigation of a complaint or the review of a complaint by the Complainants' Review Committee except for the purpose of complying with the objectives of the Act or with these rules.
- (5) Despite subrule (1), with the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that ~~the Committee reasonably believes~~ may be evidence of an offence.

### Division 2 – Practice Standards

#### Confidentiality of Practice Standards Committee deliberations

- 3-23 (1) Subject to subrules (2) to (6) and Rule 3-24 [*Report to complainant*], the following must be treated as confidential and must not be disclosed except for the purpose of complying with the objects of the Act:
- (a) all of the information and documents that form part of the Practice Standards Committee's consideration of a complaint;
  - (b) any action taken or decision made by the Committee;

## LAW SOCIETY RULES

- (c) any report prepared for or on behalf of the Committee.
- (3) Despite subrule (1), ~~With~~ with the consent of the ~~Practice Standards~~ Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that ~~the Committee reasonably believes~~ may be evidence of an offence.

### Division 5 – Insurance

#### Confidentiality of insurance claims

- 3-46** (2) No one is permitted to disclose any information or records associated with a claim.
- (5) In the case of a claim under Part B of the policy of professional liability insurance, despite subrule (2), the Executive Director may do any of the following:
- (c) with the consent of the Discipline Committee, deliver to a law enforcement agency any information or documents obtained under this division that ~~the Committee reasonably believes~~ may be evidence of an offence.

## PART 4 – DISCIPLINE

#### Confidentiality of Discipline Committee deliberations

- 4-8** (1) No one is permitted to disclose any of the following information except for the purpose of complying with the objects of the Act or with these rules:
- (a) information and documents that form part of the consideration of a complaint under Rule 4-4 [*Action on complaints*] or 4-5 [*Consideration of complaints by chair*];
- (b) the result of a consideration under Rule 4-4.
- (5) Despite subrule (1), with the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that ~~the Committee reasonably believes~~ may be evidence of an offence.

# LAW SOCIETY RULES

## PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

### Division 2 – Admission and Reinstatement

#### Application for enrolment, admission or reinstatement

#### Disclosure of information

- 2-53 (4) With the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.

## PART 3 – PROTECTION OF THE PUBLIC

### Division 1 – Complaints

#### Confidentiality of complaints

- 3-3 (1) No one is permitted to disclose any information or records that form part of the investigation of a complaint or the review of a complaint by the Complainants' Review Committee except for the purpose of complying with the objectives of the Act or with these rules.
- (5) Despite subrule (1), with the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.

### Division 2 – Practice Standards

#### Confidentiality of Practice Standards Committee deliberations

- 3-23 (1) Subject to subrules (2) to (6) and Rule 3-24 [*Report to complainant*], the following must be treated as confidential and must not be disclosed except for the purpose of complying with the objects of the Act:
- (a) all of the information and documents that form part of the Practice Standards Committee's consideration of a complaint;
  - (b) any action taken or decision made by the Committee;
  - (c) any report prepared for or on behalf of the Committee.

## LAW SOCIETY RULES

- (3) Despite subrule (1), with the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.

### Division 5 – Insurance

#### Confidentiality of insurance claims

- 3-46** (2) No one is permitted to disclose any information or records associated with a claim.
- (5) In the case of a claim under Part B of the policy of professional liability insurance, despite subrule (2), the Executive Director may do any of the following:
- (c) with the consent of the Discipline Committee, deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.

## PART 4 – DISCIPLINE

#### Confidentiality of Discipline Committee deliberations

- 4-8** (1) No one is permitted to disclose any of the following information except for the purpose of complying with the objects of the Act or with these rules:
- (a) information and documents that form part of the consideration of a complaint under Rule 4-4 [*Action on complaints*] or 4-5 [*Consideration of complaints by chair*];
- (b) the result of a consideration under Rule 4-4.
- (5) Despite subrule (1), with the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.



## DISCLOSURE TO LAW ENFORCEMENT

### SUGGESTED RESOLUTION:

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

1. *In Rule 2-53, by rescinding subrule (4) and substituting the following:*
  - (4) With the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.
  
2. *In Rule 3-3, by rescinding subrule (5) and substituting the following:*
  - (5) Despite subrule (1), with the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.
  
3. *In Rule 3-23, by rescinding subrule (3) and substituting the following:*
  - (3) Despite subrule (1), with the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.
  
4. *In Rule 3-46, by rescinding subrule (5)(c) and substituting the following:*
  - (5) In the case of a claim under Part B of the policy of professional liability insurance, despite subrule (2), the Executive Director may do any of the following:
    - (c) with the consent of the Discipline Committee, deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.
  
5. *In Rule 4-8, by rescinding subrule (5) and substituting the following:*
  - (5) Despite subrule (1), with the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.

**REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT**



# Memo

To: Benchers  
From: Jeffrey G. Hoskins, QC for Act and Rules Committee  
Date: November 7, 2019  
Subject: **Rule amendments to implement *Legal Profession Act* amendments concerning insurance and indemnity provisions**

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1. In 2018 the Legislature passed the *Attorney General Statutes Amendment Act, 2018*, SBC 2018, c. 49, which includes, on the request of the Law Society, numerous amendments to the *Legal Profession Act*.
2. Most of the amendments were made with respect to the licensing of paralegals, but several concerned changes to the Law Society insurance program to address various regulatory issues. In the course of those changes, the nomenclature associated with the program used in the statute was changed from references to “insurance” to references to “indemnity” and “indemnification,” requiring corresponding changes in the Law Society Rules.
3. The amendments have been proclaimed in effect as of January 1, 2020.
4. I attach for your reference the relevant section of the *Amendment Act* and redlined and clean versions of the affected sections of the *Legal Profession Act*.
5. I also attach redlined and clean versions of proposed amendments to the Law Society Rules, developed in consultation with the Lawyers Insurance Fund (soon to be the Lawyers Indemnity Fund), which change the terminology to conform to the amended legislation but make no substantive changes to the rules. The Act and Rules Committee recommends adoption of the amendments effective January 1, 2020.

Attachments: Amendment Act extracts  
*Legal Profession Act* sections  
drafts

JGH

**ATTORNEY GENERAL STATUTES  
AMENDMENT ACT, 2018**

**SBC 2018, c. 49**

**Part 4 – *Legal Profession Act* Amendments**

**39 Section 23 is amended**

**(a) in subsection (1) (c) by striking out "insurance fee" wherever it appears and substituting "indemnity fee", and**

**(b) in subsection (6) by striking out "insurance" and substituting "indemnification".**

**40 Section 23 (6.1) (b), as enacted by section 38 (e) of this Act, is amended by striking out "insurance" and substituting "indemnification".**

**45 Section 30 is amended**

**(a) in subsection (1) by striking out "'trust protection insurance' means insurance" and substituting "'trust protection indemnification' means indemnification",**

**(b) in subsections (1.1), (2.1), (4) (b) and (c), (5), (6), (8), (9) (b) and (11) by striking out "trust protection insurance" wherever it appears and substituting "trust protection indemnification",**

**(c) in subsections (2), (8) (a) (i) and (9) (b) by striking out "professional liability insurance" and substituting "professional liability indemnification",**

**(d) in subsections (2.1) (c), (6) and (11) by striking out "insurance fund" and substituting "indemnity fund",**

**(e) in subsections (3) (a), (4) (a) and (b), (7), (8) (b) and (9) (a) by striking out "insurance fee" and substituting "indemnity fee", and**

**(f) in subsection (4) (b) by striking out "insurance purposes" and substituting "indemnification purposes".**

**46 The following sections are added:**

**Application of other Acts to society indemnification program**

**30.1** (1) In this section:

**"society indemnification program"** means

- (a) a professional liability indemnification program established, administered, maintained and operated by the benchers under section 30 (2), or
- (b) a trust protection indemnification program established, administered, maintained and operated by the benchers under section 30 (2.1) (a);

**"subsidiary"** means

- (a) a corporation that is a company, as defined in the *Business Corporations Act*, of which the society holds all of the issued shares, or
- (b) a corporation that is a society, as defined in the *Societies Act*, of which the society is the only member, as defined in that Act.

(2) Despite the *Financial Institutions Act* and the *Insurance Act*, in relation to the establishment, administration, maintenance and operations of a society indemnification program,

- (a) the society or a subsidiary is not an insurer as defined in the *Financial Institutions Act* and the *Insurance Act*,
- (b) the society or a subsidiary is not carrying on insurance business in British Columbia,
- (c) a contract entered into respecting an undertaking to indemnify given under a society indemnification program is not a contract as defined in the *Insurance Act*,

(d) the society or a subsidiary is not required to be licensed under Division 2 of Part 6 of the *Financial Institutions Act* as an insurance adjuster or insurance agent, and

(e) an employee of the society or a subsidiary is not required to be licensed under Division 2 of Part 6 of the *Financial Institutions Act* as an insurance adjuster, employed insurance adjuster, insurance agent or insurance salesperson.

(3) Subsection (2) does not apply in respect of a subsidiary that is a captive insurance company registered under the *Insurance (Captive Company) Act*.

(4) Divisions 4 and 8 of Part 9 of the *Business Corporations Act* do not apply to a subsidiary in respect of a society insurance program.

### **Third person right of action against indemnitor**

**30.2** (1) If a judgment has been granted against a lawyer in respect of a liability against which the lawyer is indemnified under a society indemnification program, as defined in section 30.1, and the judgment has not been satisfied, the judgment creditor may recover by action against the indemnitor the lesser of

(a) the unpaid amount of the judgment, and

(b) the amount that the indemnitor would have been liable under the policy to pay to the lawyer had the lawyer satisfied the judgment.

(2) The claim of a judgment creditor against the indemnitor under subsection (1) is subject to the same equities as would apply in favour of the indemnitor had the judgment been satisfied by the lawyer.

## Consequential Amendments

### *Insurance Premium Tax Act*

***82 Section 5.2 of the Insurance Premium Tax Act, R.S.B.C. 1996, c. 232, is amended by striking out "insurance fee" and substituting "indemnity fee".***

# LEGAL PROFESSION ACT

## [SBC 1998] CHAPTER 9

amendments proclaimed in effect January 1, 2020

### Part 2 — Membership and Authority to Practise Law

#### Division 3 — Fees and Assessments

##### Annual fees and practising certificate

**23** (1) A practising lawyer must pay to the society an annual fee consisting of

- (c) an ~~insurance~~-indemnity fee set under section 30 (3) (a), unless exempted from payment of the indemnity~~insurance~~ fee under section 30 (4) (b). [39(a)]

(6) A lawyer who is suspended or who, for any other reason, ceases to be a member in good standing of the society must immediately surrender to the executive director his or her practising certificate and any proof of professional liability ~~insurance~~-indemnification issued by the society. [39(b)]

##### **InsuranceIndemnification** [This heading to be confirmed]

**30** (1) In this section, "**trust protection ~~insurance~~indemnification**" means indemnification~~insurance~~ for lawyers to compensate persons who suffer pecuniary loss as a result of dishonest appropriation of money or other property entrusted to and received by a lawyer in his or her capacity as a barrister and solicitor. [45(a)]

(1.1) The benchers must make rules requiring lawyers to maintain professional liability and trust protection ~~insurance~~indemnification. [45(b), 77]

(2) The benchers may establish, administer, maintain and operate a professional liability indemnification~~insurance~~-program and may use for that purpose fees set under this section. [45(c)]

(2.1) The benchers

- (a) must establish, administer, maintain and operate a trust protection ~~insurance~~-indemnification program and may use for that purpose fees set under this section, [45(b)]

- (b) may establish conditions and qualifications for a claim against a lawyer under the trust protection ~~insurance-indemnification~~ program, including time limitations for making a claim, and [45(b)]
- (c) may place limitations on the amounts that may be paid out of the ~~indemnity insurance~~-fund established under subsection (6) in respect of a claim against a lawyer under the trust protection ~~indemnification insurance~~ program. [45(b), (d)]
- (3) The benchers may, by resolution, set
- (a) the ~~indemnity insurance~~-fee, and [45(e)]
- (4) The benchers may make rules to do any of the following:
- (a) permit lawyers to pay the ~~indemnity insurance~~-fee by instalments on or before the date by which each instalment of that fee is due; [45(e)]
- (b) establish classes of membership for ~~insurance-indemnification~~ purposes and exempt a class of lawyers from the requirement to maintain professional liability or trust protection ~~indemnification insurance~~ or from payment of all or part of the ~~indemnity insurance~~-fee; [45(b), (e), (f)]
- (c) designate classes of transactions for which a lawyer must pay a fee to fund the professional liability or trust protection ~~indemnification insurance~~ program. [45(b)]
- (5) The benchers may use fees set under this section to act as the agent for the members in obtaining professional liability or trust protection ~~indemnification insurance~~. [45(b)]
- (6) The benchers must establish an ~~indemnity insurance~~-fund, comprising fees set under this section and other income of the professional liability and trust protection ~~indemnification insurance~~-programs, and the fund [45(b), (d)]
- (7) Subject to rules made under section 23 (7), a lawyer must not practise law unless the lawyer has paid the ~~indemnity insurance~~-fee when it is due, or is exempted from payment of the fee. [45(e)]



(8) A lawyer must immediately surrender to the executive director his or her practising certificate and any proof of professional liability or trust protection ~~indemnification insurance~~ issued by the society, if [45(b)]

(a) the society has, on behalf of the lawyer,

(i) paid a deductible amount under the professional liability ~~indemnification insurance~~ program in respect of a claim or potential claim under that program, or [45(c)]

(ii) made an indemnity payment under the trust protection ~~indemnification insurance~~ program in respect of a claim under that program, and [45(b)]

(b) the lawyer has not reimbursed the society at the date that the ~~indemnity insurance~~ fee or an instalment of that fee is due. [45(e)]

(9) The benchers may waive or extend the time

(a) to pay all or part of the ~~indemnity insurance~~ fee, or [45(e)]

(b) to repay all or part of a deductible amount paid under the professional liability ~~indemnification insurance~~ program or an indemnity payment made under the trust protection ~~indemnification insurance~~ program on behalf of a lawyer. [45(b), (c)]

(11) A payment made from the ~~indemnity insurance~~ fund established under subsection (6) in respect of a claim against a lawyer under the trust protection ~~indemnification insurance~~ program [45(b), (d)]

### **Application of other Acts to society indemnification program**

**30.1 (1) In this section:**

**"society indemnification program" means**

(a) a professional liability indemnification program established, administered, maintained and operated by the benchers under section 30 (2), or

(b) a trust protection indemnification program established, administered, maintained and operated by the benchers under section 30 (2.1) (a);

**"subsidiary" means**

(a) a corporation that is a company, as defined in the *Business Corporations Act*, of which the society holds all of the issued shares, or

(b) a corporation that is a society, as defined in the *Societies Act*, of which the society is the only member, as defined in that Act.

(2) Despite the *Financial Institutions Act* and the *Insurance Act*, in relation to the establishment, administration, maintenance and operations of a society indemnification program,

(a) the society or a subsidiary is not an insurer as defined in the *Financial Institutions Act* and the *Insurance Act*,

(b) the society or a subsidiary is not carrying on insurance business in British Columbia,

(c) a contract entered into respecting an undertaking to indemnify given under a society indemnification program is not a contract as defined in the *Insurance Act*,

(d) the society or a subsidiary is not required to be licensed under Division 2 of Part 6 of the *Financial Institutions Act* as an insurance adjuster or insurance agent, and

(e) an employee of the society or a subsidiary is not required to be licensed under Division 2 of Part 6 of the *Financial Institutions Act* as an insurance adjuster, employed insurance adjuster, insurance agent or insurance salesperson.

(3) Subsection (2) does not apply in respect of a subsidiary that is a captive insurance company registered under the *Insurance (Captive Company) Act*.

(4) Divisions 4 and 8 of Part 9 of the *Business Corporations Act* do not apply to a subsidiary in respect of a society insurance program. [46]

### **Third person right of action against indemnitor**

**30.2** (1) If a judgment has been granted against a lawyer in respect of a liability against which the lawyer is indemnified under a society indemnification program, as defined in section 30.1, and the judgment has not been satisfied, the judgment creditor may recover by action against the indemnitor the lesser of

(a) the unpaid amount of the judgment, and

(b) the amount that the indemnitor would have been liable under the policy to pay to the lawyer had the lawyer satisfied the judgment.

(2) The claim of a judgment creditor against the indemnitor under subsection (1) is subject to the same equities as would apply in favour of the indemnitor had the judgment been satisfied by the lawyer. [46]

# LEGAL PROFESSION ACT

## [SBC 1998] CHAPTER 9

amendments proclaimed in effect January 1, 2020

### Part 2 — Membership and Authority to Practise Law

#### Division 3 — Fees and Assessments

##### Annual fees and practising certificate

**23** (1) A practising lawyer must pay to the society an annual fee consisting of

(c) an indemnity fee set under section 30 (3) (a), unless exempted from payment of the indemnity fee under section 30 (4) (b). [39(a)]

(6) A lawyer who is suspended or who, for any other reason, ceases to be a member in good standing of the society must immediately surrender to the executive director his or her practising certificate and any proof of professional liability indemnification issued by the society. [39(b)]

##### Indemnification [This heading to be confirmed]

**30** (1) In this section, "**trust protection indemnification**" means indemnification for lawyers to compensate persons who suffer pecuniary loss as a result of dishonest appropriation of money or other property entrusted to and received by a lawyer in his or her capacity as a barrister and solicitor. [45(a)]

(1.1) The benchers must make rules requiring lawyers to maintain professional liability and trust protection indemnification. [45(b), 77]

(2) The benchers may establish, administer, maintain and operate a professional liability indemnification program and may use for that purpose fees set under this section. [45(c)]

(2.1) The benchers

(a) must establish, administer, maintain and operate a trust protection indemnification program and may use for that purpose fees set under this section, [45(b)]

- (b) may establish conditions and qualifications for a claim against a lawyer under the trust protection indemnification program, including time limitations for making a claim, and [45(b)]
  - (c) may place limitations on the amounts that may be paid out of the indemnity fund established under subsection (6) in respect of a claim against a lawyer under the trust protection indemnification program. [45(b), (d)]
- (3) The benchers may, by resolution, set
- (a) the indemnity fee, and [45(e)]
- (4) The benchers may make rules to do any of the following:
- (a) permit lawyers to pay the indemnity fee by instalments on or before the date by which each instalment of that fee is due; [45(e)]
  - (b) establish classes of membership for indemnification purposes and exempt a class of lawyers from the requirement to maintain professional liability or trust protection indemnification or from payment of all or part of the indemnity fee; [45(b), (e), (f)]
  - (c) designate classes of transactions for which a lawyer must pay a fee to fund the professional liability or trust protection indemnification program. [45(b)]
- (5) The benchers may use fees set under this section to act as the agent for the members in obtaining professional liability or trust protection indemnification. [45(b)]
- (6) The benchers must establish an indemnity fund, comprising fees set under this section and other income of the professional liability and trust protection indemnification programs, and the fund [45(b), (d)]
- (7) Subject to rules made under section 23 (7), a lawyer must not practise law unless the lawyer has paid the indemnity fee when it is due, or is exempted from payment of the fee. [45(e)]

(8) A lawyer must immediately surrender to the executive director his or her practising certificate and any proof of professional liability or trust protection indemnification issued by the society, if [45(b)]

(a) the society has, on behalf of the lawyer,

(i) paid a deductible amount under the professional liability indemnification program in respect of a claim or potential claim under that program, or [45(c)]

(ii) made an indemnity payment under the trust protection indemnification program in respect of a claim under that program, and [45(b)]

(b) the lawyer has not reimbursed the society at the date that the indemnity fee or an instalment of that fee is due. [45(e)]

(9) The benchers may waive or extend the time

(a) to pay all or part of the indemnity fee, or [45(e)]

(b) to repay all or part of a deductible amount paid under the professional liability indemnification program or an indemnity payment made under the trust protection indemnification program on behalf of a lawyer. [45(b), (c)]

(11) A payment made from the indemnity fund established under subsection (6) in respect of a claim against a lawyer under the trust protection indemnification program [45(b), (d)]

### **Application of other Acts to society indemnification program**

**30.1** (1) In this section:

**"society indemnification program"** means

(a) a professional liability indemnification program established, administered, maintained and operated by the benchers under section 30 (2), or

(b) a trust protection indemnification program established, administered, maintained and operated by the benchers under section 30 (2.1) (a);

**"subsidiary"** means

(a) a corporation that is a company, as defined in the *Business Corporations Act*, of which the society holds all of the issued shares, or

(b) a corporation that is a society, as defined in the *Societies Act*, of which the society is the only member, as defined in that Act.

(2) Despite the *Financial Institutions Act* and the *Insurance Act*, in relation to the establishment, administration, maintenance and operations of a society indemnification program,

(a) the society or a subsidiary is not an insurer as defined in the *Financial Institutions Act* and the *Insurance Act*,

(b) the society or a subsidiary is not carrying on insurance business in British Columbia,

(c) a contract entered into respecting an undertaking to indemnify given under a society indemnification program is not a contract as defined in the *Insurance Act*,

(d) the society or a subsidiary is not required to be licensed under Division 2 of Part 6 of the *Financial Institutions Act* as an insurance adjuster or insurance agent, and

(e) an employee of the society or a subsidiary is not required to be licensed under Division 2 of Part 6 of the *Financial Institutions Act* as an insurance adjuster, employed insurance adjuster, insurance agent or insurance salesperson.

(3) Subsection (2) does not apply in respect of a subsidiary that is a captive insurance company registered under the *Insurance (Captive Company) Act*.

(4) Divisions 4 and 8 of Part 9 of the *Business Corporations Act* do not apply to a subsidiary in respect of a society insurance program. [46]

**Third person right of action against indemnitor**

**30.2** (1) If a judgment has been granted against a lawyer in respect of a liability against which the lawyer is indemnified under a society indemnification program, as defined in section 30.1, and the judgment has not been satisfied, the judgment creditor may recover by action against the indemnitor the lesser of

- (a) the unpaid amount of the judgment, and
- (b) the amount that the indemnitor would have been liable under the policy to pay to the lawyer had the lawyer satisfied the judgment.

(2) The claim of a judgment creditor against the indemnitor under subsection (1) is subject to the same equities as would apply in favour of the indemnitor had the judgment been satisfied by the lawyer. [46]



# LAW SOCIETY RULES

## PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

### Division 1 – Practice of Law

#### Inter-jurisdictional practice

##### Inter-jurisdictional practice without a permit

- 2-16** (3) Subject to subrule (4), to qualify to provide legal services on a temporary basis under this rule, a visiting lawyer must at all times
- (a) maintain professional liability insurance that
    - (i) is reasonably comparable in coverage and limits to ~~that the~~ indemnity coverage required of lawyers under Rule 3-39 (1) [*Compulsory professional liability ~~insurance~~ indemnification*], and
    - (ii) extends to the visiting lawyer's temporary practice in British Columbia,
  - (b) maintain trust protection insurance or other defalcation compensation coverage from a governing body that extends to the visiting lawyer's temporary practice in British Columbia,
- (6) The requirement in subrule (3) (a) does not apply to a visiting lawyer who is exempt from professional liability indemnification ~~insurance~~ under Rule 3-43 [*Exemption from professional liability indemnification ~~insurance~~*] with respect to legal services to be provided in British Columbia.

##### Inter-jurisdictional practice permit

- 2-19** (3) A visiting lawyer applying under subrule (1) must deliver to the Executive Director
- (d) proof of professional liability insurance as required under Rule 2-16 (3)
    - (a) [*Inter-jurisdictional practice without a permit*], and
  - (e) proof that the visiting lawyer maintains the trust protection insurance or other defalcation coverage required under Rule 2-16 (3) (b) [*Inter-jurisdictional practice without a permit*].

##### Expiry and renewal of inter-jurisdictional practice permit

- 2-22** (3) A permit ceases to be valid if the holder of the permit
- (b) fails to maintain professional liability insurance as described in Rule 2-19 (3) (d) [*Inter-jurisdictional practice permit*],

## LAW SOCIETY RULES

- (b.1) fails to maintain the trust protection insurance or other defalcation coverage described in Rule 2-16 (3) (b) [*Inter-jurisdictional practice without a permit*], or

### Practitioners of foreign law

#### Practitioners of foreign law

- 2-29** (2) The Executive Director may issue a permit to a person applying under subrule (1) if satisfied that the person
- (e) carries professional liability insurance or a bond, indemnity or other security
    - (i) in a form and amount at least reasonably comparable to ~~that the~~ indemnity coverage required of lawyers under Rule 3-39 (1) [*Compulsory professional liability ~~insurance~~ indemnification*], and

#### Dual qualification

- 2-32** A lawyer, other than a retired or non-practising member, who is qualified to practise law in a foreign jurisdiction may act as a practitioner of foreign law in British Columbia without obtaining a permit, provided the lawyer maintains professional liability insurance that
- (b) is in a form and amount at least reasonably comparable to ~~that the~~ indemnity coverage required of lawyers under Rule 3-39 (1) [*Compulsory liability ~~insurance~~ indemnification*].

### Multi-disciplinary practice

#### Application to practise law in MDP

- 2-40** (2) In addition to any other requirement determined by the Credentials Committee, in the form referred to in subrule (1), the lawyer must report full details of the arrangements that the lawyer has made to ensure that
- (d) every member of the MDP obtains and maintains liability ~~insurance~~ indemnity coverage as required under Rule 2-47 [*Liability ~~insurance~~ indemnification*],

## LAW SOCIETY RULES

### Liability ~~insurance~~indemnification

- 2-47 (1) A lawyer practising law in an MDP must ensure that every non-lawyer member of the MDP providing services directly or indirectly to the public on behalf of the MDP
- (a) maintains professional liability ~~insurance~~indemnity coverage
    - (i) on the terms and conditions offered by the Society through the Lawyers ~~Insurance-Indemnity~~ Fund and pays the ~~insurance-~~indemnity fee, and
    - (ii) in an amount equivalent to the total amount of coverage that the MDP maintains in excess of that required under Rule 3-39(1) [*Compulsory professional liability ~~insurance~~indemnification*], and
  - (b) complies with the provisions of Part 3, Division 5 [*InsuranceIndemnification*] as if the non-lawyer were a lawyer.
- (2) If a non-lawyer member of an MDP agrees in writing, in a form approved by the Executive Committee, to engage in activities on behalf of the MDP for an average of 25 hours or less per week, the applicable ~~insurance-~~indemnity base assessment is the part-time ~~insurance-~~indemnity fee specified in Schedule 1.

### Notifying the Society

- 2-49 (1) Each lawyer who practises law in an MDP must report to the Executive Director in a form approved by the Credentials Committee concerning the following:
- (d) professional liability ~~insurance-~~indemnity coverage maintained by non-lawyers under Rule 2-47 [*Liability ~~insurance~~indemnification*],

## Division 2 – Admission and Reinstatement

### Call and admission

#### First call and admission

- 2-77 (1) An articulated student who applies for call and admission must deliver to the Executive Director
- (b) a professional liability ~~insurance-~~indemnity application or exemption form,

## LAW SOCIETY RULES

(c) the following fees:

- (iii) the prorated annual ~~insurance~~-~~indemnity~~ fee specified in Schedule 2, unless exempt under Rule 3-43 [*Exemption from professional liability ~~insurance~~~~indemnification~~*], and

### Transfer from another Canadian jurisdiction

**2-79** (1) An applicant for call and admission on transfer from another jurisdiction in Canada must deliver the following to the Executive Director:

(d) a professional liability ~~insurance~~-~~indemnity~~ application or exemption form;

(f) the following fees:

- (iii) the prorated annual ~~insurance~~-~~indemnity~~ fee specified in Schedule 2, unless exempt under Rule 3-43 [*Exemption from professional liability ~~insurance~~~~indemnification~~*];

### Transfer as Canadian legal advisor

**2-82** (1) Subject to subrule (3), a member of the Chambre may apply for call and admission on transfer as a Canadian legal advisor by delivering to the Executive Director the following:

(d) a professional liability ~~insurance~~-~~indemnity~~ application or exemption form;

(e) the following fees:

- (iii) the prorated annual ~~insurance~~-~~indemnity~~ fee specified in Schedule 2, unless exempt under Rule 3-43 [*Exemption from professional liability ~~insurance~~~~indemnification~~*];

## Reinstatement

### Reinstatement of former lawyer

**2-85** (4) The Executive Director may issue a practising certificate to an applicant on reinstatement on payment of the following:

- (b) the prorated annual ~~insurance~~-~~indemnity~~ fee specified in Schedule 2, unless exempt under Rule 3-43 [*Exemption from professional liability ~~insurance~~~~indemnification~~*];

# LAW SOCIETY RULES

## Division 3 – Fees and Assessments

### Annual practising fees

- 2-105** (1) The annual practising fee and ~~insurance~~-~~indemnity~~ fee are payable in respect of each calendar year.
- (2) The date for payment of the annual practising fee and first ~~indemnity~~~~insurance~~ fee instalment is November 30 of the year preceding the year for which they are payable.

### Refund when lawyer does not practise law

- 2-115** (1) A lawyer who has paid the annual fee for a year but who satisfies the Executive Director that the lawyer has totally abstained from practice in British Columbia during that year through disability, other than a suspension, is entitled to a refund of
- (b) a portion of the annual ~~insurance~~-~~indemnity~~ fee set under section 30 (3)
- (a) [~~Insurance~~~~Indemnification~~], in an amount determined by the Executive Director.

### Refund on exemption during practice year

- 2-116** (1) A lawyer who has paid the annual ~~insurance~~-~~indemnity~~ fee for a year and ceases to practise for any reason other than suspension or who becomes exempt under Rule 3-43 [*Exemption from professional liability ~~insurance~~~~indemnification~~*] during that year, is entitled to a refund of a portion of the ~~indemnity~~ fee in an amount determined by the Executive Director.

### Failure to pay fine, costs or penalty

- 2-117** (1) The Executive Director must apply any money received from or on behalf of a lawyer or former lawyer to payment of the following due and owing by the lawyer or former lawyer before any fees or assessments:
- (d) a deductible amount paid on behalf of the lawyer under the Society's ~~insurance program~~~~indemnity policy~~;
- (e) reimbursement for payment made on behalf of the lawyer or former lawyer under trust protection ~~insurance~~~~indemnity coverage~~.

# LAW SOCIETY RULES

## PART 3 – PROTECTION OF THE PUBLIC

### Division 5 – Insurance Indemnification

#### Compulsory professional liability insurance indemnification

- 3-39** (1) A lawyer must maintain professional liability insurance indemnity coverage on the terms and conditions offered by the Society through the Lawyers Insurance-Indemnity Fund and pay the insurance indemnity fee under Rule 3-40 [*Annual insurance indemnity fee*], unless the lawyer is exempt or ineligible under Rule 3-43 [*Exemption from professional liability insurance indemnification*].
- (2) A lawyer is bound by and must comply with the terms and conditions of the professional liability indemnity policy insurance maintained under subrule (1).
- (3) As soon as practicable, the Executive Director must notify all governing bodies of any change to professional liability insurance indemnification under this division that affects the limits of liability or scope of coverage.

#### Compulsory trust protection indemnification insurance

- 3-39.1** (1) A lawyer must maintain trust protection insurance indemnity coverage on the terms and conditions offered by the Society through the Lawyers Insurance-Indemnity Fund and pay any fee for trust protection insurance indemnity coverage set under Rule 3-40 [*Annual insurance indemnity fee*].
- (2) A lawyer is bound by and must comply with the terms and conditions of trust protection insurance indemnity coverage maintained under subrule (1).

#### Annual insurance indemnity fee

- 3-40** (1) The insurance indemnity fee to be paid under section 23 (1) (c) [*Annual fees and practising certificate*] is calculated as follows:
- (c) any credit to which the lawyer is entitled under Rule 3-42 [*Insurance-Indemnity fee credit*].
- (2) If a lawyer undertakes, in a form approved by the Executive Committee, to engage in the practice of law and associated activities for an average of 25 hours or less per week, the applicable base assessment is the part-time insurance indemnity fee specified in Schedule 1.

## LAW SOCIETY RULES

- (3) Subject to subrule (6), a lawyer is not eligible to pay the part-time ~~insurance-indemnity~~ fee under subrule (2) for 5 years in practice after the Society pays an indemnity claim in respect of the lawyer.
- (4) For a lawyer who does not give the undertaking referred to in subrule (2), the appropriate base assessment is the full-time ~~insurance-indemnity~~ fee specified in Schedule 1.
- (6) The Executive Director may, in the Executive Director's discretion, reduce the time that a lawyer is not eligible under subrule (3) to pay the part-time ~~insurance-indemnity~~ fee or, in extraordinary circumstances, allow the lawyer to pay the part-time ~~indemnityinsurance~~ fee despite subrule (3).

### Payment of annual ~~insurance-indemnity~~ fee by instalments

- 3-41** (1) A lawyer must pay the ~~indemnityinsurance~~ fee in two equal annual instalments as follows:
- (2) A lawyer who fails to pay the second instalment by the date prescribed in subrule (1) must immediately cease the practice of law in accordance with section 30 (7) [~~InsuranceIndemnification~~] and surrender to the Executive Director his or her practising certificate and any proof of professional liability ~~insurance-indemnity coverage~~ issued by the Society.

### ~~Insurance-Indemnity~~ fee credit

- 3-42** (1) The Benchers may approve an annual ~~insurance-indemnity~~ fee credit and set the conditions that a lawyer must meet to be entitled to the credit.
- (2) When a lawyer is entitled to an annual ~~insurance-indemnity~~ fee credit, the first instalment of the ~~insurance-indemnity~~ fee payable by the lawyer is reduced by the amount of the credit.

### Exemption from liability ~~insurance-indemnification~~

- 3-43** (1) A lawyer is exempt from the requirement to maintain professional liability ~~insurance-indemnity coverage~~ and pay the ~~insurance-indemnity~~ fee if the lawyer is

## LAW SOCIETY RULES

- (4) A lawyer may apply to the Executive Director for exemption from the requirement to maintain professional liability ~~insurance~~ indemnity coverage and pay the ~~insurance~~ indemnity fee, if, in another Canadian jurisdiction in which the governing body allows a similar exemption for members of the Society, the lawyer
- (b) maintains the full mandatory professional liability insurance coverage required in the other jurisdiction that is reasonably comparable in coverage and limits to ~~that the indemnity coverage~~ required of lawyers in British Columbia and extends to the lawyer's practice in British Columbia.
- (5) A Canadian legal advisor may apply to the Executive Director for exemption from the requirement to maintain professional liability indemnity coverage ~~insurance~~ and pay the ~~insurance~~ indemnity fee.
- (6) On an application under subrule (5), the Executive Director must grant the exemption, provided the Canadian legal advisor maintains the full mandatory professional liability insurance coverage required by the Chambre that extends to the Canadian legal advisor's practice in British Columbia.

### Deductible, surcharge and reimbursement

- 3-44** (1) On demand, a lawyer must pay in full to the Society any of the following amounts paid under the Society's ~~insurance~~ indemnification program on behalf of the lawyer:
- (b) any other amount that the lawyer is required to repay or reimburse the ~~insurer~~ indemnity fund under the ~~policy of~~ professional liability ~~insurance~~ indemnity policy.
- (2) If indemnity has been paid under the Society's ~~insurance~~ indemnification program, the lawyer on whose behalf it is paid must
- (a) pay the ~~insurance~~ indemnity surcharge specified in Schedule 1 for each of the next 5 years in which the lawyer is a member of the Society and not exempt from the ~~insurance~~ indemnity fee, and
- (b) if the payment was made under Part B of the ~~policy of~~ professional liability ~~insurance~~ indemnity policy, reimburse the Society in full on demand, for all amounts paid under Part B.



## LAW SOCIETY RULES

### Application for ~~insurance~~-indemnity coverage

- 3-45 (1) A lawyer may apply for ~~insurance~~-indemnity coverage by delivering to the Executive Director
- (a) an application for ~~insurance~~-indemnity coverage, and
  - (b) the prorated ~~insurance~~-indemnity fee as specified in Schedule 2.
- (2) A lawyer who is ~~insured~~-indemnified for part-time practice may apply for ~~insurance~~-coverage for full-time practice by delivering to the Executive Director
- (a) an application for full-time ~~insurance~~-indemnity coverage, and
  - (b) the difference between the prorated full-time ~~insurance~~-indemnity fee specified in Schedule 2 and any payment made for part-time ~~insurance~~-indemnity coverage for the current year.
- (3) The Executive Director must not grant the ~~insurance~~-indemnity coverage applied for under subrule (1) or (2) unless satisfied that the lawyer is not prohibited from practising law under Rule 2-89 [*Returning to practice after an absence*].

### Confidentiality of ~~insurance~~-indemnity claims

- 3-46 (1) In this rule, “**claim**” means a claim or potential claim reported under the ~~policy of~~ professional liability ~~insurance~~indemnity policy.
- (5) In the case of a claim under Part B of the ~~policy of~~ professional liability ~~insurance~~indemnity policy, despite subrule (2), the Executive Director may do any of the following:

## Division 7 – Trust Accounts and Other Client Property

### Trust report

- 3-79 (6) A non-practising or retired lawyer or a practising lawyer who is exempt under Rule 3-43 [*Exemption from liability ~~insurance~~indemnification*] from the requirement to maintain professional liability ~~insurance~~-indemnity coverage and pay the ~~insurance~~-indemnity fee, is not required to file a trust report for a reporting period of 12 months during which the lawyer has

## LAW SOCIETY RULES

### SCHEDULE 1 – 2020 LAW SOCIETY FEES AND ASSESSMENTS

2. ~~Liability insurance~~Indemnity fee base assessment (which may be increased or decreased in individual cases in accordance with Rule 3-40 (1) [*Annual ~~insurance-indemnity fee~~*]): \$\$
3. ~~Liability insurance~~Indemnity surcharge (Rule 3-44 (2) [*Deductible, surcharge and reimbursement*]) \$\$

### SCHEDULE 2 – 2020 PRORATED FEES AND ASSESSMENTS FOR PRACTISING LAWYERS

[Rules 2-77 (1) [*First call and admission*], 2-79 (1) [*Transfer from another Canadian jurisdiction*], 2-85 (4) [*Reinstatement of former lawyer*], and 3-45 (1) and (2) [*Application for ~~insurance-indemnity coverage~~*]]

~~Liability insurance~~Indemnity fee assessment

Full-time ~~insurance~~indemnification

Part-time ~~insurance~~indemnification

## LAW SOCIETY RULES

### PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

#### Division 1 – Practice of Law

##### Inter-jurisdictional practice

##### Inter-jurisdictional practice without a permit

- 2-16** (3) Subject to subrule (4), to qualify to provide legal services on a temporary basis under this rule, a visiting lawyer must at all times
- (a) maintain professional liability insurance that
    - (i) is reasonably comparable in coverage and limits to the indemnity coverage required of lawyers under Rule 3-39 (1) [*Compulsory professional liability indemnification*], and
    - (ii) extends to the visiting lawyer’s temporary practice in British Columbia,
  - (b) maintain trust protection insurance or other defalcation compensation coverage from a governing body that extends to the visiting lawyer’s temporary practice in British Columbia,
- (6) The requirement in subrule (3) (a) does not apply to a visiting lawyer who is exempt from professional liability indemnification under Rule 3-43 [*Exemption from professional liability indemnification*] with respect to legal services to be provided in British Columbia.

##### Inter-jurisdictional practice permit

- 2-19** (3) A visiting lawyer applying under subrule (1) must deliver to the Executive Director
- (d) proof of professional liability insurance as required under Rule 2-16 (3)
    - (a) [*Inter-jurisdictional practice without a permit*], and
  - (e) proof that the visiting lawyer maintains the trust protection insurance or other defalcation coverage required under Rule 2-16 (3) (b) [*Inter-jurisdictional practice without a permit*].

##### Expiry and renewal of inter-jurisdictional practice permit

- 2-22** (3) A permit ceases to be valid if the holder of the permit
- (b) fails to maintain professional liability insurance as described in Rule 2-19 (3) (d) [*Inter-jurisdictional practice permit*],

## LAW SOCIETY RULES

- (b.1) fails to maintain the trust protection insurance or other defalcation coverage described in Rule 2-16 (3) (b) [*Inter-jurisdictional practice without a permit*], or

### Practitioners of foreign law

#### Practitioners of foreign law

- 2-29** (2) The Executive Director may issue a permit to a person applying under subrule (1) if satisfied that the person
- (e) carries professional liability insurance or a bond, indemnity or other security
    - (i) in a form and amount at least reasonably comparable to the indemnity coverage required of lawyers under Rule 3-39 (1) [*Compulsory professional liability indemnification*], and

#### Dual qualification

- 2-32** A lawyer, other than a retired or non-practising member, who is qualified to practise law in a foreign jurisdiction may act as a practitioner of foreign law in British Columbia without obtaining a permit, provided the lawyer maintains professional liability insurance that
- (b) is in a form and amount at least reasonably comparable to the indemnity coverage required of lawyers under Rule 3-39 (1) [*Compulsory liability indemnification*].

### Multi-disciplinary practice

#### Application to practise law in MDP

- 2-40** (2) In addition to any other requirement determined by the Credentials Committee, in the form referred to in subrule (1), the lawyer must report full details of the arrangements that the lawyer has made to ensure that
- (d) every member of the MDP obtains and maintains liability indemnity coverage as required under Rule 2-47 [*Liability indemnification*],

## LAW SOCIETY RULES

### Liability indemnification

- 2-47** (1) A lawyer practising law in an MDP must ensure that every non-lawyer member of the MDP providing services directly or indirectly to the public on behalf of the MDP
- (a) maintains professional liability indemnity coverage
    - (i) on the terms and conditions offered by the Society through the Lawyers Indemnity Fund and pays the indemnity fee, and
    - (ii) in an amount equivalent to the total amount of coverage that the MDP maintains in excess of that required under Rule 3-39(1) [*Compulsory professional liability indemnification*], and
  - (b) complies with the provisions of Part 3, Division 5 [*Indemnification*] as if the non-lawyer were a lawyer.
- (2) If a non-lawyer member of an MDP agrees in writing, in a form approved by the Executive Committee, to engage in activities on behalf of the MDP for an average of 25 hours or less per week, the applicable indemnity base assessment is the part-time indemnity fee specified in Schedule 1.

### Notifying the Society

- 2-49** (1) Each lawyer who practises law in an MDP must report to the Executive Director in a form approved by the Credentials Committee concerning the following:
- (d) professional liability indemnity coverage maintained by non-lawyers under Rule 2-47 [*Liability indemnification*],

## Division 2 – Admission and Reinstatement

### Call and admission

#### First call and admission

- 2-77** (1) An articulated student who applies for call and admission must deliver to the Executive Director
- (b) a professional liability indemnity application or exemption form,
  - (c) the following fees:
    - (iii) the prorated annual indemnity fee specified in Schedule 2, unless exempt under Rule 3-43 [*Exemption from professional liability indemnification*], and

## LAW SOCIETY RULES

### Transfer from another Canadian jurisdiction

- 2-79** (1) An applicant for call and admission on transfer from another jurisdiction in Canada must deliver the following to the Executive Director:
- (d) a professional liability indemnity application or exemption form;
  - (f) the following fees:
    - (iii) the prorated annual indemnity fee specified in Schedule 2, unless exempt under Rule 3-43 [*Exemption from professional liability indemnification*];

### Transfer as Canadian legal advisor

- 2-82** (1) Subject to subrule (3), a member of the Chambre may apply for call and admission on transfer as a Canadian legal advisor by delivering to the Executive Director the following:
- (d) a professional liability indemnity application or exemption form;
  - (e) the following fees:
    - (iii) the prorated annual indemnity fee specified in Schedule 2, unless exempt under Rule 3-43 [*Exemption from professional liability indemnification*];

## Reinstatement

### Reinstatement of former lawyer

- 2-85** (4) The Executive Director may issue a practising certificate to an applicant on reinstatement on payment of the following:
- (b) the prorated annual indemnity fee specified in Schedule 2, unless exempt under Rule 3-43 [*Exemption from professional liability indemnification*];

## Division 3 – Fees and Assessments

### Annual practising fees

- 2-105** (1) The annual practising fee and indemnity fee are payable in respect of each calendar year.
- (2) The date for payment of the annual practising fee and first indemnity fee instalment is November 30 of the year preceding the year for which they are payable.

## LAW SOCIETY RULES

### Refund when lawyer does not practise law

- 2-115** (1) A lawyer who has paid the annual fee for a year but who satisfies the Executive Director that the lawyer has totally abstained from practice in British Columbia during that year through disability, other than a suspension, is entitled to a refund of
- (b) a portion of the annual indemnity fee set under section 30 (3) (a) [*Indemnification*], in an amount determined by the Executive Director.

### Refund on exemption during practice year

- 2-116** (1) A lawyer who has paid the annual indemnity fee for a year and ceases to practise for any reason other than suspension or who becomes exempt under Rule 3-43 [*Exemption from professional liability indemnification*] during that year, is entitled to a refund of a portion of the indemnity fee in an amount determined by the Executive Director.

### Failure to pay fine, costs or penalty

- 2-117** (1) The Executive Director must apply any money received from or on behalf of a lawyer or former lawyer to payment of the following due and owing by the lawyer or former lawyer before any fees or assessments:
- (d) a deductible amount paid on behalf of the lawyer under the Society's indemnity policy;
- (e) reimbursement for payment made on behalf of the lawyer or former lawyer under trust protection indemnity coverage.

## PART 3 – PROTECTION OF THE PUBLIC

### Division 5 – Indemnification

#### Compulsory professional liability indemnification

- 3-39** (1) A lawyer must maintain professional liability indemnity coverage on the terms and conditions offered by the Society through the Lawyers Indemnity Fund and pay the indemnity fee under Rule 3-40 [*Annual indemnity fee*], unless the lawyer is exempt or ineligible under Rule 3-43 [*Exemption from professional liability indemnification*].
- (2) A lawyer is bound by and must comply with the terms and conditions of the professional liability indemnity policy maintained under subrule (1).

## LAW SOCIETY RULES

- (3) As soon as practicable, the Executive Director must notify all governing bodies of any change to professional liability indemnification under this division that affects the limits of liability or scope of coverage.

### Compulsory trust protection indemnification

- 3-39.1** (1) A lawyer must maintain trust protection indemnity coverage on the terms and conditions offered by the Society through the Lawyers Indemnity Fund and pay any fee for trust protection indemnity coverage set under Rule 3-40 [*Annual indemnity fee*].
- (2) A lawyer is bound by and must comply with the terms and conditions of trust protection indemnity coverage maintained under subrule (1).

### Annual indemnity fee

- 3-40** (1) The indemnity fee to be paid under section 23 (1) (c) [*Annual fees and practising certificate*] is calculated as follows:
- (c) any credit to which the lawyer is entitled under Rule 3-42 [*Indemnity fee credit*].
- (2) If a lawyer undertakes, in a form approved by the Executive Committee, to engage in the practice of law and associated activities for an average of 25 hours or less per week, the applicable base assessment is the part-time indemnity fee specified in Schedule 1.
- (3) Subject to subrule (6), a lawyer is not eligible to pay the part-time indemnity fee under subrule (2) for 5 years in practice after the Society pays an indemnity claim in respect of the lawyer.
- (4) For a lawyer who does not give the undertaking referred to in subrule (2), the appropriate base assessment is the full-time indemnity fee specified in Schedule 1.
- (6) The Executive Director may, in the Executive Director's discretion, reduce the time that a lawyer is not eligible under subrule (3) to pay the part-time indemnity fee or, in extraordinary circumstances, allow the lawyer to pay the part-time indemnity fee despite subrule (3).

### Payment of annual indemnity fee by instalments

- 3-41** (1) A lawyer must pay the indemnity fee in two equal annual instalments as follows:



## LAW SOCIETY RULES

- (2) A lawyer who fails to pay the second instalment by the date prescribed in subrule (1) must immediately cease the practice of law in accordance with section 30 (7) [**Indemnification**] and surrender to the Executive Director his or her practising certificate and any proof of professional liability indemnity coverage issued by the Society.

### Indemnity fee credit

- 3-42** (1) The Benchers may approve an annual indemnity fee credit and set the conditions that a lawyer must meet to be entitled to the credit.
- (2) When a lawyer is entitled to an annual indemnity fee credit, the first instalment of the indemnity fee payable by the lawyer is reduced by the amount of the credit.

### Exemption from liability indemnification

- 3-43** (1) A lawyer is exempt from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee if the lawyer is
- (4) A lawyer may apply to the Executive Director for exemption from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee, if, in another Canadian jurisdiction in which the governing body allows a similar exemption for members of the Society, the lawyer
- (b) maintains the full mandatory professional liability insurance coverage required in the other jurisdiction that is reasonably comparable in coverage and limits to the indemnity coverage required of lawyers in British Columbia and extends to the lawyer's practice in British Columbia.
- (5) A Canadian legal advisor may apply to the Executive Director for exemption from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee.
- (6) On an application under subrule (5), the Executive Director must grant the exemption, provided the Canadian legal advisor maintains the full mandatory professional liability insurance coverage required by the Chambre that extends to the Canadian legal advisor's practice in British Columbia.

## LAW SOCIETY RULES

### Deductible, surcharge and reimbursement

- 3-44** (1) On demand, a lawyer must pay in full to the Society any of the following amounts paid under the Society’s indemnification program on behalf of the lawyer:
- (b) any other amount that the lawyer is required to repay or reimburse the indemnity fund under the professional liability indemnity policy.
- (2) If indemnity has been paid under the Society’s indemnification program, the lawyer on whose behalf it is paid must
- (a) pay the indemnity surcharge specified in Schedule 1 for each of the next 5 years in which the lawyer is a member of the Society and not exempt from the indemnity fee, and
  - (b) if the payment was made under Part B of the professional liability indemnity policy, reimburse the Society in full on demand, for all amounts paid under Part B.

### Application for indemnity coverage

- 3-45** (1) A lawyer may apply for indemnity coverage by delivering to the Executive Director
- (a) an application for indemnity coverage, and
  - (b) the prorated indemnity fee as specified in Schedule 2.
- (2) A lawyer who is indemnified for part-time practice may apply for coverage for full-time practice by delivering to the Executive Director
- (a) an application for full-time indemnity coverage, and
  - (b) the difference between the prorated full-time indemnity fee specified in Schedule 2 and any payment made for part-time indemnity coverage for the current year.
- (3) The Executive Director must not grant the indemnity coverage applied for under subrule (1) or (2) unless satisfied that the lawyer is not prohibited from practising law under Rule 2-89 [*Returning to practice after an absence*].

### Confidentiality of indemnity claims

- 3-46** (1) In this rule, “**claim**” means a claim or potential claim reported under the professional liability indemnity policy.
- (5) In the case of a claim under Part B of the professional liability indemnity policy, despite subrule (2), the Executive Director may do any of the following:

## LAW SOCIETY RULES

### Division 7 – Trust Accounts and Other Client Property

#### Trust report

- 3-79** (6) A non-practising or retired lawyer or a practising lawyer who is exempt under Rule 3-43 [*Exemption from liability indemnification*] from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee, is not required to file a trust report for a reporting period of 12 months during which the lawyer has

#### SCHEDULE 1 – 2020 LAW SOCIETY FEES AND ASSESSMENTS

- |                                                                                                                                                              |      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| 2. Indemnity fee base assessment (which may be increased or decreased in individual cases in accordance with Rule 3-40 (1) [ <i>Annual indemnity fee</i> ]): | \$\$ |
| 3. Indemnity surcharge (Rule 3-44 (2) [ <i>Deductible, surcharge and reimbursement</i> ]) .....                                                              | \$\$ |

#### SCHEDULE 2 – 2020 PRORATED FEES AND ASSESSMENTS FOR PRACTISING LAWYERS

[Rules 2-77 (1) [*First call and admission*], 2-79 (1) [*Transfer from another Canadian jurisdiction*], 2-85 (4) [*Reinstatement of former lawyer*], and 3-45 (1) and (2) [*Application for indemnity coverage*]]

**Indemnity fee assessment**

**Full-time indemnification**

**Part-time indemnification**

## INDEMNITY PROGRAM

### SUGGESTED RESOLUTION:

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

1. *By rescinding Rule 2-16 (3) (a) (i) and substituting the following:*
  - (i) is reasonably comparable in coverage and limits to the indemnity coverage required of lawyers under Rule 3-39 (1) [*Compulsory professional liability indemnification*], and.
2. *In Rules 2-16 (6) and 3-39 (3), by striking out “professional liability insurance” and substituting “professional liability indemnification”.*
3. *In Rules 2-29 (2) (e) (i), 2-32 (b) and 3-43 (4) (b), by striking out “to that required of lawyers” and substituting “to the indemnity coverage required of lawyers”.*
4. *By striking out “liability insurance” and substituting “liability indemnity coverage” in the following provisions:*
  - (a) *Rule 2-40 (2) (d);*
  - (b) *Rule 2-47 (1) (a);*
  - (c) *Rule 2-49 (1) (d);*
  - (d) *Rule 3-39 (1);*
  - (e) *Rule 3-41 (2);*
  - (f) *Rule 3-43 (1), (4) and (5);*
  - (g) *Rule 3-79 (6).*
5. *In Rules 2-47 (1) (a) (i), 3-39 (1) and 3-39.1 (1), by striking out “Lawyers Insurance Fund” and substituting “Lawyers Indemnity Fund”.*
6. *By rescinding Rule 2-47 (2) and substituting the following:*
  - (2) If a non-lawyer member of an MDP agrees in writing, in a form approved by the Executive Committee, to engage in activities on behalf of the MDP for an average of 25 hours or less per week, the applicable indemnity base assessment is the part-time indemnity fee specified in Schedule 1.
7. *In Rules 2-77 (1) (b), 2-79 (1) (d) and 2-82 (1) (d), by striking out “professional liability insurance application” and substituting “professional liability indemnity application”.*

8. ***By striking out “insurance fee” and substituting “indemnity fee” in the following provisions:***
- (a) ***Rule 2-47 (1) (a) (i);***
  - (b) ***Rule 2-77 (1) (c) (iii),***
  - (c) ***Rule 2-79 (1) (f) (iii);***
  - (d) ***Rule 2-82 (1) (e) (iii);***
  - (e) ***Rule 2-85 (4) (b);***
  - (f) ***Rule 2-105 (1) and (2);***
  - (g) ***Rule 2-115 (1) (b);***
  - (h) ***Rule 2-116 (1);***
  - (i) ***Rule 3-39 (1);***
  - (j) ***Rule 3-40 (1), (2), (3), (4) and (6);***
  - (k) ***Rule 3-41 (1);***
  - (l) ***Rule 3-42 (1) and (2);***
  - (m) ***Rule 3-43 (1), (4) and (5);***
  - (n) ***Rule 3-79 (6).***
9. ***In Rule 2-116 (1), by striking out “a portion of the fee” and substituting “a portion of the indemnity fee”.***
10. ***By rescinding Rule 2-117 (1) (d) and substituting the following:***
- (d) a deductible amount paid on behalf of the lawyer under the Society’s indemnity policy,;
11. ***In Rules 2-117 (1) (e) and 3-39.1 (1) and (2), by striking “trust protection insurance” and substituting “trust protection indemnity coverage”.***
12. ***By rescinding Rule 3-39 (2) and substituting the following:***
- (2) A lawyer is bound by and must comply with the terms and conditions of the professional liability indemnity policy maintained under subrule (1).

- 13. By rescinding Rule 3-44 (1) and (2) and substituting the following:**
- (1) On demand, a lawyer must pay in full to the Society any of the following amounts paid under the Society's indemnification program on behalf of the lawyer:
    - (a) a deductible amount;
    - (b) any other amount that the lawyer is required to repay or reimburse the indemnity fund under the professional liability indemnity policy.
  - (2) If indemnity has been paid under the Society's indemnification program, the lawyer on whose behalf it is paid must
    - (a) pay the indemnity surcharge specified in Schedule 1 for each of the next 5 years in which the lawyer is a member of the Society and not exempt from the indemnity fee, and
    - (b) if the payment was made under Part B of the professional liability indemnity policy, reimburse the Society in full on demand, for all amounts paid under Part B.
- 14. By rescinding Rule 3-45 and substituting the following:**
- (1) A lawyer may apply for indemnity coverage by delivering to the Executive Director
    - (a) an application for indemnity coverage, and
    - (b) the prorated indemnity fee as specified in Schedule 2.
  - (2) A lawyer who is indemnified for part-time practice may apply for coverage for full-time practice by delivering to the Executive Director
    - (a) an application for full-time indemnity coverage, and
    - (b) the difference between the prorated full-time indemnity fee specified in Schedule 2 and any payment made for part-time indemnity coverage for the current year.
  - (3) The Executive Director must not grant the indemnity coverage applied for under subrule (1) or (2) unless satisfied that the lawyer is not prohibited from practising law under Rule 2-89 [*Returning to practice after an absence*].
- 15. In Rule 3-46 (1) and (5), by striking out "the policy of professional liability insurance" and substituting "the professional liability indemnity policy".**
- 16. In Schedule 1**
- (a) **by striking out "Liability insurance" in item 2 and substituting "Indemnity fee", and**

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- (b) *by striking out* “Liability insurance surcharge” *in item 3 and substituting* “Indemnity surcharge”.

**17. In Schedule 2**

- (a) *by striking out* “Liability insurance assessment” *and substituting* “Indemnity fee assessment”,
- (b) *by striking out* “Full-time insurance” *and substituting* “Full-time indemnification”, *and*
- (c) *by striking out* “Part-time insurance” *and substituting* “Part-time indemnification”.

**REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT**



# Memo

To: Benchers  
 From: Ethics Committee  
 Date: November 12, 2019  
 Subject: BC Code amendments required to follow legislation changes affecting the Lawyers Insurance Fund (LIF)

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We are informed that an amendment to the *Legal Profession Act* coming into force on January 1, 2020, will change the LIF from an “insurance” fund to an “indemnity” fund. This change to the *Act* requires a series of minor amendments to the Chapter 7 provisions, dealing with lawyers’ professional obligations in relation to insurance coverage, in the Code of Professional Conduct for British Columbia (the “BC Code”), in order to preserve the fit between the *Act* and the BC Code provisions. The changes to the affected provisions of the BC Code are set out in ‘red-line’ form below, as they were suggested to the Committee by Su Forbes, Q.C., in her capacity as Director of LIF. The Committee has reviewed the suggested changes and finds them to be acceptable for the purposes of the BC Code. They do not create a substantive change in the professional responsibilities of lawyers in BC. Accordingly, the Committee recommends the changes set out below for adoption by the Benchers.

## Resolution

Be it resolved that:

The text of Chapter 7 of the BC Code be amended to reflect the changes indicated in the red-lined version of the rules and Commentary presented below and that these changes be effective on January 1, 2020, simultaneously with the ‘coming into force’ date of the related amendment to the *Legal Profession Act*.

## Affected Provisions

(Note: only the affected Chapter 7 provisions are provided here; the rest would remain unchanged. The affected provisions are: rules 7.1-2, 7.6-1 Commentary [1], 7.8-1 Commentary [1], 7.8-2 and Commentary [1], 7.8-3, and 7.8-5.)

## Chapter 7 – Relationship to the Society and Other Lawyers

### 7.1 Responsibility to the Society and the profession generally



...

### Meeting financial obligations

**7.1-2** A lawyer must promptly meet financial obligations in relation to his or her practice, including payment of the deductible under a professional liability ~~insurance~~-indemnity policy, when called upon to do so.

...

### 7.6 Preventing unauthorized practice

**7.6-1** A lawyer must assist in preventing the unauthorized practice of law.

#### Commentary

[1] Statutory provisions against the practice of law by unauthorized persons are for the protection of the public. Unauthorized persons may have technical or personal ability, but they are immune from control, from regulation and, in the case of misconduct, from discipline by the Society. Moreover, the client of a lawyer who is authorized to practise has the protection and benefit of the lawyer-client privilege, the lawyer's duty of confidentiality, the professional standard of care that the law requires of lawyers, and the authority that the courts exercise over them. Other safeguards include mandatory professional liability ~~insurance~~indemnification, the assessment of lawyers' bills, regulation of the handling of trust monies and the maintenance of compensation funds.

...

### 7.8 Errors and omissions

#### Informing client of errors or omissions

**7.8-1** When, in connection with a matter for which a lawyer is responsible, a lawyer discovers an error or omission that is or may be damaging to the client and that cannot be rectified readily, the lawyer must:

- (a) promptly inform the client of the error or omission without admitting legal liability;
- (b) recommend that the client obtain independent legal advice concerning the matter, including any rights the client may have arising from the error or omission; and
- (c) advise the client of the possibility that, in the circumstances, the lawyer may no longer be able to act for the client.

#### Commentary

[1] Under Condition 4.1 of the Lawyers<sup>2</sup> Compulsory Professional Liability ~~Insurance~~-Indemnity Policy, a lawyer is contractually required to give written notice to the ~~insurer~~-indemnitor immediately after the lawyer becomes aware of any actual or alleged error or any circumstances that could reasonably be

expected to be the basis of a claim or suit covered under the policy. This obligation arises whether or not the lawyer considers the claim to have merit. Rule 7.8-2 imposes an ethical duty to report to the indemnitor or other insurer. Rule 7.8-1 should not be construed as relieving a lawyer from the obligation to report to the insurer-indemnitor before attempting any rectification.

### Notice of claim

**7.8-2** A lawyer must give prompt notice of any circumstances that may reasonably be expected to give rise to a claim to an indemnitor or other insurer ~~or other indemnitor~~ so that the client's protection from that source will not be prejudiced.

### Commentary

[1] The introduction of compulsory insurance-indemnification coverage has imposed additional obligations upon a lawyer, but these obligations must not impair the relationship and duties of the lawyer to the client. A lawyer has an obligation to comply with the provisions of the indemnity policy ~~of insurance~~. The insurer's-indemnitor's rights must be preserved, and the lawyer, in informing the client of an error or omission, should be careful not to prejudice any rights of indemnity that either of them may have under an insurance, client's protection or indemnity plan/policy, or otherwise. There may well be occasions when a lawyer believes that certain actions or a failure to take action have made the lawyer liable for damages to the client when, in reality, no liability exists. Further, in every case, a careful assessment will have to be made of the client's damages arising from a lawyer's negligence.

### Co-operation

**7.8-3** A lawyer facing a claim or potential claim of professional negligence must not fail to assist and co-operate with the indemnitor or other insurer ~~or other indemnitor~~ to the extent necessary to enable the claim or potential claim to be dealt with promptly.

### Responding to client's claim

...

**7.8-5** If liability is clear and the indemnitor or other insurer ~~or other indemnitor~~ is prepared to pay its portion of the claim, a lawyer has a duty to pay the balance. (See also Rule 7.1-2]

[End of memorandum.]



# Memo

To: Benchers  
From: Equity Diversity and Inclusion Advisory Committee  
Date: October 3, 2019  
Subject: Updated Terms of Reference

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## Purpose

This memo requests the Benchers' approval of updated terms of reference for the Equity Diversity and Inclusion Advisory Committee.

## Background

On June 8, 2019, the Benchers approved a name change for the Committee, from the "Equity and Diversity Advisory Committee" to the "Equity Diversity and Inclusion Advisory Committee".

During the process of updating its name, the EDI Advisory Committee reviewed its terms of reference in comparison with the terms of reference of other advisory committees. The EDI Advisory Committee has drafted minor amendments (in the attached document) that have been endorsed by the Governance Committee. The proposed amendments are intended to simplify the terms of reference, and to increase consistency with the terms of reference for other advisory committees. The proposed amendments are not intended to substantively change the EDI Advisory Committee's mandate, duties, or responsibilities.

## Recommendation

The Equity Diversity and Inclusion Advisory Committee recommends that the Benchers approve the updated terms of reference (attached).

# EQUITY DIVERSITY AND INCLUSION ADVISORY COMMITTEE

## TERMS OF REFERENCE

Updated: ~~December-October, 2016~~2019

## MANDATE

The Equity Diversity and Inclusion Advisory Committee monitors and advises the Benchers on developments and issues affecting equity, diversity, and inclusion in the legal profession and the justice system and promotes equity, diversity, and inclusion in the legal profession.

## COMPOSITION

1. Under Rule 1-47, the President may appoint any person as a member of a committee of the Benchers and may terminate the appointment.
2. The Committee must be chaired by a Bencher and must have at least one appointed Bencher.

## MEETING PRACTICES

1. The Committee operates in a manner that is consistent with the Benchers' Governance Policies.
2. The Committee meets as required.
3. Quorum consists of at least half of the members of the Committee. (Rule 1-16(1))

## ACCOUNTABILITY

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

## REPORTING REQUIREMENTS

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

## DUTIES AND RESPONSIBILITIES

1. to fulfill responsibilities related to equity, diversity, and inclusion contemplated by the Strategic Plan, or specific tasks assigned by the Benchers~~Monitor issues affecting equity, diversity, and inclusion in the legal profession and the justice system in British Columbia;~~
2. to monitor issues affecting equity, diversity and inclusion in the legal profession and the justice system in British Columbia; ~~At the request of the Benchers or Executive Committee:~~
  - a. ~~develop recommendations, policy options, collaborations, and initiatives;~~
  - b. ~~advise the Benchers on priority planning;~~
  - c. ~~analyze policy implications of Law Society initiatives; and~~
  - d. ~~attend to other matters referred to the Committee regarding equity, diversity, and inclusion in the legal profession in British Columbia.~~

3. to advise the Benchers on priority planning and respective issues affecting equity, diversity, and inclusion in the legal profession and the justice system – including the identification of matters that may require the immediate attention by the Benchers;
4. to develop recommendations, policy options, collaborations, and initiatives;
5. to analyze the implications of Law Society initiatives as they relate to equity, diversity, and inclusion; and
- 3.6. to attend to such other matters as the Benchers may refer to the Committee.

## STAFF SUPPORT

Staff Lawyer, Policy and Legal Services

## EQUITY DIVERSITY AND INCLUSION ADVISORY COMMITTEE

### TERMS OF REFERENCE

Updated: October 2019

### MANDATE

The Equity Diversity and Inclusion Advisory Committee monitors and advises the Benchers on developments and issues affecting equity, diversity, and inclusion in the legal profession and the justice system, and promotes equity, diversity, and inclusion in the legal profession.

### COMPOSITION

1. Under Rule 1-47, the President may appoint any person as a member of a committee of the Benchers and may terminate the appointment.
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The Committee is accountable to the Benchers.

### REPORTING REQUIREMENTS

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

### DUTIES AND RESPONSIBILITIES

1. to fulfill responsibilities related to equity, diversity, and inclusion contemplated by the Strategic Plan, or specific tasks assigned by the Benchers;
2. to monitor issues affecting equity, diversity, and inclusion in the legal profession and the justice system in British Columbia;
3. to advise the Benchers on priority planning and respective issues affecting equity, diversity, and inclusion in the legal profession and the justice system – including the identification of matters that may require the immediate attention by the Benchers;
4. to develop recommendations, policy options, collaborations, and initiatives;
5. to analyze implications of Law Society initiatives as they relate to equity, diversity, and inclusion; and
6. to attend to such other matters as the Benchers may refer to the Committee.

### STAFF SUPPORT

Staff Lawyer, Policy and Legal Services

# Memo

The Law Society  
of British Columbia



*To* Benchers  
*From* Executive Committee  
*Date* November 13, 2019  
*Subject* **Revised Bencher, Committee Member, Hearing Panellist and Other Volunteer Expense Reimbursement Policies**

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## Background

At the May 15, 2019 Executive Committee meeting, the Committee discussed the current policy of reimbursing individual expense claims for alcoholic beverages. The Committee agreed to recommend to the Benchers an amendment to the Bencher Expense Reimbursement and the Committee Member, Hearing Panellist and Other Volunteer Expense Reimbursement Policies that would provide that alcohol will not be reimbursed for individual expense claims. Alcohol consumed in relation to Group Meals would continue to be reimbursed.

Redlined and clean version of the policies with the proposed changes are attached.

As the Bencher Expense Reimbursement Policy and the Committee Member, Hearing Panellist and Other Volunteer Expense Reimbursement Policy are Bencher policies, the Committee recommends the following resolution to the Benchers for approval.

## Be It Resolved that:

The Bencher Expense Reimbursement Policy and the Committee Member, Hearing Panellist and Other Volunteer Expense Reimbursement Policy be modified to exclude reimbursement of alcohol for individual Bencher, committee member, hearing panellist and other volunteer expense reimbursements.

# Policy

## Bencher expense reimbursement

December 2019

### 1 Policy

- 1.01 As a Bencher, you are entitled to be reimbursed by the Society for reasonable expenses incurred in conducting Law Society business.

### 2 Purpose

- 2.01 The purpose of this Policy is to:
- a) Provide guidelines for Benchers with respect to reimbursable expenses in conducting Law Society business,
  - b) Reflect the obligation of the Law Society to be accountable for the expenditure of all funds,
  - c) Assist the Law Society in overseeing Bencher expenses,
  - d) Outline the required supporting documentation to ensure sufficient back-up is provided for annual audit and CRA compliance purposes.

### 3 Scope

- 3.01 This Policy applies to all current Benchers when conducting Law Society business.

### 4 Responsibility

- 4.01 You are responsible for:
- a) Following the policy and guidelines for expenses.
  - b) Retaining and submitting, in a timely manner, all original detailed receipts along with a completed Law Society Bencher Expense claim form (Appendix A) and the necessary information to allocate costs to the relevant Law Society business conducted. Please Note: Credit card receipts alone are not sufficient back-up for audit and CRA compliance purposes.
  - c) When applicable, Benchers are expected to apportion expenses incurred between Law Society business and other business being conducted.



- 4.02 The Chief Financial Officer (CFO) or delegate is responsible for:
- a) Providing guidance to Benchers regarding appropriate types and levels of expenses.
  - b) Reporting on Bencher expenses to the President and management as required.
- 4.03 The President and/or CEO is responsible for:
- a) Approving exceptions to the Bencher Expense Reimbursement Policy, where the policy guidelines are exceeded due to extenuating circumstances, and communicating those decisions to the CFO/Controller.

## 5 Allowable Law Society business expenses

### 5.01 Travel

- a) The Law Society recognizes the following as reimbursable travel expenses related to Law Society business:
  - (i) Airfare
  - (ii) Ferries
  - (iii) Airport fees
  - (iv) Public transportation costs
  - (v) Parking
  - (vi) Taxi fares, including gratuity, to and from, airport, hotel or residence
  - (vii) Use of a Bencher's personal vehicle for business travel will be reimbursed on a per kilometer basis at a rate of \$0.55 per kilometer.
- b) Flights under 4 hours should be booked as Economy Class. For flights more than 4 hours, if no coupons are available to upgrade to Executive Class, flights can be booked as Executive Class for CEO, Executive Committee, and/or Benchers travelling on official Law Society business.

### 5.02 Accommodation

The Law Society recognizes the following as reimbursable accommodation expenses related to Law Society business:

- a) Where an overnight stay in Vancouver is necessary, hotel overnight accommodation will be reimbursed for a standard single room equivalent at the Law Society's pre-approved hotels at the negotiated rates. Please request the Law Society corporate discount when booking your room to ensure that the Law Society corporate rate is

obtained.

- b) Hotel expenses will be covered for one night per meeting day, unless flight schedules or ground transportation do not permit earlier travel, or if the scheduled timing of the meeting or event requires arrival the night before the meeting.
- c) Appendix C contains further details on corporate hotel rate information and will be updated and published by the Law Society periodically.

### 5.03 Meals and Beverages

- a) The Law Society reimburses reasonable meals and beverage costs incurred while travelling or conducting Law Society business. If the Law Society is already providing a meal (breakfast, lunch or dinner), additional meal or beverage costs should not be claimed for these meals.
- b) Original detailed restaurant meal receipts including details on meals and beverages purchased, must be submitted along with the expense reimbursement claims. The names of all individuals in attendance, that are included in the reimbursable cost of the meal, must be listed on the expense claim or written on the back of the original receipt.
- c) Daily Limit for Bencher Meals and Beverages – You will be reimbursed up to a maximum of \$125 per day for meal and beverage costs, inclusive of tips and tax, which are incurred while travelling or conducting Law Society business. The daily limit amount includes breakfast, lunch and dinner. For all meals other than group meals, you must pay for your meals separately and submit individual meal and beverage expense receipts. Daily meals and beverages costs will be reimbursed only based on receipted amounts, up to the maximum daily limit.
- d) Group Meals – A group meal is defined as any meal or dinner at which there are six or more Bencher attendees. At group meals, reasonable meals and beverages costs will be reimbursed, and the President or the most senior Bencher in attendance should pay for the group meal. Group meals include Bencher dinners which occur after Thursday night committee meetings and after Executive Committee meetings, and any year end dinners organized by the Law Society, at a restaurant outside the Law Society building.
- e) Reimbursement for alcoholic beverages is not permitted on individual expense claims. Alcoholic beverages will be reimbursed for Group Meals.

### 5.04 Child Care and Dependant Adult Care

- a) Reasonable child care and/or dependant adult care expenses incurred by you will be reimbursed by the Law Society for those related expenses incurred during the hours of scheduled Law Society committee meetings or Law Society business and during the time taken to travel to and from such meetings, where they are in addition to what

would normally be incurred by you.

- b) If you are attending scheduled Law Society meetings away from your hometown, reasonable related child care and/or dependent adult care expenses will be reimbursed for any time spent overnight in order to attend a Law Society function, hearing or committee meeting, where they are in addition to what would normally be incurred by you. The caregiver should be a non-family member.
- c) You should indicate the number of hours and hourly rate and attach receipts to the Bencher Expense Claim Form.

#### 5.05 Other Reimbursable Expenses

The Law Society will reimburse reasonable miscellaneous expenses incurred in conducting Law Society business such as:

- a) Communication costs such as fax, long distance telephone charges, teleconferences and cellular phone usage.
- b) Administration costs such as postage and courier.

In an effort to reduce the impact on the environment, we encourage the reduction of photocopying and printing wherever possible. If you are unable to view the meeting materials in an electronic format, a printed hard copy can be provided upon request.

#### 5.06 Non-reimbursable Expenses

The Law Society does not reimburse expenses incurred for hospitality gifts, meals, accommodation or other expenses where you are hosted by family or friends or stay in your own secondary residence instead of a hotel.

#### 5.07 Spousal/Guest Travel Expenses

The Law Society occasionally hosts functions that are designated by the President or CEO as events to which a Bencher may bring a guest. Additional expenses that are incurred for a guest to travel to a designated event will be reimbursed in accordance with this policy, see Guest Travel Policy (Appendix B). For Benchers who receive remuneration, by honorarium or per diem, the amount that is reimbursed for guest travel will be considered a taxable benefit. For additional information please contact the CFO/Controller.

#### 5.08 Per Diems\* for **Appointed Benchers** for Service

- a) All Appointed Benchers are eligible to receive \$350 for every full day and \$200 for every half-day during which they attend any meeting, hearing or other event at the request of the Law Society. Meetings, hearings and events lasting more than 4 hours will be considered a full day event and less than 4 hours will be considered a half day event.

- b) In addition, any out-of-town Appointed Benchers are eligible to receive \$150 when they must travel for an extended period of time, for the purpose of attending a full day or half day event. Appointed Benchers are eligible for the travel per diem to and from

home, on the day the travel takes place including when travel takes place the same day as the event.

- c) Time spent preparing for meeting, hearings or other events will not be eligible for per diems.

\*T4's will be issued for all per diems that are paid during the year.

## 6 Submission of expense claims

### 6.01 Submission of Expense Claims

- a) Original detailed receipts and boarding passes must be submitted with a completed Bencher Expense Claim Form to the attention of the Controller.
- b) The Bencher Expense Claim Form should include the purpose for incurring the expense(s) such as attending a Committee, Call Ceremony, etc.
- c) Receipts supporting a business meal should indicate the reason for the business meeting and the names of those in attendance. Original detailed receipts must be submitted along with the expense reimbursement claims.
- d) Claims for reimbursement should be submitted on a monthly basis.

## 7 Reporting

### 7.01 Reporting

- a) In accordance with the Law Society's internal control and governance processes, reports on Bencher expenses will be produced as required.
- b) On an annual basis, a summary of reimbursed Bencher expenses by individual will be posted on the Members Only section of the Law Society website.

## Appendix A - Bencher expense claim form

Sample claim form shown below. Please use the claim form available under Bencher Resources on the Law Society website.

**Notes:**

- (1) One event per form.
- (2) Fill in the shaded areas.

<b>Event Date</b>	
<b>Event Description</b>	
<b>Place of Event</b>	
Name of Airline	
Name of Hotel	

DESCRIPTION	NET	HST	TOTAL
Meals & Entertainment (60025)	0.00	0.00	0.00
Airfare (60010)	0.00	0.00	0.00
Hotel (60015)	0.00	0.00	0.00
Taxi Fare (60010)	0.00	0.00	0.00
Parking (60010)	0.00	0.00	0.00
Ferry (60010)	0.00	0.00	0.00
Car Rental (60010)	0.00	0.00	0.00
Car Mileage (60010)(To/From)			
km @ \$0.55/km	0.00	0.00	0.00
Telephone (60040)	0.00	0.00	0.00
Photocopying/Fax (60040)	0.00	0.00	0.00
Courier/Postage (60040)	0.00	0.00	0.00
Per Diem (62205) None	0.00	0.00	0.00
Per Diem (62205) None	0.00	0.00	0.00
Per Diem (62205) None	0.00	0.00	0.00
Per Diem (62205) None	0.00	0.00	0.00
Other:	0.00	0.00	0.00
Other:	0.00	0.00	0.00
<b>TOTAL</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

**Name of Payee**

**Signature of Payee**

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**Approval**

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## Appendix B – Guest travel approval

Event	President	First VP	Second VP	CEO	Benchers
Bencher Retreat	Y	Y	Y	Y	Y
Welcome/Farewell Dinner	Y	Y	Y	Y	Y
Certificate Luncheon	N	N	N	N	N
Federation Conferences (x 2)	Y	N	N	N	N/A
Bench & Bar Dinner	N	N	N	N	N
CBA Annual Meeting	Y	N	N	N	N
Alberta Bencher Retreat	Y	N	N	N	N/A
IILACE <sup>1</sup> Annual Meeting	N/A	N/A	N/A	Y	N/A
International Conference (yearly)	Y	N	N	N	N
Functions in LSBC official capacity with a Guest	Y	Y	Y	Y	Y <sup>2</sup>
All Other Functions, Conferences, Events <sup>3</sup>	N	N	N	N	N

### Notes

- 1 International Institute of Law Association Chief Executives
- 2 If substituting for one of the Ladder
- 3 Unless pre-approved by Executive Committee

## Appendix C – Corporate rates

For a list of hotels, rates and discount codes, please see “Corporate Hotel Rates” under the Bencher Resources section of the law Society website, or attached to the bencher orientation package.

# Policy

## Bencher expense reimbursement

December 2019

### 1 Policy

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### 2 Purpose

- 2.01 The purpose of this Policy is to:
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  - b) Reflect the obligation of the Law Society to be accountable for the expenditure of all funds,
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### 3 Scope

- 3.01 This Policy applies to all current Benchers when conducting Law Society business.

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#### 5.08 Per Diems\* for **Appointed Benchers** for Service

- a) All Appointed Benchers are eligible to receive \$350 for every full day and \$200 for every half-day during which they attend any meeting, hearing or other event at the request of the Law Society. Meetings, hearings and events lasting more than 4 hours will be considered a full day event and less than 4 hours will be considered a half day event.

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- c) Time spent preparing for meeting, hearings or other events will not be eligible for per diems.

\*T4's will be issued for all per diems that are paid during the year.

## **6 Submission of expense claims**

### 6.01 Submission of Expense Claims

- a) Original detailed receipts and boarding passes must be submitted with a completed Bencher Expense Claim Form to the attention of the Controller.
- b) The Bencher Expense Claim Form should include the purpose for incurring the expense(s) such as attending a Committee, Call Ceremony, etc.
- c) Receipts supporting a business meal should indicate the reason for the business meeting and the names of those in attendance. Original detailed receipts must be submitted along with the expense reimbursement claims.
- d) Claims for reimbursement should be submitted on a monthly basis.

## **7 Reporting**

### 7.01 Reporting

- a) In accordance with the Law Society's internal control and governance processes, reports on Bencher expenses will be produced as required.
- b) On an annual basis, a summary of reimbursed Bencher expenses by individual will be posted on the Members Only section of the Law Society website.

## Appendix A - Bencher expense claim form

Sample claim form shown below. Please use the claim form available under Bencher Resources on the Law Society website.

**Notes:**

- (1) One event per form.  
 (2) Fill in the shaded areas.

<b>Event Date</b>	
<b>Event Description</b>	
<b>Place of Event</b>	
Name of Airline	
Name of Hotel	

DESCRIPTION	NET	HST	TOTAL
Meals & Entertainment (60025)	0.00	0.00	0.00
Airfare (60010)	0.00	0.00	0.00
Hotel (60015)	0.00	0.00	0.00
Taxi Fare (60010)	0.00	0.00	0.00
Parking (60010)	0.00	0.00	0.00
Ferry (60010)	0.00	0.00	0.00
Car Rental (60010)	0.00	0.00	0.00
Car Mileage (60010)(To/From)			
km @ \$0.55/km	0.00	0.00	0.00
Telephone (60040)	0.00	0.00	0.00
Photocopying/Fax (60040)	0.00	0.00	0.00
Courier/Postage (60040)	0.00	0.00	0.00
Per Diem (62205) None	0.00	0.00	0.00
Per Diem (62205) None	0.00	0.00	0.00
Per Diem (62205) None	0.00	0.00	0.00
Per Diem (62205) None	0.00	0.00	0.00
Other:	0.00	0.00	0.00
Other:	0.00	0.00	0.00
<b>TOTAL</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

Name of Payee

Signature of Payee

\_\_\_\_\_

Approval

\_\_\_\_\_

## Appendix B – Guest travel approval

Event	President	First VP	Second VP	CEO	Benchers
Bencher Retreat	Y	Y	Y	Y	Y
Welcome/Farewell Dinner	Y	Y	Y	Y	Y
Certificate Luncheon	N	N	N	N	N
Federation Conferences (x 2)	Y	N	N	N	N/A
Bench & Bar Dinner	N	N	N	N	N
CBA Annual Meeting	Y	N	N	N	N
Alberta Bencher Retreat	Y	N	N	N	N/A
IILACE <sup>1</sup> Annual Meeting	N/A	N/A	N/A	Y	N/A
International Conference (yearly)	Y	N	N	N	N
Functions in LSBC official capacity with a Guest	Y	Y	Y	Y	Y <sup>2</sup>
All Other Functions, Conferences, Events <sup>3</sup>	N	N	N	N	N

### Notes

- 1 International Institute of Law Association Chief Executives
- 2 If substituting for one of the Ladder
- 3 Unless pre-approved by Executive Committee

## **Appendix C – Corporate rates**

For a list of hotels, rates and discount codes, please see “Corporate Hotel Rates” under the Bencher Resources section of the law Society website, or attached to the bencher orientation package.

# Policy

## Committee member, hearing panellists and other volunteer expense reimbursement

December 2019

### 1 Policy

- 1.01 As a committee member, hearing panellist or other volunteer, you are entitled to be reimbursed by the Law Society for reasonable expenses incurred in conducting Law Society business.

### 2 Purpose

- 2.01 The purpose of this Policy is to:
- a) Provide guidelines for committee members, hearing panellists and other volunteers with respect to reimbursable expenses in conducting Law Society business,
  - b) Reflect the obligation of the Law Society to be accountable for the expenditure of all funds,
  - c) Assist the Law Society in overseeing expenses, and
  - d) Outline the required supporting documentation to ensure sufficient back-up is provided for annual audit and CRA compliance purposes.

### 3 Scope

- 3.01 This Policy applies to committee members, hearing panellists and other volunteers when conducting Law Society business. All current elected and appointed Benchers should use the *Bencher expense reimbursement policy*.

### 4 Responsibility

- 4.01 You are responsible for:
- a) Following the policy and guidelines for expenses.
  - b) Retaining and submitting, in a timely manner, all original detailed receipts (credit card receipts alone are not sufficient back-up for audit and CRA compliance purposes) along with a completed Law Society Bencher and Volunteer Expense claim form (Appendix A), along with the necessary information to allocate costs to the relevant



Law Society business conducted.

4.02 The Chief Financial Officer (CFO) or delegate is responsible for:

- c) Providing guidance regarding appropriate types and levels of expenses.

## **5 Allowable Law Society business expenses**

### 5.01 Travel

The Law Society recognizes the following as reimbursable reasonable travel expenses when required for Law Society business:

- (i) Airfare. All flights must be booked as Economy class, at the lowest reasonable cost available.
- (ii) Ferries
- (iii) Airport fees
- (iv) Economy class car rental
- (v) Public transportation costs
- (vi) Parking
- (vii) Taxi fares, including gratuity
- (viii) Use of a personal vehicle for business travel will be reimbursed on a per kilometer basis at a rate of \$0.55 per kilometer.

### 5.02 Accommodation

The Law Society reimburses reasonable accommodation expenses incurred for conducting Law Society business outside of the lower mainland.

If travelling for Law Society business and an overnight stay is necessary, reasonable hotel overnight accommodation will be reimbursed for a standard single hotel room, excluding mini-bar, movies, valet charges or other personal expense items. Corporate hotel rate information can be found in Appendix B. If no corporate hotel rates are available, hotel room rates must be in the mid-range of the market, depending on the location of the business travel.

### 5.03 Meals and Beverages (Meals)

The Law Society reimburses reasonable meals incurred while travelling or conducting Law Society business as follows:

- d) If the Law Society is already providing a meal (breakfast, lunch or dinner), additional meal or beverage costs should not be claimed for these meals.

Original detailed restaurant meal receipts (not only the credit card receipt), including details on meals purchased, must be submitted with the expense claim.

If dining with others, you must pay for your meals separately and submit individual meal and beverage expense receipts.

Limit for Meals (outside of the Vancouver area, but within BC), including tax and reasonable gratuities:

Breakfast = \$15

Lunch = \$20

Dinner = \$40

Limit for Meals (within the Vancouver area, and outside of BC), including tax and reasonable gratuities:

Breakfast = \$20

Lunch = \$30

Dinner = \$50

Reimbursement for alcoholic beverages is not permitted on individual expense claims.

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5.04 Child Care and Dependant Adult Care

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- e) Reasonable child care and/or dependant adult care expenses incurred by you will be reimbursed by the Law Society for those related expenses incurred during the hours of scheduled Law Society committee meetings or Law Society business and during the time taken to travel to and from such meetings, where they are in addition to what would normally be incurred by you.
- f) If you are attending scheduled Law Society meetings away from your hometown, reasonable related child care and/or dependent adult care expenses will be reimbursed for any time spent overnight in order to attend a Law Society function, hearing or committee meeting, where they are in addition to what would normally be incurred by you. The caregiver should be a non-family member.
- g) You should indicate the number of hours and hourly rate and attach receipts to the Bencher and Volunteer Expense Claim Form.

5.05 Other Reimbursable Expenses

The Law Society will reimburse reasonable miscellaneous expenses incurred in conducting Law Society business such as:

- h) Communication costs such as fax, long distance telephone charges, teleconferences and cellular phone usage.
- i) Administration costs such as postage and courier.

In an effort to reduce the impact on the environment, we encourage the reduction of photocopying and printing wherever possible. If you are unable to view the meeting materials in an electronic format, a printed hard copy can be provided upon request.

#### 5.06 Non-reimbursable Expenses

The Law Society does not reimburse expenses incurred for hospitality gifts, meals, accommodation or other expenses where you are hosted by family or friends or stay in your own secondary residence instead of a hotel.

#### 5.07 Per Diems\* for **Public representatives attending hearings.**

- a) All public representatives in the hearing panel pool are eligible to receive \$350 for every full day event and \$200 for every half-day event during which they attend a hearing at the request of the Law Society. Hearings lasting more than 4 hours will be considered a full day event and less than 4 hours will be considered a half day event.
- b) In addition, any out-of-town public representatives in the hearing panel pool are eligible to receive \$150 when they must travel for an extended period of time, for the purpose of attending a full day or half day event. Public representatives in the hearing panel pool are eligible for the per diem to and from home on the day the travel takes place including when travel takes place the same day as the event.
- c) Time spent preparing for hearings will not be eligible for per diems.

\*T4A's will be issued for all per diems that are paid during the year.

## 6 Submission of expense claim

### 6.01 Submission of Expense Claims

- j) Original detailed receipts and boarding passes must be submitted with a completed Expense Claim Form.
- k) The Expense Claim Form should include the purpose for incurring the expense(s) such as attending a Committee, Hearing, etc.
- l) Claims for reimbursement should be submitted on a monthly basis.

## Appendix A – Bencher and volunteer expense claim form

Sample claim form shown below.

**Notes:**

- (1) One event per form.
- (2) Fill in the shaded areas.

<b>Event Date</b>	
<b>Event Description</b>	
<b>Place of Event</b>	
Name of Airline	
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Other:	0.00	0.00	0.00
<b>TOTAL</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

Name of Payee

Signature of Payee

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Approval

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## Appendix B – Corporate rates

A list of hotels, rates and discount codes will be available for non-bencher committee members and hearing panellists. For an updated list please contact the Controller.



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December 2019

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<b>Event Description</b>	
<b>Place of Event</b>	
Name of Airline	
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Ferry (60010)	0.00	0.00	0.00
Car Rental (60010)	0.00	0.00	0.00
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km @ \$0.55/km			
Telephone (60040)	0.00	0.00	0.00
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Courier/Postage (60040)	0.00	0.00	0.00
Per Diem (62205) None	0.00	0.00	0.00
Per Diem (62205) None	0.00	0.00	0.00
Per Diem (62205) None	0.00	0.00	0.00
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Other:	0.00	0.00	0.00
Other:	0.00	0.00	0.00
<b>TOTAL</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

**Name of Payee**

**Signature of Payee**

\_\_\_\_\_

**Approval**

\_\_\_\_\_

## **Appendix B – Corporate rates**

A list of hotels, rates and discount codes will be available for non-bencher committee members and hearing panellists. For an updated list please contact the Controller.



# Memo

To: Benchers  
From: Craig Ferris, QC  
First Vice-President  
Date: November 26, 2019  
Subject: 2020 Committees, Task Forces and Working Groups

---

At the September 12, 2019 Executive Committee meeting, the Committee considered if efficiencies might be gained by revising the Law Society committee, task force and working group structure. After a useful discussion, the Executive Committee agreed to leave the issue to the First Vice-President to consider further.

I note that currently, there are 21 committees, task forces and working groups.

During the last substantial review of committees in 2007, John Hunter, QC then First Vice-President, stated:

*... there is a need for setting priorities among policy issues and there is a need for an educated board making policy decisions. [I] would like to see Bencher meetings more focused on discussion rather than receiving presentations, and dealing with a small number of high priority items without adding matters unless they are clearly necessary. Once that is in place, the Benchers would be able to devote several hours of Bencher time to a particular issue with adequate information to produce a sound policy decision. The important thing is to move away from committees and task forces making the policy decisions rather than the Benchers.*

While the Benchers may establish committees to do anything the Benchers are authorized to do, it may be that delegation to committees detracts from the engagement of the Benchers with issues or areas that are delegated to committees.

As the Governance Committee noted in its 2017 mid-year report,

*... in some ways the current process at the Benchers' table did make it harder to have input into recommendations and decisions, given that much of the policy work is done in committee.*

As the Governance Committee observed, it is difficult to engage a board as large as the Benchers in the type of discussion that committees enable. But too much delegation may detract from the diversity and experience that is represented at the Benchers table and certainly may detract from the Benchers participation in policy decisions. So, perhaps committees when necessary but not necessarily committees.

With that in mind, I am suggesting the following:

1. **Access to Justice Advisory Committee:** The mandate of the Legal Aid Advisory Committee is a subset of the broader mandate of the Access to Legal Services Advisory Committee. While the creation of the Legal Aid Task Force and subsequent Legal Aid Advisory Committee were appropriate responses to the continued inaction of the government with respect to legal aid, the developments in legal aid over the last year have signaled that the concerted action by the Law Society and a number of other groups has had some impact. While having an advisory committee focused attention on the issue of legal aid in BC, going forward it is my view that we need only one advisory committee to look at the range of issues connected with the need for greater access to legal services. I am proposing to the Benchers that the Access to Legal Services Advisory Committee and the Legal Aid Advisory Committee be consolidated into one advisory committee, to be renamed the Access to Justice Advisory Committee.
  
2. **Lawyer Development Task Force:** The Lawyer Education Advisory Committee was created in December 2007 as the successor to the Lawyer Education Task Force, which had been charged with considering continuing professional development for the profession. The Committee subsequently reviewed our professional legal training course and most recently has been charged with reviewing the Law Society's admission program. The Lawyer Education Advisory Committee is unique in that we do not have standing advisory committees with respect to other Law Society program areas, such as professional conduct or trust assurance. The Lawyer Education Advisory Committee is also different from our other advisory committees, which tend to be more focused on external policy issues, such as access to legal services, lawyer independence, and truth and reconciliation. In my view, the better approach to issues arising in respect of program areas such as lawyer education is the creation of issue specific task forces. As such, I am recommending that the Lawyer Education Advisory Committee convert into a Lawyer Development Task Force. The Task Force would be tasked with a mandate to consider a "cradle to grave" review of how we are developing and maintaining a well-educated and qualified bar to serve the public of British Columbia. Its mandate would be to consider the life cycle of a lawyer as a whole, as opposed to looking at programs piecemeal without consideration of how those programs interact. The mandate would include completing the current admission program review by a fixed date, reviewing our pre-call education program in light of developments in other Canadian jurisdictions, our

continuing professional development program, whether we should have specializations to allow for more directed continuing legal training and the issue of re-certification.

3. **The Practice Standards Committee:** This Committee has been in place since 1999<sup>1</sup> with responsibility for fulfilling the Benchers authority to set standards of practice for lawyers, establish and maintain a program to assist lawyers in handling or avoiding personal, emotional, medical or substance abuse problems, and establish and maintain a program to assist lawyers on issues arising from the practice of law.<sup>2</sup> The work of the Practice Standards Committee is related to the work of the Discipline Committee, in that both committees may consider complaints about lawyers and take action with respect to those complaints. In addition, the Act permits the Benchers to make Rules allowing the Discipline Committee to consider the work of the Practice Standards Committee with respect to:

- (i) the findings of an investigation into a lawyer's competence to practise law,
- (ii) any remedial program undertaken or recommended,
- (iii) any order that imposes conditions or limitations on the practice of a lawyer, and
- (iv) any failure to comply with an order that imposes conditions or limitations on the practice of a lawyer.

As such, there is a close connection between the responsibilities of both committees and which may provide an opportunity to achieve some efficiencies in the work of both committees and the related Law Society operations. This may be particularly so in light of the development of the diversion program which is currently being contemplated. However, any significant changes to the Practice Standards Committee would require an amendment to the Rules but I intend to ensure that the Benchers consider and make a determination on this issue in 2020.

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<sup>1</sup> Its predecessor was the Competency Committee.

<sup>2</sup> Legal Profession Act, s. 27. Note that Rule 3-16 provides a variation on the statutory responsibilities of the Benchers in stating that the objectives of the Practice Standards Committee are to

- (a) recommend standards of practice for lawyers,
- (b) develop programs that will assist all lawyers to practise law competently, and
- (c) identify lawyers who do not meet accepted standards in the practice of law, and recommend remedial measures to assist them to improve their legal practices.



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

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December 6, 2019

Prepared for: Benchers

Prepared by: Don Avison

## **1. Briefing Session For Newly Elected Benchers**

Four new Benchers will be commencing their responsibilities with the Law Society on January 1, 2020. To assist with the introduction to the organization an orientation session with President elect Craig Ferris Q.C. and with senior staff is scheduled for January 29, 2020 prior to the first Bencher meeting of the New Year.

In addition, this year we will be providing new Benchers with an opportunity to tour Law Society operations to get a sense of who does the work and the various areas of responsibility.

## **2. Cullen Commission**

Earlier this year the Law Society sought party status in relation to the public inquiry that the Government of British Columbia established to further examine money laundering in B.C. Ludmila Herbst Q.C. was retained to assist the Law Society on the inquiry and Jennifer Chan of the Professional Conduct group has been tasked with internal coordination of the Law Society's work on this over the course of the next several months. Ms. Chan has had substantial experience with commission proceedings and her work on this matter has proved very valuable.

As with the reviews conducted by Peter German Q.C. and by the Expert Panel chaired by Professor Maureen Maloney, senior staff will be meeting with counsel for the Commission to provide detailed background briefings on the trust assurance and auditing programs, on investigations and discipline and with respect to out practice advice and professional education initiatives.

The briefings will also include information regarding the role of the Federation of the Law Societies of Canada, on the Federation's model code development process, on the Federation's Anti-Money Laundering and Terrorist Financing Working Group and the progress of discussions taking place at the national level with the Departments of Justice and Finance, the CRA, FINTRAC, the RCMP and other entities'.



### **3. Engagement with Government**

There have been a number of meetings in recent weeks that Benchers should be aware of. Pinder Cheema Q.C., Dean Lawton and I met with the Assistant Deputy Minister Kurt Sandstrom Q.C. to provide a briefing on the Rule and commentary changes proposed by the Ethics Committee and how those changes are linked to other proposed changes that Bencher will consider arising from the work of the Law Society's Mental Health Task Force.

On November 18, President Merrill, Brook Greenberg and I met with the Deputy Attorney Richard Fyfe Q.C. and with Assistant Deputy Minister Sandstrom to provide further background on the recommendations set out in the Second Interim Report of the Mental Health Task Force.

Mr. Whitcombe Q.C and I also met recently with Paul Craven, Superintendent responsible for the implementation of the *Professional Governance Act*. That discussion resulted in a useful exchange of information and I will provide further background at the December 6 meeting.

### **4. Staffing Update – Manager Appointment in Member Services**

As Benchers know, resources allocated in the 2020 Law Society budget included provision for the addition of a Manager for Member Services who will report to Lesley Small.

I am pleased to report that, Ms. Lynwen Clark has accepted our offer to take on this important role and she will join us on January 6, 2020. Ms. Clark comes to us from the BC College of Nursing Professionals where she was the Manager of Application and Renewal where she implemented business process improvements including the automation of manual processes, the enhancement of "self-service" options for registrants and the transition to an enhanced online environment. Her prior experience has included work with CDC software and with Pivotal Corporation.

Working with Ms. Small, Ms. Clark will be expected to play a leadership role in further modernizing the Law Society's Member Services operations.

## **5. Looking Ahead to 2020**

As we begin a new year in 2020, and enter upon the third year of the Law Society's current Strategic Plan, I believe it would be an appropriate time to report out to Benchers on a number of key activity areas. With this in mind, I have asked members of Senior Leadership Group to attend the January, 2020 Bencher meeting to provide overviews of, and to answer questions in relation to, their respective area of responsibilities. Those overviews will provide information on organizational performance, existing or emerging challenges and senior staff perspectives on initiatives that could assist in improving outcomes, efficiency and effectiveness.

Don Avison  
Chief Executive Officer



# Memo

To: Benchers  
From: Finance and Audit Committee  
Date: November 14, 2019  
Subject: Enterprise Risk Management Plan - 2019 Annual Update

---

Attached is the 2019 annual update to the Law Society's Enterprise Risk Management (ERM) plan. This was reviewed by the Finance and Audit Committee meeting at their October meeting, and is being provided as information to the Benchers. Since the inception of the ERM plan in 2011, the plan has been reviewed on an annual basis.

## **Background**

The ERM plan is a governance tool to accomplish the following:

- Identify the enterprise risks that can have an impact on the achievement of the Law Society's strategic goals and mandate.
- Determine the relative priority of those risks based on the likelihood they would occur and the extent of the impact on the organization.
- Manage the risks through mitigation strategies that are either in place or in progress, which assist in retaining, reducing, avoiding or transferring the risks.

## **2019 Update**

Attached is an ERM Executive Summary which highlights the top 10 strategic residual risks, along with the updated enterprise risk register, with new initiatives or changes in the mitigation strategies highlighted in blue.

Management has reviewed the top ten enterprise risks and has made the following changes to the residual risks levels:

R10: Emergence of new technologies challenging the ability to regulate legal services:

We have adjusted the residual risk level to green, which moves this risk out of the top ten. We will continue to monitor technological trends, such as block chain and artificial intelligence, to evaluate the impact on the regulator.

R5: Failure to sanction, or deal with, a lawyer in an appropriate way.

Although this risk has not changed substantially from previous evaluations, with the importance of this risk, we have moved the residual risk level to yellow, as this continues to be top of mind and we continue to actively monitor and manage this risk.

R8: Admission decisions, including those made by the National Committee on Accreditation, are not reflective of the character, fitness and competencies of a prospective lawyer.

We adjusted the residual risk level to yellow, which moves this risk into the top ten. As the number of PLTC students, including NCA students, has increased significantly, we continue to actively monitor and manage this risk.

**Law Society of British Columbia**  
**Enterprise Risk Management - Updated October 2019**  
**Executive Summary**

An enterprise risk is the threat that an event or action will adversely affect an organization's ability to achieve its strategic goals and mandate.

An Enterprise Risk Management Plan (ERM) is a governance tool which provides for the:

- Identification of enterprise risks that can have an impact on the achievement of the Law Society's strategic goals and mandate
- Determination of relative priority of these risks based on their potential to occur and the extent of the impact
- Management of the risks through mitigation strategies, retaining, reducing, avoiding or transferring the risks

To successfully manage these risks, a framework for risk identification, measurement and monitoring has been developed and is reported to the Finance and Audit Committee (and then to the Benchers) on an annual basis.

The process going forward will be:

- Leadership Council plays a central role, with the Executive Director / Chief Executive Officer being the main liaison, per the Executive Limitations
- The ERM plan will be maintained through discussions by Leadership Council and related departments to refresh the Risk Schedule and related risk management efforts
- Should a risk change or a new risk occur, the escalation process will be to inform the appropriate Executive Team member, and/or the ED/CEO, with a report out to the President (or Executive Committee) when required, subject to the Executive Limitations

The top ten strategic residual risks are noted below, with the full Risk Schedule attached as Appendix A.

<b>Summary of Major Strategic Residual Risks (top 10 risks)</b>		
<b>Category</b>	<b>Risk</b>	<b>ET Lead</b>
Regulatory	R11: Misuse of trust funds and accounts, and/or other facilitation of financial misconduct by members	CLO and Director of Trust Regulation, Director of Insurance
Operational	O1: Natural or other disaster, such as fire, flood or earthquake	ED/CEO
Regulatory	R9: Perceived failure to enable, or actual hindrance of, reasonable access to legal service providers	ED/CEO
Regulatory	R5: Failure to appropriately sanction, or deal with, a lawyer in an appropriate way	CLO and Tribunal Counsel
Regulatory	R8: Admission decisions, including NCA, are not reflective of character, fitness and competencies	ED/CEO, DED, Director of Education and Practice
Regulatory	R3: Conflict of interest event by Benchers or staff	ED/CEO
Operational	O3: Significant breach (including unauthorized access) of confidential and/or FOIPPA information to members, employees and/or the public	DED and CFO
Regulatory	R6: Significant failure to fulfill the statutory duties under the Legal Profession Act	ED/CEO
Staff and Work Environment	SW1: Loss of key personnel or inability to recruit skilled personnel	ED/CEO
Regulatory	R12: Exercise of members' statutory right to override appropriate Bencher decisions	ED/CEO

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Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2018	Residual Risk Level 2019	Planned (In Progress) Strategies and Controls	ET Lead
REGULATORY RISK	<p><b>R11:</b> Misuse of trust funds and accounts, and/or other facilitation of financial misconduct by members, and/or the perception that the Law Society needs to do more to effectively regulate</p>	<ul style="list-style-type: none"> <li>• <b>Political:</b> government intervention in the Law Society authority and structures</li> <li>• <b>Reputational:</b> diminished public confidence along with a loss of reputation with the membership</li> <li>• <b>Financial:</b> costs and damages - possible litigation</li> </ul>		<ul style="list-style-type: none"> <li>• Appropriate Law Society trust and conduct rules</li> <li>• Trust assurance audit program</li> <li>• Appropriate investigation and prosecution of legal matters commensurate with administrative law</li> <li>• Education and risk management advice to lawyers and Admission Program students</li> <li>• Insurance policy terms and limits</li> <li>• Insurance policy for Part B underwritten by AIG</li> <li>• Credentialing standards and procedures</li> <li>• Hearing panel composition and training</li> <li>• Government engagement and communications</li> <li>• National Discipline Standards</li> <li>• Enhanced AMLTF rules effective January 2020</li> <li>• Development of new guidance and best practices documents</li> <li>• Simplify reporting of criminal conduct to one committee, Discipline Committee</li> <li>• Law Firm Regulation self-assessment includes consideration of adequate commercial insurance coverage, including crime and employee theft</li> </ul>			<ul style="list-style-type: none"> <li>• Further development of AML guidance and courses for the profession</li> <li>• Participation in FLSC AMLTF Working Group</li> <li>• FLSC engagement with Department of Finance working group</li> </ul>	<p>CLO, Director of Trust Regulation, Director of Insurance, Director of Education &amp; Practice</p>

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OPERATIONAL	<b>O1:</b> Natural or other disaster, such as fire, flood or earthquake	<ul style="list-style-type: none"> <li>• <b>Operational and financial:</b> injury of staff and/or building damage</li> <li>• <b>Operational:</b> service disruption</li> <li>• <b>Financial:</b> unexpected costs</li> </ul>		<ul style="list-style-type: none"> <li>• Fire and earthquake safety plan and training</li> <li>• Crisis communication plan</li> <li>• Building, human resources, and operational procedures and training</li> <li>• First Aid attendants</li> <li>• Information technology backup plan</li> <li>• Building due diligence review</li> <li>• Insurance coverage and Work Safe coverage</li> <li>• Off-site storage</li> <li>• Off-site server location</li> <li>• Annual manager training to back up floor wardens</li> </ul>			<ul style="list-style-type: none"> <li>• Implementation of Virtual Desktop Infrastructure ongoing</li> </ul>	ED/CEO
REGULATORY RISK	<b>R9:</b> Perceived failure to enable, or actual hindrance of, reasonable access to legal service providers	<ul style="list-style-type: none"> <li>• <b>Reputational:</b> loss of public confidence, being seen as a barrier to public access</li> <li>• <b>Political:</b> government intervention</li> </ul>		<ul style="list-style-type: none"> <li>• Unbundling of legal services</li> <li>• Committees: Licensed Paralegal Task Force, Access to Legal Services, Unauthorized Practice</li> <li>• Appropriate use of unauthorized practice authority</li> <li>• Supporting and funding pro bono service</li> <li>• Funding other access to legal services initiatives</li> <li>• Obtained legislative changes to broaden legal service providers to include licensed paralegals</li> </ul>			<p>Strategic Plan updated for 2018 to 2020:</p> <ul style="list-style-type: none"> <li>• Pursue our Vision for Publicly Funded Legal Services</li> <li>• Review regulatory requirements to ensure they do not hamper innovation or hinder cost-effective delivery of legal services</li> </ul>	ED/CEO

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<b>REGULATORY</b>	<b>R5:</b> Failure to sanction, or deal, with a lawyer in an appropriate way	<ul style="list-style-type: none"> <li>• <b>Political:</b> government intervention in the Law Society authority and structures</li> <li>• <b>Reputational:</b> diminished public confidence along with a loss of reputation with the membership</li> <li>• <b>Financial:</b> costs and damages - possible litigation</li> </ul>		<ul style="list-style-type: none"> <li>• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law</li> <li>• S.86 Legal Profession Act (statutory protection against lawsuits and liability)</li> <li>• D &amp; O insurance policy underwritten by AIG</li> <li>• Government relations</li> <li>• Ability to seek review and/or appeal to the BC Court of Appeal</li> <li>• Enhanced role of Tribunal Counsel</li> <li>• Hearing panel composition and training</li> <li>• National Discipline standards</li> <li>• Federation of Law Societies AML Working Group</li> <li>• Tribunal Case Management</li> <li>• Written Hearings</li> <li>• Administrative suspensions for failures to respond</li> </ul>			<ul style="list-style-type: none"> <li>• Review of Discipline and Professional Conduct processes</li> </ul>	CLO and Tribunal Counsel



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REGULATORY	<b>R8:</b> Admission decisions, including those made by the National Committee on Accreditation, are not reflective of the character, fitness, and competencies of a prospective lawyer	<ul style="list-style-type: none"> <li><b>Political:</b> government intervention in the Law Society authority and structures</li> <li><b>Reputational:</b> diminished public perception of independence</li> <li><b>Financial:</b> costs and damages imposed through possible litigation</li> </ul>		<ul style="list-style-type: none"> <li>Law Society Admission Program</li> <li>Credentialing standards and procedures</li> <li>Continuous updating &amp; enhancement of PLTC student assessment and training</li> <li>Hearing panel composition and training</li> <li>Enhanced role of Tribunal Counsel</li> <li>Legislative amendment to allow Law Society appeals of prior decisions</li> <li>National Committee on Accreditation</li> <li>Federation law degree approval process</li> </ul>			<ul style="list-style-type: none"> <li>Articling program review, including quality and availability</li> <li>Review of Federation National Committee on Accreditation</li> </ul>	ED/CEO, DED, Director of Education and Practice
REGULATORY	<b>R3:</b> Conflict of interest event by Benchers or staff	<ul style="list-style-type: none"> <li><b>Political:</b> government intervention in the Law Society authority and structures</li> <li><b>Reputational:</b> diminished public perception of independence along with a loss of reputation with the membership</li> </ul>		<ul style="list-style-type: none"> <li>Bencher governance policies and training</li> <li>Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law, including investigations conducted by independent, external counsel where appropriate</li> <li>Enhanced role of Tribunal Counsel</li> <li>Hearing panel composition and training</li> <li><a href="#">New Bencher Code of Conduct policy</a></li> </ul>				ED/CEO
OPERATIONAL	<b>O3:</b> Significant breach (including unauthorized	<ul style="list-style-type: none"> <li><b>Reputational:</b> diminished public perception of independence and</li> </ul>		<ul style="list-style-type: none"> <li>Information technology security policy, process and procedures</li> </ul>				DED and CFO

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	access) of confidential and/or FOIPPA information to members, employees and/or the public	possible loss of reputation with membership		<ul style="list-style-type: none"> <li>• Member file and case file management procedures</li> <li>• Records management procedures and LEO security profiles, confidential shredding service</li> <li>• Building security system and procedures</li> <li>• Information technology, privacy and security training of new staff</li> <li>• Established Privacy Policies, including annual privacy awareness training for staff</li> <li>• Information Privacy Agreements with contractors</li> <li>• IT Security Review completed regularly</li> <li>• Member portal</li> <li>• Encryption of Bencher and Committee agendas</li> <li>• Bencher and Committee member procedures for Law Society documents in place</li> <li>• Cyber Insurance in place</li> </ul>				

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<b>STAFF AND WORKING ENVIRONMENT</b>	<b>SW1:</b> Loss of key personnel or inability to recruit skilled personnel	<ul style="list-style-type: none"> <li><b>Operational:</b> service disruption as well as loss of corporate knowledge</li> </ul>		<ul style="list-style-type: none"> <li>Succession planning and cross training</li> <li>Compensation and benefit philosophy, including employee recognition program</li> <li>Regular review of compensation benchmarking practices in consultation with external compensation experts</li> <li>Professional, leadership and skills development program and human resource policies</li> <li>Performance management and coaching process</li> <li>Leadership Council structure to provide leadership experience</li> <li>Hiring practices and recruiting firms</li> <li>Ad-hoc Telecommuting Policy</li> </ul>			<ul style="list-style-type: none"> <li>Review of Performance Management and RREX program</li> <li>New Employee Survey design</li> <li>Implementation of Virtual Desktop Infrastructure</li> </ul>	ED/CEO
<b>REGULATORY RISK</b>	<b>R12:</b> Exercise of members' statutory right to override appropriate Bencher decisions	<ul style="list-style-type: none"> <li><b>Operational:</b> disruptive to day-to-day operations</li> <li><b>Reputational:</b> loss of member and public confidence, distraction from other issues, strained relationships</li> <li><b>Financial:</b> large resource commitment takes away from other initiatives</li> </ul>		<ul style="list-style-type: none"> <li>Communication strategies</li> <li>Law Society initiated consultation or member referenda</li> <li>Policy analysis</li> <li>New AGM structure and process</li> </ul>				ED/CEO

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REGULATORY	<b>R6:</b> Significant failure to fulfill the statutory duties under the <i>Legal Profession Act</i>	<ul style="list-style-type: none"> <li>• <b>Political:</b> government intervention in the Law Society authority and structures</li> <li>• <b>Reputational:</b> diminished public confidence along with a loss of reputation with the membership</li> <li>• <b>Financial:</b> costs and damages - possible litigation</li> </ul>		<ul style="list-style-type: none"> <li>• Bencher governance policies and training</li> <li>• Bencher Strategic Plan</li> <li>• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law</li> <li>• Crisis communication plan (note: applies to all risks)</li> <li>• Government relations</li> <li>• Hearing panel composition and training</li> <li>• Trust Assurance audit program</li> </ul>			<ul style="list-style-type: none"> <li>• Law Firm Regulation Task Force self-assessment pilot project completed, Phase 1 being implemented</li> </ul>	ED/CEO
OPERATIONAL	<b>O5:</b> Loss of data and information	<ul style="list-style-type: none"> <li>• <b>Reputational:</b> diminished public perception of independence and possible loss of reputation with membership</li> <li>• <b>Operational:</b> service disruption</li> <li>• <b>Financial:</b> unexpected costs</li> </ul>		<ul style="list-style-type: none"> <li>• Information technology backup plan</li> <li>• Information technology security policy, process and procedures</li> <li>• Records management policies and LEO</li> <li>• Off-site Iron Mountain storage for closed files</li> <li>• Insurance coverage</li> <li>• Off-site storage</li> <li>• Off-site server location</li> </ul>				DED and CFO
REGULATORY	<b>R2:</b> A legal proceeding alleging a failure of the Law Society to follow due process or	<ul style="list-style-type: none"> <li>• <b>Reputational:</b> diminished public perception of independence along with a loss of reputation with the membership</li> </ul>		<ul style="list-style-type: none"> <li>• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law</li> <li>• Hearing panel composition and training</li> <li>• Enhanced role of the Tribunal Counsel</li> <li>• National Discipline Standards</li> </ul>				CLO and DED

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	alleging human rights breaches	<ul style="list-style-type: none"> <li>• <b>Financial:</b> lawsuit defence and settlement costs</li> </ul>		<ul style="list-style-type: none"> <li>• S.86 <i>Legal Profession Act</i> (statutory protection against lawsuits and liability)</li> <li>• D &amp; O insurance policy underwritten by AIG</li> <li>• Government engagement and communications</li> </ul>				
<b>STAFF AND WORKING ENVIRONMENT</b>	<b>SW3:</b> Labour action (strike)	<ul style="list-style-type: none"> <li>• <b>Operational:</b> service disruption</li> </ul>		<ul style="list-style-type: none"> <li>• Cross training</li> <li>• Compensation and benefit philosophy, including pay equity</li> <li>• Human resource and operational standards, policies and procedures</li> <li>• 2019 – 2021 PEA collective agreement</li> </ul>				DED and CFO
<b>STAFF AND WORKING ENVIRONMENT</b>	<b>SW5:</b> Proceeding commenced on human rights issues by staff	<ul style="list-style-type: none"> <li>• <b>Operational and reputational:</b> diminished levels of staff performance</li> <li>• <b>Financial:</b> unexpected costs</li> </ul>		<ul style="list-style-type: none"> <li>• Human resource and operational standards, policies and procedures</li> <li>• Annual performance management and coaching process</li> <li>• Leadership development training</li> <li>• Legal counsel and advice</li> <li>• Revised <i>Respectful Workplace policy and training</i></li> </ul>				CFO
<b>REGULATORY RISK</b>	<b>R10:</b> Emergence of new technologies challenging the ability to	<ul style="list-style-type: none"> <li>• <b>Regulatory:</b> unable to appropriately investigate and discipline</li> <li>• <b>Reputational:</b> loss of confidence</li> </ul>		<ul style="list-style-type: none"> <li>• General awareness and environmental scan</li> <li>• Practice advisors</li> <li>• Monitor developments in block chain and artificial intelligence to evaluate implications for legal regulation</li> </ul>				DED

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	regulate legal services	<ul style="list-style-type: none"> <li><b>Operational:</b> disruption to day-to-day activities</li> </ul>						
<b>FINANCIAL</b>	<b>F2:</b> Significant impact of economic and/or financial market downturn	<ul style="list-style-type: none"> <li><b>Financial:</b> investment devaluation as well as losses of market value in the building and member revenue, member economic impact</li> </ul>		<ul style="list-style-type: none"> <li>Investment policies and procedures (SIIP)</li> <li>Quarterly reviews of investment performance and benchmarking</li> <li>Investment managers and pooled funds</li> <li>Annual operating and capital budgeting process</li> <li>Monthly and quarterly financial review process</li> <li>Real estate expert advice and monitoring</li> <li>Appropriate reserve levels and Minimum Capital Test ratio</li> <li>Revised Asset Mix to include infrastructure funds to diversify investments and reduce risk</li> </ul>			<ul style="list-style-type: none"> <li>Revise investment policy and implement new managers</li> </ul>	CFO and Director of Insurance

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REGULATORY	<b>R7:</b> Loss of a lawsuit alleging wrongful deprivation of lawyer's (prospective) membership (livelihood)	<ul style="list-style-type: none"> <li>• <b>Reputational:</b> diminished public perception of independence along with a loss of reputation with the membership</li> <li>• <b>Financial:</b> costs and damages imposed through possible litigation</li> </ul>		<ul style="list-style-type: none"> <li>• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law</li> <li>• Appropriate credentialing procedures, including investigations, assessment of applications and credentials hearings</li> <li>• Appropriate PLTC standards in student assessment and training</li> <li>• Hearing panel composition and training</li> <li>• S.86 <i>Legal Profession Act</i> (statutory protection against lawsuits and liability)</li> <li>• D &amp; O insurance policy underwritten by AIG</li> </ul>			<ul style="list-style-type: none"> <li>• Articling program review, including quality and availability</li> </ul>	CLO, Director of Education and Practice, and Tribunal Counsel
REGULATORY	<b>R4:</b> Failure of the Law Society to stay within jurisdiction and/or wrongful prosecution	<ul style="list-style-type: none"> <li>• <b>Political:</b> government intervention in the Law Society authority and structures</li> <li>• <b>Reputational:</b> diminished public perception of independence along with a loss of reputation with the membership</li> </ul>		<ul style="list-style-type: none"> <li>• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law</li> <li>• Hearing panel composition and training</li> <li>• Enhanced role of the Tribunal Counsel</li> </ul>				CLO and Tribunal Counsel

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LAWYERS INSURANCE FUND	LIF7: Lawsuit for “bad faith” failure to settle / denial of coverage	<ul style="list-style-type: none"> <li>• <b>Reputational:</b> loss of reputation with the public or profession</li> <li>• <b>Financial:</b> exposure to excess damage award</li> </ul>		<ul style="list-style-type: none"> <li>• Established and documented quality control (Claims Manual)</li> <li>• Protocol to avoid “bad faith” losses</li> <li>• Third Party Claims Audits</li> <li>• S.86 <i>Legal Profession Act</i> (possible statutory protection against lawsuits and liability)</li> <li>• E&amp;O insurance policy underwritten by Markel</li> <li>• Appropriate reserve levels and Minimum Capital Test ratio</li> </ul>				Director of Lawyers Insurance Fund
LAWYERS INSURANCE FUND	LIF5: Significant error in advice to insured or payment (non-payment) of individual claim	<ul style="list-style-type: none"> <li>• <b>Financial:</b> unnecessary payments</li> </ul>		<ul style="list-style-type: none"> <li>• Established and documented quality control (Claims Manual)</li> <li>• Peer File Reviews</li> <li>• E&amp;O insurance policy underwritten by Markel</li> </ul>				Director of Lawyers Insurance Fund
FINANCIAL	F1: Misappropriation of Law Society financial assets	<ul style="list-style-type: none"> <li>• <b>Reputational:</b> loss of reputation with the membership</li> <li>• <b>Financial:</b> loss of revenue, increased fees</li> </ul>		<ul style="list-style-type: none"> <li>• Internal controls</li> <li>• Schedule of authorizations</li> <li>• External audit</li> <li>• Monthly and quarterly financial review process</li> <li>• Crime insurance and cyber insurance</li> </ul>				CFO



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LAWYERS INSURANCE FUND	LIF6: Error in actuarial advice	<ul style="list-style-type: none"> <li>• <b>Financial:</b> insufficient reserves</li> </ul>		<ul style="list-style-type: none"> <li>• External actuarial advice and projections</li> <li>• External auditor reviews of actuarial methodology and numbers</li> <li>• Monitoring of LPL insurance trends and risks</li> <li>• Appropriate reserve levels and Minimum Capital Test ratio</li> </ul>				Director of Lawyers Insurance Fund
LAWYERS INSURANCE FUND	LIF4: Catastrophic losses under Part A of the LPL policy	<ul style="list-style-type: none"> <li>• <b>Financial:</b> significant investigation expense and settlement payments</li> </ul>		<ul style="list-style-type: none"> <li>• Policy wording on limits and “related errors”</li> <li>• Proactive claims and risk management practices</li> <li>• Monitoring of LPL insurance trends and risks</li> <li>• Education and risk management advice to lawyers</li> <li>• Appropriate reserve levels and Minimum Capital Test ratio</li> <li>• Stop-loss reinsurance treaty underwritten by ENCON</li> </ul>				Director of Lawyers Insurance Fund
LAWYERS INSURANCE FUND	LIF2: Loss of third-party lawsuit against captive, insurance operations or in-house counsel	<ul style="list-style-type: none"> <li>• <b>Financial:</b> exposure to compensatory damage award</li> </ul>		<ul style="list-style-type: none"> <li>• Established and documented quality control (Claims Manual)</li> <li>• S.86 <i>Legal Profession Act</i> (possible statutory protection against lawsuits and liability)</li> <li>• E &amp; O insurance policy underwritten by Markel</li> </ul>				Director of Lawyers Insurance Fund

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Risk Assessment Tools

Likelihood (Rating)	Estimated Chance of a Single Occurrence Within Five Years
High (4)	80 - 100%
Medium-High (3)	60 – 80%
Medium (2)	40 – 60%
Low (1)	0 – 40%

Consequences (Rating)	Financial	Operational	Reputational	Political
	Consequences	Consequences	Consequences	Consequences
High (5)	A material loss of financial assets or cash: > \$750,000 in general, or 200% of gross case reserves/expected value for LIF claims, or >20% negative return for LIF investments	A substantial proportion of operations cannot be restored in a timely manner, essential services are unable to be delivered, and/or there is a significant loss of corporate knowledge that will result in the under-achievement of the Law Society's mandate	An irreparable loss of member and stakeholder trust in, or severe public criticism at a national and provincial level that brings disrepute to the reputation of, the Law Society	Change in the mandate and/or the imposition of a new governance as well as management structure for the Law Society is enacted by the government
Medium-High (4)	A substantial loss of financial assets or cash: \$500,000 - \$750,000 in general, 190% of gross case reserve expected value for LIF claims >15% negative return for LIF investments	Part of the operation cannot be restored in a timely manner, with some disruption to essential services, and/or a loss of corporate knowledge that can impact on the ability to render key decisions for the Law Society in the short to medium term	A substantial loss of member and stakeholder trust in, or sustained public criticism at a provincial level of, the Law Society which will be difficult to remedy over the short to medium term	The Law Society is susceptible to a potential change in government rules and legislation with implications for its authorities and/or an imposed change in the management structure

Law Society of British Columbia  
Enterprise Risk Management  
Risk Assessment Tools

Medium (3)	<p>A moderate loss of financial assets or cash: \$250,000 - \$500,000 in general 180% of gross case reserves/expected value for LIF claims 10% negative return for LIF investments</p>	<p>Some parts of the operation will be disrupted, but essential services can be maintained, and/or there is some loss of corporate knowledge that warrants management attention but the implications for which are limited to select projects or processes</p>	<p>Some loss of member and stakeholder trust in, and local public criticism over a short period of time of, the Law Society which warrants management attention</p>	<p>A change in Provincial direction affecting the operations of the Law Society is likely, but can be addressed within the current governance and management structure</p>
Low-Medium (2)	<p>A manageable loss of financial assets or cash: \$100,000 - \$250,000 in general 170% of gross case reserves/expected value for LIF claims 5% negative return for LIF investments</p>	<p>Some inefficiency will exist, leading to increased cost and/or time in the provision of essential services, and/or a loss of corporate knowledge that may result in minor disruptions in specific projects or processes</p>	<p>A relatively minor setback in the building of member and stakeholder trust in, or “one off” unfavorable local public attention put toward, the Law Society</p>	<p>Minor, non-routine changes may occur in regulation of relevance, and the nature of guidance that is provided by the government, to the Law Society</p>
Low (1)	<p>A relatively immaterial loss of financial assets or cash: &lt; \$100,000 in general 160% of gross case reserves/expected value for LIF claims &lt;5% negative return for LIF investments</p>	<p>No measurable consequence</p>	<p>No measurable consequence</p>	<p>No measurable consequence</p>

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Risk Assessment Tools

		Consequences				
		Low 1	Low-Medium 2	Medium 3	Medium-High 4	High 5
Likelihood						
High	4	Green	Yellow	Red	Red	Red
Medium-High	3	Green	Yellow	Yellow	Red	Red
Medium	2	Green	Green	Yellow	Yellow	Red
Low	1	Green	Green	Green	Yellow	Yellow



# Bencher Evaluation and Appointments to External Organizations

## Committee: Governance

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

November 18, 2019

Prepared for: Benchers

Prepared by: Staff

Purpose: Decision

## Process

1. The Committee has met six times this year.
2. The initial meetings of the Committee were taken up with consideration of amendments to the Rules regarding the Annual General Meeting, culminating in recommendations to the Benchers that were adopted by the Benchers at the April 2019 meeting, subsequently approved by the members by referendum and implemented in the Rules in time for the 2019 Annual General Meeting.
3. The May meeting resulted in a recommendation to the Benchers regarding the Executive Committee election Rules which were adopted by the Benchers at the June meeting and subsequently implemented in the Rules.
4. Several meetings focussed on revisions to the Bencher Code of Conduct, culminating in recommendations to the Benchers which were adopted by the Benchers at the July 2019 meeting.
5. This report from the Committee to the Benchers deals with three recommendations. The first relates to Bencher appointments to various other organizations and the second and third relate to the annual Bencher and Committee evaluation process.
6. The recommendations are presented for discussion and decision by the Benchers.

## Recommendations

The Committee recommends that the Law Society approach organizations whose legislation or bylaws require that one or more appointees to the board be Benchers and request that they amend their legislation or bylaws to eliminate the requirement that the appointment be a Bencher but instead give the Law Society the power of appointment in its discretion.

The Committee recommends to the Benchers that a new semi-annual Bencher evaluation process commence in 2020 with the statements set out in Appendix A and B for each of the first and second semi-annual evaluations respectively.

The Committee also recommends to the Benchers that a new semi-annual Committee evaluation commence in 2020 with the statements set out in Appendix C.

## Appointments to External Organizations

7. The Committee considered the extent of conflicts that may arise in relation to Benchers sitting on the boards of other organizations. In particular, the Committee considered the recently approved revisions to the Bencher Code of Conduct that speak directly to the participation of Benchers on the boards of other organizations.

*A Bencher may have a conflict of duty when that duty to the Law Society may conflict with duties to another organization. Benchers will often encounter this situation, as Benchers sit on other boards or are involved with other organizations from time to time. When a specific conflict of duty arises, the Bencher should disclose the conflict of duty and, subject to section 10, may still participate in any decision-making.*

*A Bencher should withdraw from a role with another organization or outside activity or resign as a Bencher where participation in an organization or outside activity places the Bencher in a substantial or ongoing conflict between the Bencher's duties to the Law Society and the duties to another organization or the requirements of an outside activity such that the conflict materially interferes with the Bencher fulfilling the duties associated with the Bencher's role.*

8. In addition to these recent revisions to the Bencher Code of Conduct, the Bencher Governance Policies also provide:

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

9. In light of these provisions, the Committee considered whether to recommend to the Benchers that the Law Society ask external organizations whose legislation or bylaws require that the appointee be a Bencher to amend their legislation or bylaws to eliminate that requirement. The Committee also considered whether it was appropriate for the Law Society (or the President in some cases) to be a member of external organizations.

For example:

*Continuing Legal Education Society of British Columbia (CLEBC)*



*The by-laws of CLEBC provide that the members of the Society, inter alia, shall be the Law Society of British Columbia, the president and the first vice-president from time to time. The by-laws also provide that the Law Society of British Columbia shall be a member of CLEBC in perpetuity. And the by-laws also provide that the board shall include two Benchers.*

*British Columbia Courthouse Library Society (BCCLS)*

*The by-laws of BCCLS provide that, amongst others, the Law Society appoints one person to be a member of BCCLS. The members then elect the board.*

10. The Committee recognized that many of these institutional structures were established at a time when the appointment of directors to other organizations was seen as a way of maintaining contact and participation in those other organizations. However, as evidenced in the Code of Conduct and the Governance Policies, there is the potential for a conflict of interest with such appointments. The potential for a conflict becomes particularly acute where the Law Society is a funder of an organization, or where the Law Society's rule-making directly effects the operations of an organization. In addition, the concept that cross-appointments assist in maintaining contact and engagement with other organizations has generally fallen out of favour in other contexts given the issues that arise when the interests of the two organizations do not coincide.
11. The Committee acknowledged, however, that the Law Society often is a stakeholder in the mission of many of the organizations that currently require a Bencher to be on their boards. The Committee believes that, as a stakeholder, it is beneficial for the Law Society to have a power of appointment to these bodies. However, the Committee believes the Law Society should have the discretion to appoint persons other than Benchers to roles that are currently required to be occupied by Benchers.
12. The Committee recommends that the Law Society approach those organizations whose legislation or bylaws require that one or more appointees to the board be Benchers and request that they amend their legislation or bylaws to eliminate the requirement that the appointment be a Bencher but instead give the Law Society the power of appointment in its discretion.

## **Bencher Evaluation Process**

13. The current Bencher evaluation process was implemented following the recommendations of the 2012 Governance Review Task Force report. That report recommended that:

*The Benchers should ensure there is a process in place for an annual evaluation of the Benchers as a whole, the Oversight Committees and the three officers.*

*Once the evaluation processes recommended above have been implemented, the Benchers should consider implementing a peer review process for individual Benchers. The evaluation should be based on expectations of individual Benchers set out in the Bencher Position Description.*

14. The first recommendation was adopted by the Benchers; the second was not.
15. As it does each year, the Committee considered the effectiveness of the current Bencher evaluation process. Mr. Krueger reported to the Committee on the process used by the board at Chartered Professional Accountants British Columbia (CPABC) as part of its ongoing evaluation of board performance. Mr. Krueger noted that after each board meeting, CPABC distributes a survey link to all board members providing access to a series of statements about the board's performance and asks board members to complete the survey.
16. The Committee considered whether the CPABC approach should be adopted but the consensus was that the Committee did not wish to recommend doing evaluations after every Bencher and committee meeting. The Committee was, however, of the view that there is a benefit in increasing the opportunities for Benchers and committee members to give feedback. As a result, the Committee recommends that there should be two evaluations each year, one in March and one in September, and that the surveys should have fewer questions and take no more than five to ten minutes to complete.
17. The Committee recommends to the Benchers that a new semi-annual Bencher evaluation process commence in 2020 with the statements set out in Appendix A and B for each of the first and second semi-annual evaluations respectively.
18. The Committee also recommends to the Benchers that a new semi-annual Committee evaluation commence in 2020 with the statements set out in Appendix C.
19. For each evaluation, respondents will be given an opportunity to provide comments in addition to evaluating the specific statements. Evaluation will be on a six point scale from Strongly Agree to Strongly Disagree.
20. For 2019, the Bencher and Committee evaluation will remain the same as previously approved by the Benchers.

## **Appendix A – First Semi-Annual Bencher Evaluation**

*The Benchers have an effective role in the strategic planning process.*

*The Benchers are up to date with latest developments in legal regulation in this and other jurisdictions.*

*The Benchers are up to date with the latest developments in the supply and demand for legal services.*

*The Benchers receive sufficient information to analyze the potential risks and benefits of every major decision.*

*The Benchers know what is expected of them.*

*Benchers have no hesitation raising issues in Bencher meetings.*

*The Benchers are actively engaged with each other and with management on issues.*

*Benchers have sufficient educational opportunities respecting their role as Benchers.*

*Meeting materials are received in sufficient time to allow for adequate preparation.*

*Meeting materials provide appropriate context and background information to support informed decision-making.*

*Presentations to the Benchers are generally of appropriate length and content.*

*Bencher meetings allow for candid, constructive discussion and critical questioning.*

*The right things are placed on the agenda.*

*There is adequate time for discussion of agenda items during Bencher meetings.*

*Benchers come to meetings prepared.*

*Benchers use the meeting time effectively and efficiently.*

*Bencher discussions are open, meaningful and respectful.*

## **Appendix B – Second Semi-Annual Bencher Evaluation**

*The Benchers receive sufficient information to evaluate organizational performance.*

*The Benchers receive sufficient information on financial performance.*

*The Benchers receive sufficient information about progress on the strategic goals.*

*The Benchers receive adequate briefings on the principal risks of the organization, and on its systems for identifying, managing and monitoring such risks.*

*The different roles of the Benchers and management are well understood.*

*The Benchers and management work collaboratively.*

*Benchers have sufficient information regarding the performance evaluation of the CEO and senior management.*

*The Benchers obtain sufficient input from committees and staff to support effective decision-making.*

*Meeting materials are received in sufficient time to allow for adequate preparation.*

*Meeting materials provide appropriate context and background information to support informed decision-making.*

*Presentations to the Benchers are generally of appropriate length and content.*

*Bencher meetings allow for candid, constructive discussion and critical questioning.*

*The right things are placed on the agenda.*

*There is adequate time for discussion of agenda items during Bencher meetings.*

*Benchers come to meetings prepared.*

*Benchers use the meeting time effectively and efficiently.*

*Bencher discussions are open, meaningful and respectful.*

## **Appendix C – Semi-Annual Committee, Task Force and Working Group Evaluation**

*Members understand and act within the mandate of the committee.*

*The Chair effectively manages meetings.*

*Meeting agendas and supporting materials are received in sufficient time to allow for adequate preparation.*

*All members attend meetings.*

*Meetings allow for constructive discussion and critical questioning.*

*Discussion is open, meaningful and respectful.*



# Memo

To: Benchers  
 From: Finance and Audit Committee  
 Date: October 30, 2019  
 Subject: Recommendation to Adopt Changes to the Statement of Investment Policies and Procedures (SIPP)

## Background

The Finance and Audit Committee (FAC), along with management and independent investment advisors, George & Bell, undertook a review of the Law Society Statement of Investment Policies and Procedures (SIPP) and the Lawyers Insurance Fund (LIF) long term investment portfolio. The review consisted of examining the investment structure, the current manager performance and the asset mix. With changes in the expected returns for the equity and bond markets, the current asset mix is not expected to earn the required rate of return for the portfolio. This review looked at various asset mix combinations and return assumptions, and recommends the addition of infrastructure equity to the mix.

Based on this review, in order to increase the expected rate of return and decrease the expected risk of the LIF long term investment portfolio, we recommend that the benchmark asset mix be set in accordance with the following table:

<b>Portfolio</b>	<b>Baseline (Current Asset Mix)</b>	<b>Recommended Rounded</b>	<b>Difference</b>
<b>Fixed Income</b>			
Canadian Money Market	5%	0%	-5%
Universe Bonds	30%	10%	-20%
Mortgages	10%	20%	+10%
<b>Total Fixed Income</b>	<b>45%</b>	<b>30%</b>	<b>-15%</b>
<b>Equities</b>			
Canadian Large Cap Equities	18%	10%	-8%
Global Large Cap Equities	27%	20%	-7%
<b>Total Equities</b>	<b>45%</b>	<b>30%</b>	<b>-15%</b>
<b>Alternatives</b>			
Canadian Real Estate	10%	10%	+0%
Infrastructure Equity	0%	30%	+30%
<b>Total Alternatives</b>	<b>10%</b>	<b>40%</b>	<b>+30%</b>

We summarize the main changes we are recommending to the SIPP:

1. Add infrastructure equity with a target allocation of 30% of the portfolio, and adjust the target allocation to 10% for real estate, 20% for mortgages, 10% for bonds, 30% for equities and 0% for Canadian money market;
2. For infrastructure equity, hire two infrastructure managers, with a target allocation of 15% each for diversification of markets, asset types, exposure and management styles;
3. As bonds and equity holdings have been reduced from 80% to 40%, we recommend that the balanced managers for the equities, bonds and short-term securities be reduced from two to one;
4. Maintain the current managers for real estate and mortgages, with the allocation to mortgages increasing from 10-20% to take advantage of the low risk nature of these investments while earning higher returns than bonds; and
5. Adjust the real estate benchmark to an absolute return of 6%, which is the return expectation for the current real estate manager.

The above-noted changes, along with changes required to transition to the new asset mix target allocations, have been incorporated into the SIPP (see attached red-lined and clean versions). For additional information, further details on the recommendations are attached.

### **Recommendation**

The Finance and Audit Committee recommends the following Bencher resolution:

#### **BE IT RESOLVED:**

***“To adopt the attached ‘Statement of Investment Policies and Procedures’ which replaces Appendix 1 - Investment Guidelines of the Bencher Governance Policies”***

Assuming the SIPP is revised, the FAC has performed an infrastructure investment manager search and is recommending IFM Investors and Axium be engaged as the infrastructure managers. New agreements with these managers will be finalized and the LIF long term investment portfolio will be invested according to the new asset mix over the next 24 months.

## Appendix 1 – Benchers Governance Policies

### Statement of Investment Policies and Procedures

For

The Law Society of British Columbia

Adopted: November 2001

Revised: July 2005

Revised: April 2009

Revised: March 2010

Revised: June 2015

Revised: December 2019



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## 1. **General**

### 1.1 **Application**

These investment guidelines (“Investment Guidelines”) apply to the investment funds (the “Funds”) owned and controlled by the Law Society of British Columbia (the “Law Society”) for which the Law Society has retained external investment management.

An investment manager providing services in connection with the Law Society’s investment assets must adhere to these guidelines.

### 1.2 **Compliance**

All Funds will be managed in accordance with all applicable legal requirements notwithstanding any indication to the contrary which may be construed from these guidelines.

All investment activities by the investment managers will be made in accordance within the scope of the Code of Ethics and Standards of Practice of the CFA Institute and the Code of Ethics established by the investment management firms retained to manage the Fund assets.

### 1.3 **Pooled Funds**

Pooled funds are managed under guidelines established by the investment manager for each pooled fund approved for use within the Investment Guidelines. It is recognized that from time to time, when pooled funds are used, it may not be entirely possible to maintain complete adherence to the Investment Guidelines. However, the investment manager is expected to advise the Finance Committee if a pooled fund exhibits, or may exhibit, any significant departure from the Investment Guidelines. The Finance Committee may accept the non-compliance, or take such further action as may be required, and the Finance Committee shall report any such action to the Benchers on a quarterly basis.

### 1.4 **Effective Date**

A reasonable transition period is expected to bring assets, now subject to these Investment Guidelines, into compliance.

## 2. **Responsibilities**

### 2.1 Plan Administration

The Benchers have the sole power to amend or terminate the application of the Investment Guidelines.

### 2.2 Delegation

The Benchers may delegate all of their responsibilities related to the Investment Guidelines, except for changes to these Investment Guidelines, to a Committee, to Law Society staff or to investment managers.

### 2.3 Investment Managers

The investment managers are responsible for:

- Selecting securities within the asset classes assigned to them, and the mix of asset classes, subject to applicable legislation and the constraints set out in these Guidelines;
- Providing the Law Society with a monthly report of portfolio holdings;
- Providing the Law Society with a quarterly compliance report and a review of investment performance and future strategies;
- Attending meetings at the Law Society at least once per year, at the discretion of the Law Society, to review performance and to discuss investment strategies;
- Informing the Law Society promptly of any investments which do not comply with these guidelines and what actions will be taken to remedy this situation; and
- Advising the Law Society of any element of these Guidelines that could prevent attainment of the Law Society's investment objectives.

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### 2.4 Standard of Care

In exercising their responsibilities the Benchers, Committees, and Law Society staff shall exercise the degree of care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person.

In exercising their responsibilities, the investment managers, as persons who possess, or because of their profession, business or calling, ought to possess, a particular level of knowledge or relevant skill, shall apply that particular knowledge to the administration of these guidelines.

### 3. Account Management

#### 3.1 Overview of Accounts

The Law Society maintains several investment accounts for which different portions of the Investment Guidelines have application.

#### 3.2 Lawyers Indemnification Fund - LT Account

The Lawyers Indemnification Fund - LT Account is subject to all of the provisions of the Investment Guidelines.

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#### 3.3 Unclaimed Trust Funds Account

The Unclaimed Trust Funds Account is subject to all of the provisions of the Investment Guidelines, except Sections 4 and 5. In lieu of those sections:

- the investment objective is to earn a rate of return of 1.0% per year for short term investments and 3.0% per year for fixed income investments.
- the Benchmark Portfolio shall consist of short term or fixed income investments in any combination, totaling 100%.

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The BC Courthouse Library Society Fund Account is subject to all of the provisions of the Investment Guidelines, except Sections 4 and 5. In lieu of those sections: ¶  
the investment objective is to earn a rate of return of 1.5% per year¶  
the Benchmark Portfolio shall consist of 25% fixed income and 75% short term investments.

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#### 3.4 Captive Insurance Company Account

The Captive Insurance Company Account is subject to all of the provisions of the Investment Guidelines, except Sections 4 and 5. In lieu of those sections:

- the investment objective is to earn a rate of return of 1.0% per year
- the Benchmark Portfolio shall consist of 100% short term investments.

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#### 3.5 Lawyers Indemnification Fund - ST Account

The Lawyers Indemnification Fund - ST Account is subject to all of the provisions of the Investment Guidelines, except Sections 4 and 5. In lieu of those sections:

- the investment objective is to earn a rate of return of 1% per year
- the Benchmark Portfolio shall consist of 100% short term investments.

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## 4. Fund Objectives

### 4.1 Investment Philosophy

The overall investment philosophy of the Funds is to maximize the long-term real rate of return subject to an acceptable degree of risk.

### 4.2 Investment Objectives

The primary objective of the portfolio is inflation-adjusted capital growth to meet the Law Society’s future errors and omission and defalcation claim funding requirements and operational costs. Over the 10-year period ~~2020 to 2029~~, the target rate of return of the investments is at least 5.5% per year, net of investment management expenses.

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The Law Society’s long-term funding requirements and relatively low requirement for asset liquidity dictate a moderate risk portfolio with a mix of fixed income, equity, real estate, ~~mortgages and infrastructure~~. It is expected that the value of the portfolio will fluctuate as market conditions and interest rates change.

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### 4.3 Investment Constraints

- Time Horizon: The portfolio has a long-term time horizon.
- Liquidity Requirements: Liquidity requirements are expected to be low.
- Tax Considerations: The Law Society is a non-taxable entity.
- Legal and Regulatory Considerations: Other than regulations governing the tax-exempt status of the Society, there are no legal constraints on the portfolio outside the provisions of the Legal Profession Act.
- The Law Society has no unique preferences in regard to its investment approach.

## 5. Asset Allocation and Investment Management Mandates

### 5.1 Benchmark Portfolio and Asset Allocation Ranges

The Benchmark Portfolio is the portfolio consisting of specified asset class indices combined in specified percentages that is intended to meet the investment objectives. The Law Society has established the following Benchmark Portfolio that is expected to achieve the investment objectives. Each asset class shall be maintained within the minimum and maximum, as set out below.

Asset Class	Asset Class Benchmark Index	Asset Class Percentages (market value)		
		Minimum	Benchmark	Maximum
Canadian Equities	S&P / TSX Composite Index	<del>5%</del>	<del>10%</del>	<del>15%</del>
Foreign Equities	MSCI-World Index (CAD)	<del>15%</del>	<del>20%</del>	<del>15%</del>
<b>Total Equities</b>		<del>20%</del>	<del>30%</del>	<del>40%</del>
Bonds	FTSE TMX Canada Universe Bond Index	<del>5%</del>	<del>10%</del>	<del>15%</del>
Cash and Short Term	FTSE TMX Canada 91-Day Treasury Bill Index	0%	<del>0%</del>	<del>5%</del>
Mortgages	FTSE TMX Canada Short Term Bond Index + 1%	<del>18%</del>	<del>20%</del>	<del>22%</del>
Real Estate	<u>Absolute Return (net of fees) of 6% per annum</u>	8%	10%	12%
<u>Infrastructure</u>	<u>Absolute Return (net of fees) of 8% per annum</u>	<u>25%</u>	<u>30%</u>	<u>35%</u>

The Infrastructure allocation is in the process of being funded. Until the Infrastructure allocation reaches the minimum allocation of 25% of assets:

- The minimum allocation to Infrastructure shall not apply.
- The difference between the benchmark weight to Infrastructure (30% of assets) and the actual allocation to Infrastructure will be invested as follows: 50% in Bonds, 16.7% in Canadian Equities and 33.3% in Foreign Equities, and
- The maximum allocations to Bonds, Canadian Equities and Foreign Equities shall not apply if a breach is caused by the transition.

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**5.2 Investment Management Structure**

As of approximately January 2020, the long-term structure of the Funds will be as follows:

Manager	Asset Class Percentages (market value)		
	Minimum	Benchmark	Maximum
Balanced Manager	<del>35%</del>	<del>40%</del>	<del>45%</del>
Real Estate Manager	8%	10%	12%
Mortgage Manager	<del>18%</del>	<del>20%</del>	<del>22%</del>
<u>Infrastructure Manager 1</u>	<u>12.5%</u>	<u>15%</u>	<u>17.5%</u>
<u>Infrastructure Manager 2</u>	<u>12.5%</u>	<u>15%</u>	<u>17.5%</u>

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The Infrastructure allocation is in the process of being funded. Until the Infrastructure allocation reaches 12.5% of assets to each Infrastructure Manager:

- The minimum allocation to each of the Infrastructure Managers shall not apply.
- The difference between the benchmark weight to the Infrastructure Managers (30% of assets) and the actual allocation to infrastructure will be invested as follows: 66.7% with the Balanced Manager and 33.3% in a temporary bond mandate managed by the Balanced Manager.
- Investments in an Infrastructure Manager shall be funded by withdrawing 66.7% of the investment from the Balanced Manager and 33.3% from the temporary bond mandate managed by the Balanced Manager, and
- The maximum allocations to the Balanced Manager shall not apply if a breach is caused by the transition.

a. Balanced Manager's Asset Mix

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The Balanced Manager shall have the following Balanced Benchmark Portfolio and shall manage its assets within the following allowable ranges for each asset class.

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Asset Class	Asset Class Benchmark Index	Asset Class Percentages (market value)		
		Minimum	Benchmark	Maximum
Canadian Equities	S&P / TSX Composite Index	<del>20%</del>	<del>25%</del>	<del>30%</del>
Foreign Equities	MSCI-World Index (CAD)	<del>45%</del>	<del>50%</del>	<del>55%</del>
<b>Total Equities</b>		<del>65%</del>	<del>75%</del>	<del>85%</del>
Bonds	FTSE TMX Canada Universe Bond Index	<del>15%</del>	<del>25%</del>	<del>35%</del>
Cash and Short Term	FTSE TMX Canada 91-Day Treasury Bill Index	0%	<del>0%</del>	<del>10%</del>

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b. Real Estate Manager Asset Mix

The Real Estate Manager shall invest its assets in a Real Estate Pooled Fund.

c. Mortgage Manager Asset Mix

The Mortgage Manager shall invest its assets in a Mortgage Pooled Fund.

d. Infrastructure Managers' Asset Mix

Each Infrastructure Manager shall invest its assets in an Infrastructure Pooled Fund.

**5.3 Investment Manager Mandates**

a. Balanced Managers

The Balanced Manager's target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is the rate of return of the Balanced Benchmark Portfolio over that period, plus 1%.

Deleted: Each

b. Real Estate Manager

The Real Estate Manager's target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is an absolute return of 6% per annum.

Deleted: is the rate of return of the REALpac / IPD Canada Quarterly Property Index for real estate.



c. Mortgage Manager

The Mortgage Manager's target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is the rate of return of the FTSE TMX Canada Short Term Bond Index + 1%.

d. Infrastructure Managers

The Infrastructure Managers' target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is an absolute return of 8% per annum.

**5.4 Active Asset Mix Management**

The Balanced Manager shall maintain the asset mix of their portion of the Funds within the ranges set out in Section 5.2a.

Deleted: Each

**5.5 Re-Balancing**

The Law Society will review the Funds' allocation to each manager on a quarterly basis. Periodically, the Law Society shall consider whether to re-balance the Funds so that the manager assets are in line with the targets in Section 5.2.

Further, periodically, the Law Society may re-balance through cash flows: providing net cash to managers in underweight positions and taking needed cash from managers in overweight positions.

## 6. Permitted Investments

### 6.1 List of Permitted Investments

#### a. Canadian Equities:

Common and preferred stocks, income trusts, debt securities that are convertible into equity securities, rights and warrants.

#### b. Foreign Equities:

- Common and preferred stocks, depository receipts, debt securities that are convertible into equity securities, rights, warrants; any of which may be denominated in foreign currency

#### c. Short-term instruments, subject to limitations in Section 7.3:

- Cash;
- Demand or term deposits;
- Short-term notes;
- Treasury Bills;
- Bankers acceptances;
- Commercial paper; and
- Investment certificates issued by banks and insurance and trust companies

#### d. Fixed Income instruments, subject to limitations in Section 7.3:

- Bonds, debentures and other evidence of indebtedness issued or guaranteed by Canadian federal, provincial and municipal governments and agencies, Canadian corporations, non-Canadian government and corporate issuers, issued in Canadian or non-Canadian currency;
- Private Placements;
- Debentures (convertible and non-convertible);
- Mortgages, mortgage-backed securities; and
- Any other securities with debt-like characteristics that are constituents of the FTSE TMX Canada Universe Bond Index.

~~e. Real estate investments made either through closed or open-ended pooled funds, or through participating shares or debentures of corporations or partnerships formed to invest in commercial real estate.~~

Deleted: e.

~~f. Infrastructure investments made either through closed or open-ended pooled funds (including limited partnerships).~~

~~g. Pooled funds and closed-end investment companies in any or all of the above permitted investment categories are allowed.~~

Deleted: g  
f.

**6.2 Derivatives**

Investment in derivative instruments and futures contracts may be used for replication or hedging purposes to facilitate the management of risk or to facilitate an economical substitution for a direct investment. Under no circumstances will derivatives be used for speculative purposes or to create leveraging of the portfolio.

**6.3 Prohibited Transactions**

Investment managers will not engage in the following unless first permitted in writing by the Benchers:

- Purchase of securities on margin;
- Loans to individuals;
- Short sales; and
- Investments in venture capital, resource properties, hedge funds and commodity funds.

**6.4 Securities Lending**

Securities lending is permitted only in pooled funds, and only if the investment manager has disclosed to the Law Society the terms and conditions that apply to securities lending within each pooled fund.

## 7. **Investment Restrictions**

### 7.1 Canadian Equities

- a. No more than 10% of the market value of the assets of a Canadian equity portfolio may be invested in the equity securities of any one company.
- b. At any given time, a Canadian equity portfolio is expected to be invested in no less than seven subsectors of the S&P/TSX Composite Index. The portion of a Canadian equity portfolio invested in a subsector shall not exceed the lesser of 40% or the subsector weight of the index plus 10%.
- c. No more than 10% of the market value of the assets of the Canadian equity portfolio may be invested in companies with a capitalization of less than \$1 billion.
- d. The 10 largest stocks by market capitalization of a Canadian equity portfolio may not account for more than 50% of the market value of the assets of that equity portfolio.

### 7.2 Foreign Equities

- a. No more than 10% of the market value of the assets of a foreign equity portfolio may be invested in the equity securities of any one company.
- b. No more than 30% of the market value of the assets of a foreign equity portfolio may be invested in a single country, except the United States.
- c. No more than 60% of the market value of the assets of a foreign equity portfolio may be invested in the United States.
- d. No more than 10% of the market value of the assets of a foreign equity portfolio may be invested in companies with a capitalization of less than \$2 billion.
- e. The 10 largest stocks by market capitalization may not account for more than 40% of the market value of the assets of the foreign equity portfolio.

### 7.3 Fixed Income, including Short-Term Securities

- a. No more than 15% of a fixed income portfolio shall be invested in bonds with a BBB rating. Short-term and fixed income instruments rated below BBB are not permitted.
- b. Maximum holdings for the fixed income portfolio by the issuer are: 100% for Government of Canada, 50% for Provincial bonds A-rated or higher, 50% for Corporate bonds, 15% for investment-grade asset-backed securities of which 10% will be rated at least A, 15% for domestic bonds denominated for payment in non-Canadian currency and 10% for real return bonds.

c. All debt ratings refer to the ratings of the Dominion Bond Rating Service (DBRS), Standard & Poor's or Moody's. In the event that a security is rated differently by one or more of the rating agencies, the highest rating shall apply.

d. No more than 10% of the market value of the fixed income portfolio may be invested in a single short term or fixed income instrument that is not issued by the Government of Canada or a Provincial government (including government guaranteed issuers and agencies).

f. Private Placements are permitted subject to the following conditions:

- i. The restrictions and limitations identified in the Investment Guidelines for publicly traded securities must be adhered to,
- ii. Maximum 3% of the market value of any one private placement,
- iii. Sufficient liquidity to ensure the sale of the private placement in a reasonable time and a reasonable price.

g. The minimum rating for short-term securities is R1 (low).

## 8. **Other Matters**

### 8.1 Valuation of Investments

- a. Investments in publicly traded securities shall be valued no less frequently than monthly at their market value.
  
- b. Investments in pooled funds comprising of publicly traded securities shall be valued according to the unit values published at least monthly by the investment manager.
  
- c. If a market valuation of the investment is not readily available, then the investment manager shall determine a fair value. For each such non-traded investment, an estimate of fair value shall be provided by the investment manager quarterly. In all cases, the methodology should be applied consistently over time.
  
- d. The Benchers shall be provided with a qualified independent appraiser's evaluation of all such non-traded investments not less frequently than every three years, or annually where the investments represent more than 2% of the invested assets.

### 8.2 Conflict of Interest

- a. It is a conflict of interest for anyone with authority or control over the invested assets to have an interest in the invested assets of sufficient substance and proximity to impair their ability to render unbiased advice or to make unbiased decisions affecting the investments.
  
- b. Anyone who has a potential or actual conflict of interest as defined in section 8.2.a must disclose it as soon as possible to the President who, in turn, shall disclose it all to the Benchers at an appropriate time.

### 8.3 Proxy Voting Rights

- a. Proxy voting rights on securities held are delegated to the investment manager.
- b. The investment manager maintains a record of how voting rights of securities in each fund were exercised.

## 9. **Monitoring**

### 9.1 Monthly Investment Reports

Each month, each investment manager, other than the Infrastructure Managers, will provide an investment report containing the following information:

- a. Portfolio holdings at the end of the month;
- b. Portfolio transactions during the month;
- c. Rates of return for the portfolio, compared to relevant indices or benchmarks; and
- d. Commentary on any material changes with the investment manager.

### 9.2 Quarterly Investment Reports

At the end of each calendar quarter, each investment manager will provide an investment report containing the following information:

- a. Rates of return for the portfolio and each asset class;
- b. The rate of return of the Benchmark Portfolio;
- c. Details of all asset-backed securities held;
- d. A commentary on the investment performance, including a comparison to the rate of return of the Benchmark Portfolio; and
- e. A commentary on the markets including market outlook and management strategy.

### 9.3 Quarterly Compliance Reports

Each investment manager will provide the Law Society with a report at the end of each quarter. Such report will contain:

- a. Confirmation that each pooled fund managed by the investment manager complies with the Investment Guidelines established by the investment manager, and, if not, an explanation of the areas of non-compliance and the plan by the investment manager to put the pooled fund into compliance;
- b. Confirmation that each pooled fund managed by the investment manager agrees with these Investment Guidelines, and, if not, an explanation of the areas of non-compliance; and

- c. Confirmation that the Funds have been managed in accordance with these Investment Guidelines.

#### 9.4 Meetings with the Law Society

Each investment manager will meet at least once per year with the Law Society. At these meetings, the investment manager will:

Deleted: twice

- a. Review the rate of return achieved by the funds;
- b. Review capital market performance and expectations of future returns;
- c. Discuss any areas of non-compliance with the Investment Guidelines, and comment on the implications of such non-compliance;
- d. Provide any information concerning new developments affecting the firm and its services;  
and
- e. Comment on the continued appropriateness of the Investment Guidelines.



## 10. Investment Guidelines Review

### 10.1 Review

The Investment Guidelines will be reviewed within three years of each previous review.

### 10.2 Material Changes

Material changes in the following areas may require a need for a revision of the Investment Guidelines:

- a. Long-term risk/return/correlation tradeoffs in capital markets;
- b. Risk tolerance of the Benchers;
- c. Legislation or regulation; and
- d. Shortcomings of the Investment Guidelines that emerge in its practical application or significant modifications that are recommended to the Benchers by the investment managers
- e. Change in objectives and/or constraints of the funds.

## 11. Investment Guidelines Approval

The Benchers have approved the Investment Guidelines originally at the Benchers meeting in November 2001 and have approved updated versions in July 2005, April 2009, March 2010, June 2015, [and December 2019](#).

## Appendix 1 – Benchers Governance Policies

### Statement of Investment Policies and Procedures

For

The Law Society of British Columbia

Adopted: November 2001

Revised: July 2005

Revised: April 2009

Revised: March 2010

Revised: June 2015

Revised: December 2019

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## **1. General**

### **1.1 Application**

These investment guidelines (“Investment Guidelines”) apply to the investment funds (the “Funds”) owned and controlled by the Law Society of British Columbia (the “Law Society”) for which the Law Society has retained external investment management.

An investment manager providing services in connection with the Law Society’s investment assets must adhere to these guidelines.

### **1.2 Compliance**

All Funds will be managed in accordance with all applicable legal requirements notwithstanding any indication to the contrary which may be construed from these guidelines.

All investment activities by the investment managers will be made in accordance within the scope of the Code of Ethics and Standards of Practice of the CFA Institute and the Code of Ethics established by the investment management firms retained to manage the Fund assets.

### **1.3 Pooled Funds**

Pooled funds are managed under guidelines established by the investment manager for each pooled fund approved for use within the Investment Guidelines. It is recognized that from time to time, when pooled funds are used, it may not be entirely possible to maintain complete adherence to the Investment Guidelines. However, the investment manager is expected to advise the Finance Committee if a pooled fund exhibits, or may exhibit, any significant departure from the Investment Guidelines. The Finance Committee may accept the non-compliance, or take such further action as may be required, and the Finance Committee shall report any such action to the Benchers on a quarterly basis.

### **1.4 Effective Date**

A reasonable transition period is expected to bring assets, now subject to these Investment Guidelines, into compliance.

## 2. **Responsibilities**

### 2.1 **Plan Administration**

The Benchers have the sole power to amend or terminate the application of the Investment Guidelines.

### 2.2 **Delegation**

The Benchers may delegate all of their responsibilities related to the Investment Guidelines, except for changes to these Investment Guidelines, to a Committee, to Law Society staff or to investment managers.

### 2.3 **Investment Managers**

The investment managers are responsible for:

- Selecting securities within the asset classes assigned to them, and the mix of asset classes, subject to applicable legislation and the constraints set out in these Guidelines;
- Providing the Law Society with a monthly report of portfolio holdings;
- Providing the Law Society with a quarterly compliance report and a review of investment performance and future strategies;
- Attending meetings at the Law Society at least once per year, at the discretion of the Law Society, to review performance and to discuss investment strategies;
- Informing the Law Society promptly of any investments which do not comply with these guidelines and what actions will be taken to remedy this situation; and
- Advising the Law Society of any element of these Guidelines that could prevent attainment of the Law Society's investment objectives.

### 2.4 **Standard of Care**

In exercising their responsibilities the Benchers, Committees, and Law Society staff shall exercise the degree of care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person.

In exercising their responsibilities, the investment managers, as persons who possess, or because of their profession, business or calling, ought to possess, a particular level of knowledge or relevant skill, shall apply that particular knowledge to the administration of these guidelines.

### **3. Account Management**

#### **3.1 Overview of Accounts**

The Law Society maintains several investment accounts for which different portions of the Investment Guidelines have application.

#### **3.2 Lawyers Indemnification Fund - LT Account**

The Lawyers Indemnification Fund - LT Account is subject to all of the provisions of the Investment Guidelines.

#### **3.3 Unclaimed Trust Funds Account**

The Unclaimed Trust Funds Account is subject to all of the provisions of the Investment Guidelines, except Sections 4 and 5. In lieu of those sections:

- the investment objective is to earn a rate of return of 1.0% per year for short term and 3.0% per year for fixed income
- the Benchmark Portfolio shall consist of short term or fixed income investments in any combination, totalling 100%.

#### **3.4 Captive Insurance Company Account**

The Captive Insurance Company Account is subject to all of the provisions of the Investment Guidelines, except Sections 4 and 5. In lieu of those sections:

- the investment objective is to earn a rate of return of 1.0% per year
- the Benchmark Portfolio shall consist of 100% short term investments.

#### **3.5 Lawyers Indemnification Fund - ST Account**

The Lawyers Indemnification Fund – ST Account is subject to all of the provisions of the Investment Guidelines, except Sections 4 and 5. In lieu of those sections:

- the investment objective is to earn a rate of return of 1% per year
- the Benchmark Portfolio shall consist of 100% short term investments.

## 4. **Fund Objectives**

### 4.1 **Investment Philosophy**

The overall investment philosophy of the Funds is to maximize the long-term real rate of return subject to an acceptable degree of risk.

### 4.2 **Investment Objectives**

The primary objective of the portfolio is inflation-adjusted capital growth to meet the Law Society's future errors and omission and defalcation claim funding requirements and operational costs. Over the 10-year period 2020 to 2029, the target rate of return of the investments is at least 5.5% per year, net of investment management expenses.

The Law Society's long-term funding requirements and relatively low requirement for asset liquidity dictate a moderate risk portfolio with a mix of fixed income, equity, real estate, mortgages and infrastructure. It is expected that the value of the portfolio will fluctuate as market conditions and interest rates change.

### 4.3 **Investment Constraints**

- **Time Horizon:** The portfolio has a long-term time horizon.
- **Liquidity Requirements:** Liquidity requirements are expected to be low.
- **Tax Considerations:** The Law Society is a non-taxable entity.
- **Legal and Regulatory Considerations:** Other than regulations governing the tax-exempt status of the Society, there are no legal constraints on the portfolio outside the provisions of the Legal Profession Act.
- The Law Society has no unique preferences in regard to its investment approach.



## 5. Asset Allocation and Investment Management Mandates

### 5.1 Benchmark Portfolio and Asset Allocation Ranges

The Benchmark Portfolio is the portfolio consisting of specified asset class indices combined in specified percentages that is intended to meet the investment objectives. The Law Society has established the following Benchmark Portfolio that is expected to achieve the investment objectives. Each asset class shall be maintained within the minimum and maximum, as set out below.

Asset Class	Asset Class Benchmark Index	Asset Class Percentages (market value)		
		Minimum	Benchmark	Maximum
Canadian Equities	S&P / TSX Composite Index	5%	10%	15%
Foreign Equities	MSCI-World Index (CAD)	15%	20%	15%
<b>Total Equities</b>		<b>20%</b>	<b>30%</b>	<b>40%</b>
Bonds	FTSE TMX Canada Universe Bond Index	5%	10%	15%
Cash and Short Term	FTSE TMX Canada 91-Day Treasury Bill Index	0%	0%	5%
Mortgages	FTSE TMX Canada Short Term Bond Index + 1%	18%	20%	22%
Real Estate	Absolute Return (net of fees) of 6% per annum	8%	10%	12%
Infrastructure	Absolute Return (net of fees) of 8% per annum	25%	30%	35%

The Infrastructure allocation is in the process of being funded. Until the Infrastructure allocation reaches the minimum allocation of 25% of assets:

- The minimum allocation to Infrastructure shall not apply,
- The difference between the benchmark weight to Infrastructure (30% of assets) and the actual allocation to infrastructure will be invested as follows: 50% in Bonds, 16.7% in Canadian Equities and 33.3% in Foreign Equities, and
- The maximum allocations to Bonds, Canadian Equities and Foreign Equities shall not apply if a breach is caused by the transition.

### 5.2 Investment Management Structure

As of approximately January 2020, the long-term structure of the Funds will be as follows:

Manager	Asset Class Percentages (market value)		
	Minimum	Benchmark	Maximum
Balanced Manager	35%	40%	45%
Real Estate Manager	8%	10%	12%
Mortgage Manager	18%	20%	22%
Infrastructure Manager 1	12.5%	15%	17.5%
Infrastructure Manager 2	12.5%	15%	17.5%

The Infrastructure allocation is in the process of being funded. Until the Infrastructure allocation reaches 12.5% of assets to each Infrastructure Manager:

- The minimum allocation to each of the Infrastructure Managers shall not apply,
- The difference between the benchmark weight to the Infrastructure Managers (30% of assets) and the actual allocation to infrastructure will be invested as follows: 66.7% with the Balanced Manager and 33.3% in a temporary bond mandate managed by the Balanced Manager,
- Investments in an Infrastructure Manager shall be funded by withdrawing 66.7% of the investment from the Balanced Manager and 33.3% from the temporary bond mandate managed by the Balanced Manager, and
- The maximum allocations to the Balanced Manager shall not apply if a breach is caused by the transition.

a. Balanced Manager's Asset Mix

The Balanced Manager shall have the following Balanced Benchmark Portfolio and shall manage its assets within the following allowable ranges for each asset class.

Asset Class	Asset Class Benchmark Index	Asset Class Percentages (market value)		
		Minimum	Benchmark	Maximum
Canadian Equities	S&P / TSX Composite Index	20%	25%	30%
Foreign Equities	MSCI-World Index (CAD)	45%	50%	55%
<b>Total Equities</b>		<b>65%</b>	<b>75%</b>	<b>85%</b>
Bonds	FTSE TMX Canada Universe Bond Index	15%	25%	35%
Cash and Short Term	FTSE TMX Canada 91-Day Treasury Bill Index	0%	0%	10%

b. Real Estate Manager Asset Mix

The Real Estate Manager shall invest its assets in a Real Estate Pooled Fund.

c. Mortgage Manager Asset Mix

The Mortgage Manager shall invest its assets in a Mortgage Pooled Fund.

d. Infrastructure Managers' Asset Mix

Each Infrastructure Manager shall invest its assets in an Infrastructure Pooled Fund.

### 5.3 Investment Manager Mandates

#### a. Balanced Manager

The Balanced Manager's target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is the rate of return of the Balanced Benchmark Portfolio over that period, plus 1%.

#### b. Real Estate Manager

The Real Estate Manager's target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is an absolute return of 6% per annum.

#### c. Mortgage Manager

The Mortgage Manager's target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is the rate of return of the FTSE TMX Canada Short Term Bond Index + 1%.

#### d. Infrastructure Managers

The Infrastructure Managers' target rate of return, on average over rolling four-year periods, after the deduction of investment management fees, is an absolute return of 8% per annum.

### 5.4 Active Asset Mix Management

The Balanced Manager shall maintain the asset mix of their portion of the Funds within the ranges set out in Section 5.2a.

### 5.5 Re-Balancing

The Law Society will review the Funds' allocation to each manager on a quarterly basis. Periodically, the Law Society shall consider whether to re-balance the Funds so that the manager assets are in line with the targets in Section 5.2.

Further, periodically, the Law Society may re-balance through cash flows: providing net cash to managers in underweight positions and taking needed cash from managers in overweight positions.

## 6. Permitted Investments

### 6.1 List of Permitted Investments

#### a. Canadian Equities:

Common and preferred stocks, income trusts, debt securities that are convertible into equity securities, rights and warrants.

#### b. Foreign Equities:

- Common and preferred stocks, depository receipts, debt securities that are convertible into equity securities, rights, warrants; any of which may be denominated in foreign currency

#### c. Short-term instruments, subject to limitations in Section 7.3:

- Cash;
- Demand or term deposits;
- Short-term notes;
- Treasury Bills;
- Bankers acceptances;
- Commercial paper; and
- Investment certificates issued by banks and insurance and trust companies

#### d. Fixed Income instruments, subject to limitations in Section 7.3:

- Bonds, debentures and other evidence of indebtedness issued or guaranteed by Canadian federal, provincial and municipal governments and agencies, Canadian corporations, non-Canadian government and corporate issuers, issued in Canadian or non-Canadian currency;
- Private Placements;
- Debentures (convertible and non-convertible);
- Mortgages, mortgage-backed securities; and
- Any other securities with debt-like characteristics that are constituents of the FTSE TMX Canada Universe Bond Index.

#### e. Real estate investments made either through closed or open-ended pooled funds, or through participating shares or debentures of corporations or partnerships formed to invest in commercial real estate.

#### f. Infrastructure investments made either through closed or open-ended pooled funds (including limited partnerships).

#### g. Pooled funds and closed-end investment companies in any or all of the above permitted investment categories are allowed.

## **6.2 Derivatives**

Investment in derivative instruments and futures contracts may be used for replication or hedging purposes to facilitate the management of risk or to facilitate an economical substitution for a direct investment. Under no circumstances will derivatives be used for speculative purposes or to create leveraging of the portfolio.

## **6.3 Prohibited Transactions**

Investment managers will not engage in the following unless first permitted in writing by the Benchers:

- Purchase of securities on margin;
- Loans to individuals;
- Short sales; and
- Investments in venture capital, resource properties, hedge funds and commodity funds.

## **6.4 Securities Lending**

Securities lending is permitted only in pooled funds, and only if the investment manager has disclosed to the Law Society the terms and conditions that apply to securities lending within each pooled fund.

## **7. Investment Restrictions**

### **7.1 Canadian Equities**

- a. No more than 10% of the market value of the assets of a Canadian equity portfolio may be invested in the equity securities of any one company.
  
- b. At any given time, a Canadian equity portfolio is expected to be invested in no less than seven subsectors of the S&P/TSX Composite Index. The portion of a Canadian equity portfolio invested in a subsector shall not exceed the lesser of 40% or the subsector weight of the index plus 10%.
  
- c. No more than 10% of the market value of the assets of the Canadian equity portfolio may be invested in companies with a capitalization of less than \$1 billion.
  
- d. The 10 largest stocks by market capitalization of a Canadian equity portfolio may not account for more than 50% of the market value of the assets of that equity portfolio.

### **7.2 Foreign Equities**

- a. No more than 10% of the market value of the assets of a foreign equity portfolio may be invested in the equity securities of any one company.
  
- b. No more than 30% of the market value of the assets of a foreign equity portfolio may be invested in a single country, except the United States.
  
- c. No more than 60% of the market value of the assets of a foreign equity portfolio may be invested in the United States.
  
- d. No more than 10% of the market value of the assets of a foreign equity portfolio may be invested in companies with a capitalization of less than \$2 billion.
  
- e. The 10 largest stocks by market capitalization may not account for more than 40% of the market value of the assets of the foreign equity portfolio.

### **7.3 Fixed Income, including Short-Term Securities**

- a. No more than 15% of a fixed income portfolio shall be invested in bonds with a BBB rating. Short-term and fixed income instruments rated below BBB are not permitted.
  
- b. Maximum holdings for the fixed income portfolio by the issuer are: 100% for Government of Canada, 50% for Provincial bonds A-rated or higher, 50% for Corporate bonds, 15% for investment-grade asset-backed securities of which 10% will be rated at least A, 15% for domestic bonds denominated for payment in non-Canadian currency and 10% for real return bonds.

- c. All debt ratings refer to the ratings of the Dominion Bond Rating Service (DBRS), Standard & Poor's or Moody's. In the event that a security is rated differently by one or more of the rating agencies, the highest rating shall apply.
  
- d. No more than 10% of the market value of the fixed income portfolio may be invested in a single short term or fixed income instrument that is not issued by the Government of Canada or a Provincial government (including government guaranteed issuers and agencies).
  
- f. Private Placements are permitted subject to the following conditions:
  - i. The restrictions and limitations identified in the Investment Guidelines for publicly traded securities must be adhered to,
  - ii. Maximum 3% of the market value of any one private placement,
  - iii. Sufficient liquidity to ensure the sale of the private placement in a reasonable time and a reasonable price.
  
- g. The minimum rating for short-term securities is R1 (low).



## **8. Other Matters**

### **8.1 Valuation of Investments**

- a. Investments in publicly traded securities shall be valued no less frequently than monthly at their market value.
  
- b. Investments in pooled funds comprising of publicly traded securities shall be valued according to the unit values published at least monthly by the investment manager.
  
- c. If a market valuation of the investment is not readily available, then the investment manager shall determine a fair value. For each such non-traded investment, an estimate of fair value shall be provided by the investment manager quarterly. In all cases, the methodology should be applied consistently over time.
  
- d. The Benchers shall be provided with a qualified independent appraiser's evaluation of all such non-traded investments not less frequently than every three years, or annually where the investments represent more than 2% of the invested assets.

### **8.2 Conflict of Interest**

- a. It is a conflict of interest for anyone with authority or control over the invested assets to have an interest in the invested assets of sufficient substance and proximity to impair their ability to render unbiased advice or to make unbiased decisions affecting the investments.
  
- b. Anyone who has a potential or actual conflict of interest as defined in section 8.2.a must disclose it as soon as possible to the President who, in turn, shall disclose it all to the Benchers at an appropriate time.

### **8.3 Proxy Voting Rights**

- a. Proxy voting rights on securities held are delegated to the investment manager.
- b. The investment manager maintains a record of how voting rights of securities in each fund were exercised.

## 9. **Monitoring**

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Each month, each investment manager, other than the Infrastructure Managers, will provide an investment report containing the following information:

- a. Portfolio holdings at the end of the month;
- b. Portfolio transactions during the month;
- c. Rates of return for the portfolio, compared to relevant indices or benchmarks; and
- d. Commentary on any material changes with the investment manager.

### 9.2 **Quarterly Investment Reports**

At the end of each calendar quarter, each investment manager will provide an investment report containing the following information:

- a. Rates of return for the portfolio and each asset class;
- b. The rate of return of the Benchmark Portfolio;
- c. Details of all asset-backed securities held;
- d. A commentary on the investment performance, including a comparison to the rate of return of the Benchmark Portfolio; and
- e. A commentary on the markets including market outlook and management strategy.

### 9.3 **Quarterly Compliance Reports**

Each investment manager will provide the Law Society with a report at the end of each quarter. Such report will contain:

- a. Confirmation that each pooled fund managed by the investment manager complies with the Investment Guidelines established by the investment manager, and, if not, an explanation of the areas of non-compliance and the plan by the investment manager to put the pooled fund into compliance;
- b. Confirmation that each pooled fund managed by the investment manager agrees with these Investment Guidelines, and, if not, an explanation of the areas of non-compliance; and

- c. Confirmation that the Funds have been managed in accordance with these Investment Guidelines.

#### **9.4 Meetings with the Law Society**

Each investment manager will meet at least once per year with the Law Society. At these meetings, the investment manager will:

- a. Review the rate of return achieved by the funds;
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- c. Discuss any areas of non-compliance with the Investment Guidelines, and comment on the implications of such non-compliance;
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and
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### 10.1 Review

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Material changes in the following areas may require a need for a revision of the Investment Guidelines:

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- b. Risk tolerance of the Benchers;
- c. Legislation or regulation; and
- d. Shortcomings of the Investment Guidelines that emerge in its practical application or significant modifications that are recommended to the Benchers by the investment managers
- e. Change in objectives and/or constraints of the funds.

## **11. Investment Guidelines Approval**

The Benchers have approved the Investment Guidelines originally at the Benchers meeting in November 2001 and have approved updated versions in July 2005, April 2009, March 2010, June 2015, and December 2019.



# 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

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*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~~sthe 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 4<sup>th</sup> 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 4<sup>th</sup> 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.]



# 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

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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~~sthe 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.



# 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

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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.<sup>87</sup>

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.

# Indigenous intercultural competence education for BC lawyers

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

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October 10, 2019

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## 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.<sup>1</sup>

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.”<sup>2</sup>

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,

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<sup>1</sup> *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.

<sup>2</sup> *Ibid* at 1.  
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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.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup>

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

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<sup>3</sup> *Ibid* at 202.

<sup>4</sup> *Ibid* at 205.

<sup>5</sup> *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.<sup>6</sup>
  
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.”<sup>7</sup>
  
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.<sup>8</sup> 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.”<sup>9</sup>
  
17. Intercultural competence refers to an ability to interact effectively with people of different cultures, and a willingness to understand and respect their differences.<sup>10</sup> 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 issues.<sup>11</sup> Effective intercultural competence goes beyond knowledge to include self-reflection, positional awareness, interpersonal skills, critical thinking, attitudinal consciousness, and behavioural change.<sup>12</sup>

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<sup>6</sup> *Legal Profession Act*, s. 3.

<sup>7</sup> *Legal Profession Act*, s 28.

<sup>8</sup> *BC Code*, s. 3.1-2.

<sup>9</sup> *BC Code*, s. 3.1-1.

<sup>10</sup> Robert Wright, *Aspiring to Cultural Competence: The Why, What and How for Lawyers*, <https://slideplayer.com/slide/13310318/> at slide 6.

<sup>11</sup> Rose Voyvodic, “Advancing the Justice Ethic through Cultural Competence,” (available online: <https://lawsocietyontario.azureedge.net/media/iso/media/legacy/pdf/f/fourthcolloquiumvoyvodic.pdf>).

<sup>12</sup>

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 Benchers 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."<sup>13</sup>
  - 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

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<sup>13</sup> The Benchers endorsed the Terms of Reference at the September 30, 2016 Benchers meeting.  
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competence education for all Law Society Benchers, staff, and committee members, and all lawyers and Admission Program candidates in British Columbia.”<sup>14</sup>

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.<sup>15</sup> This permits Indigenous intercultural competence

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<sup>14</sup> See Truth and Reconciliation Action Plan, enumerated point 4.1. Online at:

<https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/TruthandReconciliationActionPlan2018.pdf>

<sup>15</sup> 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.<sup>16</sup>
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.”<sup>17</sup>
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.

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<sup>16</sup> 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](https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/LawyerEd-CPD_2017.pdf)

<sup>17</sup> See Truth and Reconciliation Action Plan, enumerated point 4.1, online at: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/TruthandReconciliationActionPlan2018.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.<sup>18</sup> These past and present inequalities have led Indigenous peoples to have a deep and abiding distrust of Canada's legal system,<sup>19</sup> and constitute a stain on Canada's claim to be a leader in the protection of human rights among the nations of the world.<sup>20</sup> The fundamental problem is that the role of Canadian law in generating and maintaining disparities between Indigenous peoples

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<sup>18</sup> *TRC Summary Report*, *supra* note 1 at 135.

<sup>19</sup> *Ibid* at 202.

<sup>20</sup> *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.<sup>21</sup> 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.<sup>22</sup> 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

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<sup>21</sup> 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.

<sup>22</sup> *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.<sup>23</sup> 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"<sup>24</sup> 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*".<sup>25</sup> 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."<sup>26</sup> 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

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<sup>23</sup> *TRC Summary Report*, *supra* note 1 at 215.

<sup>24</sup> <https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/AboriginalReport.pdf> .

<sup>25</sup> 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>.

<sup>26</sup> *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.<sup>27</sup>
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*); and
  - x. Skills-based training in:
    - a. Intercultural competency;
    - b. Conflict resolution;

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<sup>27</sup> 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
- e. 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.<sup>28</sup>

54. The proposed model offers a number of benefits.

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<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup>
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.

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<sup>29</sup> There are over 12,000 practicing lawyers and over 1,500 non-practicing lawyers in BC.

<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup>
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.

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<sup>31</sup> “All lawyers” includes Indigenous lawyers.

<sup>32</sup> 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.<sup>33</sup>

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

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<sup>33</sup> 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*.<sup>34</sup>

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 Benchers' approval of the majority of the recommendations in the Lawyer Education Advisory Committee final CPD review report in 2017.<sup>35</sup> 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.<sup>36</sup> 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

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<sup>34</sup> *Supra* notes 6 and 7.

<sup>35</sup> CPD Review Report, *supra* note 19.

<sup>36</sup> However, the Law Society of Ontario, licensees are required to complete three hours of CPD focused on equality, diversity, and inclusion (EDI) by the end of 2020. Licensees will be required to complete one hour of EDI education per year of accredited programming thereafter.

of this unique context, a number of lead cases on Indigenous issues have originated in British Columbia (examples include the *Calder*,<sup>37</sup> *Delgamuukw*,<sup>38</sup> and *Tsilh'qotin*<sup>39</sup> decisions regarding Aboriginal title, the *Sparrow*<sup>40</sup> decision on Aboriginal rights, and the *Haida*<sup>41</sup> and *Taku*<sup>42</sup> decisions regarding consultation.) Moreover, British Columbia recently tabled Bill 41, the *Declaration on the Rights of Indigenous Peoples Act*. If passed, the province will be the first in Canada to legally implement the United Nations Declaration on the Rights of Indigenous Peoples. 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 it 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,<sup>43</sup> 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,<sup>44</sup> 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.

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<sup>37</sup> [1973] SCR 313.

<sup>38</sup> [1997] 3 SCR 1010.

<sup>39</sup> 2014 SCC 44.

<sup>40</sup> [1990] 1 SCR 1075.

<sup>41</sup> 2004 SCC 73.

<sup>42</sup> 2004 SCC 74.

<sup>43</sup> 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.

<sup>44</sup> 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.

## Budgetary Implications

81. The Practice Support Department currently operates four online courses – Practice Management Course, Practice Refresher Course, Communications Toolkit, and Legal Research Essentials. 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.



# Equity Diversity and Inclusion Advisory Committee 2019 Year-End Report

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Jasmin Ahmad (Chair)  
Jennifer Chow, QC (Vice Chair)  
Beatriz Contreras  
Jeevyn Dhaliwal  
Brook Greenberg  
Jamie Maclaren, QC  
Elizabeth Rowbotham

December 6, 2019

Prepared for: Benchers

Prepared by: Equity Diversity and Inclusion Advisory Committee

Purpose: Information



## Introduction

1. The Equity Diversity and Inclusion Advisory Committee is one of the advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers in connection with those issues. From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and may be asked to develop recommendations or policy alternatives regarding such initiatives.
2. The purpose of this report is to update the Benchers about the work the Committee has undertaken for the second half of 2019. The Committee met on July 11, September 26, and October 24, and discussed the following matters.

## Equity Diversity and Inclusion Assessment

3. The EDI Advisory Committee has been developing a proposal for the retention of an independent firm to conduct an equity, diversity and inclusion assessment of the Law Society. An EDI assessment is a review of an organization's policies, procedures, and practices to clarify the organization's EDI objectives, and to identify the organization's strengths and areas for improvement in relation to achieving its EDI goals.
4. The Committee is proposing a thorough phased assessment of various aspects of the Law Society. Those aspects may include governance, employment, and regulatory functions as they affect the public and membership. Either as part of, or in addition to that assessment, the Committee has also considered making a recommendation to conduct an analysis of demographic data about the legal profession in British Columbia. The Committee intends to finalize the proposal for consideration by the Benchers early next year.

## Maternity Leave Benefit Loan Program

5. In 2009, based on a recommendation from the Women in Law Task Force, the Benchers established the Maternity Leave Benefit Loan Program as a pilot program aimed at assisting self-employed women lawyers to take maternity leaves and return to practice after giving birth. The Program provides a fixed sum of \$2000 per month for up to four months (a maximum of \$8000) to cover some of the overhead costs associated with operating a sole practice during the maternity leave period. The loan is paid over four months from the child's date of birth in equal payments. The loan is interest-free and is a taxable benefit.
6. The Women in Law Task Force anticipated approximately 9 lawyers per year would access the Program. However, only 23 women have accessed the Program since its inception in 2010, which amounts to an average of 2.5 women per year.

7. The EDI Advisory Committee has undertaken a Program review to identify the reasons for the underuse the Program, and to devise options regarding the future of the Program. The Committee developed a survey to gather qualitative data from Program users regarding their perceptions of the effectiveness of the Program.
8. A telephone survey was conducted during the month of August, 2019. Of the 23 Program users, 16 responded to the survey. The EDI Advisory Committee is now in the process of developing recommendations in light of the results of the Program user survey.

## Respectful Language Style Guide

9. In 2007, the Law Society's Women in Law Task Force developed *Guidelines for Respectful Language* to provide guidance on issues regarding terminology involving the following groups: women; people of diverse races, ethnicities, or countries of origin; people of Indigenous descent; people with disabilities; people who are lesbian, gay, bisexual and transgender; and adoptive families. The *Guidelines* were endorsed by the Benchers and publicized on the Law Society's website in 2007, and should now be updated.
10. The Mental Health Task Force approached the EDI Advisory Committee seeking support for a recommendation to create a style guide to promote respectful terminology in relation to mental health. Although the recommendation focuses on destigmatizing language regarding mental health, it is broad enough to encapsulate equity, diversity, and inclusion concerns. The EDI Advisory Committee fully supports the Mental Health Task Force's recommendation to update the *Guidelines* to incorporate guidance on respectful language in relation to mental health issues. The EDI Advisory Committee will collaborate with the Mental Health Task Force in updating and improving the style guide.

## Qualification as Principal

11. The EDI Advisory Committee became aware of a systemic issue with the Law Society's rule regarding qualification as principal: to be eligible to serve as a principal under rule 2-57, a lawyer must have been in active practice of law in Canada for at least 5 of the 6 years immediately preceding the articling start date. This rule precludes many lawyers who have taken parental leave during this timeframe from serving as principals. The EDI Advisory Committee has shared its analysis of the issue with the Credentials Committee to aid in the development of a recommendation that will be presented to Benchers for consideration early next year.

## Terms of Reference

12. The EDI Advisory Committee has updated its terms of reference, which are included in the consent agenda for the December 6, 2019 Benchers meeting.

## Equity Diversity and Inclusion Award

13. At the recommendation of this Committee, the Equity, Diversity, and Inclusion Award was initiated by the Law Society in 2017 to recognize individuals who have made significant contributions to equity, diversity, and inclusion in the legal profession or the law in British Columbia. It is awarded biennially.
14. Raji Mangat has been selected by the Law Society to receive the Equity, Diversity and Inclusion Award for 2019. Mangat has made significant contributions the promotion of diversity and inclusion through the development of the law in her roles as the current executive director (and former litigation director) of West Coast Women’s Legal Education and Action Fund Association, and as former counsel with the British Columbia Civil Liberties Association. She has contributed to improving diversity and inclusion in the legal profession through her mentorship, recruitment and supervision of law student interns and articling students, as well as serving on numerous boards of organizations that promote equality and inclusion.

## Process for electing second vice-president

15. In early 2019, the EDI Advisory Committee forwarded a number of recommendations to the Governance Committee for consideration geared toward fostering equity and diversity in Law Society leadership roles. In response, the Governance Committee:
  - a. Incorporated a diversity statement into the Law Society’s calls for nominations. The EDI Advisory Committee provided advice on the wording of the diversity statement;
  - b. Publicized descriptions for the positions of Second Vice-President, First Vice-President, President and members of the Executive Committee, including an estimate of the time commitment required for each position; and
  - c. Modified the nomination process for the Second Vice President whereby: the names of candidates are announced after the deadline for nominations, and if more than one candidate is nominated, then an election is held by secret ballot. At the September 27, 2019 Benchers meeting, the Benchers resolved to run future elections for the Second Vice-President in the same manner, until further notice.

## Legal Aid Advisory Committee 2019 Year-End Report

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

December 6, 2019

Prepared for:           Benchers

Prepared by:           Legal Aid Advisory Committee

Purpose:                   Information

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## Introduction

1. The purpose of this report is to provide the Benchers with an update on the work of the Advisory Committee for the second half of 2019.
2. After the Benchers adopted the Law Society of British Columbia's Vision for Publicly Funded Legal Aid (the "Law Society Vision"), they struck the Legal Aid Advisory Committee to carry out the work necessary to advance the Law Society's Vision.
3. The Committee's work in 2019 builds on the feedback it received at the Second Legal Aid Colloquium, held in November 2018. At the Colloquium participants spoke of the importance of working collaboratively to advocate for appropriate funding of legal aid, and suggested forming a coalition to accomplish this objective.

## Legal Aid Coalition

4. Earlier this year the Benchers approved the formation of a Legal Aid Coalition, for the purpose of seeing if the Law Society can find common ground with a range of organizations that serve the public in social, health and public safety services to craft a more persuasive case for the importance of legal aid, and the need for adequate funding of legal aid. The Coalition met in September and November.
5. The Legal Aid Coalition consists of the following, external members:
  - a. Chief Spt. David Attfield
  - b. Shawn Bayes, CEO Elizabeth Fry Society of Greater Vancouver
  - c. Elba Bendo, Director of Law Reform, West Coast LEAF
  - d. Raji Mangat, Executive Director, West Coast LEAF<sup>1</sup>
  - e. Jennifer Brun, Vice-President CBA BC
  - f. Deb Bryant, CEO YWCA of Metro Vancouver
  - g. John McCormick, Executive Director, John Howard Society in Nanaimo
  - h. Lynn Pelletier, Vice-President, BC Mental Health & Substance Use Services

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<sup>1</sup> Ms. Bendo and Ms. Mangat will alternate participation at meetings.

- i. Olga Stachcova, CEO Mosaic
  - j. Lissa Smith, Vice-President, Metis Nation BC
6. The Committee members who participate in the Coalition are: Nancy Merrill, QC, Gary Bass, Odette Dempsey-Caputo, and Sarah Westwood.
  7. The work of the Coalition is in its early days, but common themes emerged around issues such as: capacity to navigate the justice system unaided; lack of housing/shelter and associated risks; risk of violence to the individual and/or children; and the impact of mental health and/or addiction. The Coalition is interested in the social determinants of health, and has identified, in a preliminary way, the potential connections between social and health determinants in legal matters. The Coalition recognizes the need to consider “upstream” solutions to social/health/legal problems and focus on prevention and mitigation and not solely on repairing harms that have already occurred. As it works through these issues, the hope is that the Coalition will be able to provide both the evidence and the narrative for the societal value for adequately funding legal aid.

## Economic Analysis of Legal Aid

8. Since its inception, the Committee has reported to the Benchers about the opportunities and challenges associated with performing an economic analysis of legal aid. It does not repeat those findings in this report. However, the Benchers should be aware that in September 2019 the World Bank published a report on the economics of legal aid.<sup>2</sup>
9. The World Bank report surveys a range of studies from a variety of jurisdictions, which support the claim that legal aid contributes more to the economies of countries and states than it costs to fund, suggesting that beggaring legal aid is bad economic and social policy. The caveats that the Committee has raised in the past regarding the various legal aid economic analysis reports remain valid, but perhaps what is changing is that with the profile the World Bank brings to the issue, the economic value of legal aid is now forming part of the narrative.
10. At this point, due to the potential analytical issues underpinning some of the reports referenced in the World Bank report, the persuasiveness of the data likely depends on whether funding legal aid aligns with the political values of the governing parties; the current contrast between British Columbia and Ontario reflect this. A government supportive of legal aid funding can tout the World Bank report, and a government opposed

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<sup>2</sup> *A Tool For Justice: The Cost Benefit Analysis of Legal Aid* (World Bank Group: September, 2019).

to such spending can attack the methodology of the various reports that the World Bank report relies on. The need for better access to justice data metrics remains a live issue.

## Legal Aid Videos

11. In the early part of 2019, the Committee developed core messages that link to the Law Society Vision and could form the basis of a video or videos, as well as other creative materials. The fundamental message was that the current gap in funding is affecting the most marginalized in society. The strategy focused on illustrating the difference between what the realities, and what the public believes, are the state of legal aid, who is eligible for legal aid, the scope of coverage, and the availability of lawyers who take legal aid cases.
12. With the Committee's input, Mr. Kuzminski prepared a four-page brochure-styled document, "Who Will Be There For You" based on the strategy and which included quotations from a range of lawyers and other service providers who bear witness to the impact that funding levels have had on the people they see and serve. The brochure was used by President Merrill and Mr. Avison in government outreach meetings with individual cabinet ministers and MLAs throughout May to July.
13. The fundamental messaging of the brochure also formed the foundation of a legal aid video project, titled "It's About Fairness." The project was filmed in September and featured President Merrill, Odette Dempsey-Caputo, and Gary Bass of the Committee, as well as Bencher Michelle Stanford, QC.
14. The initial intention for the video was to preview it for MLAs in attendance at separate events held to meet with the provincial government and opposition caucuses, where the role of the Law Society and a number of initiatives were to be discussed. Due to the timing of an announcement that an agreement involving government, the Legal Services Society, and the Association of Legal Aid Lawyers ("ALL") had been ratified, a decision was made not to utilize the video at this time.
15. A final version of the video is ready for use. The content of the video, which raises concerns about eligibility levels, limits to coverage, and other issues, will continue to be relevant until government concludes further agreements that it has indicated will need to be addressed in Budget 2020-2021.
16. Another video was developed that features President Merrill providing an overview of the Law Society Vision. The video is oriented more to being an informational video statement than for use in an advocacy campaign. It will be hosted on the Law Society website, along with similar video statements on the Rule of Law and other topics, in early 2020.



17. A third video project is in development and reflects the Committee's consideration of a collection of vignettes of lawyers and others involved in the delivery of legal aid sharing poignant, unscripted, personal and sometimes raw personal reflections about legal aid. For greater clarity, this project would be modelled in the style of "But I Was Wearing a Suit." Video footage has begun to be captured, with some of the participants in "It's About Fairness" speaking to their personal experiences regarding legal aid issues. Filming will continue in early 2020, with editing and post-production to follow.

## **Monitoring: Government Negotiations with the Association of Legal Aid Lawyers**

18. The Law Society Vision is an expansive vision of legal aid. In crafting the Law Society Vision, the Legal Aid Task Force recognized that if legal aid is to evolve to include the broader scope contemplated in the Law Society Vision, additional funding is necessary. Because of this, part of the mandate of the Committee is to find ways to advocate for greater funding for legal aid.
19. In 2018, ALL formed, and in 2019 it coalesced behind a plan to engage the government to secure greater funding for the legal aid tariff. The Benchers are well aware of the moribund state of the tariff, so it is not necessary to highlight its history here. What is important to highlight is that because of the action of ALL, and because the current government recognized the value of legal aid lawyers, and not merely the cost, the two parties were able to negotiate a substantial raise to the legal aid tariffs. While these negotiations were underway, the Committee eased back on advocating for greater legal aid funding in order to respect the process of negotiations.
20. While adequate tariff rates are only one element of what makes a healthy legal aid system, they are an important element, and one that has largely been ignored for just shy of three decades. It is important to acknowledge the efforts of ALL, but also to acknowledge the important step the government took to help repair the damaged state of legal aid in British Columbia. The Committee recognizes, in particular, the value of having a champion like The Hon. David Eby in the role of Attorney General, and his efforts to secure greater funding towards the tariff.
21. More work remains to get legal aid funding to where it needs to be, but for the first time in decades there is some cause for hope, thanks to the commitment the government has made to infuse much needed funding into this essential public service.

## Looking Ahead

22. The Benchers established the Legal Aid Advisory Committee to carry on with work identified by the Legal Aid Task Force. In many respects, the Committee has functioned as a Task Force, working through a series of mandate items the Benchers assigned it, and providing periodic reports as to its progress. To date, the main progress of the Committee has been to maintain the Law Society's engagement and leadership with respect to championing legal aid. This has occurred through a number of tactics, but perhaps the most effective has been the two legal aid colloquia the Committee held. From that process of collaboration, the new Legal Aid Coalition was established. It is desirable to continue the culture of consultation and collaboration the Committee fostered.
23. The Committee has explored economic analysis research, and made recommendations, but advancing these concepts are in the hands of other organizations or the government.
24. Other matters, such as improved funding for legal aid have seen progress through the negotiations referenced in this report.
25. Throughout the year, Nancy Merrill, QC and Don Avison, Adam Whitcombe, QC and Jason Kuzminski have executed a government outreach strategy informed by the Committee's considerations, including meeting with a number of key MLAs and with both the leadership and opposition caucuses to discuss a range of important matters, including legal aid. Maintaining constructive relationships with government is essential to secure ongoing, adequate funding for publicly funded legal aid.
26. In a handful of years, the Law Society has moved from being silent on legal aid, to once again becoming a key champion of this essential public service. A critical part of this work has been the evolution of thinking regarding how the Law Society can be a constructive advocate for legal aid. The Committee – and the Task Force before it – engaged in broad consultations, worked collaboratively with a range of stakeholders, and channeled the pent up energy around the inadequate state of legal aid into an approach for advocacy that recognizes the need for government and the legal profession to work constructively towards improving legal aid for British Columbians. By taking a measured approach to advocacy, supported by the principles in the Law Society's Vision has helped situate the Law Society to better discharge its public interest mandate with respect to legal aid. The Law Society was asked by the provincial government to play a prominent role in its media event and news release to announce the agreement with LSS and ALL. The Law Society is now well-situated to play a constructive role in future efforts to support legal aid.
27. In the near future, the Benchers will need to turn their minds to the best way to move forward with legal aid. While there was some sense in carrying on the work of the Task Force through a separate committee, it is appropriate to reflect on whether the ongoing

work with respect to legal aid – save for the work assigned to the Coalition – is more appropriately part of the monitoring and advisory function of the Access to Legal Services Advisory Committee, than the work of a stand-alone committee. The Benchers will recall that the Access to Legal Services Advisory Committee is where the call for re-engagement in legal aid arose, and its long-standing status and mandate to consider access to justice through a broad spectrum may make it ideally suited for keeping the Law Society engaged in legal aid.

/DM&ML



## Access to Legal Services Advisory Committee 2019 Year-End Report

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Michelle D. Stanford, QC (Chair)  
Claire Hunter, QC (Vice-Chair)  
Jeffrey Campbell, QC  
Lisa Hamilton, QC  
Jacqueline McQueen  
Karen Snowshoe  
The Honourable Thomas Cromwell

December 6, 2019

Prepared for: Benchers

Prepared by: Access to Legal Services Advisory Committee

Purpose: Discussion

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## Introduction

1. The purpose of this report is to provide the Benchers with an update on the topics the Committee considered in 2019.
2. The Committee is an advisory committee. Its purpose is to monitor matters within its mandate that are relevant to the work of the Law Society and provide advice to the Benchers. The Committee can also carry out discrete tasks the Benchers assign it. The primary focus of the Committee is to recommend to the Benchers ways the Law Society, through its strategic objectives and regulatory processes, can better facilitate access to legal services and promote access to justice.

## Developing a Proof-of-Concept Model for a non-profit legal services delivery program

3. On four occasions since the fall of 2017 the Committee updated the Benchers regarding a proof-of-concept for a non-profit “law firm.” In summary, the idea is to encourage law firms and/or other justice system stakeholders to develop a cost recovery model to provide discrete legal services in the areas of family and immigration law to people who can afford some help, but not the traditional full retainer services law firms provide.
4. The Committee provided an extensive update to the Benchers in June, and sought permission to engage in consultations on the concept with a select group of lawyers, law firms and other justice system stakeholders. The Committee envisions the concept as a resource lawyers could direct people towards in circumstances where the lawyer is unable to take on the individual as a client, and the individuals’ legal problem fits within the scope of services the non-profit firm provides.
5. Over the course of the summer, the Committee engaged in some trial interviews with former Benchers, and revised its question template based on the feedback. In the fall, the Committee engaged in a broader consultation on the concept.
6. The trial interviews revealed a range of perspectives. One former Bencher thought there is no data to support the existence of an access to justice problem in family law, and that in many cases people are deciding to spend money on vacations and personal goods rather than on lawyers. The other former Benchers thought there is unmet need, but provided input about the challenges of creating a non-profit firm. Respondents identified the importance of not replicating services like legal aid, the value of providing unbundled services, and the importance of making it administratively easy for lawyers to provide services through the model.

7. The Committee identified several dozen lawyers, firms and justice system stakeholders to interview and have commenced the process, with a goal that the Committee in 2020 can synthesize findings on the proof-of-concept and report to the Benchers in the first half of the year.

## Pro Bono

8. For several years the Committee has discussed how to encourage greater pro bono efforts by the profession. In 2017 the Committee recommended, and the Executive Committee authorized, creating some optional questions on the Annual Practice Declaration (“APD”) regarding pro bono, low bono, legal aid and other access to justice work. The idea behind the APD pro bono questions is for the Law Society to get better data about what lawyers are doing, and the barriers (real or perceived) to providing pro bono legal services.
9. At the 2018 AGM, Resolution No. 2 included an instruction that the Law Society find ways to encourage pro bono. The Committee analyzed the pro bono aspects of the Resolution in order to support the Benchers in their consideration of Resolution No. 2.
10. The Committee spent much of the year discussing how to increase lawyer engagement in pro bono. The verbatim responses to the APD suggest that some lawyers (particularly government and in-house lawyers) see barriers to participation in pro bono. To better understand the issue, the Committee met with James Harvey, QC, Assistant Deputy AG to discuss pro bono opportunity for government lawyers, and Anna Fung, QC and Sarah Khan (from the BC Utilities Commission) to discuss pro bono opportunities for in-house counsel.
11. The common thread that ran through the conversations was the importance of having champions of pro bono, within government or a corporation. If there are not individuals in senior positions who support and encourage pro bono, lawyers are far less likely to pursue the work.
12. With respect to pro bono and government lawyers, Mr. Harvey, QC indicated that the government has a pro bono policy, and provided the pro bono work fits within the policy (which is quite broad), government lawyers can do pro bono work. This reinforced a theme that the Committee identified early in its analysis, and that is the need to educate lawyers about the opportunities that exist to do pro bono, and that many of the perceived barriers to participation either do not exist, or are easy to overcome.
13. Michelle Stanford, QC spoke with Peter Juk, QC, Assistant Deputy AG to discuss pro bono opportunities for crown counsel. Mr. Juk, QC indicated there is no prohibition against Crown counsel doing pro bono, except for matters of a criminal nature, matters that may engage the government as a party, and that office equipment or resources cannot be used. It was observed that many of these lawyers will have little time capacity, so it is perhaps

worth exploring opportunities to participate in an event several times a year to provide one-off services in an area like poverty law.

14. With respect to pro bono and in-house counsel, the conversation was a bit different. The Committee heard it is important to find the incentive for in-house counsel to do pro bono, as they operate in a business environment and their value to their employer is mostly in a business advisor capacity. It is very unlikely the corporation will ask the in-house counsel to do pro bono work unrelated to the corporation's objectives. Pro bono can be more difficult to link back to the in-house lawyer's career objectives. In fact, it was suggested, the Law Society would likely have greater success getting in-house lawyers to donate money (or corporations to donate goods and services), than to get significant participation in pro bono.
15. The Committee determined that lawyers are not as aware as they might be about the opportunities for pro bono and the insurance coverage that exists. The first step is to better educate lawyers and the Committee reached out to Lesley Small, Deputy Director of Credentials and Licensing to discuss creating an FAQ for lawyers, and also to Shelley Braun, in the Lawyers Insurance Fund for ideas of how to better alert lawyers to the scope of coverage that is available. Ms. Stanford followed up with Ms. Small and Mr. Munro, and staff will make the necessary operational changes to create FAQs and provide better information to lawyers who are retiring or going on non-practising status, regarding pro bono opportunities and insurance coverage.
16. During its deliberations the Committee identified the roles Benchers can play in promoting pro bono. This, of course, starts with Benchers doing pro bono as well as being champions for pro bono at their firms, but it also includes being pro bono ambassadors. A key opportunity to discuss access to justice and pro bono is during the articulated student interviews. The information for articulated student interviews already highlights pro bono as a topic. Staff will review the resource and update it to be more inclusive of the broad range of access to justice work lawyers can undertake. The Committee recommends that each Bencher address the importance of fostering pro bono and access to justice during interviews with articulated students. This is consistent with the Law Society's Vision for how lawyers can advance access to justice and legal services.
17. The Committee also discussed the importance of profiling the good pro bono work the profession does and the various opportunities that exist to contribute. The Committee was impressed that over 9000 lawyers answered the optional questions on the Annual Practice Declaration regarding pro bono, low cost services, legal aid and other access to justice work lawyers undertake. At present, the data suggests that almost 56% of lawyers undertake some form of pro bono work. The Committee is uncertain whether, or how, these numbers would change if the questions were mandatory and not optional, as the statistics are considerably higher than just 10 years ago when the Committee reviewed the



mandatory APD questions on pro bono. This led the Committee to discuss whether it is appropriate to make the questions mandatory, in order to get a complete and more accurate picture of pro bono. This is a topic, however, that requires further analysis, and the Committee encourages the 2020 Committee to analyze the pros and cons of such a change, and make recommendations to the Benchers next year.

18. The Committee also identified, in a preliminary fashion, how to engage more students to provide pro bono legal services. In New York State, for example, lawyers are required to provide 50 hours of defined pro bono services in order to be called to the state Bar. The Committee understands that the Lawyer Education Advisory Committee is undertaking an extensive review of the articling program in 2019-2020, and intends to explore with that committee the opportunities to highlight access to justice as part of the professional ethos of lawyers. The Committee expects to analyze the topic of pro bono and students in greater detail in 2020.
19. In Summary, the Committee has explored the following operational matters with respect to Resolution No. 2 from the 2018 AGM:
  - a. The Member Services Department create an FAQ to provide lawyers who are retiring or going on non-practising status, which highlights the policies and insurance coverage available for approved pro bono. This recommendation is operational in nature and is under way;
  - b. That the Law Society utilize its various communications media to better promote pro bono opportunities and to celebrate the good work lawyers do. The Committee intends to explore this with the Communications Department.
20. The items identified in paragraph 19(a)&(b) are operational, and staff are considering how best to implement the concepts.
21. There are several matters the Committee intends to explore at its December meeting and, perhaps, into 2020:
  - a. How to engage articulated students in undertaking pro bono work? The Committee will liaise with the Lawyer Education Advisory Committee (and, as appropriate, the Credentials Committee) to explore how promoting access to justice fits within the admission program.
  - b. Whether the pro bono and access to justice questions on the APD ought to remain optional, or revert to a mandatory set of questions.
  - c. Follow up with government to determine if the Justice Services Branch and the Crown Counsel are prepared and able to promote greater pro bono engagement, and

perhaps find partnering opportunities for the government and organizations like Access Pro Bono to facilitate greater pro bono by government lawyers

- d. Explore with the Canadian Corporate Counsel Association opportunities for greater engagement by in-house counsel in pro bono.
22. The concepts identified in paragraph 21(a)&(b) require more detailed analysis before the Committee is able to make a recommendation to the Benchers; the items in 21(c)&(d) carry forward the work undertaken in 2019.
  23. The Committee also recommends that:
    - as part of their interviews with articled students Benchers discuss the importance of promoting access to justice and legal services, which can include pro bono work, and that the guidelines for such interviews be amended accordingly.

## Monitoring

24. Throughout the year, the Committee reviewed dozens of articles, reports and media relating to access to legal services and access to justice taking place in BC, the rest of Canada, and globally. The materials covered a range of topics: from advances in the right to counsel in housing disputes in several US States, to developments in technology and artificial intelligence, the risks of algorithmic justice and policing, law reform that allows states to obtain sensitive data about individuals directly from corporations without warrants or subpoenas, border searches, emerging trends in alternate legal service providers, and alternative business structures, to name but a few topics.
25. Collectively, the monitoring provides a snapshot of access to legal services and access to justice issues at the level of law reform, policing, and in the lives of individuals both upstream and downstream from triggering events that manifest in a legal problem. The monitoring situates discussions about what lawyers and the Society can and should do, in a broader societal context.
26. Recently, the Committee read about family law reforms that are underway in Manitoba. Manitoba will launch a pilot project to make family law “faster, less complex, less expensive for families, and less adversarial.”<sup>1</sup>
27. The Committee may consider the project further at its December meeting, and may recommend that the 2020 Committee consider the topic of reforming the procedural and

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<sup>1</sup> “Modernizing Our Family Law System: A Report from Manitoba’s Family Law Reform Committee” (June 2018), at p. 1.

substantive law in the area of family law, in order to move toward less adversarial systems of resolving family law disputes. The recent announcement of the family law reforms underway in British Columbia, which the Benchers heard about at the October meeting, may well supersede the concept of reviewing the situation in Manitoba. The Committee is reviewing the BC reforms and may recommend a response to the consultation on behalf of the Law Society.

28. The Committee also learned that the Surrey Pre-Trial Detention Centre is requiring articulated students to have a letter from a supervising lawyer in order to gain access to the facility, rather than simply showing their Law Society identification. In concert with the Rule of Law and Lawyer Independence Advisory Committee, the Committee recommended that a letter drafted by Jeff Campbell, QC, be provided to Ms. Merrill to send on behalf of the Law Society to encourage the centre to change its policy.
29. Lastly, the Committee heard from Annie Rochette, Deputy Director PLTC about the PLTC reforms that are underway, which are designed to inculcate students with a reflective learning methodology that promotes greater understanding of access to justice issues and opportunities, including pro bono and legal aid work.

## Conclusion

30. Access to justice is a vast societal problem. There is no singular cause, definition, process or solution that captures all of its complexity. It is important to analyze the nature of the problem, the available data (and data that is missing), and understand the legal, economic and social issues that intersect to create an access to justice / access to legal services problem. This year – as it does every year – the Committee spent a fair amount of time grappling with these complexities. In order to move from the level of abstract thought to practical action, the Committee reviewed data from the APD and consulted with individuals who possess specialized knowledge about areas of practice and/or legal matters.
31. It is important for the Law Society to continue to take a leadership role in improving access to justice and legal services. Work is underway with respect to licensed paralegals and legal aid, and when we conceive of “access to justice” through a broader, societal lens the work the Law Society engages in with respect to equity, diversity and inclusion, Truth and Reconciliation, and the rule of law are all critically important vehicles for promoting access to justice and access to competently delivered legal services.
32. The Committee has made some “soft” recommendations this year to advance pro bono, through raising awareness, and outreach to government and exploring opportunities for in-house counsel. That work is still in early days, and more work is required if there are to be returns on those early efforts.

33. The Committee has spent several years trying to get its non-profit law firm proof-of-concept model in a form where the Benchers can determine whether the Law Society ought to make it public and encourage lawyers and other justice system stakeholders to explore it (or similar concepts). The success of that project, much like unbundling and the designated paralegal initiative before it, will be in the hands of the profession. That is always the nature of optional reforms and policy created by the Law Society.
34. In an effort to move the needle further in 2020, the Committee intends to explore how to increase pro bono and access to justice work by articulated students, non-practising and retired lawyers.
35. Lastly, the Committee echoes what it heard throughout its consultations regarding pro bono. Pro bono – and access to justice – needs champions. The Law Society has undertaken significant policy reform in the area of access to justice, but not all of that reform has translated into increased access to legal services or the reduction of systemic barriers to accessing services. There are a range of possible reasons for this, and the Committee is prepared to provide the Benchers a deeper dive into the scope of the access to justice problem and the various Law Society responses, if the Benchers desire. When it comes time to make decisions about topics like licensed paralegals and mandatory pro bono, understanding the scope of the access to justice problem and the various steps the Law Society has taken to ameliorate matters, may facilitate the Benchers being the access to justice champions the public requires.

/DM



# Lawyer Education Advisory Committee 2019 Year-End Report

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

December 6, 2019

Prepared for: Benchers

Prepared by: Lawyer Education Advisory Committee

Purpose: Information

## Introduction

1. The Lawyer Education Advisory Committee's Year-End Report to the Benchers summarizes the Committee's work in 2019, with a particular focus on initiatives undertaken since the July 2019 Mid-Year Report.
2. The foundation for the Lawyer Education Advisory Committee's work is directed by section 3 of the *Legal Profession Act*:

It is the object and duty of the society to uphold and protect the public interest in the administration of justice by ...

(c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission ...

(e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

3. The Law Society's 2018-2020 Strategic Plan includes the following goals specifically relating to the work of the Lawyer Education Advisory Committee:

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

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

4. In addition, the mandate of the Lawyer Education Advisory Committee intersects with the Law Society's strategic goals in relation to the advancement of the Truth and Reconciliation Commission's Calls to Action:

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

- Encouraging all lawyers in British Columbia to take education and training in areas relating to Aboriginal law (the Law Society's mandatory continuing professional development program recognizes and gives credit for education and training in areas relating to Aboriginal issues).
5. The Lawyer Education Advisory Committee's progress in achieving these strategic goals over the course of 2019 is detailed below.

## Articling Program review

6. Throughout 2019, the Lawyer Education Advisory Committee continued its comprehensive review of the Articling Program, which canvasses a broad range of issues related to the structure, functionality and effectiveness of the articling scheme and the consideration of potential modifications to the existing program.
7. As part of its research plan, which was established in 2018, the Lawyer Education Advisory Committee has identified a series of research questions in relation to four key areas:
  - a. the availability of articling positions;
  - b. remuneration for articling;
  - c. the quality of the Articling Program; and
  - d. the effectiveness of the Admission Program, with a particular focus on the articling component.
8. Methods for collecting information and data in each of these areas were identified in the research plan, including an anonymous survey of one, two and three year calls and a series of stakeholder focus groups that will explore, in further detail, themes emerging from the survey results.
9. In early 2019, a comprehensive survey addressing different aspects of the articling experience was distributed to all one to three year calls in BC (i.e. individuals with call dates in 2017, 2016 and 2015) – approximately 800 lawyers in total.
10. Part 1 of the survey included questions on the availability of articling positions, remuneration for articling, the quality of the articling experience and the competencies necessary for entry level practice. Part 2 of the survey included questions on wellness, discrimination and harassment.

11. A large body of demographic information was also collected as part of the survey, including data relating to respondents' practice setting and geographic location, gender identity, age, race and ethnicity, Indigeneity, path of entry into the Admissions Program (Canadian law school graduate or National Committee on Accreditation ("NCA") certificate of qualification) and the country or Canadian law school where the respondents obtained their law degrees.
12. Participation in the survey was voluntary. At the conclusion of the survey period, staff had obtained 113 complete survey responses and 78 partially complete responses, for a total of 191 responses, which meets the threshold for statistical significance.
13. Over the last several months, staff have collated and reviewed the survey data. This work has included an analysis of the quantitative data, as well as the coding of a significant amount of qualitative information contained in the comments and feedback provided in response to the survey's open-ended questions.
14. These preliminary findings have generated discussion at the Committee level and, following further work, an analysis of the survey data will be presented to the Benchers as part of a stand-alone report in 2020.
15. In addition to undertaking this qualitative and quantitative analysis, staff have also commenced a series of focus groups and individual interviews that are designed to explore, in more depth, a number of key themes emerging from the survey results. These groups include those individuals who have obtained an NCA certificate, lawyers called to the bar over the past one to three years, law school career officers, firm recruiters and articling principals.

## **Indigenous intercultural competency education**

16. Over the past 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 competency.
17. Working closely with the Truth and Reconciliation Advisory Committee, a central focus of the Lawyer Education Advisory Committee's work in 2019 has been determining how to establish a baseline of intercultural competency for BC lawyers. This work has been guided by the Law Society's 2018-2020 Strategic



Plan and its Truth and Reconciliation Action Plan, as well as the Truth and Reconciliation Advisory Committee's Terms of Reference.

18. In May 2019, the two Committees held their first joint meeting, with the goal of collaborating on the development of a recommendation on the role of lawyer education in advancing the Law Society's commitment to reconciliation more generally, and intercultural competency training, specifically.
19. Over the following five months, the two Committees canvassed a range of issues, including clarifying the objectives of intercultural competency education, defining the content and scope of intercultural competency education, establishing who should receive intercultural competency education and exploring whether intercultural competency education should be voluntary or mandatory, as well as whether it should fall within, or exist outside of, the CPD program.
20. The Committees also discussed possible delivery methods for intercultural competency education and the appropriate amount and frequency of the proposed training.
21. Working closely together, the Committees subsequently developed proposals and a supporting policy paper that outline the rationales for, and options in relation to, introducing Indigenous intercultural competency education in BC. The proposals include the Law Society developing, in consultation with subject-matter experts, an online Indigenous intercultural competency course composed of a series of modules that cover, at a minimum, the content of Call to Action #27.
22. The proposals were presented to the Benchers for discussion on October 25, 2019 and will be on the Bencher agenda for decision on December 6, 2019.

## **Future work**

23. Moving into 2020, the Lawyer Education Advisory Committee will continue to advance its work on the Articling Program review process, including completing the analysis of the survey results and concluding a series of focus groups.
24. The Committee will also continue to review the results of similar articling surveys that have been recently conducted in other jurisdictions, including Alberta,

Saskatchewan and Manitoba, as well as monitoring any changes to Ontario's articling program following its recent review.

25. By the end of 2020, the Lawyer Education Advisory Committee aims to produce a recommendation report for the Benchers that addresses the three areas of inquiry identified in the Strategic Plan, namely: developing a policy and proposals on access to articling positions and remuneration, developing proposals for the enhancement of articling and examining alternatives to articling.
26. In the upcoming year, the Lawyer Education Advisory Committee will also consider the role of CPD in supporting the mental health of lawyers. Specifically, the Committee will address the Mental Health Task Force's 2018 recommendation that the two groups work collaboratively to examine the merits of a mandatory CPD requirement for mental health and substance use disorder programming.
27. As an advisory body, the Committee will also continue to monitor developments in the area of lawyer education, including work occurring at the Federation level in relation to the NCA program.

The Law Society  
of British Columbia



# Rule of Law and Lawyer Independence Advisory Committee 2019 Year-End Report

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Jeff Campbell, QC (Chair)  
Christopher McPherson, QC (Vice-Chair)  
Jennifer Chow, QC  
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Jon Festinger, QC  
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December 6, 2019

Prepared for: Benchers

Prepared by: Rule of Law and Lawyer Independence Advisory Committee

Purpose: Information

## Introduction

1. The Rule of Law and Lawyer Independence Advisory Committee is one of the several advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers on matters relating to those issues. From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and may be asked to develop the recommendations or policy alternatives regarding such initiatives.
2. The lawyer's duty of commitment to his or her client's cause, and the inability of the state to impose duties that undermine that prevailing duty, have been recognized as a principle of fundamental justice.<sup>1</sup> The importance of lawyer independence as a principle of fundamental justice in a democratic society, and its connection to the support of the rule of law, has been explained in past reports by this Committee and need not be repeated at this time. It will suffice to say that the issues are intricately tied to the protection of the public interest in the administration of justice, and that it is important to ensure that citizens are cognizant of this fact.
3. The Committee's mandate is:
  - to advise the Benchers on matters relating to the Rule of Law and lawyer independence so that the Law Society can ensure
    - its processes and activities preserve and promote the preservation of the Rule of Law and effective self-governance of lawyers;
    - the legal profession and the public are properly informed about the meaning and importance of the Rule of Law and how a self-governing profession of independent lawyers supports is a necessary component of the Rule of Law; and
  - to monitor issues (including current or proposed legislation) that might affect the independence of lawyers and the Rule of Law, and to develop means by which the Law Society can effectively respond to those issues.
4. The Committee met on January 23, March 14, April 3, May 1, July 10, September 25 and December 4, 2019.
5. This year-end report of the Committee is prepared to advise the Benchers on its work in 2019.

## Topics of Discussion in 2019

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<sup>1</sup> *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7, [2015] 1 S.C.R. 401 DM2531936

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

6. The Committee has continued efforts to advance both the profession's and the public's understanding of the importance of the rule of law. Its primary activities to this end have been undertaken through the continuation of a yearly lecture series and high school essay contest. Both were reported on in the Committee's mid-year report, but for the sake of convenience are again outlined below:

### **a. Rule of Law Lecture**

7. The Committee hosted the Law Society's third annual Rule of Law Lecture on June 25 at the UBC Downtown campus. The Lecture, which was entitled "Privacy, Technology and the Rule of Law," included presentations by The Right Honourable Beverley McLachlin and Richard Peck, QC. The event was moderated by Jennifer Chow, QC.
8. The Lecture was attended by approximately 225 people and received very favourable comments. Like last year, the event was webcast live, and a further 58 viewers participated through that medium. A video of the entire Lecture has been posted on the Law Society website.
9. The Committee is beginning its planning for a fourth lecture next year, and is currently in the process of identifying speakers and topics.

### **b. High School Essay Contest**

10. The Committee completed its fourth essay contest for high school students. A smaller number of essays were received this year in past years. Judging of the essays was done by a panel comprised of Jeff Campbell QC, Jennifer Chow, QC and Professor Michelle Lawrence, from the Faculty of Law at the University of Victoria.
11. In previous years, the panel has selected a winner and runner-up. This year, however, the panel chose two co-winners. Presentations were made to both winners at the July 12, 2019 Bencher meeting, and their essays have been published on the Law Society website <https://www.lawsociety.bc.ca/our-initiatives/rule-of-law-and-lawyer-independence/secondary-school-essay-contest/>.
12. The Committee has started the process for the 2020 edition of this initiative. It has settled on the following essay topic:

*Does government and/or corporate monitoring of social media adversely affect the rule of law? Please provide specific examples.*

13. The Communications Department has begun to reach-out to school districts and teachers' associations to advertise the contest. The Committee hopes to be able to encourage some

teachers to assign the topic as part of their class assignments, as history has shown that is the best way to encourage essay submissions.

## **II. Public Commentary on the Rule of Law**

14. In mid-2015, the Benchers approved the Committee's proposal that it publicly comment on issues relating to the Rule of Law.
15. The Committee re-examined its public commentary role in the context of whether it should be commenting more frequently, particularly on domestic matters. To date, the tendency has been to comment on the rule of law in foreign jurisdictions. However, given the recent increase in Canadian rule of law concerns, the Committee determined that it would be sensible to focus greater attention on the prospect of commenting on domestic problems.
16. As reported in its mid-year report, the Committee monitored two high-profile issues that have garnered widespread attention in Canada this year, one which centres on prosecutorial independence and the other on extradition. The former arose in the context of the SNC-Lavalin affair. While the Committee established that it would be inappropriate to comment on whether any wrongdoing occurred, it did write an article about the dual role of the Attorney General/Minister of Justice and how that structure may, in certain circumstances, lead to conflicts. The article, titled "Prosecutorial Independence and the Rule of Law," was published on Slaw.

## **III. Education Initiatives**

17. Approximately a decade ago, the predecessor of this Committee, working with the Justice Education Society, created a package of materials suitable for instruction at the Grade 11/12 level on the importance of the rule of law and how judicial independence and lawyer independence support the rule of law.
18. At the 2019 Rule of Law Lecture, both speakers commented on the foundational importance of learning at an early age about the importance of the rule of law so that it can form a basis for understanding in relation to many social issues that students will face during the course of their education and into adulthood.
19. The Committee discussed revisiting the issue and to consider how best to place it for better uptake in the secondary school curriculum. With the assistance of the Chief Executive Officer, it hopes to seek information and feedback about how this may be accomplished.

## **IV. Review of the Roles of the Minister of Justice and Attorney General of Canada (McLellan Report)**

20. One of the outcomes of the issues that developed in the SNC/Lavalin matter was the appointment, by the Prime Minister, of the Honourable Anne McLellan as a Special Advisor on the roles of the Minister of Justice and Attorney General of Canada. Ms. McLellan reported on her assessment and review in a Report dated June 28. The report included examination of the importance of prosecutorial independence to the justice system and the rule of law.
21. In her report, Ms. McLellan noted a concern that institutional knowledge about the importance of the preservation of prosecutorial independence may not be being passed on, and that one should not assume that all governmental actors have a clear understanding of the legislation, constitutional principles, conventions and institutional arrangements and norms of behaviour that reinforce prosecutorial independence. She therefore recommended that all parliamentarians receive education on the role of the Attorney General and that all Cabinet members, their staff and other relevant governmental officials receive more intensive training on various matters, including
- their roles in protecting and promoting the rule of law,
  - the unique roles of the Minister of Justice and Attorney General, and
  - the consequences of interfering with prosecutorial discretion
22. The Committee discussed how these issues were ones on which law societies may have some ability to provide guidance and assistance in developing the sort of education Ms. McLellan identified in her report. Given that the matter is at the federal level, the Committee agreed that a recommendation be made to raise the subject with the Federation of Law Societies to follow up on the recommendation with the government and, if an opportunity presents itself, to offer to create relevant educational materials. Through the Chief Executive Officer, this matter has been raised with the Federation.

## **V. Meetings with Other Groups**

23. In 2018 the Committee met with Gail Davidson, a Director at Lawyers Rights Watch Canada to discuss issues relating to abuses, around the world, of the human rights of lawyers, particularly in developing countries, and the risks such action place on the rule of law. The Committee expressed interest in the work of Lawyers Rights Watch Canada, and agreed to keep open lines of communications with that group to learn more about actual instances of violations of lawyers' rights in the course of their work and the effect such actions had on the rule of law.
24. On May 8, 2019, at the invitation of Lawyers' Rights Watch Canada, Committee members Jeff Campbell, QC and Jon Festinger, QC met with Edre U. Olalia, who is a human rights lawyer from the Philippines and President of the National Union of Peoples' Lawyers. They discussed reports from that region regarding the political persecution of lawyers, including the reported

killings of over 30 lawyers in recent years. Further information can be found at <https://iadllaw.org/>.

25. On May 10, 2019, Mr. Campbell and Craig Ferris, QC (a past Chair of the Committee), met with a delegation of judges and journalists from the Ukraine. There was a general discussion of issues related to the rule of law and independence of the judiciary and legal profession in the Ukraine, which faces some challenges on these subjects. The delegation was particularly interested in the role of the bar in defending the judiciary in the face of unfair criticisms.
26. On November 7, 2019 Mr. Lucas, on behalf of the Committee, attended a meeting with Lawyers Rights Watch Canada and lawyers from Colombia, one from an organisation called the Regional Corporation for the Protection of Human Rights and two others from the Women's Lawyers Collective. They spoke of challenges with respect to the independence of courts and efforts made to criminalise individuals or groups that sought legal redress against certain interests in the country. They spoke of seeking ways to utilise foreign legal processes to address actions of foreign nationals or corporations engaging in behaviour in Colombia that raised issues with respect to contraventions of human rights or environmental damages.

#### **V. Amendments to the Civil Resolution Tribunal Amendment (Bill 22)**

27. This year the Trial Lawyers Association of British Columbia commenced a proceeding against the province, which claims that the \$5,500 cap on minor injuries under *Insurance (Vehicle) Act* and inadequate tribunal independence and expertise under the *Civil Resolution Tribunal Act* are unconstitutional. After discussing the matter, the Committee made a recommendation to the Executive Committee to refrain from seeking leave to intervene at the trial stage. Instead, the Committee suggested monitoring the case and, should it reach the Court of Appeal, the Law Society may wish to consider intervening at that stage.

#### **VI. Bill C-75 (An Act to Amend the Criminal Code, Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts)**

28. One of the amendments contained in Bill C-75 increased the maximum imprisonment for summary conviction offences from 6 months to 2 years. The Committee was concerned that this could have unintended consequences with respect to the ability for defendants to appear at summary conviction charges through agents, and in particular through temporary articulated students working through legal clinics. Currently, an agent can only appear for offences that carry a maximum jail sentence of 6 months or less, unless the agent is authorized under a provincial program to appear for offences that entail jail terms above 6 months. The Committee was considering making a recommendation that the Law Society comment with respect to this section, although it also thought that with respect to federal legislation, representations might more effectively come from the Federation of Law Societies. Coincidentally, however, the Federation's Public Affairs and Government Relations Committee prepared a draft submission to the Minister of Justice with respect to the very same issue.



29. The Committee reviewed the Federation's proposed submission and recommended to the Executive Committee that the Law Society support the Federation's submission regarding agents. The Committee also asked the Executive Committee to advise the Federation to comment that, for the reasons stated above, legislative reform through omnibus legislation is a process that should be discouraged. The Executive Committee endorsed both recommendations, which staff then conveyed to the Federation.
30. In April 2019, with Bill C-75 having already passed in the House of Commons, the Federation provided their submission to the Senate Standing Committee on Legal and Constitutional Affairs. In their submission, the Federation focused on issues pertaining to agents.
31. In May 2019, the Senate approved amendments to Bill C-75 to address the concerns about agents. The amended provision provided that agents are not allowed to appear for offences that have jail sentences over 6 months, unless the agent is permitted to do so under a law of the province or under a program, for which the latter could be authorized by a law society. Unfortunately, the House of Commons did not accept the Senate amendment on this point.
32. Subsequent to the passage of the legislation, the Committee prepared a letter, for signature of the President, raising concerns about how the provisions amending summary conviction offences could affect appearances by students in clinical programs at law schools and, possibly, articulated students. As the legislation contained a provision that the lieutenant governor in council of the province to authorize appearances by agents, over the summer, discussions were had between staff at the Ministry of Attorney General and the Law Society to that end and an Order in Council was prepared (OIC 478-2019) clarifying the ability of articulated students, temporary articulated students and law students participating in various supervised programs and BC law schools as being authorized to act as agents for the purposes of s. 802.1 of the *Code*.

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

33. As reported in the mid-year report, the Committee prepared a letter for signature by the President to the Treasury Board President and the Chair of the Standing Committee on Access to Information, Privacy and Ethics. The letter outlined concerns regarding proposed amendments that would require disclosure of information relating to judicial expenses of individual judges. While recognizing the need for transparency, the Committee was concerned that such provisions were an infringement on judicial independence. Furthermore, such disclosure could trigger unwarranted criticism of judges, who have limited ability to defend themselves.
34. The Chair of the Standing Committee on Access to Information, Privacy and Ethics sent a response letter, which the Committee viewed as largely unresponsive. The Chair of the Standing Committee advised our Committee to forward its concerns to the Senate as Bill C-58 was about to shift over to that chamber. Accordingly, the Committee prepared a new letter for

signature by the President that was sent to the Standing Senate Committee on Legal and Constitutional Affairs.

35. The Committee did not receive a response from the Senate Committee. However, this year the Senate voted in favour of an amendment to Bill C-58 that only allows disclosure of aggregate judicial expenses for each court, rather than for individual judges. In June 2019, the House of Commons accepted the Senate's proposed amendment.
36. While the Committee cannot conclude that its letter was determinative in the Senate's decision to forward amendments to the House of Commons, the Committee is pleased that the concerns it raised, along with other parties, were dealt with by both Houses of Parliament and that the final bill was amended in line with what the Committee advocated.

### **VIII. Submission to the Judicial Compensation Commission**

37. As reported in the mid-year report, the Committee made a submission for the Law Society to the Judicial Compensation Commissioner. Under the *Judicial Compensation Act*, an independent commission must be appointed every three years to report and make recommendation on all matters relating to judicial compensation. As part of the process, the Commission accepts submissions from the public. The Law Society has provided a number of submissions over the years, with the last one being in 2016. This year, the Commission wrote to the Law Society and asked if it would be interested in providing another submission. The Committee discussed the request and agreed that the Law Society should make a submission. The Committee prepared a submission on behalf of the Law Society that was considered and approved by the Executive Committee and sent to the Commission.

### **IX. Developing Issues**

38. The Committee continues to review items that appear in media reports that express concerns about the rule of law domestically and internationally. There are many issues that arise, such as social media as a court of public opinion, online privacy and state surveillance activities. Unbridled surveillance poses a particular risk to the rule of law and the Committee continues to monitor that issue closely and with concern. Concerns also continue to arise internationally where attacks on the credibility and/or rights and freedoms of lawyers, judges and independent law enforcement agencies continue to accelerate.

# Truth and Reconciliation Advisory Committee 2019 Year-End Report

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

December 6, 2019

Prepared for: Benchers

Prepared by: Truth and Reconciliation Advisory Committee

Purpose: For information

## Introduction

1. The Truth and Reconciliation Advisory Committee (“Committee”) is one of the advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers in connection with those issues. From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and may be asked to develop the recommendations or policy alternatives regarding such initiatives.
2. The purpose of this report is to update the Benchers about the work the Committee has undertaken for the latter half of the year. The Committee met on July 11, September 26, and October 24. The Committee also had a joint meeting with the Lawyer Education Advisory Committee on September 26, 2019. The Committee has made progress on the following matters between July and October, 2019.

## Intercultural Competency Education for Lawyers

3. As a follow up to the Law Society’s Truth and Reconciliation Action Plan’s commitment to mandate Indigenous intercultural competence education for all lawyers in BC, the Committee has spent the majority of its time developing a report and recommendation regarding an Indigenous intercultural competence education requirement for lawyers, in collaboration with the Lawyer Education Advisory Committee.
4. A report and recommendation is included in the Bencher agenda for decision at the December 6, 2019 Bencher meeting.

## Intercultural Competency Education for Tribunal Members

5. The Law Society’s “Tribunal Refresher Course” on July 10, 2019 focused on Indigenous intercultural competence in the tribunal context. The session was led by Professor Patricia Barkaskas (the Academic Director at the Indigenous Community Legal Clinic and a co-developer of the Indigenous Cultural Competency Certificate at the Allard School of Law at the University of British Columbia).

## Indigenous Inclusion in Law Society Hearing Pools

6. A targeted call for applicants for the Law Society of BC’s hearing panel pools was sent to Indigenous organizations in British Columbia earlier this year. As a result of the targeted call, Indigenous individuals have been appointed to the hearing panel pools.

## Intercultural Competency Education for Staff

7. Staff at the Law Society observed Orange Shirt Day on September 30, 2019, to honour the victims and survivors of residential schools and reflect on the continuing legacy of residential schools. Approximately 35 staff members viewed a webinar entitled “Racism & Privilege in the Everyday”, that was presented as part of the Indigenous Cultural Safety Collaborative Learning Series. The webinar featured Dr. Charlotte Loppie who explored Indigenous experiences of everyday racism, and Dr. Adam Barker who shared perspectives on settler colonialism and how it affects contemporary relationships between Indigenous and non-Indigenous collectives.
8. On October 9, 2019, the Law Society of BC hosted the Canadian Centre for Diversity and Inclusion workshop entitled “Circle for Reconciliation” which explored the TRC’s recommendations related to the workplace and provided examples of ways employers can work toward meaningful reconciliation.

## Indigenous Engagement

9. The Truth and Reconciliation Advisory Committee acknowledges that, at a basic level, reconciliation starts with improving relationships between Indigenous and non-Indigenous people. The goal of the Law Society’s outreach efforts is relationship building, which is foundation for reconciliation. To that end, representatives from the Law Society and the Truth and Reconciliation Advisory Committee have participated in the following engagements:
  - a. A pilot course on Indigenous Legal Dispute Resolution mechanisms;
  - b. A lunch meeting with the Canadian Bar Association BC Aboriginal Lawyers Forum;
  - c. The First Nations Leadership Council Gathering from November 4 to 6;
  - d. The UBC Law Indigenous Legal Clinic’s 25<sup>th</sup> Anniversary Event on November 14;
  - e. The CBA BC Aboriginal Lawyers Forum Dinner on November 29;
  - f. Consultation with the Court Services Branch about the use of eagle feathers for taking oaths and affirmations in courts in British Columbia; and
  - g. Consultation in relation to a trauma informed legal service guide that is being developed.

## Indigenous Scholarship

10. The Law Society of British Columbia offers a scholarship for Indigenous students enrolled in full time legal studies in the province of British Columbia. The Indigenous Scholarship aims to enhance the representation of Indigenous lawyers in British Columbia by supporting their legal education.
11. In 2018, on the recommendation of the Committee, the eligibility criteria for the award was expanded to include Juris Doctorate students. Prior to the amendment, the scholarship had previously only been available to graduate students. The scholarship amount was also increased from \$10,000 to \$20,000, and may be awarded to one student, or divided equally between two students (\$10,000 per student), at the discretion of the selection committee.
12. The Indigenous Scholarship for 2019 was awarded to Shawnee Monchalin, who will complete her Juris Doctor degree later this year, and begin articles in Vancouver in 2020.

## Intercultural Competency Education in PLTC

13. PLTC staff continues to collaborate with Indigenous lawyers to integrate Indigenous content throughout PLTC materials. The PLTC curriculum already contains modules on Indigenous sentencing principles, Indigenous child welfare, and Indigenous intercultural competency. PLTC staff is now working with the University of Victoria Faculty of Law's Indigenous Laws Research Unit to develop a module on an Indigenous legal orders.

## Federation of Law Societies TRC Calls to Action Committee

14. Dean Lawton, QC serves as the Western Representative of the Federation of Law Societies' TRC Calls to Action Committee. He attended the Annual Conference of the Federation of Law Societies from October 16 to 19 in St. John's, Newfoundland, where a Co-Chair of the Federation's TRC Calls to Action Committee provided a progress report.
15. Representatives from western law societies meet regularly by teleconference to share information and updates regarding TRC initiatives.

## Mental Health Task Force 2019 Year-End Report

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Brook Greenberg (Chair)  
Michelle Stanford, QC (Vice Chair)  
Christopher McPherson, QC  
Derek LaCroix, QC  
The Honourable Madam Justice Nitya Iyer  
The Honourable Chief Judge Melissa Gillespie  
Kendra Milne  
Phil Dwyer

December 6, 2019

Prepared for: Benchers

Prepared by: Mental Health Task Force

Purpose: Information

## Introduction

1. The Mental Health Task Force (the “Task Force”) is responsible for coordinating and assisting the Benchers in implementing the Law Society’s strategic goals in relation to improving the mental health of the profession, namely: reducing stigma around mental health and substance use issues and developing an integrated mental health review concerning regulatory approaches to discipline and admissions.<sup>1</sup>
2. Over the course of 2019, the Task Force has continued to pursue its mandate as it relates to these two key goals. The Year-End Report provides a high-level update of its recent activities, with a particular focus on the Task Force’s work since the Mid-Year Report.<sup>2</sup>

## Discussion

### Implementing Recommendations from the First Interim Report

3. In December 2018, the Benchers approved the Task Force’s First Interim Report,<sup>3</sup> which contained a series of recommendations (the “2018 Recommendations”) falling into two broad categories: educational strategies that increase awareness and understanding of mental health and substance use within the legal profession, and regulatory strategies that focus on how these issues are addressed in the regulatory context.
4. In addition to the implementation work undertaken earlier this year,<sup>4</sup> in recent months the Task Force has focused on three key areas relating to the 2018

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<sup>1</sup> See Law Society of BC 2018-2020 Strategic Plan, online at:

[https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/StrategicPlan\\_2018-2020.pdf](https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/StrategicPlan_2018-2020.pdf) and the Mental Health Task Force Terms of Reference, online at:

[https://www.lawsociety.bc.ca/Website/media/Shared/images/initiatives/MentalHealthTaskForce\\_termsofreference.pdf](https://www.lawsociety.bc.ca/Website/media/Shared/images/initiatives/MentalHealthTaskForce_termsofreference.pdf)

<sup>2</sup> Pursuant to section 3(b) of its Terms of Reference, the Task Force is required to produce a mid-year and year-end report to the Benchers on its activities.

<sup>3</sup> Mental Health Task Force First Interim Report (December 2018), online at:

<https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/MentalHealthTaskForceInterimReport2018.pdf>

<sup>4</sup> See the 2019 Mid-Year Report, online at:

<https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/2019MentalHealthTaskForceMidYearReport.pdf>



Recommendations, namely: mental health education and training initiatives for Law Society staff (Recommendations 2, 3, 4 and 5); improving the accessibility of LifeWorks services (Recommendation 9); and eliminating the stigmatizing language in the *Code of Professional Conduct for British Columbia* (the “BC Code”) (Recommendation 13).

## Education and training

5. Over the course of the past year, the Law Society, primarily through the work of its Human Resources Department, has worked with the Canadian Mental Health Association (“CMHA”) to develop training programs that improve staff awareness and understanding of, and responses to, mental health and substance use issues that they may encounter during their interaction with lawyers.
6. In September and October, the CMHA delivered a series of customized three hour workshops to over 80 Law Society employees that examined the signs and prevalence of major mental health issues, stigma, risk and protective factors, and the availability of support resources. Programming on compassion fatigue was also delivered to over 60 staff members in November.
7. A half-day training program that provides participants with tools and resources to identify and support persons at risk of suicide (SafeTALK), and an eight hour online module designed to assist non-experts dealing with individuals facing substance use and addiction challenges, has also been organized for Law Society employees.
8. At the conclusion of each training program, staff will review the feedback from participants and develop additional phases of programming, as required to address the recommendations made by the Task Force.

## Accessing LifeWorks services

9. Members of the Task Force have continued to participate in meetings with LifeWorks representatives in an effort to further understand the scope of its services and the extent to which counselling and other resources are available to lawyers.
10. Staff reports that it has also progressed on implementing the 2018 Recommendation that lawyers not be required to use the Law Society’s member portal to access LifeWorks services. This recommendation was based on concerns that lawyers’

apprehensions about the confidentiality of this process may be preventing some practitioners from accessing support.

11. To address this concern, information enabling practitioners to directly access LifeWorks by phone or online will be posted on the Law Society's website by the end of 2019, and lawyers will no longer be required to utilize the member portal or their Law Society ID and password to access these services.
12. The Communications Department will continue to ensure that this change, along with additional information about the nature of scope of LifeWorks' services, are promoted to the profession, and will keep the Task Force informed of its progress.

### Eliminating stigmatizing language from the *BC Code*

13. Throughout 2019, the Task Force has been engaged in ongoing consultations with the Ethics Committee with respect to amending Rule 7.1-3 of the *BC Code* and its associated Commentary. During the latter portion of this year, this work focused on identifying an exemption from the duty to report for lawyer-counsellors serving in a professional peer-support program, such as the Lawyers Assistance Program ("LAP").
14. The rationale for the proposed changes was two-fold: to eliminate stigmatizing language and to address aspects of the Commentary that may prevent lawyers from seeking peer support based on concerns about what information, if shared, a lawyer-counsellor would be required to disclose to the Law Society. Additionally, the Task Force observed that the existing Commentary may deter lawyers who wish to act as counsellors in such programs from doing so, while at the same time failing to provide the Law Society with meaningful information that would serve to protect the public.
15. In October, the Ethics Committee presented a recommendation to the Benchers addressing the problematic language in Rule 7.1-3 and the Commentary that was endorsed by the Task Force in its Second Interim Report.

### **New Recommendations and the Second Interim Report**

16. In addition to its implementation activities, the Task Force has been engaged in consultations, research and policy discussions concerning the development of a

second set of recommendations that address the Law Society’s strategic goals in relation to mental health.

17. The culmination of this work is the Task Force’s Second Interim Report, which contains seven new recommendations (the “2019 Recommendations”), that were presented to the Benchers for discussion and decision in October and December 2019, respectively.

### Information-sharing strategies

18. The majority of the 2019 Recommendations focus on information-sharing strategies that seek to enhance the exchange of ideas and information between the Law Society and other stakeholders in the legal profession in relation to mental health, substance use and stigma reduction.
19. Information strategies have been a key focus for the Task Force for two inter-related reasons. First, enhancing the manner in which lawyers and firms talk about mental health and substance use issues, and increasing the forums in which these conversations occur, can improve the professions’ awareness and understanding of these issues. Second, increasing opportunities for open dialogue reduces stigma and, in doing so, may encourage those practitioners that need support to seek it.
20. Following a review of several recent studies that reveal that law students and young lawyers have an elevated risk of experiencing poor mental health and substance use issues,<sup>5</sup> the Task Force developed two recommendations that specifically address the wellness challenges facing many of the newest member of the profession:
  - that the Law Society consult and collaborate with BC law schools to improve the exchange of information about the availability of support services for mental health and substance use issues within the profession and to assist

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<sup>5</sup>J. M. Organ, D. Jaffe, & K. Bender, “Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns” (2016) 66 J. Legal Educ. 116; Krill P.R., Johnson R. & Albert L., “The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys” (2016) 10 J. Addiction Med. 46 (“ABA Study”), online at: [http://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The\\_Prevalence\\_of\\_Substance\\_Use\\_and\\_Other\\_Mental.8.aspx](http://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx). The Barreau du Québec also conducted a study based on more than 2,500 lawyers in relation to psychological distress, burnout and well-being. For an English summary of the findings, see Luis Millan, *Lawyer’s Daily* (August 2017), online at: <http://secure.campaigner.com/CSB/public/ReadmoreContent.aspx?id=28522621&campaignid=36930416&ac=580325>. The full report is available online at: <https://www.barreau.qc.ca/media/1886/rapport-sante-psychologique-travail-avocats.pdf>. (French only).

students in transitioning to these supports from those provided during law school; and

- that the Law Society enhance both the content of the Bencher Orientation Manual and in-person Bencher training in an effort to improve the manner in which mental health and substance issues are addressed as part of Benchers' interviews with articling students.

21. During the latter portion of 2019, the Task Force also developed a series of additional recommendations focusing on information sharing and stigma-reduction:

- that the Law Society host a town hall event to facilitate a discussion between lawyers, legal employers, support service providers and the Law Society about mental health within the profession;
- that the existing guidelines for firms on the use of respectful language be reviewed and revised, in consultation with the Equity, Diversity and Inclusion Advisory Committee, including the provision of additional guidance with respect to how to avoid the use of stigmatizing language in relation to mental health and substance use issues;
- that the Law Society develop a style guide for staff and Benchers to provide general guidance on the use of non-discriminatory and non-stigmatizing language in all future Law Society publications; and
- that the Law Society address the paucity of data on the state of mental health within the legal profession in BC by conducting a voluntary, confidential survey of lawyers to establish a reliable set of BC-specific data in relation to mental health within the profession .

## Regulatory strategies

22. Over the past year, the Task Force has focused on the development of two new regulatory recommendations, namely: supporting specific amendments to the duty to report provisions in the *BC Code* and removing or replacing the medical fitness questions in the Law Society Admission Application Form (“LSAP Application Form”).

23. As discussed earlier in this report, the Task Force's progress on the former issue resulted in a new recommendation supporting the Ethics Committee's proposed amendments to Rule 7.1-3 and its associated Commentary, which eliminates stigmatizing language and creates an exemption from the duty to report for lawyer-counsellors serving in the LAP or another Law Society approved peer assistance program.
24. The development of a further recommendation in relation to the medical fitness questions contained in the LSAP Application Form has also been a central focus for the Task Force.
25. The Task Force began a consultation with the Credentials Committee on the subject in May 2019, and has presented a recommendation to the Benchers as part of its Second Interim Report proposing that the medical fitness questions are removed from the LSAP Application Form or, in the alternative, are replaced with conduct-related question that will assist in the evaluation of applicants' fitness to practice.<sup>6</sup>
26. The Benchers' consideration of the policy issues surrounding the medical fitness questions is ongoing, and the matter will be subject to further discussion at the December 2019 Bencher meeting.

### Outreach and consultation

27. Throughout 2019, the Task Force engaged in a number of outreach and consultation activities, the most recent of which are summarized below.
28. Over the course of the summer and fall months, as part of the Task Force's ongoing consideration of the development of an alternative discipline process, the Task Force benefited from a presentation from key staff in the Professional Regulation Department that outlined the range of regulatory tools that the Law Society currently employs to address mental health and substance use issues facing lawyers.
29. Several members of the Task Force also met with the Practice Standards Department to discuss the remedial work undertaken by this group to assist lawyers experiencing these issues.

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<sup>6</sup> A detailed overview of the Task Force's position on this issue is articulated in both its 2019 Mid-Year Report *supra* note 4 and the Second Interim Report.

30. Members of the Task Force have also participated in a number of outreach activities across various regions of the province to raise awareness about mental health and substance use issues within the profession, providing presentations to firms, government departments, Inns of Court and local bar associations.
31. The Task Force's leadership was also highlighted at the Federation of Law Societies' conference on lawyer well-being in St. John's, Newfoundland, which provided a valuable opportunity for all law societies to come together to discuss the impact of mental health and substance use on the profession and the role of regulator in responding to these issues.

## Next Steps

32. Looking towards the third year of the Law Society's Strategic Plan, the Task Force aims to focus on two streams of work: continuing to implement its previous recommendations and developing new recommendations that support the Task Force's mandate.
33. With respect to implementation, in addition to monitoring progress on the 2019 Recommendations, the Task Force will continue to monitor its 2018 Recommendations, including the merits of a mandatory CPD requirement for mental health and substance use disorder programming; the potential addition of wellness-related resources to law firm regulation's Self-Assessment Report prior to its finalization and profession-wide implementation; and the development of further educational and training opportunities for Law Society staff and Benchers.
34. With respect to the development of new recommendations, the Task Force will continue to examine the policy issues surrounding the creation of an alternative discipline processes to address lawyer conduct issues that arise from mental health or substance use issues, with the goal of presenting a recommendation to the Benchers in 2020.
35. The Task Force also expects to finalize the development of a recommendation pertaining to the creation of a best practices framework that will establish a series of evidence-based guidelines to assist the Law Society to address mental health and substance use issues across its various processes.