



Agenda

Benchers

- Date: Friday, January 31, 2020
- Time: **7:30 am** Continental breakfast
8:30 am Call to order
- Location: Bencher Room, 9th Floor, Law Society Building
- Recording: *Benchers, staff and guests should be aware that a digital audio recording is made at each Benchers meeting to ensure an accurate record of the proceedings*

OATH OF OFFICE:

The Honourable Chief Justice Robert J. Bauman, will administer an oath of office (in the form set out in Rule 1-3) to President Craig Ferris, QC, First Vice-President Dean P.J. Lawton, QC and Second Vice-President Lisa J. Hamilton, QC (individually) and all of the Benchers elected, re-elected or appointed for the term commencing January 1, 2020 (en masse).

1	Administer Oaths of Office
2	President's welcome

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.

3	Minutes of December 6, 2019 meeting (regular session)
4	Minutes of December 6, 2019 meeting (<i>in camera</i> session)
5	Law Society Appointment to the Queen's Counsel Advisory Committee
6	Law Society Appointment to the Legal Services Society
7	Law Society Appointment to the Land Title and Survey Authority
8	Terms of Reference – Access to Justice Advisory Committee
9	Terms of Reference – Lawyer Development Task Force



Agenda

REPORTS		
10	President's Report	Craig Ferris, QC
11	CEO's Report	Don Avison, QC
12	Briefing by the Law Society's Member of the Federation Council	Pinder K. Cheema, QC
DISCUSSION/DECISION		
13	2020 Objectives, Challenges and Program Area Overviews: <ul style="list-style-type: none"> • Trust Assurance • Professional Conduct 	Don Avison, QC Jeanette McPhee Natasha Dookie
14	Mental Health Task Force Second Interim Report	Brook Greenberg
UPDATES		
15	Report on Outstanding Hearing & Review Decisions <i>(Materials to be circulated at the meeting)</i>	Craig Ferris, QC
FOR INFORMATION		
16	2021 Bencher and Executive Committee Meeting Dates	
17	Three Month Bencher Calendar – February to April 2020	
IN CAMERA		
18	Other Business	



Minutes

Benchers

Date: Friday, December 06, 2019

Present:

Nancy G. Merrill, QC, President	Claire Marshall
Craig Ferris, QC, 1 st Vice-President	Geoffrey McDonald
Dean P.J. Lawton, QC, 2 nd 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	Carolynn Ryan
Jeevyn Dhaliwal	Karen Snowshoe
Martin Finch, QC	Michelle D. Stanford, QC
Brook Greenberg	Sarah Westwood
Lisa Hamilton, QC	Michael Welsh, QC
Roland Krueger, CD	Tony Wilson, QC
Jamie Maclaren, QC	Heidi Zetsche

Unable to Attend: Guangbin Yan

Staff Present:

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

Guests:	Kenneth Armstrong	Vice-President, Canadian Bar Association, BC Branch
	Dom Bautista	Executive Director, Law Courts Center
	Dr. Susan Breau	Dean of Law, University of Victoria
	Trudi L. Brown, QC	Partner, Brown Henderson Melbye
	Jennifer Brun	Vice President, Canadian Bar Association, BC Branch
	Dr. Catherine Dauvergne	Dean of Law, University of British Columbia
	Lisa Feinberg	2020 Bencher
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program
	Julie K. Lamb, QC	2020 Bencher
	Michael McDonald	Member of the Truth and Reconciliation Advisory Committee
	Mark Meredith	Treasurer, Mediate BC
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University
	Caroline Nevin	CEO, Courthouse Libraries BC
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
	Thomas L. Spraggs	2020 Bencher
	H. William Veenstra	Member of the National CBA Board of Directors
	Ardith Walkem	Member of the Truth and Reconciliation Advisory Committee
	Chelsea D. Wilson	2020 Bencher

CONSENT AGENDA

1. Minutes of October 25, 2019, meeting (regular session)

The minutes of the meeting held on October 25, 2019 were approved as circulated.

2. Minutes of October 25, 2019 meeting (*in camera* session)

The minutes of the *In Camera* meeting held on October 25, 2019 were approved as circulated.

3. Rules 3-99 and 3-107 – Client Identification and Verification

At the request of Mr. Wilson, this item was removed from the consent agenda for discussion. Following feedback from members of the profession, Mr. Wilson inquired about the support the Law Society is providing with respect to the implementation of the new rules. Mr. Avison responded that there has been quite a bit of activity by the Law Society and the Federation of Law Societies of Canada in an effort to help lawyers understand the new rules. While there was still some more work to be done before January 1, 2020 and beyond to assist with the implementation of the new rules, he assured Benchers of the considerable activity taking place and planned for the future.

Benchers discussed the risk of being too prescriptive with the rules and the intention for lawyers to think about how the rules apply to their own practice. Staff indicated the Law Society would continue to keep in mind concerns raised by members of the profession and continue efforts to ensure guidance material is readily available.

A motion to approve the following resolution was then moved and seconded, and passed unanimously.

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*].

4. Rule 5-24.1 – Preparation and Delivery of Record

The following resolution was passed unanimously and by consent.

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.

5. Rule 3-3 et al. – Disclosure to Law Enforcement

The following resolution was passed unanimously and by consent.

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.

6. Rule Amendments to Implement *Legal Profession Act* Amendments Concerning Insurance and Indemnity Provisions

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. ***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:***
- (5) 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 deductible amount;
 - any other amount that the lawyer is required to repay or reimburse the indemnity fund under the professional liability indemnity policy.
- (6) If indemnity has been paid under the Society’s indemnification program, the lawyer on whose behalf it is paid must
- 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
 - 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:***
- (5) 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***
- (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”.***

By email dated December 20, 2019, in accordance with section 6 of the *Legal Profession Act*, more than 75% of the Benchers approved a correction to the rules that were approved at the December 6, 2019 meeting. The replacement paragraphs approved on December 20, 2019 are below:

RESOLUTION ON THE INDEMNITY PROGRAM

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 trust protection indemnity coverage, reimburse the Society in full on demand, for all amounts paid.

15. In Rule 3-46

- (a) *in subrule (1), by striking out “the policy of professional liability and trust protection insurance” and substituting “the professional liability indemnity policy and trust protection indemnity coverage”; and*
- (b) *in subrule (5), by striking out “trust protection insurance” and substituting “trust protection indemnity coverage”.*

RESOLUTION ON THE INDEMNITY PROGRAM**4. In Rule 3-46, by rescinding subrule (5)(c) and substituting the following:**

- (5) In the case of a claim under trust protection 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..

7. BC Code Amendments Required to Follow Legislation Changes Affecting the Lawyers Insurance Fund (LIF)

At the request of Ms. Cheema and Mr. Lawton, this item was removed from the consent agenda for the purposes of proposing a friendly amendment to the proposed changes. Ms. Cheema pointed to page 86 of the materials where it states “or other insurer” and suggested the removal of “other” wherever it is used to modify “insurer”.

A motion to approve the following resolution, including Ms. Cheema’s friendly amendment, was moved and seconded, and passed unanimously.

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 to the Benchers 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*.

8. Equity, Diversity and Inclusion Advisory Committee Name and Terms of Reference

The updated Terms of Reference was passed unanimously and by consent.

9. Approval of Revised Bencher, Committee Member, Hearing Panellist and Other Volunteer Expense Reimbursement Policies

The following resolution was passed unanimously and by consent.

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.

10.2020 Committees, Task Forces and Working Groups

This item was removed from the consent agenda for discussion.

Some Benchers requested clarification about the scope and role of the proposed new and merged Committees. Mr. Ferris commented that the intention is for the Lawyer Development Task Force to look at lawyer development more comprehensively and how all the different pieces fit together. With respect to Practice Standards, Mr. Ferris acknowledged it is important to make it clear that the Practice Standards process is different from discipline, but said he thinks it is important to take a look at whether the Committee is doing what it needs to be doing.

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 was Mr. Ferris' 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. He proposed 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 Mr. Ferris' 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, he recommended that the Lawyer Education Advisory Committee be converted into the Lawyer Development Task Force. The Task Force would have 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 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. 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 he intends to ensure that the Benchers consider and make a determination on this issue in 2020.

It was agreed the item was For Information purposes only and did not require a formal resolution.

REPORTS

11. President's Report

Ms. Merrill congratulated the Benchers that were elected to the 2020 Executive Committee and thanked them for putting their names forward. She then provided a summary of the decisions at the November 20 Executive Committee meeting; including appointments to the Law Foundation of BC, the anti-money laundering amendments coming into force on January 1, 2020 and other matters. Finally, Ms. Merrill indicated she had spoken with Derek LaCroix, QC Executive Director of the Lawyers Assistance Program, regarding the possibility of holding a course for Benchers in 2020 on peer counselling and that this would likely take place early in 2020.

12. CEO's Report

Mr. Avison invited Mr. Armstrong, President of the Canadian Bar Association of British Columbia, to speak about Ms. Merrill. Mr. Armstrong spoke about her year of service to the legal profession as President of the Law Society and presented Ms. Merrill with a gift.

Mr. Avison then welcomed the newly elected Benchers and indicated an orientation session would be held in January 2020, followed by a tour of the Law Society building.

Work on the Cullen Commission is increasing and the Law Society is preparing for the commencement of hearings. Mr. Avison indicated some significant pieces of work have been completed to date in relation to document retention, briefings had been provided with respect to core areas of the Law Society and advice was being provided to the profession regarding related rule changes. At the national level, Mr. Avison referred to the anti-money laundering working group consisting of representatives from the Law Society, Federation of Law Societies of Canada, and government representatives. As part of that process, Law Society staff provided an overview of the trust audit process and investigations in British Columbia, which was well received. Indications are that the Government of Canada would be working closely with Canadian law societies on an ongoing basis.

In terms of engagement with the provincial government, Mr. Avison spoke about positive and productive meetings that took place with government representatives to discuss the work being considered by the Ethics Committee and the Mental Health Task Force.

Mr. Avison referred to the federal throne speech from the day before, which mentioned a number of significant items; including, introducing legislation to implement the Declaration on the Rights of Indigenous Peoples at a federal level.

Mr. Avison then spoke further about the implementation of the anti-money laundering rules across Canada and guidance material that was available for members of the profession.

Finally, Mr. Avison spoke about Professor Brad Morse, Dean of Law at Thompson Rivers University and thanked Mr. Morse for his exceptional work in establishing strong foundations for not only the law school at Thompson Rivers University, but for the institution more broadly and for the community of law schools within the province of British Columbia. Mr. Avison recognized Mr. Morse's many contributions and presented him with a gift from the Law Society.

UPDATES

13. Licensed Paralegal Task Force Update

Ms. Merrill introduced Ms. Brown, Chair of the Licensed Paralegal Task Force.

Ms. Brown said there were two stages to the work of the Task Force; first, identify unmet needs that lawyers are not meeting in our society, which may have a much broader focus than family law.

The Task Force has designed a survey, which has been sent out to between 20 and 30 organizations to ask them where they believe the unmet needs are. 15 responses had been received so far and the Task Force will meet again in January 2020 to the responses. The intention is then to go back to the profession to make sure there is general agreement about where the unmet needs lie. The issue would then be brought back to Benchers for consideration, before the Task Force moves on to consider the second stage.

The second stage is to identify what training would be provided to licensed paralegals and in what areas of law, provided the answer to the first stage leads to exploring the second question.

Ms. Brown indicated the Task Force is approximately half-way through stage one. Ms. Merrill thanked Ms. Brown for attending the Bencher meeting and for her work to date chairing the Task Force.

14. Enterprise Risk Management Plan - 2019 Update

Mr. Ferris introduced the item and indicated the plan was developed by staff and reviewed by the Finance & Audit Committee before being brought to Benchers. The plan identifies risks to the Law Society, how significant the risks are and what strategies exist to mitigate those risks. He referred to pages 127-128 of the materials, which provide an update on the top 10 risks and any adjustments that have been made since they were last reviewed. In particular, Mr. Ferris spoke about three main risks. He said Risk 10: Emergence of new technologies challenging the ability to regulate legal services, had been moved out of the top 10, and the risk rating for Risk 5: Failure to sanction, or deal with, a lawyer in an appropriate way, had been upgraded as it continues to be an important issue. Finally, Risk 8: Admission decisions, including those made by the National Committee on Accreditation, are not reflective of the character, fitness and competencies of a prospective lawyer, which moves this risk into the top 10.

15. Report on Outstanding Hearing & Review Decisions

Mr. Ferris thanked everyone for their work throughout the year on hearing panels. He also reminded panel members it is their joint responsibility to ensure time requirements are met.

DECISION

16. Report from the Governance Committee

Mr. McKoen, Chair of the Governance Committee, spoke to the report and the recommendations on page 147 of the materials. First, he discussed the recommendation 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. Mr. McKoen said this would allow the Law Society to better serve organizations by identifying people in the community that could sit on these boards, which would give more flexibility to the Law Society in the appointments process.

Secondly, Mr. McKoen spoke about the Committee's recommendation that Benchers launch a new semi-annual Bencher evaluation process that would commence in 2020 with statements set out in Appendix A and B of the report for each of the first and second semi-annual evaluations respectively. The rationale behind the recommendation is that conducting the evaluation once a year only allows Benchers to provide feedback at one point in time and may reflect issues that are top of mind at that point in time. For this reason, the Committee considered the existing questions asked and divided them into two lists; with half the questions to be asked in the first half of the year and half of the questions to be asked in the second half of the year.

Finally, the Committee recommended to the Benchers that a new semi-annual Committee evaluation process commence in 2020 with the statements set out in Appendix C of the report.

A Bencher queried the history of the Bencher appointment requirement and the possible need for Bencher oversight on a board. Mr. McKoen further discussed the problem the Committee was trying to address, that there is often an expectation that Benchers appointed to boards would be in a position to report back to the Bencher table, but that this is not the case because of the duties board members owe to the board.

A motion to accept the Committee's recommendations contained in the report was moved and seconded, and the motion was carried (with one abstention).

17. Recommendation to Adopt Changes to the Statement of Investment Policies and Procedures (SIPP)

Mr. Ferris introduced the item and spoke about the recommendation of the Finance & Audit Committee for the Benchers to adopt the following 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"

The recommendation is the result of a review of the Law Society Statement of Investment Policies and Procedures and the Lawyers Insurance Fund long term investment portfolio. The review consisted of examining the investment structure, the current manager performance and the asset mix. As the current asset mix was not expected to earn the required rate of return for the portfolio, the Committee recommended that the benchmark asset mix be set in accordance with the table on page 154 of the materials.

A Bencher queried whether the Law Society makes any efforts to inquire into the activities and endeavours the Law Society invests in, in so far as human rights. Another Bencher asked if there was any environmental component to the Law Society's investments.

Mr. Ferris indicated these questions could be sent back to the Finance & Audit Committee for consideration, and indicated that he did not see an issue with asking these questions of our managers if that is what the Bencher table would like.

Mr. Ferris then made a motion for the Benchers to approve the amendments to the Statement of Investment Policies and Procedures on page 156 of the materials. The motion was seconded, and was passed unanimously.

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

Ms. Cheema, Chair of the Ethics Committee, spoke to the item. She indicated the amendments had been adjourned to this meeting for decision for two reasons: (1) to allow for consultation with the provincial government, and (2) to respond to concerns raised at the last meeting about possible future crimes that may be committed and how these would be dealt with if the amendments were approved.

Ms. Cheema said she, along with Mr. Lawton and Mr. Avison, consulted with the government on the proposed changes and no further concerns were raised by the government.

Regarding the disclosure of a future crime by a lawyer seeking assistance, Ms. Cheema commented that the Committee spoke with Mr. LaCroix, QC, Executive Director of the Lawyers Assistance Program (LAP), about the process in this type of scenario. He advised that as soon as a lawyer client comes through the door, they have usually reached rock bottom and they come to LAP because they are prepared to turn their life around and need assistance in order to be able to do so. The context of the relationship is not one that is conducive to a situation where a lawyer client would be disclosing an intention to commit a future crime. When the lawyer counsellor relationship is underway, as soon as the lawyer counsellor is aware of a legal issue that may have arisen, the lawyer counsellor transfers the file to Mr. LaCroix. He would then interview the lawyer client in his capacity as a lawyer and not as a lawyer counsellor, and after he determines what the issue is, the lawyer client would be referred to appropriate counsel to help them resolve their issue. In the event the lawyer client refuses legal advice and responds to assistance in an adverse way, LAP's policy is to call the police. There are benefits to this approach as the police are best placed to take action at short notice if required.

Ms. Cheema said it is in many ways illusory to put in place a requirement that a lawyer counselor must notify the Law Society as it may or may not be effective, and practically speaking, the chances of success go down.

Ms. Cheema then made a motion that the proposal put forward on pages 201-202 of the materials be approved, which was seconded.

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 to the Benchers.

A Bencher still expressed concerns about the removal of the sentence regarding disclosure if someone has or is going to participate in a criminal activity. While there were no concerns expressed about LAP procedures, there was a concern the risk to the public outweighed the benefit to the lawyer of removing this requirement. Some other Benchers were of the view that they are satisfied it is not a significant risk and the public interest includes assisting lawyers so that they may in turn assist the public. In any event, it was pointed out that there is the discretion to disclose in a situation where there is an imminent risk of harm or death and that this discretion still remains if the changes were to be approved.

The motion was carried, with two abstentions and one opposed.

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

Ms. Merrill began by asking people not to restate the discussion from the previous meeting and invited people to raise any new points. Mr. Lawton then spoke to the item, stating there was considerable discussion at the October 25, 2019 meeting and said it was time for lawyers in British Columbia to embark upon appropriate cultural competence training with respect to Call to Action 27. The two motions before the Benchers for decision were on page 240 of the materials and are restated 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 in 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. Lawton moved that the Benchers approve Recommendation 1, which was seconded. The motion was carried unanimously.

Mr. Lawton then made a motion that the Benchers approve Recommendation 2, which was also seconded. Discussion on the substance of Recommendation 2 then followed.

Mr. Wilson made a motion that the vote on whether or not to adopt Recommendation 2 be delayed until the Bencher meeting in December 2020, which in his view, would allow time for

the course to be developed and reviewed before the mandatory nature of the Course is voted on. The motion to delay the vote on Recommendation 2 was seconded by Mr. Riddell.

Mr. Riddell was concerned about voting on the mandatory nature of the course, or considering any exemptions, before the course has been developed. In his view, it makes sense for the Benchers to consider the complete package with the content, information about comparable programs or courses and exemptions at a later date once those matters have been developed. He agreed with the policy behind the program, but felt there were operational decisions that needed to be addressed first.

Many Benchers spoke against the motion to delay the vote on Recommendation 2. The view was advanced that it is the better approach to make a strong policy decision now and that now is the time to send the message that mandatory cultural competence training is timely and necessary, especially in light of the provincial government's steps to recognize the Declaration on the Rights of Indigenous Peoples. However, Benchers did recognize that there would need to be time allowed for appropriate consultation and feedback from indigenous members of the profession on the proposed course and how it could be improved before it is implemented.

The vote was called on the motion to delay voting on Recommendation 2. The motion failed, with two in favour, one abstention and the remaining Benchers opposed.

Mr. Greenberg then introduced a motion to amend Recommendation 2 by inserting “or an equivalent course that is approved or accredited by the Law Society of British Columbia” after “that completion of the course” to provide for equivalent courses to be offered. In his view, if the Law Society course is the only one able to be taken to meet the mandatory requirement, the Law Society runs the risk of crowding out innovation and development of materials by others who would be appropriate to provide a course of this nature. For example, some people may prefer an in-person course to an online course and if the Law Society is only offering one type of course this may be unnecessarily limiting.

Some Benchers expressed support for the amendment proposed by Mr. Greenberg, stating that the focus should be on making legal education mandatory and not on the specific course. Other Benchers were opposed to the amendment on the basis that it is an important aspect of the policy to roll out the training to the profession as a whole and have confidence that all members of the profession will be exposed to the same material. Benchers debated whether the original motion would impair the future development of other courses and whether this was a real risk. Some Benchers were of the view that it was safe and appropriate to proceed with the original motion in terms of still providing for other courses to be developed in the future.

Ms. Merrill then called the question on the amendment to the motion as proposed by Mr. Greenberg. With 9 in favour and 20 opposed, the motion failed.

Mr. Maclaren expressed that it had been his intention to propose an amendment with respect to timing, but instead wished to encourage a process that allows substantial room for feedback and consultation with indigenous members of the profession, and all members, and a process that also develops the course quickly while still ensuring the quality of the course remains a priority.

Mr. Lawton then repeated the original motion to adopt Recommendation 2. The motion carried with 2 opposed, 2 abstentions and 25 in favour.

FOR INFORMATION

20. Year-End Advisory Committee Reports:

There was no discussion on the Year-End Advisory Committee Reports.

- **Equity, Diversity and Inclusion Advisory Committee**
- **Legal Aid Advisory Committee**
- **Access to Legal Services Advisory Committee**
- **Lawyer Education Advisory Committee**
- **Rule of Law and Lawyer Independence Advisory Committee**
- **Truth and Reconciliation Advisory Committee**
- **Mental Health Task Force**

21. Three Month Bencher Calendar – December to February 2020

There was no discussion on this item.

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

Final remarks

Mr. Avison paid tribute to outgoing President Merrill and thanked her for her passionate and significant contribution to the organization and many of the issues dealt with throughout the course of 2019. On behalf of Law Society staff, Mr. Avison presented Ms. Merrill with a gift as a

token of appreciation for her many efforts and achievements during her time as President. He said the energy and leadership she brought to many issues was instrumental in bringing about changes.

Ms. Cromarty presented Ms. Merrill with a gift from the Kootenay Bar Association.

Ms. Merrill thanked the Benchers for their hard work throughout 2019 and gave special thanks to Mr. Ferris, Mr. Lawton, Mr. Avison, and Mr. Whitcombe, as well as other Law Society staff who assisted her during her presidency.

Ms. Merrill then welcomed Mr. Ferris as President for 2020 and presented him with the President's pin.

KH
2019-12-06



Memo

To: Benchers
From: Executive Committee
Date: January 23, 2020
Subject: **Law Society Representatives on the 2020 QC Appointments Advisory Committee**

Historically, each Fall two members of the Law Society appointed by the Benchers participate in an advisory committee that reviews all applications for appointment of Queen's Counsel, and recommends deserving candidates to the Attorney General. The Benchers' usual practice, on the recommendation of the Executive Committee, is to appoint the President and First Vice-President to represent the Law Society.

The other members of the QC Appointments Advisory Committee are the Chief Justices, the Chief Judge, the Deputy Attorney General and the CBABC President.

The Executive Committee recommends that the Benchers appoint President Craig Ferris, QC and First Vice-President Dean P.J. Lawton, QC as the Law Society's representatives on the 2020 QC Appointments Advisory Committee.

ACCESS TO JUSTICE ADVISORY COMMITTEE

TERMS OF REFERENCE

Updated:

MANDATE

Access to justice is an existential issue for the legal profession in British Columbia and requires that the Law Society actively engage in review and reform of the administration of justice to ensure that it works for all citizens of British Columbia. The Committee should monitor and advise the Benchers about key access to justice issues, with particular emphasis on access to legal services, and on legal aid issues and recommend to the Benchers as necessary actions or initiatives to address issues as they arise. This advisory function supports the Law Society's strategic planning process and the Vision for Publicly Funded Legal Aid and ensures the Society is addressing its part in ensuring access to justice.

COMPOSITION

1. Under Rule 1-49, the President may appoint any person as a member of a committee of the Benchers and may terminate the appointment.
2. At least half of the Committee members should be Benchers, and the Chair of the Committee must be a Bencher.

MEETING PRACTICES

1. The Committee operates in a manner that is consistent with the Benchers' Governance Policies.
2. The Committee meets as required.
3. 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

The Committee provides status reports to the Benchers twice a year.

DUTIES AND RESPONSIBILITIES

1. Adopt an evidenced-based data-driven outcomes-focused approach to the matters identified in the mandate and to any recommendations to the Benchers that it may make;

2. Promote the creation of proper data analytics systems within the justice system and legal aid in order to better evaluate access to justice and legal aid issues in society and the justice system;
3. Keep the Benchers informed of key matters, to assist in setting policy, or to recommend that specific action be taken by the Benchers;
4. Explore opportunities for collaboration with third parties to advance the Law Society's Strategic Plan and to better understand issues for potential inclusion on future Strategic Plans;
5. Ensure the work of the Committee provides for input from the public, Law Society members and the Benchers in regard to matters within the Committee's mandate;
6. Identify stakeholders engaged with access to justice and legal aid in British Columbia and consult with those stakeholders, other professional organizations and experts as appropriate to ensure a broad engagement on the matters identified in the mandate; and
7. Meet with representatives of the Law Foundation annually to discuss the potential allocation of the access to justice funding the Law Society provides to the Law Foundation as delegated to the Committee by the Benchers.

STAFF SUPPORT

Staff lawyer, Policy and Planning

LAWYER DEVELOPMENT TASK FORCE

TERMS OF REFERENCE

Updated:

MANDATE

A comprehensive and effective system for the development and maintenance of a competent, independent and honourable bar in British Columbia is a necessary element in protecting the public interest in the administration of justice. To that end, the Task Force will undertake an evaluation of what will be required in the future to ensure the development and maintenance of a well-educated and qualified bar to serve the public of British Columbia. The Task Force should consider the entire education and development life cycle of a lawyer rather than looking at educational programs and activities in isolation without considering how they interact. The Task Force will complete the review of the admission program currently underway while also looking at our pre-call education requirements and programs in light of developments in other Canadian jurisdictions, our continuing professional development program and the issues of re-certification and specialization.

COMPOSITION

1. Under Rule 1-49, the President may appoint any person as a member of a committee of the Benchers and may terminate the appointment.
2. The Chair of the Task Force must be a Bencher and should include some members who have knowledge and experience with current lawyer development programs.

MEETING PRACTICES

1. The Task Force shall operate in a manner that is consistent with the Benchers' Governance Policies.
2. The Task Force shall meet as required.
3. Quorum consists of at least half of the members of the Task Force.

ACCOUNTABILITY

The Task Force is accountable to the Benchers. The Task Force is responsible for fulfilling its mandate and such other tasks as the Benchers may assign during the tenure of the Task Force. If the Task Force requires direction in relation to its mandate, duties or responsibilities, the Task Force will advise the Benchers.

REPORTING REQUIREMENTS

The Task Force is expected to keep the Benchers advised of its progress in fulfilling its mandate and to provide a final report by July 2021.

DUTIES AND RESPONSIBILITIES

1. Take an evidenced-based data-driven outcomes-focused approach to the matters identified in the mandate and to any recommendations to the Benchers that it may make;
2. Identify the core professional competencies lawyers must possess at the various stages of their development in order to inform the educational and experiential requirements necessary to develop a well-educated and qualified BC bar;
3. Consider whether the current educational and development programs and processes develop and maintain those professional competencies lawyers must possess;
4. Take into account the work of the Federation of Law Societies of Canada, other law societies and legal professional organizations on the matters identified in the mandate;
5. Identify stakeholders in the future of the legal education in British Columbia and consult with those stakeholders, other professional organizations and experts as appropriate to ensure a broad engagement on the matters identified in the mandate; and
6. Ensure the work of the Task Force provides for input from the public, Law Society members and the Benchers in regard to matters within the Task Force's mandate.

STAFF SUPPORT

Annie Rochette
Lesley Small



CEO's Report to the Benchers

January 31, 2020

Prepared for: Benchers

Prepared by: Don Avison

1. Orientation Session – New Benchers

An orientation session for newly elected and appointed Benchers will take place at the Law Society on January 29, 2020. The session has been developed to provide a broad overview of the work the Society, Bencher meetings/committees, the Strategic Plan, key priorities and a briefing on the Society's management/organizational structure.

Law Society President, Craig Ferris QC, will provide an introduction which will then be followed by briefings from CEO Don Avison QC, Deputy CEO Adam Whitcombe QC and by Kerryn Holt, Manager, Governance and Board Relations.

New to the session this year will be a short tour of Law Society operations designed to provide new Benchers with a more direct understanding of who does the day-to-day work of the Law Society.

2. Cullen Commission – Money Laundering in B.C.

At this point, we expect the Cullen Commission will begin in the Spring of 2020 and we will provide Benchers with more specific information on this as it becomes available.

A considerable amount of work was undertaken over the last 6-8 weeks to position the Law Society to respond appropriately to document disclosure requests from the Commission. Jennifer Chan, assisted by Jennifer Lowney, has done an exceptional job of bringing this work together in the context of some very tight timelines and Ms. Chan's assistance with coordination of the Law Society's work on this front has been invaluable.

Benchers can expect an update at the January 31 meeting on the status of our AML initiatives, implementation of the new Rules on client identification/"no cash" transactions and the work of the Anti-Money Laundering Working Group.

3. Indigenous Cultural Competency Program

At the December, 2019 meeting Benchers approved the establishment of a mandatory six hour on-line Indigenous Cultures Competency Program. The decision by the Law Society to take this step has received a positive response from many and that was certainly evident at a recent Vancouver conference on conducting business in the context of the United Nations Declaration on the Rights of Indigenous Peoples.

Our objective is to have the program developed and ready for piloting in September of this year and we are in the process of securing the assistance of curriculum content expertise. The TRC Advisory Committee will be regularly informed as to progress and Benchers can expect updates through the course of the year.

4. Administrative Update

We are pleased to report that Ms. Lynwen Clark has now joined us as Manager of Member Services where she will report to Lesley Small. Ms. Clark spent much of the last decade with the BC College of Nursing Professionals and with the College of Registered Nurses of BC. Lynwen has extensive experience in the development and deployment of innovative solutions to key business problems including the automation of manual processes. Prior to her time with College of Nurses Lynwen worked in the information technology space with CDC Software and with Pivotal Corporation.

With the LIF program, Benchers will recall that I mentioned at the last meeting that the amendments to section 30 of the Legal Profession Act, which came into force as of January 1, 2020 would convert our former insurance program into an indemnity program. This change to the legislation has required changing the numerous references to “insurance” - and other similar terms - to reflect that we now operate an indemnity program. In addition to the many operational documents, there are a number of Benchers-approved documents that make reference to an insurance program, such as the Schedule of Authorizations and the investment policy. As the change from insurance to indemnity is not substantive, we are proposing to make the necessary modifications.

5. Planning for 2020 Law Society Retreat

Staff will be working with Mr. Lawton QC on developing the content for this year's retreat which will be held at Whistler from May 28-30, 2020. We expect to be able to provide more detailed information about the program at the March meeting of Benchers.

Don Avison
Chief Executive Officer

Second Interim Report of the Mental Health Task Force

For Presentation at the January 31, 2020 Bencher Meeting

Mental Health Task Force

Brook Greenberg, Chair
Michelle Stanford, QC, Vice Chair
Honourable Madam Justice Nitya Iyer (appointed June 10, 2019)
Honourable Chief Judge Melissa Gillespie (appointed August 20, 2019)
Christopher McPherson, QC
Derek LaCroix, QC
Kendra Milne
Phil Dwyer

January 20, 2019

Prepared for: The Benchers

Prepared: On behalf of the Mental Health Task Force

Purpose: Decision

Table of Contents

Table of Contents	2
Executive Summary	3
Introduction	3
Task Force Recommendations	6
Information sharing strategies	6
Recommendation 1: Improve information sharing with BC law schools about mental health supports within the profession	8
Recommendation 2: Improve Benchers orientation materials and expand mental health-related training for articulated student interviews	9
Recommendation 3: Host a town hall event to discuss mental health within the profession.	11
Recommendation 4: Develop guidance on the use of non-stigmatizing and non-discriminatory language in all future Law Society publications and communications	12
Recommendation 5: Conduct a voluntary, confidential member survey exploring mental health and substance use among BC lawyers	15
Regulatory strategies	17
Recommendation 6: Amend <i>BC Code</i> Rule 7.1-3 (“duty to report”) and the associated Commentary.....	17
Recommendation 7: The medical fitness questions in Schedule A of the LSAP Application Form be removed.....	19
Budgetary implications	19
Summary of Recommendations	20
Resolution	21

Executive Summary

Over the last several years, research has revealed problematic levels of substance use, depression, anxiety and various other forms of psychological distress among lawyers, with both Canadian and American studies confirming that these issues manifest across the full spectrum of the profession at levels much greater than the general population and the majority of other professions.

A number of commentators have regarded the conclusions drawn from the research as a call to action, demanding that all sectors of the profession commit to improving lawyer wellness. In responding to this call, the Law Society has elevated addressing mental health and substance use issues within the profession to an organizational priority. In so doing, the Law Society recognizes not only the scale of the problem, but also, the critical connection to its public interest mandate and the important role regulators can play in building a healthier professional and regulatory culture.

The goal of the Second Interim Report is to build on the foundational work of the Task Force's 2018 recommendations by proposing a series of new initiatives that maintain the Law Society's forward trajectory with respect to improving BC lawyers' mental health, for the benefit of both Law Society members and the public interest that the Society is statutorily mandated to uphold and protect.

Underpinning each of these recommendations is an acknowledgement of, and effort to respond to, the concerning rates of mental health and substance use issues within the profession, as well as the harmful effects of stigma. The recommendations are also reflective of the important relationship between lawyer wellness and the protection of the public, and the Law Society's unique position to show leadership in this regard.

If approved by the Benchers, the recommendations contained in the Second Interim Report will continue to advance the important work of changing how the profession talks about, and takes action in relation to, mental health and substance use issues, to the benefit of both lawyers and the public they serve.

Introduction

1. It is well documented that those in the legal profession experience mental health and substance use disorders at rates much greater than that of the general population and the majority of other professions. These issues manifest across the full spectrum of the profession, affecting law students, young lawyers and seasoned practitioners.
2. Over the last several years, social science research has confirmed alarming levels of problematic alcohol use, depression, anxiety and various other forms of psychological distress among lawyers. In a groundbreaking study of American lawyers in 2017, researchers found that more than 36% of respondents provided answers consistent with problematic drinking or dependence. Further, more than 60% of lawyers reported experiencing anxiety issues over the course of their careers, while 45% had experienced depression. Rates of

panic disorder, bipolar disorder and self-injurious behaviour were also notable. Disturbingly, more than 11% of lawyers reported having suicidal thoughts at some point during their career, and 0.7% — more than 90 lawyers in the study cohort — reported at least one prior suicide attempt.¹

3. In 2019, a comparable Canadian study found that 40% of respondent lawyers were experiencing some form of psychological distress, and “burnout” rates approached 30% in some practice areas.²
4. The culture and stressors unique to the practice of law appear to contribute to these problems and create barriers to open dialogue about, and action in relation to, mental health and substance use. Lawyers frequently work in an organizational milieu where expectations and demands are high and time is short. Billable hour targets, competition among colleagues and the inherent stressors associated with work that is largely problem-driven, adversarial in nature and based on uncertain outcomes that often have serious consequences for clients all contribute to cultural norms fostered within firms and other legal employers that can be unhealthy. Stigma can compound the challenges of lawyers living with, talking about and obtaining assistance for these issues, with concerns about privacy and confidentiality and others “finding out” cited as the most common barriers to seeking help.³
5. A number of commentators have characterized these emerging trends as a “mental health crisis” or a “wellness epidemic” within the profession.⁴ Others, including the US National Task Force on Lawyer Well-Being, have regarded this research as a call to action, demanding that all sectors of the profession commit to addressing substance use and mental health issues among lawyers.⁵

¹ 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, online at: http://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx. (“ABA Study”).

² The study, which was commissioned by the Barreau du Québec, was based on more than 2,500 lawyers answering a 150-question survey that focused on 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) (“Barreau du Québec Study”).

³ ABA Study *supra* note 1.

⁴ See, for example: Jim Middlemiss, “Mental Health’s Toll” *Canadian Lawyer* (May 20, 2019), online at: <https://www.canadianlawyermag.com/news/opinion/mental-healths-toll/276099>; Daniel Fish, “The Mental Health Crisis in Law” *Precedent* (March 6, 2018), online at: <https://lawandstyle.ca/law/cover-story-the-mental-health-crisis-in-law/>; Edward Fennel, “Stopping a Mental Health Crisis Before it Begins” *The Times* (May 16, 2019), online at: www.thetimes.co.uk/article/stopping-a-mental-health-crisis-before-it-begins-zz7t77x6k; Legalspeak, “Confronting the Mental Health Crisis in the Legal Profession”, online at: <https://legalspeak.libsyn.com/confronting-the-mental-health-crisis-in-the-legal-profession>; Dina Port, “Lawyers Weigh In: Why Is There a Depression Epidemic In the Profession?” *ABA Journal* (May 11, 2018), online at: www.abajournal.com/voice/article/lawyers_weigh_in_why_is_there_a_depression_epidemic_in_the_profession

⁵ The National Task Force of Lawyer Well-Being, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (2017), online at:

6. In responding to this call, the Law Society acknowledges the scale of the problem, its connection to its public interest mandate, and the important role the regulator can play in building a healthier professional and regulatory culture.
7. Over the last two years, the Law Society has devoted significant resources to implementing the suite of mental health initiatives contained in the Task Force’s First Interim Report.⁶ The goal of the Second Interim Report is to build on the foundational work of the Task Force’s earlier recommendations and propose a series of new initiatives that maintain the Law Society’s forward trajectory with respect to improving lawyers’ mental health.

Background

8. The Law Society has elevated addressing mental health and substance use issues within the profession to an organizational priority. This commitment is reflected in the 2018-2020 Strategic Plan, which directs the Law Society to take steps to improve lawyers’ mental health by identifying ways to reduce stigma and developing an integrated mental health review concerning regulatory approaches to discipline and admissions.⁷
9. In January 2018, the Mental Health Task Force (the “Task Force”) was established and provided a clear mandate to assist the Law Society achieve these strategic goals in order to further promote and protect the public interest.⁸
10. In November 2018, the Task Force issued its First Interim Report, which outlined the scale of mental health and substance use issues within the legal profession and the effects of stigma, as well as proposing a set of 13 initial policy recommendations to the Benchers.⁹ These recommendations, which were approved in December 2018, fall into two broad categories: educational strategies that increase awareness and understanding of mental health and substance use issues with the profession, and regulatory strategies that focus on how these issues are appropriately addressed in the regulatory context in order to protect the public interest.
11. These early recommendations were well-received by the profession, and propelled the Law Society to the forefront of action on these issues among Canadian law societies. Over the last year, the Task Force has maintained this strong forward momentum, focusing on three

www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf

⁶ Mental Health Task Force First Interim Report (December 7, 2018), online at:

<https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/MentalHealthTaskForceInterimReport2018.pdf> (“First Interim Report”).

⁷ Law Society of BC, 2018-2020 Strategic Plan, online at:

https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/StrategicPlan_2018-2020.pdf.

⁸ Mental Health Task Force Terms of Reference, online at:

https://www.lawsociety.bc.ca/Website/media/Shared/images/initiatives/MentalHealthTaskForce_termsofreference.pdf (“Terms of Reference”).

⁹ First Interim Report *supra* note 6.

distinct streams of work: implementing the recommendations contained in the First Interim Report,¹⁰ engaging in informal consultations and educational outreach activities, and developing additional recommendations that address the Law Society’s strategic priorities in relation to mental health.

12. The Second Interim Report focuses on the latter aspect of the Task Force’s work, namely, the development of a second set of recommendations for the Benchers that will continue to advance the important work of changing how the profession thinks about, and responds to, mental health and substance use issues.

Task Force Recommendations

13. Over the course of 2019, the Task Force engaged in consultations, outreach, research, and policy discussions focusing on how to build and expand on the regulatory and educational strategies presented in the First Interim Report. Flowing from this work, the Task Force has developed seven new recommendations, which are presented to the Benchers for discussion and decision. These recommendations fall into two broad categories:

Information-sharing strategies that 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.

Regulatory strategies that focus on how mental health and substance use issues affecting lawyers are most appropriately addressed in the regulatory context.

Information sharing strategies

14. The Task Force has developed a series of five recommendations that aim to enhance the manner in which the Law Society shares information about mental health and substance use issues and related supports within the legal community.
15. A focus on information sharing is important for two inter-related reasons. First, improving the ways that lawyers and firms talk about mental health and substance use, and expanding the forums in which these conversations occur can improve the profession’s collective awareness and understanding of the nature, prevalence and impact of these issues on lawyers. Second, improved communication creates opportunities to reduce stigma and to encourage practitioners that are functioning below their ability or otherwise struggling with health concerns to seek support.

¹⁰ For details on the Law Society’s progress in implementing the 13 recommendations made in 2018, see the Mental Health Task Force 2019 Mid-Year Report, online at: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/2019MentalHealthTaskForceMidYearReport.pdf>

16. Although high rates of psychological distress and problematic substance use are observed across all levels of the profession, research suggests that the process of transitioning into, and the early years of, legal practice are a time in which students and young lawyers are particularly susceptible to experiencing mental health and substance use issues.
17. Detrimental changes in mental health occurring at this foundational stage of professional development are concerning not only for affected lawyers or students, but also, for the profession and the public more generally. Although many individuals do seek support and recover from, or learn to successfully manage, health conditions, failure to recognize a problem or the harmful effects of stigma may prevent many young lawyers from seeking assistance for these issues.
18. In 2016, a landmark study involving 3,000 students across 15 US law schools (the “Student Well-Being Study”) revealed concerning levels of mental health and substance use issues among law student populations.¹¹ Researchers found that 17% of respondents indicated they experienced depression, 14% reported experiencing extreme anxiety and six percent reported having serious suicidal thoughts within the past year.
19. Additionally, between one-quarter and one-third of participants reported frequent binge drinking, with increasing rates of problematic drinking observed as students approached the end of law school and neared the beginning of their professional careers.¹²
20. Similarly, the most current and comprehensive study on the prevalence of mental health and substance use issues among practising lawyers, conducted by the Hazelden Betty Ford Foundation and the American Bar Association in 2017 (the “ABA Study”), found that young lawyers are at increased risk of developing a mental health or substance use issue.¹³
21. Based on these findings, the ABA Study concluded that “being in the early stages of one’s legal career is strongly correlated with a high risk of developing an alcohol use disorder,” reversing trends observed in earlier studies in which there was a positive association

¹¹ Organ J.M., Jaffe D.B. & Bender K.M., “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), online at: <https://jle.aals.org/home/vol66/iss1/13/>. (“Student Well-Being Study”). This was first multi-school study in over twenty years to address law student use of alcohol and street drugs, and the first ever multi-school study to explore prescription drug use and the mental health concerns and help-seeking attitudes of law students.

¹² Age was another factor that contributed to problematic substance use, with respondents aged 21-30 being roughly twice as likely to report engaging in binge-drinking behavior as those over age 30 (*ibid.* at 129).

¹³ ABA Study *supra* note 1. Specifically, the ABA Study found that newly called lawyers had a significantly higher proportion of positive screens for problematic substance use as compared with those that had worked in the profession for longer. Lawyers in their first ten years of practice demonstrated the highest rates of problematic drinking, at rates approximating 30%, with declining rates reported with the advancement in position and increasing age. Of those that stated that they believed their alcohol use has been a problem, the majority (44%) indicated that the problem began within the first 15 years of practice.

between a higher prevalence of problematic drinking and a greater number of years in the profession. The ABA Study also revealed that new lawyers experienced the highest rates of anxiety, depression and stress, all of which decreased with an increase in age or duration in the profession.¹⁴

22. From the limited available data, these trends appear to be similar in the Canadian context. In a 2019 study commissioned by the Barreau du Québec, researchers found that approximately half of the surveyed lawyers with less than 10 years of practice experience reported psychological distress and 22% experienced burnout, as compared to 37% and 16% of those with more practice experience, respectively.¹⁵
23. Collectively, these three studies suggest that students and young lawyers face an elevated risk of experiencing mental health and substance use issues. Based on this evidence, the Task Force has developed two recommendations that specifically address the wellness challenges facing many of the newest members of the profession.

Recommendation 1: Improve information sharing with BC law schools about mental health supports within the profession

24. During the Task Force’s consultations with BC law schools regarding the LSAP Application Form in 2018, law school administrators and staff outlined the processes they have put in place to actively promote wellness and the robust set of resources they have developed for students seeking assistance.¹⁶ These initiatives include establishing dedicated positions to provide support and referrals for students experiencing academic and personal challenges, including embedded counsellors within the law school, developing programs and course content that focus on well-being and linking with bodies on campus that oversee accommodations for those with physical and mental health challenges. Students therefore appear to have significant supports available to them for addressing health issues as they advance through law school.
25. However, some students are reluctant to utilize these supports as the result of concerns that doing so may threaten or delay their call to the bar.¹⁷ Moreover, once students leave the academic setting and begin the process of being called to the bar, law school resources and supports tend to fall away. This transition period can be a difficult one, with students leaving behind a tight-knit and supportive law school community and experiencing, for the

¹⁴ Notably, a recent Canadian study found that lawyers at large firms in the private sector, widely considered to be the most prestigious roles, were most likely to experience depressive symptoms, reversing trends found in the general population where career success is typically equated with fewer mental health risks. See Koltai J., Schieman S. & Dinovitzer R., “The Status-Health Paradox: Organizational Context, Stress Exposure, and Well-Being in the Legal Profession” (2018) 59:1 J Health Soc. Behav. 20, online at: <https://www.ncbi.nlm.nih.gov/pubmed/29373053>

¹⁵ Barreau du Québec study *supra* note 2.

¹⁶ All three of BC’s law schools were consulted, however, only UBC and UVic provided the Law Society with information about their wellness initiatives.

¹⁷ Student Well-Being Study *supra* note 11 at 141.

first time, concerns about job security, exposure to firm culture and the many and varied pressures associated with the practice of law.

26. Anecdotally, some Benchers have received feedback that as students begin their articles, they are not familiar with the resources provided by the profession in relation to mental health and substance use issues. This includes the services provided by both LifeWorks and the Lawyers Assistance Program (the “LAP”), as well as the expanded role of the Law Society’s Practice Advisors, which now includes availability for confidential consultation about mental health and substance use concerns.
27. Some students have reported that they only become aware of these resources once they attend PLTC¹⁸ or, in other cases, are informed about support services during a Bencher interview. This feedback suggests that information about the availability of, and confidentiality associated with, resources and support is not being effectively conveyed to students by the law schools and the Law Society during the transition to practice.
28. In light of the prevalence of mental health and substance use issues among students and young lawyers, the Task Force recommends that the Law Society consult and collaborate with BC law schools to improve the exchange of information about the support resources available within the profession and to assist students in transitioning to these supports from those provided by the law schools.
29. As a first step, the Task Force proposes that Law Society representatives should meet with those individuals that coordinate and direct students to law school wellness resources to discuss how to improve communications about, and access to, the resources that are available to students and new lawyers as they enter articling and practice.

Recommendation 1: The Law Society will consult and collaborate with BC law schools to improve the exchange of information about the availability of support resources for mental health and substance use issues within the profession and to assist students in transitioning to these supports from those provided during law school.

Recommendation 2: Improve Bencher orientation materials and expand mental health-related training for articulated student interviews

30. The Task Force also proposes improving the exchange of information about mental health and substance use issues and supports between the Law Society and articulated students in the course of the Bencher interview process.

¹⁸ The PLTC program provides students enrolled in the Law Society’s Admission Program with both resources and instruction related to mental health and substance use issues.

31. During the articling term, each articulated student in BC receives instructions respecting a personal interview with a Bencher (the “Bencher interview”), which they must attend prior to their call to the bar. The interview is intended to welcome students to the profession, provide a contact if students require assistance during the articling term, introduce students to the role of the Law Society, and emphasize the importance of adhering to the highest standards of ethical practice, integrity and professionalism.
32. The Bencher interview also plays a unique role in a student’s entry into the profession, as it creates an opportunity for every prospective lawyer to engage in a one-on-one dialogue with a Bencher. Limited guidance on how to conduct a Bencher interview is included in a section of the orientation manual (the “Orientation Manual”) provided to Benchers at the beginning of their term. Although most Benchers develop their own format for conducting interviews, the Orientation Manual includes a brief primer on the interview process and a list of possible discussion points.
33. Notwithstanding the references to mental health in the current version of the Orientation Manual, some Benchers have provided feedback that they do not feel well prepared to address these issues in interviews, particularly given the high rates of mental health and substance use disorders observed within the student population and among young lawyers. More can and should be done to ensure the interview provides articulated students with an opportunity to hear, directly from Benchers, that these issues are not uncommon in the profession and are acknowledged and understood by the Law Society, and that resources and support are available if such issues arise at any point in the student’s legal career.
34. Providing lawyers and students with resources to assist them in meeting their professional responsibilities can result in better and healthier lawyers and reduce the likelihood of incidents that will lead to a regulatory outcome. Accordingly, the following improvements to the training Benchers receive in relation to these interviews are proposed:
 - written materials should not talk about “work-life balance,” which is an outdated term that does not adequately address the realities of those with mental health and substance use issues;
 - materials contained in the Orientation Manual should be supplemented with in-person training addressing how to talk about these issues to articulated students, which could be included as part of overall Bencher training on mental health and substance use issues,¹⁹ or as an element of specific training on how to conduct a Bencher interview; and

¹⁹ See Recommendation 7 of the First Interim Report *supra* note 6, which advocates for enhanced general training for Benchers on issues of mental health and substance use.

- training should occur more frequently than just at the commencement of the Bencher’s term.
35. Importantly, the goal is not to make Benchers “mental health experts,” or to turn the interview into an exercise in probing students’ mental health status. Rather, the aim is to ensure that Benchers feel sufficiently informed and prepared to discuss the prevalence of these issues within the profession and provide students with information about the support and resources available to articulated students and lawyers.
36. Creating space within the Bencher interview to discuss these issues also plays another important function: reducing the stigma that can make it difficult for those living with mental health challenges to share their experiences or seek assistance.²⁰ Demonstrating that concerns about mental health and substance use issues are a priority for the Law Society may help counteract prospective lawyers’ fears associated with talking about these issues with others in the profession and normalize the process of seeking support.

Recommendation 2: Revise the material in the Bencher Orientation Manual and expand in-person training to improve the manner in which mental health and substance use issues are addressed during the Bencher interview process.

Recommendation 3: Host a town hall event to discuss mental health within the profession

37. In an effort to reduce the stigma surrounding mental health and substance use disorders and to demonstrate the Law Society’s engagement with these issues with the broader legal community, several members of the Task Force have participated in a variety of educational outreach activities, including making presentations as part of CPD programs, local bar events, conferences and PLTC sessions. To date, this outreach work has primarily involved ad-hoc information-sharing between the Law Society and lawyers. The next step, from the Task Force’s perspective, is to find ways to bring more lawyers, as well as legal employers in both the public and private sectors, into these discussions.
38. It is recognized that law firms and other legal employers develop distinct organizational cultures and structures that can influence the conduct and values of their lawyers.²¹ This cultural influence can, and does impact on understandings, attitudes and behaviours surrounding lawyer wellness. What firms and other legal employers prioritize and value, and how those values are communicated have the potential to support, or alternatively,

²⁰ The Student Well-Being Study *supra* note 11 found that stigma remains one of the greatest barriers to students seeking assistance for mental health issues.

²¹ See, for example Dodek A., “Regulating Law Firms in Canada” (2012) 90:2 Canadian Bar Review, online at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1984635.

erode lawyer well-being. As a result, all legal employers have a critical role to play in developing strategies in relation to the high rates of psychological distress and problematic substance use affecting lawyers.

39. The Task Force recommends that the Law Society host a town hall to facilitate an information-sharing and solutions-oriented discussion between lawyers, firms, other legal employers, support service providers and the Law Society about mental health in the profession.
40. The proposed town hall event would aim to achieve three objectives. First, to provide a platform for the Law Society to share information with legal employers about the prevalence of these issues within the profession, their impact on lawyers and related public interest concerns. Second, to create an opportunity to generate ideas and mobilize support among firms and other legal employers to take action to address these issues, including initiatives that target unhealthy firm cultures and practices. Third, holding these discussions in a public forum may reduce stigma and demonstrate the Law Society's leadership role in this regard.
41. The precise structure of the event and the scope of participation would be established following the approval of the recommendation to host a town hall, in principle. However, the Task Force envisages that firms of various sizes and other large legal employers would be invited to attend the forum to discuss initiatives they have undertaken to address mental health and substance use issues and the results of those initiatives. To encourage participation, the Task Force envisages that the event would be free to all members.

Recommendation 3: Host a town hall to encourage lawyers and firms and other legal employers to engage in a discussion about mental health and substance use within the profession, including the role that legal employers can play in improving lawyer wellness.

Recommendation 4: Develop guidance on the use of non-stigmatizing and non-discriminatory language in all future Law Society publications and communications

42. As outlined in the 2018-2020 Strategic Plan, one of the Law Society's current priorities is to identify ways to reduce the stigma within the profession in relation to mental health concerns. The Task Force's Terms of Reference direct that the Task Force make recommendations to assist the Benchers in achieving this goal.²²

²² Terms of Reference *supra* note 8.
DM2600245

43. Although the academic literature reflects a variety of conceptualizations of the stigma associated with mental health,²³ it is generally recognized that stigma exists when four components interact. First, people distinguish and label a particular difference. For example, a person with a cocaine dependency is called a drug addict, or a person with a mental health disorder is referred to as “disturbed.”²⁴ Second, labelled differences are linked to a set of undesirable characteristics which form a negative stereotype that is applied to every member of the group. Third, those who are labelled and stereotyped are regarded as being fundamentally different, or “other.”
44. In the last component of the stigma process, the labelled person experiences status loss and discrimination,^{25,26} Self-stigma is an additional issue, and can manifest when affected individuals accept and internalize prejudice against them, resulting in feelings of shame, blame and distress that have been shown to create barriers to seeking treatment.²⁷
45. Language is one of the most powerful means through which discrimination and stereotyping are reproduced and perpetuated. Insensitive word choice can negatively impact the way that people that are affected by mental health and substance use issues are perceived, as well as how these individuals feel about themselves. Language can also propagate stigma, whether intentionally or unintentionally.
46. More than a decade ago, the Law Society recognized that values and attitudes are reflected in word choice, and created a resource for the profession entitled “Guidelines for respectful language” (the “Guidelines”) to raise lawyers’ awareness of commonplace assumptions and prejudice in everyday language and to offer alternative terminologies.²⁸

²³ See for example, Link B.G. & Phelan J.C., “Conceptualizing Stigma” (2001) 27 *Annual Review of Sociology* 36 at 367 (“Link et al.”), online at: www.jstor.org/stable/2678626 ; Rüsich N., Angermeyer M.C. & Corrigan P.W., “Mental Illness Stigma: Concepts, Consequences, and Initiatives to Reduce Stigma” (2005) 20 *European Psychiatry* 52 at 535, online at: [https://www.europsy-journal.com/article/S0924-9338\(05\)00090-8/pdf](https://www.europsy-journal.com/article/S0924-9338(05)00090-8/pdf) ; Corrigan P.W., “Mental Health Stigma as Social Attribution: Implications for Research Methods and Attitude Change” (2006) 7 *Clin. Psychol. Sci. Pract.* 48, online at: <http://www1.und.edu/health-wellness/healthy-und/mental-health-stigmafawn.pdf>.

²⁴ For additional examples of stigmatizing language, see Rose D. et al., “250 Labels Used to Stigmatize People with Mental Illness” (2007) 7 *BMC Health Services Research* 97, online at: www.ncbi.nlm.nih.gov/pmc/articles/PMC1925070/

²⁵ See Link et al., *ibid.*

²⁶ Ritsher J.B., Otilingam P.G. & Grajales M., “Internalized Stigma of Mental Illness: Psychometric Properties of a New Measure” (2003) 121:1 *Psychiatry Res.* 31, online at: <https://www.ncbi.nlm.nih.gov/pubmed/14572622> ; Stuart H., “Reducing the Stigma of Mental Illness” (2016) 3 *Global Mental Health*, online at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5314742/>

²⁷ Jennings K.S., Cheung J.H. & Britt T.W. et al., “How Are Perceived Stigma, Self-Stigma, and Self-Reliance Related to Treatment-Seeking? A Three-Path Model” (2015) 38 *Psychiatric Rehabilitation J.* 109, online at: <https://www.ncbi.nlm.nih.gov/pubmed/25844914> (the study revealed that higher perceived stigma, self-stigma, and self-reliance were all related to a more negative attitude toward treatment-seeking for mental health issues). See also Ey S., Henning K.R. & Shaw D.L., “Attitudes and Factors Related to Seeking Mental Health Treatment among Medical and Dental Students” (2000) 14 *Journal of College Student Psychotherapy* 23.

²⁸ Law Society of BC Practice Resource, “Guidelines for respectful language”, online at: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/Policy-Language1.pdf>

47. As this practice resource has not been revised in more than a decade, it is now outdated. Some of the language that was previously considered appropriate or optimal no longer is, reflecting a shift in social and scientific understandings over time. The Guidelines also contain little guidance with respect to the language surrounding mental health and related matters. In light of the growing focus on these issues, guidance on respectful language should provide examples and techniques of how to avoid the use of stigmatizing language in this context.
48. Additionally, the target audience of the Guidelines is currently lawyers and firms, not Law Society staff and Benchers that author Law Society materials. While many of the general principles and examples contained in the Guidelines may be transferable, the Law Society may have additional considerations with respect to language usage, given its public interest mandate and leadership role.
49. The Task Force consulted with the Equity, Diversity and Inclusion Advisory Committee about this initiative. That Committee agrees with the overall proposal to update the current Guidelines to include a style guide for staff and Benchers to provide general guidance on the use of non-stigmatizing, non-discriminatory and non-exclusionary language for future Law Society publications and communications.
50. In developing this resource, the Law Society should rely on scholarship by subject-matter experts, including that which specifically addresses language usage in relation to mental health and substance use issues. The guidance must also be continually updated over time.
51. At a minimum, and in consultation with the Equity, Diversity and Inclusion Advisory Committee and other bodies, such as the Truth and Reconciliation Advisory Committee, the guidance should address language use in relation to mental health and substance use issues; physical disabilities; sex and sexual orientation; gender expression and gender identity; race, colour, ancestry and place of origin; and Indigeneity.

Recommendation 4: Staff will develop a style guide that provides guidance on the use of non-stigmatizing and non-discriminatory language in all future Law Society publications and communications and update the current practice resource on respectful language and ensure that this material is prominently displayed on the Law Society’s website.

52. The proposed guidance is not intended to serve as a formal dictum on language use for authors, and will not be constraining or prescriptive in nature. The style guide would espouse general principles and identify problematic terms and their possible alternatives, but would not require specific usages. There would be no imposition on freedom of speech or thought, only the presentation of guidance and suggestions.

Recommendation 5: Conduct a voluntary, confidential member survey exploring mental health and substance use among BC lawyers

53. Pursuant to item 3(c)(viii) of its Terms of Reference, the Task Force has spent a considerable amount of time exploring the advisability, viability and scope of a potential voluntary, confidential member survey to establish a body of BC-specific data in relation to mental health within the profession.
54. In a number of other jurisdictions, survey methodology has been used as a research tool to explore the prevalence of substance use and mental health concerns among current and future lawyers, awareness and utilization of support services, and the factors that discourage lawyers from seeking assistance for these issues.
55. Both the ABA Study and the Student Well-Being Study²⁹ utilized surveys to explore mental health and substance use concerns within their target populations,³⁰ providing the profession with critical data that has been influential in raising the profile of these issues.³¹
56. Until recently, there has been no comparable data on the health of Canadian lawyers. This changed in June 2019, with the publication of a study commissioned by the Barreau du Québec, which was based on more than 2,500 lawyers responding to a detailed survey that focused on psychological distress, burnout and well-being.³² The results of the survey, which paint a similar picture of an unwell profession, provided the regulator with key information about members' health that has led to the organizational prioritization of these issues.
57. By way of contrast, there is virtually no data on the state of the mental health of the BC bar. Although there are likely to be some similarities across jurisdictions, without empirical data it is not possible to accurately assess the extent to which these issues impact on BC lawyers. Accordingly, collecting information directly from members through an anonymous survey that explores issues surrounding mental health and substance use is of critical importance. In considering the scope of the survey, the Task Force has identified four objectives, namely:
 - (a) assess the state of mental health among BC lawyers by exploring a range of issues along the mental health continuum, including the prevalence of mental health and

²⁹ The ABA Study *supra* note 1 recruited lawyers from 19 states to complete the survey, resulting in a final sample of 12,825 individuals. The Student Well-Being Study *supra* note 11 was sent to 11,000 students across 15 law schools, with an overall response rate just under 30% (3,300 respondents).

³⁰ For an overview of a number of surveys on lawyers' satisfaction with their legal careers more generally see Organ J.M., "What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being" (2011) 8 U. St. Thomas L.J. 225.

³¹ See, for example, the influence of these studies on the work of the US National Task Force on Lawyer Well-Being *supra* note 5.

³² Barreau du Québec Study *supra* note 2.

substance use disorders, the state of lawyers' mental health, more broadly defined, and barriers to support-seeking behaviours;³³

- (b) create a body of data that will assist the Law Society in developing a series of targeted, tailored policies and initiatives to improve mental health outcomes for lawyers;
 - (c) raise awareness about wellness issues within the profession and the Law Society's commitment to addressing these concerns; and
 - (d) establish a set of baseline data with respect to the mental health of BC lawyers that can be monitored over time to evaluate progress and change.
58. The scope of the study will be further defined with the assistance of a lead researcher following the Benchers' approval of the survey's development. However, in considering the type of information that could be collected, the Task Force highlights the importance of situating inquiries about mental health within the broader context of lawyer wellness.
59. Although historically, research into mental health and substance use issues focused on assessing the presence of a level of impairment or dysfunction, recent academic scholarship, major health organizations and other key bodies now consistently recognize that a state of mental health is more than simply the absence of illness; it also includes a positive state of physical, psychological, social and emotional well-being.³⁴ Additionally, the majority of lawyers are not diagnosed with a mental health or substance use disorder, this does not necessarily mean that they feel, or are functioning, well. Capturing this information is important to gaining a complete understanding of the overall well-being of the profession.
60. In this vein, the Task Force supports a survey that avoids a narrow focus on rates of diagnosable disorders and instead, undertakes a broader exploration of psychological health.
61. In assessing the viability of a voluntary, confidential member survey, the Task Force recognizes that the Law Society does not have the necessary expertise, either in relation to the specific subject matter or with respect to survey methodology, to develop a

³³ Identifying barriers to help-seeking behaviours has been a theme of a number of major studies on lawyer and physician wellness. See Student Well-Being Study *supra* note 11, ABA Study *supra* note 1 and the Canadian Medical Association National Physician Health Survey (October 2018), online at: <https://www.cma.ca/sites/default/files/2018-11/nph-survey-e.pdf> ("CMA Physician Health Study").

³⁴ See, for example the National Task Force on Lawyer Well-Being *supra* note 5. (The National Task Force defines lawyer well-being as "a continuous process whereby lawyers seek to thrive in each of the following areas: emotional health, occupational pursuits, creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections with others."). See also, the Canadian Mental Health Association, "Mental health promotion a framework for action," online at: <https://cmha.ca/documents/mental-health-promotion-a-framework-for-action> and Keyes C., "Mental Illness and/or Mental Health? Investigating Axioms of the Complete State Model of Health" (2005) *Journal of Consulting and Clinical Psychology* 73(3) at 539.

questionnaire in-house. It will therefore be necessary to partner with, or otherwise engage an individual or organization that will take on the role of a principal researcher.

62. Ideally, the survey would be done using a methodology that would permit comparative analysis of the data obtained in BC with that from the Quebec study referred to above.
63. Additionally, apprehensions about privacy and confidentiality and the stigma surrounding disclosure will influence the survey response rate. The Task Force observes, however, that similar studies have not experienced markedly low response rates, notwithstanding the personal nature of the subject matter.³⁵ Partnering with an external body to administer the survey should allay some of these confidentiality and privacy concerns.

Recommendation 5: Conduct a voluntary, confidential member survey exploring mental health and substance use among BC lawyers.

Regulatory strategies

64. Building on the regulatory recommendations contained in the First Interim Report, and the subsequent consultations with the Ethics Committee and the Credentials Committee that occurred in early 2019, the Task Force has developed two new regulatory recommendations, namely: proposing a series of specific amendments to the duty to report provisions in the *Code of Professional Conduct for British Columbia* (“BC Code”) and removing or replacing the medical fitness questions in the LSAP Application Form.

Recommendation 6: Amend BC Code Rule 7.1-3 (“duty to report”) and the associated Commentary

65. Over the course of 2019, the Task Force and the Ethics Committee engaged in a period of consultation which resulted in consensus between the two bodies on a series of amendments designed to eliminate stigmatizing language and approaches to reporting requirements in Rule 7.1-3 of the *BC Code*. These proposed changes were approved at the December 2019 Bench meeting.
66. Prior to these changes, Rule 7.1-3(d) of the *BC Code* imposed a duty on lawyers to self-report, or report another practitioner to the Law Society if there was evidence of “mental instability of such a nature that the lawyer’s clients are likely to be materially prejudiced.”³⁶

³⁵ For example, the overall response rate for the Student Well-Being Study was slightly under 30%. The CMA Physician Health Study had a response rate of 8.5% which was noted as being typical for an online survey. Notably, the ABA Study found that three quarters of respondents did not to answer questions on the consumption of licit and illicit drugs, highlighting lawyers’ extreme reluctance to divulge information regarding drug use, specifically.

³⁶ *BC Code* Rule 7.1-3, online at: <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/actrules-and-code/code-of-professional-conduct-for-british-columbia/chapter-7-%E2%80%93-relationship-to-the-society-and-other/>

This language, which reinforces the stereotype that those living with a mental health condition are more likely than others to harm their clients, had previously been removed from the Federation’s Model Code³⁷ as well of the codes of conduct of most Canadian law societies. Accordingly, both the Committee and Task Force recommended that Rule 7.1-3(d) be eliminated from the *BC Code*.

67. The Task Force also supported modifications to Commentary [3] to address stigmatizing language. These amendments included the removal of language that reminds lawyers acting as counsellors for professional support groups of their duty to report, and replacing this Commentary with a new exemption from the duty to report under Rule 7.1-3 for lawyer-counsellors participating in a Law Society approved peer counselling program.
68. The Task Force was of the view that the Commentary, as previously worded, did not sufficiently allay confidentiality concerns for lawyers considering receiving assistance from a professional peer support group, and proposed exempting lawyer-counsellors from the duty to report under Rule 7.1-3 on the basis that the costs of perpetuating a potential disincentive for lawyers to utilize the LAP far outweigh any benefits to the Law Society with respect to the information lawyer-counsellors are expected to report. Given that confidentiality is critical to an effective counselling relationship, the public interest is better served by encouraging lawyers to seek support through the LAP and to remove any barriers that may prevent them from doing so.³⁸
69. As part of its recommendation, however, both the Ethics Committee and the Task Force proposed additional Commentary that permits lawyer-counsellors to report otherwise confidential information in circumstances where there is an imminent risk of death or serious harm, and disclosure is necessary to prevent the death or harm.³⁹
70. The Task Force notes that the recommendation made by the Ethics Committee was approved by the Benchers on December 6, 2019, and that the Task Force recommendation to support it has therefore already been implemented.

Recommendation 6: Amend *BC Code* Rule 7.1-3 (“duty to report”) and the associated Commentary. (Approved by the Benchers, December 6, 2019).

³⁷ See the Federation’s Model Code Rule 7.1-3, online at: <https://flsc.ca/wp-content/uploads/2018/03/ModelCode-as-amended-March-2017-Final.pdf>

³⁸ Manitoba and Alberta also both exclude lawyer-counsellors from the “duty to report” rule in their codes of professional conduct. See Law Society of Alberta Code of Conduct, online at: <https://dvbat5idhx7ib.cloudfront.net/wp-content/uploads/2017/01/14211909/Code.pdf> and Law Society of Manitoba Code of Professional Conduct at 7.1-3, online at: http://www.lawsociety.mb.ca/lawyer-regulation/code-of-professional-conduct/documents/english-version/code_of_conduct.pdf.

³⁹ Before the recommendation was proposed for adoption, the Law Society communicated with a representative of the Provincial Government regarding the changes to Rule 7.1-3 and associated Commentary and no concerns were raised. DM2600245

Recommendation 7: The medical fitness questions in Schedule A of the LSAP Application Form be removed

71. The Task Force has previously referenced substantial, recent social science evidence and academic discourse that casts significant doubt on the utility of including medical fitness questions in the LSAP Application Form. Based on that research, the Task Force agrees with the following characterization by the President of the New York State Bar Association:

The hard truth is that stigma around mental illness remains a significant barrier to treatment within the legal profession, and society at large. There is compelling evidence that mental health questions on bar applications are ineffective and unnecessary, and several states have already done away with them.

72. The Task Force is of the view that, no matter how well-intentioned Law Society processes have been in the past, there is a better way to address the question of fitness in 2020 and beyond.
73. As a result, the Task Force recommends the removal of the medical fitness questions as they appear in Schedule A of the LSAP Application Form.
74. If, in reconfiguring the LSAP Application Form, the Credentials Committee is of the view that additional questions should be added in order to fulfill the Law Society’s statutory mandate, the Task Force recommends that such questions
- (a) be based on conduct, not condition;
 - (b) avoid stigma and non-evidence based assumptions; and
 - (c) be created in collaboration with the Task Force.

Recommendation 7: The medical fitness questions in Schedule A of the LSAP Application Form be removed.

Budgetary implications

75. Collectively, the seven recommendations contained in the Second Interim Report are expected to cost in the range of \$40,000 over the next 18 months, based on the following assumptions:
- a. Approximately \$5,000 will be required to secure subject-matter expertise to develop the style guide outlined in Recommendation 4;
 - b. Approximately \$20,000 will be required to commission a third party to create, distribute and analyse a voluntary, confidential member survey as outlined in

Recommendation 5. This amount was anticipated and provisionally allocated as part of the 2020 budget process;

- c. Approximately \$10,000 will be required to develop and deliver a town hall meeting, as proposed in Recommendation 3;
- d. Approximately \$5,000 will be required for developing and implementing additional training in relation to Bencher interviews, pursuant to Recommendation 2; and
- e. No additional costs are associated with implementing recommendations 1, 6 and 7.

Summary of Recommendations

76. The following recommendations are presented to the Benchers for discussion and decision:

Recommendation 1: The Law Society will consult and collaborate with BC law schools to improve the exchange of information about the availability of support resources for mental health and substance use issues within the profession and to assist students in transitioning to these supports from those provided during law school.

Recommendation 2: Revise the material in the Bencher Orientation Manual and expand in-person training to improve the manner in which mental health and substance use issues are addressed during the Bencher interview process.

Recommendation 3: Host a town hall to encourage lawyers and firms and other legal employers to engage in a discussion about mental health and substance use within the profession, including the role that legal employers can play in improving lawyer wellness.

Recommendation 4: Staff will develop a style guide that provides guidance on the use of non-stigmatizing and non-discriminatory language in all future Law Society publications and communications and update the current practice resource on respectful language and ensure that this material is prominently displayed on the Law Society's website.

Recommendation 5: Conduct a voluntary, confidential member survey exploring mental health and substance use among BC lawyers.

Recommendation 6: Amend *BC Code* Rule 7.1-3 (“duty to report”) and the associated Commentary.

Recommendation 7: The medical fitness questions in Schedule A of the LSAP Application Form be removed.

Resolution

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

The Benchers adopt recommendations 1,2,3,4,5,6 and 7, as described in the Mental Health Task Force's Second Interim Report.



2021 Bencher & Executive Committee Meetings

Executive Committee	Bencher	Other Dates
Thursday, January 14	Friday, January 29	Jan 1: New Year's Day Jan 29: Welcome/Farewell Dinner
Thursday, February 18	Friday, March 5	Feb 15: Family Day TBD: Federation Spring Meetings March 15 - 26: Spring Break
Thursday, April 8	Friday, April 23	Apr 2 - 5: Easter
Thursday, May 12	Saturday, May 29	May 24: Victoria Day May 27 - 29: LSBC Bencher Retreat TBD: LSA Retreat
Thursday, June 24	Friday, July 9	July 1: Canada Day July 7: Commemorative Certificate Luncheon Aug 2: BC Day Aug 25-29: IILACE Conference
Thursday, September 9	Friday, September 24	Sept 6: Labour Day Sept 6 (sundown)-Sept 8 (sundown): Rosh Hashanah Sept 15 (sundown)-Sept 16 (sundown): Yom Kippur
Thursday, October 14	Friday, October 29	Oct 5: AGM Oct 11: Thanksgiving Day TBD: Federation Fall Meetings Oct 17 - 22: IBA Annual Conference
Thursday, November 18	Friday, December 3	Nov 11: Remembrance Day Nov 15: Bencher By-Election Dec 25: Christmas Day Dec 26: Boxing Day