



Agenda

Benchers

Date: Friday, April 17, 2020

Time: **9:00 am**

Please join the meeting anytime from 8:30 am to allow enough time to resolve any video/audio issues before the meeting commences.

Location: Virtual meeting

Recording: *Benchers, staff and guests should be aware that a digital audio and video recording will be made at this Benchers meeting to ensure an accurate record of the proceedings. Any private chat messages sent will be visible in the transcript that is produced following the meeting.*

VIRTUAL MEETING DETAILS

The Bencher Meeting is taking place via a virtual meeting. If you would like to attend the meeting, please email BencherRelations@lsbc.org.

CONSENT AGENDA:

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

1	Minutes of March 6, 2020 meeting (regular session)
2	Minutes of March 6, 2020 meeting (<i>in camera</i> session)
3	Executive Committee Terms of Reference
4	Access to Justice Advisory Committee Terms of Reference
5	Rule 3-102 (3): Proposed Amendment to Permit the use of Certain Electronic Documents and Information in Client Identification and Verification
6	Rules 2-105 and 3-41: Recommendations to Amend Rules Concerning the Payment of the Second Instalment of the Indemnity Fee
7	Rule 4-20: Proposed Rule Amendments concerning the Publication of Citations
8	Rule 10-1: Proposed Amendments to Permit Service through Member Portal



Agenda

9	External Appointment: Vancouver Foundation Board of Directors	
10	Students who Fail the Professional Legal Training Course: Recommendation to Amend the Law Society Rules	
REPORTS		
11	President's Report	Craig Ferris, QC
12	CEO's Report	Don Avison, QC
13	Attorney General Eby's Report	Hon. David Eby, QC
DISCUSSION/DECISION		
14	Roundtable on implications of COVID-19 for the legal profession and the administration of justice	Craig Ferris, QC (Open Discussion)
15	Legal Aid Strategy for Law Society	Michelle D. Stanford, QC
UPDATES		
16	2020 First Quarter Financial Report	Jeanette McPhee
17	Report on Outstanding Hearing & Review Decisions (<i>Materials to be circulated at the meeting</i>)	Craig Ferris, QC
FOR INFORMATION		
18	Revisions to 2020 Bencher and Executive Committee Meeting Dates	
19	Letter from President Ferris to family of Alan Hope, QC	
20	Letter from Craig Ferris, QC to Attorney General Eby dated March 30, 2020 regarding the current state of affairs	
21	Three Month Bencher Calendar – April to June 2020	
IN CAMERA		
22	Other Business	



Minutes

Benchers

Date: Friday, March 06, 2020

Present:	Craig Ferris, QC, President	Jamie Maclaren, QC
	Dean P.J. Lawton, QC, 1 st Vice-President	Geoffrey McDonald
	Lisa Hamilton, QC, 2 nd Vice-President	Steven McKoen, QC
	Jasmin Ahmad	Christopher McPherson, QC
	Paul Barnett	Jacqueline McQueen
	Pinder K. Cheema, QC	Elizabeth J. Rowbotham
	Jennifer Chow, QC	Mark Rushton
	Barbara Cromarty (via teleconference)	Karen Snowshoe (via teleconference)
	Jeevyn Dhaliwal, QC	Thomas L. Spraggs
	Lisa Feinberg	Michelle D. Stanford, QC
	Martin Finch, QC	Michael Welsh, QC
	Brook Greenberg	Chelsea D. Wilson
	Sasha Hobbs	Guangbin Yan
	Julie K. Lamb, QC	Heidi Zetsche
	Dr. Jan Lindsay	
Unable to Attend:	Jeff Campbell, QC	
	Claire Marshall	
Staff Present:	Don Avison, QC	Alison Luke
	Barbara Buchanan, QC	Tara McPhail
	Natasha Dookie	Jeanette McPhee
	Su Forbes, QC	Cary Ann Moore
	Andrea Hilland	Lesley Small
	Kerryn Holt	Alan Treleven
	Jeffrey Hoskins, QC	Adam Whitcombe, QC
	Jason Kuzminski	Vinnie Yuen
	Michael Lucas, QC	

Guests: Dom Bautista	Executive Director, Law Courts Center
Jennifer Brun	Vice-President, CBABC
Dr. Catherine Dauvergne	Dean of Law, University of British Columbia
Alexis Kazanowski	Assistant Dean of Law, Thompson Rivers University
Professor Robert Lapper, QC	University of Victoria
The Honourable Peter Leask, QC	Life Bencher
Shawn Mitchell	CEO, Trial Lawyers Association of BC
Caroline Nevin	CEO, Courthouse Libraries BC
Linda Russell	CEO, Continuing Legal Education Society of BC

CONSENT AGENDA

1. Minutes of January 31, 2020, meeting (regular session)

The minutes of the meeting held on January 31, 2020 were approved as circulated.

2. Rule 3-59(5): Cash transactions; correction

The following resolution was passed unanimously and by consent:

BE IT RESOLVED to amend Rule 3-59 (5) by striking “greater than \$1,000”.

3. Creation of Mark Andrews Excellence in Litigation Award

The creation of the Mark Andrews Excellence in Litigation Award was approved as circulated.

REPORTS

4. President’s Report

Mr. Ferris began his report by recognizing that Bencher Jeff Campbell, QC was not present at the meeting as he had been appointed as Judge of the Provincial Court of BC. Benchers congratulated Mr. Campbell on the appointment.

Mr. Ferris then reported the results of the Executive Committee election for the appointed Bencher representative, indicating that Mr. Rushton was the successful candidate.

In light of the opening statements of the Cullen Commission Inquiry into money laundering on February 24, the focus of Mr. Ferris’ President’s Report was on the Federation of Law Societies decision of the Supreme Court of Canada. He provided a history of the decision and the key takeaways from it, stating that the takeaways are vital to the work the Law Society continues to do on the Rules with respect to money laundering, client identification and verification, source of funds and trust accounts. He said it was important to be clear on the lessons from the Federation case and to follow those lessons.

However, before discussing the Federation case, Mr. Ferris acknowledged it had been a busy time since the last Bencher meeting in January, with one milestone being the provincial government’s announcement and introduction of legislation with respect to a no-fault insurance system. He did not make any substantive comments on the government’s plans for a no-fault insurance system; however, did comment on the policy in relation to the Law Society’s section 3 mandate. Specifically, he said it was appropriate for the Law Society to determine whether or not there are rule of law implications and whether or not the rights and freedoms of all people and the administration of justice are dealt with fairly and appropriately. He expected there would be

more to say in the future on the details of the legislation with regard to the Law Society's mandate. He did wish to make one statement publicly about a series of unfortunate political statements laying the blame and seeking to scapegoat lawyers and judges as the reason for the difficulties experienced by ICBC. In his view, such statements are disrespectful and harm the public respect for the administration of justice. Attacks on lawyers and judges detract from the rule of law and the respect of judicial institutions. Mr. Ferris reported that he had spoken to the Attorney General about these comments and asked him to ensure that the government stops making such statements.

Mr. Ferris then returned to discussion of the Federation case. He provided a historical overview and said the issue has been going on for two decades. The judicial history means that the Law Society, as the regulator of the legal profession in BC, has been given an important role by the Supreme Court of Canada and the lower courts in BC. In each decision, reliance was given on the measures the Law Society is taking and the vigour the Law Society is utilizing as a reason why both the legislation was a breach of the Charter and could not be saved under section 1. He said it is important to remember that if the Law Society did not do its job, this section 1 analysis could change in subsequent cases and we must be vigilant. Ways to be vigilant include continually evolving rules and regulations to meet our obligations, including nationally. Enforcement must remain robust and we need to ensure we do not overreach in the use of trust accounts – they are protected for clients and not for lawyers' convenience. Trust accounts are protected for certain circumstances where there is privilege and a duty of loyalty/commitment, and it is important to make sure trust accounts are only used for these purposes.

5. CEO's Report

Mr. Avison attended the Kootenay Bar Association meeting the week prior, which he said was a valuable opportunity to engage with members of the local bar. He provided an overview of the Law Society's priorities and heard directly from lawyers about issues that are top of mind for them. With reference to the ICBC changes that were announced, lawyers have expressed concerns about the changes and what it means for their clients and communities.

Mr. Avison then reported on the Federation meetings he attended earlier in the week. A national survey on health and wellness was proposed, which would be conducted in two phases – the first would be funded by the Law Societies nationally, and the second phase would be funded by research councils. It may take some time to complete the survey, which could be an issue if British Columbia wants to proceed with conducting a provincial survey at an earlier date. Also discussed was the Federation strategic plan and there was an opportunity to discuss what is happening across the country on anti-money laundering efforts. There was considerable interest from other jurisdictions on the Cullen Commission taking place in BC.

Mr. Avison then provided an overview of the opening statements made to the Cullen Commission on February 24. A copy of the opening statement made by the Law Society's counsel would be made available to Benchers. The statement made clear that this is an issue the Law Society takes very seriously and it outlined the action the Law Society has taken; in particular, investments the Law Society has made in key areas such as educating the profession, trust audits and insurance. The level of the Law Society's fiscal allocation to those areas following the Federation case has gone up 30%, and the level of audit activity increased from 400 audits per year to 675 audits in 2019. It was made clear that the Law Society is of the view that engagement and partnership is a key element in how to proceed. Mr. Avison then provided a brief overview of the submissions from the other parties, before turning to discussion of the federal anti-money laundering working group and the Law Society's involvement at that level.

Mr. Avison turned to the recent announcement by the provincial government about no-fault insurance and provided statistics showing the number of articling students potentially affected by the change.

The Law Society Employee Engagement survey was completed in January 2020 and the reports were in the process of being finalized. Mr. Avison indicated sessions with staff would be occurring later in the month and that he would provide more detail to Benchers at the April Bencher meeting.

Ms. Avison then thanked a number of Benchers, Life Benchers and Staff for volunteering to teach portions of the Professional Legal Training Course.

Finally, Mr. Avison acknowledged the extraordinary contributions of Mr. Treleavan to the legal profession as a whole and to the Law Society and thanked him for his years of service.

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

Ms. Cheema spoke about the Federation meetings held earlier that week in Montreal. The first day was a joint forum attended by council members and staff. Topics addressed included the wellbeing of the legal profession in Canada and a proposed national study, emerging legal technology and the NCA Modernization Committee.

She said the issue of wellbeing in the legal profession is front and centre for all jurisdictions in Canada and that the Federation had received a proposal to conduct a national study. Statistics to date have indicated that young lawyers appear to be more affected by severe stress, and that stress can be impacted by area of law. All jurisdictions were in support of a national study being conducted and the proposal was for the issue to go to the Federation Council meeting in June for decision. There would be two parts to the survey: (1) a quantitative survey provided to all Law

Societies in Canada that would take up to 18 months to complete, and (2) a qualitative study funded by granting agencies.

Another issue discussed was emerging legal technology; specifically, technology that lawyers use in private practice that helps lawyers efficiently draft contracts and review documents, and artificial intelligence. The issue was how to assess technology and what role the Federation might have in emerging legal technology. The discussion that took place did not go so far as to say the Federation would proceed with piloting technology.

Finally, the NCA Modernization Committee discussed a ‘gap analysis’ that was completed to identify whether foreign-trained lawyers do not perform as well during articles or in practice than Canadian-trained lawyers. Data was gathered from Ontario, British Columbia and Alberta. Findings confirmed anecdotal evidence that there is a substantial difference in the successful completion of the Professional Legal Training Course between Canadian-trained lawyers and foreign-trained lawyers, with Canadian-trained lawyers performing at a higher level. A competency-based assessment would be considered to assess NCA students, level the playing field and try to narrow the gap.

The next day of business was the general business meeting, where the Federation’s strategic plan was discussed. The goals remain information-sharing, collaboration and stakeholder engagement. The plan was met with approval and would be presented to the Council in June for decision.

Other updates included the Model Code Committee, and an update on strategic priorities; including anti-money laundering. The next meeting of the Federation is scheduled for June 2020.

Benchers asked for clarification about how the proposed national wellbeing survey would fit with the proposed wellbeing survey to be conducted in British Columbia. The plan was to obtain a copy of the Quebec survey questions and consider whether it would meet British Columbia’s purposes, or whether there are additional questions we would want to ask. Further work will be done on this before a path forward is confirmed.

DISCUSSION/DECISION

7. Review of the Law Society’s 2019 Audited Financial Statements and Financial Reports

Mr. Lawton, Chair of the Finance and Audit Committee, introduced the item. Ms. McPhee, Chief Financial Officer & Director of Trust Regulation, then provided a summary of the Law Society’s 2019 audited financial statements and financial reports.

Ms. McPhee said the general fund had a positive year, both from a revenue and expense point of view. Revenue was 28.8 million, which was 1.5 million (5%) over the budgeted amount. Factors that contributed to the increase in revenue included the practice fees received from an additional 189 lawyers (\$343,000), an additional 116 students, D & O insurance recoveries of \$671,000 and income interest of \$132,000.

Ms. McPhee provided an overview of practising membership numbers from 2014 to 2019, which showed an increase in practising members from 11,114 in 2014 to 12,572 in 2019 and a projected increase to 12,846 in 2020. The membership increases by 2% on average each year, but the increase from 2018 to 2019 was closer to 3%. Professional Legal Training Course numbers have also increased since 2014, with a steady increase from 2016 onwards to 540 students in 2018 followed by a marked increase of 656 students in 2019. The number of students projected for 2020 is 638.

The general fund operating results were also positive, with total expenses amounting to 26.4 million (2.1 million under budget). Factors that contributed to the savings included external counsel fee savings, human resources consulting savings, travel and storage savings, and other factors. Ms. McPhee noted that some of the reported savings were the result of timing and that these costs would be incurred in 2020.

Ms. McPhee then turned to the TAF/Trust Assurance program. Revenue for 2019 was slightly lower than the budgeted 4 million at 3.5 million in part due to real estate sales being down by 1.5%, and expenses for 2019 were close to the budgeted 3.4 million at 3.3 million. There is a projected increase in revenue and expenses for 2020.

In terms of the general fund balance sheet, as at December 2019, assets were 62.2 million, liabilities were 35.9 million, capital allocation was 3 million, trust assurance was 2 million, invested in capital assets was 12.9 million and unrestricted net assets were 8.4 million.

Only a few assets were still flowing through the special compensation fund, in the amount of \$58,000 for 2019, and this is largely due to production and recovery costs for some old files. The fund is expected to close in 2020 and any other costs will be charged to the Lawyers Indemnity Fund after that.

Actual revenue for the Lawyers Insurance Fund came in on budget at 16.1 million, and expenses were under budget by 19% at 6.9 million. The provision for claims through income statement was 12.9 million, a decrease of 3.6 million. There was a lower claims provision due to a net adjustment to the prior year claims reserves.

Ms. McPhee said investment returns have been volatile over the last ten years and that it often depends on the budget. 2019 was a great year where there was a 14% return, compared with a 0% return in 2018.

The Lawyers Insurance Fund reserve was 97.9 million for 2019, compared with 76.9 million for 2018 (an increase of 27.3%).

Mr. Lawton then made a motion, which was seconded, that the following resolution be approved by the Benchers:

BE IT RESOLVED to approve the Law Society’s 2019 Combined Financial Statements for the General & Special Compensation Funds, and the 2019 Consolidated Financial Statements for the Lawyers Insurance Fund.

The motion passed unanimously.

UPDATES

8. Lawyers Indemnity Fund: Program Overview

Ms. Forbes, Director of the Lawyers Indemnity Fund, provided an overview of the Lawyers Indemnity Fund program. She began by providing a roadmap of the program, followed by information about who works in the program and everyone’s roles. Each of the four managers in the program introduced themselves by video and spoke about their different areas and responsibilities. Ms. Forbes described the various functions of the program, including claims management (approximately 80% of the program’s work), defence counsel management, excess carriers and insurers, coverage inquiries, risk management (helping lawyers to prevent claims) and the LSBC Directors & Officers Policy, which covers Benchers, staff and volunteers.

Ms. Forbes then provided an overview of Parts A, B & C of the program. Part A coverage is for negligence, provides 1 million of coverage for each “error”, with 2 million annual aggregate per lawyer. Defence costs are within limits, with a \$5,000 or \$10,000 deductible. Unlike Ontario, the deductible is not triggered for the payment of defence costs, which means lawyers in British Columbia essentially receive a “free” defence.

In terms of the legal profession in British Columbia, Ms. Forbes provided an overview of the total number of lawyers in British Columbia (15,400), with 12,700 of them practising lawyers and 2,700 non-practising or retired. Of the 12,700 practising lawyers, 9,400 are in private practice and 3,300 are in-house lawyers (who are not covered by the Lawyers Indemnity Fund).

When comparing the indemnity fee with other Canadian jurisdictions, BC has the third largest program in Canada but the tenth largest fee. The fee also includes theft risk, which is not covered by any other jurisdiction.

Of the 9,400 lawyers in private practice in BC, 8,250 of those are full-time and 1,150 are part-time. The number of part-time lawyers has remained relatively flat from 2015 to 2019, whereas the number of full-time lawyers has seen an 11% increase in the last five years.

The number and frequency of reports to the Lawyers Indemnity Fund over the years has remained relatively flat, which is one of the main drivers of the stability of the program. In terms of frequency by area of law, ‘Motor Vehicle – Plaintiff’ and ‘Civil Litigation – Plaintiff’ are the two main areas of law that generate claims. Ms. Forbes compared these areas of law with the complaints statistics previously provided by Ms. Dookie, which showed that family law generates a lot of complaints, but presents fourth on the list for claims reported to LIF. Looking at severity by area of law, Ms. Forbes indicated ‘Commercial – Other’ and ‘Civil Litigation – Plaintiff’ are always near the top.

Turning to claims payment over the last five years, Ms. Forbes said expenses are relatively stable but that indemnity claims can be more volatile. In 2019, 76% of reports were closed with no payment at all, which has been a fairly consistent percentage since 2015. By comparison, Ms. Forbes indicated only 36% of claims in Ontario close without any payment. In Ms. Forbes view, the success in resolving these reports in BC can be attributed to early reporting of matters by lawyers, and the skills of claims counsel in resolving claims.

Part B coverage relates to lawyer theft, \$300,000 is allowed for each claim, with a 17.5 million profession-wide annual aggregate, and there is no deductible. In 2019, there were 18 reports and 16 claims, with a total of \$239,300 paid. The number of reports over the past five years trends slightly towards the positive.

Ms. Forbes then spoke about Part C claims which are intended to cover social engineering frauds, where \$500,000 is allowed for each “error”, there is an annual aggregate per lawyer and firm of \$500,000, a 2 million profession-wide annual aggregate, the lawyer must comply with client identification and verification rules, and there is a 35% deductible. The thinking behind the 35% deductible is that, if lawyers have skin in the game, they will help manage the risk. Very few claims were made from 2015 to 2019.

Ms. Forbes provided an overview of the results of reports, with 45% of reports not resulting in a claim developing. Repairs were the second highest result with 22%.

In terms of challenges and responses, Ms. Forbes outlined the following challenges: recruitment/succession for claims counsel, self-represented litigants, lawyers withholding

information due to fear about how it will be used, expectation of lawyers that the policy covers everything, keeping ahead of changes in the risk, and the growing risk of technology-based fraud & protecting lawyers. Ms. Forbes provided information about the program's responses and strategies to deal with the above challenges.

Finally, Ms. Forbes provided information about feedback received from lawyers about their experience with the program. As a result of service evaluation and risk management forms, positive feedback was received in 185 instances, with only 8 negative comments. Survey results have gone up over the years, with overall response rates regarding lawyer satisfaction with the handling of their claim and interaction with counsel in 2001 at 90%+, increasing to 98%-100% in 2019. In response to the question "How satisfied overall were you with the services provided by claims counsel?", 100% of lawyers who responded in 2019 were satisfied.

In response to a Bencher's question about the impact of the recent ICBC announcement on the Lawyers Indemnity Fund program, Ms. Forbes indicated the number of claims relating to Motor Vehicle matters may go down, but that those claims may go into different areas of law where lawyers are practising with little experience. However, she commented that the strategy was to hold the Indemnity fee at a steady rate.

Benchers thanked Ms. Forbes for her informative presentation and the continued success of the program.

9. National Discipline Standards Report

Ms. Dookie, Chief Legal Officer, spoke about the Report included in the materials and commented on a few key findings. She said the National Discipline Standards were developed as a Federation of Law Societies of Canada initiative to create uniformly high standards for the handling of complaints and disciplinary matters. The Benchers approved the adoption and implementation of the standards in 2014.

To date, no Canadian law society has met all of the standards in their entirety. For 2019, the Law Society met 19 of 23 standards, which is similar to the Law Society's performance in 2017 and 2018.

Ms. Dookie indicated that, in areas where the Law Society met the standards we exceeded them, but noted there were some areas where making significant progress can be challenging. In particular, standard 9 requires 75% of all hearings to be commenced within 9 months of the citation being authorized and 90% of hearings be commenced within 12 months of the citation being authorized. In 2019, the Law Society met this standard with 36% and 72% of hearings respectively. Ms. Dookie referred to factors between 2017 and 2019 that impacted the Law Society's ability to meet the standard, but indicated concerted efforts of the Discipline

department in 2019 have made assisted with reducing the backlog. She also commented that, while statistics can be valuable data points, they do not tell the whole story or reflect the complexity of the work.

10. Report on Outstanding Hearing & Review Decisions

Mr. Ferris provided an update on outstanding hearing and review decisions. He referred to National Discipline Standard 10, which requires 90% of panel decisions to be rendered within 90 days of the last submissions. While the Law Society's compliance with this standard has improved from 2018 to 2019, he encouraged Benchers to keep efforts up to meet get decisions out in a timely manner. Mr. Ferris reminded Benchers that, even if they are not writing a decision, they are responsible for pushing the matter forward and trying to ensure the timelines are met.

FOR INFORMATION

11. Of Robes and Robots: Innovation and the Legal Profession – Remarks of the Honourable Chief Justice Robert Bauman

Mr. Ferris said Chief Justice Bauman's remarks were excellent, inspirational and he encouraged all Benchers to read the remarks.

12. Progress update on the Strategic Plan 2018 – 2020

There was no discussion on this item.

13. Three Month Bencher Calendar – March to May 2020

There was no discussion on this item.

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

KH
2020-03-06



Memo

To: Benchers
From: Executive Committee
Date: April 8, 2020
Subject: Executive Committee Terms of Reference

At the April 7, 2020 Executive Committee meeting, the Committee resolved to recommend to Benchers a revision to the Terms of Reference to reflect the Committee's policy oversight function.

A redlined copy of the revised Terms of Reference is attached to this memorandum for Bencher approval.

EXECUTIVE COMMITTEE

TERMS OF REFERENCE¹

Updated: January 2020

MANDATE

The Executive Committee provides direction and oversight for the strategic and operational planning of the Law Society and develops agendas for Benchers meetings to ensure that the Benchers exercise their oversight, regulatory and policy development responsibilities. The Executive Committee also works with the CEO and senior management on the operational priorities for the organization and provides support and advice to the CEO and senior management on the overall operations of the Law Society. The Executive Committee authorizes significant agreements and the appointment of counsel for the Law Society. The Executive Committee also recommends appointments to outside bodies and exercises such other authority as is delegated to it by the Benchers or provided for in the Rules.

COMPOSITION

1. The Executive Committee consists of the following Benchers:²
 - a) the President;
 - b) the First and Second Vice-Presidents;
 - c) the Second Vice-President-elect, if not already a member of the Executive Committee;
 - d) 3 other elected Benchers; and
 - e) one appointed Bencher.
2. The President is the Chair and the First Vice-President is the Vice-Chair.³

MEETING PRACTICES

1. The Committee operates in a manner that is consistent with the Benchers' governance policies.

¹ Nothing in this document amends, replaces or supersedes the relevant provisions in the Legal Profession Act or the Law society Rules.

² Rule 1-50(1)

³ Rule 1-50(2)

2. The Committee meets as required.
3. Quorum is 4 members of the Committee.⁴

ACCOUNTABILITY

The Committee is accountable to the Benchers as a whole.

REPORTING REQUIREMENTS

The Chair reports regularly to the Benchers on the work of the Committee and the minutes of the Committee meetings are provided at each subsequent Bencher meeting.

DUTIES AND RESPONSIBILITIES

1. Assist the President and Executive Director in establishing the agenda for Bencher meetings and the annual general meeting; assist the Benchers and the Executive Director in establishing relative priorities for the assignment of Society financial, staff and volunteer resources; plan Bencher meetings or retreats held to consider a policy development schedule for the Benchers and provide constructive performance feedback to President.⁵
2. Authorize the execution of documents relating to the business of the Society and appoint one or more persons to affix the seal of the Society to a document as required⁶ and specifically as provided in the Schedule of the Authorizations approved by the Benchers.
3. Approve forms in relation to the annual practice declaration, the trust administration report, the part-time insurance application, the mortgage discharge form, corporate name approval, corporate name change and law corporations and the unclaimed trust fund form.⁷
4. Authorize the appointment of counsel to advise or represent the Law Society when the Law Society is the plaintiff, petitioner or intervenor in an action or proceeding.⁸
5. Recommend appointments to the appointing bodies on appointments to outside bodies and make, as required, appointments to the Board of Governors of the Law Foundation.⁹
6. Determine the date, time and places for the Annual General Meeting, and set the agenda.¹⁰

⁴ Rule 1-17(2)

⁵ Rule 1-51(f) - (i)

⁶ Rule 1-51(b), Rule 1-45(1)(b)

⁷ Rule 1-51(d)

⁸ Rule 1-51(a)

⁹ Rule 1-51(j) & (m)

¹⁰ Rule 1-51(k)

7. Oversee the process in connection with the Bencher elections.¹¹
8. Determine what constitutes a client matter in individual cases and extend or vary the time for remitting the trust administration fee and report.¹²
9. Designate savings institution under section 33(3)(b) of the Act.¹³
10. Consider claims for unclaimed trust funds and hold hearings if required.¹⁴
11. Provide oversight and direction on Law Society policy considerations and development.
- ~~10.~~

¹¹ Rule 1-51(l)

¹² Rule 2 -113

¹³ Rule 1-51(o)

¹⁴ Rule 1-51(p)



Memo

To: Benchers
From: Access to Justice Advisory Committee
Date: March 6, 2020
Subject: Revised Mandate and Terms of Reference

Background

At the January 31, 2020 Benchers meeting, Jeff Campbell, QC (as he then was) requested that the draft mandate and terms of reference for the Access to Justice Advisory Committee be withdrawn from the consent agenda, in order to allow the Committee time to recommend some edits.

The Committee discussed the draft mandate and terms of reference at its March 5, 2020 meeting, and made several changes to the document. The edits make the document more appropriate with the public as the target audience. The revised mandate and terms of reference is appended to this memorandum (**Appendix 1**). A redlined version of the draft mandate and terms of reference from the January 2020 Benchers meeting is included for comparison purposes (**Appendix 2**).

Recommendation: Be it resolved that the Benchers adopt the mandate and terms of reference for the Access to Justice Advisory Committee as set out in **Appendix 1**.

/DM

/Attachment

Appendix 1: Revised Mandate and Terms of Reference

TERMS OF REFERENCE

Updated:

MANDATE

Access to justice is critical to the public interest in the administration of justice. The ability of the public to access legal services is an important component of public confidence in the legal profession. The Law Society's mandate of protecting the public interest in the administration of justice includes promoting access to justice for all citizens of British Columbia. Accordingly, the Law Society should engage in the review and reform of matters within the jurisdiction of the Law Society for the purpose of improving access to justice.

The Committee shall monitor and advise the Benchers about key access to justice issues, with particular emphasis on access to legal services, including legal aid. The Committee shall recommend to the Benchers actions or initiatives to address access to justice issues as they arise. This advisory function supports the Law Society's strategic planning process and the Vision for Publicly Funded Legal Aid. The role of the Committee is to assist the Law Society in discharging its mandate to improve 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 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. Where possible, adopt an evidenced-based, outcomes-focused approach to the Committee mandate and to any Committee recommendations to the Benchers;
2. Promote the creation of data analytics systems within the justice system in order to better evaluate access to justice and legal aid issues;
3. Keep the Benchers informed of important access to justice matters, to assist in setting policy or in recommending 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 access to justice issues for potential inclusion on future Strategic Plans;
5. Ensure the work of the Committee provides for input from the public, the profession 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

Appendix 2: Redlined Mandate and Terms of Reference from January 2020 Benchers Meeting

TERMS OF REFERENCE

Updated:

MANDATE

Access to justice is critical to the public interest in the administration of justice. The ability of the public to access legal services is an important component of public confidence in the legal profession. The Law Society's mandate of protecting the public interest in the administration of justice includes promoting access to justice for all citizens of British Columbia. Accordingly, the Law Society should engage in the review and reform of matters within the jurisdiction of the Law Society for the purpose of improving access to justice.~~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~~ shall monitor and advise the Benchers about key access to justice issues, including legal aid. The Committee shall recommend to the Benchers actions or initiatives to address access to justice issues as they arise, 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. The role of the Committee is to assist the Law Society in discharging its mandate to improve access to justice.~~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. ~~Where possible~~ Adopt an evidenced-based data-driven outcomes-focused approach to the ~~matters identified in the mandate and to any Committee mandate and to any Committee~~ 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 important access to justice matters, to assist in setting policy, or ~~to recommend~~ in recommending 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~~ the profession 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



Rule 3-102: Proposed Amendment to Permit the use of Certain Electronic Documents and Information in Client Identification and Verification

April 7, 2020

Prepared for: Benchers

Prepared on behalf of: Executive Committee

Purpose: Proposed Rule Amendment

Purpose

1. The Executive Committee, acting in its role of considering regulatory policy matters and having considered a recommendation by staff, recommends amendments Rule 3-102 to address a concern relating to the manner in which lawyers may identify and verify clients through the use, in limited circumstances, of electronic documents and information.
2. The proposed amendment will mean that the Law Society Rules will not parallel the Federation's model rules exactly. However, the difference may be justified on the basis of particular British Columbia legislation, and it is also likely that the Federation will consider amendments to the related Model rule in the near future.

Problem

3. Rule 3-102 requires a lawyer to verify a client's identity. This must be done in a number of ways as set out in the Rules. Generally, a client's identity must be verified by means of documents and information. Rule 3-102(3) provides that "an electronic image of the document is a not a document or information for the purposes of this rule." Therefore, a lawyer cannot use an electronic document or information to verify the identity of a client.
4. If a client is an organization, such as a company or a society that is created or registered pursuant to legislative authority, the rule as it currently reads would prohibit a lawyer from utilizing a search through BC Online to verify a client, as the resulting document would be an electronic document. The BC Online document would not constitute written confirmation from a government registry in the current iteration of the rules, as the document provided would be an electronic document.

Discussion

5. Concerns about this rule have been raised with the Law Society's Practice Advisors by a number of lawyers. BC Online is a government agency and falls within the definition of "public body" as defined in the Law Society Rules.
6. However, the documents produced by BC Online are electronic. Absent being able to verify a company's identity through an electronic search via BC Online, a lawyer would be required to attend the Registered and Records Office of client organizations in order to obtain minute books and look up material and make copies, or request the client to provide the record books to the lawyer for that purpose. It is likely, were such an arrangement required, that a lawyer would in any event want to back up their findings with a BC Online search, so it does seem somewhat unusual to provide that a BC Online search would not meet the requirements of Rule 3-102 in the first place. Moreover, a BC Online search may

still be necessary because a review of the minute book may not fulfill the requirement to obtain “written confirmation from a government registry,” and the minute books would likely not meet that requirement.

7. Staff reported to the Committee that it considered whether the *Electronic Transactions Act*, SBC 2001, c. 10, could address the issue. Section 3 of that Act states that “information or a record to which this Act applies must not be denied legal effect or enforceability solely by reason that it is in electronic form.” Unfortunately, s. 2 provides that the Act does not limit the operation of a law that “expressly... prohibits the use of information or records in electronic form.” Given the current language of Rule 3-102(3), which is essentially a prohibition of the use of information from an electronic image of a document,” s. 2 would apply and therefore result in the *Electronic Transactions Act* being inapplicable to address this issue.
8. Nevertheless, the intent of the *Electronic Transactions Act* is clearly to give validity to electronic documents in the same sense as paper documents, and the question can therefore be asked as to why the Law Society would prohibit reliance on such electronic documents where they are created by a reliable body – in the case of BC Online, a reliable public body through which access to documents that are registered with government are filed and retrieved. With that in mind, while the Committee agrees to make the recommendation below, it encourages consideration as to whether subsection (3) is necessary.
9. The Committee also encouraged further consideration as to whether electronic documents or information from registries maintained by municipal governments could be included.

Recommendation

10. The Executive Committee recommends that the Benchers approve in principle an amendment to Rule 3-102 to permit lawyers to use electronic documents or information obtained through public bodies, such as BC Online, to verify the identity of an organization. Given the fact that the rules currently prohibit this practice, the Executive Committee understands that the Act and Rules Committee has already reviewed this matter, and recommends the rules be amended in the form attached.

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 11 – Client Identification and Verification

Requirement to verify client identity

- 3-102** (2) For the purposes of subrule (1), the client's identity must be verified by means of the following documents and information, provided that documents are valid, original and current and information is valid and current:
- (b) if the client is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors where applicable, such as
 - (i) a certificate of corporate status issued by a public body,
 - (ii) a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or
 - (iii) a copy of a similar record obtained from a public body that confirms the organization's existence;
- (3) An electronic image of a document is not a document or information for the purposes of this rule.
- (3.1) Despite subrule (3), an electronic image of a document that is created by and obtained directly from a registry maintained by the government of Canada, a province or a territory or a foreign government, other than a municipal government, may be treated as a document or information for the purposes of subrule (2) (b).

CLIENT IDENTIFICATION AND ELECTRONIC DOCUMENTS**SUGGESTED RESOLUTION:**

BE IT RESOLVED to amend the Rule 3-102 by adding the following subrule:

- (3.1) Despite subrule (3), an electronic image of a document that is created by and obtained directly from a registry maintained by the government of Canada, a province or a territory or a foreign government, other than a municipal government, may be treated as a document or information for the purposes of subrule (2) (b).

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

Rules 2-105 and 3-41: Recommendations to Amend Rules Concerning the Payment of the Second Instalment of the Indemnity Fee

April 7, 2020

Prepared for: Benchers

Prepared on behalf of: Executive Committee

Purpose: Proposed Rule Amendments

Purpose

1. The Executive Committee, acting in its role of considering regulatory policy matters and having considered a recommendation by staff, recommends amendments to Rules 2-105 and 3-41 in order to permit the Executive Director a discretion to extend the payment of the second instalment of the indemnity fee.

Problem

2. The way the rules are currently structured, the second indemnity fee instalment is required to be paid on or before June 30 of the year for which it is paid. There are provisions for the extension of a payment of the annual practising fee and the first indemnity fee instalment, but there is no provision in the rules to allow an extension to pay the second instalment. This is likely due to the fact that failure to pay the second instalment does not affect one's membership in the Law Society. Rather, a failure to pay the second instalment creates a regulatory requirement on the lawyer to cease practising law until such time as the instalment is paid.
3. In light of the current circumstances surrounding the existence of COVID-19, there are concerns that lawyers may have problems paying the second instalment by the end of June, and this would mean that all those lawyers would be required to cease practising law. This could have a significant effect on their clients, and therefore providing some ability in the rules for the Executive Director to extend the date of payment of the second fee would be advisable.
4. The Law Society has already announced that it will extend the date by which payment of the second instalment of the indemnity fee. It is therefore important to amend the rules to permit this to happen.

Discussion

5. The best way to address the problem identified above is to provide the Executive Director with a general discretion to specify an alternate date, besides the June 30th date set out in Rule 3-41, for payment of the second indemnity fee instalment. That would result in a requirement that the second indemnity instalment be paid by June 30th, unless in unusual circumstances such as exist at present, the Executive Director specifies another date.
6. This result would ensure that, where the Executive Director had specified another date, a lawyer who had failed to pay by June 30th would not be prohibited from practising law until the date specified by the Executive Director for payment passed.

7. It would also provide a better mechanism to preserve the requirement that the lawyer cease practising law if he or she had not paid the second installment fee by the alternate date specified by the Executive Director.

Recommendation

8. The Executive Committee recommends that the Benchers approve in principle amendments to the rules to provide the Executive Director with a discretion to specify an alternate date for payment of the second instalment fee. If that recommendation is accepted, given the urgency to this recommendation in the current circumstances, the Executive Committee understands that the Act and Rules Committee has already reviewed this matter, and recommends the rules be amended in the form attached. A proposed resolution is attached.
9. The Executive Committee agreed that the proposed amendment was a good starting point for finding ways to offer certain financial relief for lawyers given the current circumstances exigent in the province, but recommends that the Law Society continue looking at other options for providing relief.

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 3 – Fees and Assessments

Annual practising fees

- 2-105** (1) The annual practising fee and indemnity fee are payable in respect of each calendar year.
- (2) The date for payment of the annual practising fee and first indemnity fee instalment is November 30 of the year preceding the year for which they are payable.
- (3) The date for payment of the second indemnity fee instalment is prescribed under Rule 3-41 (1) [Payment of annual indemnity fee by instalments].

Late payment

- 2-108** (1) A lawyer who fails to pay fees by the date required under Rule 2-105 (2) [Annual practising fees] but pays all ~~required of those~~ fees before December 31 of the year preceding the year for which they are payable, together with the late payment fee under this rule, continues to be a member of the Society.
- (3) A lawyer, other than a retired or non-practising member, who has failed to pay the annual practising fee in accordance with Rule 2-105 (2) [Annual practising fees], is required to pay the late payment fee for practising lawyers specified in Schedule 1.

PART 3 – PROTECTION OF THE PUBLIC

Division 5 – Indemnification

Payment of annual indemnity fee by instalments

- 3-41** (1) A lawyer must pay the indemnity fee in two equal annual instalments as follows:
- the first instalment on or before November 30 of the year preceding the year for which it is paid;
 - the second instalment on or before June 30 of the year for which it is paid or a later date specified by the Executive Director.
- (2) A lawyer who fails to pay the second instalment by the date prescribed in subrule (1) must immediately cease the practice of law in accordance with section 30 (7) [Indemnification] and surrender to the Executive Director his or her practising certificate and any proof of professional liability indemnity coverage issued by the Society.

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 3 – Fees and Assessments

Annual practising fees

- 2-105** (1) The annual practising fee and indemnity fee are payable in respect of each calendar year.
- (2) The date for payment of the annual practising fee and first indemnity fee instalment is November 30 of the year preceding the year for which they are payable.
- (3) The date for payment of the second indemnity fee instalment is prescribed under Rule 3-41 (1) [*Payment of annual indemnity fee by instalments*].

Late payment

- 2-108** (1) A lawyer who fails to pay fees by the date required under Rule 2-105 (2) [*Annual practising fees*] but pays all of those fees before December 31 of the year preceding the year for which they are payable, together with the late payment fee under this rule, continues to be a member of the Society.
- (2) The Executive Director may extend the time for a lawyer or class of lawyers to pay fees or a special assessment and, if the lawyer pays
- (a) the annual practising fee or special assessment by the date to which the time is extended, and
 - (b) the late payment fee under this rule,
- the lawyer is deemed to be a member of the Society in good standing and to have been in good standing during the period of time that the lawyer's fee or special assessment was unpaid.
- (3) A lawyer, other than a retired or non-practising member, who has failed to pay the annual practising fee in accordance with Rule 2-105 (2) [*Annual practising fees*], is required to pay the late payment fee for practising lawyers specified in Schedule 1.
- (4) A retired member who has failed to pay the annual fee for retired members in accordance with Rule 2-4 [*Retired members*] is required to pay the late payment fee for retired members specified in Schedule 1.
- (5) A non-practising member who has failed to pay the annual fee for non-practising members in accordance with Rule 2-3 [*Non-practising members*] is required to pay the late payment fee for non-practising members specified in Schedule 1.
- (6) A lawyer who does not pay a special assessment by the date specified under Rule 2-106 (2) [*Assessments*] or extended under subrule (2) must pay a late payment fee of 20 per cent of the amount of the assessment.
- (7) When there are special circumstances, the Executive Director may, in his or her discretion, waive or reduce a late payment fee payable under this rule.

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 5 – Indemnification

Payment of annual indemnity fee by instalments

- 3-41** (1) A lawyer must pay the indemnity fee in two equal annual instalments as follows:
- (a) the first instalment on or before November 30 of the year preceding the year for which it is paid;
 - (b) the second instalment on or before June 30 of the year for which it is paid or a later date specified by the Executive Director.
- (2) A lawyer who fails to pay the second instalment by the date prescribed in subrule (1) must immediately cease the practice of law in accordance with section 30 (7) *[Indemnification]* and surrender to the Executive Director his or her practising certificate and any proof of professional liability indemnity coverage issued by the Society.

SECOND INDEMNITY FEE INSTALMENT

SUGGESTED RESOLUTION:

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

1. ***In Rule 2-105, by adding the following subrule:***
 - (3) The date for payment of the second indemnity fee instalment is prescribed under Rule 3-41 (1) *[Payment of annual indemnity fee by instalments]*.
2. ***In Rule 2-108, by rescinding subrules (1) and (3) and substituting the following:***
 - (1) A lawyer who fails to pay fees by the date required under Rule 2-105 (2) *[Annual practising fees]* but pays all of those fees before December 31 of the year preceding the year for which they are payable, together with the late payment fee under this rule, continues to be a member of the Society.
 - (3) A lawyer, other than a retired or non-practising member, who has failed to pay the annual practising fee in accordance with Rule 2-105 (2) *[Annual practising fees]*, is required to pay the late payment fee for practising lawyers specified in Schedule 1.
3. ***In Rule 3-41 (1), by rescinding paragraph (b) and substituting the following:***
 - (b) the second instalment on or before June 30 of the year for which it is paid or a later date specified by the Executive Director.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Rule 4-20: Proposed Rule Amendments concerning the Publication of Citations

April 7, 2020

Prepared for: Benchers

Prepared on behalf of: Executive Committee

Purpose: Proposed amendments to Rule 4-20(1)

Purpose

1. After considering a recent decision of the Supreme Court that dealt with Rule 4-20 and the publication of citations, the Executive Committee, in its regulatory policy role makes recommendations for amendments to the Rule to address the outcome of the decision.

Case Summary

2. On February 7, 2020, sealed reasons for judgment were released in a decision of the Supreme Court of British Columbia in a matter in which the petitioner member of the Law Society ('the petitioner') was successful in an application for judicial review of a decision by the Executive Director refusing to anonymize a citation issued against the petitioner. The application was made in connection to Rule 4-20.

3. Rule 4-20 (Disclosure of citation) states:

4-20 (1) Once the respondent has been notified of a direction to issue a citation, the Executive Director may disclose to the public the citation and its status.

(2) The Executive Director may disclose the outcome of a citation, including dismissal by a panel, rescission by the Discipline Committee or the acceptance of a conditional admission.

(3) Disclosure under this rule may be made by means of the Society's website.

(4) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.

4. The petitioner submitted to the Executive Director that under the current rule, the Law Society may disclose the citation, and therefore the Executive Director's decision to publish the citation is discretionary. The petitioner asked the Executive Director to exercise his discretion not to publish the citation.
5. After considering the submissions of the petitioner and the Law Society, the Executive Director released his decision to deny the petitioner's application. The Executive Director directed that the citation would be published within seven days. His written reasons for his decision noted that:

...only in rare and exceptional cases where one or more individuals would suffer extraordinary prejudice to such an extent that it would outweigh the public interest in having the Law Society carry out its discipline processes in a transparent and accountable manner.

The Executive Director did not conclude that the petitioner's application warranted an exception to the practice of publishing a citation.

6. The petitioner brought an application to the Supreme Court of British Columbia to stay the Executive Director's decision, seeking judicial review on whether the Executive Director erred in refusing to grant the application to anonymize publication of the citation. The Court allowed the judicial review and quashed the Executive Director's decision refusing to publish the citation anonymously and made an order restraining the Executive Director from publishing the petitioner's name or any identifying information within the citation.

Issue

7. Challenges to the exercise of the discretion to publish the citation, which names the lawyer, can create problems for the Law Society in demonstrating its ability to regulate the profession effectively and transparently. Such challenges open the door to lawyers against whom citations have been authorized to apply for non-publication of the decision to publish, opening up the possibility for review on a regular basis of the Executive Director's exercise of discretion to publish.
8. As the publication of a citation against a lawyer is meant to ensure that the public is aware of allegations of professional misconduct that are serious enough to warrant a citation in order to ensure that the public, and in particular, existing or putative clients are aware of the allegations, challenges to the decision to publish would be contrary to what the Law Society generally considers to be in the public interest.
9. Consideration of an amendment to the Rule to address these concerns is therefore warranted to ensure the Law Society is able to discharge its regulatory functions effectively and transparently.

Background to Rule 4-20(1)

History of the Rule

10. For much of the history of the Law Society, discipline of lawyers was not done publicly. It was not until 1983 that the hearing process became public.
11. Rule 4-20(1) can be traced to 1988. Prior to 1988, there was no explicit direction in the Law Society Rules regarding public disclosure of a citation. In 1988, there was a major update to the *Legal Profession Act* in British Columbia, and the Law Society updated its rules accordingly. This saw the creation of the predecessor of what is now Rule 4-20.
12. In 1988, what was then Rule 467 read as:

Citation may be disclosed

467. Once a citation has been served on the respondent, the Secretary may disclose to the public the citation and the status of the inquiry.

13. As drafted, the rule created a discretion for disclosure of the citation that was to be exercised by the Secretary (now Executive Director). It is, unfortunately, not clear why the rule was drafted with the inclusion of this discretion, although it is to be noted that publication and disclosure of discipline matters was still relatively new at the time, and many rules were drafted with the inclusion of a discretion, presumably to allow for determination as to publication on the basis of consideration of the various interests involved.
14. In January 1990, the Benchers debated whether the Law Society should inform the media of upcoming disciplinary hearings, as they were public hearings. After some debate for and against the motion, the Benchers decided that the Law Society should notify the Canadian Press that, if they inquire of the Law Society, they will be given information respecting citations outstanding and the names of the individuals involved. The debate identified the importance of disclosure to media who may be interested, although there remained a number of Benchers concerned about the effect on the lawyer, particularly if the citation were later dismissed. Arguments in favour of a public disclosure included the Law Society wanting its proceedings to be seen as open and in the public interest, as well as deterring lawyers from misconduct. Arguments against public disclosure included the potential for uneven application of the Secretary's/Executive Director's discretion for disclosure and the detrimental effect of disclosure, especially to practitioners in small communities or sole practitioners.
15. The Rule was next considered in 1998, when the Law Society Rules underwent another comprehensive update. The rule, now Rule 4-16, added subrules (3) and (4):

Disclosure of citation

4-16(1) Once the respondent has been notified of a direction to issue a citation, the Executive Director may disclose to the public the citation and its status.

(2) The Executive Director may disclose the outcome of a citation, including dismissal by a panel, rescission by the Discipline Committee or the acceptance of a conditional admission.

(3) Disclosure under this Rule may be made by means of the Society's website.

(4) This Rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege and confidentiality.

16. Beginning in 1999, the Law Society began posting on its website the names of respondents and hearing dates in a 'hearings calendar'. The decision to have a 'hearings calendar' was made by the Executive Director, but no decision was made on whether to post other details of the citation or its outcome.
17. In 2002, the Disclosure and Privacy Task Force reported on matters relating to publication of citations. The Disclosure and Privacy Task Force identified options for disclosure consistent with developments in transparency expectations on public bodies. The focus of the policy discussion at that time was whether there should be proactive disclosure to media of the citations or whether public disclosure through the website sufficed. However, again, the issue of the discretion to disclose was not debated.
18. The option chosen by the Benchers at their September 2002 meeting was to adopt a policy that would permit the Law Society to post citations on its website, rather than simply the name of the respondent and the date of the hearing.
19. There have been small amendments to the rule since 2002, but they do not substantively change the intent of the rule.
20. Consistent with the decision in 2002, and as reflected in the reasons that the Executive Director gave in not exercising his discretion to publish the citation against the petitioner anonymously, the practice has become to publish citations against lawyers on the Law Society website.

The Problem

21. Generally, once the Discipline Committee has resolved to issue a citation against a lawyer, and the citation has been served on the lawyer, the Law Society publishes the citation in order to inform the public of the existence of the citation.
22. The result of the Court's decision, however, highlights the fact that the Rule provides a discretion to publish the citation to the public. The existence of a discretion permits a respondent to ask the Executive Director that publication not be made and, where the request is refused, to seek judicial review of the refusal to exercise the discretion not to publish.
23. Rule 4-20(1) in its current form does not match the practice of the Law Society in applying the rule. If the practice reflects the desired Benchers policy as determined in 2002, then the rule needs to be amended to remove the discretionary nature of the Executive Director's duty to disclose a citation to the public. Alternatively, if Rule 4-20(1) is not amended, then the Law Society is at risk of having the Executive Director's decisions in this area undergo judicial review, and potentially be quashed.

24. To expand on the problem, it is worth noting that Standard 15 of the Federation of Law Societies' National Discipline Standards is:

Notices of charge or citation are published promptly after a date for the hearing has been set.

25. In order to meet this standard, Rule 4-20(1) would need to be amended to remove the Executive Director's discretion to publish a citation, and instead make publication mandatory with potential for rare exception incorporated in the rule.

Key Comparisons

Law Society of Alberta

26. The Law Society of Alberta publishes their citations as Notice of Hearings in their schedule section of their website. Notably, the Law Society of Alberta Rules state the Benchers may establish guidelines for the Executive Director regarding publication of information, and that the Executive Director 'shall,' (not 'may') publish orders and written decisions. Section 78(4) of the *Legal Profession Act* also does not limit the Law Society of Alberta from disclosing or publishing the name of the lawyer subject to a hearing, even if that hearing is held in private. However, there is nothing in the Act or the Rules that refers explicitly to the power of the Executive Director to publish citations.

Law Society of Saskatchewan

27. The Law Society of Saskatchewan calls their citations 'Formal Complaints.' Formal complaints are published in two sections on the website, under 'pending discipline matters' as well as 'discipline news'. However, the details of the citation are only included in the 'pending discipline matters' section, whereas the 'discipline news' section is more of a schedule. Saskatchewan's Rules explicitly set out the requirement of the Society to publish a Formal Complaint. The relevant provisions are contained in Rules 1124(3) and 1137(1). It should be noted that the Rules use the word 'shall,' which removes the discretionary power, and also make explicit that publication includes the Society's website.

Law Society of Manitoba

28. The Law Society of Manitoba publishes their citations on their website under the section of 'upcoming hearings' as 'nature of charges', which are very succinct (for example, Breach of Integrity [x3]). If there is no hearing date attached to the citation, it uses the phrase 'to be set'. There are no separate documents linked or attached to the list of upcoming hearings.

Manitoba's Act and Rules around publication of citations are more discretionary, for example the complaints investigation committee 'may' direct the publication of the name of the member and the nature of the matter being investigated. However, the Act adds in an additional consideration for the committee, in that it can publish the citation if the committee considers it necessary for the 'protection of the public'.

Law Society of Ontario

29. The Law Society of Ontario publishes their citations on their Tribunal's website, which is separate but linked to the Society's website. They list their hearings under an 'upcoming hearings calendar' and include links to the 'Notice of Application – Conduct' which details the allegations to be heard as part of the citation. The Law Society of Ontario has two relevant sections in Rules of Professional Conduct that may cover the power of the Law Society to issue a citation, albeit the rules are not explicit.

Options

30. There are really two options: maintain the status quo or amend the rule to remove the exercise of discretion. If the second option is chosen, a sub-option could be to include a provision that permits a lawyer against whom a citation has been authorized to apply to the Tribunal to anonymize the citation, setting out the criteria that the lawyer must establish in order for an application to be considered.

Option 1

31. The first option is to continue with the rule and the Executive Director's practice as it currently stands. This option might be defensible, as in the 30-plus years of citations being published and the Executive Director having discretion to publish, it appears that there have been only two cases of a successful challenge with Judicial Review (one being the most recent, the other in the 1990s).
32. However, as discussed above, this option risks an outcome that results in a citation not being published. Such a result is inconsistent with transparency of process and leaves clients of a lawyer who may be facing serious sanctions in the dark about the lawyer's alleged conduct, or about risks to the lawyer's continued ability to represent the client.
33. Permitting a discretion to remain in the rules also risks public interpretation that the Law Society may be inclined to exercise discretion against publication, in the lawyer's interest rather than in the public interest. Given the most recent decision against the Law Society, it may be desirable to amend the rule to prevent future challenges to the Executive Director's powers.

Option 2

34. The second option is to amend Rule 4-20(1) by, for example, replacing the word ‘may’ with ‘must’.
35. This option would make publication of citations mandatory, which may be criticised as inflexible. However, the option would bring the rule in line with the current practice and would best implement Standard 15 of the National Discipline Standards. It would send a public message that allegations regarding a lawyer’s conduct that have been approved for hearing are matters in which the public has a legitimate interest, and would allow the public to know both the name of a lawyer against whom a citation has been authorized and the date of hearing, which are important considerations given that hearings are generally to be held in public.
36. Recognizing that there may indeed be rare occasions where the public interest would support the anonymization of the citation, an amendment to the rule could incorporate a provision for a member to apply that the citation be published anonymously. If this option were to be pursued, it is recommended that the application be made to the Tribunal rather than to the Executive Director, akin to the process for anonymizing a hearing decision. The Committee recommends, if this option is accepted, that the opportunity to make an application be extended to a party or individual affected by the citation so that any affected person could apply to anonymise publication if harm can be established. The power to apply should be extended to the Law Society as well, in the event the interests of justice or fairness required the application but no other person was prepared or able to make it.
37. The benefit of including in the Rules a provision for anonymity is that it could establish the requirements for consideration of an application. It also would make explicit in the rule that the practice is for the Executive Director always to publish, unless the applicant can establish, on evidence before the Tribunal, certain requirements upon their application.

Recommendation

38. The Executive Committee recommends that the Benchers approve, in principle, amendments to Rule 4-20(1) to require the Executive Director to publish a citation on the website once the citation has been authorized and the respondent has been notified.
39. The Committee also recommends that the Benchers approve, in principle, amendments to the rule that would permit an application to the Tribunal for an order that the citation be anonymized, and that the criteria that must be established be set out in the rule.
40. In both instances, if the recommendations are approved in principle, the issue should be referred to the Act and Rules Committee to develop rules to implement the recommendations, and to return the matter to the Benchers to approve the rule changes.



Rule 10-1: Proposed Amendments to Permit Service through Member Portal

April 7, 2020

Prepared for:

Benchers

Prepared on behalf of:

Executive Committee

Purpose:

Proposed amendments to Rule 10-1

Purpose

1. The Executive Committee, acting in its role of considering regulatory policy matters and having considered a recommendation by staff, recommends amendments to Rule 10-1 in order to permit service through the Law Society Portal.

The Problem

2. At present, Rule 10-1 contemplates service by mail, electronic facsimile, or electronic mail and the only way to effect service apart from these standard methods is to obtain an Order for substituted service in accordance with Rule 10-1(2). The current methods of service clearly present some limitations.
3. In order to more efficiently address concerns surrounding the protection of privilege and confidential information, the Discipline Department has suggested an amendment to Rule 10-1 that will permit service via the Discipline Portal.
4. While the proposal contemplated that such service will primarily be used in situations where the other party refuses to respond to Law Society communications or attempts to evade service, the ability to use the Discipline Portal in this manner will provide the additional benefit of providing the Law Society with a secure method of sending large attachments to subject lawyers, where necessary, that contain third party information and documents otherwise protected by solicitor client privilege.

Background

Creation of the New Discipline Portal

5. The Discipline Department has recently developed its own specialized electronic portal that is accessible through the existing member portal.
6. The intention behind its creation is to use the Discipline Portal as a primary means of communicating with parties involved in the discipline hearing process. As well, both the Law Society and respondents have the ability to upload hearing-related documents and other communications to the Discipline Portal.
7. All individuals who become Law Society members are technically able to access the member portal. This includes non-practising members and former members. However, what is visible to each member varies depending on their practising status, insurance status, etc. For the purposes of the new Discipline Portal, members will see the “Regulatory Documents” tab only if citation file access is opened for them. When the citation file access is closed, they will no longer see

the “Regulatory Documents” tab and will no longer be able to read or upload documents to that citation file on the member portal.

8. When a document gets posted to the Discipline Portal, an email is generated informing the other party that there is a new document for them to review. If the document posted is a service document, the Discipline department would have the ability to customize the email to note that the recipient is being served.
9. The Manager of Discipline also has the administrative ability to monitor use of the portal and can determine whether or not a document has been viewed.

Current rules Regarding Service

10. When a lawyer is cited for misconduct as part of the Law Society’s discipline process, a notice of citation must be served pursuant to Rule 4-19:

4-19 The Executive Director must serve a citation on the respondent

(a) in accordance with Rule 10-1 [*Service and notice*], and

(b) not more than 45 days after the direction that it be issued, unless the Discipline Committee or the chair of the Committee otherwise directs.

11. Rule 10-1 describes the appropriate means of service and notice:

10-1 (1) A lawyer, former lawyer, articled student or applicant may be served with a notice or other document personally, by leaving it at his or her place of business or by sending it by

(a) registered mail, ordinary mail or courier to his or her last known business or residential address,

(b) electronic facsimile to his or her last known electronic facsimile number,

(c) electronic mail to his or her last known electronic mail address, or

(d) any of the means referred to in paragraphs (a) to (c) to the place of business of his or her counsel or personal representative or to an address given to discipline counsel by a respondent for delivery of documents relating to a citation.

(2) If it is impractical for any reason to serve a notice or other document as set out in subrule (1), the President may order substituted service, whether or not there is evidence that

(a) the notice or other document will probably

(i) reach the intended recipient, or

(ii) come to the intended recipient’s attention, or

(b) the intended recipient is evading service.

- (3) The President may designate another Benchler to make a determination under subrule (2).
- (4) A document may be served on the Society or on the Benchers by
- (a) leaving it at or sending it by registered mail or courier to the principal offices of the Society, or
 - (b) personally serving it on an officer of the Society.
- (4.1) A document required under the Act or these rules to be delivered to the President or the Executive Director must be left at or sent by registered mail or courier to the principal offices of the Society.
- (5) A document sent by ordinary mail is deemed to be served 7 days after it is sent.
- (6) A document that is left at a place of business or sent by registered mail or courier is deemed to be served on the next business day after it is left or delivered.
- (7) A document sent by electronic facsimile or electronic mail is deemed to be served on the next business day after it is sent.
- (8) Any person may be notified of any matter by ordinary mail, electronic facsimile or electronic mail to the person's last known address.
12. In several recent cases, citations have been authorized against lawyers who have refused to cooperate with the Law Society by advising of a place to serve documents on them or otherwise make themselves available for personal service.
13. Despite numerous attempts to serve these lawyers in accordance with the requirements of Rule 10-1(1), the Law Society has been forced to seek an Order for substituted service pursuant to Rule 10-1(2) of the Law Society Rules. This is because service via email would merely result in a bounce back and service to the lawyer's last known address or facsimile number would mean sending documents knowing the intended recipient would not receive them.
14. Accordingly, part of the requests made in the orders have included seeking the ability to post the notice to the lawyer's member portal on the Law Society's website. The member portal can be accessed by members using their username and password at www.lawsociety.bc.ca/labc/apps/members/index.cfm.

Protection of Privileged and Confidential Information

15. The main reason for seeking substituted service through the member portal has been to protect the confidential information of third parties from getting into the hands of anyone other than the subject lawyer.
16. In the course of its investigations and discipline process, the Law Society often obtains documents or information that are confidential or subject to solicitor client privilege pursuant to section 88(1.1) of the *Legal Professional Act*. While these documents or information may be used by the Law Society as evidence towards a citation, the Law Society has the responsibility

of protecting the disclosure of such information as if it were the person from whom that information was obtained. Section 88(2) of the *Legal Profession Act* reads as follows:

88(2) Despite section 14 of the *Freedom of Information and Protection of Privacy Act*, a person who, in the course of exercising powers or carrying out duties under this Act, acquires information, files or records that are confidential or are subject to solicitor client privilege has the same obligation respecting the disclosure of that information as the person from whom the information, files or records were obtained.

17. Ensuring that the Law Society protects third party or solicitor client privilege becomes a serious concern with regards to service, particularly in situations where the Law Society is aware that the subject lawyer cannot be reached through any of their previously known means of contact. Thus far, service through the member portal has negated this concern because it provides a secure means of uploading privileged and confidential documents while enabling the Law Society to meet its service obligations and obligations under section 88.

Discussion

18. Two options were considered: the status quo and the proposed amendment.

Status Quo (Order for Substituted Service)

19. The status quo does provide for a method of substituted service, such as the Discipline Portal, where the Law Society has been unable to serve a lawyer or former lawyer by one of the methods set out in Rule 10-1.
20. However, the process of seeking an Order for substituted service pursuant to Rule 10-1(2) can become rather onerous for the Law Society, as submissions must be prepared by Discipline Counsel and reviewed by the President or their designate before an order can even be made.
21. If the Law Society maintains the status quo, no rule amendments will be necessary. However, it means that the Law Society will have to continue seeking Orders for substituted service for all future instances where it seeks to serve documents through the existing electronic portal.
22. Given the intentions behind creating the Discipline Portal and the possibility of it providing a means of ensuring the Law Society meets its obligations under section 88(2) of the *Legal Profession Act*, the option of maintaining the status quo regarding service and Orders for substituted service is not preferable.

Amend Rule 10-1

23. Amending Rule 10-1 to allow for service through the Discipline Portal would allow the Law Society the option of effecting service in a more secure manner, thereby negating any risk to confidentiality and privilege, without having to go through the additional process of seeking an Order for substituted service to do so.

24. A review of other Canadian legal regulators did not reveal any legislation that expressly contemplates the use of an electronic portal for service. However, several provinces do have rules relating to service that might inform how an amendment to Rule 10-1 might be structured.

Electronic Method or Means

25. At present, Rule 10-1 only allows for service by registered mail, mail, courier, electronic facsimile, or electronic mail.¹

26. The same is true for Alberta.² However, Rule 83 of the Rules of the Law Society of Alberta further provides that where service of documents pertaining to a member's conduct (e.g. pre-hearing or hearing documents) in the ordinary course may be ineffectual, the Chair of the Conduct Committee may authorize a different method of service, which may include an "electronic method."

27. Rule 83(3) reads as follows [emphasis added]:

83(3) The chair of the Conduct Committee or a chair of a pre-hearing conference may authorize any method of service considered reasonable in the known circumstances, including

- (a) Service of a notice pursuant to this rule may be effected by publication in which case the notice
 - (i) shall be addressed to the person to be served,
 - (ii) shall contain such information as directed by the chair, and
 - (iii) shall be published at such time as the chair may direct.
- (b) Service of a notice pursuant to this rule may be effected by an electronic method where the person to be served has utilized communication by the same method to the Law Society in connection with the same proceeding and has not notified the Law Society that the addressee no longer subscribes to the information system which he or she utilized to communicate with the Law Society, in which case the notice
 - (i) shall be addressed to the person to be served,
 - (ii) shall contain such information as directed by the chair,
 - (iv) shall be transmitted at such time as the chair may direct, and
 - (v) shall be sent to the information system that had been utilized by the person to be served to communicate with the Law Society.
- (c) Service of a notice pursuant to this rule may be effected by any other method of service authorized by the chair of the Conduct Committee or a chair of the pre-hearing conference, subject in such case to the prior approval of the chair and to any instructions given by the chair in respect of the service of the document by that other method.

¹ Rule 10-1(1).

² Rule 4, Rules of the Law Society of Alberta.

28. Although this rule appears to contemplate service by email as the intended “electronic method”, the definitions of “electronic” and “electronic agent” have the same meanings as they have in the Alberta *Electronic Transactions Act*:³

- (a) “**electronic**” includes created, recorded, transmitted or stored in digital form or in any other intangible form by electronic, magnetic or optical means or by any other means that have similar capabilities for creation, recording, transmission or storage;
- (b) “**electronic agent**” means a computer program or any other electronic means used to initiate an act or to respond to electronic information, records or acts, in whole or in part, without review by an individual at the time of the initiation or response; [...]⁴

29. It should be noted that these definitions are broad enough to apply to an electronic portal and are also similar to those definitions contained in the BC *Electronic Transactions Act*.

30. Similarly, the Manitoba Law Society Rules use the term “electronic or other means” [emphasis added] in its description of applicable methods of service:

5-78(3) Service on a member of a charge under subsection (2) may be effected by:

- (a) serving the member personally;
- (b) sending it by registered mail to the member’s last known address; or
- (c) serving it personally on the member’s counsel or delivering a copy to the member’s counsel by electronic or other means.

31. Amending Rule 10-1 to include a more broad term like “electronic method” or “electronic means” would likely capture service through the Discipline Portal, as well as any future electronic portals used by the Law Society in its various proceedings, and not be restricted solely to email and facsimile as it currently is.

Deemed Service

32. In addition to amending Rule 10-1 to allow for service via the more broad “electronic method” or “electronic means”, consideration must be given as to how and when such service will be considered deemed.

33. In Ontario, The Law Society Hearing Division Rules of Practice and Procedure govern service of documents pertaining to regulatory hearings and appeals involving Ontario lawyers and paralegals are conducted by the Law Society Tribunal. Rule 10.04, in particular, provides that service will be deemed effective so long as it is done using the contact information provided by

³ Rule 83(1), Rules of the Law Society of Alberta.

⁴ *Electronic Transactions Act*, Statutes of Alberta, 2001, Chapter E-5.5, s. 1.

the member. This appears to be the case regardless of whether or not the member actually receives the documents.

Contact information in the Society's records

10.04 For this Rule and Rule 9, service on a licensee using contact information provided to the Society under By-Law 8, ss.3 and 4 shall be deemed effective unless otherwise ordered by the Tribunal.

34. Here in BC, the rule is actually more comprehensive. Subsections (5) to (7) of Rule 10-1 describe exactly when service is deemed depending on how it was effected.
35. If Rule 10-1 is amended to allow for service via an “electronic method” or “electronic means” (i.e. the Discipline Portal), a similar provision will also be required to explain how and when such service is considered deemed. It seems to make the most sense if the amendment mirrors subsection (7) which deems service on the next business day after a document is served by electronic mail or electronic facsimile.

Recommendation

36. The Executive Committee recommends that Rule 10-1 be amended to allow for the possibility of service through the Discipline Portal. Doing so will improve confidentiality in Law Society processes moving ahead with technology, and can improve efficiency in Law Society processes at the same time.
37. In order to effect this change, staff recommends an amendment to Rule 10-1 that:
 - (a) Expand the available electronic methods of service to include a provision describing a broad definition of “electronic method” or “electronic means” that would allow for service via an electronic portal; and
 - (b) Provide that service via this expanded electronic method or means is deemed to be served on the next business day after it is sent, in keeping with the current Rule 10-1(7) for service via electronic mail and electronic facsimile.
38. The Committee recommends, however, that for service through the Discipline Portal to be effective, some provision be built into the rule to ensure the party receiving service be required to be notified as well through some other form of communication, which could include email.
39. In the event the recommendation is accepted, the matter should be referred to the Act and Rules Committee to prepare the necessary rule amendments to be returned to the Benchers for approval.



Students who Fail the Professional Legal Training Course: Recommendation to Amend the Law Society Rules

Credentials Committee

April 8, 2020

Prepared for: Benchers

Prepared by: Credentials Committee

Purpose: Approval in Principle to amend rules

Purpose of Report

1. This Report discusses the policy considerations and the recommendation of the Credentials Committee that the Benchers approve in principle that the Law Society Rules be amended to vest discretion in the Executive Director to grant a second or third opportunity to complete the Professional Legal Training Course.

Issue and Recommendation

2. The Credentials Committee has considered the current policy as reflected in the Rules on Students Who Fail the Professional Legal Training Course (“PLTC”) and, specifically, those students who come before the Credentials Committee to seek a second or third opportunity to write an examination(s) or assessment(s). In particular, the Committee considered whether its existing discretion to permit students a second or third opportunity at any one or more of the PLTC assessments or examinations ought to continue to fall under the discretion of the Credentials Committee or whether the discretion ought instead to be exercised by the Executive Director.
3. The Committee noted that its current practice indicates that a student’s request for a second or third opportunity will invariably be granted and because of this, over time it has become the norm to place these requests on the Committee’s consent agenda.
4. As a result, the Committee has considered the policy issues and recommends that the Benchers approve in principle that the discretion to grant articling students a second or third opportunity to complete a PLTC examination(s) or assessment(s) be given to the Executive Director and that the matter be forwarded to the Act and Rules Committee to draft the required rule amendments.

Background

5. Originally, a student who had failed examinations or assessments could apply an unlimited number of times for an opportunity to retake the failed criteria. Third opportunities to write an examination or assessment had become the norm as far back as the early 1990’s. By 1998, the Committee created a policy that attempted to make the third opportunity an extraordinary remedy and in all likelihood the last opportunity, but since the Committee continued to receive requests for fourth and occasionally even a fifth subsequent attempts, the Benchers approved a proposal by the Committee that the Committee’s discretion to grant unlimited opportunities be taken away.
6. Rules were therefore adopted in 2004 to limit the number of times a student could apply to the Credentials Committee and, what is now Rule 2-74(2) was approved. This rule provides that a

student may not apply to the Credentials Committee for a review of their failed standing if the student has failed in three attempts to pass the course.

7. Following adoption of the current Rule, requests for third opportunities come to the Committee, which considers and routinely grants such requests. It has now become the norm to place these requests on the consent agenda where matters are proposed to be dealt with by unanimous consent and without debate.

The Current Process and Problem to be Addressed

8. To achieve an overall Pass standing, a student must successfully complete the four skills assessments and the two PLTC examinations, as well as complete all of the assignments.
9. A student who fails one or two assessments or examinations has an overall Remedial standing. Rule 2-72(6) specifically gives the Executive Director the discretion to allow the student to re-attempt the failed assessment(s) or examination(s). There is no “formal” request or approval process in place for a second attempt.
10. A student who fails three or more assessments and/or examinations on the first attempt, or who fails any one or more assessments and/or examinations for the second time, has an overall FAIL standing and must apply to the Credentials Committee for permission to reattempt the failed components under Rule 2-74. Students are advised that completed submissions to the Committee should include:
 - a) A letter requesting an opportunity to redo the failed PLTC work. This should include:
 - i) the relief sought (e.g. another opportunity)
 - ii) the reason(s) the Committee should consider the request;
 - iii) an explanation for the failed work, including any exceptional circumstances that may have contributed to the failed standing;
 - iv) steps that have been, or will be, taking to ensure any such exceptional circumstances do not continue to be a problem; and
 - v) a detailed education and study plan that demonstrates all efforts made, or will be making, and any help obtained to remediate successfully.
 - b) A submission from the principal advising whether the student should be given further remedial opportunities. The principal should also indicate:
 - i) the firm’s willingness and specific plan to provide special training in the areas the student failed;
 - ii) the firm’s continued support of the student’s efforts to successfully complete PLTC; and

the firm's willingness to extend the student's articles if the Credentials Committee so recommends.

11. Upon receipt of the submissions from the student and the principal, the Deputy Director, PLTC prepares a report for the Committee's consideration and a recommendation regarding the relief sought. If the Deputy Director's recommendation is that the student ought to be granted the relief that is being sought, the matter is placed on the consent agenda of the Committee at the next upcoming meeting.
12. Given that a student's request for a second or third opportunity seems to always be granted, the Credentials Committee recognized that vesting the discretion in the Executive Director could improve operational efficiencies and the process would result in decisions being made more quickly.

Options

13. Three main options were considered:

- Maintain the status quo;
- Amend the Rules to permit the Executive Director to exercise the discretion to allow a student a second or third opportunity to write one or more remedial assessments or examinations;
- Amend the Rules to create automatic permission for a student to have three opportunities to write one or more remedial assessment or examination.

14. The Credentials Committee considered each of the options and noted the following points:

Maintaining the Status Quo

15. In applying for a review of their failed status, students must set out either compassionate grounds or grounds based on their past performance, and relief sought in their applications. Applications must be received within 21 days after the date the student received his or her PLTC transcript. The Committee may then consider any submission made by PLTC, the student, the principal, or any other person who can provide relevant information with regard to the application. The Committee may also invite the student and principal to meet informally with the Committee; however, students are normally invited only when the student has failed badly or PLTC staff disagree with the relief sought by the student.
16. Requiring students to reflect on "what went wrong" and spend some time working on an educational and study plan to remediate successfully is beneficial. Likewise, ensuring that the student's principal and firm are involved to provide support to the student is helpful.

17. Having said that, depending on the timing of the Committee meetings, students must wait for a decision of the Committee before being able to embark on the next steps. This can, in some instances, increase the anxiety of the students as they are unfamiliar with the process and the scheduling involved.
18. In addition, the process from a staff and Committee perspective is time consuming. Staff is required to collect all of the information and write a report to the Committee for consideration. While the materials are placed on the consent agenda, the Committee is still required to review the materials to ensure that they are in agreement with the recommendations.

Amending the Rules to permit the Executive Director discretion

19. Amending the Rules to permit the Executive Director to exercise the discretion to allow a student a second or third opportunity to write one or more assessments or examinations would provide more timely decisions to the students thereby allowing them to move forward.
20. It would also alleviate the Committee's time in reviewing the materials and staff time in preparing reports for the Committee.
21. The process itself could remain the same, in that students and principals could still be required to provide submissions for the Executive Director's consideration in the same way that they are currently required to make submissions to the Credentials Committee.
22. In the event the Executive Director is not willing to exercise discretion to allow for a second or third opportunity, the matter would then be referred to the Credentials Committee for consideration, as contemplated by Rule 2-51.

Amending the Rules to permit an automatic third attempt

23. Amending the Rules to permit students an automatic third attempt would alleviate decisions having to be made by either the Committee or the Executive Director. An automatic third opportunity would remove any uncertainty for the students that the Committee or the Executive Director may not exercise discretion and grant the third opportunity.
24. It would also alleviate the necessity for a student to have to make submissions. This would, however, remove what the Committee considers to be a beneficial step in having a student reflect on their past performance and develop a plan for success.
25. Some may criticize the result as a relaxation of standards. However, as third opportunities are routinely granted now, that concern may already exist.

Discussion and Analysis

26. The Committee considered this issue in light of the efficiency of process given what current practice has developed.
27. The benefit of the status quo is that it sets out a process to suggest to students that a third opportunity to pass a failed item in PLTC is not a given. It focuses the student on the need to make a rationale that the Committee should exercise its discretion to grant the opportunity, and this may better focus the student's mind and practices toward success.
28. Requiring the student to come before the Committee seeking a third opportunity does reflect the importance that the student should attach to the application. Taking matters up to a benchers committee in order to seek a favourable exercise of discretion has a focusing effect and has the benefit of impressing on the student the seriousness of the matter.
29. In order to reflect on the serious nature of the request, a requirement that the applicant make a request to the Executive Director, which can therefore be handled by staff based on guidelines established by the Committee, has the benefit of reinforcing the serious nature of the request on the applicant, but not tying up staff time in preparing materials for an agenda which results in approval by consent without discussion.
30. The Committee considered whether the Legal Profession Act permits the Executive Director to make such decisions.
31. Section 11(1) of the *Legal Profession Act* gives the Benchers rule-making power:

11(1) The benchers may make rules for the governing of the society, lawyers, law firms, articulated students and applicants, and for the carrying out of this Act.
32. Section 3 of the Act sets out the object and duty of the Law Society to uphold and protect the public interest in the administration of justice by:

(c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission.
33. The question is whether it is reasonably within the authority granted by the Act to change the entity that can consider an application for a third opportunity to redo a PLTC examination(s) or assessment(s) from the Credentials Committee to the Executive Director.
34. Some rules vest discretion in the Executive Director to make a decision (such as 2-72(6) that permits the Executive Director to allow a student a second opportunity to pass an examination or assessment), while other rules vest discretion in committees to make a decision. Other rules

could be considered hybrid in that there is a right for review of the Executive Director's decision by a committee. This is the case under Part 2, Division 2, of the Law Society Rules. Specifically, Rule 2-51 provides:

- 2-51(1) The Executive Director may refer any matter for decision under this division to the Credentials Committee.
- (2) At the written request of a lawyer, former lawyer, articled student or application affected by a decision made by the Executive Director under this division, the Executive Director must refer the matter to the Credentials Committee.
- (3) When the Executive Director refers a matter to the Credentials Committee under this rule, the Committee may make any decision open to the Executive Director under this division and may substitute its decision for that of the Executive Director.

Recommendation

35. After consideration, the Committee concluded that in order to best addresses the policy issues raised including:

- the problem of delay for the articled students;
- the beneficial step in having a student reflect and develop a plan for success along with involvement from the student's principal and firm; and
- the operational inefficiency caused by the existing rule.

it would be reasonable to delegate the discretion to the Executive Director to grant a student a second or third opportunity if that is the relief that the student is seeking.

36. If the Executive Director does not exercise his or her authority to grant the relief, the articled student can request that the matter be referred to the Credentials Committee pursuant to Law Society Rule 2-51. In fact, as a matter of practice, if the Executive Director decides not to grant the third opportunity, the matter could automatically be referred to the Credentials Committee.

37. As a result, the Credentials Committee recommends that the Law Society Rules be amended to vest discretion in the Executive Director to grant a second or third opportunity to complete a PLTC examination(s) or assessment(s).

Recommended Reading

Opinion pieces by Jordan Furlong (<https://www.law21.ca/blog/>)

- [Pandemic I: What we're up against](#)
- [Pandemic II: Justice system down](#)
- [Pandemic III: Justice reconstructed](#)
- [Pandemic IV: Lawyer formation disrupted](#)
- [Pandemic V: Lawyer formation rescued](#)
- [Pandemic VI: Lawyer formation re-engineered](#)
- [Pandemic VII: Law firm essentials](#)



Memo

To: Benchers
From: Access to Justice Advisory Committee
Date: March 6, 2020
Subject: A Legal Aid Strategy for the Law Society of British Columbia

Background

In the “Mandate Letter” to the Chair of the Access to Justice Advisory Committee at the beginning of the year, the President asked that the Committee “consider whether we require an ongoing legal aid strategy, and if so, what it would be.” The request operates in the context of the decision to dissolve the Legal Aid Advisory Committee and move its monitoring and advising function into the Access to Justice Advisory Committee.

Analysis

In March 2017 the Benchers unanimously adopted the Law Society of British Columbia’s Vision for Publicly Funded Legal Aid (“Vision”) (**Appendix 1**). The Vision is an important policy document because it articulates the Law Society’s position on legal aid. As a reference point, the Vision allows the Law Society to respond to issues involving legal aid in a principled manner. It is included to provide context for the recommended legal aid strategy.

In many ways, the Vision is an aspirational statement. It envisions a type of legal aid that has never existed and may never come to pass. The Committee is of the View that if the Vision is to remain vibrant, and if the Law Society is to maintain the credibility it achieved through creating the Vision and engaging openly about the importance of legal aid, then the Law Society requires a legal aid strategy.

The Committee created the appended legal aid strategy (**Appendix 2**). The strategy is a high-level, flexible approach. Because external factors impact legal aid, the strategy needs to be responsive to developments outside the Law Society’s control. The strategy supports the role of the Committee to monitor developments and advise the Benchers from time to time as to whether the Society requires allocating additional resources towards discrete issues involving legal aid.

Recommendation

Recommendation: **Be it resolved** that the Law Society adopt the legal aid strategy set out in **Appendix 2** to this memorandum.

/DM

/Appendices

Appendix 1: Law Society Vision for Publicly Funded Legal Aid in British Columbia

WHEREAS

The rule of law is the foundation of our democratic society. Every person must have the opportunity to understand how the rule of law affects their daily lives. Legal Aid is an essential service necessary to ensure all persons have that opportunity and understand its effect and to access our justice system.

RECOGNIZING

Access to justice is a fundamental human right, and:

- (a) Our democratic society cannot exist without the rule of law, and the rule of law depends on all people having meaningful and effective access to justice,
- (b) not all people in society have the ability or means to access justice,
- (c) Indigenous people are uniquely and historically disadvantaged in their access to the legal system and legal aid, and
- (d) publicly funded legal aid plays an essential role in achieving the goal of access to justice,

The Law Society of British Columbia's vision for publicly funded legal aid is as follows:

The purpose of legal aid should be to:

- a) support the ability of all people to access justice and specifically to protect the rights of the most disadvantaged and vulnerable members of society;
- b) assist people in the exercise of those rights, to obtain appropriate remedies, and to enjoy the benefits of professional legal advice concerning those remedies,

- c) advise people about the obligations and responsibilities imposed on them as members of a democratic society, subject to the rule of law. [Commentary 1 below]

All people, regardless of their means and without discrimination, should have access to legal information and publicly funded professional legal advice to assist them in understanding whether their situation attracts rights and remedies or subjects them to obligations or responsibilities.

In particular, the most disadvantaged and vulnerable people in our society are entitled to additional publicly funded legal services, up to and including legal representation before courts, tribunals, and alternative dispute resolution methods inclusive of the legal advice necessary for proper access to justice. Provision of these services may also need to take into consideration the financial means of the individual and the nature of the matter. [Commentary 2 below]

The access to these additional services should seek to balance the ability of the person to access similar services in the free market with due consideration of the potential impact of the situation on the person's life, liberty or security. [Commentary 3 below]

It is essential that consultation with Indigenous Communities develop culturally appropriate systems for the delivery of professional legal services and legal aid. Consultation and collaboration with Indigenous Communities, the courts, social and other government services is necessary. The Federal Government has a heightened responsibility to ensure such services are adequately supported with both policies and funding.

Legal Aid should provide professional legal services that cover the following:

- (a) Matters that involve the state against the individual where the liberty or security of the individual is at risk; [Commentary 4 below]
- (b) Children whose security of the person is at risk; [Commentary 5 below]
- (c) People with mental or intellectual disabilities that impair their liberty, safety, or access to government or community services; [Commentary 6 below]

- (d) Family law in circumstances where the physical, economic, or emotional security of a family member is at risk; [Commentary 7 below]
- (e) Persons disadvantaged due to circumstances of poverty; [Commentary 8 below]
- (f) Immigrants and refugees. [Commentary 9 below]

Legal aid is an essential public service and, as such, governments bear the responsibility to fund legal aid to the degree necessary to achieve these purposes and objectives.

COMMENTARY

Commentary 1: DIAGNOSIS / ISSUE IDENTIFICATION

These publicly funded professional legal services should enable the individual to be aware of the relevant services, whether within the formal institutional justice system or within the alternative dispute resolution systems. These services should include information about both in-person assistance and technological platforms for in-person or remote access. This diagnostic service should be universal.

Commentary 2: REPRESENTATION AND ADVICE

For the enumerated categories of subject matter, individuals who qualify based on a financial means test should have access to the services of a lawyer or a non-lawyer legal service provider who is able to provide legal advice and/or representation as may be appropriate.

Commentary 3: ELIGIBILITY

The public must have confidence in the legal system and delivery of legal aid. The limits of funding will, of necessity, limit the scope of the services that can be provided. Any financial means test or limit on the provision of legal services must balance principles and pragmatism. The principles that guide eligibility must not be governed solely by budgetary considerations. This may require consideration of sliding scales of eligibility based on the nature of the issue.

Commentary 4: GOVERNMENT ACTION AGAINST THE INDIVIDUAL

It is fundamental to the rule of law that government and its agents are subject to laws. To ensure this, it is necessary that individuals whose life, liberty or security of the person is at stake as a result of state action have access to a certified, regulated and independent legal professional in order to defend any action brought by the state. In order for the justice system to work, it is necessary for those facing a criminal charge to have access to a full answer and defence and that requires that the professionals who provide the defence receive fair compensation for their services.

Commentary 5: CHILDREN AT RISK

Children are among the most vulnerable members of our society and in circumstances where children's safety, survival or development is at risk it is essential that adequate legal and social services be available. Canada has ratified the United Nations Convention on the Rights of the Child, which requires that "State Parties shall ensure to the maximum extent possible the survival and development of the child."¹ The provision of professional legal services is critical when a child requires access to the services directly and not through the intermediation of a parent or guardian.

Commentary 6: MENTAL OR INTELLECTUAL DISABILITIES

People with mental or intellectual disabilities are among the most neglected and vulnerable members of the community in need of the provision of professional legal services when they face matters dealing with their liberty, safety, or access to government or community services. It is essential such services operate in an appropriate mental health network that treats the underlying cause and not merely the particular symptom or manifestation of the illness or disability. As with other areas that merit coverage, this is first and foremost a social problem. Where legal issues intersect with social problems it is essential that there be cooperation between the legal and social work communities and also between the Ministry of Justice and the various other government ministries that have oversight of health and social portfolios.

¹ Article 6.2.

Commentary 7: FAMILY LAW

Matrimonial discord and separation can trigger family violence, emotional and financial crises. Family members have a right to be protected from physical and emotional harm. Vulnerable family members have a right to financial support. Family members in need must be able to access legal assistance in order to obtain such protection and financial support. Without legal assistance there may be no meaningful access to justice, with the consequence that vulnerable family members, particularly children, are at risk of physical harm, emotional trauma and economic insecurity. This in turn can lead to additional draws on already scarce community resources such as police, healthcare, mental health services, social assistance, women's shelters, housing subsidies and homeless shelters. As well, the slide into poverty that often accompanies family separation is difficult to overcome.

Legal aid coverage for family law services should provide the necessary assistance for vulnerable family members in obtaining protection for them from family violence, obtaining basic necessities of life through enforceable support orders and agreements, and in achieving some degree of stability in housing, schooling and employment.

Commentary 8: FINANCIALLY DISADVANTAGED PERSONS

Poverty law services should be included in legal aid and developed to address current needs in society. The purpose of the services should be to facilitate access to essential legal and social services for people who are living in poverty and are unable to access such services. This should include coverage for matters that will reduce the likelihood of the individual becoming, or remaining, trapped in a cycle of poverty.

Commentary 9: IMMIGRANTS AND REFUGEES

Legal aid services should be available for immigrants and refugees in need. It is particularly important to provide legal assistance for immigrants and refugees at risk of deportation or involuntary return to a country where such a return places the individual's life or security of the person at risk.

Appendix 2: Law Society of British Columbia’s Legal Aid Strategy

Goal:

The Law Society of BC will be, and be seen to be, a strong champion for publicly funded legal aid in BC.

Guiding Principles:

1. The Law Society will be guided by the Law Society’s *Vision for Publicly Funded Legal Aid*;
2. The Law Society will take a constructive and collaborative approach to championing legal aid in BC;
3. The Law Society’s positions on legal aid will be based on consultation, research and evidence.

The core principles of legal aid strategy:

The Law Society’s legal aid strategy involves supporting the following core principles of legal aid:

1. Eligibility for legal aid should be fair and reasonable;
2. The services provided by legal aid, the types of legal problems and scope of geographic coverage, meet the essential public needs for legal services.;
3. The tariff rates paid to legal aid lawyers should be fair and reasonable.

The strategy should involve monitoring the extent to which legal aid addresses the three core principles, and determining whether the Law Society needs to take particular action.

The Law Society’s *Vision for Publicly Funded Legal Aid* is the reference point from which analysis of future legal aid developments will be assessed.

Government and the Association of Legal Aid Lawyers (“ALL”)

The Law Society’s legal aid strategy recognizes that the government of British Columbia and ALL are exploring a framework for future negotiations regarding legal aid in which ALL is the official negotiating party. How these negotiations progress will impact the appropriate response by the Law Society.

How to analyze matters covered by the government and ALL's negotiating framework:

For matters covered by the framework between the government and ALL, the Law Society should:

1. Monitor the negotiations;
2. Be available for consultation;
3. Provide constructive feedback where appropriate;
4. Where appropriate, recommend a strategy to the Benchers.

How to analyze matters covered not by the government and ALL's negotiating framework:

For matters not covered by the government and ALL's negotiating framework, the Benchers shall determine the most effective means of analyzing the issue: (e.g. the Access to Justice Advisory Committee, a working group, another committee, staff, etc.).

The group which is assigned the task shall:

1. Determine what is the issue or problem (the core legal aid principle) we are trying to address;
2. Consider whether issue or problem relates to the Law Society's Vision for Publicly Funded Legal Aid;
3. If so, develop potential solutions or strategies based on consultation, evidence and research;
4. Consider the information / evidence with respect to the issue, and whether further information gathering is necessary. Here the Law Society may rely on existing research, as well as engage in consultations and/or discrete research;
5. Where appropriate, recommend a strategy to the Benchers.

The Law Society
of British Columbia



Quarterly Financial Report

February 29, 2020

Prepared for: Finance & Audit Committee Meeting - April 2, 2020
Bencher Meeting - April 17, 2020

Prepared by: The Finance Department

Quarterly Financial Report - to the end of February 2020

Attached are the financial results and highlights to the end of February 2020, along with information on a number of areas that will likely be impacted by the COVID-19 crisis.

The first quarter results to the end of March 2020 are not available due to the timing of the FAC and Bencher meetings.

General Fund

General Fund (excluding capital and TAF)

To the end of February 2020, the General Fund operations resulted in a positive variance to budget mainly due to the timing of operating expenses.

Revenue

Revenue was \$4.9 million \$105,000 (2%) over budget, which is primarily due to a higher than projected number of lawyers and slightly higher than expected program recoveries.

Operating Expenses

Operating expenses were \$4.2 million, \$248,000 (5%) below budget mainly due to the timing of expenditures.

2020 Forecast - General Fund (excluding capital and TAF)

At this time, we are forecasting to be unfavorable compared to budget in a few key areas. All of these items relate to timing issues for revenues and expenses from 2019, resulting in a negative variance to budget of \$1 million overall.

Operating Revenue - Forecast

In 2020, there was approximately \$500,000 in D&O insurance recoveries that were budgeted, but these recoveries were received in 2019. Therefore, there will be a negative variance to budget of \$500,000 in 2020.

Operating Expenses - Forecast

In 2019, there was \$400,000 budgeted for external counsel fees for certain files but these costs will be incurred in 2020, creating a negative variance to budget. In addition, \$100,000 was budgeted in 2019 to develop policies related to law firm regulation. As this work has carried over into 2020, these costs will lead to a

negative variance to budget in 2020. In summary, there will be a negative variance to budget in 2020 of \$500,000 for these two expense areas.

Impact of COVID-19

We are also monitoring a number of areas closely as they will likely be impacted by the COVID-19 crisis.

Operating Revenue

Practice Fees: The number of full-time equivalent practicing lawyers is currently at 12,665, compared to a budget of 12,846. We expected to be slightly ahead of this budget, but with the crisis, this may not happen. We may see lawyers moving to non-practicing or retired status and there may be a decline in PLTC students and fewer transfers, thereby reducing the number of practicing lawyers, and practice fees.

PLTC Revenue: PLTC revenue is budgeted at 638 students. The actual number of students may be lower as the status of the May session is unknown, and some articling students may lose their articling positions. This would be offset slightly by a reduction in PLTC expenses.

Electronic Filing Revenue: Lower real estate unit sales will result in lower electronic filing revenue.

Miscellaneous Revenue: There will likely be a reduction in transfer fees, law corporation registration fees, and temporary articles, along with reduced activity in other miscellaneous revenues and recoveries.

Interest Revenue: There will be a reduction in interest revenue due to lower cash balances held, lower interest rates, and deferrals of the LIF instalment fee payments.

Operating Expenses - Areas being monitored

There may be savings in the following expense areas:

- Operations - Operations costs, such as printing, paper, office supplies and postage.
- Benchers and committee meeting costs - As meetings will be conducted virtually, there will be savings of approximately \$20,000 per set of Benchers/Thursday committee meetings.
- Salaries - Some vacant positions may not be filled right away due to the crisis, resulting in higher than expected staff vacancy savings.

- PLTC - There may be savings in certain PLTC costs if the number of students decreases.
- External Counsel/Forensic Accounting Fees - Work on external files may be delayed, or there may be delays in sending files out, leading to external fee savings.

There will be increases in expenses in the following expense areas:

- IT expenses related to new software and hardware requirements, such as Zoom, Jabber and laptops, plus increased use of conference calling.
- Online courses - there will be additional costs related to the development of the TRC course and moving current online courses to the D2L platform.

TAF-related Revenue and Expenses

TAF receipts of \$204,000 were received after the year-end financial statement cutoff in 2019. First quarter 2020 TAF revenue is not received until the April/May time period. Trust assurance program costs are close to budget.

With the current economic conditions, it is expected that real estate unit sales will decrease, leading to reduction in TAF revenue for the year. It is difficult to project this, but as an example, during the 2008 financial crisis, TAF decreased 30%, and during the 2016 real estate market slowdown, TAF decreased 20%. It should be noted that there is a 6 month TAF reserve of \$1.7 million to help offset a temporary reduction in TAF revenue.

Special Compensation Fund

The Special Compensation Fund continues to incur costs related to document production for past files.

Lawyers Indemnity Fund

LIF fee revenues were \$2.7 million in the first two months of the year, just over the budget. LIF operating expenses were \$1.1 million compared to a budget of \$1.4 million, with savings related to staff vacancy savings and the timing of external counsel fees and consultant costs.

At the end of February 2020, the market value of the LIF long term investment portfolio was \$187.9 million. The LIF long term investment portfolio return to February was -1.68%, slightly below the benchmark return of -1.04%.

Since the end of February, the equity markets have decreased significantly. On March 18th, the S&P/TSX Composite index was down 31%, and the MCSI World index was down 22%. As the LIF portfolio has a diversified asset mix, holding equities, bonds, real estate and mortgage funds, the LIF portfolio was down 12%.

Update on Implementation of Revised Asset Mix – LIF Investments

As approved by the Benchers in December 2019, we would like to provide an update on the implementation of the revised asset mix of the LIF portfolio.

In summary, the asset mix changes will reduce fixed income and equity allocations and increase alternative investments, specifically infrastructure funds, to 30%, and increase mortgage funds from 10% to 20%. Infrastructure assets refers to physical, long life assets that are required for the proper functioning of an economy, such as airports, water utilities, renewable energy, parking lots, and hospitals.

This decision is being implemented through the following transition plan:

- 1) Commit to the infrastructure fund managers and await capital calls;
- 2) Terminate one balanced manager, Beutel Goodman. The infrastructure funds will be held by Fiera Capital on a temporary basis until the infrastructure managers begin calling the committed funds. This is expected to take between 6-18 months.
- 3) Move the additional 10% of assets to ACM mortgage funds.

In order to complete the transition in a reasonable amount of time, and to smooth out the exposure to stock market volatility, we are transitioning from Beutel to Fiera and ACM in three equal amounts at the end of each month, beginning on April 30th and ending June 30th.

Fiera's target mix will be adjusted over time so that the overall allocation to equities and fixed income will gradually move towards the long-term target allocation in effect when the infrastructure mandate is fully funded.

Markets have seen a significant correction during the end of February and throughout March 2020 due to the COVID-19 pandemic. Market volatility is expected to continue but the focus is on the long-term sustainability of the Society's portfolio. Regardless of the recent downturn, we continue to believe a shift towards illiquid asset classes, particularly infrastructure equity, will enhance the portfolio's diversification and result in better risk-adjusted returns over time.

Summary of Financial Highlights - Feb 2020 (\$000's)

2020 General Fund Results - Feb 2020 (Excluding Capital Allocation & Depreciation)				
	<u>Actual</u>	<u>Budget</u>	<u>\$ Var</u>	<u>% Var</u>
Revenue (excluding capital)				
Practice fees	4,017	3,956	61	2%
PLTC and enrolment fees	26	23	3	13%
Electronic filing revenue	109	117	(8)	-7%
Interest income	101	97	4	4%
Credentials & membership services	120	101	19	19%
Fines, penalties & recoveries	142	80	62	78%
Other revenue	103	138	(35)	-25%
Building revenue & tenant cost recoveries	242	243	(1)	0%
	<u>4,860</u>	<u>4,755</u>	<u>105</u>	<u>2%</u>
Expenses (excluding depreciation)	<u>4,228</u>	<u>4,476</u>	<u>248</u>	<u>6%</u>
	<u>632</u>	<u>279</u>	<u>353</u>	

Feb 2020 General Fund Forecast (Excluding Capital Allocation & Depreciation)		
	<u>Avg # of Members</u>	
Practice Fee Revenue		
2019 Budget	12,383	
2019 Actual	12,572	
Feb 2020 Actual	12,665	
2020 Budget	12,846	
2020 Forecast- unknown given uncertainty	-	
		<u>Variance</u>
Known Variances		
Revenue:		
D&O Insurance Recoveries- \$500,000 budgeted in 2020 but already collected in 2019		(500)
Expenses:		
Additional external counsel fees - primarily due to carry over of files from 2019		(400)
Law firm regulation - policy development work budgeted in 2019, work in 2020		(100)
		(500)
Feb 2020 General Fund Variance to Budget - known timing differences from 2019 results		<u>(1,000)</u>
<u>Potential variances as a result of COVID-19 crisis that will be monitored - too early to forecast</u>		
In revenue we may see:		
Reductions in practice fee revenue, with an increase in status changes to non-practicing or retired, and fewer calls and transfers		
Reductions in PLTC fees if May session cannot go ahead or students lose articling positions		
Reductions in Electronic Filing Revenue - lower real estate unit sales (unit sales reduced 30% in 2008 financial crisis)		
Reductions in misc revenue - transfer fees, law corp fees, temporary articles, fines and penalties waived or deadlines extended		
Reduced interest income due to lower cash balances held and lower interest rates		
In expenses we could see:		
Savings in operations expenses related to staff working from home		
Savings in Bencher/committee meeting costs related to virtual meetings - Savings of approx \$20,000 per Bencher/comm meeting		
Savings in Salaries if hiring of new staff is delayed		
Savings in PLTC costs related to reductions in students taking PLTC		
Savings in external counsel fees if firms cannot work on files or files are delayed due to crisis		
Savings in forensic accounting fees if 4-55's are done internally or delayed due to crisis		
Additional IT expenses related to new software, hardware and increased usage of zoom and conference calling		
Additional spending is expected for online courses - TRC course development and moving current courses to D2L platform		

Trust Assurance Program Actual				
	<u>2020 Actual</u>	<u>2020 Budget</u>	<u>Variance</u>	<u>% Var</u>
TAF Revenue- related to prior year	204	-	204	
Trust Assurance Department	514	584	70	12.0%
Net Trust Assurance Program	<u>(310)</u>	<u>(584)</u>	<u>274</u>	
<u>Potential Variances as a result of COVID-19</u>				
If the real estate unit sales dropped 25%, and there was a TAF revenue reduction of \$875,000, would use half of the TAF reserve				
Note: during 2008 financial crisis, TAF reduced 30%, during 2016 real estate market drop, TAF reduced 20%				

2020 Lawyers Indemnity Fund Long Term Investments - YTD Feb 2020* Before investment management fees	
Performance	-1.68%
Benchmark Performance	-1.04%
*Quarter end March investment results not yet available, at March 18th, portfolio is down 12% ytd	

The Law Society of British Columbia
General Fund
Results for the 2 Months ended February 29, 2020
(\$000's)

	2020 Actual	2020 Budget	\$ Variance	% Variance
Revenue				
Membership fees (1)	6,249	6,195	54	1%
PLTC and enrolment fees	26	23	3	13%
Electronic filing revenue	109	117	(8)	-7%
Fines, penalties and recoveries	142	80	62	78%
Application fees	120	101	19	19%
Interest income	101	97	4	4%
Other revenue	103	138	(35)	-25%
Building Revenue & Recoveries	242	243	(1)	0%
Total Revenues	7,092	6,994	98	1.4%
Expenses				
Regulation	1,701	1,749	48	3%
Education and Practice	747	709	(38)	-5%
Corporate Services	483	555	72	13%
Bencher Governance and Board Relations and Events	290	332	42	13%
Communications and Information Services	361	441	80	18%
Policy and Legal Services	337	403	66	16%
Occupancy Costs	309	287	(22)	-8%
Depreciation	163	200	37	19%
Total Expenses	4,391	4,676	285	6.1%
General Fund Results before Trust Assurance Program	2,701	2,318	383	
Trust Assurance Program (TAP)				
TAF revenues	204	-	204	100%
TAP expenses	514	584	70	12.0%
TAP Results	(310)	(584)	274	46.9%
General Fund Results including Trust Assurance Program	2,391	1,734	657	

(1) Membership fees include capital allocation of \$2.23m

The Law Society of British Columbia
General Fund - Balance Sheet
As at February 29, 2020
(\$000's)

	Feb 29 2020	Feb 29 2019
Assets		
Current assets		
Cash and cash equivalents	26,598	22,319
Unclaimed trust funds	2,236	2,064
Accounts receivable and prepaid expenses	1,088	1,103
Due from Lawyers Insurance Fund	11,533	12,282
	<u>41,455</u>	<u>37,768</u>
Property, plant and equipment		
Cambie Street property	12,056	12,785
Other - net	1,747	1,578
	<u>13,803</u>	<u>14,362</u>
Long Term Loan	365	365
	<u>55,623</u>	<u>52,495</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	4,294	3,760
Liability for unclaimed trust funds	2,236	2,064
Current portion of building loan payable	500	500
Deferred revenue	19,795	18,883
Deferred capital contributions	-	1
Deposits	60	55
	<u>26,885</u>	<u>25,263</u>
Building loan payable	100	600
	<u>26,985</u>	<u>25,863</u>
Net assets		
Capital Allocation	4,729	3,000
Unrestricted Net Assets	23,909	23,632
	<u>28,638</u>	<u>26,632</u>
	<u>55,623</u>	<u>52,495</u>

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
Results for the 2 Months ended February 29, 2020
(\$000's)

	<i>Invested in</i> Capital	<i>Unrestricted</i> Net Assets	Total Unrestricted	Trust Assurance	Capital Allocation	2020 Total	Year ended 2019 Total
	\$	\$	\$	\$	\$	\$	\$
Net assets - At Beginning of Year	12,849	8,408	21,257	1,990	3,000	26,247	23,663
Net (deficiency) excess of revenue over expense	(229)	699	470	(310)	2,231	2,391	2,584
Contribution to LIF				-		-	
Repayment of building loan	500	-	500	-	(500)	-	-
Purchase of capital assets:						-	
LSBC Operations	-	-	-	-	-	-	-
845 Cambie	2	-	2	-	(2)	-	-
Net assets - At End of Period	13,122	9,107	22,229	1,680	4,729	28,638	26,247

The Law Society of British Columbia
Special Compensation Fund
Results for the 2 Months ended February 29, 2020
(\$000's)

	<u>2020</u> <u>Actual</u>	<u>2020</u> <u>Budget</u>	<u>\$</u> <u>Variance</u>
Revenue			
Interest income	-	-	-
Total Revenues	<u>-</u>	<u>-</u>	<u>-</u>
Expenses			
Claims and costs, net of recoveries	8	-	8
Administrative and general costs	-	-	-
Total Expenses	<u>8</u>	<u>-</u>	<u>8</u>
Special Compensation Fund Results	<u>(8)</u>	<u>-</u>	<u>(8)</u>

The Law Society of British Columbia
Special Compensation Fund - Balance Sheet
As at February 29, 2020
(\$000's)

	Feb 29 2020	Feb 29 2019
Assets		
Current assets		
Due from Lawyers Insurance Fund	51	149
	<u>51</u>	<u>149</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	-	-
Net assets		
Unrestricted net assets	51	149
	<u>51</u>	<u>149</u>

The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
Results for the 2 Months ended February 29, 2020
(\$000's)

	2019	Year ended 2019
	\$	\$
Unrestricted Net assets - At Beginning of Year	59	159
Net excess of revenue over expense for the period	(8)	-
	<u>(8)</u>	<u>(100)</u>
Unrestricted Net assets - At End of Period	<u>51</u>	<u>59</u>

The Law Society of British Columbia
Lawyers Indemnity Fund
Results for the 2 Months ended February 29, 2020
(\$000's)

	2020 Actual	2020 Budget	\$ Variance	% Variance
Revenue				
Annual assessment	2,747	2,663	84	3%
Investment income	(3,339)	1,515	(4,854)	-320%
Other income	46	11	35	318%
Total Revenues	(546)	4,189	(4,735)	-113.0%
Expenses				
Indemnity Expense				
Provision for settlement of claims	2,965	2,965	-	0%
Salaries and benefits	534	604	70	12%
Contribution to program and administrative costs of General Fund	226	245	19	8%
Insurance	91	76	(15)	-20%
Office	113	219	106	48%
Actuaries, consultants and investment brokers' fees	55	157	102	65%
Premium taxes	-	-	-	0%
Income taxes	-	-	-	0%
	3,984	4,266	282	7%
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	89	147	58	39%
Total Expenses	4,073	4,413	340	7.7%
Lawyers Indemnity Fund Results	(4,619)	(224)	(5,075)	

The Law Society of British Columbia
Lawyers Indemnity Fund - Balance Sheet
As at February 29, 2020
(\$000's)

	Feb 29 2020	Feb 29 2019
Assets		
Cash and cash equivalents	8,738	9,845
Accounts receivable and prepaid expenses	631	600
Current portion General Fund building loan	500	500
LT Portion of Building Loan	100	600
Investments	187,925	175,129
	<u>197,894</u>	<u>186,674</u>
Liabilities		
Accounts payable and accrued liabilities	319	303
Deferred revenue	5,518	5,395
Due to General Fund	11,533	12,282
Due to Special Compensation Fund	51	149
Provision for claims	75,311	73,754
Provision for ULAE	11,860	10,779
	<u>104,592</u>	<u>102,661</u>
Net assets		
Internally restricted net assets	17,500	17,500
Unrestricted net assets	75,802	66,513
	<u>93,302</u>	<u>84,013</u>
	<u>197,894</u>	<u>186,674</u>

The Law Society of British Columbia
Lawyers Indemnity Fund - Statement of Changes in Net Assets
Results for the 2 Months ended February 29, 2020

	Unrestricted \$	Internally Restricted \$	2020 Total \$	2019 Total \$
Net assets - At Beginning of Year	80,421	17,500	97,921	76,922
Net excess of revenue over expense for the period	(4,619)	-	(4,619)	20,999
Net assets - At End of Period	75,802	17,500	93,302	97,921



Memo

To: Benchers
From: Executive Committee
Date: April 8, 2020
Subject: Revisions to 2020 Benchers & Executive Committee Meeting Dates

The 2020 Benchers & Executive Committee meeting dates were first approved at the January 10, 2019 Executive Committee meeting. The dates were subsequently revised at the September 12, 2019 Executive Committee meeting, and by email in January and March 2020, to address scheduling conflicts that had arisen since the dates were first approved.

The meeting dates and events have been reviewed and adjusted as a result of the recent health directives related to Covid-19. The Commemorative Certificate Luncheon has been pushed back from July to September and the 2020 Bencher Retreat taking place in Whistler, BC has been moved from the last weekend of May to the last weekend of October.

As a consequence of the above changes, the May Bencher Meeting date has been moved from Saturday, May 30 to Friday, May 29 as it will be held in Vancouver as per usual. The October Bencher Meeting date has been moved from Friday, October 30 to Saturday, October 31 to align with the traditional Bencher Retreat schedule.

We attach for your information the updated version of the 2020 Benchers & Executive Committee meeting dates as approved at the April 7, 2020 Executive Committee meeting.

2020 Bencher & Executive Committee Meetings

Executive Committee	Bencher	Other Dates
Thursday, January 16	Friday, January 31	New Year's Day: Jan 1 Welcome/Farewell Dinner: Jan 31
Thursday, February 20	Friday, March 6	Valentine's Day: Feb 14 Family Day: Feb 17 Federation Spring Meetings: March 2 - 3 Spring Break: March 16 – 27
Tuesday, April 7	Friday, April 17	Easter: April 10 – 13
Wednesday, May 13	Saturday Friday, May 29 30	Victoria Day: May 18 LSBC Bencher Retreat: May 28 – 30 LSA Retreat: June 3 – 6 <u>Bencher By-Election: May 20</u>
Thursday, June 25	Friday, July 10	Canada Day: July 1 BC Day: Aug 3
Thursday, September 10	Friday, September 25	Labour Day: Sept 7 IILACE Conference: (TBD) Rosh Hashanah: Sept 18 (sundown) – Sept 20 (sundown) <u>Commemorative Certificate Luncheon: Sept 23</u> Yom Kippur: Sept 27 (sundown) – Sept 28 (sundown)
Wednesday, October 7	Friday Saturday, October 31 0	AGM: Oct 6 Thanksgiving Day: Oct 12 Federation Fall Meetings: Oct 14 – 17 <u>Bench and Bar Dinner: TBD</u> <u>LSBC Bencher Retreat: Oct 29 - 31</u>
Thursday, November 19	Friday, December 4	IBA Annual Conference: Nov 1 - 6 Remembrance Day: Nov 11 Bencher By-Election: Nov 16 Christmas Day: Dec 25

2020 Bencher & Executive Committee Meetings

Executive Committee	Bencher	Other Dates
Thursday, January 16	Friday, January 31	New Year's Day: Jan 1 Welcome/Farewell Dinner: Jan 31
Thursday, February 20	Friday, March 6	Valentine's Day: Feb 14 Family Day: Feb 17 Federation Spring Meetings: March 2 - 3 Spring Break: March 16 – 27
Tuesday, April 7	Friday, April 17	Easter: April 10 – 13
Wednesday, May 13	Friday, May 29	Victoria Day: May 18 Bencher By-Election: May 20
Thursday, June 25	Friday, July 10	Canada Day: July 1 BC Day: Aug 3
Thursday, September 10	Friday, September 25	Labour Day: Sept 7 IILACE Conference: (TBD) Rosh Hashanah: Sept 18 (sundown) – Sept 20 (sundown) Commemorative Certificate Luncheon: Sept 23 Yom Kippur: Sept 27 (sundown) – Sept 28 (sundown)
Wednesday, October 7	Saturday, October 31	AGM: Oct 6 Thanksgiving Day: Oct 12 Federation Fall Meetings: Oct 14 – 17 Bench and Bar Dinner: TBD LSBC Bencher Retreat: Oct 29 - 31
Thursday, November 19	Friday, December 4	IBA Annual Conference: Nov 1 - 6 Remembrance Day: Nov 11 Bencher By-Election: Nov 16 Christmas Day: Dec 25



April 3, 2020

Sent via mail

Gloria Hope
[REDACTED]

Dear Ms. Hope:

Please accept my heartfelt condolences on the passing of Mr. H. Allan Hope, Q.C. He is renowned among members of the bar for his integrity, wit and leadership. It was an honour to have him serve in the legal profession. He will be missed.

As a Bencher and former Treasurer of the Law Society, Allan devoted countless hours to the cause of protecting the public interest in the administration of justice. He was instrumental in establishing what is now known as our Practice Standards Committee, because he understood the importance of fostering competency and professionalism. He made many other contributions to the legal profession for which the Law Society is deeply grateful.

On a more personal note, Allan served with my father, A. Boyd Ferris, Q.C. as a Bencher during the 1970s. I recall fondly the stories my father told me of the Bencher table during this time as well as his regard for Allan.

Allan's passing is truly a great loss to the legal community. He will always be respected for his hard work and commitment to justice.

My sincere sympathy,

Craig Ferris, QC
President, Law Society of BC

Craig Ferris, QC
President

Office Telephone
604.605.5394

Office Email
president@lsbc.org

March 30, 2020

Sent via email

Hon. David Eby, QC
Attorney General
PO Box 9044, Stn Prov Govt
Victoria, BC V8W 9E2

Craig Ferris, QC
President

Dear Mr. Attorney General:

Re: Current State of Affairs

Office Telephone
604.605.5394

Office Email
president@lsbc.org

I write on behalf of the Law Society of British Columbia regarding three issues that we have spoken with your staff and others about in recent days. As you will know, the Law Society's mandate is to protect the public interest in the administration of justice by, amongst other things, protecting the rights and freedoms of all people and right now, we need your help.

To state the obvious, the public health emergency caused by COVID-19 is multi-faceted and layered. We at the Law Society hope that we can continue to work with you to address some of the key issues that have affected the justice system in British Columbia.

Thank you for your work which resulted in the recent order to suspend the running of limitation periods in relation to civil or family matters before the Provincial Court, Supreme Court and the Court of Appeal. This order will be helpful to both the public and the legal profession, as will the ability of a person, tribunal or other body with a statutory power of decision to suspend or extend time periods. We remain concerned, however, that there are a number of deadlines that impose limits on the time within which rights must be asserted which are not covered by the order and which may deprive a member of the public the opportunity to effectively enforce their rights. For example, under the *Health Professions Act*, a notice or document that is required to be delivered under the Act is deemed to be delivered to the person 7 days after the date on which it was mailed if sent to the last address of the registrant. With offices closing and the general direction to work from home, a registrant

may be deemed to have received a notice or document without having an actual opportunity to receive it. We therefore continue to encourage the government to consider a broader suspension, similar to that directed in Ontario, to ensure that no one loses the right to exercise or enforce a right due to the inability to do so during the current public emergency.

In addition, the public health officer's directions regarding social distancing have also created a concern about the commissioning of sworn documents. This is particularly true with respect to the documents required by the Land Title and Survey Authority but is not limited to those documents. A number of statutes, regulations and procedures for government and other entities require that documents must be sworn. The process for doing so may not be defined in any of the statutes, regulations or other requirements but the accepted practice has been to require the deponent to appear personally before a lawyer, notary or commissioner.

In order to facilitate lawyers being able to continue to practice law while still following the recommendations of the public health officer regarding social, or physical, distancing, the Law Society has given notice that we will not require lawyer to meet the direction in Appendix A to the Code of Professional Conduct that a lawyer must not swear an affidavit or take a solemn declaration unless the deponent is physically present before the lawyer. However, to ensure the validity of documents sworn virtually, a general direction similar to the steps taken with limitations and procedural deadlines needs to be adopted. I note that the Government of Saskatchewan has recently enacted emergency regulations that provide for the opportunity to execute and witness certain documents, including land title documents, via electronic means such as a video conference on platforms such as Skype or FaceTime.

We have heard from lawyers - particularly from sole practitioners - who are understandably concerned about their health and the health of their colleagues and families. They are committed to their clients and to fulfilling their professional obligations but worry that they are being required to put their own personal health in jeopardy to do so.

We urge you and the government to consider providing that, during the state of emergency, all sworn documents will be valid if sworn virtually using the procedure accepted by the BC's courts. Such a step would ensure the health of those members of the public who must have a document sworn and would assist the legal profession to remain healthy and available to their clients.

Finally, I would like to bring to your attention a concern about the efforts undertaken in British Columbia to balance the open court principle with public health priorities. All levels of the courts are integral to our constitutional system of government. Given this, I note that courts in several Canadian jurisdictions have taken steps to continue to operate as much as is reasonably possible. For example, the Chief Justice of the Ontario Supreme Court of Justice wrote to the Ontario legal community about the Courts' "constitutional responsibility to ensure access to justice" in announcing that a virtual tour would commence hearings on April 6, 2020.

Alberta's courts continue to operate and are allowing public access to courthouses to individuals who are litigants, counsel, witnesses, designated personnel, accredited media, those paying a fine or filing documents, or as approved by a judge. Certain Quebec courts are using telephone and videoconference for some aspects of proceedings. In Saskatchewan, all matters before a panel of three judges, such as appeals and applications, are being heard by videoconferencing.

The Law Society of British Columbia is encouraged by the steps taken by courts elsewhere in Canada and we would welcome the opportunity to work with you and with the courts in British Columbia to put in place procedures and innovations that would assist in restoring a reasonable level of access in British Columbia as soon as possible.

Thank you for your consideration.

Yours truly,

A handwritten signature in black ink, appearing to read 'Craig Ferris', with a stylized flourish at the end.

Craig Ferris, QC
President, Law Society of BC

Cc: The Hon. Chief Justice Bauman
The Hon. Chief Justice Hinkson
The Hon. Chief Judge Gillespie