



Agenda

Benchers

Date: Friday, September 25, 2020

Time: **9:00 am - Call to order**

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 July 10, 2020 meeting (regular session)
2	Minutes of July 10, 2020 meeting (<i>in camera</i> session)
3	Rule 10-1: Proposed Amendments to Permit Service through Member Portal
4	Rule 2-105 et al.: Payment of Practising Fees by Instalment
5	Rule Amendments: 2020 Call and Admission Ceremonies
6	Proposal to Amend Rules Addressing Law Society Form Approval
7	2021 Fee Reduction for Qualifying Lawyers
8	Update on Fall Events and Revisions to 2020 Benchers & Executive Committee Meeting Dates
9	2020 Law Society Award

Agenda

The Law Society
of British Columbia



REPORTS		
10	President's Report	Craig Ferris, QC
11	CEO's Report	Don Avison, QC
12	Briefing by the Law Society's Member of the Federation Council	Pinder K. Cheema, QC
DISCUSSION/DECISION		
13	Futures Task Force: Anticipated Changes in the Legal Profession	Craig Ferris, QC
14	Licensed Paralegal Task Force Report: Proposal for Developing and Regulating Alternate Legal Service Providers	Trudi L. Brown, QC
15	Lawyer Development Task Force Report: Exploring Alternatives to Articling	Steven McKoen, QC
16	Unauthorized Practice Committee: Policy Statement on Unauthorized Practice Action	Jamie Maclaren, QC
17	Review of 2021 – 2025 Strategic Plan Survey Results and Priorities	Don Avison, QC
18	Consent Agreements for the Resolution of Complaints without a Citation or Hearing: Professional Regulation Process Review	Natasha Dookie
19	Equity, Diversity and Inclusion Advisory Committee: Maternity Leave Loan Review	Jeevyn Dhaliwal, QC
20	Equity, Diversity and Inclusion Advisory Committee: Action Plan	Jeevyn Dhaliwal, QC
21	2021 Budget & Fees	Dean Lawton, QC Don Avison, QC Jeanette McPhee
UPDATES		
22	National Discipline Standards: 2020/2021 Implementation Report	Natasha Dookie
23	Report on Outstanding Hearing & Review Decisions (Materials to be circulated at the meeting)	Craig Ferris, QC

Agenda

The Law Society
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FOR INFORMATION

24	Three Month Benchers Calendar – October to December 2020
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IN CAMERA

25	Litigation Report	Tara McPhail
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26	Other Business
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Minutes

Benchers

Date: Friday, July 10, 2020

Present:

Craig Ferris, QC, President	Jamie Maclaren, QC
Dean P.J. Lawton, QC, 1 st Vice-President	Claire Marshall
Lisa Hamilton, QC, 2 nd Vice-President	Geoffrey McDonald
Jasmin Ahmad	Steven McKoen, QC
Pinder K. Cheema, QC	Christopher McPherson, QC
Jennifer Chow, QC	Jacqueline McQueen
Barbara Cromarty	Elizabeth J. Rowbotham
Jeevyn Dhaliwal, QC	Mark Rushton
Cheryl S. D'Sa	Karen Snowshoe
The Hon. David Eby, 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 Zetzsche
Dr. Jan Lindsay	

Unable to Attend: Paul Barnett

Staff Present:

Don Avison, QC	Jason Kuzminski
Avalon Bourne	Michael Lucas, QC
Barbara Buchanan, QC	Alison Luke
Natasha Dookie	Jeanette McPhee
Su Forbes, QC	Doug Munro
Andrea Hilland	Lesley Small
Kerryn Holt	Adam Whitcombe, QC
Jeffrey Hoskins, QC	Vinnie Yuen

Guests: Dom Bautista	Executive Director, Law Courts Center
Dr. Susan Breau	Dean of Law, University of Victoria
Jennifer Brun	Vice President, CBABC
Michelle L. Casavant	Member, Aboriginal Lawyers Forum
Paul Craven	Executive Director, Office of the Attorney General
Dean Catherine Dauvergne	Dean of Peter A. Allard School of Law
Dr. Cristie Ford	Associate Dean Research and the Legal Profession, Peter A. Allard School of Law
Catherine George	Associate, Farris LLP
Ludmila Herbst, QC	Partner, Farris LLP
Clare Jennings	Incoming Vice-President, Canadian Bar Association, BC Branch
Alexis Kazanowski	Assistant Dean of Law, Thompson Rivers University
Mark Meredith	Board Treasurer, Mediate BC
Ian Mulgrew	Columnist, Vancouver Sun
Josh Paterson	Executive Director, Law Foundation of British Columbia
Brenda Rose	Director, Community Engagement, Courthouse Libraries BC
Linda Russell	CEO, Continuing Legal Education Society of BC
Kurt Sandstrom	Assistant Deputy Minister, Office of the Attorney General
Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
Sharon Sutherland	Director of Strategic Innovation, Mediate BC

CONSENT AGENDA

1. Minutes of May 29, 2020 meeting (regular session)

The minutes of the meeting held on May 29, 2020 were approved as circulated.

2. Minutes of May 29, 2020 meeting (*in camera* session)

The *In Camera* minutes of the meeting held on May 29, 2020 were approved as circulated.

3. 2020 Law Society Scholarship

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that the Benchers ratify the recommendation of the Credentials Committee to award the 2020 Law Society Scholarship to Catherine McMillan.

4. 2020 Law Society Indigenous Scholarship

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that the Benchers ratify the recommendation of the Credentials Committee to award the 2020 Law Society Indigenous Scholarship equally between Katelyn Beale and Darnell Tailfeathers.

5. Revisions to Bencher Meeting *In Camera* Policy

The following resolution was passed unanimously and by consent.

BE IT RESOLVED that the Benchers approve revisions to the Bencher meeting in camera policy as recommended by the Governance Committee.

6. Rule 1-26: Proposed Amendments regarding the Voter List for Elections and By-elections

The following resolution was passed unanimously and by consent.

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

1. *By rescinding Rule 1-25 (2);*
2. *By rescinding Rule 1-26 (1) to (4) and substituting the following:*
 - (2) In this Division, a “**voter list**” is a list of voters for an electoral district containing, in alphabetical order, the names of all members of the Society eligible to vote in the electoral district.

- (2.1) For the purpose of this rule, an election is in progress from the day that nominations are opened until the last day that members are permitted to vote.
 - (3) When an election is in progress, a member of the Society may request a voter list from the Executive Director.
 - (3.1) The Executive Director may comply with a request for a voter list by providing the list in electronic form.
 - (4) A member of the Society who has reason to believe that a voter list improperly includes or omits a name, or contains an error respecting the district in which a member is entitled to vote may, when an election is in progress, report the error to the Executive Director.
3. ***In Rule 1-27 (1), by striking “each member of the Society whose name is on the voter list prepared under Rule 1-26” and substituting “each member of the Society entitled to vote in an election”; and***
4. ***By rescinding Rule 1-38 (3) and substituting the following:***
 (3) Rules 1-21 to 1-37 apply to a by-election under subrule (1), except that the Executive Director may change the dates referred to in Rules 1-23 (c) [Nomination] and 1-27 (1) [Voting procedure].

7. Rule 2-74: Review of failed standing (PLTC)

The following resolution was passed unanimously and by consent.

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

- 1. ***By rescinding Rule 2-72 (6); and***
- 2. ***By rescinding Rule 2-74 (1) to (3), (5) to (7) and (9) and substituting the following:***

Review of failed standing

- 2-74** (1) Subject to subrule (2), an articulated student who has failed the training course may apply in writing to the Executive Director for a review of the student’s failed standing, not more than 21 days after the date on which the Executive Director issued the transcript under Rule 2-72 (5) [Training course].
- (2) An articulated student may not apply under subrule (1) if the student has failed in 3 attempts to pass the training course, including any of the following:
- (a) the original attempt;
 - (b) a further attempt to pass examinations, assignments or assessments;
 - (c) any attempt to meet a requirement under subrule (7).
- (3) The Executive Director may consider an application for review received

after the period specified in subrule (1).

- (7) After considering the submissions made under subrule (4), the Executive Director may do one or more of the following:
 - (a) confirm the standing, including any failed standing;
 - (b) grant the student an adjudicated pass in a training course examination, assignment or assessment, with or without conditions;
 - (c) require the student to complete further examinations, assignments or assessments, and to pass them at a standard set by the Executive Director;
 - (d) require the student to complete or repeat and pass all, or a portion of, the training course;
 - (e) require the student to complete a specified program of training at an educational institution or under the supervision of a practising lawyer, or both.
- (9) The Executive Director must deliver a transcript stating the student's standing and the extent to which any standards or conditions have been met to
 - (a) each student whom the Executive Director has required to do anything under subrule (7), and
 - (b) each such student's principal.

8. Rule 2-58: Offer Dates for Articled Students

The following resolution was passed unanimously and by consent.

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 2-58 (4) and substituting the following:

- (4) A lawyer must not offer articles to a student of any law school unless the offer is to remain open at least until the offer date designated under subrule (3).
- (6) If the Credentials Committee designates an offer date that is before September 1, subrule (4) does not apply to a student who has begun the third year of studies at any law school.

REPORTS

9. President's Report

Mr. Ferris began his report by referencing the Law Society's mandate to uphold and protect the public interest in the administration of justice and the need for continuous reform to ensure that

educated and competent lawyers are in place to help British Columbians. He said that reform needs to be grounded in the Law Society's mandate and our mandate's core principles.

Mr. Ferris then spoke to the core principle of the protection of the rule of law. As the Law Society navigates the COVID-19 pandemic, the rule of law needs to be at the forefront of the work we're doing. Mr. Ferris spoke to the need to find the right balance between pandemic response, reform, and rule of law. BC's current state of emergency is the longest in our history, and it provides the provincial government with extraordinary powers to make orders without normal parliamentary oversight, which demonstrates the need for the Law Society, as protector of the rule of law, to ensure that the right balance is being struck and that concerns need to be acknowledged and debated.

The remainder of Mr. Ferris' report focused on the many items under review by the Law Society, including the issue of licensed paralegals and court procedure reform. Mr. Ferris closed his report by stating that he was eager to pursue reform to ensure that all British Columbians have access to justice; however reform must be grounded in the Law Society's core principals, and we must protect the rule of law in any and all reform initiatives.

Attorney General's Report

Attorney General Eby began by informing Benchers of the recently passed COVID-19 Related Measures Act, which clarifies the authority of the Solicitor General, incorporates current ministerial emergency orders so that the legislature may pass and formally recognize them, and puts in place safeguards to limit the power of any one minister.

Attorney General Eby then reviewed the specific proposals brought to the Law Society for their consideration. The first proposal regarded the resumption civil jury trials, taking into consideration the challenges presented by the provincial health regulations. Attorney General Eby stated that his office had been looking into other venues in which to hold civil jury trials, but hosting trials outside of the law courts brings a new slate of concerns, specifically in regard to security and logistics. Attorney General Eby asked the Law Society what its feedback would be if BC established a policy of not allowing civil jury trials until a vaccine or treatment program was developed for COVID-19. He also asked if there were areas in which civil jury trials were not serving British Columbians, as they are a lengthy process, and he would like to know what the impacts have been over the last few months with BC not having had any. Attorney General Eby then asked the Benchers for their feedback regarding offering plaintiffs in a motor vehicle injury claim the option of binding arbitration with the understanding that the outcome would be final without appeal. Attorney General Eby asked the Law Society to consider these proposals and to provide feedback in whatever format was appropriate.

Attorney General Eby updated Benchers on the activities of the legislature, letting Benchers know that the COVID-19 Recovery Act had been passed and will come into effect once the current state of emergency comes to an end to ensure the stable unwinding of orders made under the Emergency Program Act. Attorney General Eby also spoke to some of the measures that the provincial courts are taking to continue to meet the legal needs of BC during this time of crisis. He then concluded his report speaking to BC's transition from Phase II to Phase III of recovery, detailing a proposal being drafted for Phase III recovery to address the current backlog within the courts through increased virtual options and other reforms to allow people to resolve their legal matters without appearing before court.

Benchers then engaged in discussions regarding the Attorney General's proposals and update, and offered insights for the Attorney General's consideration. Suggestions included incorporating mediation into the arbitration model to address motor vehicle collision claims. Benchers also discussed plans for the resumption of circuit courts and criminal jury trials.

10. CEO's Report

Mr. Avison updated Benchers on the Law Society's response to COVID-19 now that BC is entering Phase III of the recovery protocols. Mr. Avison gave an update on several department's activities and priorities, stating that technology options have allowed operations to continue effectively. Staff continues to operate in accordance with the public health guidelines with no more than 50% of staff working in the office at any one time.

Mr. Avison then spoke to the high degree of engagement the Law Society has had with all levels of justice administration, particularly through the COVID-19 Response Group. Mr. Avison gave an update on the three working groups established by the Ministry of the Attorney General: alternative dispute resolution, alternative legal service providers, and the expanded utilization of virtual hearings. Mr. Avison also informed Benchers that the Cross Jurisdiction Technical Advisory Group (XJ-TAG) is expected to report at the end of July. Regarding the opening of the courts, Mr. Avison noted that all court registries are expected to re-open on July 13, 2020.

Mr. Avison mentioned his weekly telephone calls with Deputy Attorney General Richard Fyfe, and thanked him for his openness, accessibility, and action oriented approach during these challenging times. The support that he has provided to the Law Society has been greatly appreciated.

Mr. Avison also reported on the national CEO group meetings in which he has taken part and noted how useful these meetings have been in providing a sense of what is taking place in other jurisdictions and where common challenges lie.

Mr. Avison then updated Benchers on the Cullen Commission hearings, noting that the Commission recently completed 17 days of witness testimony and will reconvene in the fall.

Mr. Avison concluded his report by updating Benchers on his conversations with BC's law schools and offered his congratulations to Catherine Dauvergne, QC, who has been appointed as Vice-President, Academic and Provost at Simon Fraser University.

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

Ms. Cheema provided an update on the recent Federation meeting, which included a check-in on the impact of the pandemic across the representatives' jurisdictions and practices. She noted two particular challenges: the impact on administrative tribunals in New Brunswick, and the impact of closed borders in the northern territories due to the dependence on visiting lawyers and judges.

Ms. Cheema also spoke to the Federation's response to the Cullen Commission and the submission of the Anti-Money Laundering Working Group to the Cullen Commission, which details the history of the 2015 Federation case, litigation history, and addressed the regulation of the profession through the law societies. It is expected that the Federation will make its submission to the Commission in November.

Ms. Cheema then spoke to the report and recommendations of the Truth and Reconciliation Committee. Nine recommendations were accepted by the Federation, including recommending that the Federation make a formal commitment to reconciliation, and recommending that law societies review their regulatory processes, provide ongoing opportunities for competency training, build relationships with indigenous groups, and collaborate with these groups to provide support, and to consider mandatory cultural competency training. The Committee does not recommend changing the national requirement for education of law students, as that should be left to the law schools.

Ms. Cheema updated Benchers on the impacts of the pandemic on the National Committee on Accreditation (NCA), which has seen a drop in revenue due to the cancelling of exams in May and the cancelling of CLE programs. The NCA is contemplating a wider application of virtual attendance to address these impacts.

Finally, Ms. Cheema concluded her report with an update on the National Well-Being Survey, which has been approved by the Council. The steering group is being set up, and the study will be led by L'Université de Sherbrooke. The study will be paid for by the Federation with assistance from the Canadian Bar Association. Further details to come after the October meeting.

DISCUSSION/DECISION

12. Introduction to the 2021 – 2025 Strategic Planning Process

Mr. Avison updated Benchers on the process for the development of the Law Society's fifth strategic plan and spoke to the importance of the process in determining the Law Society's mission and values, prioritizing attention and resources to achieving the objectives of the strategic plan, and promoting accountability and transparency in reporting on progress. Mr. Avison also spoke to the three phases of the process and Benchers' involvement throughout with the intent of having Benchers approve the plan at the December Bencher meeting.

Mr. Avison then provided an overview of each of the components of the strategic plan and spoke to examples that staff had researched in determining the Law Society's approach, including the Nova Scotia Barristers' Society, Barreau du Québec, Queensland Law Society, and the College of Dental Surgeons of BC. Mr. Avison reviewed how each of these organizations approached the development of their respective missions, visions, values, objectives, and initiatives.

Mr. Avison concluded by reviewing the next steps in the planning process, which will include a survey sent to Benchers for their input on the various components of the strategic plan. The results of the survey will then be reviewed in breakout sessions prior to the September Bencher meeting.

Benchers then engaged in discussions regarding the strategic planning process, including engagement with the public and the logistics and composition of the working groups.

13. Bencher and Committee Mid-Year Survey Results

Ms. Hamilton briefed Benchers on the results of the mid-year Bencher and Committee Survey. She noted that a total of 25 Benchers provided responses. Ms. Hamilton highlighted to Benchers the questions which elicited the most agreement, as well as those with the most disagreement, and also noted the questions regarding how Benchers are feeling with the switch to virtual Bencher meetings.

UPDATES

14. Equity, Diversity & Inclusion Work Plan

Ms. Dhaliwal thanked Committee members and staff for their work to date and updated the Benchers on the Equity, Diversity, and Inclusion (EDI) work plan. Ms. Dhaliwal spoke to the Committee's mandate to identify issues and advocate meaningful change both within the Law Society and within the profession at large and to create a work plan of tangible initiatives with measurable outcomes aimed at addressing racism within BC's legal profession. Ms. Dhaliwal

spoke to the existing EDI initiatives and resources of the Law Society, which the Committee is building upon, including fostering diversity within the organization at all levels, fair and equitable hiring practices, intercultural competency training for all Law Society representatives, expansion of CPD accreditation criteria to include EDI issues arising in legal practice, law firm regulation requiring self-assessments, model policies and guidelines, and recognition of significant contributions to EDI in the legal profession through the Law Society EDI award. Ms. Dhaliwal also spoke to the collaboration between the Committee and the Ethics Committee in responding to the Federation of Law Societies' consultation on proposed amendments to the non-discrimination and harassment sections of the Model Code of Professional Conduct. Ms. Dhaliwal then spoke to the importance of tracking progress on these initiatives and of collecting and monitoring demographics data. Ms. Dhaliwal concluded by noting that the EDI action plan had been completed and will be before the Benchers for approval at the September meeting.

The Benchers discussed the statements made by President Ferris on behalf of the Law Society condemning racism and the importance of reiterating that EDI issues are rule of law issues and concern the protection of the public interest.

15.2020 May YTD Financial Report

Ms. McPhee, Chief Financial Officer, provided an update on the financial results and highlights to the end of May 2020. The General Fund operations resulted in a positive variance to budget mainly due to lower operating expenses from a combination of permanent savings as well as the timing of expenses. Revenue is slightly behind budget, mainly due to D&O insurance recoveries having been received in 2019, earlier than expected, as well as lower practice fee revenue. PLTC student revenue is on track with little change. Investment revenue is slightly ahead of budget, but will likely drop by the end of the year due to interest rate reductions. Operating expenses are much lower than anticipated and will likely continue to be lower for the balance of the year, due to timing differences for expenses, as well as internal cost savings due to the pandemic. These savings are expected to continue through to the end of the year and will help balance any revenue shortfall. TAF revenue from the second quarter has not yet been received, but is expected to be lower than budgeted. Ms. McPhee noted that the Law Society had sufficient reserves to address anticipated shortfalls in revenue.

16. Report on Outstanding Hearing & Review Decisions

President Ferris provided an update on outstanding hearing and review decisions and thanked Benchers for their efforts to get decisions in on time, as timeliness is important to the public and those involved in proceedings.

FOR INFORMATION

17.2020 Mid-Year Advisory Committees Report

There was no discussion on this item.

18.Rule of Law Secondary School Essay Contest

There was no discussion on this item.

19.Three Month Bencher Calendar – July to September 2020

There was no discussion on this item.

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

AB
2020-07-10



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: July 16, 2020
Subject: **Rule 10-1, Service of documents by portal**

1. At the virtual Benchers meeting on April 17 the Benchers accepted the recommendation of the Executive Committee calling for the amendment of Rule 10-1 to allow service of documents by use of an electronic portal to give greater security to the document than service by email or other means.
2. I attach for your reference the report of the Executive Committee to the Benchers making the recommendations. I also attach draft amendments, in redlined and clean versions, which the Act and Rules Committee recommend for adoption to give effect to the Benchers decision. I attach a suggested resolution for that purpose.
3. The main proposed amendments would provide for an alternative method of service by means of posting a document to an electronic portal that is operated by the Law Society and to which the intended recipient has been given access. There is a requirement that the Law Society **must notify** the recipient of the posting by one of the other approved means of service. The document is deemed to be served the day after **both** the posting and the notification have taken place.
4. The Committee has also taken the opportunity to update this provision by
 - a. making it expressly apply to law firms;
 - b. replacing five instances of “his or her”, which is no longer a preferred form of gender neutral language;

- c. making subrule (8) consistent with other provisions in the rule by adding registered mail and courier to the means by which a person may be notified of something (as opposed to served with a document).

5. The Committee recommends the adoption of the proposed amendments.

Attachments: report to Benchers
 draft amendments
 resolution

JGH

The Law Society
of British Columbia



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

July 16, 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 Benchers 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 to provide a specific method of service that involves the Portal

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. Expanding the rule to permit service by other electronic means or method would be aimed to permit service through the Discipline Portal. Both Alberta and Manitoba have rules that contemplate expanded forms of service through electronic means or method.²
27. It is contemplated that a posting of materials on the Discipline Portal would, for the purposes of service, need to be accompanied by a notification to the lawyers, by for example email, that the materials are on the Portal.
28. Because service is already permitted by electronic mail to the last known address given, an argument exists that by attaching the link to the Portal in the email, service would already be effected. However, because argument on that point can be avoided by specifying the process in the Rules, a specific rule on the issue would be a preferable outcome.
29. Moreover, amending Rule 10-1 to include a more broad term like “electronic method” or “electronic means” ought to capture service through not only the Discipline Portal, but any future electronic portals used by the Law Society in its various proceedings as well, and not be restricted solely to email and facsimile as it currently is.

Deemed Service

30. 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.
31. 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

¹ Rule 10-1(1).

² See Rule 83(3) (Alberta) and Rule 5-78(3) (Manitoba)

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.

32. 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.
33. 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

34. 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.
35. In order to effect this change, staff recommends an amendment to Rule 10-1 that:
 - (a) Expands 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 **electronic mail that provides access to the service materials, whether as an attachment or through** 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.
36. The Committee recommends, as well, that for service through the Discipline Portal to be effective, a specific provision be built into the rule to ensure the party receiving service be required to be notified through some other form of communication, which could include email, that the materials for services are posted in the Portal.
37. 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.

LAW SOCIETY RULES

PART 10 – GENERAL

Service and notice

10-1 (0.1) In this rule, “recipient” means a lawyer, former lawyer, law firm, articulated student or applicant.

- (1) A lawyer, former lawyer, articulated student or applicant recipient may be served with a notice or other document personally, by
- (a) leaving it at his or her the place of business of the recipient, or by
 - (b) sending it by
 - (ai) registered mail, ordinary mail or courier to his or her the last known business or residential address of the recipient,
 - (bii) electronic facsimile to his or her the last known electronic facsimile number of the recipient,
 - (eiii) electronic mail to his or her the last known electronic mail address of the recipient, or
 - (diiv) any of the means referred to in paragraphs (a) to (c) to the place of business of his or her the counsel or personal representative of the recipient or to an address given to discipline counsel by a respondent for delivery of documents relating to a citation, or
 - (c) posting it to an electronic portal operated by the Society to which the recipient has been given access and notifying the recipient of the posting by a method enumerated in paragraph (b) (ii) to (iv).
- (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.
- (7.1) A document that is posted to an electronic portal operated by the Society is deemed to be served the next business day after the document is posted and notification is sent to the recipient.
- (8) Any person may be notified of any matter by ordinary mail, registered mail, courier, electronic facsimile or electronic mail to the person’s last known address.

LAW SOCIETY RULES

PART 10 – GENERAL

Service and notice

10-1 (0.1) In this rule, “**recipient**” means a lawyer, former lawyer, law firm, articled student or applicant.

- (1) A recipient may be served with a notice or other document by
 - (a) leaving it at the place of business of the recipient,
 - (b) sending it by
 - (i) registered mail, ordinary mail or courier to the last known business or residential address of the recipient,
 - (ii) electronic facsimile to the last known electronic facsimile number of the recipient,
 - (iii) electronic mail to the last known electronic mail address of the recipient, or
 - (iv) any of the means referred to in paragraphs (a) to (c) to the place of business of the counsel or personal representative of the recipient or to an address given to discipline counsel by a respondent for delivery of documents relating to a citation, or
 - (c) posting it to an electronic portal operated by the Society to which the recipient has been given access and notifying the recipient of the posting by a method enumerated in paragraph (b) (ii) to (iv).
- (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.
- (7.1) A document that is posted to an electronic portal operated by the Society is deemed to be served the next business day after the document is posted and notification is sent to the recipient.
- (8) Any person may be notified of any matter by ordinary mail, registered mail, courier, electronic facsimile or electronic mail to the person’s last known address.

SERVICE BY PORTAL

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend Rule 10-1 as follows:

1. by rescinding subrule (1) and substituting the following:

(0.1) In this rule, “recipient” means a lawyer, former lawyer, law firm, articulated student or applicant.

(1) A recipient may be served with a notice or other document by

(a) leaving it at the place of business of the recipient,

(b) sending it by

(i) registered mail, ordinary mail or courier to the last known business or residential address of the recipient,

(ii) electronic facsimile to the last known electronic facsimile number of the recipient,

(iii) electronic mail to the last known electronic mail address of the recipient, or

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

(c) posting it to an electronic portal operated by the Society to which the recipient has been given access and notifying the recipient of the posting by a method enumerated in paragraph (b) (ii) to (iv).;

2. by adding the following subrule:

(7.1) A document that is posted to an electronic portal operated by the Society is deemed to be served the next business day after the document is posted and notification is sent to the recipient.; ***and***

3. by rescinding subrule (8) and substituting the following:

(8) Any person may be notified of any matter by ordinary mail, registered mail, courier, electronic facsimile or electronic mail to the person’s last known address..

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: September 10, 2020
Subject: **Rule 2-105 et al. — Payment of practising fees by instalment**

1. At their last meeting, the Benchers discussed ways to give some relief to lawyers on payment of fees to the Law Society. The Benchers agreed to change the current structure of payment of the annual practice fee from once a year to two instalments as is currently done with the annual indemnity (formerly insurance) fee.
2. This change in collecting annual fees will require some changes to the rules governing the payment of fees and the consequences of failing to pay on time or at all. The current rules require full payment of practice fees before the beginning of the year for which the fees are paid. Since billing for the 2021 annual fees will need to be done before the Benchers meeting in October, if a change is to be made, it is most efficiently done at the meeting in September.
3. The Act and Rules Committee has considered and approved draft amendments that would allow payment of the practice fee in instalments like the indemnity fee, with a period of grace at mid-year in which the fee can be paid late with a late fee, as is currently done with all of the annual fees at the end of each calendar year.
4. I attach draft amendments, which the Committee recommends to the Benchers for adoption in the event that they decide to adopt payment of fees by instalment. I also attach a suggested resolution to effect that result.

Drafting notes

5. Under the current rules, payment of fees is split into two divergent parts of the rules. The practice fee and first instalment of the indemnity fee are required under Rule 2-105 to be paid by November 30 each year. The requirement to pay the second instalment is referred to (in a

provision recently added), but is actually set out in Rule 3-41. The Committee proposes the rescission of Rule 3-41 and re-locating the provision governing second instalments to Rule 2-105.

6. Lawyers currently must pay the practice fee (all of it) by November 30 in order to practise in the following calendar year. If they miss that date, they can still pay the fee plus a late fee in December and not have their standing interrupted.
7. In order to replicate that for the second instalment, it is proposed to set the due date at May 31 with a possibility of paying in June with the same late fee. If the lawyer makes full payment of fees, including the late payment fee, the lawyer continues to be a member and entitled to practise law, during the “late payment period.” This ensures that there is no indeterminate status and allows the Law Society to confirm to the public whether the lawyer is entitled to practise. While this means that the indemnity instalment would be due a month earlier than it is at present, it is offset by the practice fee being delayed by six months.
8. A new Rule 2-108.1 is proposed to set out explicitly and in one place what happens when a lawyer fails to pay the required fees when they are finally required. At the start of the year, the lawyer would cease to be a member of the Law Society, which is the current situation.
9. There is currently no mechanism for ceasing a lawyer’s membership mid-year, so it is proposed to impose a suspension for non-payment of the practice fee after June 30. When a lawyer who is required to pay the indemnity fee fails to do so after June 30, the current Rule 3-41 prohibits the lawyer from practising law. The amendments would keep that provision, but move it to the new Rule 2-108.1.

Attachments: draft amendments
 resolution

JGH

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 3 – Fees and Assessments

Annual practising and indemnity fees instalments

- 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 first instalment of each of the annual practising fee and first the 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 instalment of each of the annual practising fee and the indemnity fee ~~instalment~~ is ~~prescribed under Rule 3-41 (1) [Payment of annual indemnity fee by instalments]~~ May 31 of the year for which they are payable.

Late payment

- 2-108** (1) ~~If A-a~~ lawyer ~~who~~ fails to pay the instalment of fees by the date required under Rule 2-105 (2) *[Annual practising and indemnity fees instalments]* 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, the lawyer continues to be a member of the Society.

(1.1) If a lawyer fails to pay the instalment of fees by the date required under Rule 2-105 (3) [Annual practising and indemnity fee instalments] but pays all of those fees before June 30 of the the year for which they are payable, together with the late payment fee under this rule, the lawyer continues to be a member of the Society and is not suspended for non-payment of fees.

- (2) The Executive Director may extend the time for a lawyer or class of lawyers to pay an instalment of fees or a special assessment and, if the lawyer pays
- (a) the ~~annual practising~~instalment of fees 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 instalment of fees or special assessment was unpaid.

LAW SOCIETY RULES

- (3) A lawyer, other than a retired or non-practising member, who has failed to pay ~~the annual practising~~ an instalment of fees in accordance with Rule 2-105 (2) or (3) [*Annual practising ~~and indemnity fees~~ fee instalments*], is required to pay the late payment fee for practising lawyers specified in Schedule 1.
- (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.

Failure to pay fees

- 2-108.1** (1) If a lawyer fails to pay the first instalment of the annual practising fee by December 31 of the year preceding the year for which it is payable, together with the late payment fee if required, the lawyer ceases to be a member of the Society.
- (2) If a lawyer fails to pay the second instalment of the annual practising fee by June 30 of the year for which it is payable, together with the late payment fee if required, the lawyer is suspended.
- (3) If a lawyer who is not exempt under Rule 3-43 [*Exemption from professional liability indemnification*] fails to pay the second instalment of the indemnity fee by June 30 of the year for which it is payable, together with the late payment fee if required, the lawyer must immediately cease the practice of law in accordance with section 30 (7) [*Indemnification*] and surrender to the Executive Director the lawyer's practising certificate and any proof of professional liability indemnity coverage issued by the Society.

PART 3 – PROTECTION OF THE PUBLIC

Division 2 – Practice Standards

Costs

- 3-25** (1) The Practice Standards Committee may order that a lawyer pay to the Society the cost of a practice review, action or remedial program ordered or allowed under this Division, and may set and extend the date for payment.
- (2) A lawyer who is ordered by the Practice Standards Committee, under subrule (1), to pay costs must pay those costs in full by the date set or extended by the Committee.
- (3) If any part of the amount owing under subrule (1) remains unpaid by the date set in Rule 2-105 (2) or (3) [*Annual practising ~~and indemnity fees~~ instalments*], the lawyer concerned must not engage in the practice of law unless the Benchers order otherwise.

LAW SOCIETY RULES

Division 5 – Indemnification

~~Payment of annual indemnity fee by instalments~~

~~3-41~~~~[rescinded]~~ (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.~~

Division 7 – Trust Accounts and Other Client Property

Failure to file trust report

3-81 (8) If any part of the amount owing under subrule (6) remains unpaid by the date set in Rule 2-105 ~~(2) or (3)~~ [Annual practising ~~and indemnity~~ fee ~~instalments~~], the lawyer concerned must not engage in the practice of law unless the Benchers order otherwise.

SCHEDULE 1 – 2020 LAW SOCIETY FEES AND ASSESSMENTS

A. Annual fee

- | | \$ |
|--|----------|
| 1. Practice fee (Rule 2-105 [Annual practising and indemnity fees instalments]) | 2,289.12 |

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 3 – Fees and Assessments

Annual practising and indemnity fee instalments

- 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 first instalment of each of the annual practising fee and the indemnity fee is November 30 of the year preceding the year for which they are payable.
- (3) The date for payment of the second instalment of each of the annual practising fee and the indemnity fee is May 31 of the year for which they are payable.

Late payment

- 2-108** (1) If a lawyer fails to pay the instalment of fees by the date required under Rule 2-105 (2) [*Annual practising and indemnity fee instalments*] 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, the lawyer continues to be a member of the Society.
- (1.1) If a lawyer fails to pay the instalment of fees by the date required under Rule 2-105 (3) [*Annual practising and indemnity fee instalments*] but pays all of those fees before June 30 of the year for which they are payable, together with the late payment fee under this rule, the lawyer continues to be a member of the Society and is not suspended for non-payment of fees.
- (2) The Executive Director may extend the time for a lawyer or class of lawyers to pay an instalment of fees or a special assessment and, if the lawyer pays
- (a) the instalment of fees 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 instalment of fees or special assessment was unpaid.
- (3) A lawyer, other than a retired or non-practising member, who has failed to pay an instalment of fees in accordance with Rule 2-105 (2) or (3) [*Annual practising and indemnity fee instalments*], is required to pay the late payment fee for practising lawyers specified in Schedule 1.

LAW SOCIETY RULES

- (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.

Failure to pay fees

- 2-108.1** (1) If a lawyer fails to pay the first instalment of the annual practising fee by December 31 of the year preceding the year for which it is payable, together with the late payment fee if required, the lawyer ceases to be a member of the Society.
- (2) If a lawyer fails to pay the second instalment of the annual practising fee by June 30 of the year for which it is payable, together with the late payment fee if required, the lawyer is suspended.
- (3) If a lawyer who is not exempt under Rule 3-43 [*Exemption from professional liability indemnification*] fails to pay the second instalment of the indemnity fee by June 30 of the year for which it is payable, together with the late payment fee if required, the lawyer must immediately cease the practice of law in accordance with section 30 (7) [*Indemnification*] and surrender to the Executive Director the lawyer's practising certificate and any proof of professional liability indemnity coverage issued by the Society.

PART 3 – PROTECTION OF THE PUBLIC

Division 2 – Practice Standards

Costs

- 3-25** (1) The Practice Standards Committee may order that a lawyer pay to the Society the cost of a practice review, action or remedial program ordered or allowed under this Division, and may set and extend the date for payment.
- (2) A lawyer who is ordered by the Practice Standards Committee, under subrule (1), to pay costs must pay those costs in full by the date set or extended by the Committee.
- (3) If any part of the amount owing under subrule (1) remains unpaid by the date set in Rule 2-105 (2) or (3) [*Annual practising and indemnity fee instalments*], the lawyer concerned must not engage in the practice of law unless the Benchers order otherwise.

Division 5 – Indemnification

3-41[rescinded]

LAW SOCIETY RULES

Division 7 – Trust Accounts and Other Client Property

Failure to file trust report

- 3-81** (8) If any part of the amount owing under subrule (6) remains unpaid by the date set in Rule 2-105 (2) or (3) [*Annual practising and indemnity fee instalments*], the lawyer concerned must not engage in the practice of law unless the Benchers order otherwise.

SCHEDULE 1 – 2020 LAW SOCIETY FEES AND ASSESSMENTS

A. Annual fee

- | | |
|--|-----------|
| | \$ |
| 1. Practice fee (Rule 2-105 [<i>Annual practising and indemnity fee instalments</i>]) .. | 2,289.12 |

FEES BY INSTALMENT

SUGGESTED RESOLUTION:

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

1. By rescinding Rule 2-105 and substituting the following:

Annual practising and indemnity fee instalments

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 first instalment of each of the annual practising fee and the indemnity fee is November 30 of the year preceding the year for which they are payable.

(3) The date for payment of the second instalment of each of the annual practising fee and the indemnity fee is May 31 of the year for which they are payable.;

2. By rescinding Rule 2-108 (1) to (3) and substituting the following:

2-108(1) If a lawyer fails to pay the instalment of fees by the date required under Rule 2-105 (2) [*Annual practising and indemnity fee instalments*] 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, the lawyer continues to be a member of the Society.

(1.1) If a lawyer fails to pay the instalment of fees by the date required under Rule 2-105 (3) [*Annual practising and indemnity fee instalments*] but pays all of those fees before June 30 of the the year for which they are payable, together with the late payment fee under this rule, the lawyer continues to be a member of the Society and is not suspended for non-payment of fees.

(2) The Executive Director may extend the time for a lawyer or class of lawyers to pay an instalment of fees or a special assessment and, if the lawyer pays

(a) the instalment of fees 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 instalment of fees or special assessment was unpaid.

- (3) A lawyer, other than a retired or non-practising member, who has failed to pay an instalment of fees in accordance with Rule 2-105 (2) or (3) [*Annual practising and indemnity fee instalments*], is required to pay the late payment fee for practising lawyers specified in Schedule 1.;

3. ***By adding the following rule:***

Failure to pay fees

- 2-108.1** (1) If a lawyer fails to pay the first instalment of the annual practising fee by December 31 of the year preceding the year for which it is payable, together with the late payment fee if required, the lawyer ceases to be a member of the Society.
- (2) If a lawyer fails to pay the second instalment of the annual practising fee by June 30 of the year for which it is payable, together with the late payment fee if required, the lawyer is suspended.
- (3) If a lawyer who is not exempt under Rule 3-43 [*Exemption from professional liability indemnification*] fails to pay the second instalment of the indemnity fee by June 30 of the year for which it is payable, together with the late payment fee if required, the lawyer must immediately cease the practice of law in accordance with section 30 (7) [*Indemnification*] and surrender to the Executive Director the lawyer's practising certificate and any proof of professional liability indemnity coverage issued by the Society.;

4. ***In Rules 3-25 and 3-81, by striking “the date set in Rule 2-105” and substituting “the date set in Rule 2-105 (2) or (3)”; and***

5. ***By rescinding Rule 3-41.***

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society
of British Columbia



Rule 2-84: Proposed Amendments to the Rules Concerning the Current Requirement for New Lawyers to be Presented in Open Court

September 1, 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, recommends amendments to Rule 2-84 in order to extend the time for a lawyer to be presented in open court for call and admission.

Problem

2. The way the rules are currently structured, if a lawyer is not presented in open court prior to December 31st, the Executive Director must not renew that lawyer's practising certificate.
3. There is an exception to this rule as the Executive Director may renew a certificate issued within four months of its expiry date (being December 31st). As a result, lawyers called and admitted after August 31, 2020 can be issued a practicing certificate for 2021 and have until December 31, 2021 to be presented in open court.
4. In light of the current circumstances surrounding the existence of COVID-19, there are concerns that lawyers may not be able or choose not to be presented in open court before a judge of the Supreme Court in order to meet the requirements of call and admission. Providing ability in the rules to extend the timing of the presentation in open court would be advisable.

Discussion

5. In order to address the problem identified above, the Executive Committee recommends that the time referred to in Rule 2-84(6) be extended by a year. This would require a lawyer who is called and admitted on or before August 31, 2020 to be presented in open court by the end of December 2021.
6. This should allow sufficient time for the physical distancing measures to be lifted and allow for in person ceremonies, celebrated with family, friends and colleagues.

Recommendation

7. The Executive Committee recommends that the Benchers approve in principle amendments to the rules to provide an extension of time for lawyers who have been called and admitted to be presented in open court before a judge of the Supreme Court until December 31, 2021. If that recommendation is accepted, the matter will be referred to the Act and Rules Committee to develop the specific language.



Proposal to Amend Rules Addressing Law Society Form Approval

Date: September 17, 2020

Prepared for: The Benchers

Prepared by: Executive Committee

Purpose: For recommendation

Purpose

1. The Executive Committee considered a recommendation from staff to replace the requirement that forms be approved by various committees with rules that the forms be approved by the Executive Director. This memorandum outlines the rationale for the proposal and recommends that the Benchers adopt it and refer the matter to the Act and Rules Committee to amend the rules accordingly.

Problem

2. A variety of forms are used for operational purposes under the rules. With the current structure of the Rules, many of these forms require the approval of a committee for any amendments to the form. Specifically, the Discipline Committee, Executive Committee and the Credentials Committee all have forms that require their approval under the rules. This means that any amendments to the forms that are necessary from time to time must be added to the relevant committee's agenda, discussed and decided upon, and then communicated either back to staff or on to the Benchers for further discussion. In some places in the rules, however, the Executive Director already has authority to approve certain forms.
3. Where committee approval is necessary, the result is that form amendments can take a surprisingly considerable period of time to be approved due to the committee meeting schedules, priority of agenda items, and communications between Law Society staff and committee members. This also represents an ineffective use of committee members' valuable time and expertise that could be used to discuss other pressing policy or regulatory matters.

Discussion

4. Forms exist to obtain information that the rules require be provided to the Law Society. The rules requiring the production of information reflect the policy decisions made by the benchers about the need for the information. The forms are simply the operational method by which the information is collected. The forms need to reflect the rules, and cannot require the production of information that is not permitted by the rules.
5. The Executive Director, through staff, is now drafting the forms, and utilizing its expertise in the issues that need to be included to implement policy decisions regarding the collection of information. These considerations include the operation of the *Freedom of Information and Protection of Privacy Act* as well as principles of human rights law and fairness. As a result, the forms are generally provided to the committees, where required, for approval which is regularly given. committees sometimes want to discuss the form, but it is usually on drafting issues which is not a good use of committee time.
6. Consequently, bencher-level approval of a form is an extra step that serves no principled policy outcome. The policy decision has already been made by passing the rule to require the

information be provided. Operational decisions about how the rules are implemented are routinely made by staff, and consequently the current requirement that a committee approve a form is an ineffective use of the society's resources.

7. There are also current inconsistencies in the rules that are difficult to rationalize. For example, Rule 2-5(1) requires the Credentials Committee to approve the form of application for release from an undertaking. Two rules later, however, Rule 2-7 permits the Executive Director to approve a list of several different types of forms, including the form of practicing certificates and the form of a permit for a practitioner of foreign law.
8. The simplest way to address the problem identified above is to amend the rules so that the Executive Director can approve forms instead of the relevant committees. By virtue of Rule 1-44.1, this would allow for designated Law Society staff to make any operational amendments to the forms that were required by operation of the rules or on recommendation of a committee dealing with the relevant rules. It is a quicker and more streamlined process.
9. This solution also has the benefit of freeing the relevant committees from having to consider and approve forms. Some committees have a considerable number of forms for approval under the rules. The time saved in having the Executive Director approve the forms would allow for these committees to focus on their mandate instead of operational matters.
10. The Executive Committee, however, discussed that where forms are being amended in a substantive manner, it would be appropriate for the Executive Director to consult and obtain approval of the relevant committee (or where there is no obviously relevant committee, then to consult the Executive Committee) prior to changing the form.

Recommendation

11. The Executive Committee recommends that the Benchers approve in principle amending the rules to provide the Executive Director with the authority to approve forms, subject to the Executive Director implementing a policy that where substantive changes are being made, committee approval will be sought. If the Benchers accept the recommendation, the matter should be referred to the Act and Rules Committee to prepare proposed rule amendments to be returned to the Benchers for approval.



Memo

To: Benchers
From: Staff
Date: September 15, 2020
Subject: 2021 Annual Practising Fee Reduction

At the July Benchers meeting, the Benchers authorized providing some amount of annual practising fee reduction for those lawyers most in need of financial assistance as a result of the COVID-19 pandemic and its impact on their practice. The fee reduction was to be based on information to be gathered from those expressing interest in receiving a fee reduction.

Over the course of the summer, designated representatives were provided with several opportunities to complete a form and provide information about their 2019 and 2020 fees earned during the first six months of each year and their per lawyer pre-COVID income for their last full fiscal period. The proposed criteria for receipt of the reduction were a 30% decline in per-lawyer fees from January through June 2019 to January through June 2020 and per lawyer pre-COVID income equal to or less than \$75,000 for full-time lawyers and \$37,500 for part-time lawyers. Law firms formed after June 2019 that did not have any 2019 fees to report were encouraged to complete as much of the form as they could.

In order to produce the invoices for the 2021 annual practising fee, the amount of the fee reduction will need to be established by the Benchers. The proposal is to provide a proportionate reduction for those who meet the criteria set out above based on the following table.

Year over Year Fee Decline	Reduction
30% - 39%	50%
40% - 49%	62.5%
50% or more	75%

For those firms that applied and did not have any 2019 fees but did meet the pre-COVID income criteria, the proposal is that they receive a 50% reduction on their 2021 annual practising fee.

As it's expected that the business consequences of the COVID-19 pandemic will continue to unfold over the balance of this year and quite possibly into 2021, it's proposed that the Executive Director will have the discretion in extraordinary circumstances to provide for a fee reduction where a sole practitioner or small firm that did not otherwise apply during the summer

subsequently finds itself in need of financial assistance, particularly in relation to the second instalment due in mid-2021.

To implement the above, the following resolution is proposed:

Provided the firm has completed the required form and meets the criteria for an annual practising fee reduction set out above, or if the Executive Director determines that there are extraordinary circumstances that would justify a firm receiving a 2021 annual practice fee reduction where no application was received, lawyers in each firm that qualifies shall be entitled to a percentage fee reduction on their 2021 annual practising fee as indicated.



Memo

To: Benchers
From: Executive Committee
Date: September 25, 2020
Subject: Update on Fall Events and Revisions to 2020 Benchers & Executive Committee Meeting Dates

Due to event restrictions in place due to COVID-19 and the unlikelihood of the restrictions being lifted prior to the end of the year, the Executive Committee has decided to cancel the 2020 Recognition Dinner and postpone the Commemorative Certificate Luncheon to 2021. The Committee has also decided to cancel this year's Bencher Retreat and postpone to 2021, or such a time as it could be held safely.

As a consequence of the above change, the October Bencher Meeting date has been moved from Saturday, October 31 to Friday, October 30 to align with the original meeting schedule for 2020.

We attach for your information an updated version of the 2020 Benchers & Executive Committee meeting dates as approved at the September 10, 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	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	Friday, October 30	AGM: Oct 6 Thanksgiving Day: Oct 12 Federation Fall Meetings: Oct 14 – 17
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



CEO's Report to the Benchers

September 25, 2020

Prepared for: Benchers

Prepared by: Don Avison

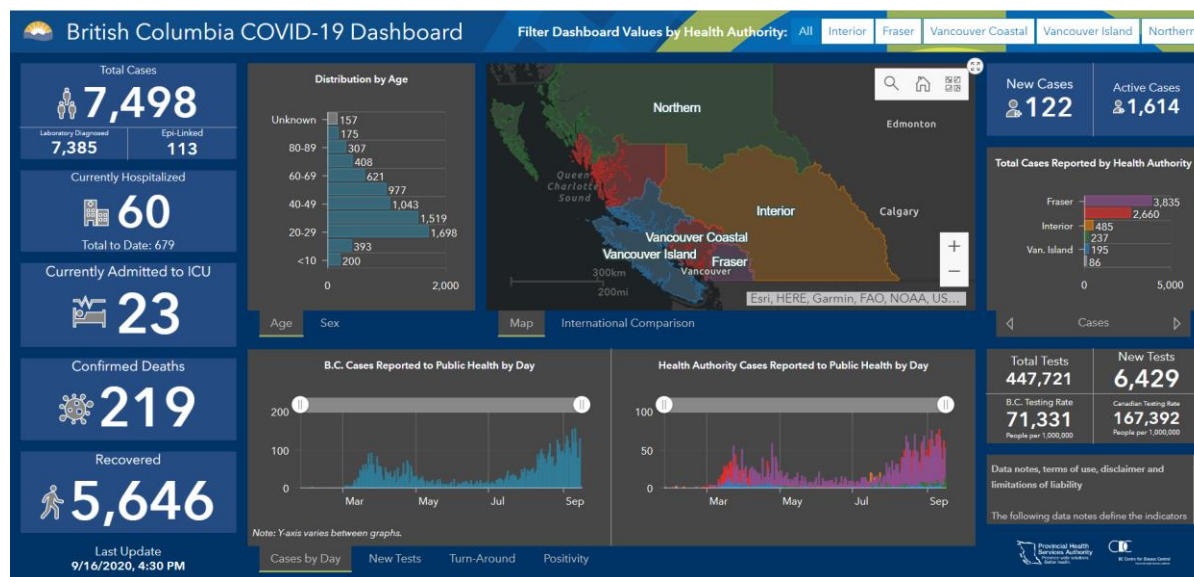
1. LSBC Operations

At the September 25, 2020 meeting of Benchers I will provide a more detailed update regarding LSBC operations.

With staff working both remotely and coming in to the office, our overall productivity levels are continuing to be quiet good.

We continue to closely monitor and implement COVID-19 protocols and, while we have had some challenges, those have been managed effectively.

The Law Society continues to regularly review information provided by the BC Centre of Disease Control regarding COVID infections in British Columbia. The BCCDC Dashboard provides some interesting insight regarding how the situation has evolved in this province and I have included with my report a copy of what the dashboard was telling us as of September 16, 2020.



The largest concentration of reported cases are in the Vancouver Coastal and Fraser Health regions where daily case levels have increased quiet dramatically, albeit with fewer hospitalizations, over the last 5-7 weeks.

2. Staffing and Organizational Changes

DM2851090

I'm very pleased to report that Lesley Small has been appointed as Senior Director, Professional Development, Practice Support and Credentials, and as a result, joins the Senior Leadership Team.

Lesley is well known to everyone in the organization and the profession. She brings an extraordinary level of institutional knowledge to her new managerial responsibilities and will be a significant contributor on a number of existing and emerging Law Society priorities.

With the shift in Lesley's role, I have also made the decision that now is the right time to locate Member Services within Finance and Audit. With this change Lynwen Clark will now report to Chief Financial Officer, Jeanette McPhee. I am very grateful to Jeanette for her willingness to take on this additional responsibility.

One of our key objectives over the remainder of 2020, and in 2021, will be working on improving response times with Member Services requests.

3. The Law Society's 2020 Annual General Meeting

Plans are well underway for this year's AGM.

As Benchers will know, the AGM is taking place in very challenging circumstances this year and I appreciate all the work that Avalon Bourne and her staff are doing to make the event as seamless as possible.

4. The Federation Fall Conference

The annual conference of the Federation was to have taken place in Saskatoon, Saskatchewan in October of this year but, like many other events, the in-person conference and meetings were cancelled.

Over the past several months the federation, together with representatives of the provincial and territorial Law Societies have been working on the development of a virtual conference that will now take place through two 3 hour sessions held on October 15 and 16.

As the virtual format presents an opportunity for a greater number of Benchers to experience engagement with the Federation and its work, we have asked if we could expand the number of Bencher participants from B.C.

On a related front, I can advise that one of the positive outcomes of the COVID situation is that Law Society CEO's from all provinces and territories are more connected than they have been at any point in the past. Zoom video conferences were happening every week for some time and we have now moved to a call every two weeks. This has generated an unprecedented level of information sharing between jurisdictions and I expect this exchange will continue long after the pandemic.

5. The Cullen Commission

Commission hearings will reconvene in the coming weeks. At this point, the Commission will focus on the gaming industry and ancillary issues through October and in to November.

The sessions dedicated to professionals, and the regulation of professional groups, will commence on November 16, 2020. I will update Benchers on September 25 with respect to the Law Society's anticipated engagement with the Commission.

6. 2021 Budget Proposal

Given the unique circumstances we have faced in 2020, Benchers have had a number of briefings on budget development over the past several months. A proposed budget will now come before the Benchers for consideration at the meeting on September 25.

An information session for Benchers on the proposed 2021 budget is scheduled for 12:45 pm on September 24 and I would urge as many Benchers as possible to attend. With the assistance of the C.F.O, Jeanette McPhee, Deputy C.E.O, Adam Whitcombe and other members of the Senior Leadership Team, we plan to review the proposed budget, cost-containment strategies that we have put in place for the current fiscal year, the fee relief initiative for 2021 and a proposal

Benchers may wish to consider regarding extending fee relief in respect of the second installment on 2021 fees.

Don Avison, QC
Chief Executive Officer



Anticipating Changes in the Delivery of Legal Services and the Legal Profession

The Final Report of the Futures Task Force

Craig Ferris, QC (Chair)

Jeevyn Dhaliwal, QC (Vice-Chair)

Lawrence Alexander

Lynne M. Charbonneau

Dr. Cristie L. Ford

Steven R. McKoen, QC

Dr. Katie Sykes

Tony Wilson, QC

Date: September 10, 2020

Prepared for: The Benchers

Prepared by: Futures Task Force

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Introduction

For time and the world do not stand still. Change is the law of life. And those who look only to the past or the present are certain to miss the future.

John F. Kennedy

Change is coming, and it is better to surf and control it, than to wish for a past that is not going to be resurrected.

Jonathan Goldsmith

(former secretary general of the Council of Bar and Law Societies of Europe)

Change is constant in all aspects of our lives, and this is true in the practice of law as well. Client expectations, competition among lawyers and with other professionals, technology, generational expectations, and societal norms all affect what lawyers do and how they carry out their practice in important ways. Society's expectations of what lawyers do and how they should do it also change. How lawyers keep up with these changes is very important for the availability of efficient and affordable legal services and for the confidence that the public has in the legal profession as a whole, and equally important for the sustainability of their practices and their personal well-being. A legal profession that is incapable of achieving outcomes that resonate with what society expects is one in which the public will eventually lose confidence.

The legal profession is steeped in tradition and in precedent. Lawyers routinely look into the past to find precedents that will assist in solving the legal problems faced by clients. But when it comes to new trends and developments in how services are delivered, what clients are seeking, or even how people other than lawyers think about the world, the legal profession, bound in its traditions and precedents, is often poorly suited to "move with the times." Our affinity for history and our aversion to risk are both impediments to positive change.

The legal profession, and in particular the market for legal services, is rapidly evolving, and it has been over 10 years since the Law Society had dedicated a specific group to identify and consider trends and issues that warrant action. Therefore, in January 2019 the Benchers established the Futures Task Force to consider and develop insight on the future forces and factors the profession might face in the future and to make recommendations on the issues driving change to the Benchers.

The Benchers will be determining the Law Society's next Strategic Plan throughout the fall of 2020, and expect that the recommendations from the Futures Task Force's Final Report will help to inform the strategic planning process by identifying trends and providing recommendations that the Benchers can incorporate into the plan.

The Task Force was established with the following mandate:

Recognizing that significant change in the legal profession and the delivery of legal services is expected over the next five to 10 years, the Futures Task Force will identify the anticipated changes, consider and evaluate the factors and forces driving those changes, assess the impact on the delivery of legal services to the public, by the profession and on the future regulation of the legal profession in British Columbia, and make recommendations to the Benchers on the implications of the anticipated changes and how the Law Society and the profession might respond to the anticipated changes.

Task Force Work Plan

At its first meeting, the Task Force developed a work plan with a timetable of meetings, together with an outline of possible areas of inquiry and identified additional information that the Task Force needed to gather to fulfil its mandate.

The Task Force also divided its work into three general phases. Phase one was used to identify and learn about the factors and forces that would drive change in the practice of law and regulation of the profession. Phase two was dedicated to evaluating the scope and significance of the changes with a view to assessing their relative impact and priority for further consideration. And phase three addressed the impact and made recommendations about steps that could be taken in response to the anticipated changes.

The Task Force held eight meetings, on average one month apart. With the arrival of COVID-19 in British Columbia and the subsequent social distancing requirements from March 2020 onward, the Task Force shifted to conducting its activities through Zoom's video meeting application and email. While the pandemic was unexpected, the rapid move to virtual interactions demonstrated the speed with which change can occur when necessary. The Task Force considers that the time has come where some change is now indisputably necessary for the legal profession.

Areas of Inquiry

During phase one, the Task Force engaged in a wide-ranging discussion in person and over email on the multitude of forces and factors that could affect the delivery of legal services and impact the regulation of the legal profession in British Columbia over the next five to 10 years. As a result of these exchanges, the Task Force identified four broad areas of interest.

The Future of Legal Services

This area of inquiry would consider the factors that would directly impact the actual delivery of legal services. Areas for consideration included:

1. The demographics of the legal profession and those seeking their services;
2. The gap between unmet and underserved legal needs and lawyers who have underused capacity;
3. The differentiation within the profession, such as in-house lawyers being separated from the ‘firm’ model, and the differences of those practising in small rural areas compared to large urban practices; and
4. The impact of technology and globalization on the market of legal services in British Columbia.

The Future of Legal Accreditation/Education

This area of inquiry focused on professional accreditation by the Law Society and how that is impacted by legal education. We considered whether our accreditation process may need to evolve to accommodate a new market and business model for the provision of legal services. Areas for consideration focused on how the accreditation requirements for the next generation of legal service providers can accommodate the changing nature of practice of law as technology and new kinds of competition redefine the market. The Task Force also identified for consideration the question of how to anticipate and respond to a different environment with the potential for a loss of market monopoly and, possibly, changes to the structure of the regulatory body either introduced from within the profession or imposed on the profession by the government.

The Future of Legal Regulation

The Task Force recognized the importance of the Law Society’s role in protecting and serving the public interest in the administration of legal self-regulation. This heading identified several areas that could influence the continuation and efficacy of self-regulation, including challenges to the current regulatory model. The Task Force identified for consideration the question of whether a remake of the regulatory model is necessary, or whether the current model can be reformed to accommodate the changing legal landscape.

The Future of the Law

This fourth area of inquiry encapsulated the Task Force’s identification of anticipated changes to actual law. The Task Force noted recent and increasing threats to the rule of law seen in other jurisdictions and whether this represented a trend toward challenges to lawyer and legal independence, particularly from the State. The Task Force also recognized the significance of the Truth and Reconciliation Commission’s Calls to Action and the anticipated changes to laws as a response to those recommendations.

Activities Undertaken

The Task Force considered different means of gathering the perspectives of the legal profession in British Columbia to fulfil its mandate. Ultimately, it decided that the core method for gathering information would be through consultation.

In addition to the consultation responses, the Task Force considered the following resources as part of their responsibilities listed in the Terms of Reference. The Task Force examined the perspective of law students and recently called entrants to the profession by referencing the PLTC exit surveys, which have been conducted since 2006. The Task Force also identified a number of academics and authors writing about the future delivery of legal services. Experts writing in this area included Richard Susskind, Jordan Furlong, Adam Dodek, Richard Abel and Gillian Hadfield. A list of written resources the Task Force reviewed is included in the Appendix.

The Task Force identified other groups of stakeholders for consultation purposes such as the government, the courts, the Canadian Bar Association BC Branch, the Trial Lawyers Association of BC, and the Criminal Defence Advocacy Society. The law schools at the University of British Columbia, the University of Victoria and Thompson-Rivers University were also identified, as were the Continuing Legal Education Society of BC, the Law Foundation, Courthouse Libraries BC, the People's Law School and the Justice Education Society.

The Task Force also met with Paula Littlewood (at the time the Executive Director of the Washington State Bar Association), Fred Headon (who had been President of the Canadian Bar Association at the time that organization prepared its report on Transforming the Delivery of Legal Services), Jon Festinger, QC (educator and counsel) and George Psiharis (Chief Operating Officer of Clio, a company that develops legal management software).

Given the timeframe in which the Task Force was asked to complete its mandate, the Task Force decided that it would not be feasible to hear individually from every stakeholder. Instead, the Task Force conducted its consultation through a survey, and reached out specifically to the listed stakeholders to provide their commentary.

The Consultation

The Task Force created a consultation survey of 14 open response questions. The topics for the first 13 questions were based on forces and factors that the Task Force identified for further exploration, with the last (14th) question being a generalized 'what other factors' question. In order to encourage a wide breadth of responses and participation, no self-identifying questions were asked of the respondents. Respondents could answer any or all of the questions they chose, and no word limit was imposed. Each question included a preface on the issue or an observation by the Futures Task Force. The consultation was hosted on the Law Society's website and was open from December 2019 to the end of February 2020. The Task Force extended the consultation

period once, so that it remained open until the end of March 2020. The consultation was advertised and promoted through the Law Society’s website and social media platforms, and was included in the Law Society’s monthly E-Briefs from December 2019 to March 2020. Stakeholder groups were individually emailed by Law Society staff to draw their attention to the consultation. The consultation was available to the public.

The Task Force received 58 completed submissions to the consultation. The vast majority of submissions were received prior to mid-March 2020, and therefore may not be reflective of the rapid changes in the legal profession seen in response to the COVID-19 pandemic.

A report on the findings from the consultation, together with the full consultation paper with prefaces and consultation questions can be found in the Appendix to this Report.

Findings

While the Task Force has generally made recommendations about the issues driving change rather than specific recommendations on what the Benchers or the Law Society should do in response to those issues, the Task Force has also made specific recommendations in some cases on what can or should be done. The Task Force recognizes however that ultimately it is up to the Benchers to consider how the Law Society should respond to these issues over the coming years as part of their strategic planning process. However, even where the recommendations in this report address only the issues driving change, the Task Force urges the Benchers to take heed of the changes identified and be prepared to address those changes with innovation and boldness.

The Task Force’s recommendations are listed under the four broad headings that the Task Force identified early on in their research and discussions. The four headings are: the future of legal services, the future of legal accreditation/education, the future of legal regulation, and the future of the law. In addition, due to the unanticipated influence of the COVID-19 pandemic, the Task Force has included a fifth heading for recommendations that relate to the pandemic and public health orders.

The Future in Light of COVID-19

In December 2019, the first known cases of a novel coronavirus were being reported in Wuhan, China. By early February 2020, British Columbia was diagnosing its first known cases. What followed was a rapid increase in infection rates and deaths worldwide and local, provincial and national governments responded to the pandemic in a variety of ways. In British Columbia, the public health officer declared a public health emergency on March 18, 2020, giving the provincial government the powers to make decisions in order to protect the public and contain the spread of the virus. The government mandated that only essential services should remain open during what was then phase one of the virus containment plan. Legal services were considered essential. The

government also required everyone to maintain social distancing measures, which meant a limitation on how many people could be in a space at one time and required people to stay at least two meters apart. Due to the restrictions and safety measures, most law offices had to move their staff so that they could work from home if able, and the courts closed for all but the most urgent of matters.

The state of emergency that COVID-19 precipitated changes in the legal profession and justice system. The profession was forced out of its traditional conservatism and was required to adapt in rapid order. Some practices, such as how affidavits are commissioned and how wills are executed that have been in place for centuries, were modernized in the space of weeks.

The COVID-19 pandemic is one of the great catastrophes of our times, a public health crisis that has also caused great upheaval, in the legal system as in society generally. At the same time, it has catalyzed changes in the legal system that are welcomed, even seen as overdue, by some. The negative effects on legal services and the legal profession were largely a result of offices and the courts having to close or move to “work from home” due to health orders. Some legal practices had to temporarily or permanently lay off staff due to the reduction in income or the inability to transition effectively to working from home. Law firms and sole practitioners felt increased business pressures as they tried to maintain their operations whilst remaining safe. While many lawyers and firms with established practices were able to adapt quickly, the profession’s ability to welcome and integrate lawyers new to practice or new to a practice environment suffered. The requirements of distancing resulted in many professionals working from home, and this reduced the effectiveness of the mentoring and supervision benefits of the articling process. The closure of the courts meant that non-urgent hearings and trials that were scheduled, some years in advance, were put on hold to be rescheduled at some unknown future date. This also impacted the public, by postponing decisions on their legal matters and creating anxiety about when their cases would have resolution and redress. It also impacted our legal aid system, as the income of criminal defense lawyers is often dependent and calculated on the number of days they appear in court.

This will necessitate changes to how new lawyers and staff will be welcomed into what was traditionally an office environment. There was an increase in the use of technology to provide legal services, such as meetings over video conferencing applications. The profession, the courts, and the government were able to collaborate in ways to allow for rapid amendments to legislation and rules to allow, for example, for the execution of wills or the commissioning of affidavits through the use of remote technologies instead of requiring in-person attendance. The courts adapted by modifying their long-standing preference for having documents filed in person, and updating their systems to allow for more e-filing and video conferencing abilities. The courts implemented processes to allow matters to be resolved through written submissions, phone or video conferencing instead of in-person hearings and the Law Society itself did likewise by creating processes to allow for hearings to be held using video technology. While not always perfect and recognizing that improvements can and should be made, these efforts demonstrated

that justice system participants could work collaboratively to adapt to unusual situations. The Task Force noted that some of the changes brought into effect as a response to the COVID-19 pandemic should be maintained, with improvements, in the future, even after the threat of the virus recedes.

COVID-19 has also highlighted the need for the Law Society to augment its data collection and analytic capabilities. The Law Society should become more data-driven and evidence-based, in order to be more effective. For example, our need to address income levels for a targeted fee reduction due to the impact of COVID-19 on law firm income needed to be driven by a one-time survey. In order to address the challenges facing the profession and to plan effectively for a changing professional environment, the Law Society needs to develop the capacity to collect better, more granular data in an ongoing and more systematic way.

Both the legal profession and the broader justice system have therefore shown that they *can* make changes – even transformative changes – where events require it. The profession itself should have the ability to identify what needs changing in order to address future challenges.

Recommendations to address the aftermath of COVID-19:

- 1. The Benchers need to recognize where changes are possible and be prepared to advance bold and innovative approaches to how law is practised and regulated in order to address items listed in its mandate in section 3 of the *Legal Profession Act*.**
- 2. The Benchers need to evaluate which fundamental changes adopted due to the COVID-19 pandemic have had, allowing for imperfections, a generally positive effect on the practice of law and the experience of people who use legal services in British Columbia, and take steps to make those changes permanent.**
- 3. The Benchers should evaluate how best to prepare legal services, legal practice and the legal profession in British Columbia to be resilient in the face of future catastrophic events such as another pandemic or a natural disaster.**
- 4. The Benchers should augment the Law Society's data-gathering and analytic capacity to support and improve its resilience, its policy efforts, and its planning.**

The Future of Legal Services

The future of legal services is the subject of many articles and books. It is a frequent point of discussion amongst lawyers, even to those who have practised for a decade (let alone three or four), that the provision of legal services has changed and is continuing to do so. How things are done today is very different from how they were done in the early 1990s or 2000s. Changes continue to accelerate. The Law Society needs to be a driver for this change, because the legal profession is lagging behind society in its acceptance of new business models, service delivery

strategies, and in how it adapts to technology. This change cannot stop at the door to the legal profession but must move into and throughout the whole justice system.

The majority of the Task Force's consultation questions were on the future of legal services. The topic covered questions and responses on all of the following: demographics, access to justice, unmet legal needs, alternative legal service providers, alternative business structures, in-house counsel, Indigenous legal services, and technology.

The findings from the consultation demonstrated how many of the forces and factors for the future of legal services are interconnected. For example, one common theme from the consultation was the challenge that traditional law firm models pose and the effect that the model has on mental health, substance use and wellness. Many respondents suggested that exploring new technologies or allowing alternate legal service providers to take on some legal work could potentially alleviate the stresses caused by the traditional model and have a positive flow-on effect on wellness too.

Alternate Legal Service Providers

Far too many people are unable to afford the services of a lawyer. This is not a British Columbia-specific problem, but it is one that exists in this province and the legal profession must address it. Surveys conducted by the Law Society in 2009 and 2020 demonstrate that as many as 70% of those with a legal problem get no legal advice about their situation. Of the 30% that do obtain advice, only about half get it from a lawyer. There is clearly a need for legal advice that lawyers are currently not providing.

While the Task Force recognizes that the Law Society has engaged already in a considerable review of alternate legal service providers (ALSPs) (including obtaining legislative amendments to permit the regulation of ALSPs), more work evidently needs to be done to implement the initiative and expand on how it can be utilized to improve the provision of legal services. This must be addressed by the profession in the near future, and the Law Society needs to be bold, take risks, and drive this initiative to fruition.

Technology

Technology will play a significant role in the delivery of legal services over the next five to 10 years. This will play out in two ways:

1. Technology will aid lawyers in delivering legal services. Access to machine learning, also known as artificial intelligence, should make research faster, more comprehensive and, hopefully, more cost effective. Lawyers will still be integral to the interpretation of that advice for the particular circumstances of their clients, but lawyers who do not understand or engage with technology will, many experts predict, be at a significant competitive disadvantage.

2. Technology will assist self-represented individuals to gain better access to legal information, and will assist in tasks that are largely based on form-filling to enable an individual to complete a legal transaction without costly one-to-one professional help. More intelligent information can be provided through the development of artificial intelligence systems that will be able to guide an individual through a process based on algorithms that are linked to data bases.

Incorporating technology requires understanding its uses, benefits and limitations. The Task Force recognizes that a legal professional's guidance of a client through a process retains the advantages of interpersonal contact that can be very important to that client. It creates a relationship and can provide for empathy even when the advice that needs to be given is not favorable to the client. This empathic support is something that does not happen where a legal services user accesses information through technology alone. On the other hand, the convenience and immediacy of technology can be advantageous to someone needing legal information or advice, particularly if being accessed in remote areas. Access to technology may also provide a sense of anonymity. Ideally, a combination of human help and technological tools and support can be achieved. Legal tools can be (and are being) developed that are similar to, for example, e-advisors in the investment industry, offering simple portfolios with less expensive fees by comparison to bespoke portfolios with customized investment advice. The legal profession must accept that one size does not fit all client needs and bespoke solutions are not always needed or even optimal.

The Law Society must understand this shift in how services are delivered through technology, including both its benefits and its costs in terms of the legal profession, its clients, and the public interest. Technology is affecting all aspects of the economy and the professions, and it will affect - indeed, already is affecting - the legal profession. In the Task Force's opinion, it would be contrary to the public interest in the administration of justice for the Law Society not to identify the importance of adopting technology in the profession in ways that serve the public interest. Its regulatory approaches should also reflect that reality. It would be better to embrace and adapt to technology and allow the legal profession to experiment with innovative ways to leverage it for their clients and society at large.

The Task Force believes that there is a role for Law Society regulation of certain forms of legal technology (or how they are used), but this regulation will require a new approach. Regulating technology in a proper and proportional way will require a different regulatory design. The Task Force believes that certain core principles of the profession will need to be maintained, but they may need modification and the Law Society must be prepared to recognize and adapt.

Existing regulation focuses on individual lawyers, but this is out of sync with how many firms currently operate, and will be further out of sync with the more expanded range of service provision structures that may exist in future. The Benchers have accepted recommendations of the Law Firm Regulation Task Force – recommendations that are designed to focus on desired outcomes - and

those recommendations are, the Task Force understands, being implemented. The Task Force believes that differently-focused regulatory approaches such as those contemplated on outcomes will be important to meet regulatory expectations in the coming years.

Alternate Business Structures

The consultation results suggest allowing for innovation in creating models for the delivery of legal services.

Alternate business structures (ABSs) have been in the lexicon for a little more than a decade, and are permitted in England and in Australian states. While non-lawyer ownership of law firms has generally not been permitted in the United States (aside from some limited application in the District of Columbia), the Task Force has learned that Utah and Arizona have recently approved such ownership. While ABSs have not, perhaps, had the transformative effect to date that their proponents promised, the Task Force believes ABSs require consideration when examining the way legal services will be delivered in the future. Our jurisdiction has excessive limitations on who can own the entity that delivers legal services. Lawyers are skilled at delivering legal services, but are not equally skilled in understanding or applying technologies by which the delivery of legal services can be improved, at management, or at other complementary skills. But with law firm ownership being largely limited to lawyers, those with technological – or other – expertise have few incentives to develop new delivery and business models within the law firm structure. Innovation needs to be undertaken with new delivery models, and the Task Force believes that current limitations on ownership stifle both innovation and the investment that permits innovation to happen. Current limitations reduce the opportunity for creative solutions to improve how capital can come into a law firm so investments can be made in technology or other resources to improve the delivery of legal services. Consequently, the Task Force recommends developing a regulatory structure that permits the creation of ABSs through which legal services are provided in order to meet the current and future needs of clients and the broader justice system.

The Task Force recognizes that there are concerns about how “core” values of the legal profession could be adversely affected by ABSs. However, the Task Force believes that these concerns can be addressed through proper and targeted regulation. It would be preferable to refine or adapt regulation that proves inefficient or ineffective than to delay it indefinitely in hopes of finding the perfect approach. We must continue to remember that our current rules are not our values, but merely an expression of those values. We must be thoughtful about how different rules or different approaches can continue to express and maintain those values but in new and innovative ways.

In-house counsel

Approximately one quarter of practising lawyers in BC practise as in-house counsel or with government. The Task Force paid heed to the responses from the consultation to questions about in-house counsel, noting their call for more resources to be made available that specifically address

this area of practice. Practice advice could be included for government, not-for-profit, and in-house lawyers to address the common issues that they face as part of their practice.

As the need for corporate and government bodies to manage or in some cases reduce their budgets and still obtain necessary legal advice and services increases, the need to drive innovative solutions in operations, process and the use of technology will increase. The possibility of alternate legal service providers forming part of the solution is very real, along with the unbundling of certain elements of practice. The globalization of legal support has already driven some legal services to lower cost jurisdictions. Therefore, the context and environment in which these lawyers practise merits specific consideration in a way that has not happened over the Law Society's history. The business models and delivery of service models faced by this segment of the bar are very different from private practice. The Law Society needs to identify what resources in-house and government lawyers need, including what model of regulation is best suited for this area of practice. In-house lawyers also have experience with the systematization and operationalization of legal advice for rapid consumption by a variety of actors within their structures, and this experience could very well be leveraged by the Benchers in their consideration of what changes might be considered and are familiar with identifying and managing risk, such as may be helpful in developing regulatory sandboxes.

Mental Health, Substance Use and Wellness

The Task Force acknowledged the significant amount of research and analysis on this subject by the Law Society's Mental Health Task Force, which has led to recommendations that are aimed at improving an area of real concern for the profession. But the Task Force believes more will need to be done in the next decade as knowledge and treatments of health issues improve. The consultation respondents suggested early identification and reporting before mental ill health begins to affect a lawyer's practice, as well as increasing the availability of resources. One of the often repeated suggestion was the need to change how law is practised in British Columbia, with the expectation of long hours, client demands and the pressure of perfectionism. Providing resources for those experiencing mental health challenges, substance use and other stressors and altering our regulatory process to provide approaches that are more effective and outcomes to those experiencing mental health issues are both necessary steps, but addressing the underlying and potentially systemic causes is also required.

Indigenous Peoples and Reconciliation

The Report of the Truth and Reconciliation Commission in 2015 underlined the need to acknowledge and remedy the consequences of over a century of government policy regarding Indigenous populations and legal orders. The 94 Calls to Action identify an ambitious program of reconciliation. Many of those Calls to Action, while they may not specifically identify lawyers or

the legal profession, will require work to be done by the legal profession to effectively work toward reconciliation. Call to Action 27 speaks directly to law societies.

These issues will alter the legal profession and they must be addressed now and over the coming years. The Task Force recognizes that this will require time and resources from the Law Society. The consultation findings suggested that for both the practice of Indigenous law and helping Indigenous People's access to justice need to be recognized and supported. It is not fully clear to the Task Force what work will need to be done, but we expect it to include finding ways to increase the representation of Indigenous People in the legal profession, including in senior positions as well as identifying what issues the Law Society can address itself, or assist others in addressing, that have been identified in the First Nations Justice Strategy released earlier in 2020. It will require identifying ways to improve our general cultural competency about Indigenous cultures so that those delivering legal services have a higher level of fluency about those cultures especially, but not only, on matters in which Indigenous people or their lands are involved. In addition, it will require working within the broader justice system to identify what it means to recognize Indigenous legal orders within the justice system.

Recommendations Concerning the Future of Legal Practice:

- 5. The Benchers need to evaluate how existing and emerging technologies can better support legal services and address regulatory impediments that exist in permitting their use in the provision of services.**
- 6. The Benchers need to amend regulatory structures to allow for innovation in legal service delivery and alternative business structures while protecting the public.**
- 7. The Benchers need to reevaluate current regulations and restrictions on law firm ownership and investment, as well as multi-disciplinary practice and partnership structures to ensure they are not inhibiting innovation, or prohibiting a more efficient and effective practices of law, and if they are, work to change these restrictions.**
- 8. In order to achieve Recommendations 5, 6 and 7, the Benchers need to authorize regulatory sandboxes to allow innovations, which may be illegal or unethical under current regulations, to be piloted and evaluated in a controlled environment.**
- 9. The Benchers should consider how ALSPs and technology could better meet the demand for access to justice through the evaluation of pilot programs designed to address that need.**
- 10. The Benchers must advance their initiative concerning the regulation of licensed paralegals in order to utilize powers given to the Society under the *Legal Profession Act* to improve access to legal services in a timely and affordable manner.**

- 11. The Benchers need to consider a review of the traditional law firm model and identify how to improve mental health and vulnerability to substance use issues and to lessen stress.**
- 12. The Benchers should more regularly reach out to and develop resources to support in-house counsel and government lawyers, and generally lawyers who are not working in the traditional firm or sole-practice models.**
- 13. The Benchers should continue their work on Indigenous legal services by understanding where more support is needed and to listen to and work with Indigenous Peoples to address that need.**

The Future of Legal Accreditation/Education

The structure of legal education has not been substantially revised in British Columbia since 1945 although the substance of the education has evolved considerably. An undergraduate degree, followed by a law degree and articles, have been the base of that structure for 75 years. The Law Society's role with respect to legal education focuses on the determination of the standards required for entry into practice, and it has accepted this structure as the means of entry into the legal profession. The current model does much to ensure that academically qualified individuals become lawyers, but it requires a considerable investment by the student and this has a limiting effect on who becomes a lawyer and, indeed, on the nature of work that newly called lawyers often focus on.

The nature of what is taught in law school is currently undergoing review and the Law Society encourages the continuation of these innovations. Innovations that would increase experiential learning, perhaps together with programs designed to improve the transition to practice, would be particularly welcome. Given the implications of increased student debt level and the need to improve access to justice, the Law Society should communicate a willingness to explore, with the law schools, options for more rapid entry into practice.

There have been many advances in the delivery models of education, and there are other ways of learning to become a lawyer demonstrated in other common law jurisdictions that have not been critically examined in British Columbia. For example, in the United Kingdom, a one-year law conversion course called a GDL is recognized as a qualifying program for students who have completed a bachelor level degree in an alternate discipline.

Questions and responses that the Task Force considered under the heading of the future of legal education included discussions of law school, articling, the Professional Legal Training Course, the qualification process to becoming a lawyer and competency of the profession. The findings showed that the respondents felt quite strongly that certain areas of legal education leading to and maintaining a lawyer's accreditation should be reconsidered for the future. The Task Force notes

that there is crossover between its mandate to consider the future of legal education, and the mandate of the Lawyer Development Task Force. The following discussion and recommendations should be considered in relation to the work and recommendations of the Lawyer Development Task Force.

As noted, we acknowledge that the Law Society cannot and should not try to alter legal education at universities. We do, however, point out that the consultation results highlighted that most respondents were focused on how to improve the delivery of legal education through law school. The majority of the suggested ideas were on how to better incorporate more skills-based education about the realities of practising law into the law school curriculum. Ideas included more opportunities for legal clinics or clinical practice, more mentorship opportunities, shortening law school but extending articling, and including practical legal training courses as part of law school. One idea that was suggested by several respondents was including education on general business administration as part of law school as well as part of continuing legal education.

Recommendations on the Future of Legal Accreditation/Education:

- 14. The Benchers need to re-consider the accreditation process for lawyers in British Columbia, with special consideration given to how to incorporate more skills-based training into that process.**
- 15. The Benchers need to identify and make recommendations on alternate education initiatives methods for qualifying for the practice of law.**
- 16. The Benchers should encourage the delivery of more educational opportunities on managing the business of practising law.**

The Future of Legal Regulation

The manner in which professions are regulated is a topic of academic and political interest. The Task Force recognizes the public suspicion about whether members of a profession can effectively regulate themselves, and the degree to which members of a profession engaged in self-regulation can genuinely advance the public interest if there is any possibility that it conflicts with the interest of the members. Where mistrust exists, it is hard to dispel even if the record of the regulator is otherwise efficient and effective. Many professions are no longer truly self-regulating, and even the legal professions in some Commonwealth countries such as England and Australia have effectively ceased to be self-regulating.

Regulatory models therefore change. Regulatory norms evolve. Public expectations change and increase. Moreover, who or what is to be regulated will evolve over the next decade. The Law Society has already embarked on the regulation of law firms in addition to the regulation of lawyers. Will the Law Society need to regulate other legal service providers, and how will that be

accomplished? Will those other legal service providers include technological tools such as expert systems and artificial intelligence? How can effective regulation of these new tools in the public interest be ensured? What will investigations and discipline structures look like in these possible areas of change?

It is clear from the consultation that respondents were wary of over-regulation. The Task Force discussed and acknowledged that regulation is needed, it must be done in such a way that the burden imposed on those being regulated is proportionate to, and an intelligent and effective responses to, the risk of harm. We cannot keep adding new rules and new regulations without going back and determining whether the existing rules or regulations remain relevant or necessary. Future regulations need to be balanced with opportunities for innovation; that too many rules on how law is practised may stifle or thwart any potential innovations in legal services or education.

The Task Force identified areas for potential amendments to current regulatory practices:

- continuation of self-regulation of the profession through the Law Society,
- regulating emerging legal technologies, and
- regulation of new business models and ALSPs.

The Task Force also recognized that when looking at creating or changing the way these areas are regulated, it must be done with consideration for equity, diversity and inclusivity principles, as well as the need to work towards equality before the law and access to justice. Our regulation must encourage a more representative legal profession in British Columbia. In order to achieve this goal, the Law Society ought to collect high-quality data and take proactive steps to identify and track, even try to address, the equity, diversity and inclusivity gaps in the legal profession. We need to continue to work to eliminate discrimination and unconscious bias, building on the work we are presently doing with mandatory cultural competency training with respect to Indigenous issues and our statements condemning racism.

We must continue to be mindful of the changing legal landscape around professional regulation. For example, on August 26, 2020, the Provincial government announced a reorganization and consolidation of the health care colleges in British Columbia. The Law Society must be mindful of these innovations and continue to be the gold standard of professional regulation in this province. The Law Society will have to grapple with and resolve public skepticism about self-regulation of the legal profession independent of government, bearing in mind that this may be an important – perhaps constitutional – public right.

Recommendations on the Future of Regulation:

17. The Benchers need to evaluate the Law Society's regulations to ensure they are not causing an unnecessary burden on the practice of law or failing to appreciate the context in which some lawyers practise.
18. The Benchers must allow for innovation in legal service delivery through use of regulation in a manner that does not inhibit growth. This must include regulatory 'sandboxes.'
19. The Benchers should ensure that current and future regulation is amended and created to be in accordance with equity, diversity and inclusivity principles.
20. The Benchers must always recognize how regulatory practices improve public confidence in the principle of self-regulation.

The Future of the Law

In considering the future of law in Canada, the Task Force looked at two areas of particular interest in 2020: the future of the rule of law and of Indigenous legal orders.

Rule of Law

As stated by the Supreme Court of Canada in *Roncarelli v. DuPlessis*, "the rule of law is a fundamental postulate of our constitutional structure." It also forms part of the preamble of the *Charter of Rights and Freedoms*. The Task Force identified that events around the world are creating challenges to the rule of law in some jurisdictions, and even, to some degree, domestically.

The consultation asked whether changes to regulatory structures or to the delivery of legal services could affect the rule of law. Although there was not as much consensus about this question as there was to other questions in the consultation, the responses did suggest that challenges to the principle of the rule of law and its protection need to be monitored.

The rule of law suffers when the public is not able to obtain legal advice or service or to effectively access the justice system. This is something the Task Force believes the Law Society must be concerned about in the coming years. Where support for a fundamental constitutional postulate wanes because the services offered by lawyers are not accessible, a solution must be found. Some respondents suggested this presented opportunities to reconsider regulation. If changes can be identified that create a fairer system in which more people can participate, the rule of law will be strengthened.

Indigenous Legal Orders

While Indigenous Peoples and the future practice have law have been discussed previously in this Report, this section is included to recognize the importance that Indigenous legal orders and laws are expected to have in the development of the law generally over the next years.

The issue of how to recognize Indigenous laws and legal orders within the current justice system will be a difficult but necessary task. The Task Force recognizes that the Law Society's Truth and Reconciliation Advisory Committee is tasked with the work in this area and that its recommendations should be considered in the context of the work of that Advisory Committee.

A large majority of respondents to this consultation question felt that the work being completed as part of the Calls to Action would have a positive effect on the practice of law in British Columbia, but that there was more to be done. In regards to the future of the law, respondents suggested that, in consultation and partnership with Indigenous Peoples, the Law Society's Rules, Code of Conduct and governing legislation should be reviewed to recognize Indigenous legal orders where relevant, and to acknowledge the significance of Indigenous peoples' experiences with Canadian law. There were also suggestions that a larger review of provincial legislation and regulation should be encouraged to address the inclusion of Indigenous legal orders and of Indigenous Peoples' experiences with Canadian law, and that the Law Society should be prepared to assist where it can with such a review.

Recommendations on the Future of Law:

- 21. The Benchers must continue to prepare and respond to the increasing threats to the rule of law at the local, provincial and federal level.**
- 22. The Benchers, in consultation with Indigenous Peoples, should review the Law Society's governing legislation, Rules and Code of Conduct to include and reflect Indigenous law and experiences.**
- 23. The Benchers, in consultation with Indigenous Peoples, should identify ways to provide assistance with the question of identifying how to include Indigenous laws and legal orders into the justice system.**

Conclusion

The work of the Futures Task Force focused on identifying forces and factors that are driving change in the legal profession and wider justice system. The Task Force witnessed how quickly society can change and how the legal profession needs to better anticipate and be ahead of those changes. These recommendations are directed at identifying particular areas on which the Task Force believes the Law Society needs to focus attention to meet anticipated changes in how legal

services are regulated and delivered, and to meet the anticipated changes in demand for those services.

The Task Force urges the Benchers, when addressing these recommendations, to be prepared to be bold and innovative with their responses. The Benchers should consider how to implement these recommendations when creating the Law Society's Strategic Plan initiatives for 2021-2025. Focus on these recommendations is needed in order to ensure the legal profession remains modern and relevant as society changes around it.

List of Recommendations

- 1. The Benchers need to recognize where changes are possible and be prepared to advance bold and innovative approaches to how law is practised and regulated in order to address items listed in its mandate in section 3 of the *Legal Profession Act*.**
- 2. The Benchers need to evaluate which fundamental changes adopted due to the COVID-19 pandemic have had, allowing for imperfections, a generally positive effect on the practice of law and the experience of people who use legal services in British Columbia, and take steps to make those changes permanent.**
- 3. The Benchers should evaluate how best to prepare legal services, legal practice and the legal profession in British Columbia to be resilient in the face of future catastrophic events such as another pandemic or a natural disaster.**
- 4. The Benchers should augment the Law Society's data-gathering and analytic capacity to assist in future planning.**
- 5. The Benchers need to evaluate how existing and emerging technologies can better support legal services and address regulatory impediments that exist in permitting their use in the provision of services.**
- 6. The Benchers need to amend regulatory structures to allow for innovation in legal service delivery and alternative business structures while protecting the public.**
- 7. The Benchers need to reevaluate current regulations and restrictions on law firm ownership and investment, as well as multi-disciplinary practice and partnership structures to ensure they are not inhibiting innovation, or prohibiting a more efficient and effective practices of law, and if they are, work to change these restrictions.**
- 8. In order to achieve Recommendations 5, 6 and 7, the Benchers need to authorize regulatory sandboxes to allow innovations, which may be illegal or unethical under current regulations, to be piloted and evaluated in a controlled environment.**

9. The Benchers should consider how ALSPs and technology could better meet the demand for access to justice through the evaluation of pilot programs designed to address that need.
10. The Benchers must advance their initiative concerning the regulation of licensed paralegals in order to utilize powers given to the Society under the *Legal Profession Act* to improve access to legal services in a timely and affordable manner.
11. The Benchers need to consider a review of the traditional law firm model and identify how to improve, mental health and vulnerability to substance use issues and to lessen unnecessary stress.
12. The Benchers should more regularly reach out to and develop resources to support in-house counsel and government lawyers, and generally lawyers who are not working in the traditional firm or sole-practice models.
13. The Benchers should continue their work on Indigenous legal services by understanding where more support is needed and to listen to and work with Indigenous Peoples to address that need.
14. The Benchers need to re-consider the accreditation process for lawyers in British Columbia, with special consideration given to how to incorporate more skills-based training into that process.
15. The Benchers need to identify and make recommendations on alternate education initiatives methods for qualifying for the practice of law.
16. The Benchers should encourage the delivery of more educational opportunities on managing the business of practising law.
17. The Benchers need to evaluate the Law Society's regulations to ensure they are not causing an unnecessary burden on the practice of law or failing to appreciate the context in which some lawyers practise.
18. The Benchers must allow for innovation in legal service delivery through use of regulation in a manner that does not inhibit growth. This must include regulatory 'sand boxes'.
19. The Benchers should ensure that current and future regulation is amended and created to be in accordance with equity, diversity and inclusivity principles.
20. The Benchers must always recognize how regulatory practices improve public confidence in the principle of self-regulation.

- 21. The Benchers must continue to prepare and respond to the increasing threats to the rule of law at the local, provincial and federal level.**
- 22. The Benchers, in consultation with Indigenous Peoples, should review the Law Society's governing legislation, Rules and Code of Conduct to include and reflect Indigenous law and experiences.**
- 23. The Benchers, in consultation with Indigenous Peoples, should identify ways to provide assistance with the question of identifying how to include Indigenous laws and legal orders into the justice system.**

Appendix A

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Appendix B

Consultation Questions

1. How will the changing demographics of the legal profession, including the growth in lawyers over the age of 65, the narrowing gender balance, the lagging diversity of the legal profession and the expectation of the next generation of lawyers affect the future delivery of legal services?
2. How will developments in legal technology impact the future delivery of legal services in British Columbia, particularly sole practitioners and smaller law firms?
3. To what extent, if any, will the unmet need for legal advice and services continue to impact the public and the profession and what solutions, beyond the efforts currently in place, might be provided to increase access for those who are currently unable to obtain assistance?
4. To what extent, if any, are lawyers and firms feeling business pressures and if so, how are they responding?
5. To what extent, if any, are alternative legal service providers and alternate business structures likely to impact lawyers and law firms in British Columbia?
6. As nearly one-quarter of all practising BC lawyers are engaged in providing legal services to government, corporations and non-profit organizations and regulatory bodies, what more could or should be done to support these lawyers in the roles they play for their employers?
7. What pressures will the Law Society face to adjust the self-regulation model in a changing landscape? How do shifts in other jurisdictions away from the self-regulation model, and the challenges faced by some other self-regulating professions in British Columbia, affect this discussion?
8. How can core values of the legal profession that underpin fundamental structures of the justice system be maintained in the face of a changing marketplace for the delivery of legal services?
9. Are current educational efforts to ensure effective lawyer development throughout the continuum from law school to continuing professional development preparing future lawyers to be effective and maintaining that effectiveness and if not, what changes are necessary?

10. What are the impacts of mental health and substance use on lawyers, clients and the public and how will our ability to address the impacts effectively affect the future delivery of legal services?
11. What can the Law Society do to make its regulatory processes more responsive to lawyers who are experiencing challenges in the delivery of effective legal services due to mental health and substance use issues and to deal more effectively with lawyers who repeatedly face disciplinary action over the course of their career?
12. Could changing the regulatory structure of the legal profession or how legal services are delivered benefit the rule of law or create risks to its preservation?
13. How could the Calls to Action and the engagement with Indigenous legal orders influence the future delivery of legal services?
14. What other factors and forces are likely to influence the future delivery of legal services and the future of the legal profession and legal regulation in British Columbia?

Findings

Overall, the topics which received the highest response rate and engagement levels were the questions on the role of technology, access to justice, education, alternative legal service providers (ALSP) and demographics of the profession. The questions with the lowest response rate and engagement levels were those with topics on business pressures of practising law, in-house counsel, the rule of law, indigenous legal orders and the general ‘other’ question. It should be noted that the response and engagement rate of questions may have been influenced by the order they appeared in the survey, with the questions listed first receiving more and longer responses than those toward the end of the survey.

The Task Force identified four broad areas for inquiry (future of legal services, future of legal education, future of legal regulation, and the future of the law). Given the complex and interrelated nature of some of the topics, some of the individual survey questions do not fit squarely within any one of the broad areas. The findings below will be presented for each question, instead of the four broader areas.

Question 1: Demographics

This question asked how the changing demographics of the legal profession (in terms of age, gender and diversity) affect the future delivery of legal services. Respondents identified both the aging population of practising lawyers and the lagging diversity of the profession as being two of the factors they considered could affect the future delivery of legal services. Although gender was suggested as a factor in the question, it was discussed less in the responses than age and diversity.

Respondents identified other factors that they considered could impact the future delivery of legal services, with over half of those answering this question mentioning challenges to the traditional business model of law firms. Respondents were also concerned with the influence of socio-economic factors and the desire for more work/life balance and the protection of mental health.

Question 2: Technology

This question asked how developments in legal technology will impact the future delivery of legal services, and specifically mentioned the impact on sole practitioners and smaller law firms. This question was the second most responded to question, and respondents discussed a wide variety of what they considered technology. Responses included discussion of the impact of products such as online legal databases, e-filing, online case management tools, and more complex technologies, such as artificial intelligence operated legal advice programs.

Overall, 60% of respondents to this question thought that technology would have a positive impact on the profession, with approximately an additional 30% qualifying their answer as dependent on the technology. The main areas that respondents thought that technology would impact included efficiencies in the delivery of legal services and the reduction in costs and overhead in their practice. Thirteen respondents mentioned that technology would actually create more work for them, or more complicated work for them, or at least more time to work on more complicated work. Responses included the belief that any new technology being developed and employed would need legal advice and interpretation, or that new technology which made their administrative work more efficient would free them up to focus on more complicated legal matters or at least give them more time to dedicate to other legal work.

Another finding from this question is that nine respondents mentioned the impact they were already seeing to their practice through access to online research tools and databases. There was specific mention of how these research resources and advancements in them allow for smaller practices in particular to reduce their costs and time spent on research.

Question 3: Access to Justice

This question asked to what extent the unmet need for legal advice and services continue to impact the public and profession, and asked for solutions for addressing the need. This question garnered the highest response rate overall, with 88% of all respondents weighing in on this topic, and of those respondents, 96% thought that there was an unmet need in legal advice and justice.

The respondents offered a wide variety of solutions to increase access to justice. The solutions that were mentioned the most included increasing or changing how pro-bono and legal aid is administered, offering alternative or non-legal services and processes, unbundling legal services and increasing the use of paralegals. Other suggestions included changes to the justice system and the court rules to streamline filings and hearings, increasing the use of technology and innovation,

and decreasing the costs of practising law so that lawyers would be more willing to take on legal aid or pro bono work. There was also mention that a solution could be providing more support for remote lawyers or those working in less popular legal areas.

Question 4: Business Pressures

This question asked to what extent are lawyers and law firms feeling business pressures and how are they responding. Although this question was one of the ones that received the least responses, the respondents who answered were highly engaged with the topic. This suggests that some of the respondents were likely not in the position to comment on business pressures their firms were facing.

Those that responded to this question were quite divided on whether or not they were feeling business pressures. A quarter of respondents said they were worried about business pressures and felt an impact, while 29% completely disagreed and said that they were ‘doing great’, and the remaining majority was somewhere in the middle between the two ends.

Some of the respondents went on to identify the reason for the pressures they were feeling, which included over a fifth of respondents mentioning the traditional business model of law firms, followed by over regulation and operating costs. A few of the solutions offered included increasing efficiencies, such as space sharing, using technology and data insights to save time and money, and looking into the provision of alternative legal methods.

Question 5: Alternative Legal Service Providers

This question asked to what extent are alternative legal service providers (ALSPs) and alternate business structures likely to impact lawyers and law firms. This question received a high response rate, with over 86% of respondents answering the question. Of those who answered, 67% thought that ALSPs would have an impact, with 22% saying that it is hard to predict, and 11% thought that there would be no impact. Overall, 68% of respondents to this question thought that the impact would be positive, with some qualifying their positive assessment based on certain conditions, such as licensing of ALSPs or limiting what tasks they are allowed to complete.

One of the common themes that was found throughout the responses was the need to change how legal services are currently being delivered. However, many respondents did not go on to suggest how to achieve that change.

Question 6: In-House Counsel

The Task Force recognized that nearly one-quarter of all practising lawyers in BC are engaged in providing legal services to government, corporations and non-profit organizations and regulatory bodies, and asked in this question what more could or should be done to support these lawyers.

Overall, only 46% of total respondents answered this question, however of those that answered, 70% felt that in-house counsel needed more support.

Some suggested supports that were discussed frequently were ways to provide in-house counsel with more resources. These included increasing mentorship opportunities, providing more specific practice advice, and increasing training and education in this type of practice. It was suggested that resources could focus on the type of law being practised (e.g. family, corporate, criminal), as well as on how those laws are being practised (e.g. in-house, sole, remote, government).

Question 7: Self-Regulation

This question asked about the pressures that the Law Society might face in adjusting the self-regulation model in a changing landscape. In the preface to the question, the Task Force included mentions of how law societies in other jurisdictions were moving away from the self-regulation model, and the pressures that other self-regulating professions were facing in British Columbia. The majority of respondents to the question (48%) felt that that self-regulation could be improved in some way.

Respondents discussed different pressures on both the profession itself and on the regulation of the profession. Common pressures identified included political pressures, access to justice issues, as well as the negative public perception of lawyers. Common themes throughout the answers included the need to protect the public interest, and the importance of lawyer independence and the rule of law.

Suggested solutions to the pressures that the Law Society might face in self-regulation included looking to other jurisdictions for lessons, both positive and negative. Ten respondents also mentioned that the Law Society should advocate on behalf of the profession through public relations to address the political pressure against and negative image of lawyers.

Question 8: Core Values

This question asked how the core values that underpin the legal profession can be maintained in the face of a changing legal marketplace. The respondents seemed to differ in what they felt were core values of the legal profession. Nonetheless, 57% of those who answered this question (38% of all respondents) felt that the core values of the profession need to change.

Some of the suggested changes are topics that are echoed throughout the survey, with respondents identifying the need for the profession's core values to reflect a need to increase access to justice, increase the use of technology and innovation, and increase diversity and inclusivity. Ways in which to encourage this change included increasing ethics and regulation training, increasing the regulation of lawyers and ALSPs and increasing public relations.

Question 9: Education

This question asked whether current education efforts of lawyers from the continuum from law school to continuing professional development are effective in preparing future lawyers, and if not, what changes are necessary. This topic received a high response rate, especially given that it was positioned later in the survey. Over two-thirds of all respondents, and 84% of those who answered this question, thought that education efforts are not effective or are in need of improvement.

The educational area that these respondents felt most in need of change was law school (60%), followed by articling (28%), practical legal training (12%) and continuing professional development (7%). The analysis of this question was based on mentions of the form of education in the answers, so although law school received the most discussion, it needs to be further analyzed.

In terms of suggest solutions, there was a significant amount of support for an increase in skills based training, whether at law school or throughout articling (51% of respondents suggested this solution). Other solutions included improving articling by increasing the length or providing more oversight of the principal, increasing opportunities for clinical practice and student clinics, increasing mentorship, increasing the education on access to justice principles and reducing the cost of education. One solution that 19% of respondents to this question mentioned was the need for training on the ‘business’ aspect of practising law, such as how to properly run a law firm or legal practice as well as general business acumen principles.

Question 10: Wellness

This question asked respondents about the impacts on lawyers, clients and the public due to mental health and substance use, as well as how the Law Society can effectively address these issues. Over 90% of respondents to this question thought that mental health and substance use in the profession needed addressing, either by the Law Society or in general.

Some of the issues in addition to mental health matters and substance use that respondents mentioned in their answers included feeling financial stress or pressure to bill, experiencing abuse at work, working long hours, and the continuing stigma around mental health issues. One issue that stood out was 36% of respondents to this question mentioned the pressure and stress they felt due to expectations of them to be perfect and perform at the highest level always. This included pressures to bill and work long hours, but also included the fear of making any errors and the repercussions thereof.

When turning their minds to potential solutions that the Law Society should consider, 59% of respondents thought that the culture of the legal profession needed to change. They mentioned that the need for an increase in the profession of lawyers actually achieving a healthy balance between work and interests outside of work, and a change to the model of more junior lawyers

working unhealthily at the bequest of senior lawyers because that is the model the senior lawyers experienced themselves. Other solutions suggested included increasing resources offered to lawyers for mental health and substance use matters, and enforcing regulations and employment standards on law firms when necessary.

Question 11: Regulatory Responses

Following the question on mental health and substance use matters, this question asked respondents what the Law Society can do make its regulatory processes more responsive to those lawyers experiencing these types of challenges. It also asked how the Law Society could deal more effectively with lawyers who repeatedly face disciplinary action. In general, respondents focused their answers on mental health and substance use or on ‘repeat offenders’, with the majority discussing options for lawyers facing mental health and substance use matters.

For mental health and substance use solutions, 69% of respondents to this question thought that the Law Society needs to provide more support in some way. Suggested supports included offering the lawyer rehabilitation, ongoing check-ins with a dedicated Law Society staff member, mentor or counsellor, and creating a plan to return to practise safely. Thirty-nine percent of respondents thought that the Law Society needs to do more early prevention and intervention work, so that they can work with lawyers to address these matters before they become a regulatory problem. Similarly, respondents felt that there needs to be less ‘shame’ in the discipline process for those lawyers who are facing mental health or substance use challenges, and suggested that hearings should be private or that discipline needs to be more flexible in these cases.

Comparatively, those respondents who answered this question in regards to repeat offenders felt very little sympathy toward them. Ten respondents felt that the Law Society needs to be harsher in addressing repeat offenders, and three mentioned that the Law Society should focus their attention on the worst offences instead of those committing repeated but minor offences.

Question 12: Rule of Law

In this question, the Task Force asked respondents to consider whether changing the regulatory structure of the legal profession or legal service delivery would benefit or risk the rule of law. It seemed that respondents struggled in answering this question, as some wanted to know what the changes to the regulation or delivery of legal services were specifically before being able to provide commentary on whether they thought them to be a benefit or a risk. Over 40% of those answering this question indicated that they were unsure or it depended on the changes.

However, of those that indicated that the changes would be beneficial (49%), they mentioned that changes would potentially increase access to justice and equality before the law.

Question 13: Indigenous Law

This question asked how the Calls to Action and engagement with Indigenous legal orders could influence the future delivery of legal services. Although this question received a lower response rate in the survey, those that chose to respond were in high consensus with their opinion. Close to three-quarters (74%) of those who responded felt that engagement with Indigenous legal orders and the Calls to Action for the Law Society would have a positive influence on the delivery of legal services, with 14% being unsure or neutral, and 11% indicating either no influence or a negative influence.

The respondents to this question then went on to suggest ways that the Law Society could increase support and engagement with Indigenous legal orders. Over a third of respondents (34%) suggested training and education on Indigenous history and law. Respondents also identified supporting Indigenous lawyers in their practice, as well as increasing access to justice for Indigenous Peoples. Some respondents also discussed the need to amend the Law Society's Rules, Code and provincial and federal statutes to be more inclusive of Indigenous law and experiences. Four respondents specifically mentioned the Indigenous Legal System needs to be recognized and developed in Canada with the goal of having a three-part legal system (Canadian Common Law, Quebec Civil Code and Indigenous Legal System).

Question 14: Other Factors

The survey finished with asking respondents whether there are any other factors and forces not covered in the previous questions that they wished to bring to the attention of the Task Force. Fifty-nine percent of respondents chose to answer this question, although the analysis demonstrated that most respondents used this question as an opportunity to expand their answers on topics covered by the previous questions.

The novel forces and factors that the respondents identified included student debt, legal training and practice outside of both British Columbia and Canada, the role of international and global law firms, and changes to government and court rules. Other factors and forces that were suggested (although only by a single respondent) included world economic fluctuations, data security concerns, increase of multi-disciplinary practices, increase in the number of women judges, changes to childhood education on legal matters, and statements in favour for practices like the Inns of Court and regulating more in the public interest.



Licensed Paralegal Task Force Report

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Purpose: Proposal for developing and regulating alternate legal service providers

Date: September 25, 2020

Background

1. The report proposes an approach that differs both from the Task Force’s mandate and from how the topic of alternate legal service providers has been approached to date. The Task Force seeks approval from the Benchers to make the conceptual shift set out in the report. If the Benchers adopt the recommended approach, additional work will be necessary to address some issues that are identified in the report, but not resolved.
2. The Benchers created the Licensed Paralegal Task Force in 2019. Its mandate and terms of reference are to further develop the work of the Alternate Legal Service Provider Working Group that had considered, and consulted on, the possibility of regulation and scope of practice of family law alternate legal service providers in 2018. Specifically, the Task Force was directed to:
 - 1. Consider and identify opportunities, in consultation with the profession and others, for the delivery of legal services in areas where there is a substantial unmet legal need and the public would benefit from the provision of those services by licensed paralegals; and*
 - 2. If the Task Force identifies areas of legal services where licensed paralegals may meet an unmet legal need:*
 - a) consider the scope of services that would be appropriate for licensed paralegals to provide in relation to the identified areas of legal services;*
 - b) consider what education, qualifications, credentials, experience and insurance would be necessary to enable licensed paralegals to deliver legal services in a competent and ethical manner in the identified areas of legal services; and*
 - c) make recommendations to the Benchers for a regulatory framework that will ensure that licensed paralegals provide legal services in a regulated, competent and ethical manner only in the identified areas of legal services approved by the Law Society.*
3. The Task Force has met through the remainder of 2019 and into 2020. It has reviewed the Law Society’s prior work on alternate legal service providers, including a consideration of the 2018 consultation report and the commentary the Law Society received. It has also analysed the results of a 2020 IPSOS Reid survey of legal needs that updated the Law Society’s 2009 survey.
4. For the reasons set out below, the Task Force recommends an approach that varies from the approach contained in its mandate.

Licensed Paralegal Initiative: Brief Review

5. The licensed paralegal initiative is intended to address, at least in part, the broader access to justice challenge. The Law Society has made a policy decision that licensed paralegals

may help address areas of underserved or unmet legal needs where people are seeking legal services, but are unable to obtain them and has obtained legislative amendments (as yet unproclaimed) through which the policy decision may be implemented.

6. The research and data reviewed by the Task Force, including our 2009 and 2020 Surveys, establish that over any three year period approximately 50% of Canadians will experience a serious, difficult to resolve legal problem.¹ These problems can cluster and cascade into more problems, including economic, social and health problems. For people experiencing these problems, only about 15% get help from lawyers.² In 2009 when the Law Society surveyed legal need, approximately 16% of people sought help from someone other than a lawyer, including paid services, and approximately 70% sought no help.³ In 2020, the number of people seeking help from someone other than a lawyer increased to 27%, the number seeking help from lawyers remained steady at 15%, and the number of people who sought no help declined to 60%.
7. Clearly, therefore, while many people facing a legal problem are getting no legal help, a sizable portion of the population facing a legal problem is getting some legal assistance from someone other than a lawyer (16% in 2009 and 27% in 2020). Some of this may be from persons (like notaries or community legal advocates) who have some ability and qualifications to provide the advice or assistance, but some will undoubtedly be from people who have no demonstrable qualification and who operate under no regulatory structure, which leaves the client vulnerable.
8. The problem faced by the justice system, to which the licensed paralegal initiative directs itself, is that a large portion of the public (a) experience serious, difficult to resolve, legal problems, and want help from a professional, (b) have some money to spend, but (c) are not getting help from lawyers.

Discussion

Setting the Stage: “Top Down” vs. “Grass Roots”

9. British Columbia is not unique when it comes to having an access to justice challenge. Other jurisdictions face the same challenge and have made efforts to examine how legal services may be provided by people who do not have the full training of a lawyer.

¹ Ab Currie, “The Legal Problems of Everyday Life – The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians”, Department of Justice, 2009-05-12; Ab Currie, “Nudging the Paradigm Shift, Everyday Legal Problems in Canada” 2016 CanLIIDocs 352.

² Law Society of BC, IPSOS Reid Surveys 2009 and 2020 confirm these data.

³ The rounding totals are explained in the reports.

10. The Task Force’s examination of other jurisdictions suggests that the consideration of regulation relating to other legal professionals has resulted in two possible approaches: “top down” or “grass roots”
11. The “top down” approach is one in which the regulator defines a category of provider, a scope of practice, and a set of qualifications, credentials and experience in the expectation that there will be an interest in joining that category.
12. An example is Washington State’s Limited License Legal Technicians (“LLLT”) program. The LLLT initiative was driven by the courts (the body ultimately responsible in that state for professional regulation) particularly in response to self-represented litigants in court. The Supreme Court issued a practice rule, which created LLLTs, and the State Bar worked with local universities and colleges to design the training and credentialing requirements. The program was limited to family law, but was intended to be scaled up for other areas of need.
13. The LLLT requirements for licensing were considerable, including an associate level of post-secondary education, completion of ABA approved programs in family law and other basic legal subjects, 3000 hours of practice experience supervised by a lawyer over a three year period, and successful completion of a core education exam and practice area exam.
14. Over the course of the seven years during which the program was in place, only 45 LLLTs were registered and as of early summer there were only 39 active LLLTs.
15. In June, 2020, at the request of the State Bar, the Washington State Courts announced the LLLT program will end. The Chief Justice’s announcement cited the costs of the program and limited participation as the reasons for ending the program.⁴ The Task Force is of the view that the Washington State experience illustrates some of the problems with a top down approach.
16. A “grass roots” approach, on the other hand, is one where the regulator looks to revise or recalibrate its regulatory scope to permit the provision of legal services by providers who may already be providing services.
17. An example of the “grass roots” approach is the evolution of licensed paralegals in Ontario.
18. As a result of the definition of the practise of law in the Ontario *Law Society Act* and various court decisions⁵, by the year 2000 there had developed a fairly robust community of paralegals acting as "agents," who could represent individuals in court in certain

⁴ The board of the LLLT program has recently announced that it will be asking the Court reconsider its decision or at a minimum allow more time for the LLLT candidates to complete the licensing requirements.

⁵ The most significant was *R. v. Lawrie and Pointts Ltd.* (1987), 59 O.R. (2d) 161 (C.A.)

circumstances. Concerns about the scope of practice which paralegals could undertake led to calls for regulation of paralegals and, on the part of the Law Society of Upper Canada, calls for limitations on what matters paralegals could act on in court.⁶

19. Over the next seven years, there were repeated calls for regulation or limitations on the role of paralegals that eventually resulted, on May 1st, 2007, in the extension of the mandate of the Law Society of Ontario to include the regulation of paralegals. The number of paralegals initially registered following 2007 exceeded the estimates of the Law Society of Ontario and today there are over 9,000 paralegal licensees.⁷
20. While the grass roots development of a viable paralegal community in Ontario was the result of factors peculiar to that province, more recently other jurisdictions have taken to implementing changes to foster a grass roots approach to the development of alternate legal service providers that aim to create an environment for the provision of legal services by persons who are not lawyers.
21. The Law Society of Saskatchewan (LSS) created a task team to explore the issues of access to justice, increased consumer options and regulatory reform. As a result of the task team's 2018 report, the LSS expanded the exemptions to the unauthorized practice rules, including identifying a range of services that currently exist and do not pose a threat to the public and therefore no longer need to be "regulated" by the Law Society. The LSS has adopted an incremental approach that is application-based, guided by a set of principles, and takes a flexible and tailored approach to defining the qualifications, scope of practice, and practice controls that would be applicable to each licensee.
22. Utah, Oregon and California are all now looking at revising their regulation of the legal profession to permit alternatives to the delivery of legal service only by lawyers. They are either considering or implementing what is commonly referred to as a regulatory "sandbox" to permit experimentation in the delivery of legal services within the ambit of the practice authority in those states.
23. The Task Force recognizes that the Law Society's entire engagement with the idea of licensed paralegals to this point has been premised on what we have described here as the "top down" approach. The recommendations from the 2013 Legal Service Providers Task Force and the 2014 Legal Services Regulatory Framework Task Force assumed that the appropriate approach was to seek an amendment to the *Legal Profession Act* to permit the Law Society to establish new classes of legal service providers to engage in the practice of

⁶ A convenient summary of the evolution can be found in [The Cory Report and the Regulation of Paralegals in Ontario](#)

⁷ As a further example of the "ground up" approach, it was the existing barristers and solicitors of the day in 1869 who came together to form the Law Society and it was the existing bar that prompted the creation of the *Legal Professions Act* in 1884.

law, set the credentialing requirements for such individuals, and regulate their legal practice. The implementation of that recommendation eventually resulted in the as-yet unproclaimed amendments to the *Legal Profession Act* permitting the regulation of licensed paralegals.

24. The Task Force also recognizes that the predecessor to this Task Force, the Alternate Legal Service Providers Working Group, made an attempt to move forward with a “top down” approach relating to the provision of family law legal services by licenced paralegals. It encountered conceptual issues in relation to determining the scope of practice and regulation as well as objections from the bar regarding the overall proposal.
25. However, the Task Force also recognizes that the Law Society has been engaged with the issue of recognizing paralegals as independent legal service providers for many years and that during that time, no “top down” approach has resulted in the existence of any licensed paralegals. The Task Force believes that such an approach must therefore be recognised as having limitations when trying to *create* a cohort of legal service providers and to determine, in a vacuum, what services that cohort should provide and how they should be regulated.
26. The Task Force therefore suggests that a more fruitful approach is to undertake a “grass roots” approach to the issue and, under some supervision, create a space that will let a marketplace develop that might address the unmet or underserved legal needs of the public. It is more likely that the marketplace will identify what these services are before the Law Society is able to do so.
27. In addition, the approach recommended in this report aligns with the Access to Justice BC Triple Aim, which the Benchers adopted in 2018. The Triple Aim seeks to ensure that the user experience is improved, access to justice is enhanced, and there is overall cost efficiency.
28. The Task Force is therefore recommending the creation of a process that will allow service models to develop under general oversight of the Law Society in a manner that allows for creativity and innovation while determining, based on evidence that will be gathered as the market develops, the level of regulation required relative to the risk to the public. The environment in which this process can unfold is increasingly referred to as a regulatory “sandbox.”

A Proposed “Sandbox.”

29. The Utah Implementation Task Force on Regulatory Reform described its regulatory sandbox as a well-established policy tool through which regulators permit new models and services to participate in a market under careful oversight to test the interest, viability, and consumer consequence of the model or service and inform policy development. New legal

practice providers and services have to apply to enter the regulatory sandbox before they will be permitted to offer services in the legal market. The application form sets out a series of criteria that must be met in order for people to be granted admission to the sandbox. The Task Force recommends tailoring a similar, yet British Columbia specific, model of intake. Successful applicants will be able to offer services under careful oversight to ensure there is no demonstrable harm to a person or public.

30. As will be obvious from the description of the regulatory sandbox, there is a necessary connection with s.15 of the *Legal Profession Act* and the exercise of the Law Society's ability to restrain the unauthorized practice of law. To that end, the Unauthorized Practice Committee has been working to develop a clear statement of policy as to when the Law Society will and will not take steps to respond to allegations and instances of the provision of legal services that may amount to the unauthorized practice of law. The goal is to publish this policy so that individuals and organizations may be able to assist with providing access to some legal services where there is no demonstrable harm to a person or the public. This work aligns with the recommendations of this Task Force.

Populating the Sandbox

Application

31. It is expected that the application form will require basic information about the applicants, the services they intend to provide, the evidence in support of how those services meet the criteria of unmet or underserved legal need,⁸ the skills, experience and knowledge the applicant brings that are relevant to providing those services, as well as certain requirements to adhere the standard ethical obligations that will be developed as part of the regulatory process.

"No action agreements"

32. Individuals who meet the requirements of the application phase will be issued a "no action agreement," which will set out the terms and conditions on the limited scope of legal services the applicant will be permitted to perform. The letter will also set out conditions for oversight, including reporting requirements and the potential requirement for insurance coverage. The letter will explain that the ability to provide the services is revocable by the Law Society. A no action agreement could be provided to a person, or categories of persons, who meet objective identified, approved criteria for providing particular services.
33. This approach will create a controlled environment, within a "sandbox" structure, through which to test the types of services that may be offered, the degree of regulation may be

⁸ This evidence could be tested against existing data such as the 2009 and 2020 Law Society IPSOS Reid surveys.
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required, and the degree of qualification or background of the provider.

Paralegals

34. The Task Force recognizes that the British Columbia Paralegal Association (BCPA) has, for some time, expressed interest in a more formal recognition of paralegals. A survey by the BCPA prior to the introduction of the amendments to the *Legal Profession Act* indicated that, if paralegals were regulated in a manner similar to Ontario paralegals, a significant majority would choose to practise as a regulated paralegal.
35. There are currently over 800 designated paralegals. Designated paralegals are permitted to provide all legal services, albeit under the supervision of a lawyer. The Law Society assumes that lawyers who have designated a paralegal as a “designated paralegal” have confidence that the paralegal has a significant degree of ability to provide legal services directly to a client. The program proposed in this report might therefore usefully leverage the existence of a group of “designated paralegals” as potential applicants for entry to the regulatory sandbox.
36. One way the Law Society can foster the “grass roots” approach is by providing a pathway for existing paralegals and designated paralegals to engage in providing legal services to the public through inclusion in the regulatory sandbox. The Task Force has come to recognize that this approach is the most viable way to move forward with a licensed paralegal program.
37. A system can eventually be developed by which paralegals who enter the sandbox, and meet identified objectives/criteria for a defined period of time, could eventually apply to the Law Society to become licensed paralegals.

Some further comments on the sandbox

38. Ultimately, the Task Force expects that if paralegals embrace the opportunity to provide legal services within the regulatory sandbox, there will eventually be a qualified cohort of providers within the sandbox that will form the basis for a more structured licensed paralegal regime, based on those actively providing paralegal services. The sandbox could continue to operate with the other individuals who, while not having a path to licensing, will be able to continue to operate under the no action agreement regime.
39. The Task Force recognizes that as the sandbox is developed, discrete matters such as the needed level of regulation will need to be determined. The sandbox will include a spectrum of responses to the access to justice problem, not a single model of service delivery or even potential licence. For some service providers, entry into the sandbox will put them on a path to eventual licensing by the Law Society, while others will operate without a license, but in a limited and discrete area of service. Although the model

recommended below might present as a linear progression, it is not intended to be presented in that fashion, except to the degree that the act of licensing (if it does take place) will be informed by what the Law Society learns from the sandbox.

40. The Task Force also recognizes that even within a relaxed, regulatory sandbox it is important that the people providing legal services adhere to certain essential aspects of the *Code of Conduct for British Columbia*. While not all elements of the *Code* would transfer to people in the sandbox, at a minimum concepts of maintaining client confidences, not acting in a conflict of interest, not providing services in an illegal manner, are all important. The Task Force is of the view that key aspects of the *Code* must be included in the terms of any non-action letter or other contractual document that permits activity within the sandbox, and reinforced in the initial application process. The key will be to identify principles that aim to reduce the risk of harm to the public.

Recommendation

41. The Task Force recommends a “grass roots” approach to advance the licensed paralegal initiative within a regulatory sandbox.
42. The regulatory sandbox would:
 - (a) Permit individuals to apply to the Law Society to provide legal advice or services in areas where the Law Society determines it is in the public interest to expand the permitted services, as well as in areas where there the Law Society has assessed that there are no services (or insufficient services) being provided by lawyers;
 - (b) Develop a system of no action agreements to cover categories of legal service providers, and individual-based letters for applicants who wish to provide discrete services based on their skills and knowledge in circumstances where the Law Society has assessed that it is in the public interest to permit the services to be provided in the sandbox; and
 - (c) Eventually provide the basis for the formal recognition of licensed paralegals within the licensed paralegal regime, by way of amendments to the LPA, providing for the types of paralegals who will be able to provide legal services directly to the public in identified areas of need, either working with lawyers or independently.
43. If this proposal is accepted by the Benchers, additional work will be required to detail the administrative and operational implications of overseeing the sandbox. The Task Force is of the view that it is premature to develop those criteria without the Benchers’ endorsement of exploring the framework of a sandbox.
44. In closing, the Task Force observes that the amendments to the *Legal Profession Act* have been in a holding pattern for almost two years, and it is time to move forward with a program of expanded service provision with a path towards licensing. For the reasons

contained in this report, the Task Force recommends the Law Society further develop what we call a grass roots sandbox approach and consult with interested stakeholders for their ideas, comments, and critiques on how best to make that work.



Exploring the development of alternatives to articling: Recommendations

Lawyer Development Task Force

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September 16, 2020

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Introduction

1. The Lawyer Development Task Force (the “Task Force”) was established in January 2020 and provided with a broad mandate that includes evaluating what is necessary to ensure the future development and maintenance of a well-educated and qualified bar.
2. In accordance with its terms of reference, the Task Force has begun to examine BC’s pre-call educational requirements, particularly in light of developments in other Canadian jurisdictions. The Task Force’s early work has explored a range of issues, including the regulatory objectives of, and inter-relationship between, the components of the “lifecycle” of pre-licensing lawyer development in BC. These discussions, which have been informed by the work of a number of legal commentators, as well as a review of the licensing approaches of other regulators, have led the Task Force to develop the first in what it anticipates will be a series of proposals for the Benchers regarding changes to BC’s lawyer licensing process.
3. For the reasons discussed in this memo, the Task Force recommends that the Law Society engage in a process of exploring the potential development of new pathways to licensing, in addition to articling, that will satisfy the Law Society’s pre-call experiential training requirements.
4. The development of options for alternatives to articling must be guided by two key principles. The first is that the primary focus of the licensing process is to ensure the competence of those that are admitted to practice law in BC. When evaluating the merits of prospective alternatives to articling, the Law Society’s competency mandate must remain paramount. At the same time, however, consideration must be given to regulatory fairness and ensuring that the licensing system does not create barriers to entry into the profession for otherwise competent, qualified candidates.

Background

The current model for lawyer licensing and opportunities for change

5. BC’s current educational model for lawyer licensing requires a period of study at university culminating in obtaining a JD, a term of articling under the guidance of a principal and the completion of the Law Society’s Professional Legal Training Course (“PLTC”). This model has been in place since 1983 and, aside from PLTC replacing the previous tutorials, has undergone minimal changes since 1945. Those that obtain their law degree outside of Canada are required to undergo certification through the National Committee on Accreditation (“NCA”) following an assessment of their legal credentials and the

completion of required exams before they can enroll in the Law Society's Admission Program (articling and PLTC).¹

6. Over this same time period, the landscape of the legal profession has undergone significant changes. The numbers of law schools admitting students has increased and the number of candidates seeking entry into the profession has grown substantially. The profession has also seen a rise in the number of students obtaining their legal education outside of Canada. The impact of this trend in BC is apparent when reviewing student enrolment in PLTC, where the average number of foreign-trained graduates increased by 81% between 2010 and 2016. Currently, approximately 20% of those enrolled in the Law Society's Admission Program hold a Certificate of Qualification from the NCA rather than a Canadian law degree. In recent years, the percentage of candidates from equality-seeking groups entering the profession has also increased.²
7. Practice structures and locations have also shifted, with an increase in lawyers working in larger firms in urban centres and a decline in sole practitioners, particularly in smaller communities. Technological developments have had a profound influence on all aspects of the profession, and will continue to do so. The long-term impacts of the COVID-19 pandemic on firm culture and organization, and the legal marketplace, remain uncertain as does the likelihood of the occurrence of similar disruptive forces in the future.
8. Given the scope and scale of these social, economic and technological changes, the relatively static nature of legal education over this same time period raises a critical question: is a method for training lawyers that was created 70 years ago appropriate for 2020 and beyond? Recognizing that the fundamentals of pre-call legal education have not been discussed by the Law Society in detail in some time, the Task Force has examined, in broad terms, the current method for training entry-level lawyers in BC and considered whether it remains the optimal approach to licensing.
9. The variation in licensing programs across other common law jurisdictions demonstrates that BC's licensing scheme, which typically requires the completion of a four year undergraduate degree and a three year law degree, followed by a nine month articling

¹ The Law Society assesses whether those with an NCA Certificate of Qualification must complete the entire PLTC and articling program based on their previous practice and educational experiences.

² See the Law Society of BC, "[Demographics of the legal profession](#)", which documents the growth in the percentage of lawyers identifying as racialized, a visible minority or a person of colour.

period³ and a ten week bar admission course,⁴ is not the only method for developing competent entry-level lawyers. Pre-call training requirements across Canada, Australia, the UK and the United States can take anywhere between five to seven years to complete. Although some foreign jurisdictions require a first degree prior to commencing law school, others permit students to proceed directly to an undergraduate law degree. Several regulators permit students to pursue a graduate law degree without completing an undergraduate law degree. In the UK, a student can bypass a law degree entirely by completing a lengthy apprenticeship.⁵ Most regulators require licensing candidates to complete a practical training course following law school, ranging from several months to a year in length, and a period of experiential training in the form of articling, work contracts or work placements that are also months to years in duration. Other regulators have no such requirements.⁶

10. Notwithstanding these variations, each jurisdiction is presumably confident that their licensing scheme consistently produces competent entry-level lawyers. This is certainly the case in BC, where the Law Society has been satisfied that requiring prospective licensees to complete law school, articling and PLTC fulfills its statutory duty to ensure that newly admitted lawyers are competent to serve the public.
11. Having a functional system for pre-call lawyer education does not, however, preclude an examination of whether the system that is currently in place is the *optimal* approach to lawyer licensing. Could the current system be improved and, if so, in what ways? How might these changes benefit the public, applicants and the profession more broadly? What challenges and opportunities might modifications to the existing licensing scheme present? As discussed below, the Task Force recommends that the Law Society undertake a detailed examination of these issues.

³ These requirements vary. For example, those that complete a clerkship, article in another jurisdiction or have practice experience outside of Canada may have their articling term reduced by up to five months.

⁴ Some individuals may be exempt from PLTC if they have completed a bar admission course in another Canadian jurisdiction or have engaged in the practice of law in another common law jurisdiction for at least five full years.

⁵ In the United States, applicants must complete four years of undergraduate work followed by a three year law degree. In the UK, prospective lawyers need not complete undergraduate work before commencing a two to five year law degree. Following graduation, solicitors are required to complete a one year legal practice course and a two year apprenticeship/training contract. Barristers must complete a one year training course and complete a year of training in barristers chambers. Solicitors can also become qualified through the completion of a six year legal apprenticeship rather than attending law school. In Australia, law can be a three to five year undergraduate degree or a two or three year graduate degree followed by a three to six month practice legal training course, which includes a work placement.

⁶ There is no requirement to complete a bar course prior to licensing in the United States or Ontario.

Articling as the sole pathway to lawyer licensing

12. Currently in BC, candidates for licensing must complete a period of articling in order to be eligible for call to the bar.⁷ As there are no alternatives means of obtaining pre-call experiential training, the inability to secure an articling position creates a barrier to licensing.
13. Whether articles should serve as the gateway to the profession has been the subject of discussion and debate for some time. Criticisms of articling include the variability across experiences and the challenges of effectively assessing consistency; the increasingly restricted location, size and substantive practice areas of firms that hire students; and the pressure on the articling system generated by the growing number of internationally trained students and, to a lesser degree, Canadian law school graduates.
14. The Task Force will be examining the extent to which these and other issues arise in the context of BC's articling program.⁸ A core element of this work will involve the analysis of the results of a voluntary, online survey of lawyers in their first three years of call.⁹ The results of the survey are expected to provide the Law Society with additional insight into the experience of those candidates that were successful in obtaining articles and may shape future recommendations with respect to the existing articling program.
15. Concerns have also been raised about the "regulatory fairness" of a system in which the market dictates access to an essential component of the licensing regime. Critics have highlighted that unfair barriers may be created for some candidates if entry into the profession is dependent on the availability of positions rather than an individual's qualifications and competence. Where there is a limited number of articling positions available, for example, students who are otherwise competent may not be able to secure a placement and thereby are unable to gain admission to the profession. Obtaining statistical data about the composition and experience of this group is difficult given that these

⁷ Some students are eligible to be called and admitted without articling on the basis of transfer from another jurisdiction under Law Society Rules 2-81 and 2-79.

⁸ The Law Society's 2018-2020 Strategic Plan included a review of the Admission Program. This work commenced under the Lawyer Education Advisory Committee in mid-2018, and will be completed by the newly established Lawyer Development Task Force.

⁹ The survey explores the availability of articling positions, remuneration, quality of articling experiences and competencies associated with entry-level practice, as well as issues surrounding wellness, harassment, discrimination and bullying within the articling experience.

individuals have not enrolled in the Law Society's Admission Program¹⁰ and therefore are not represented in surveys or consultations involving articling students and lawyers.

16. Notwithstanding these concerns, the articling system has been the traditional form of transitional training for generations of lawyers, creating opportunities for students to acquire real-world practical experience prior to being called to the bar and fostering the development of professional networks.
17. Canadian legal regulators have consistently rejected the abolition of articles.¹¹ Within BC, for at least the past two decades, each time the subject of Admission Program reform has been raised, an early preference has been stated for a period of post-graduation experiential learning to bridge the gap between academics and practice.¹² In Ontario, however, concerns that a shortage of articling positions was creating barriers to entry into the profession led to a comprehensive review of the Law Society of Ontario's ("LSO") pre-call lawyer education requirements, commencing in 2011. Over the course of the following seven years, a series of consultations, studies and reports resulted in significant changes to Ontario's lawyer licensing process. This included the introduction of two new training programs that provided candidates with an alternative to articling: the Law Practice Program ("LPP") and the Integrated Practice Program ("IPP"), which both satisfy the LSO's pre-call experiential training requirements. These programs are discussed in more detail in the latter portion of this memorandum.
18. Although the available data suggests that BC is not currently experiencing an articling shortage akin to that in Ontario, the increasing number of Canadian law school graduates and internationally trained applicants have fuelled a growing demand for positions. Anecdotally, there are reports of a highly competitive articling market in which NCA students, in particular, are facing challenges finding placements. Looking forward, a variety of factors have the potential to further reduce the number of available positions, including changes in the demand for, and delivery of, legal services, the continued growth in the

¹⁰ Only those individuals that have secured an articling position are eligible to enroll in the Law Society's Admission Program.

¹¹ The Law Society of Ontario has directly addressed the issue of whether articling should be abolished twice in the last decade, in 2011 and 2018, and has rejected the elimination of articles on both occasions.

¹² In 2002, the Articling Task Force's comprehensive review of the Law Society's Admission Program expressed, at the outset, support for articling remaining a prerequisite to admission to the bar and did not fundamentally question the role of articling in the licensing process. Similarly, no detailed consideration was given to the issue of eliminating articles as part of the Lawyer Education Advisory Committee's 2015 review of the Admission Program, which included a recommendation to maintain the articling requirement with minor changes.

number of internationally trained applicants and the uncertain impacts of large-scale social and economic disruptions, such as the COVID-19 pandemic. In the event that these, or other conditions contribute to a decline in the number of articling positions, market forces, rather than the competence of applicants, have the potential to determine who becomes a lawyer in BC and who does not.

Discussion

19. The Task Force is of the view that, as a modern and proactive regulatory body, the Law Society ought not wait for a “placement crisis” to emerge before considering whether a system in which articling is the only means for licensing candidates to satisfy the Law Society’s experiential training requirement remains the optimal approach. Accordingly, the Task Force recommends that the Law Society establish a process for examining the merits of, and options for, creating alternative pathways to licensing in addition to articling.
20. This work falls squarely within the Law Society’s statutory duty to establish standards and programs for the education, professional responsibility and competence of lawyers and applicants for call and admission. In discharging this duty, section 21(1)(b) of the *Legal Profession Act* gives the Benchers the authority to make rules to establish requirements and procedures for call to the bar and s. 28 gives them the authority to take steps to promote and improve the standard of practice by lawyers, including by establishing, maintaining or otherwise supporting a system of legal education. The Law Society therefore has some significant latitude to modify its existing licensing processes and programs.
21. In accordance with this mandate, the Law Society’s primary concern is to ensure that the licensing program significantly contributes to the development of competent entry-level lawyers. At the same time, however, the scheme should ensure fairness to all candidates. Such an approach does not imply that the licensing process must guarantee every candidate entry into the profession, regardless of competence. However, it does demand that the Law Society ensure that the licensing program does not create or perpetuate barriers to entry into the profession for otherwise competent candidates. As discussed in more detail below, the development of alternatives to articling provides the Law Society with an opportunity to create innovative forms of experiential training that advance this and other goals.

Alternatives to articling

22. In developing this recommendation, the Task Force undertook a detailed review of the two alternatives to articling recently adopted by the LSO. These approaches are presented not as models for adoption, but rather, as examples of the types of licensing pathways that may

warrant further study going forward. Importantly, the LSO has demonstrated that the shifting professional landscape may require novel and innovative forms of pre-call legal education, and that the regulator need not be constrained by traditional approaches when re-envisioning the future of lawyer licensing. Ontario's experience is valuable as it illustrates how articling can be retained as a licensing option, while developing parallel experiential training streams that address issues of regulatory fairness and realize a number of additional benefits.

Law Practice Program (LPP)

23. The LPP is a program developed by the LSO as an alternative to articling, arising from its analysis of a perceived growing gap between the supply of, and demand for, articles in Ontario. In 2012, the program was initially approved as a three year pilot project at Ryerson University (in English) and at the University of Ottawa (in French). Each comprised four months of skills training followed by a four month work placement that would operate alongside the articling program.¹³
24. The first cohort of the LPP commenced in 2014. Over the course of pilot, the program was continually reviewed and assessed, and was the subject of additional consultation with the profession. After considerable discussion and debate, Convocation approved the LPP as a permanent pathway to lawyer licensing in Ontario in 2018.
25. The LPP is open to all students in the LSO licensing process that have completed either a JD from a recognized Canadian law school or have obtained an equivalent degree as evidenced by the receipt of a Certificate of Qualification from the NCA. The costs of administering the program are spread across all licensing candidates and licensed lawyers, and there are no additional fees associated with participation.¹⁴ There are no limits on the number of registrants, and annual enrollment in the LPP has averaged 220 students in the English program and 15 candidates in the French program.

¹³ Articling Task Force Final Report, "[Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario](#)" (October 2012). At the same time, the articling program would be enhanced, with a recommendation to introduce a uniform final assessment to ensure that each candidate, whether they articulated or took the LPP, had successfully completed a set of practice skills covering core competencies.

¹⁴ Each year the LSO's lawyer members contribute one million dollars (\$25-\$27 per licensee) to offset the costs of the LPP. Licensing fees for all candidates (not just those enrolled in the LPP) increased approximately \$1900 to offset the costs associated with the program at the commencement of the pilot project.

26. The composition of the LPP is more diverse than the articling program. Approximately half of LPP students are Canadian law schools graduates. Twenty-five percent of the other half typically start their undergrad in Canada, but complete a law degree in the U.K., Australia or the United States before returning to Ontario for licensing. The LPP also has a larger percentage of candidates from equality-seeking groups than the articling program.¹⁵
27. The LPP begins with a 17-week instructional and skill development component that replicates the experience of legal practice by organizing students into small virtual law firms. Using interactive, web-based modules and digital tools, students develop a range of lawyering competencies by completing tasks and acquiring practical skills as they work through simulated files.¹⁶ Using online technologies to meet with practising lawyers that serve as the virtual law firm's "supervising lawyer," students discuss matters raised by the files, including practice and client management, professionalism and ethics. A three week in-person session also provides students with additional training and networking opportunities. The second portion of the LPP is a four month work placement during which candidates further develop lawyering competencies in the context of a practical legal workplace experience. Work placement teams assist students in locating positions, which may be paid or unpaid.¹⁷ Most of the positions are in small firms and, for at least the first several years of the LPP, the majority were located outside of Toronto.
28. Upon successfully completing both components of the LPP, candidates must only pass the licensing exams and fulfill the LSO's good character requirement to be called to the bar. Graduates of the LPP are generally succeeding in obtaining employment, with over 85% working in law or law related positions at the one year call mark.

Integrated Practice Program (IPP)

29. At the time that the LPP was initially proposed, the LSO also suggested creating an additional pathway to licensing by integrating a training program into the law school curriculum. In 2012, Convocation supported, in principle, the accreditation of an integrated

¹⁵ For example, in the 2016/17 and 2017/18 cohorts, the percentage of self-identifying racialized candidates in the articling pathway was 17% and 22% respectively, while the percentage of self-identifying racialized candidates in the LPP were 22% and 36% respectively.

¹⁶ The LPP covers seven key practice areas: wills and estates, real estate, business law, administrative law, family law, criminal law and civil litigation.

¹⁷ During the pilot project, approximately 30% of LPP work placements were unpaid as compared to 3% of articling placements ([Professional Development and Competence Committee Report to Convocation](#), May 2018). Although work placements are not guaranteed, to date every student that has completed the first four months of the LPP has obtained a position.

practice program (“IPP”) embedded within the law school curriculum that fused formal legal education with skill development across a three year course of study and included a mandatory work placement.

30. The approval of an IPP requires the law school to demonstrate that its curriculum satisfies the requirements for skills and task exposure and assessment identified in the LSO’s competency achievement list.¹⁸ Within this broader framework, however, law schools have considerable flexibility as to how they develop and deliver their curriculum.
31. In 2013, the LSO approved the first IPP at Lakehead University. In 2018, a second program was approved at Ryerson University. Although the Lakehead and Ryerson programs operate independently, they share a number of common features. During the three year law degree, students must complete numerous mandatory courses that integrate a theoretical foundation of legal knowledge with the development of practical skills.¹⁹ For example, students write factums and make oral submissions in constitutional law, complete bail review hearings in criminal law, draft opinion letters in tort law, and participate in client interview role playing assignments in ethics and professionalism courses. Academic faculty typically have experience working in firms and many courses are taught by practising lawyers. In their third year of study, IPP students must complete a three month unpaid work placement, which is coordinated through the student services office. Practice experiences are monitored by the law school and evaluations are conducted by placement supervisors at the firm.
32. Graduates of an approved IPP must only pass the LSO’s licensing exams and fulfill the good character requirement to be called to the bar. As such, students benefit from focusing on the early integration of legal skills and knowledge and avoid the potential challenges of securing an articling position, as well as the additional time and costs associated with completing the LPP or articles.

Rationales for exploring innovative approaches to lawyer licensing

33. In the course of examining BC’s current lawyer licensing scheme, the Task Force has identified several rationales for exploring alternatives to articling. A key impetus for this

¹⁸ These competencies are based on both the entry-level practice competencies set out in the Federation’s National Competency Profile and additional competencies set by the LSO.

¹⁹ Ryerson’s IPP includes 26 mandatory courses. Lakehead’s IPP has more than 18 mandatory courses.

work is to proactively address concerns with the regulatory fairness of an approach in which the market dictates access to an essential component of licensing. These concerns have become increasingly relevant in an environment that is experiencing unprecedented changes, including the significant and continuous growth in the number of internationally trained applicants seeking entry to the BC bar and the uncertainties surrounding the magnitude and duration of the COVID-19 pandemic's impact on all facets of economy and society, including the legal profession.

34. Retaining a scheme in which articling is the sole pathway to licensing may result in factors other than the competence of candidates impacting whether otherwise qualified and competent individuals are able to complete the experiential training required to be called to the bar. The fact that many competent, qualified candidates do not face difficulties finding articling positions does not mean that those that are unable to secure articles lack the knowledge, skills or attributes to become competent lawyers. Rather, other factors, unrelated to competence, may be influencing the ability for some students to compete for scarce positions in a competitive articling market.
35. The LSO's licensing review, for example, suggested that equality-seeking groups may be disproportionality affected by challenges in obtaining articles in circumstances where the demand for positions outstrips the supply. Although a variety of factors made it difficult for the LSO to develop a robust statistical analysis of how placement issues affected specific demographics,²⁰ qualitative data resulting from consultations with the profession emphasized that those from equality-seeking groups — almost all of whom were supportive of developing alternatives to articling — may be less likely to secure articles, are underrepresented in articling positions in large firms, have fewer networks to assist with job finding opportunities and are more likely to have significant law school debt.
36. These issues were the subject of further study during successive evaluations of the LPP, which revealed that certain categories of candidates are more heavily represented in the LPP population, as compared to the articling stream, including internationally educated, racialized and older (40 years+) students. In approving the LLP as a permanent pathway to

²⁰ The LSO's 2011 consultation report indicated that licensing candidates that identified as being from an equality-seeking group were less successful in securing an articling placement. The LSO noted, however, that a minority of members of equality-seeking groups self-identify, and that the experience of different groups within this cohort were not consistent, resulting in incomplete information respecting placement issues. The LSO also observed that the increased number of unplaced racialized candidates also correlated with an increase in NCA students and suggested that internationally trained candidates, whether originally Canadian or not, with more limited connections to Canadian legal practice, have more difficulty obtaining placements.

licensing, the LSO highlighted that the program supported fairness by ensuring access to the profession for all candidates, including those that had previously faced barriers to securing articling placements for reasons unrelated to competence.²¹

37. In BC, the Law Society has limited information about who does not obtain articles because these individuals are not enrolled in the Admission Program, and relies on self-reporting to obtain demographic information about those that do secure placements. This results in incomplete data sets. However, anecdotal reports suggest that NCA students and out-of-province candidates miss out on critical opportunities which lead to articling positions, including networking events hosted by law schools, firm interviews and recruitment information provided by BC law school career offices. The difference between the format of NCA students' transcripts and those of Canadian law school graduates, as well firms' unfamiliarity with out-of-province and out-of-country law schools is another factor that may influence hiring decisions. In some circumstances, bias within the articling interview process—whether conscious or unconscious— may also play a role in qualified candidates being unable to secure a position.
38. Developing alternatives to articling may therefore provide the Law Society with an opportunity to improve access to the experiential training portion of the licensing process for those that have historically faced barriers. In addition to the benefiting those individuals seeking call to the bar, the public interest is also greatly served by improving the diversity of the profession.
39. The Task Force also observes that a number of additional benefits may accrue from developing alternatives to articling. These include the opportunity to establish a form of experiential training that improves access to justice; for example, by providing work placement or training requirements that include areas of practice or practice settings that are dedicated to providing legal services to underserved or disadvantaged groups, and expanding the opportunities for experiential training in environments that fall outside of the traditional law firm or government articling experience. The development of alternative pathways also presents an opportunity to improve the consistency of students' experiential training and to reduce the extent to which the time and costs associated with articling create a barrier to entry into the profession for some students.

²¹ Law Society of Ontario, Professional Development and Competence Committee [Options for Lawyer Licensing: A Consultation Paper](#) (May 2018).

Recommendations and next steps

40. On the basis of the rationales identified above, the Task Force recommends that the Law Society commence a process of exploring and developing options for the creation of additional pathways to licensing that provide candidates with an alternate means of obtaining the necessary pre-call experiential training. Possible approaches may include a program that follows the completion of law school, or that is integrated into a law school curriculum, or both. These options should be developed with the view to recommending a program that operates in addition to, rather than as a replacement for, articling.

41. The Task Force recommends that the review of the licensing program includes, but is not limited to, further examination of the LPP and IPP and whether the introduction of a similarly structured program in BC may benefit candidates, the profession and the public, both by improving opportunities for licensing and integrating with other initiatives, such as increasing the diversity within the profession and addressing access to justice issues. Additionally, in an effort to build a licensing program that is resilient and agile in the face of disruptors such as the current pandemic, consideration should also be given to enhancing the role of technology in experiential training, including increased opportunities for remote learning and mentorship.

42. With respect to timing, the Task Force believes that the Benchers' decision to approve, in principle, a recommendation to explore the development of new pathways to licensing need not wait for the analysis of the Law Society's current articling program to be completed. Although that analysis may inform future proposals regarding modifications to the existing articling program, the survey's focus on newly called lawyers, all of whom articulated, will limit the extent to which the results will advance the Law Society's understanding of the policy issues raised in this memorandum.

43. Once options are developed by the appropriate Law Society body, potential reforms to the licensing process will be returned to the Benchers for further discussion.



Public Policy on Unauthorized Practice

September 1, 2020

Prepared for: Bencher Meeting – September 25, 2020

Prepared by: Unauthorized Practice Committee

Purpose

1. The Unauthorized Practice Committee recommends adopting a public policy on when the Law Society should take action to prevent the unauthorized practice of law.

Background

2. The Law Society's website has a section on the unauthorized practice of law. It summarizes the prohibitions contained in section 15 of the *Legal Profession Act* and provides some examples of what it means to engage in the practice of law. Users can also search a database of unauthorized practitioners against whom the Law Society has obtained court orders under section 85 of the Act. However, the Law Society does not take action under section 85 on every instance of apparent unauthorized practice, and there is currently no statement on the website explaining the rationale for declining to do so.
3. President Ferris wrote to the Unauthorized Practice Committee at the beginning of the year suggesting the committee develop a clear public policy for the exercise of the unauthorized practice authority, "*so that individuals and organizations are able to assist with access to legal services without fear of the Law Society alleging they are involved in unauthorized practice.*" That suggestion was made without the benefit of the intervening crisis precipitated by the COVID-19 pandemic.
4. The crisis has generated calls for reform both to our justice system and the legal profession, as well as more action to address the unmet legal needs of the public. As Chief Justice Bauman has recently commented:

The challenge posed has been how the Court can continue to do its part to prevent harm to public health, while also moving forward to ensure people's legal issues are not left in limbo, especially where the problems that led to the legal issues might be intensified by the pandemic – for example, co-parents navigating tense shared parenting arrangements, difficulties paying support that are exacerbated by loss of a job, contract delays, etc.

5. Our most recent research on the unmet legal needs of the public has also highlighted that, while 15% of those surveyed said they sought assistance from a lawyer regarding a recent serious and difficult to resolve problem, 27% sought assistance from someone other than a lawyer. Most often that assistance was provided by friends or relatives, the internet, government offices or other organizations.
6. On the premise that one should not waste a crisis, the Attorney General has called together a group of former judges, academics and advocates to form the Cross-Jurisdictional Technical Advisory Group ("XJ-TAG") to recommend best practice technology and other

measures that can reduce backlogs and deliver access to justice to British Columbians during and post-pandemic. The XJ-TAG report has not yet been released.

7. The XJ-TAG has spawned several working groups, one of which is the Alternate Legal Services Working Group (“ALSWG”). The ALSWG has been charged with consulting on options for reform in the delivery of legal services. One of those options would be to eliminate the prohibition on the unauthorized practice of law, subject to limited and specific types of services restricted to practising lawyers; or reduce the scope of lawyers’ exclusive practice by removing elements from the statutory definition of the “practice of law”, such as providing legal advice.
8. Another option put to the ALSWG is to consider experimenting with regulatory reforms using a “regulatory sandbox.” A regulatory sandbox for legal services would be a policy structure that creates a controlled environment in which innovation in legal services—which might amount to unauthorized practice—can be piloted and evaluated. The goal is to allow regulators and aspiring innovators to develop new services and service models, validate them in the marketplace, and understand how current regulations might need to be selectively or permanently relaxed to permit these and other innovations in the future.
9. In addition to the work of the ALSWG, the Law Society’s Licensed Paralegal Task Force has also considered a regulatory sandbox for the future licensing of paralegals. The proposal is that the Law Society would invite paralegals currently working with law firms, including designated paralegals, to consider seeking a wider scope of practice through the regulatory sandbox and the use of “no action” or “comfort” letters. Approved paralegals would then be able to test independent service delivery for further evaluation.
10. Both the options suggested by the ALSWG and the Licenced Paralegal Task Force relate directly to the work of the Unauthorized Practice Committee. In particular, the underlying premise of the ALSWG options is that the “monopoly” on the provision of legal services by lawyers is enforced through the Law Society’s use of its unauthorized practice authority in the interest of lawyers.
11. As a result, the development of a clear public policy of when the Law Society will and will not take steps to respond to allegations and instances of the provision of legal services that may amount to the unauthorized practice of law has become more urgent.

Discussion and Analysis

12. Earlier this year, the Unauthorized Practice Committee reviewed summaries of prior committee decisions to pursue or not pursue apparent cases of the unauthorized practice of law. A memo to the committee for their July 2016 meeting set out the underlying policy that staff has followed in deciding whether to bring proceedings against unauthorized

practitioners: “Staff will only bring proceedings where the impugned activity poses a danger to the public or where there are no overriding factors present that would favour forbearance (i.e., access to justice concerns).”

13. Based on past practice and looking to the current climate and the need to respond to concerns that the exercise of the authority given by section 15 of the *Legal Profession Act* is used to protect the interests of lawyers, a clear public policy statement indicating that the Law Society will only act when risk of harm to a person or the public is demonstrable would seem to be in order.
14. Accordingly, the Unauthorized Practice Committee recommends that the Benchers adopt the following policy statement:

The Law Society will not take action against persons who are apparently acting contrary to section 15 of the Legal Profession Act unless there is demonstrable risk of harm to a person or the public.

Conclusion

15. The Unauthorized Practice Committee recommends that the Benchers adopt the proposed policy on when the Law Society should take action to prevent the unauthorized practice of law. If that recommendation is accepted, staff will take steps to publish the policy on the Law Society’s website.

Be it resolved that the Benchers adopt the following policy statement: The Law Society will not take action against persons who are apparently acting contrary to section 15 of the *Legal Profession Act* unless there is demonstrable risk of harm to a person or the public.

The Law Society
of British Columbia



Professional Regulation Process Review:

Introducing Consent Agreements for the Resolution of Complaints without a Citation or Hearing

Prepared for: Benchers

Prepared by: Staff

Purpose: Approval of Consent Agreements as a mechanism for the pre-citation resolution of complaints

Date: September 10, 2020

Purpose

1. In a June 5, 2020 memo to the Executive Committee,¹ staff identified a pre-citation mechanism to resolve complaints as an additional tool to strengthen the Law Society’s professional regulation program and enhance protection of the public interest. The rationale for a pre-citation resolution option is discussed in greater detail in that memo. In brief, a new mechanism is required for two related reasons: (i) citation hearings are costly, resource-intensive and slow, and in some cases would not be necessary to protect the public interest but for the absence of a sufficiently effective and transparent alternative to hearings; and (ii) existing options that do not involve issuance of a citation may lack tangible, enforceable consequences, and are less transparent.
2. This Report proposes and examines policy considerations for the introduction of “Consent Agreements” as a settlement agreement between the Law Society and the subject lawyer that may be used to address and resolve (including sanctions) complaints by consent, without the need for a citation or hearing.

Issue being Addressed

3. A discipline hearing is one possible outcome of a complaint investigation. However, a hearing consumes a considerable amount of time and resources on the part of a hearing panel members and staff, can be stressful on the parties and witnesses involved, and are also, on average, now taking longer to conclude. The cost in time and resources are operational concerns for the Law Society, as they ultimately impact the cost of Law Society membership, which increases the cost to lawyers of remaining in practice.
4. Hearings are also expensive to respondents. In addition to the cost of retaining counsel, respondents take time away from their practice to instruct counsel and also take time from practice to prepare and attend the hearing. In addition to these financial costs, the process of getting from citation to the conclusion of hearings is inevitably stressful for the respondent.
5. The body of precedent that has been established by the decisions of hearing panels over the years allows for determinations as to what would be likely outcomes of a hearing. Where an agreement can be made between the parties about an outcome that falls within the range of outcomes expected at the conclusion of a hearing, it is in the interests of the Law Society, the respondent and the public that such an agreement can be reached.

¹ Report to Executive Committee entitled “Professional Regulation Process Review: Adapting Law Society Processes to Meet Changing Conditions in the Legal Profession,” DM2728823.

6. At present, there is no process for obtaining a discipline-like outcome by consent prior to the issuance of a citation.² What is proposed in the balance of this report suggests “a hearing if necessary but not necessarily a hearing.”

Proposal

Pre-Citation Consent Agreements

7. Staff propose the adoption of a process permitting the resolution of complaints through “Pre-Citation Consent Agreements”. At any time prior to the authorization of a citation, staff may propose to a subject lawyer that the complaint be resolved using a Consent Agreement. A Consent Agreement must include a summary of the relevant facts and admissions by the lawyer as well as the proposed conditions (including sanctions) for the resolution of the complaint. The resolution conditions will be tailored to the circumstances and may include, without limitation, any of the following: coursework, readings, limitations or conditions on the lawyer’s practice, fines, suspension, costs, or resignation on terms equating to a disbarment.

8. If staff are satisfied with the terms negotiated with the lawyer, they may they would provide a summary of the facts and a term sheet for the proposed Consent Agreement for review by either the Chair or a member of the Discipline Committee assigned by the Chair.

9. Upon reviewing the facts and proposed terms, the Committee member may:

- a) Approve the proposed Consent Agreement, in which case the agreement will be finalized by staff in resolution of the complaint; or
- b) Reject the proposed Consent Agreement, in which case the matter will be returned to staff. Staff may, as appropriate, refer the complaint to the Discipline Committee for consideration.

10. The Discipline Committee will retain its existing options for disposition of matters referred to it, including no further action, conduct letter, conduct meeting, conduct review, citation, or referring the matter back to staff for further investigation.

11. The Consent Agreement process would also include the following characteristics:

- a) Consent Agreements, with terms as approved above, may be signed by the Executive Director or designate, on behalf of the Law Society.
- b) Consent Agreements will form part of the lawyer’s professional conduct record.

² Rule 4-29 provides for a conditional admission of a discipline violation on the part of a respondent but only applies once a citation has been issued.

- c) Consent Agreements (redacted as appropriate), or a summary of the agreement, will be published online including the lawyer's name. A summary may also be included in the Discipline Digest and Lawyer Directory.
- d) As a negotiated settlement, Consent Agreements will not be subject to review. However, the parties may agree to modify the terms of a Consent Agreement by mutual consent, for example to revise conditions or limitations on a lawyer's practice, where appropriate. The Executive Director (or designate), may agree to the proposed amendment. If the proposed amendment is rejected by staff, then the lawyer may apply to have their request considered by the member of the Discipline Committee.
- e) Existing options for resolving complaints will remain available, including the resolution of complaints by informal means pursuant to Rule 3-7, or the use of undertakings or recommendations for complaints closed pursuant to Rule 3-8.

12. Consent Agreements will not be appropriate for all matters. Where the facts are in dispute, the appropriate disciplinary sanction is unclear, or the complaint is otherwise novel and requires consideration by a Hearing Panel, the matter is unlikely to be resolved using a Consent Agreement. Complaints involving clear facts or admissions, and a range of sanctions that is well-defined, may be suited for a Consent Agreement. For example, a lawyer's failure to pay GST or PST, which tends to result in a fine, may be appropriately resolved using a Consent Agreement, avoiding an otherwise document-intensive hearing. Likewise, a case involving admitted misappropriation may be promptly and publicly resolved through resignation on terms equating to a disbarment without a citation or hearing.

Discussion

Authority to Implement Proposal

13. The Law Society's authority to resolve a complaint using a pre-citation settlement agreement, such as a Consent Agreement, must stem from powers granted to the Benchers under the *Legal Profession Act* (the "*Act*")³ either expressly or by application of the common law doctrine of jurisdiction by necessary implication.⁴

14. The *Act* confers Benchers with broad authority to carry out the object and duty of the Law Society, which is to uphold and protect the public interest in the administration of justice by, *inter alia*, regulating the profession and ensuring the integrity, honour and competence of lawyers. When interpreting the bounds of Benchers authority, guidance is offered by the *Act* itself, which provides that Benchers may take any action consistent with the *Act*, and that such authority is not

³ *Legal Profession Act*, S.B.C. 1998, c. 9.

⁴ See *Atco Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, paragraph 38.

limited by any specific power or responsibility given to Benchers under the *Act*.⁵ In accordance with the *Interpretation Act*, one must take a “fair, large and liberal construction and interpretation” of the authorities granted by the *Act*, to ensure the attainment of its objects.⁶

15. The *Act* does not expressly confer the authority to settle a complaint in advance of the citation hearings process.⁷ However, it is well established that a statutory body enjoys not only the powers expressly conferred upon it, but also by implication all powers that are reasonably necessary to accomplish its mandate.⁸ In particular, the power to settle allegations made against a person under investigation may be conferred by implication where reasonably necessary to accomplish the statutory body’s mandate under its enabling legislation.⁹

16. A case on point is *British Columbia (Securities Commission) v. Seifert*, 2006 BCSC 174, affirmed 2007 BCCA 484,¹⁰ in which the plaintiff alleged that a settlement agreement he entered into with the BC Securities Commission was unenforceable because: (i) no specific settlement power had been granted to the Commission under the *Securities Act*¹¹ and the agreement was entered into outside the hearings process contemplated by that Act, (ii) the authority to enter into a settlement agreement had been delegated to the Executive Director, and (iii) the agreement included payment of an administrative penalty that was later determined (in an unrelated hearing) to exceed what the Commission could have obtained following a hearing.

17. In finding the settlement agreement valid and enforceable, Kelleher J. concluded that the power to settle was conferred on the Commission by implication because it is reasonably necessary to accomplish the Commission’s mandate of protecting the public interest.¹² He acknowledged that a settlement may not be “absolutely” necessary in that the Commission could hold a hearing in every case. However, adjudicating on every matter would not permit the Commission to carry

⁵ *Legal Profession Act*, sections 3, 4(3), and 4(4).

⁶ *Interpretation Act*, R.S.B.C. 1996, c. 238, section 8.

⁷ After a citation has been issued, the *Act* establishes several requirements for the disposition of the citation through a hearing. Also, a “proceeding” is required in certain circumstances, such as prior to an order for a medical examination, or an order for an interim suspension, conditions or limitations pending conclusion of an investigation or hearing. Outside of these circumstances, there is no requirement under the *Act* for a proceeding or hearing to resolve an investigation.

⁸ *R v. 974649 Ontario Inc.*, 2001 SCC 81, paragraph 70; See also *Interpretation Act*, section 27(2).

⁹ *British Columbia (Securities Commission) v. Seifert*, 2006 BCSC 174, paragraph 45.

¹⁰ Cited with approval in *British Columbia (Securities Commission) v. Alexander*, 2013 BCCA 111, paragraphs 55-56.

¹¹ Note, the *Securities Act* was amended by the *Finance Statutes Amendment Act* in 2011 to add section 162.2, granting express authority to the Securities Commission for settlements. In describing this new provision, then Minister of Finance Hon. Kevin Falcon noted: “This is a technical section. All this amendment does is make clear that a person may waive their rights to a hearing and accept and agree to the sanctions” (2011 Legislative Session: Fourth Session, 39th Parliament, Hansard, Volume 28, Number 10, p. 9096). The authority to settle was extended to the Executive Director effective March 2020 with no further discussion in the Legislature (See the *Securities Amendment Act*, 2019, S.B.C. 2019, c. 38 and BC Reg 45/2020).

¹² *Seifert*, BCSC, paragraph 45.

out its enforcement mandate in an effective and efficient manner.¹³ On appeal, Donald J.A. confirmed the power to settle and that a hearing is not required to validate a settlement. Rather, “the procedure adopted to conclude the settlement is for the [Commission] to determine.”¹⁴

18. On the issue of whether the settlement power could be delegated, Kelleher J. noted that the *Securities Act* permitted the Commission to delegate its powers and duties to its executive director and “this must include powers that are reasonably necessary to accomplish its mandate, such as the power to settle an investigation before proceeding to a hearing.”¹⁵ Donald J.A. agreed, noting that “if the [Commission] can settle, it can delegate that power”¹⁶ and there was no need to establish a practical or operational necessity for settling without an approval process involving the Commissioners.¹⁷ On the terms of the legislation, delegation of the settlement power to the Executive Director was valid and, on that basis, a settlement entered into by the Executive Director “was as though the [Commission] itself made the settlement”¹⁸ (even though, by the time the case was heard and as noted by the Court, the Commission had changed its practice after concluding that because settlements are highly visible and a significant part of the Commission’s enforcement regime, settlements would be overseen through Commissioner-level pre-approval).

19. In confirming that the settlement terms could include an administrative penalty in excess of what the Commission would be entitled to following a hearing, Kelleher J. and Donald J.A. noted the voluntary nature of a settlement agreement, and distinguished it from a plea bargain or a coercive, compelled resolution.¹⁹ Both parties were free to walk away from unsatisfactory negotiations and to seek disposition through the hearings process.²⁰ As components of a voluntary, bilateral agreement, Donald J.A. accepted that the payment amounts agreed to “are not open to question on the basis of jurisdiction.”²¹ Such outcome was agreed upon, not imposed. So long as the financial components of the settlement advanced the public interest and regulatory goals of the Commission, “it cannot be said that they ran contrary to public policy and were beyond the reach of the [Commission’s] powers.”²²

20. By analogy to the reasoning in *Seifert*, we conclude that the authority conferred on Benchers to regulate the legal profession in the public interest includes by necessary implication the power to settle a complaint prior to issuance of a citation. Benchers may determine the procedure for settlement, and in particular, may delegate settlement authority to a committee of

¹³ *Seifert*, BCSC, paragraphs 47-48.

¹⁴ *British Columbia (Securities Commission) v. Seifert*, 2007 BCCA 484, paragraph 30.

¹⁵ *Seifert*, BCSC, paragraph 50.

¹⁶ *Seifert*, BCCA, paragraph 40.

¹⁷ *Seifert*, BCCA, paragraph 37.

¹⁸ *Seifert*, BCCA, paragraph 34.

¹⁹ *Seifert*, BCSC, paragraph 42; *Seifert*, BCCA, paragraph 23.

²⁰ *Seifert*, BCSC, paragraph 49; *Seifert*, BCCA, paragraph 26.

²¹ *Seifert*, BCCA, paragraph 41.

²² *Seifert*, BCCA, paragraph 45.

Benchers or to staff.²³ The contents of a settlement agreement may include penalties normally available after a hearing, or may include other outcomes agreed to by the parties provided such outcomes advance the public interest mandate of the Law Society.

Public Interest Considerations

21. The use of Consent Agreements is expected to provide the Law Society with an additional tool for the protection of the public interest. They may allow for some complaints to be resolved in a more expedient and efficient manner by avoiding the need for a citation hearing, meaning that public interest protections, remediation activities and rehabilitative outcomes may be applied sooner. Timely protections are generally more effective than delayed protections. However, there is also the potential for negotiations to drag on and to fail, meaning that the implementation of Consent Agreements will require careful management to ensure that they are used efficiently. There is a risk that an unsuccessful attempt to negotiate a Consent Agreement may extend the timeline for the resolution of a complaint, compared to if no such negotiation had been attempted.

22. Consent Agreements may, in some cases, provide more effective disciplinary outcomes. The content of Consent Agreements ought to be guided, obviously, by the jurisprudence on sanctions set by Hearing and Review Panels, and by the courts. Within that framework, Consent Agreements may allow the Law Society to develop a tailored response to the specific circumstances and concerns arising in a complaint. There is no one-size-fits-all to conduct issues, and a flexible approach may be more appropriate and effective for remediation and rehabilitation.

23. In some regulatory bodies, consensual settlement agreements have been criticised for providing “lighter” penalties than a hearing. This risk may be mitigated by ensuring that Consent Agreements are public, that processes are transparent, and that staff maintain clear and consistent expectations regarding appropriate disciplinary and remedial outcomes to negotiate. The proposal for Consent Agreements includes Bencher oversight, by providing for approval of Consent Agreements by the Chair or Vice-Chair of the Discipline Committee.

24. Consent Agreements are expected to maintain a high degree of transparency through the publication of the facts, the lawyer’s name and the agreed disposition terms. However, a Consent Agreement’s summary of facts may, in some cases, provide less information than a citation hearing, which may involve testimony and the presentation of other evidence. Also, the negotiation of a Consent Agreement may prolong the investigation phase and delay publication of the lawyer’s alleged conduct, as compared to if the matter went directly to the Discipline Committee for issuance and publication of a citation.

²³ See also *Legal Profession Act*, sections 8(a), 8(b) and 9(2) regarding the authority to delegate all powers other than rule-making power to committees or staff.

Lawyer Considerations

25. Consent Agreements will be voluntary and consensual. Lawyers will be free to decline a proposed Consent Agreement, and in doing so would retain the same choices and administrative protections that they currently enjoy. Having the additional option of entering into a Consent Agreement may benefit a subject lawyer by (i) providing an earlier opportunity to conclude the matter, without having to complete a lengthy hearings process; (ii) allowing the lawyer to reduce and control their own costs, such as the costs of legal representation and hearing costs; (iii) reducing uncertainty and risk, by allowing for a predictable negotiated outcome as opposed to the greater uncertainty of a Hearing Panel decision; and (iv) potentially reducing the stress and other mental health impacts that may be occasioned by a lengthy, costly, and unpredictable citation hearing.

26. Hearing Panel decisions currently provide precedential, educational and deterrent value for the legal profession. It is anticipated that Consent Agreements will continue to provide educational and deterrent value by including a summary of the facts and the disposition. However, Consent Agreements may not provide the same degree of legal analysis that a hearing decision would provide. As such, a Consent Agreement may not be appropriate for the resolution of a particularly novel complaint that requires the degree of legal analysis available only from a hearing decision.

Financial and Operational Considerations

27. It is expected that the use of Consent Agreements may, over time, reduce hearing costs and increase operational efficiency for the resolution of a portion of complaints that would otherwise require a citation hearing. Specifically, the potential reduction in costs may stem from a modest reduction in the number of citation hearings, and therefore a reduction in hearing-related expenses, such as document disclosure costs, travel costs for witnesses and Hearing Panelists, court reporter fees, and legal fees and disbursements for external counsel. This will also have benefits for the respondent by saving the time and expense, including potential legal costs, that would be associated with the investigation and hearing, and would not harm the public interest as the resulting outcome should be roughly consistent with that resulting from a hearing. As this is a consent-based process, the financial impact of Consent Agreements will ultimately depend on whether they are used by lawyers subject to investigation.

28. Operational efficiencies may arise if the negotiation of Consent Agreements requires less staff time than the completion of a citation hearing. This may include a reduction in workload for the Discipline Counsel prosecuting citations, and for the hearings administrator and hearings support staff. However, the reduction in staff time related to hearings may be offset by the time spent preparing agreed statements of fact and negotiating the Consent Agreements. Such work has the potential to be time-consuming for Investigating Lawyers and Discipline Counsel. As noted above, the negotiation of Consent Agreements has the potential to extend the timeline for

resolution of some complaint matters if negotiations drag on or fail. Additional monitoring and enforcement work may also be required to ensure compliance with Consent Agreements depending on the resolution conditions agreed.

29. Even a modest number of Consent Agreements will help in decreasing Benchers workload through a modest decrease in the number of citations, which will result in a need for fewer hearings.

Other Regulator Practices

30. Pre-citation settlement agreements are used to resolve complaints by a broad variety of professional regulators, such as those overseeing teachers, nurses, doctors, dentists, massage therapists (and other health professions regulated under the *Health Professions Act*).²⁴ The *Professional Governance Act*,²⁵ assented to in late 2018, will also provide mechanisms for consensual resolution as an alternative to hearings for engineers, applied biologists, forest professionals and agrologists, with more professions to be added.²⁶ The BC Securities Commission has used enforcement settlement agreements as an alternative to hearings for over 30 years. As discussed above, the lack of a prescribed settlement process in a regulator's enabling legislation does not mean that such regulator lacks the authority to settle.

31. The specific processes and attributes of consent resolution options employed by these regulators differ. However, key similarities include the availability of a consensual resolution as an alternative to a hearing (often prior to the issuance of a citation), the development of an agreement or order setting out the facts and agreed disposition, and publication of the resulting agreement or order (redacted as appropriate). Regulators that use a form of consent agreement tend to resolve significant proportions of their complaints using this option.

32. The approval processes required for a consent resolution will depend on the regulator's enabling legislation. For example, the enabling legislation for professions regulated under the *Health Professions Act* and the *Professional Governance Act* require (or will require upon coming into force) consent resolutions to be approved by a committee of the governing board,²⁷ whereas consent resolutions for teachers may be approved by the Commissioner for Teacher Regulation appointed under the *Teachers Act*.²⁸ Where the enabling legislation is silent on the matter of approvals, it is up to the regulator to determine its own settlement processes.²⁹ For example, from 1989 to 2007, the Securities Commission authorized its Executive Director to enter into

²⁴ R.S.B.C. 1996, c. 183.

²⁵ S.B.C. 2018, c. 47.

²⁶ Note, the relevant provisions of the *Professional Governance Act* are not yet in force.

²⁷ *Health Professions Act*, section 37.1; *Professional Governance Act*, sections 72 and 73, not yet in force.

²⁸ *Teachers Act*, S.B.C. 2011, c. 19, section 53.

²⁹ As discussed above and in *Seifert*, BCCA 484, paragraph 30.

enforcement settlement agreements without approval by the Commissioners.³⁰ However (as noted above) in 2007 the Securities Commission revised its governance policy to require that all enforcement settlement agreements be pre-approved by non-adjudicative “settlement committees” comprised of Commissioners. This policy amendment was made on the basis that “settlements are highly visible and a significant part of the Commission's enforcement regime.”³¹

33. Pre-citation settlement agreements are not used by other Canadian law societies, except in limited circumstances and with limited outcomes. The Law Society of Saskatchewan permits a lawyer to apply to their Conduct Investigation Committee to resign in the face of discipline, by submitting an agreed statement of facts and proposed conditions. If accepted, the matter is resolved without a citation or hearing and the agreed statement of facts will be made public. This option is only available where the outcome will be resignation.³² The Law Society of Nova Scotia's Complaints Investigation Committee may issue a reprimand instead of a citation, provided the lawyer has given consent. A consent reprimand may impose practice restrictions or conditions, or require remedial actions, and will include a statement of facts, the committee's conclusions regarding the conduct, and admissions and apologies by the lawyer.³³ The consent reprimand will be published online. However, certain outcomes such as a suspension, fines or other penalties do not appear to be available through a consent reprimand. The Law Society of New Brunswick's Complaints Committee may, if the lawyer consents or does not contest a complaint, settle the matter by issuing a warning or reprimand, ordering a fine or costs, or imposing restrictions or conditions.³⁴ However, it appears that a sanction involving suspension or disbarment is not available without a hearing, and any pre-citation resolution will not be made public.

34. The lack of similar processes in other law societies is not determinative of the issue. The Law Society of British Columbia has taken the lead on introducing new regulatory measures where appropriate in the past. Benchers have the authority to introduce a settlement process for complaints, and to dictate the procedures to be followed.

35. Adopting a Consent Agreement process that has Benchers-level involvement through the approval role of the Chair or Vice-Chair of the Discipline Committee will provide a new tool for expeditious resolution of appropriate cases, with oversight protections. Consideration has been given to the type of recommended oversight. It is noted that the Chair of the Discipline Committee

³⁰ Note, the *Securities Act* was silent on the matter of settlement until the introduction of section 162.2 effective November 2011. At that time, settlement power was granted to the Commission. Effective March 2020, the settlement power was expanded to the Executive Director (See the *Securities Amendment Act*, 2019, S.B.C. 2019, c. 38 and BC Reg 45/2020).

³¹ BC Securities Commission BCN 2007/27 BCSC Governance of Enforcement Settlement Agreements Published August 22, 2007.

³² Law Society of Saskatchewan Rules 1111 and 1137. Note, this process does not appear to be set out in the *Legal Profession Act* (Saskatchewan).

³³ *Legal Profession Act* (Nova Scotia), section 36(2)(c) and Law Society of Nova Scotia Regulation, section 9.4.3(e).

³⁴ *Law Society Act* (New Brunswick), section 52. See fine limit under Law Society of New Brunswick Rule 82.

has authority to order an audit of a lawyer's books, records and accounts under Rule 4-55. While the situations are not directly analogous, there is a similarity in that the Chair of the Committee would be able to exercise a review role of staff recommendations and make a decision that has consequences on the investigation in both cases.

Proposed Resolution

36. After reviewing the Law Society's authority to enter into settlements, considering the potential impacts on the public, lawyers and the Law Society's finances and operations, and surveying the approaches undertaken by other regulators, staff recommend the introduction of Consent Agreements for the resolution of complaints without a citation or hearing. This additional tool has the potential to improve the effectiveness and efficiency of the Law Society's approach to a portion of complaints that may otherwise result in a hearing.

37. The process for Consent Agreements proposed in this Report takes into consideration the Law Society's public interest mandate and existing regulatory processes and governance structures. Specifically, staff recommend adoption of the following resolutions:

THAT the Benchers approve the use of consent agreements, where appropriate, to resolve complaint matters without a citation or hearing, and that the process for such consent agreements be as set out in this report; and

THAT the Act & Rules Committee be directed to prepare the necessary rule amendments to be returned to the Benchers for approval.

The Law Society
of British Columbia



Maternity Leave Benefit Loan Program

Pilot Program Review Report

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July 9, 2020

Prepared for: Benchers

Prepared by: Equity Diversity and Inclusion Advisory Committee

Purpose: Decision

Purpose of Report

1. In 2007, the Women in Law Task Force recommended a Maternity Leave Benefit Program (“Program”) to reduce the financial hardship of self-employed female lawyers who give birth. The Program was intended to address an ongoing concern that women are disproportionately leaving the profession due to family responsibilities.
2. The Program was initially introduced as a pilot project, but because there was not much initial use of the Program, it was extended to permit more data to be gathered. Although significantly delayed, this Report constitutes the review of the pilot project. This Report therefore undertakes to review and assess the Program, with a view to making recommendations.

Executive Summary

3. The Maternity Leave Benefit Loan Program was introduced as a pilot program in 2010, and over the course of ten years since it was introduced, it has failed to meet its intended objectives. The Program has had a consistently low usage rate, some of the users did not take maternity leaves, and others did not return to practice after taking maternity leaves. The Program was developed at a time when federal employment insurance (EI) benefits were not yet available to self-employed lawyers; the federal EI benefits have been available since 2010 (just as the Law Society’s Program was being launched). The Covid-19 crisis has led to financial difficulties for a number of lawyers, and the Law Society has taken measures to alleviate some monetary pressures on lawyers.¹ In light of the results of the Program review, the Committee is recommending that the Program be phased out and replaced with alternative measures aimed at supporting the retention of new parents in the legal profession.

Background

4. The Women in Law Task Force was concerned about the representation of women in the legal profession, and examined barriers to the practice of law. It noted, for example, of all women called to the bar in 2003, only 66% retained practising status in 2008 compared with 80% of men called in the same year.² The current gender ratio for practising lawyers up to 15 years call is 49 male to 51 female (i.e. near parity), and decreases slightly for 15 to 19 year calls: 57 male to 43 female. A higher number of women (58%) than men (42%) have non-practising status.

¹ Such as deferring fee payments, and providing information about free continuing professional development opportunities.

² The Business Case for Retaining and Advancing Women Lawyers in Private Practice, <http://www.lawsociety.bc.ca/docs/publications/reports/Retaining-women-business-case.pdf> at 4.

5. The Program was proposed as a grant of \$2000 per month over the course of 4 months, available to self-employed lawyers who became birth mothers and had no access to other maternity and parental benefits. The Program was not intended as income replacement, but to help defray some of the cost of overhead during the time spent away from practice during maternity leave.
6. The proposal was presented at the April 5, 2007 Benchers Meeting. During the discussion about the proposal, a number of points of controversy regarding the grant model emerged. One Benchers expressed his belief that the maternity leave grant was beyond the Law Society's mandate.³ Another Benchers doubted the effectiveness of the grant. Yet another expressed concern about the absence of a financial needs test to determine whether applicants needed the grant. One Benchers anticipated a lack of support for the Program by Law Society members, and suggested that a referendum should be conducted before the Program was implemented.
7. As a result of these concerns, the Benchers were unable to achieve consensus on the grant, but approved the Program with the proviso that it be restructured as a repayable, interest-free loan. The Executive Director was instructed to determine the terms of the loan, with guidance from the Benchers. Even so, one Benchers asserted that it was beyond the Law Society's mandate to loan money to its members. Following the Benchers meeting, repayment provisions were added to the Program, but other aspects of the Program were not reconsidered in light of the loan scheme.
8. The primary goal of the Program is to assist self-employed women lawyers to cover overhead costs during a maternity leave in order to counteract the high attrition rate for women of childbearing age leaving the legal profession. It is meant to assist in encouraging diversity in the legal profession by removing barriers to women in the profession, and supporting sole practitioners. This supports the Law Society's mandates of protecting the:
 - 1) public interest by encouraging women in sole practice to stay in the profession, thereby increasing the diversity of legal representation available to the public; and
 - 2) interests of lawyers by assisting sole practitioners on maternity leave who might otherwise be discouraged from practising.
9. The Program provides a fixed sum of \$2000 per month for up to four months (a maximum of \$8000) to cover some of the overhead associated with operating a sole practice during the

³ However, nothing in the *Legal Profession Act* prevents the Law Society from implementing such a program. Under section 32 of the *Act*, the Benchers can create "standards of financial responsibility relating to the integrity and financial viability of a lawyer's professional practice." It could be argued that such a program helps to support the financial viability of sole practitioners.

maternity leave period. The loan is paid over four months from the child's date of birth in equal payments. The loan is interest-free and is a taxable benefit.

10. The loan is available to practising lawyers who:

- 1) Are birth mothers;
- 2) Are members of the Law Society of British Columbia in good standing;
- 3) Are sole practitioners or self-employed lawyers associated with a firm of five lawyers or less; and
- 4) Have no access to additional maternity and parental financial benefits beyond government programs.

11. The repayment terms are as follows:

- 1) Repayment of the loan begins on the first year anniversary date of the loan;
- 2) Repayment is over four years, and will be paid monthly at the start of each month;
- 3) Repayment will be made through pre-authorized debit from the member's bank account;
- 4) Repayment will be immediate if the member does not return to or continue to practice after the maternity leave; and
- 5) Repayment of any remaining balance will be immediate if the member becomes non-practising or leaves the profession during the repayment period.

12. The only costs of the Program are the Controller's time for administration, and lost interest on the funds lent out. All loans have been, or are currently being repaid. The Program is not currently budgeted.

13. The Women in Law Task Force anticipated approximately 9 lawyers per year would access the Program. However, only 23 women have accessed the Program since its inception in 2010, which amounts to an average of 2.3 women per year accessing the Program.⁴ The impact of the Program is therefore considerably less than was originally expected.

14. The EDI Advisory Committee has undertaken this Program review to identify the reasons for the underuse of the Program, and to consider options regarding the future of the Program.

15. The Committee's review has been informed by: the Law Society's gender demographic data, minutes from meetings during which the Program was being developed, the proposal that was

⁴ The total number of women practising law in BC is approximately 5,000 (including full-time and part-time practitioners) and approximately 1,000 women are currently non-practising members.

considered by the Benchers, the Program's guidelines and eligibility criteria, communications from Program users requesting alterations to the Program, information about comparable programs in other jurisdictions (attached as Appendix A), and the results of a survey of Program users (attached as Appendix B).

16. During the month of August 2019, Law Society staff conducted a telephone survey of Program users. Sixteen lawyers participated in the survey and seven declined to participate.⁵ Staff also reviewed Law Society records to compile data regarding the practising statuses of each of the Program users. Lawyers who did not use the Program were not surveyed, so there is no direct information from non-users about why they did not access the Program.
17. The survey revealed that the Program was not a pivotal factor in enabling women to take leaves, or to return to practice. In fact, one in four Program users did not actually take leaves, and three of the Program users did not return to practice following their leaves. Survey responses revealed that the loan amount was not independently sufficient; instead, user perceptions of the sufficiency of the loan depended on other factors such as lack of overhead costs (e.g. working from home offices) or access to other funds (e.g. EI benefits, private loans, spousal income, and/or income from continuing to provide legal services). Many respondents commented on the administrative barriers (e.g. processes and fees) that made it difficult to transfer to non-practising status in order to take parental leaves. (Six did not transfer to non-practising status.) Many survey respondents indicated that simplifying the process for transferring to and from non-practising status might enable more lawyers to take parental leaves.

Issues

18. The Program review has revealed the following issues: 1) the failure of the Program to meet its objectives 2) deficiencies of information and awareness about the Program; 3) limited usefulness of the interest-free loan; 4) constrictive eligibility criteria; 5) restrictive terms of the loan agreement; and 6) the Law Society's lack of capacity to administer loans.

Analysis

1) Failure to Meet Objectives

19. The Law Society's records reveal that the Program failed to meet two of its key objectives: to enable women lawyers to take maternity leaves, and to support the retention of women in the legal profession.

⁵ Two of the seven expressly declined, and five of the seven did not respond following three attempts to connect with them.

20. Regarding the first objective, the Program has failed to enable lawyers in private practice to take maternity leaves. Six lawyers (26% of Program users) did not take full maternity leaves (i.e. five continued part-time practice, and one continued full-time practice⁶) despite receiving the loan.
21. With respect to the second objective, the Program has not had a significant impact on the retention of women in private practice. The low usage rate overall (i.e. 23 lawyers out of 5000 practising women lawyers in the province, which amounts to 0.46%) reveals that the Program is having a negligible impact on the retention of women in private practice. Moreover, five lawyers (22% of Program users) are no longer in private practice (i.e. three lawyers are no longer practising, and two are in-house counsel). Only 18 out of 23 Program users are still in private practice, which amounts to 0.36% of the 5000 practising women lawyers in the province.

2) Deficiencies and Inconsistencies of Information

22. The launch of the Program was announced in the Law Society's E-Brief, Benchers' Bulletin, and on the Law Society's website. Details about the Program, including the application form, remain on the Law Society's website, but the Program is not being actively promoted.
23. The Law Society has had to clarify some eligibility requirements, such as specifically limiting the availability of loans to: self-employed lawyers associated with firms of five lawyers or less;⁷ members of the Law Society of BC in good standing;⁸ and birth mothers of newborn babies.⁹
24. There are also inconsistencies in the information about the Program that is provided on the Law Society's website. For example, although the guidelines have been updated to clarify that the Program is only available to "self-employed lawyers associated with firms of five lawyers or less," the application form still says "I am a practising self-employed lawyer," without the limitation that the applicant must be associated with a firm of five lawyers or less. This inconsistency may be a source of confusion.
25. Survey respondents expressed concerns that the Program is not sufficiently advertised, there is not enough information provided on the Law Society's website, the information that is provided is not consistent, and Law Society staff are not sufficiently knowledgeable to answer questions about the Program. For example, one survey respondent conveyed that she was

⁶ One survey respondent indicated that she did not take any leave, even though the eligibility criteria specifies that loan recipients may only work up to one day per week.

⁷ As opposed to those associated with firms that have 8 to 13 lawyers (discussed below).

⁸ As opposed to members of other law societies (discussed below).

⁹ As opposed to birth fathers, and birth mothers of four year old children (both situations are discussed below).

unclear about whether she was eligible for two loans, and was not able to obtain clarification from Law Society staff. As a result, she refrained from applying for a second loan.

3) Limited Usefulness of the Interest-Free Loan

26. The limited usefulness of the interest-free loan is likely the key factor in the Program's low usage rate. During the Benchers debate regarding the Program, and while it was still perceived as a grant, two Benchers doubted that \$2000 per month would be a determinative factor in whether a woman returns to practice after a maternity leave. An interest-free loan is even less helpful in defraying the overhead costs of a legal practice than a grant would be.
27. The Program user survey asked respondents about usefulness of a loan in relation to the sufficiency of the amount, and whether it enabled lawyers to take leaves and return to practice. The survey responses revealed that the loan is not unequivocally useful.
28. User perceptions of the sufficiency of the loan amount were contingent on other sources of income. Many respondents said they would have taken loans from a financial institution if the Program was not available. One respondent specifically noted that the interest rates from financial institutions are so low right now that the Law Society's interest-free loan is not a substantial benefit. Four respondents reported that they did in fact have loans from financial institutions, four had accessed the federal Employment Insurance (EI) program during their leaves, and twelve indicated they were able to access spousal income during their leaves. Six continued to practice, and therefore continued to generate income from legal services during their leaves. The Law Society's loan loses significance in light of these other sources of income.
29. Another factor that influenced the perception of usefulness of the Program was the pre-leave income of loan recipients. The pre-leave net income of the sixteen survey respondents were as follows:
 - 3 were making less than \$30,000
 - 4 were making between \$50,000 and \$80,000
 - 4 were making between \$80,000 and \$100,000 and
 - 5 were making over \$100,000.

The three respondents with a net income of less than \$30,000 perceived the Program to be very useful, whereas respondents with higher the net incomes had lower perceptions of the usefulness of the Program.
30. The availability of the federal EI program to self-employed lawyers is likely another factor that decreases the usefulness of the interest-free loan. The Law Society's Program was

developed in 2007, before EI became available to self-employed individuals (in 2010).¹⁰ Now that self-employed lawyers can access EI benefit program, the need for the Law Society's Program is questionable.¹¹

4) Eligibility Criteria

31. The lack of clarity with respect to the eligibility criteria has led to unintended applicants applying for the loan.
32. For example, self-employed lawyers in limited liability partnerships (LLP) with between 8 and 13 other lawyers have been approved for loans. Initially, the guidelines and application form only required the applicants to declare: "I am a practising self-employed lawyer". Although the guidelines state that the Program "is designed to help defray some of the costs of overhead during the time spent away from practice for maternity leave" (which suggests that the Program is intended for sole practitioners and lawyers in small firms), at the time these applications were processed, there was no limitation on the size of firm that self-employed lawyers applying for the loan might work with.
33. After these approvals came to light, the Program guidelines implemented a limitation that requires that applicants "be a sole practitioner or a partner in a firm of five lawyers or less" to ensure that the loan is being used for its intended purpose: to defray overhead costs while a self-employed lawyer is on maternity leave. It is reasonable to assume that overhead costs would be absorbed by the remaining lawyers in firms with more than five lawyers. Limiting the loan to self-employed lawyers associated with small firms is meant to maintain eligibility for the target recipients and to prevent lawyers in larger firms from taking undue advantage of an interest-free loan. As mentioned above, there is a discrepancy between the guidelines and the application form.
34. Another issue with the eligibility criteria is that a lawyer from another jurisdiction applied for a loan, so the guidelines and application form have been updated to make it clear that the Program is only available to members of the Law Society of BC in good standing.

¹⁰ In January 2010, the EI Benefits Program was amended to provide self-employed individuals with benefits, including maternity, parental, and adoption benefits. Previously, these benefits were only available to wage earners and salaried workers. Self-employed lawyers may now opt into the plan and pay premiums for at least one year before they can claim benefits. The benefits calculation is based on income, with a maximum benefit of \$524 per week for those making \$49,500 or more per year. After the leave, recipients must keep paying premiums for as long as they remain self-employed.

¹¹ Some survey respondents indicated that they were deterred from the EI program because it requires pay-in. However, some of the survey respondents were accessing both the EI program and Law Society's Program.

35. The same lawyer (applying from another jurisdiction) applied for the loan even though her child was 4 years old at the time of her application. The guidelines were clear, and continue to be clear, that the Program is only available over four months from the child's date of birth.
36. The Law Society also received an application from a father (whose spouse was enrolled in the Program and receiving a loan) even though the eligibility criteria specifies that the loan is only available to birth mothers.
37. There is currently a lack of clarity as to whether a lawyer should be eligible for the loan if she is receiving EI benefits. The eligibility criteria states that the Program is available to self-employed lawyers who "have no access to additional maternity and parental financial benefits *beyond government programs*." The Program user survey has revealed that four loan recipients were accessing EI while receiving the Maternity Leave Benefit Loan, which is within the scope of the current eligibility criteria. However, as mentioned above, the Law Society's Program was developed before the EI benefits were available to self-employed lawyers, so the developers of the Program did not consider whether EI recipients would be eligible for the Program.¹²

5) Terms of the Loan Agreement

38. The restrictive terms of the loan agreement have resulted in some glitches that have become apparent since the Program's inception as an interest-free loan.
39. One problematic requirement was that to be eligible for the Program (as initially approved by the Benchers), prospective loan recipients had to change their practising status to non-practising during the leave period in which the loan was received. The requirement was likely a remnant of the grant model, and was likely meant to prevent abuse of the Program by individuals who had no intention of taking any significant maternity leave.
40. The problem became apparent when an applicant to the Program requested an exception to the requirement. She perceived that there would be some need for her to maintain communications with some of her clients during the intended leave period and, if necessary, provide them with legal advice about their open files. Law Society staff considered the request and noted that "it would be unrealistic to think that clients would have no expectation of access to legal advice from their lawyer" and that "it might be detrimental to the public interest to have the lawyer be uninsured in the face of her clients' expectations." In 2013, the Program was adapted to allow lawyers to maintain part-time status while receiving the loan. However, this amendment has led to six (i.e. 26% or approximately one in four) Program users not taking full maternity leaves.

¹² Under the Law Society of Ontario's Parental Leave Assistance Program, EI recipients are ineligible (See Appendix A).

41. A number of survey respondents commented on the administrative barriers (e.g. processes and fees) that made it difficult to transfer to non-practising status in order to take parental leaves. The respondents who own law corporations were particularly concerned about the burdensome process (and associated costs) required for them to wind down their practices in order to transfer to non-practising status. Many respondents suggested that the Law Society could improve support for parents in the legal profession by streamlining the processes associated with taking parental leaves.
42. The loan repayment provisions have also led to practical problems when applied to real-life situations, particularly where loan recipients have more than one child.
43. For example, the loan agreement requires repayment to begin on the first year anniversary date of the loan and be made over four years. This requirement presented an issue for a lawyer who had two children and applied for two consecutive loans. She asked to begin repayment of the loan for her second child after she completed the repayment of her first loan. Her request was granted, so repayment on the second loan was deferred.
44. Another issue arose for a lawyer who received a loan in relation to the birth of her first child, but did not apply for a loan with respect to her second child. The loan agreement provisions stipulate that repayment becomes immediate if the member becomes non-practising during the repayment period. The lawyer requested an exception to this provision because she intended to go to non-practising status during a maternity leave for her second child. A strict application of the immediate repayment provisions would have been at odds with the purpose of the Program by increasing, rather than reducing, financial hardship for the loan recipient. To avoid this outcome, the loan repayment was deferred while the loan recipient was on maternity leave, and non-practising, in relation to her second child.¹³

6) Administration of Loans

45. As mentioned above, a number of issues have arisen due to the lack of clarity regarding the Program's eligibility requirements, and restrictive terms of the loan agreement. These issues may be due to the fact that the Program was developed as a grant, and then implemented as a loan without further analysis or redevelopment of the Program as a loan model.
46. Some survey respondents reported irregularities with the administration of the loan, such as delayed deposits, inconsistent transactions, irregular repayment schedules, and a lack of documentation. These issues indicate that the Law Society's Finance Department was not established to administer loans, and does not have sufficient capacity to do so.

¹³ This lawyer returned to practice briefly, and is now non-practising.

Options

47. The Committee has considered three options: 1) keep the Program the same; 2) adapt the Program a) into a grant for birth mothers or b) to expand eligibility to fathers and adoptive parents; or 3) phase out the current Program.

1) Maintain the Status Quo

48. The issues detailed above indicate that maintaining the Program in its current form is not the best option. The Program is not having the result that was originally intended, is failing to meet its key objectives, and a number of problems with the loan Program have emerged. The Committee has considered whether the Program should be adapted to better achieve its purpose, or phased out.

2) Adapt the Program

a. Grant for Self-Employed Birth Mothers

49. The Committee considered whether Program usage¹⁴ would increase if the Program were offered as a grant instead of a loan. The Committee recommends against providing the Program as a grant for a number of reasons:

- i. Lack of monetary resources: Law Society programs are funded by member fees, and a maternity leave grant would be as well. A grant would result in increased fees for all lawyers, and would only benefit a small segment of the profession. The Committee is conscious of the profession's concerns about fees, which will likely be amplified because the Covid-19 crisis has led to reduced hours, lower wages, and layoffs for many lawyers. The Law Society has extended fee deadlines due to the Covid-19 crisis.¹⁵ It is reasonable to anticipate that member fees will be scrutinized as a result of the economic consequences of Covid-19.
- ii. Even as a loan, there were pressures to expand the eligibility criteria to include a broader range of members. If there is a grant, then it is reasonable to foresee requests for grants from other sole practitioners and small firms experiencing financial

¹⁴ A higher usage rate would not necessarily mean that the Program is effective. The key measure of effectiveness would be a noticeable decrease in the attrition rate of women from private practice. It is questionable whether a grant of \$2000 per month for four months would make any significant difference to the retention of women in private practice. The Program user survey revealed that the amount was not independently sufficient; instead, other sources of income (such as income from continuing to practice, EI benefits, spousal income, and private loans) were relied on by Program users.

¹⁵ <https://www.lawsociety.bc.ca/about-us/news-and-publications/news/2020/covid-19-update-april-17,-2020/>

difficulties during the Covid-19 pandemic.¹⁶ Given the economic context of Covid-19, it will be difficult to rationalize grants for new parents if financial assistance to other lawyers is denied. As mentioned above, the Law Society does not have sufficient monetary resources to fund financial assistance programs, and is not adequately equipped to administer such programs to its members.

- iii. A grant would likely attract members to test the boundaries of the eligibility criteria. The Law Society lacks the expertise and human resources to monitor or enforce eligibility requirements, or to develop and oversee a “needs assessment”.¹⁷ The survey of Maternity Loan Program users revealed that not all Program users were compliant (e.g. there were recipients who were working with more than five lawyers, and others who continued to work full time despite undertaking to limit practice to one day per week). The Law Society does not have the capacity to monitor and enforce a grant program.
- iv. A grant would pose a legal liability. As mentioned above, even as a loan, the Program was included in a human rights complaint against the Law Society (i.e. a lawyer from Alberta complained that she was denied access to the Program as part of a larger complaint regarding conditions for transferring to BC). Also, a male lawyer (whose spouse was already receiving the loan) threatened to file a human rights complaint because he was denied the loan. A grant would generate more demand than a loan, and would likely expose the Law Society to further legal challenges regarding the eligibility requirements.
- v. Although a grant program should generate good publicity, there is no guarantee that it would do so. Beyond potential human rights complaints, the grant would likely attract criticisms that the amount is insufficient and should be available to a broader range of lawyers, or on the other hand, that member fees should not be used to fund such programs.

Accordingly, the EDI Advisory Committee is of the view that adapting the Program to a grant is not the best option.

b. Expand the Program to Fathers and Adoptive Parents

50. Some lawyers have suggested that the benefit should be extended to biological fathers and adoptive parents, based on the notion that encouraging all parents to take leave for childrearing would help to normalize parental leave within the legal profession. The rationale

¹⁶ Lawyers are already calling for emergency loans or grants to keep sole practitioners and small firms afloat during the pandemic (e.g.: <https://lkd.in/gr2ie85>).

¹⁷ Statements of earnings from tax documents may not adequately reflect a person’s actual net worth, so a more nuanced assessment would need to be developed and applied.

is that normalizing parental leave could lessen the stereotypical assumption that mothers are less committed to their legal careers than fathers and non-primary caregiving parents. Some speculate that there may be less opposition to the Program if paternal and adoptive parents could also benefit from it. On the other hand, offering the benefit to all parents may be seen as a bigger expense, so there may be more opposition to doing so. Given that a number of lawyers are currently experiencing economic difficulties as a result of the Covid-19 crisis, it is reasonable to anticipate that member fees will be scrutinized by members in the coming months.

51. The normalization of parental leave in the legal profession is a fundamentally different issue than the physiological experiences of biological mothers which the Program was designed to address. In 2014, the Supreme Court of Canada ruled that a benefit that does not take childbirth into account may be deemed discriminatory against birth mothers.¹⁸ Pregnancy and parental benefits serve different purposes: pregnancy benefits provide income while a woman is away from work due to pregnancy or recuperation from childbirth; parental benefits provide income while parents are away from work in order to bond with their child.
52. The primary goal of the Maternity Leave Benefit Program is to assist self-employed women lawyers to cover overhead costs during a maternity leave in order to counteract the high attrition rate for women of childbearing age leaving the legal profession. Extending the benefit to all self-employed lawyers who become new parents without regard for childbirth would be a fundamental departure from the original rationale for the Program, and may deny substantive equality to birth mothers.
53. Another option might to offer a grant to all parents who are self-employed lawyers, with additional funds for birth mothers. This would still constitute a significant departure from the original goal of the Program. Moreover, offering the grant to paternal and adoptive parents would also increase the cost of the Program, and the increased cost could lead to increased resistance to the Program. The cost/benefit of extending parental leave to fathers is debatable,¹⁹ and would require further analysis before deciding whether to extend the Program to fathers.
54. Expanding the Program to fathers and adoptive parents would likely be constrained by limited resources in any event. When the Maternity Leave Benefit Program was being developed, the anticipated number of Program users (9 per year) was based on the Canadian fertility rate and the number of sole practising female lawyers of child-bearing age in British Columbia in 2003. Since then, the fertility rate in certain age groups has increased, and the number of sole

¹⁸ *BC Teachers' Federation v. British Columbia Public School Employers' Association*, 2014 CanLii 12475 (SCC).

¹⁹ <http://policyoptions.irpp.org/magazines/may-2017/the-trouble-with-prioritizing-dads-leave/>;
https://www.huffingtonpost.ca/2015/05/25/paternity-leave_n_7421960.html.

practising female lawyers has also increased. If sole practising male lawyers are also factored into the equation, then the number of potential Program users would increase exponentially.

55. Using the same formula applied when the original Program planners anticipated that approximately 9 women lawyers per year would access the Program, one might expect at least 12 lawyers per year to access the Program if it is extended to all parents. The anticipated cost of this option would be approximately \$100,000 per year, based on fertility rates alone, without factoring for adoptive parents. Extending the Program to all parents while simultaneously changing from the loan model to a grant model would likely lead to Program oversubscription.
56. Another option might be to offer a loan to all new parents who are self-employed sole practitioners or lawyers in small firms. However, this option would not provide special consideration of childbirth, and would not resolve the logistical problems that are being experienced in the current administration of loans to biological mothers who are self-employed lawyers. If the loan were to be extended to fathers and adoptive parents, then the logistical problems would be amplified.

3) Phase the Program Out

57. As mentioned above, the usefulness of the Maternity Leave Benefit Program may be questionable in light of other resources that are available to self-employed lawyers. The Program has never really met its intended outcome, and while it could be better advertised, it is not at all clear that better advertising would increase the use of the Program to the levels initially contemplated. Moreover, higher Program usage rates may have minimal to no effect on attrition rates. Phasing the Program out would be a recognition that there may be better ways to reach the goals contemplated by the Women in Law Task Force.
58. The Committee is of the view that alternative options to better support the retention of new parents in private practice should be explored, such as:
 - i. Decreasing administrative barriers for lawyers who take short term leaves. For example, staff should assess whether:
 - (a) the process of winding down a law firm could be eased by creating a temporary wind down provision that would be time limited and would require less administrative effort than fully winding down a law firm; and
 - (b) changing practice status (from practising, to non-practising, and back) could be streamlined with online options. As a result of the Covid-19 crisis, the Law Society will need to consider improvements to online services for members, including the possibility of enabling member forms and fees to be submitted online. If automation

streamlines the processing of forms (e.g. if the online responses are entered directly into the Law Society’s system, without the need for data entry by staff), then administrative fees should be reviewed in light of automation.

- ii. Analyzing the return to practice timelines and requirements to determine whether they pose any barriers for lawyers returning from parental leaves. The return to practice rules currently require lawyers to requalify if they have not engaged in the practice of law for more than three of the past five years. Some accommodations for parents are built into the return to practice rules, such as: part-time practice constitutes “active practice”; competence is evaluated on an individual basis where a lawyer is absent from the profession for more than three years; and educational programs are available to inactive lawyers (such as the free, online “practice refresher course”). The Law Society could consider whether any Rule amendments would help to alleviate barriers for parents returning to practice, and could improve communications materials to assist lawyers to be more proactive and strategic to avoid pitfalls in returning to practice.
- iii. Amending Law Society Rules to facilitate the provision of remote legal services. As a result of social distancing measures arising from Covid-19, working remotely has become a necessity. The Law Society will need to assess its *Act*, Rules, and Code to identify possible amendments to optimize the provision of remote legal services. Because working remotely is often useful in balancing work and family responsibilities, any amendments to enable remote legal services will likely benefit lawyers with family responsibilities. The Law Society could also develop practice resources (such as guidelines and best practices) for the provision of remote legal services, which may be useful for all lawyers, including those balancing practice and parental responsibilities.
- iv. Implementing law firm regulation, which includes considerations intended to improve equity, diversity, and inclusion within law firms. Indicators of best practices include parental leave policies, flexible work arrangements, and training in furtherance of equity, diversity, and inclusion.
- v. Compiling all of the Law Society’s resources and initiatives to support the retention and advancement of women in the profession, so that they are obvious and easily accessible by lawyers who might benefit from them.

59. Examples of the Law Society’s existing resources and initiatives include:

- An amendment to the *Code of Professional Conduct* to explicitly prohibit discrimination and sexual harassment.²⁰ The amendment was adopted in 1992;

²⁰ The *Code* states: 6.3-3 A lawyer must not sexually harass any person; 6.3-4 A lawyer must not engage in any other form of harassment of any person; 6.3-5 A lawyer must not discriminate against any person.

- The creation of a part-time practising category, and an associated 50% reduction in liability insurance for members in part-time practice since 1993;
- A non-practising membership category with a lower fee was introduced in 1994;
- The Equity Ombudsperson Program which began operating in 1995 to resolve discrimination and harassment complaints within the legal profession. The program was initially designed as an external mechanism, but following a recent review, the program was brought into the Practice Advice Department of the Law Society in 2017;
- The development of model workplace policies on maternity and parental leave, alternative work arrangements, gender-neutral language, employment equity, and workplace harassment. The Law Society continues to encourage law firms to adopt and implement the model policies;
- Actively encouraging women lawyers to stand for election as Benchers;
- The creation of a locum registry to assist law firms to obtain temporary replacements for parental leave absences; and
- The establishment of a permanent advisory committee to focus on issues of equity, diversity, and inclusion in the legal profession.
- The Law Society released its report “The Business Case for Retaining and Advancing Women Lawyers in Private Practice” in 2009.²¹ The report explains the competitive advantages for firms that foster inclusive and equal opportunity work environments, in recruiting talent, attracting clients, and avoiding turnover costs.
- The Justicia Project began operating in British Columbia in 2012. Justicia is a voluntary program facilitated by the Law Society of British Columbia and undertaken by law firms, to identify and implement best practices to retain and advance women lawyers in private practice. The participating law firms have developed model policies and videos, which are available online. They have also organized keynote presentations on how to identify and interrupt unconscious biases in an effort to improve career opportunities for women and diverse lawyers.

60. The EDI Advisory Committee recognises that the proposed phase out of the Program may raise concerns about the Law Society’s commitment to supporting women in the legal profession. However, the Committee is of the view that the existing Program is ineffective, and that other methods of support would likely be more effective than the Program. The

²¹ Available online: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/Retaining-women-business-case.pdf>.

Committee is committed to identifying and implementing more effective measures to meet the needs of new parents who are trying to maintain their legal practices.

Recommendations

61. Based on the findings from the review of the Maternity Leave Benefit Loan Pilot Program, the EDI Advisory Committee recommends that:
 - i. The Program should be phased out by the end of the calendar year (i.e. December 31, 2020); and
 - ii. Staff should identify and analyze alternative methods of supporting the retention of new parents in the legal profession.

APPENDIX A: PROGRAMS IN OTHER JURISDICTIONS

Only two other law societies, the Law Society of Ontario and the Barreau du Quebec, offer financial support in relation to parental leave for lawyers.

The Law Society of Ontario has a Parental Leave Assistance Program that is available to birth or adoptive parents (both mothers and fathers) who are sole practitioners or partners in firms of five lawyers or less. The Law Society of Ontario provides a fixed sum of \$750 a week to eligible applicants for up to twelve weeks (to a maximum of \$9,000 per leave, per family unit) to cover expenses associated with maintaining their practice during a maternity, parental or adoption leave.²² Applicants must have had an active law practice in Ontario for a period of at least six months immediately preceding the birth or adoption of a child, and must have a business address that is not a post office box. Applicants must cease to engage in remunerative work (including the practice of law) during the leave. There is a “means test” that requires applicants to have a net annual income below \$50,000. Birth mothers are offered an additional benefit of career coaching to deal with maternity leave issues which is not available to fathers or adoptive parents. The usage rate in Ontario is approximately 20 users per year, out of more than 49,000 lawyers.

Lawyers are not permitted to receive funds from the Law Society of Ontario’s Parental Leave Assistance Program in addition to EI:

- Lawyers who have entered into an agreement with the Canada Employment Insurance Commission and are eligible to receive EI Special Benefits are not eligible for the Parental Leave Assistance Program.
- Lawyers who have entered into an agreement with the Canada Employment Insurance Commission but are in the one year waiting period to be eligible for EI Special Benefits are eligible for the Program.
- Lawyers who have terminated their agreement with the Canada Employment Insurance Commission but remain eligible to claim EI Special Benefits are eligible for the Program if they sign an affidavit stating that they will forego all EI Special Benefits.

The Barreau du Quebec has a Parental Financial Assistance Program that is available to maternal, paternal, and adoptive parents. The Program provides funds to cover the actual operating costs for sole practitioners who take parental leave. The funds cover the actual amount of monthly operating costs up to \$1544.50 per month for a maximum of three months (totalling \$4633.50). To qualify, applicants must suspend their professional activities in whole or in part for the duration of the requested compensation following the birth or adoption of a child. If work is reduced, then the compensation is proportionate to the reduction of activities. Applicants must not receive any other financial support to offset the operating costs of an office when work

²² The Law Society of Ontario’s Program offers funds to all parents. Birth mothers are offered an additional benefit of career coaching to deal with maternity leave issues which is not available to fathers or adoptive parents.

activities are ceased or reduced for parental leave. If both parents are members of the Barreau, then only one can claim the funds. The usage rate in Quebec is approximately 50 users per year out of approximately 25,000 members. Notably, Quebec does not have reduced fees for part-time practice or non-practising status, so the Program is intended to counterbalance that reality.

Comparison Chart			
Details	British Columbia	Ontario	Quebec
Who is eligible to apply?	Birth mother only Practising self-employed lawyer, sole practice or firm of 5 lawyers or less	Birth or adoptive parent Mothers or fathers Sole practitioner or partner in a firm of 5 lawyers or less	Maternal Parental Adoptive Sole practitioners
Operation of practice	Self-employed lawyer; no restrictions about law firms, venue, or actual operating costs	Active law practice with a business address that is not a post office box; Firm of 5 lawyers or less	Must be a sole practitioner with actual operating costs
Period of service required prior to enrolment	No	Active law practice for a period of at least six months immediately preceding the birth or adoption of a child	No
Practice status	Applicant is not required to cease practice, but is limited to practising one day per week during loan period.	Applicant must cease to engage in remunerative work (including the practice of law) during the leave.	Applicants are not required to cease practice, but if work reduced, compensation is proportionate to the reduction of activities
Need	No access to additional maternity and parental benefits beyond government programs. No needs assessment.	No access to other parental or financial benefits under public or private plans. Net annual practice income of less than \$50,000.	Do not receive any financial support to cover operating costs. Quebec only has full-time status, no fee discount for part-time or non-practice. Benefit reimburses fees.
Time	4 months	12 weeks (3 months)	3 months
Amount	\$2000/month for up to 4 months (\$8000 maximum)	\$750/week for up to 12 weeks (\$9000 maximum)	\$1500/month Maternal (up to 4 months benefit) to cover actual costs Paternal (up to 1 month) Adoptive (up to 1 month)
Repayment	Required to repay.	No requirement to repay, unless the LSO determines that the lawyer was not eligible to receive the benefit.	No requirement to repay.
Usage Rate	14 in 5 years (2.8/year) (>13,000 members)	57/year before needs test 20/year after needs test (> 46,000 lawyers)	50/year (mostly women) (25,095 total members)
Funding	Not currently budgeted	\$4 per member per year	\$15 per member per year

8. Practicing status (e.g. full-time, part-time, non-practicing, etc.):									
a. Before leave:									
Full-time	11								
Part-time	5								
Non-practicing	0								
b. During Leave									
Full-time	1								
Part-time	5								
Non-practicing	10								
b. At present:		From LSBC Records:							
Full-time	8		12						
Part-time	7		7						
Non-practicing	1		4						
9. Approximate billable hours per week:		Many couldn't remember, or don't bill by the hour.							
a. Before leave:									
b. At present:									
10. Client base (e.g. businesses, non-profits, individuals, legal aid clients, etc.):		Most individuals, some business, a couple of legal aid.							
a. Before leave:									
b. At present:									
11. Location of practice:									
a. Before leave:									
Lower mainland	15								
Outside lower mainland	8								
b. At present:									
Lower mainland	14								
Outside lower mainland	6								
Not practicing	3								
12. If your practice changed when you returned from leave, please explain:									
a. In what ways:		Some had scaled back to fewer hours; some stayed the same.							
b. Why:									
Section 3: Questions about the sufficiency of the amount of the loan									
13. Before your leave, what were your estimated monthly business expenses (e.g. overhead, practice fees, etc.) related to providing legal services?									
how many were working from home?		At least 3 specifically mentioned it. It was not a specific question.							
14. Before your leave, what was your estimated annual net income from legal services:									
o Under \$30,000			3						
o Between \$30,000 and 50,000			0						
o Between \$50,000 and 80,000			4						
o Between \$80,000 and 100,000			4						
o Over \$100,000			5						
15. During your leave, did your household have sources of income other than the Maternity Leave Benefit Loan Program? If so:									
a. What were the other sources of income?									
EI	2								
Spouse	10								
EI & Spouse	2								
None	2								
b. Approximately how much were the annual sources of other income?		Ranged from \$0 to \$140,000+							

16. What did you use the Maternity Leave Benefit Loan funds for? Please select all that apply:							
<input type="radio"/>	Overhead (e.g. utilities, rent, etc.)		3				
<input type="radio"/>	Practice fees		4				
<input type="radio"/>	Overhead and fees		7				
<input type="radio"/>	Paying replacement lawyer/staff		0				
<input type="radio"/>	Other. Please explain:						
	Cost of living		2				
17. Do you think the loan amount was:							
<input type="radio"/>	Sufficient		8				
<input type="radio"/>	Insufficient		8				
Please explain your selection:							
18. Do you think the repayment schedule was:							
<input type="radio"/>	Appropriate		15				
<input type="radio"/>	Too long		1				
<input type="radio"/>	Too short						
Please explain your selection:							
Section 4: Questions about the usefulness of the Program							
19. Was the Maternity Leave Benefit Loan Program helpful to you? Select one:							
<input type="radio"/>	Very helpful		10				
<input type="radio"/>	Somewhat helpful		6				
<input type="radio"/>	Not helpful		0				
Please explain your selection:							
20. How important was the Maternity Leave Benefit Loan Program in enabling you to take a leave:							
<input type="radio"/>	Very important		5				
<input type="radio"/>	Somewhat important		5				
<input type="radio"/>	Not important		6				
Please explain your selection:							
21. How important was the Program in enabling you to return to practice:							
<input type="radio"/>	Very important		3				
<input type="radio"/>	Somewhat important		6				
<input type="radio"/>	Not important		7				
Please explain your selection:							
22. What would you have done if the Program was not available?							
<input type="radio"/>	Taken the same amount of leave		6				
<input type="radio"/>	Taken a shorter leave		3				
	Shorter or no leave		3				
<input type="radio"/>	Not taken leave						
	Employment Insurance		1				
<input type="radio"/>	Other (bank loan)		3				
23. Have you used the Federal Employment Insurance Special Benefits Program?							
<input type="radio"/>	Yes		4				
<input type="radio"/>	No		12				
Please explain your selection:							
24. Would you use the Federal Employment Insurance Special Benefits Program?							
<input type="radio"/>	Yes		3				
<input type="radio"/>	No		13				

25. Did you experience any difficulties with the Maternity Leave Benefit Loan Program?

- It took a while for the funds to come through at the start.
- There is very little on the Law Society website i.e. Can you get the loan a second time? I called to the Law Society to inquire and the person I spoke to said that the Law Society doesn't have a maternity leave program. I assured her that was incorrect as I already used it for my first child. I got passed through a couple of different people as it seemed no one was sure who to have me speak to.
- It was also difficult navigating the options as to whether to become non-practising and/or limiting insurance to reduce cost. My law partner went non-practising and unbeknownst to us at the time of the decision, it actually cost more as we then had to change her corporate name etc.
- I took two leaves within a couple of years, so I asked for staggered repayment. Someone at the Law Society had to review my request and get back to me.
- Not with the program itself, but the repayments were sometimes delayed and not consistent, so I would end up having to pay a huge amount after a period of not having repayments deducted from my account for prolonged periods of time.
- Overall, to be frank, I do not feel supported as a young, female lawyer and I do not feel supported as a new mother. While I do appreciate that the loan program is an effort on the part of the Law Society to help, it really does not do very much in the grand scheme of things.
- There were too many forms and fees and a requirement to maintain part-time status while I was on maternity leave because I was (and am) a shareholder/owner of a firm.
- No, it was a helpful program and the individuals with whom I was in touch at the Law Society about the program at the time were most helpful. I am very grateful to have been able to benefit from this program.
- Yes. Even though I was set up for auto repayments, the program didn't start taking repayments from me until a year after they were supposed to start. So I ended up paying double payments due to this error.
- There was no specific date for repayments. The repayments came out seemingly randomly from my account. There was no specific date for repayments. I have received one "statement" about the status of my account and I had to ask for it. No payment schedule was provided. Some months nothing would come out of my account. I have no idea if I am even finished paying it off. Also, there was no point person for me to call.

26. Do you have any suggestions to improve the Maternity Leave Benefit Loan Program?

- Tying in locum coverage in some way, so that people can actually step away from practice.
- I had to wind up my practice to go on maternity leave. That was a considerable expense.
- Spread the word about the program. Some lawyers I speak to don't even know it exists. Also, have a dedicated person as a "liaison" of sorts. List their info on the website so people know who to call. Have them educated in the options available – pros and cons, costs, process – for women exploring the options of reducing overhead (i.e. non-practising status, reducing insurance, etc.). More information on the website about all of this. Educate staff that this program exists so when lawyers call to speak to someone, they're not told it doesn't exist.
- Increase the amount in some way. Perhaps a portion could be forgiven – for example of \$2500, perhaps \$500 could be granted.
- A lot of lawyers are self-employed but are not eligible for the loan because there are too many people in their firms. The loan should be extended to them. My husband tried to apply for the loan but was not able to. The loan should also be extended to men.
- The Law Society could even assist smaller firms with implementing some sort of firm-wide maternity/parental leave policy, in conjunction with the loan. Precedent policies perhaps. Or a resource to match up prospective/soon-to-be parents with others who have been through it and can offer some advice/wisdom. I could have used that the first time around. Instead it's taken myself having two kids and my business partner having one to figure it out.
- Make it available to men.
- It could be more reflexive to individual situations. More flexible.
- Making more loan amounts available for lawyers who require more. For example, my expenses are approximately \$10,000 per month – not including lawyers' salaries, so \$2000 is not enough.
- A better locum program is absolutely necessary. I actually hadn't even heard of the locum program until very recently. Even when I did find out, I looked at the locum registry and I couldn't find anyone who would have been able to help me with my practice. I think someone (the Law Society or some other interested party) needs to really vamp up the marketing for the locum program so that people actually know about it and use it.
- Extend the duration, 4 months is too short.
- Either increase the amount, or make it a grant, not a loan.
- I think the funds should be able to be directly used as income supplement. This distinction doesn't make sense to me.
- Make greater funds available.

27. Do you have any further comments about the Maternity Leave Benefit Loan Program?

- I think it is a great program. It is nice that the Law Society has some initiative aimed at lawyers who are taking maternity leave.
- It's a really good symbol for women in the profession that there is support for women having children and taking leave to spend time with their child.
- It should extend to adoption and surrogacy. We're not all lucky enough to bear our own children. Also, consider making it "parental" leave so that men and same sex couples can use the program as well. It's not just "birth mothers" who leave the profession due to children.
- Because interest rates are currently low, the Program is not a huge benefit at the moment. It may be more beneficial for the Law Society to streamline the process and lower fees for applying for maternity leaves.
- I thought this was a wonderful program and am very grateful to have been able to benefit from it. It was a huge relief to know that my rent and other basic overhead expenses would be covered for the initial few months of my leave- while it would have been great to have had the benefit of the loan for longer than 4 months, I feel fortunate to have had it at all.
- Although grateful, it was not super helpful for a downtown practice given the huge expense and that I don't qualify for EI.

28. Do you have suggestions about what the Law Society can do to accommodate parents in the legal profession?

- Expanding locum coverage. It would be good for lawyers, and would also provide the public with better access to legal services.
- The winding down practice provisions are discriminatory against women. I had to close down/wind up practice (which involved closing down bank accounts, etc.) to go non-practising, which was a time consuming and expensive process. Then I had to rename firm (a process in itself), re-incorporate, reset up bank accounts when I was starting up again. I thought there must be a way to make this less onerous for people stepping away from practice for a short period of time – like taking a maternity leave.
- Six month leave program, more access to information about the program, a liaison to help navigate the processes available, peer mentoring facilitation. This is also an area where mental health (post-partum depression, anxiety, etc.) should be focused on. Educating soon-to-be parents on the Law Society resources available to support new parents – counselling opportunities, etc. In my experience the thought to leave the profession came when trying to return – it is very hard emotionally. I found my own support and reached out for help. But if the Law Society wants to help their lawyers stay in the legal profession, it could offer/educate on resources available. Also, possibly consider forgiving some of the loans if parents return and continue practice for a certain amount of time.

- Discount practising fees for new parents taking leave and returning from leave (e.g. transitioning back to part time and then full time). Also, make the loan and discounted fees available to all parents.
- Somehow educate the bar better. There's still a lot of barriers to moving up in the legal profession and having children. More men taking parental leave will help to normalize it and lower stigmas.
- Reducing costs/fees/process to go on parental leave. Make a simpler form and process for people who own firms to go on parental leave.
- Perhaps career coaching to help lawyers plan their careers and how to plan for parental leave – e.g. off-ramping and on-ramping to bridge return to practice.
- The Law Society should try to influence the culture of the profession to encourage the profession to be more supportive of lawyers who are balancing work and other responsibilities (this goes beyond parenting).
- I don't know what the solution is unfortunately, but I know that the system we have now did not work for me and I know other young lawyers (some who used the loan program and some who didn't) who really struggled with pregnancy, motherhood, and practising law. It is no wonder women keep leaving the profession. Motherhood is such a challenging time. It's difficult even for people who have a full, year-long mat leave that is funded by their firm (I can only dream how amazing that must be!). It would be great if, as a new mother, you could just focus on bonding with your baby and enjoying that time, rather than stressing and worrying about work. Unfortunately, that was not the reality for me.
- That is a very big question and I think part of a much larger conversation about shifting the legal profession's mentality and expectations around billable hours and workplace culture that are historically so ingrained in this profession! I think the Law Society needs to continue to provide and promote programs like the Maternity Benefit Loan Program and other such programs to support sole practitioner working parents and especially women.
- Honestly, perhaps just educate our colleagues and the public about the financial pressure on self-employed lawyers – particularly now that income-splitting is not allowed.
- Provide CLE programs free of charge to parents in the legal profession on leave; provide more information to educate law firms that may have more traditional thinking about the importance of family and work balance in this day in age when women are expected to contribute financially to the household yet also contribute as a full time parent and maternal figure in raising children in a very hectic and high-achieving time in society.



Diversity Action Plan

Equity Diversity and Inclusion Advisory Committee

Jeevyn Dhaliwal, QC (Chair)
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August 28, 2020

Prepared for: Benchers
Prepared by: Equity Diversity and Inclusion Advisory Committee
Purpose: Decision

Executive Summary

The Equity Diversity and Inclusion Advisory Committee (EDI Committee) has prepared an Action Plan (comprising the action items listed below) to address racial discrimination in the legal profession. The Action Plan builds upon the Law Society’s existing efforts to support equity, diversity, and inclusion (EDI) in the legal profession, and identifies additional concrete measures to advance the Law Society’s current EDI objectives. The proposed action items are:

1) Action items regarding demographic data:

1. Update the existing demographic self-identification survey¹ to obtain additional details;²
2. Actively encourage lawyers to respond to the demographic self-identification survey;
3. Consider whether other methods of obtaining diversity information about lawyers are required; and
4. Continue to monitor and publicize the diversity statistics of the legal profession in BC.

2) Action items regarding fostering diversity within the Law Society:

1. Consider whether additional calls for applications should include diversity statements;
2. Regularly review diversity statements to ensure they are current;
3. Continue to build on and implement a comprehensive strategy to ensure diverse representation within Law Society governance and employment;³
4. Review existing policies, procedures, and practices to determine whether additional measures need to be developed; and
5. Highlight diversity in Law Society publications.

3) Action items regarding intercultural competence education:

1. Continue to provide Law Society representatives with educational opportunities geared toward fostering support for diverse individuals;⁴

¹ That is circulated with the Annual Practice Declaration (APD).

² E.g. why people “choose not to answer,” and year of call.

³ The strategy could include: developing an informal “roster” of diverse lawyers and legal organizations (for internal use) to assist in identifying diverse candidates for appointments; ensuring that the lived experiences of diverse candidates are regarded as positive attributes in the Law Society’s assessment of candidates; conducting voluntary demographic self-identification surveys of Law Society representatives (perhaps annually, for internal use only); and finding additional ways to encourage diverse lawyers to participate in Law Society governance (e.g. inviting diverse lawyers to attend as guests at EDI Committee and Benchers meetings).

⁴ E.g.: training regarding intercultural competence, subconscious biases, micro aggressions, various types of racism (explicit, implicit, systemic), anti-racism, and trauma informed practices.

2. Identify additional methods to promote intercultural competence training, within the organization and throughout the legal profession in BC;
 3. Consider the role of the Law Society's continuing professional development (CPD) program in advancing intercultural competence education; and
 4. Strategically collaborate to advance intercultural competence education for BC lawyers.⁵
- 4) Action items regarding outreach:
1. Develop a comprehensive outreach strategy to highlight the Law Society's EDI efforts;⁶
 2. Update and enhance the Law Society's online EDI resources;⁷ and
 3. Compile a calendar of annual EDI events in BC, and encourage Law Society representatives to attend.
- 5) Action items regarding law firm regulation:
1. Review the EDI section of the Law Society's law firm regulation self-assessment tool prior to the implementation of law firm regulation; and
 2. Regularly review the EDI section of the self-assessment tool to ensure that it is up to date, and that the list of resources is relevant and responsive to emerging issues.
- 6) Action items regarding model policies and guidelines:
1. Identify further methods to promote the adoption and implementation of the Law Society's existing model policies and guides;
 2. Consider whether additional resources would be beneficial; and
 3. If necessary, develop additional resources for:
 - a. Law firms that are interested in recruiting and retaining diverse candidates;⁸

⁵ E.g. the Law Society collaborated with the Continuing Legal Education Society of BC (CLE BC) to produce the video: *But I was Wearing a Suit* (<https://www.cle.bc.ca/butiwaswearingasuit/>) to highlight discrimination against Indigenous lawyers in BC. CLE BC and the Law Society are now developing a similar production regarding the experiences of racialized lawyers.

⁶ E.g. communicating the Law Society's EDI work throughout the profession and the public via social networking, media releases (including commentaries on EDI cases), and Law Society platforms (e.g. website, Benchers' Bulletin, Annual Report, and E-Brief).

⁷ E.g. "Equity and Diversity Centre" <https://www.lawsociety.bc.ca/our-initiatives/equity-and-diversity/> and "Practice Resources" webpage <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/law-office-administration/>.

⁸ E.g. a template "diversity statement" to encourage diverse candidates to apply, and practical considerations to foster support for diverse lawyers (for the "Practice Resources" webpage and law firm regulation resource list).

- b. Diverse lawyers⁹ who are interested in resilience-building strategies; and
 - c. Lawyers who are interested in becoming allies for change.
- 7) Action items regarding the EDI Award:
 - 1. Ensure the background to the EDI Award is publicized; and
 - 2. Continue to promote and present the EDI Award.
- 8) Action items regarding the Act, Rules, and Code:
 - 1. Contribute to the Law Society of BC's response to the Federation of Law Societies' consultation regarding the discrimination and harassment provisions of the Model Code;
 - 2. Review the *Legal Profession Act* (Act), Law Society Rules (Rules), the Code of Professional Conduct for British Columbia (Code) for possible improvements that might help to support diversity in the legal profession; and
 - 3. As appropriate, collaborate with the Act and Rules Committee or the Ethics Committee to propose amendments to the Act, Rules, and Code for consideration by the Benchers.¹⁰
- 9) Action items regarding the efforts of other institutions:
 - 1. Research the EDI recommendations, resources, and initiatives from other law societies, legal organizations, law schools, and professions in order to: inform the Law Society's work, avoid duplication of efforts, and identify opportunities for cooperation; and
 - 2. Strategically collaborate to increase the recruitment, retention, and advancement of diverse lawyers.¹¹
- 10) Action items regarding tracking progress:
 - 1. Continually review, evaluate, and renew the Action Plan to ensure that it remains relevant and effective in advancing the Law Society's objectives; and
 - 2. Regularly report progress through the Law Society's existing mechanisms.¹²

⁹ Diverse lawyers include those who self-identify as Indigenous, racialized, LGBT, or a lawyer with a disability.

¹⁰ E.g.: the Act and Rules Committee oversees the *Act* and Rules, and the Ethics Committee oversees the Code.

¹¹ E.g. continue to engage in LEADR's efforts in support of diverse lawyers, keep apprised of events geared toward diverse lawyers and encourage Law Society representatives to attend, and gather and share information about existing mentorship programs for diverse lawyers.

¹² E.g. EDI Committee mid-year and year end reports, the Law Society's Annual Report, and the "Progress of Initiatives" webpage.

Background

1. On June 4, 2020, President Craig Ferris, QC, issued a statement against racism that urged lawyers to “continue to take a hard look at our institutions and our actions to ensure we are doing all we can to reduce and eradicate racial injustice,” and acknowledged that, “within the Law Society, our Equity, Diversity and Inclusion Advisory Committee works to identify issues and recommend meaningful change both within the Law Society and the profession at large.”¹³ Benchers and EDI Committee members have emphasized the need for tangible action items and measurable outcomes with regard to addressing racism in the legal profession in BC.
2. In developing the Action Plan, the EDI Committee discussed a broad range of possible actions to increase diversity in the legal profession. The Committee was mindful of practical limitations,¹⁴ so a rational method of prioritization was necessary. The Committee looked to the Law Society’s strategic plan and the Committee’s mandate and terms of reference¹⁵ in order to clarify the scope of the Action Plan. The EDI Committee also considered the Law Society’s existing efforts, reports, recommendations, and resources,¹⁶ as well as the related and ongoing work of other institutions. Based on this information, the Committee has identified existing efforts for the Action Plan to build on, as well as outstanding matters for the Action Plan to address. The Action Plan identifies concrete measures that can be appropriately prioritized, effectively implemented, and regularly tracked and reported.¹⁷

Analysis of Proposed Action Items

1) Demographics

3. In 2012, the Law Society produced a report entitled “Towards a More Representative Legal Profession: Better practices, better workplaces, better results”¹⁸ which compiled census data about the diversity demographics of the legal profession in BC, as well as guidance to help law firms develop and implement strategies to advance diversity in the legal profession.
4. As a follow up to the Diversity Report, in 2013, a demographic self-identification survey was added to APD to gather diversity information directly from lawyers to compare against the baseline census data.¹⁹

¹³ <https://www.lawsociety.bc.ca/about-us/news-and-publications/news/2020/statement-of-president-craig-ferris,-qc-on-racial/>

¹⁴ Such as financial and logistical concerns.

¹⁵ The Committee’s terms of reference and mandate are attached as Appendix A.

¹⁶ Such as model policies, guides, and online educational modules.

¹⁷ For ease of reference, Appendix B contains a chart of the action items organized by timeframe.

¹⁸ https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/Diversity_2012.pdf (Diversity Report).

¹⁹ The data collected thus far is attached as Appendix C.

5. The Committee has discussed the possibility of hiring a statistician to apply the same methodology that was used to compile the 2012 Diversity Report. This approach contains a number of shortcomings, including:
 - The census is conducted less frequently (i.e. every 5 years) than the Law Society's demographic self-identification survey (i.e. annually).
 - A census analysis would be based on extrapolated information rather than direct information from all practising lawyers in BC.
 - The Law Society has no control over the questions or categories that are surveyed in the census. The census may not provide the data the Law Society is seeking:
 - The census could provide information about race, age, and profession. Seniority may be inferred from age, but this inference is not perfect (e.g. some lawyers join the profession later in life), and lacks specific information about professional advancement (e.g. the proportion of equity partners in private firms from racialized or visible minority communities).
 - The census only counts same-sex couples and does not count individuals who self-identify as LGBT.²⁰
 - The census data may not provide accurate information. For example, there are lawyers who live in other provinces and maintain practising status in BC. The census would count them as lawyers in their province of residence, not as lawyers in BC.
 - The cost of the census analysis that the Law Society commissioned in 2012 was \$20,000.
6. Accordingly, the drafters of the Law Society's annual demographic self-identification survey (in 2012) perceived that direct information from lawyers in BC would be superior to indirect information gleaned from census data.
7. The Committee also discussed the possibility of expanding the demographic self-identification survey to ask additional questions about practice characteristics.²¹ However, some Committee members thought that expanding the survey could lead to additional problems, such as:

²⁰ The definition of same-sex co-habitation from the 2011 census led to an overestimation, because it counted roommates in the statistic. The 2016 census was updated to differentiate between same-sex cohabitation for familial versus economic purposes (see: <https://www12.statcan.gc.ca/census-recensement/2016/ref/guides/002/98-500-x2016002-eng.cfm>).

²¹ E.g. standing within firm (i.e. partner, associate, associate counsel, sole practitioner, in house, government, etc.), and whether they have ever taken any leaves, and if so, which type (e.g. medical, parental, sabbatical).

- Creating confusion about its connection to member files;
 - Decreasing the response rate (e.g. if the survey is too long, or if the objectives of the survey are unclear, then people may not respond);
 - Compiling and calculating more detailed responses may be difficult; and
 - Changing the survey could decrease the comparability of the data with previous survey results.²²
8. The Committee agreed, as a first step, the APD self-identification survey should be updated to ask for year of call in BC and other jurisdictions. This will provide additional information about the seniority of lawyers, without taking away from the comparability with previous results.
9. There has also been a suggestion that demographic questions could be added to the law firm regulation self-assessments. However, the possibility of including a demographic self-assessment in the EDI portion of law firm regulation was not pursued for a number of reasons:
- The primary objective of law firm regulation is to protect the public by encouraging law firms to have systems in place to prevent problems from arising, rather than having the regulator punish individual lawyers after problems have occurred. Tallying demographics was not seen as appropriate in the context of law firm regulation.
 - Sole practitioners and smaller firms (which make up the majority of firms in BC) would likely have concerns about the identifiability of individual lawyers, and all firms might have concerns about sharing such sensitive information with the Law Society.
 - There was also a concern about the practicality of gathering demographic information. Law firms will only be required to submit their forms once every three years. Given this timeline, and assuming lawyer turnover (as is often the case, especially at the associate level), it would be difficult to use the responses from law firm regulation self-assessments to assess the demographics of the broader profession.
10. There are other sources of information that contain information about the advancement of racialized lawyers that may be relevant to the BC context. For example, the Law Society of Ontario's Annual Report "Statistical Snapshot"²³ contains details about the practice characteristics of diverse lawyers that could be extrapolated in relation to the BC context, and the Canadian Centre for Diversity and Inclusion's *Diversity by the Numbers: Legal Profession Report*²⁴ includes demographic data regarding the career progression of diverse lawyers from law

²² Self-identification data has only been collected for 7 years, and there have already been noticeable increases.

²³ http://annualreport.lsuc.on.ca/2017/common/documents/Snapshot-Lawyers18_English.pdf

²⁴ <https://ccdi.ca/diversity-data-analytics/dbtn-legal/>

firms operating in BC. The EDI Committee intends to take a closer look at the existing data, and further discuss what information is needed, and whether any changes to the Law Society's current methods of demographic data collection are necessary.

Action items regarding demographic data:

1. Update the existing demographic self-identification survey to obtain additional details;
2. Actively encourage lawyers to respond to the demographic self-identification survey;
3. Consider whether other methods of obtaining diversity information about lawyers are required; and
4. Continue to monitor and report the diversity statistics of the legal profession in BC.

2) Fostering Diversity within the Organization

11. The Law Society has developed methods to increase the diverse representation within committees, at the Benchers table, and in hearing panel pools. For example, section 1.1.4 of the Law Society's Appointments Policy states: "The Law Society promotes diversity in its internal and external appointments and should ensure adequate representation based on gender, Aboriginal identity, cultural diversity, disability, sexual orientation and gender identity." The Law Society has developed a diversity statement to encourage diverse candidates to seek nomination in Benchers elections.²⁵ A statement targeting Indigenous candidates was included in the call for applications for hearing panel pools in 2019.²⁶
12. In relation to employees, the Law Society's "Careers" webpage states: "We are an organization that values diversity, equity and a shared sense of purpose."²⁷ The Law Society applies policies and procedures geared toward fair and equitable recruiting, interviewing, and hiring practices, as well as a Respectful Workplace Policy that adheres to the provincial anti-bullying and harassment requirements.
13. The Committee has previously proposed a diversity audit to assess demographic composition of the organization (e.g. at the Benchers, committee, and staff levels). A number of impediments have been identified, including:
 - There have been difficulties in identifying a suitable assessor to conduct the audit;

²⁵ Attached as Appendix D.

²⁶ <https://www.lawsociety.bc.ca/about-us/news-and-publications/news/2019/law-society-seeks-applicants-for-hearing-panel-pool/>

²⁷ <https://www.lawsociety.bc.ca/about-us/careers-at-the-law-society/>

- There are concerns about how the diversity data would be collected, where it would be stored, and who would be able to access it;
- The small sample size (e.g. of Benchers, committee members, and staff) means that some individuals could be identifiable in the results;
- People may be unwilling to self-identify, particularly if anonymity cannot be guaranteed;
- The rate of turnover of Benchers, committee members, staff, and contractors would make it difficult to keep the numbers current;
- There are questions about the appropriateness of Benchers instructing the collection of demographic data about staff (i.e. strategic direction vs. operational matters);
- The estimated costs associated with conducting a diversity audit are prohibitive.²⁸

14. Although a detailed diversity audit may be problematic, there may be merit in performing a cursory scan of diversity within the organization, for internal use only, to assess the effectiveness of the Law Society's policies, procedures, and practices geared toward promoting diversity.²⁹

Action items regarding fostering diversity within the Law Society:

1. Consider whether additional calls for applications should include diversity statements;³⁰
2. Regularly review diversity statements to ensure they are current;³¹
3. Continue to build on and implement a comprehensive strategy to ensure diverse representation within Law Society governance and employment;
4. Review existing policies, procedures, and practices to determine whether additional measures need to be developed; and
5. Highlight diversity in Law Society publications and imagery.

3) Intercultural Competence Education

15. The Law Society has taken measures to increase the intercultural competence of all Law Society representatives, including Benchers, committee members, hearing panel members, and staff.

²⁸ \$30,000 to \$200,000, plus staff time and technical expenses (e.g. database licencing fees).

²⁹ A cursory scan could entail a voluntary demographic self-identification survey of Law Society representatives to provide some indication of the presence of diversity within the organization.

³⁰ E.g., the Law Society's Careers webpage includes a statement in support of diversity, but individual career opportunity postings do not.

³¹ E.g., the Bencher diversity statement was updated to reflect the gender demographics of the Bencher table.

Intercultural competence training has been incorporated into the Law Society’s regular training cycle (e.g. orientation and refresher sessions), and additional opportunities for intercultural competence training have been identified and encouraged. In relation to fostering the intercultural competence of all lawyers in BC, the CPD accreditation criteria were recently expanded to include “multicultural, diversity and equity issues that arise within the legal context” as eligible “practice management” topics.

16. A catalogue of more than a thousand intercultural competence courses that have been approved by the Law Society for CPD accreditation was compiled for the Truth and Reconciliation Advisory Committee in 2017. In light of the apparent abundance of courses, the focus shifts to identifying ways to encourage lawyers to partake in intercultural competence training.

Action items regarding intercultural competence education:

1. Continue to provide Law Society representatives with educational opportunities geared toward fostering support for diverse individuals;
2. Identify additional methods to promote intercultural competence training, within the organization and throughout the legal profession in BC;
3. Consider the role of the CPD program in advancing intercultural competence training; and
4. Strategically collaborate to advance intercultural competence education for BC lawyers.

4) Outreach

17. The Law Society has a number of tools to highlight work on EDI matters, including a website that features an “Equity and Diversity Centre,” and electronic publications such as the Annual Report, Benchers Bulletin, and E-Brief. Electronic publications are emailed to members of the Law Society, and posted on the Law Society’s website.
18. One idea that continues to be raised is for the EDI Committee to host a symposium akin to the Rule of Law and Lawyer Independence Advisory Committee (ROLLIAC) lecture series. The rationale for the ROLLIAC lecture series is grounded in the Law Society’s strategic plan: “as a result of the Law Society’s work, the public will have greater confidence in the rule of law,” and ROLLIAC’s mandate: “to ensure that the legal profession and the public are properly informed about the meaning and importance of the rule of law.” In developing its proposal for the lecture series, ROLLIAC established that there were no other lectures on rule of law in British Columbia. In contrast, there are a number of lectures regarding EDI topics in the province each year.³² Given the long list of existing EDI lectures in BC, the additional value of an EDI

³² E.g.: CBA Forums, Section Meetings, Retreats, Awards Presentations, such as: Women Lawyers Forum; Aboriginal Lawyers Forum; Equality and Diversity Committee; Social Justice Section; and SOGIC; Canadian

symposium hosted by the Law Society is unclear. The feasibility of a lecture or symposium may be further analyzed in the context of developing a broader outreach strategy, but the proposal is not currently specified as a separate action item in the Action Plan.

19. Another idea regarding outreach is for the EDI Committee to sponsor a high school essay contest, like the one sponsored by ROLLIAC. ROLLIAC's "Rule of Law Essay" is an initiative that was developed in response to a concern that the rule of law, and related issues like the independence of the legal system from government and the independence of judges, are not well understood by the public. The high school essay contest is designed to reach out to high school students about subjects that they are not otherwise exposed to. An EDI essay would not address the same considerations. There is a concerted focus on EDI principles in various aspects of the provincial "kindergarten to 12" curriculum. Because the EDI Committee's mandate is to address EDI within the legal profession, an initiative aimed at high school students would miss the mark.

Action items regarding outreach:

1. Develop an outreach strategy to highlight the Law Society's EDI efforts;
2. Update and enhance the Law Society's online resources; and
3. Compile a calendar of annual EDI events in BC, and encourage Law Society representatives to attend.

5) Law Firm Regulation

20. The Law Society has approved the regulation of law firms. Under law firm regulation, law firms will be required to conduct self-assessments. A key element of self-assessment will focus on EDI, and will include model policies and resources.³³

Association of Black Lawyers (CABL): Black History Month events; Canadian Centre for Diversity and Inclusion; CLE BC: diversity-related conferences (e.g. Human Rights Law Conference, Indigenous Laws Conference), courses (e.g. "working with multicultural clients," "women thriving in law"), and online resources (e.g. "But I was Wearing a Suit"); Courthouse Libraries BC webinars: Race Issues in the BC Legal System, Protest Law and Civil Disobedience (focused on Black Lives Matter and Indigenous rights protests); Federation of Asian Canadian Lawyers: speakers at annual dinner; Justicia hosts unconscious bias sessions for participating law firms; LEADR has helped to coordinate "diversity on the bench" panels, and is organizing an EDI conference; Law Firm Diversity and Inclusion Network hosts diversity and inclusion seminars; QMUNITY annual breakfast in recognition of the International Day against Homophobia; Simon Fraser University has an annual lecture in recognition of the International Day for the Elimination of Discrimination, as well as a number of EDI related lectures throughout the year; Thomson Rivers University: annual "intercultural intersections" conference; UBC Law annual lectures, such as Marlee Kline Lecture (focuses on the intersection of class, race and gender in the legal arena); as well as monthly lectures through the Centre for Feminist Legal Studies, Social Justice Lectures, Indigenous Lectures, cultural competence certificate; UBC/UVic Law Schools (alternating each year): Mary Southin Lecture (focuses on the equity and British Columbia legal history); UVic monthly lectures: e.g. the Chair in Transgender Studies, Indigenous legal studies, etc.; and West Coast LEAF annual International Women's Day breakfast.

³³ The EDI self-assessment tool is attached as Appendix E.

Action items regarding law firm regulation:

1. Review the EDI section of the law firm regulation self-assessment tool prior to the implementation of law firm regulation; and
2. Regularly review the EDI self-assessment tool to ensure that it is up to date, and that the list of resources remains relevant in relation to emerging issues.

6) Model Policies and Guides

21. A number of model policies and guides are available on the Law Society’s website, including:

- Guidelines for recruiting, interviewing, and hiring³⁴
- Respectful Workplace Model Policy³⁵
- Workplace Accommodation Model Policy³⁶
- Workplace Equality Model Policy³⁷
- Demographic Data Collection Guide³⁸

22. A non-stigmatizing language guide (formerly known as the “Respectful Language Guide”) is currently being updated by Law Society staff. It will provide guidance on the use of non-stigmatizing and non-discriminatory language in all future Law Society publications and communications. The guide will also be shared as a practice resource, prominently displayed on the Law Society’s website.

23. The Law Society applies the model policies and guides to its own governance and employment procedures. The EDI Committee’s Retrospective Report on Gender from 2017³⁹ shows that the Law Society’s efforts have been effective in relation to gender.⁴⁰ Although there is discomfort with tallying the number of diverse representatives in the Law Society’s governance and employment spheres,⁴¹ a cursory scan suggests that there is some diversity within the Law Society as an organization (both at the governance and staff levels).

³⁴ <https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/policy-hiring.pdf>

³⁵ <https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/Policy-RespectfulWorkplace.pdf>

³⁶ <https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/policy-accommodation.pdf>

³⁷ <https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/Policy-Equality.pdf>

³⁸ https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/Justicia_demographic-guide.pdf

³⁹ <https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/Gender-analysis-2018.pdf>

⁴⁰ In 2017, three out of five members of the Executive Team, six out of eight members of the Leadership Council and 10 out of 13 members of the Management Team are women. In 2020, the gender representation at the Benchers table is: 19 women and 12 men.

⁴¹ In statistical terms, the number of people involved in the Law Society’s governance and employment spheres is so low that there is a high likelihood that diverse individuals could be identifiable in the data sets. There is apprehension about gathering or publishing diversity data that could violate the privacy rights of diverse individuals.

Action items regarding model policies and guides:

1. Identify further methods to promote the adoption and implementation of existing model policies and guides;
2. Consider whether additional resources may be beneficial; and
3. If necessary, develop additional resources for:
 - a. Law firms that are interested in recruiting and retaining diverse candidates;
 - b. Diverse lawyers who are interested in resilience-building strategies; and
 - c. Lawyers who are interested in becoming allies for change.

7) Equity Diversity and Inclusion Award

24. At the recommendation of the EDI Committee, the Equity, Diversity, and Inclusion Award was initiated by the Law Society in 2015 to recognize individuals who have made significant contributions to EDI in the legal profession or the law in British Columbia. The award was initially approved by the Benchers in May of 2000, and was meant to signal a recognition of people who were historically excluded from the legal profession in British Columbia due to discriminatory barriers. The May 2000 Benchers resolution specified that the preamble to the award should provide the names of people who sought inclusion in the legal profession, but were denied. The resolution was not implemented for a number of years. In 2014, the outstanding matter was brought to the attention of the Benchers. The EDI Committee drafted an award description to summarize the Law Society's history of exclusion,⁴² as well as the criteria and application requirements. Although the award was implemented in 2015, the preamble describing the history of exclusion was omitted from the award description on the Law Society's website.⁴³ This omission undermines a key objective of the award: to recognize and make symbolic reparations for discriminatory barriers that the Law Society historically imposed.

Action items regarding the EDI Award:

1. Ensure the background to the EDI award is publicized; and
2. Continue to promote and present the EDI award.

8) Act, Rules, and Code

25. The EDI Committee is of the view that the *Act*, Rules, and Code and related policies, procedures, and practices should be reviewed for possible improvements that might help to support diversity

⁴² Attached as Appendix F.

⁴³ <https://www.lawsociety.bc.ca/about-us/awards-and-scholarships/law-society-equity,-diversity-and-inclusion-award/>

in the legal profession. Although the text of these documents may appear neutral, some provisions may constitute systemic barriers that disproportionately affect certain segments of the profession.⁴⁴ Even if these documents do not contain any obvious impediments, a review may help to identify possible improvements that would better support diversity in the legal profession. For example:

- The EDI Committee is collaborating with the Ethics Committee to respond to the Federation of Law Societies’ Model Code Committee’s consultation regarding proposed amendments to the discrimination and harassment provisions of the Model Code; and
- The Code’s definition of “competence” could be analyzed to consider whether intercultural competence should be specified as a core competence of legal practice.

Action items regarding the *Act*, Rules, and Code:

1. Contribute to the Law Society of BC’s response to the Model Code consultation regarding the discrimination and harassment provisions;
2. Review the *Act*, Rules, and Code for possible improvements that might help to support diversity in the legal profession; and
3. Propose amendments to the *Act*, Rules, and Code for consideration by the Benchers.

9) Leveraging the Efforts of Other Organizations

26. There are a number of other law societies, organizations, institutions, and professions making efforts in support of diversity. The Law Society of BC should be aware of existing efforts in order to: inform the Law Society’s work, avoid duplicating efforts, and identify potential points of collaboration.
27. The Law Society was a founding member of the Legal Equity and Diversity Roundtable (LEADR). LEADR’s purpose is “to foster dialogues and initiatives that relate to the advancement of diversity and inclusion in the legal profession of BC”, and its objectives are “to collaborate, to support each other, to share best practices and issues of common concern, and to identify opportunities to make the legal profession more inclusive and welcoming.”⁴⁵ A representative from the Law Society’s EDI Advisory Committee continues to attend LEADR

⁴⁴ For example, the EDI Committee recently learned that Rule 2-57(2)(a) – requiring a lawyer to have engaged full-time practice in Canada for 5 of the 6 years to qualify to act as a principal – has been identified as precluding a disproportionate number of women (who have taken parental leaves) from serving as articling principals.

⁴⁵ Member organizations of LEADR include: the Law Society of BC, CBA BC Equality and Diversity Committee, CBA BC Aboriginal Lawyers Forum, CBA BC Women Lawyers Forum, CBA BC Sexual Orientation and Gender Identity Community Section, the Federation of Asian Canadian Lawyers, the Canadian Association of Black Lawyers, and the South Asian Bar Association, and the Ismaili Legal Professionals of BC, among others.

meetings, and keeps the Law Society’s EDI Advisory Committee apprised of LEADR’s efforts, with particular attention to possible synergies and collaborations.

28. Reports, recommendations, and resources from other law societies may contain information or examples that may be applicable in the BC context. For example:

- The Law Society of Ontario put together a report and recommendations entitled “Challenges Faced by Racialized Licensees Working Group Final Report.”⁴⁶ The “statement of principles” recommendation was a source of controversy at the Law Society of Ontario, so there may be some hesitance about considering the applicability of Ontario’s recommendations in BC. Even so, other recommendations aimed at supporting racialized lawyers may be feasible in the BC context.⁴⁷
- The Nova Scotia Barrister’s Society has an online “Equity Portal”⁴⁸ that compiles a number of resources (including reports, recommendations, toolkits, and online videos) onto one webpage for ease of access. This example may assist the Law Society of BC in better organizing its online “Equity and Diversity Centre.”⁴⁹

29. Other organizations have also developed EDI resources, such as:

- The Canadian Bar Association’s Equality tools;⁵⁰
- The Canadian Centre for Diversity and Inclusion;⁵¹ and
- The American Bar Association’s diversity resources.⁵²

30. Law schools are devising and implementing strategies to enhance diversity in the legal profession.⁵³

⁴⁶ <https://lawsocietyontario.azureedge.net/media/iso/media/legacy/pdf/c/convocation/convocation-s/convocation-september-2016-equity-and-aboriginal-issues-committee.pdf> (Racialized Report). See also: <https://www.stratcom.ca/wp-content/uploads/manual/Racialized-Licensees-Full-Report.pdf>.

⁴⁷ E.g., recommendation 1 calls for a review of the *Act*, Rules, and Code to promote EDI principles (now being proposed by the EDI Committee), and recommendation 2 calls for the development of model policies to address challenges faced by racialized lawyers (already underway in BC). A chart showing the feasibility of the recommendations in the BC context is attached as Appendix G.

⁴⁸ <https://nsbs.org/legal-profession/your-practice/practice-support-resources/equity-access-resources/>

⁴⁹ <https://www.lawsociety.bc.ca/our-initiatives/equity-and-diversity/>

⁵⁰ <https://www.cba.org/Equality/Publications-Resources/Tools?lang=en-ca>

⁵¹ <https://ccdi.ca/>

⁵² <https://www.americanbar.org/groups/diversity/resources/>

⁵³ E.g.: <https://www.cbc.ca/news/canada/british-columbia/ubc-black-lsat-prep-1.5695081> and <https://thevarsity.ca/2020/02/09/a-springboard-for-black-success-faculty-of-law-launches-new-black-future-lawyers-program/>. Law schools provide networking opportunities geared toward racialized lawyers (e.g. “diversity days,” specialized articling receptions, and facilitating student attendance at EDI-related conferences and events).

31. Other professions are also making efforts to increase the recruitment, retention, and advancement of diverse professionals in other arenas. The EDI Committee will continue to research what other professions are doing to foster diversity, and to consider whether their approaches could be applied to enhance the recruitment, retention, and advancement of racialized lawyers.
32. The idea of a mentorship program continues to be raised as an initiative for the Law Society to undertake. The Law Society currently administers a mentorship program for Indigenous lawyers, and a number of problems have emerged, including:
- Challenges in recruiting participants. The most recent APD self-identification survey results show there are only 340 Indigenous lawyers practising in the province. Not all of these lawyers are enrolled in the Indigenous mentorship program for a variety of reasons (e.g. lack of time or interest, geographic isolation, and prior enrollment in other mentorship programs such as the CBA BC's Student Mentorship Program⁵⁴).
 - With a low number of Indigenous mentors, the Law Society had to expand the mentor pool to include non-Indigenous lawyers. However, Indigenous mentees are often specifically seeking mentors with Indigenous ancestry.
 - Some mentees have been very particular about the characteristics they would like to see in their mentors (e.g. type of Indigenous person, gender, practice area, geographic region, and parental status). With small mentor pool, it is not always possible to find mentors that have all of the traits the mentees are seeking. In the context of a mentorship program for racialized lawyers, it is reasonable to anticipate that mentees would likely seek mentors from specific racialized groups. Such a program would be difficult to administer.
 - Logistical factors regarding the regulator administering the mentorship program.⁵⁵
33. While it is not currently feasible for the Law Society to administer a mentorship program for racialized law students and lawyers, there are a number of established mentorship programs that could provide support. For example:
- CBA BC's Student Mentorship Program⁵⁶ enables mentees and mentors to specify whether they are seeking a match based on specific characteristics (e.g. gender, race, ethnicity, disability, and sexual orientation). Although there is an assumption that mentors must be CBA members, and accordingly pay a membership fee, the user

⁵⁴ Mentoring relationships created in the CBA BC's program often continue past law school.

⁵⁵ E.g.: What happens if the Law Society receives a complaint against a mentor? Should the mentor be withdrawn from the program immediately, or should the complaint be substantiated before there is any change to enrollment?

⁵⁶ <https://www.cbabc.org/Professional-Development/Mentorship/Student-Mentorship-Program> .

agreement form indicates that “Mentors are encouraged but not required to be CBA Members.”⁵⁷

- CBA BC Women Lawyers Forum also administers a mentorship program⁵⁸ that enables participants to specify characteristics such as race and ethnicity.
- The Federation of Asian Canadian Lawyers of BC,⁵⁹ Canadian Association of Black Lawyers,⁶⁰ and South Asian Bar Association⁶¹ also provide mentorship programs for racialized lawyers.

It would likely be more effective for the Law Society to find ways of supporting the existing mentorship programs, rather than creating a new program.

Action items regarding the efforts of other organizations:

1. Research recommendations, resources, and initiatives from other legal organizations and professions;
2. Consider whether any recommendations or initiatives from other jurisdictions or organizations may be applicable in the Law Society of BC’s context; and
3. Strategically collaborate to increase recruitment, retention, and advancement of diverse lawyers.

10) Tracking Progress

34. Tracking progress is important for maintaining motivation, assessing the effectiveness of efforts and making adjustments (where appropriate), and improving accountability. The EDI Committee intends to track progress, and regularly review the Action Plan to ensure that it remains relevant and effective.

Action items regarding tracking progress:

1. Continually review, evaluate, and renew the Action Plan to ensure that it remains relevant and effective in advancing the Law Society’s EDI efforts; and
2. Regularly report progress through the Law Society’s existing mechanisms.

⁵⁷ https://mentorcity.com/en/organizations/762/user_agreement/consent .

⁵⁸ <https://www.cbabc.org/Sections-and-Community/Women-Lawyers-Forum/WLF-Mentoring-Program>

⁵⁹ <https://facibc.ca/mentorship>

⁶⁰ <https://cabl.ca/programs/mentorship/>

⁶¹ <https://sababc.com/2017/03/16/student-mentorship-event/>

Conclusion

35. The Law Society of BC, with guidance from the EDI Committee, has made extensive efforts to increase diversity in the legal profession. The Action Plan seeks to build upon previous efforts, and to make further advancements in this regard. The proposed action items may require additional prioritization and identification of tangible steps to achieve them. They are aimed at making meaningful changes to enhance diversity within the Law Society and the profession at large.

Recommendation

36. The EDI Committee recommends that the Benchers approve the Action Plan.

Appendix A: EDI Advisory Committee Mandate and Terms of Reference

The Law Society's mandate is to uphold and protect the public interest in the administration of justice, by:

- (a) preserving and protecting the rights and freedoms of all persons;
- (b) ensuring the independence, integrity, honour and competence of lawyers;
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission;
- (d) regulating the practice of law; and
- (e) supporting and assisting lawyers, articulated students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.⁶²

The Committee's mandate is to:

monitor and advise the Benchers on developments and issues affecting equity, diversity, and inclusion in the legal profession and the justice system, and to promote equity, diversity, and inclusion in the legal profession.

The Committee's duties and responsibilities are to:

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

⁶² Section 3 of the *Legal Profession Act*.

Appendix B: Action Items Organized by Timeframe

Action	Timeframe	Responsible Entity
1.1: Update the existing demographic self-identification survey to obtain additional details.	Immediate	EDI memo to Exec. Staff to implement if approved.
1.2: Actively encourage lawyers to respond to the demographic self-identification survey	Immediate	EDI and staff
4.3: Compile a calendar of annual EDI events in BC, and encourage Law Society representatives to attend.	Immediate	Staff
7.1: Ensure the background to the EDI award is publicized.	Immediate	Staff (Communications)
8.1: Contribute to the Law Society of BC's response to the Model Code consultation regarding the discrimination and harassment provisions.	Immediate (deadline: Sept. 30, 2020)	EDI, Ethics, and staff
4.1: Develop a comprehensive outreach strategy to highlight the Law Society's EDI efforts.	This year (2020)	EDI and staff
4.2: Update and enhance the Law Society's online EDI resources.	This year (2020)	Staff (Communications)
5.1: Review the EDI section of the law firm regulation self-assessment tool prior to the implementation of law firm regulation. Include a non-stigmatizing language guide.	This year (2020)	EDI and staff
2.1: Consider whether additional calls for applications should include diversity statements.	One year (2021)	Staff to review calls for applications/appointments
2.3 Continue to build on and implement a comprehensive strategy to ensure diverse representation within Law Society governance	One year (2021)	Staff to clarify current strategy, EDI and staff to review and supplement
2.5: Review existing policies and procedures to determine whether additional measures need to be developed.	One year (2021)	Staff to review existing policies and procedures
1.4 Continue to monitor and publicize the diversity statistics of the legal profession in BC.	Annually	Staff (Communications)

5.2: Regularly review the EDI self-assessment tool to ensure that it is up to date, and that the list of resources is relevant and responsive to emerging issues.	Annually	EDI and staff
10.1: Continually review, evaluate, and renew the action plan to ensure that it remains relevant and effective in advancing the Law Society's objectives.	Annually	EDI and staff
7.2: Continue to promote and present the EDI award.	Biannually	Staff (Bencher Relations)
2.2: Regularly review diversity statements to ensure they are current.	Ongoing	Staff to review before each call for applications
2.4: Ensure diverse representation within Law Society governance and employment.	Governance: annual Employment: ongoing	Governance: President Employment: CEO and HR.
2.6: Highlight diversity in Law Society publications and imagery.	Ongoing	Staff (Communications)
3.1: Continue to provide Law Society representatives with educational opportunities geared toward fostering support for diverse individuals.	Ongoing	EDI and staff
3.2: Identify additional methods to promote intercultural competence training, within the organization and throughout the legal profession in BC.	Ongoing	Lawyer Development Task Force, EDI, and staff
3.4: Strategically collaborate to advance intercultural competence education for lawyers in BC.	Ongoing	Lawyer Development Task Force, EDI, and staff
10.2: Regularly report progress through the Law Society's existing mechanisms.	Ongoing	EDI and staff
1.3: Consider whether other methods of getting diversity information about lawyers are required.	Long term (3 years)	Staff to review updated self-identification survey feedback.
3.3: Consider the role of the CPD program in advancing intercultural competence education.	Long term (3 years)	Lawyer Development Task Force, advice from EDI
6.1: Identify further methods to promote the adoption and implementation of existing model policies and guides.	Long term (3 years)	EDI and staff

6.2: Consider whether additional resources may be beneficial.	Long term (3 years)	EDI and staff
6.3: If necessary, develop additional resources for: <ul style="list-style-type: none"> a. Law firms that are interested in recruiting and retaining diverse candidates; b. Diverse lawyers who are interested in resilience-building strategies; and c. Lawyers who are interested in becoming allies for change. 	Long term (3 years)	EDI and staff
8.2: Review the <i>Act</i> , Rules, and Code for possible improvements that might help to support diversity in the legal profession.	Long term (3 years)	EDI, Act and Rules, Ethics, and staff
8.3: Where appropriate, propose amendments to the <i>Act</i> , Rules, and Code.	Long term (3 years)	EDI, Act and Rules, Ethics, Exec, and staff
9.1: Research the EDI recommendations, resources, and initiatives from other law societies, legal organizations, law schools, and professions in order to: inform the Law Society's work, avoid duplication of efforts, and identify opportunities for cooperation.	Long term (3 years)	EDI and staff
9.2: Strategically collaborate to increase recruitment, retention, and advancement of diverse lawyers.	Long term (3 years)	EDI and staff

Appendix C: Demographic Self-Identification Survey Results

Lawyer Demographics	2013		2014		2015		2016		2017		2018		2019	
	Number (#)	Percent (%)	#	%	#	%	#	%	#	%	#	%	#	%
Aboriginal/Indigenous	256	2.26	262	2.32	294	2.49	316	2.63	330	2.69	334	2.65	340	2.71
I choose not to answer	2439	21.55	2434	21.57	2528	21.44	2471	20.6	2675	21.77	2910	23.07	2966	23.61
I do not identify	6887	60.84	6734	59.69	6937	58.84	6999	58.34	6859	55.83	6798	53.89	6517	51.87
LGBT	273	2.41	295	2.61	314	2.66	339	2.83	390	3.17	397	3.15	442	3.52
Person with a Disability	170	1.5	170	1.51	194	1.65	215	1.79	229	1.86	241	1.91	271	2.16
Racialized	1291	11.41	1354	12.0	1503	12.75	1643	13.7	1795	14.61	1934	15.33	2029	16.15
Total Responses	11319		11282		11789		11996		12285		12615		12565	

Appendix D: Diversity Statement for Bencher Elections

Bencher encourage diversity in candidates seeking office

The Benchers believe that the Law Society's mandate to protect the public interest in the administration of justice is best served by leadership from diverse backgrounds and experience. Diversity that brings the skill and richness of talent reflected in the peoples of British Columbia strengthens our legal community and the community at large. All lawyers who meet the qualifications for Bencher and want to contribute to the governance of the profession are encouraged to stand for election. We particularly encourage Indigenous lawyers, racialized lawyers, LGBTQ2+ lawyers, lawyers with disabilities, young lawyers, and those practising predominantly in solicitors' fields to stand for election as these groups continue to be underrepresented among elected Benchers. Although the Law Society has achieved, and been enriched by, gender parity among its elected Benchers, it continues to encourage women to stand for election as part of its commitment to achieve leadership that is reflective of the face, talents, and strengths of all British Columbians.

Appendix E: Law Firm Regulation Self-Assessment Tool (EDI section)

ELEMENT 8 - EQUITY, DIVERSITY AND INCLUSION

Objective: Observe the laws protecting human rights, and the principles of equity, diversity and inclusion in the workplace and in all of the provision of legal services.

Indicator 1: Are policies and processes in place that foster the creation of a fair and safe working environment for all lawyers and staff?

Considerations

- Policies or processes are in place that comply with legal obligations protecting human rights and encourage diversity, inclusion, substantive equality and accommodation in the recruitment, retention and advancement of all lawyers and staff
- Hiring policies and processes are free of bias and discrimination, including interview questions
- Policies are reviewed, updated and are communicated to lawyers and staff
- Lawyers and staff participate in education and training on issues relating to unlawful discrimination, harassment and bullying, including legal obligations under the *Human Rights Code* and the *Workers Compensation Act*
- Maternity and parental leave policies are in place for lawyers and staff
- Flexible work schedules are an option for lawyers and staff who have child-care or other caregiver responsibilities
- Accommodation policies are in place for lawyers and staff with disabilities
- Internal complaints mechanisms are in place to address concerns and allegations of unlawful discrimination and harassment in the workplace

RESOURCES:

Law Society of BC, [Promoting a respectful workplace: A guide for developing effective policies](#)

Law Society of BC, [Model Policy: Flexible Work Arrangements](#)

BC Human Rights Tribunal, [Human Rights and Duties in Employment](#)

BC Code of Professional Conduct [[section 6.3](#): Harassment and discrimination]

Indicator 2: Are policies and processes in place that encourage lawyers to develop and maintain the necessary knowledge and skills to provide legal services in a manner consonant with the principles of equity, diversity, inclusion and non-discrimination?

Considerations

- All clients, court registry staff and colleagues are treated in a manner consistent with applicable human rights laws and the principles of equity, diversity and inclusion
- Language used in communicating with clients is appropriate to the individual receiving the communication and reflects freedom from unlawful discrimination
- Processes are in place to address language barriers, cultural differences and issues of mental capacity
- Lawyers and staff have adequate knowledge and skills to ensure that clients with disabilities and other equality seeking groups receive competent legal services
- Lawyers and staff participate in skills-based training with respect to the Truth and Reconciliation Commission Call to Action #27:
 - to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal – Crown relations. This will require skills-based training in intercultural competency, dispute resolution, human rights, and anti-racism.
- Legal requirements relating to accessibility have been considered and where accessibility may be an issue, lawyers meet clients in other appropriate settings

RESOURCES:

Law Society of BC, [Equity Ombudsperson](#)

Law Society of BC, *Benchers' Bulletin* Winter 2016, [Working in a Diverse Society: The Need for Cultural Competency](#)

Law Society of BC, [Practice Advisors - Frequently Asked Questions](#)

Law Society of BC, Practice Checklists Manual, [Human Rights Complaint Procedure](#)

Law Society of BC, [Equity and Diversity Centre](#)

Law Society of BC, [The Business Case for Retaining and Advancing Women Lawyers in Private Practice](#)

BC Human Rights Tribunal, [Human Rights Duties in Employment](#)

BC Human Rights Tribunal, [Human Rights in Services, Facilities, Accommodations](#)

Canadian Human Rights Tribunal, [Accommodation Works!](#)

Truth and Reconciliation Commission of Canada: [Calls to Action](#)

BC Code [[section 2.1](#): Canons of legal ethics; [section 3.1](#): Competence; [section 3.2](#): Quality of service (Clients with diminished capacity); [section 6.1](#): Supervision; [section 6.2](#): Students; [section 6.3](#): Harassment and discrimination; [section 7.2](#): Responsibility to lawyers and others]

Appendix F: Original EDI Award Description

In 2015, the Benchers of the Law Society of British Columbia instituted the Diversity and Inclusion Award. The Award honours a person who has made significant contributions to diversity and inclusion in the legal profession or the law in British Columbia over the previous two years.

The Law Society is committed to fostering a more diverse and inclusive legal profession. It recognizes that public faith and participation in the justice system are best served by a legal profession that reflects and respects the full range of human differences within civil society, including but not limited to race, ethnicity, gender, gender identity, sexual orientation, age, social class, physical ability or attributes, religious or ethical values, national origin and political beliefs.

The Diversity and Inclusion Award is given in acknowledgement of individuals and groups who were historically excluded from the practice of law in British Columbia due to discriminatory barriers. From 1918 until 1949, membership in the Law Society of BC was linked to registration on the provincial voters list. In 1875, Chinese Canadians and Aboriginal peoples were excluded from the voters list. This exclusion was extended to Japanese Canadians in 1895, to South Asian Canadians in 1907, and to Doukhobors, Mennonites and Hutterites in 1931. Although women were excluded from the provincial voters list until 1917, Mabel Penery French became the first woman to be called to the British Columbia bar in 1912 after petitioning the provincial government to pass legislation to admit women to the bar. In 1947, Chinese and South Asian Canadians were added to the provincial voters list. The prohibition was removed for Aboriginal peoples, Japanese Canadians, Mennonites and Hutterites in 1948.

Some specific examples of exclusion from the legal profession in BC include:

- Gordon Cumyow, a British subject of Chinese descent, applied for admission to the Law Society in 1918, and was denied admission in 1919.
- In 1919, Mr. Yamada was dissuaded from studying law in British Columbia based on the Law Society's exclusionary admission criteria;
- In 1922, Andrew Paull, a First Nations man from North Vancouver, was informed that he would not meet the Law Society's admission requirements;
- An individual with a surname indicating Japanese descent petitioned to be permitted to enter into articles of clerkship in order to be called to the bar in 1932; his petition was refused; and
- William Gordon Martin was denied Law Society membership in 1948 for failing to renounce his belief in communism.

Many others were undoubtedly deterred from pursuing legal careers based on the Law Society's exclusionary admission rule.

Appendix G: Ontario Recommendations in the BC Context

RECOMMENDATION	BC CONTEXT
Recommendation 1 – Reinforcing Professional Obligations The Law Society will review and amend, where appropriate, the <i>Rules of Professional Conduct</i> , the <i>Paralegal Rules of Conduct</i> , and Commentaries to reinforce the professional obligations of all licensees to recognize, acknowledge and promote principles of equality, diversity and inclusion consistent with the requirements under human rights legislation and the special responsibilities of licensees in the legal and paralegal professions.	Yes
Recommendation 2 – Diversity and Inclusion Project The Law Society will work with stakeholders, such as interested legal workplaces, legal associations, law schools and paralegal colleges to develop model policies and resources to address the challenges faced by racialized licensees.	Yes. We have some available online already.
Recommendation 3 – The Adoption of Equality, Diversity and Inclusion Principles and Practices The Law Society will: <ol style="list-style-type: none"> 1) require every licensee to adopt and to abide by a statement of principles acknowledging their obligation to promote equality, diversity and inclusion generally, and in their behaviour towards colleagues, employees, clients and the public; 2) require a licensee representative of each legal workplace of at least 10 licensees in Ontario to develop, implement and maintain a human rights/diversity policy for their legal workplace addressing at the very least fair recruitment, retention and advancement, which will be available to members of the professions and the public upon request; 3) require a licensee representative of each legal workplace of at least 10 licensees in Ontario to complete, every two years, an equality, diversity and inclusion self-assessment for their legal workplace, to be provided to the Law Society; and 4) encourage legal workplaces to conduct inclusion surveys by providing them with sample templates. 	1) In law firm regulation, used different wording. 2) Not mandated, but encouraged. 3) Law firm regulation self-assessment; not required to submit. 4) LSBC has templates online.
Recommendation 4 – Measuring Progress through Quantitative Analysis Each year, the Law Society will measure progress quantitatively by providing legal workplaces of at least 25 licensees in Ontario with the quantitative self-identification data of their licensees compiled from the Lawyers Annual Report and the Paralegal Annual Report in a manner consistent with the best practices established to protect licensees vulnerable to harm that may flow from this disclosure, so they can compare their data with the aggregate demographic data gathered from the profession as a whole through the annual reports.	The LSBC collects self-identification data. No intention to mandate law firms to gather and publish demographic data.
Recommendation 5 – Measuring Progress through Qualitative Analysis The Law Society will measure progress by: <ol style="list-style-type: none"> 1) asking licensees to voluntarily answer inclusion questions, provided by the Law Society, about their legal workplace, every four years; and 2) compiling the results of the inclusion questions for each legal workplace of at least 25 licensees in Ontario and providing the legal workplace with a summary of the information gathered 	Difficulties with survey fatigue and survey response rates (e.g. statistical significance of data if low response)
Recommendation 6 – Inclusion Index Every four years, the Law Society will develop and publish an inclusion index that reflects the following information, including, for each legal workplace of at least 25 licensees: the legal workplace's self-assessment information	Difficulties with survey fatigue and survey response rates (e.g.

(Recommendation 3(3)), demographic data obtained from the Lawyer Annual Report and Paralegal Annual Report (Recommendation 4) and information gathered from the inclusion questions provided by the Law Society (Recommendation 5).	statistical significance of data if low response)
Recommendation 7 – Repeat Challenges Faced by Racialized Licensees Project Inclusion Survey The Law Society will conduct inclusion surveys with questions similar to those asked in Appendix F of the Stratcom Challenges Faced by Racialized Licensees Final Report (March 11, 2014) (available online at http://www.stratcom.ca/wp-content/uploads/manual/Racialized-Licensees_Full-Report.pdf). The first inclusion survey will be conducted within one year of the adoption of these recommendations, and thereafter every four years, subject to any recommendation by the Equity and Aboriginal Issues Committee to Convocation.	Difficulties with survey fatigue and survey response rates (e.g. statistical significance of data if low response)
Recommendation 8 – Progressive Compliance Measures The Law Society will consider and enact, as appropriate, progressive compliance measures for legal workplaces that do not comply with the requirements proposed in Recommendation 3 and/or legal workplaces that are identified as having systemic barriers to diversity and inclusion.	No intention to impose compliance measures in BC.
Recommendation 9 – Continuing Professional Development (CPD) Programs on Topics of Equality and Inclusion in the Professions The Law Society will: <ol style="list-style-type: none"> 1) launch a three hour accredited program focused on advancing equality and inclusion in the professions; 2) develop resources to assist legal workplaces in designing and delivering their own three hour program focused on advancing equality and inclusion in the professions, to be accredited by the Law Society; and 3) require each licensee to complete three hours of an accredited program focused on equality and inclusion within the first three years following the adoption of these recommendations and one hour per year every year thereafter, which will count towards the licensee's professionalism hours for that year. 	LSBC could work to improve educational opportunities to promote diversity and inclusion. Reluctance to adjust CPD requirements
Recommendation 10 – The Licensing Process The Law Society will include the topics of cultural competency, equality and inclusion in the professions as competencies to be acquired in the Licensing Process.	Being incorporated into PLTC curriculum.
Recommendation 11 – Building Communities of Support The Law Society, in collaboration with legal associations where appropriate, will provide support to racialized licensees in need of direction and assistance through mentoring and networking initiatives.	Collaborate with CBA, FACL, CABL, LEADR, LFDIN, etc.
Recommendation 12 – Addressing Complaints of Systemic Discrimination The Law Society, in light of the findings of this project and emerging issues in the professions, will: <ol style="list-style-type: none"> 1) review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC), including considering effective ways for the DHC to address issues of systemic discrimination; 2) revise the Rules of Professional Conduct so that systemic discrimination and reprisal for complaints of discrimination and harassment are clearly identified as breaches of professional conduct requirements; 3) create effective ways for the Professional Regulation Division to address complaints of systemic discrimination; and 4) create a specialized and trained team to address complaints of discrimination. 	<ol style="list-style-type: none"> 1) Brought Equity Ombudsperson in house 2) Model Code consultation 3) Review our processes 4) Economies of scale?

<p>Recommendation 13 – Leading by Example</p> <p>1) The Law Society will continue to monitor and assess internal policies, practices and programs, to promote diversity, inclusion and equality within the workplace and in the provision of services by:</p> <ul style="list-style-type: none"> a) as required, adopting, implementing and maintaining a human rights/diversity policy addressing at the very least fair recruitment, retention and advancement; b) measuring quantitative progress through a census of the workforce or other method; c) measuring qualitative progress by conducting inclusion surveys; d) conducting regular equality, diversity and inclusion self-assessments; e) based on the results from b), c) and d), identifying gaps and barriers and adopting measures to address the gaps and barriers; f) publishing relevant findings from b), c), d) and e); and g) providing equality and inclusion education programs for staff at the Law Society on a regular basis. <p>2) The Law Society will:</p> <ul style="list-style-type: none"> a) conduct an internal diversity assessment of the bench composition and publicize the results; b) provide equality and inclusion education programs for Convocation on a regular basis 	<ul style="list-style-type: none"> a) Yes, ongoing b) Demographic data for staff not feasible c) annual staff survey could ask EDI questions d) staff leadership statistics from 25 year review are promising e) can take closer look g) underway and well attended. <p>2) a) gender ok, diversity less doable. b) intention to include training in orientation.</p>
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Memo

To: Benchers
From: Finance and Audit Committee
Date: September 15, 2020
Subject: 2021 Fees & Budgets – Review and Approval

Please find attached the Law Society of British Columbia - 2021 Fees and Budgets Report.

The 2021 Fees and Budgets were reviewed in depth by the Finance and Audit Committee, and the committee is recommending adoption of the following Benchers resolutions, as included in the report:

Be it resolved that:

- Effective January 1, 2021, the practice fee be set at \$2,289.12, pursuant to section 23(1)(a) of the Legal Profession Act.

Be it resolved that:

- the indemnity fee for 2021 pursuant to section 30(3) of the Legal Profession Act be set at \$1,800;
- the part-time indemnity fee for 2021 pursuant to Rule 3-40(2) be set at \$900; and
- the indemnity surcharge for 2021 pursuant to Rule 3-44(2) be set at \$1,000.

The Law Society

of British Columbia



The Law Society of British Columbia 2021 Fees and Budgets Report

THE LAW SOCIETY OF BRITISH COLUMBIA
2021 Fees and Budgets Report

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Law Society Overview

General Fund - Law Society Operations

Overview

The Benchers will set the 2021 fees pursuant to the Legal Profession Act, following their review of the Finance and Audit Committee's recommendations at the September 25th Bencher meeting. The Finance and Audit Committee, with input and consultation from management, has based its recommendations on a thorough review of the Law Society's finances, statutory mandate and strategic plan.

The objective of the 2021 budget is to ensure that the Law Society is able to fulfill its statutory mandate to protect the public interest in the administration of justice and to follow through on goals set out in its strategic plan, while providing temporary fee relief to those law firms and lawyers most in need.

Financial Considerations

1. 2020 forecast avoids projected deficit

As a result of the impact on Law Society operations of the state of emergency and the various orders from the Public Health Officer and other efforts on the part of management to contain costs this year, it is projected that there will be significant cost savings in 2020 to offset an expected revenue deficit of \$1 million, leading to a positive year-end result in 2020.

2. One-time fee reduction in 2021 for lawyers most in need

There will be a one-time fee reduction in 2021 based on the economic circumstances of law firms and lawyers as a result of the COVID-19 pandemic. The intention is to provide a targeted fee reduction to those most heavily impacted by the COVID crisis and to cover the one-time fee reduction from current reserves. All law firms have been invited to complete the form and a full analysis of the results and proposals for the one-time 2021 fee reduction will be brought to the Benchers for approval.

3. No increase in 2021 practice and indemnity fees

The 2021 practice and indemnity fees will be set at the same level as 2020. This will result in a deficit budget, which is manageable with projected reserve levels.

4. 2021 revenue reductions expected to be offset by cost reductions

To offset expected reductions in revenues and mandatory cost increases in 2021, we have done a thorough review of all costs and provided for expense reductions in a number of areas, such as leveraging virtual technology and reducing other compensation costs. Overall budgeted expenses are 0.5% less than 2020 levels.

Key Operational Goals for 2021

1. Enhanced Practice Support and Online Courses

We will be offering new and existing online courses through a new online learning platform, Brightspace from D2L. Through this platform, we will be providing access to Law Society courses including the new Indigenous Intercultural Competency course to be taken by all lawyers during 2021/2022, updated versions of the courses previously offered through learnlsbc.ca including the Practice Management and Practice Refresher courses, and other online course offerings. In addition, the Professional Legal Training Course (PLTC) is now supported on this platform.

2. Continued Implementation of the Professional Conduct Process Review

In recognition of the increasing demand on our regulatory resources, the Professional Conduct group will continue to implement a number of initiatives to improve the efficiency and effectiveness of our regulatory operations. In addition, following on the recommendations of the Mental Health Task Force, staff will be reviewing our practice standards model to improve its effectiveness and developing an Alternative to Discipline (“ADP”) program. This will include developing operational process flows as well as the Rules framework that will be required to implement the ADP program.

3. Improvement in technology and services to the public and lawyers

There will be a continued focus on services to the public and lawyers with an emphasis on using information technology to increase the efficiency and effectiveness of our operations, including member services and practice advice. We will also be making greater use of data analytics and artificial intelligence in our work, implementing needed updates to the Law Society Information System (LSIS), as well as to increased support for online lawyer services through the member portal.

4. Licensed Paralegal Initiative

In light of the continuing concern about unmet legal needs and access to justice, we hope to implement a framework for the introduction of licensed paralegals. The Licensed Paralegal Task Force is preparing a report to the Benchers that propose how the Law Society can encourage innovation in legal services by providing an opportunity for existing paralegals to provide legal services, within an appropriate regulatory structure.

5. Continued focus on anti-money laundering initiatives

The Cullen Commission is expected to deliver its report in 2021 and anti-money laundering is expected to remain a focus of our regulatory efforts. The revised rules regarding anti-money laundering have led to more investigations which, in turn, has increased the number of files and required resources in Investigations, Forensic Accounting, Trust Assurance, and Discipline.

Key Budget Assumptions

With economic uncertainties, and reduced revenues expected, the budget has been prepared based on an effort to match operating expenses to the expected revenue for 2021. 2021 revenues are projecting to be \$28.5 million, a reduction of 2.7% from 2020 levels. 2021 expenses are expected to be \$29.2 million, a reduction of 0.5% from 2020 levels. The 2021 General Fund operating budget projects a budgeted deficit of \$650,000, which will be funded through existing reserves.

Revenues

- Project no net lawyer growth in 2021 from currently forecasted levels, budgeting 12,673 lawyers
- Practice and indemnity fees will be collected in two installments
- PLTC revenues are projected to be similar to 2020 with 594 students
- Credentials and member services fees are set at slightly lower levels than 2020
- Interest and investment income is expected to be reduced with lower returns, and reduced cash balances due to two installment payments of annual fees
- Electronic and TAF revenues lower due to decreased real estate market activity
- No D&O insurance recovery income for legal fees is expected
- As the 845 Cambie building loan will be paid off in early 2022, have redirected \$50 per lawyer of the capital allocation in the practice fee to fund operations
- Stable 845 Cambie building lease revenues expected

Expenses

- Salaries include contracted and non-union wage increases
- Other staffing costs decreased to offset wage increase as noted above
- No staff positions added in 2021
- At least 50% of Bencher and committee meetings conducted virtually
- Reduced staff travel and meeting costs
- Reduced professional development costs
- Increased costs related to new online learning platform, Brightspace
- Additional costs for COVID related work for cleaning, PPE and zoom licenses
- Additional perimeter network security monitoring for cyber security

Budget Risks

Uncertainty Related to Global Pandemic – Due to the COVID-19 global pandemic, there is a lot of uncertainty that could significantly affect the 2021 results against the proposed budget. A second wave, depending on severity, could result in additional decreases in the number of lawyers, further interest rate reductions and lower TAF and electronic filing revenues. If social distancing requirements continue, there may be additional savings if in-person meetings or events do not take place.

Number of Lawyers – The revenue received from the practice fee and other credentials and membership fees serves to cover over 80% of the budgeted costs. As such, any variation in the actual number of lawyers from the budget projection could result in a need to draw further on reserves.

Inflation – Staff salaries and benefits comprise approximately 75% of the total expenses, so changes in inflation and salary market levels may cause unpredictability in costs.

External Counsel Fees – External counsel fees represent a significant portion of the overall budget. While these costs are analyzed, managed and tracked rigorously, estimates are necessarily contingent.

Anti-Money Laundering Efforts – The additional costs relating to AML efforts, identifying misuse of trust accounts, and file costs related to investigations and discipline are unknown. The actual costs incurred could vary from what has been estimated.

Staff Vacancy Savings – In any given year, there are staff vacancies due to staff leaving. The time to recruit and other factors result in vacancy savings and we develop an estimate of the vacancy savings each year based on past experience. The amount of staff vacancy savings depends on the actual amount of staff vacancies in any given

year. If there are lower or higher vacancies than estimated, operating costs will be different than budgeted.

Electronic Filing Revenues and Trust Administration Fees – These revenues correlate very closely with real estate unit sales in BC. Expected revenue from these sources has been set based on any available forecasts of the Real Estate Associations and actual results could vary from these forecasts.

2021 Operating Revenue Summary

General Fund revenues are projected to be \$28.5 million, \$789,000 (2.7%) lower than the 2020 budget, due to no net increase in the number of lawyers year over year, lower PLTC student numbers, reduced interest and investment revenue and no D&O insurance recoveries expected in the year. The budgeted revenue is based on estimates of 12,673 full-time equivalent practicing lawyers and 594 PLTC students. Other revenues are projected conservatively at historic levels.

2021 Operating Expense Summary

General Fund operational expenses, are projected to be \$29.2 million, which is a 0.5% decrease in expenses over 2020.

General Fund Net Assets

The 2021 budget proposes a General Fund deficit of \$650,000, to be funded from current reserves. The overall projected working capital net asset position, factoring in the expected 2020 favourable variance, is shown below. The impact of any 2021 Fee Reduction program on existing reserves still needs to be determined, as noted below in yellow.

<u>2020</u>		
Opening Balance - per 2019 audited financial statements		\$ 8,409,000
2020 forecasted reduction in revenue - as per May financial report		\$ (986,000)
2020 forecasted expense savings - as per May financial report		\$ 1,295,000
Estimated reserve used for one-time fee reductions		TBD
Projected 2020 Reserve Closing Balance		\$ 8,718,000
<u>2021</u>		
2021 Budget Projection		\$ (650,000)
Projected 2021 Reserve Closing Balance		\$ 8,068,000

Appendix A and B contains the General Fund operating budget.

2021 Practice Fee

Taking all factors into account, we recommend maintaining the fee at \$2,289.12 for 2021.

The Law Society of BC
2021 Fee Recommendation

	Funding (in 000's)				Per Lawyer			
	2021	2020	Change (\$)	Change (%)	2021	2020	Change (\$)	Change (%)
Law Society Operating Expenses	\$ 29,156	\$ 29,295	(139)	-0.5%	\$ 1,903.99	\$ 1,903.99	\$ -	0.0%
Federation of Law Societies	364	361	3	0.8%	28.12	28.12	-	
CanLII	539	539	-	0.0%	41.94	41.94	-	
CLBC*	2,694	2,615	79	3.0%	203.57	203.57	-	
The Advocate**	347	347	-	0.0%	22.26	22.26	-	
LAP*	792	792	-	0.0%	61.69	61.69	-	
Pro bono/Access*	363	354	9	2.5%	27.56	27.56	-	
Annual Practice Fee					\$ 2,289.12	\$ 2,289.12	\$ -	0.0%

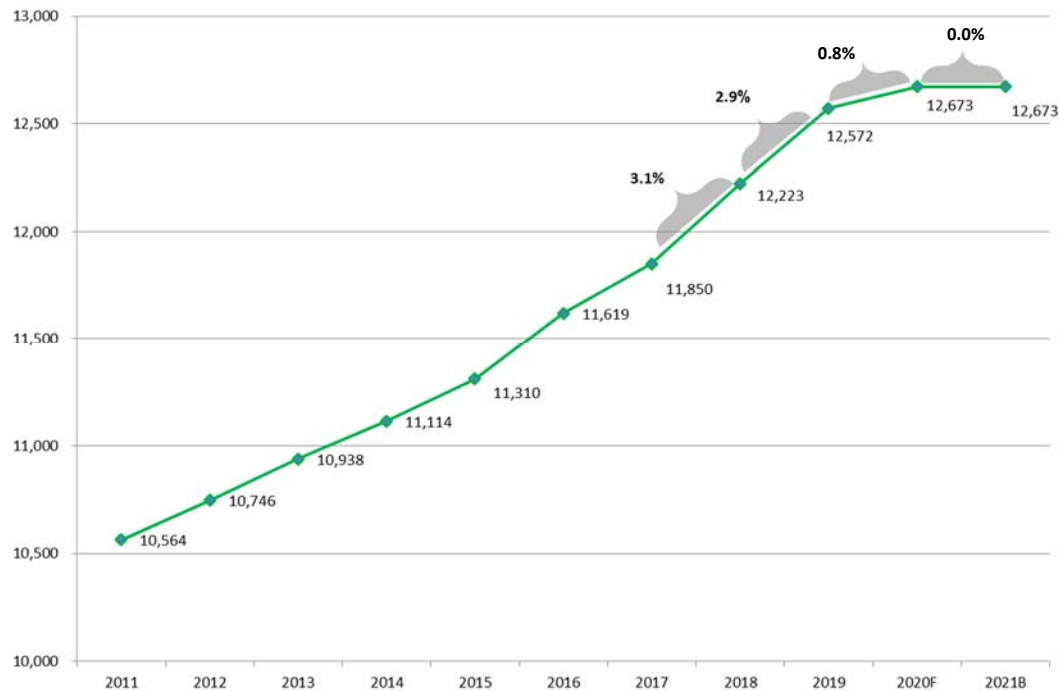
*2021 full fee paying equivalent members projected at 12,673

**2021 practicing, non-practicing and retired members projected at 15,601

2021 Operating Revenues

Practice fee revenues are budgeted at \$23.1 million, a 2% increase over the 2020 budget with \$50 per lawyer of the capital allocation being redirected to operations as the 845 Cambie building loan will be paid off in early 2022. This offsets the lower number of practicing lawyers compared to the 2020 budget. The 2020 budgeted full-time equivalent lawyers was expected to be 12,846. Due to economic uncertainty related to the COVID19 global pandemic we are now forecasting 12,673 members in 2020 and assuming this level will continue into 2021. Other categories of membership are assumed to remain consistent with previous years.

Practicing Lawyer History



PLTC revenues are budgeted at \$1.8 million, based on 594 students, similar to the number of students projected in 2020.

Electronic filing revenues are budgeted at \$700,000, which is consistent with the 2020 budget.

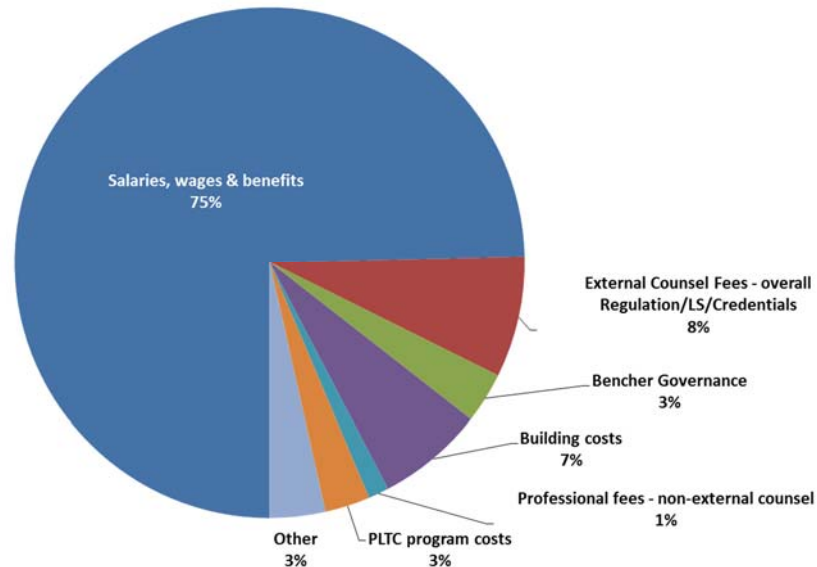
Other revenues, which include credentials and incorporation fees, fines, penalties and cost recoveries, and interest income are budgeted at \$1.5 million, about \$1 million lower than 2020, primarily due to large D&O insurance recoveries budgeted in 2020 and decreased interest income related to lower returns and lower cash balances.

Building revenue and recoveries are budgeted at \$1.4 million in 2021. The Law Society owns the 839/845 Cambie building, and occupies the majority of space, and the space that is not occupied by the Law Society is leased out to external tenants. In 2021, external lease revenues are budgeted at \$849,000. Also included in lease revenues is an inter-fund market rent allocation of \$526,000 charged by the General Fund for space occupied at 845 Cambie by the Lawyers Insurance Fund and the Trust Assurance Program.

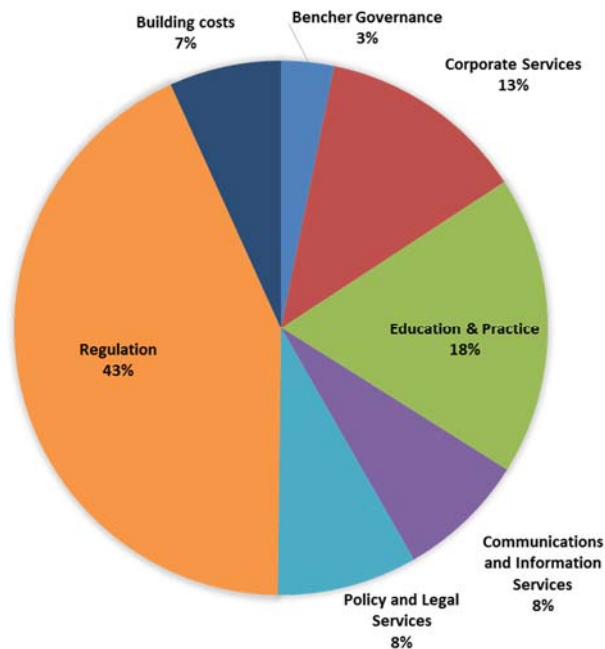
2021 Operating Expenses

The majority of operating expenses (75%) are related to staffing costs to provide the programs and services to both the public and lawyers. External counsel fees are 8% of overall spending, which is consistent with external counsel fee spending levels in 2020.

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



The operating costs by program area as a percentage of the 2021 budget are:



Departmental Summaries

Bencher Governance and Board Relations

Bencher Governance and Board Relations includes the costs of the Bencher and committee meetings, the associated travel and meeting costs, Law Society meetings and events and the costs of new initiatives related to the Bencher Strategic Plan. This also includes the Board Relations and Events department that coordinates and organizes the Bencher and Executive meetings, coordinates external appointments, and plans and provides administrative and logistical support for Law Society events, the annual general meeting and Bencher elections.

The 2021 Bencher Governance and Board Relations operating expense budget is \$933,000, a decrease of \$149,000 (14%) from the 2020 budget. Savings in this area are primarily related to half of all Bencher and committee meetings being conducted virtually in 2021.

Corporate Services

Corporate Services includes General Administration, Office of the CEO, Finance, Human Resources, and Records Management.

General Administration includes the Office of the CEO and the Operations department which provides general administrative services, such as reception, office services, office renovation services and building management oversight.

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

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

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

The 2021 Corporate Services operating expense budget is \$3.7 million, \$66,000 (2%) lower than the 2020 budget, with decreases relating to compensation savings and reductions in recruiting and consulting costs.

Education & Practice

Education and Practice includes Member Services, Credentials, PLTC, Practice Support, Practice Standards and Practice Advice.

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

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

PLTC & Education includes PLTC and Practice Support. PLTC helps articulated students make the transition from law school to legal practice. Practice Support provides lawyer resources and online courses for the profession.

Practice Standards is a remedial program that assists lawyers who have difficulty in meeting core competencies and who exhibit practice concerns, which may include issues of client management, office management, personal matters, and substantive law. The Practice Standards department conducts practice reviews of lawyers whose competence is in question, and recommends and monitors remedial programs.

Practice Advice helps lawyers serve the public effectively by providing advice and assistance on ethical, practice and office management issues. The majority of the costs of this department are allocated to LIF.

The total 2021 Education & Practice operating expense budget is \$5.3 million, a decrease of \$121,000 (2%) from the 2020 budget. There are salary savings throughout all areas. Increased costs relate to the new online learning platform for online courses, including the new Indigenous Intercultural Competency course, and updated versions of the Practice Management and Practice Refresher courses.

Communications and Information Services

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

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

The 2021 Communications and Information Services operating expense budget is \$2.3 million, an increase of \$49,000 (2%). This increase is related to perimeter network security testing and increased costs for Zoom licenses.

Policy & Legal Services

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

Policy and Legal Services develops policy advice, legal research and Rules drafting, and monitors developments involving professional regulation, independence of the Bar and Judiciary, access to justice, and equity and diversity in the legal profession, and supports the Ethics Committee. In addition, includes external counsel fees providing services for legal defence cases and interventions on behalf of the Law Society.

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

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

Unauthorized Practice (UAP) investigates complaints of unauthorized practice of law.

The 2021 Policy and Legal Services operating expense budget is \$2.5 million, a decrease of \$40,000 (2%) from the 2020 budget. This is primarily due to salary savings.

Regulation

The main program areas included in Regulation are: CLO Department, Professional Conduct, Discipline, Forensic Accounting and Custodianships.

The CLO department is responsible for providing oversight of all of the programs in Professional Regulation, which include: intake, early resolution, investigation, discipline, monitoring and enforcement, custodianships, litigation management, unauthorized practice and practice standards. Additionally the CLO department provides support to

the Discipline Committee and conducts reviews of the professional regulation programs in order to ensure the effective utilization of Law Society resources.

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

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

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

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

The 2021 Regulation operating expense budget is \$12.5 million, an increase of \$214,000 (2%) from the 2020 budget. Citations and hearing levels are expected to continue at higher levels into 2021, with 40 citations and 60 hearings projected. There has been additional resources added to enhance the monitoring and enforcement area, increased medical consultations, offset by savings in staff compensation costs.

Building Costs

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

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

The 2021 building operating expense budget is \$2.0 million, a decrease of \$27,000 (1%) over the 2020 budget. This is the result of decreased building maintenance costs partially offset by additional costs for building cleaning and sanitation health and safety measures related to COVID-19.

Capital Plan

The Law Society maintains a rolling 10 year capital plan to ensure that capital funding is available for capital projects required to maintain the 839/845 Cambie building and to provide capital for operational requirements, including computer hardware and software, furniture and workspace improvements. In addition, the capital plan funds the annual \$500,000 debt service payment on the 839/845 Cambie building loan from LIF. As the building loan will be fully repaid in early 2022, the amount of the practice fee allocated to capital has been reduced from \$176 to \$126 per lawyer, allowing \$50 to fund operations in 2021.

In the 2021 capital plan, \$1.7 million is budgeted for capital projects (Appendix C). Projects include base building maintenance, including future window and cladding repairs and a roof replacement for 839 Cambie Street. In addition, the operational capital includes replacing computer hardware and software, furniture, and office renovations.

External Organization Funding

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

Federation of Law Societies – The Federation is expected to remain the same as the 2020 fee of \$28.12 per lawyer. The Federation of Law Societies of Canada provides a national voice for provincial and territorial law societies on important national and international issues.

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

Courthouse Libraries of B.C. (CLBC) – With the support from the Law Society of British Columbia, the Law Foundation of British Columbia, and the Ministry of Attorney General, CLBC provides lawyers and the public in BC with access to legal information, as well as training and support in accessing and using legal information. Through its information services, curation of print and digital collections, website content and training, the library provides practice support for lawyers and access to justice support to the public across the province, through its 30 physical locations. The 2021 contribution per lawyer will remain at \$203.57.

The Advocate – The Advocate publication is distributed bi-monthly to all BC lawyers. The Advocate per lawyer funding of \$22.26, will provide \$347,278 for 2021, which will draw down some of the Advocate net asset reserves.

Lawyer's Assistance Program (LAP) – LAP provides confidential outreach, education, support and referrals to lawyers and other members of British Columbia's legal community. LAP has requested funding of \$792,440 which is consistent with 2020 funding, which will draw down some of the LAP net asset reserves. The contribution per lawyer will be \$61.69.

Pro bono and access to justice funding – With a CPI increase, the contribution to pro bono and access to legal services funding will be set at \$364,000 for 2021. This funding is sent to the Law Foundation for distribution.

Trust Assurance Program and Fee

The goal of the Trust Assurance program is to ensure that law firms comply with the rules regarding proper handling of clients' trust funds and trust accounting records. This is achieved by conducting trust accounting compliance audits at law firms, reviewing annual trust reports, and providing lawyer advice and resources.

The Trust Administration Fee (TAF) is currently set at \$15 per transaction, and no change is proposed for 2021. The 2021 TAF revenue is budgeted at \$3.3 million, with a decrease in the real estate market expected next year. It is expected that existing TAF reserves will be used during the year to offset revenue decreases.

The Trust Assurance operating expense budget is \$3.4 million, a decrease of \$161,000 (4%) from 2020. Decreases are primarily related to savings in staff compensation and travel. This will result in the use of TAF reserves in the amount of \$133,000.

The compliance audit program ensures that all firms are audited at least once within a six year cycle. In addition, real estate and wills & estate firms are audited every four years, along with more frequent audits in higher risk practices. In addition, the program develops and delivers webinars and trust accounting courses, and uses data analytics to improve effectiveness and efficiencies.

The TAF reserve at December 31, 2019 was \$2.0 million. The Benchers recommend the TAF reserve be set at 6 months of operating expenses, with any excess transferred to Part B insurance funding. During 2020, it is not expected that any amount will be transferred to Part B insurance funding. The level of TAF reserve will continue to be monitored. Previous transfers from TAF to LIF have totaled \$6.1 million.

Trust Assurance Program Projections

	TAF		Total		Total	Net	Transfer to	Net Asset
	Matters	Rate	Revenue	Expense	Income/ (Deficit)	LIF		Balance
2019 Actuals	231,386	\$ 15	\$ 3,470,785	\$ 3,276,744	\$ 194,041	\$ (1,160,000)	\$	1,989,501
2020 Projections	217,339	\$ 15	\$ 3,260,080	\$ 3,382,493	\$ (122,413)	\$ -	\$	1,867,088
2021 Budget	220,000	\$ 15	\$ 3,300,000	\$ 3,432,737	\$ (132,737)	\$ -	\$	1,734,351

Special Compensation Fund

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

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

Section 50 of the Legal Profession Amendment Act, 2012 provides for the transfer of unused reserves that remain within the Special Compensation Fund to the Lawyers Insurance Fund for the purposes of the insurance program. During 2017, \$1 million of the unused reserves were transferred, with no additional transfers since that time. Work is continuing on the production of documents for past files. The remaining Special Compensation Fund net assets are expected to be expended in 2020, and any remaining costs associated with document production work will be absorbed by LIF.

Lawyers Indemnity Fund

Overview and Recommendation

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

A number of factors influence the financial stability of our indemnification program, and we will review each below. Overall, 2019 was a year of moderation, which unfolded with no notables but for an uptick in frequency. The significant consideration for future risks is the potential negative impact of the lockdown resulting from the COVID-19 pandemic.

Taking all factors into account, we recommend maintaining the fee at \$1,800 for 2021.

Frequency and Severity of Claims

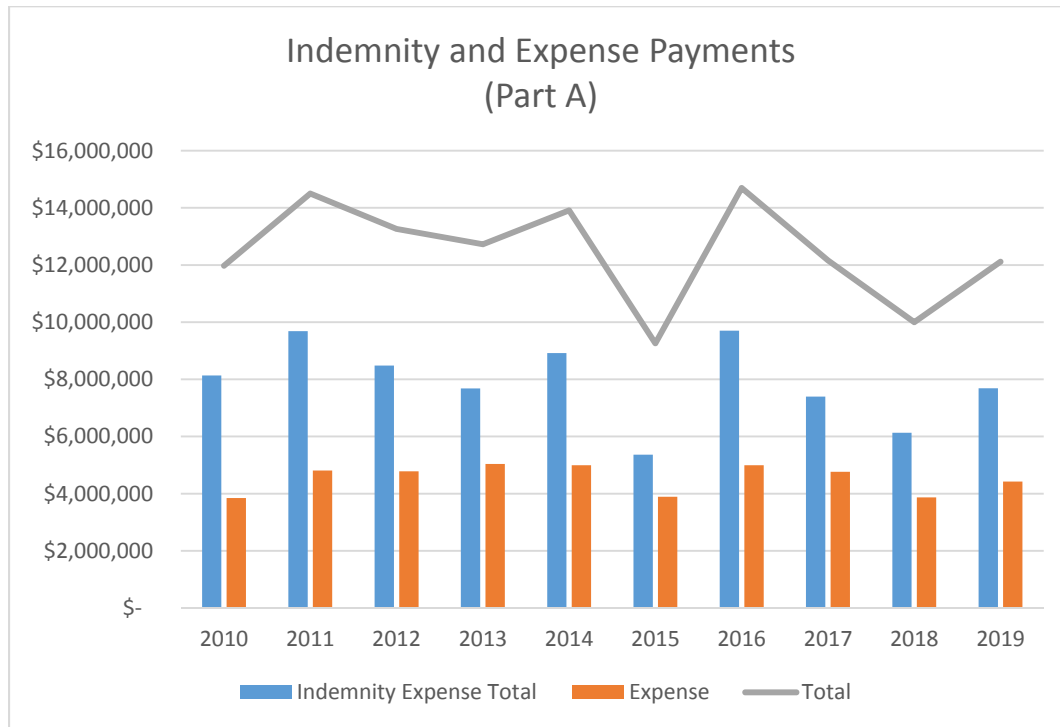
Part A:

The first factor is the total incidence of claims and potential claims, or “reports” under Part A. The number of reports rose last year; however, frequency (number of reports divided by the number of indemnified lawyers) is consistent with recent levels. From 2015 to 2018, the number of reports increased from previously to an average of 1,115 and in 2019, the number of reports grew to its highest ever: 1,190. For 2020, projecting to the end of the year, we expect the number of reports to be 1106, 30 fewer files than 2019 (as adjusted).

Report frequencies (rounded) for 2020 and the previous 10 years are:

2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 (projected)
13%	14%	13%	12%	12%	13%	13%	13%	13%	13%	12%

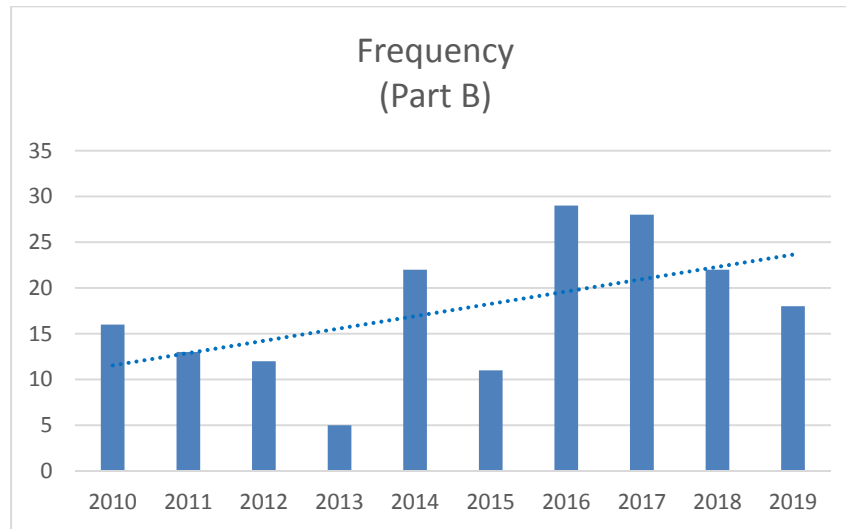
The second factor is the amount paid to defend and resolve claims. As demonstrated in the graph below, the severity (the dollar value) of claim payments on a *calendar* year basis has varied between \$10M and almost \$15M – with the notable exception of a dip in payments seen in the 2015 results, partially off-set by higher payments in 2016. 2019 closed out at \$11M. Projected to year-end, total payments are expected to be \$13.5M, 23% higher than in 2019 but within the normal range.



That said, on a *claim year* basis, the total incurred (total reserves and payments) for the claims reported in 2018 (\$33M) and 2019 (\$32M) exceeds any previous year. Primarily due to conservative reserving practices, it may also signal increased severity. We expect it is both, and time will tell what proportion of each is at play as the claims develop.

Part B:

Because of the small number of trust protection claims under Part B of the policy, the year-over-year experience is more volatile. The graph below depicts this volatility. 2019 closed out the year with 18 reports, consistent with the annual average of 19. We've received 2 reports in the first half of 2020, which is well below average.



As to severity, total claim payments in 2019 were \$239,300. This was down significantly from payments of \$1.4M in 2018, most of which related to a single disbarred lawyer. The 2019 total is fairly consistent with the 10-year annual average (including 2018) of \$273,000. We estimate paying approximately \$400,000 on claims in 2020, exceeding the average by 68%.

Future Practice Risks

The third factor is the risk of increased future claims.

The Pandemic

The most significant event to potentially impact LIF is no surprise: the Covid-19 pandemic and resulting lockdown and economic decline, which will be felt in both revenues and payments.

On the revenue side, we expect the fee revenue will be lower than usual due to more lawyers opting for part-time status than has been the case. For 2021 we have budgeted a reduction in fee revenues of \$352K from the 2020 budget. Moreover, due to market turmoil, our investment returns are also expected to decrease from the 2019 returns of 14%. This means less money to fund claims and our operations.

On the payment side, we have received 8 reports of claims resulting directly from the lockdown and expect more to come. More significantly, our experience is that following a recession, claims against lawyers increase in both number and value as commercial projects falter and loan defaults occur. This, in turn, causes borrowers and guarantors to search for loopholes to avoid paying their debts, investors to search for deep pockets to recoup their losses, and creditors to scrutinize documents to assert priority over assets, all while assets are diminishing in value. Such circumstances usually lead to claims against both lawyers on either side of the deal as well as the lawyers for other parties.

However, as the trajectory of economic decline and recovery in the next year is uncertain, it is difficult to predict the effect on the fund. There is also a possibility that financial difficulties may cause lawyers to misappropriate trust funds, leading to an increase in trust protection claims under Part B.

On the other hand, offsetting this slightly is a reduction in reports we experienced in April and May (however, June returned to higher than normal levels). This likely reflects the effect of the early stages of the lockdown when lawyers were performing less work, making fewer errors, and reporting fewer claims.

Social engineering frauds

The expanded coverage under Part C for trust shortages caused by certain social engineering scams came into effect in 2017. Our experience with claims is more or less in line with projections of an average of 2 claims per year. In 2017, we received 2 covered claims, 1 claim in 2018, and 2 claims in 2019. To date, these claims have resulted in payments from the fund totaling \$720,000. Late last month, we received our first Part C report in 2020.

Real estate

In the real estate arena, claims arising from the Real Estate Development Marketing Act now account for \$5.5M of payments and a projected further exposure of \$1.7M. The number of reports and payments had been decreasing until we received 5 REDMA reports in 2020, 2 with total reserves of almost \$1M.

On other fronts, the BC government's tax on foreign purchases of Vancouver real estate has, to date, given rise to 33 claims against lawyers, with a total incurred (total reserves and payments) of \$4.9M. We are presently focusing risk management attention on this area. In addition, the provincial government's anti-money-laundering-property-transparency measures involved a new PPT form and land ownership registry, and imposed heightened obligations for lawyers acting for purchasers to disclose beneficial interests. We conducted proactive risk management on the PPT form and have received no claims to date. The new disclosure requirements are expected to be in force in the fall, and may also generate claims. We are cautiously optimistic, however, that our extensive risk management efforts on this aspect of the AML initiative will moderate its impact on claims.

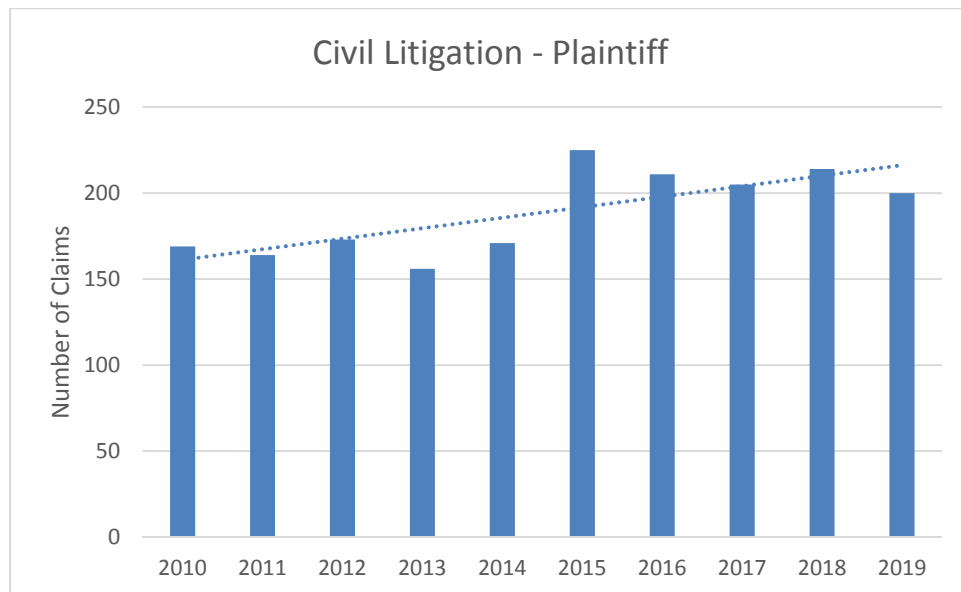
More broadly, as illustrated in the graph below, the overall frequency of reports arising from commercial and residential real estate practice, combined, has remained relatively consistent since the end of the impact of the recession. We also know that claims against realtors have dropped significantly in recent months due to COVID-19, and expect they will for lawyers as well. The severity risk of real estate claims is gradually trending upward, but fortunately we have not seen a sharp market correction, which

would lead to even more and larger claims against lawyers. We continue to monitor this risk.



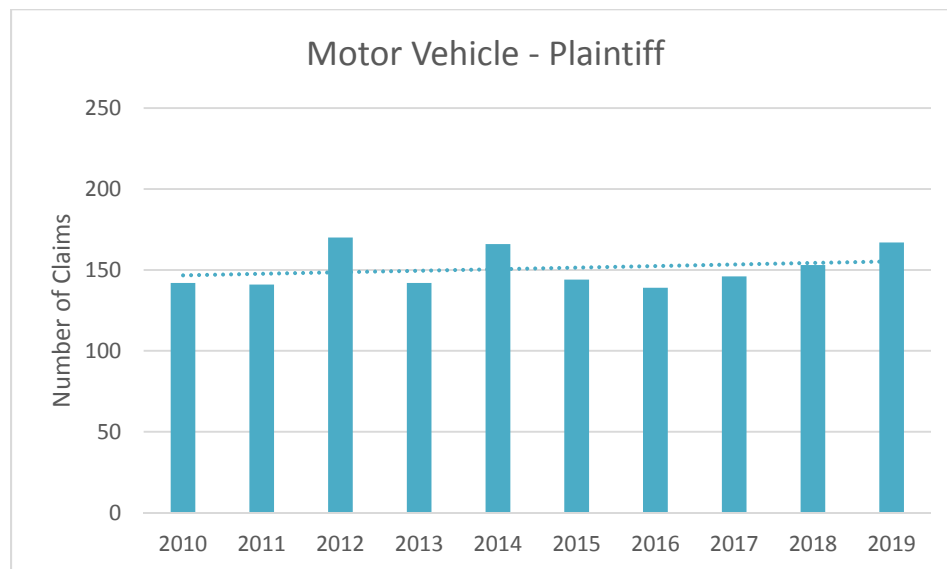
Other practice areas

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



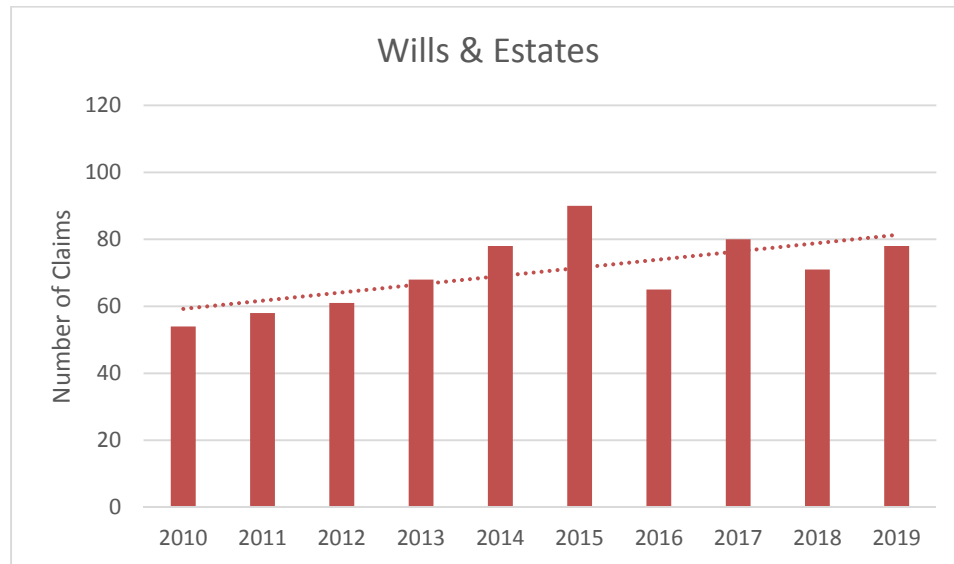
Motor Vehicle practice on the plaintiff's side is another area where we may see increased risk in the near-term but a decrease in the long-term. The government's initiative to fold all actions for Part 7 benefits (scope now significantly expanded) and "minor injury" claims into the exclusive jurisdiction of the Civil Resolution Tribunal last April 1 may catch some lawyers off-guard. Lawyers starting actions in the wrong venue, or failing to send section 103 notices to ICBC to suspend the running of the limitation period will lead to additional and larger claims – but in limited numbers – as our risk management efforts are expected to pay off.

More significantly, over the longer horizon, MVA claims will drop substantially when no-fault insurance becomes a reality in BC. As demonstrated in the graph below (2019 adjusted), MVA practice for plaintiffs has given rise to a steady stream of claims, usually for missed limitations and "settler's remorse". We will monitor this area closely for changes in report rate, both up and down. We will also be watching for an increase in claims elsewhere due to lawyers moving from MVA practice to other areas of law where they lack experience. We expect over the next couple of years a large number of personal injury lawyers to pivot to family, wills & estates, medical malpractice, employment law, other insurance defence work, and general litigation.

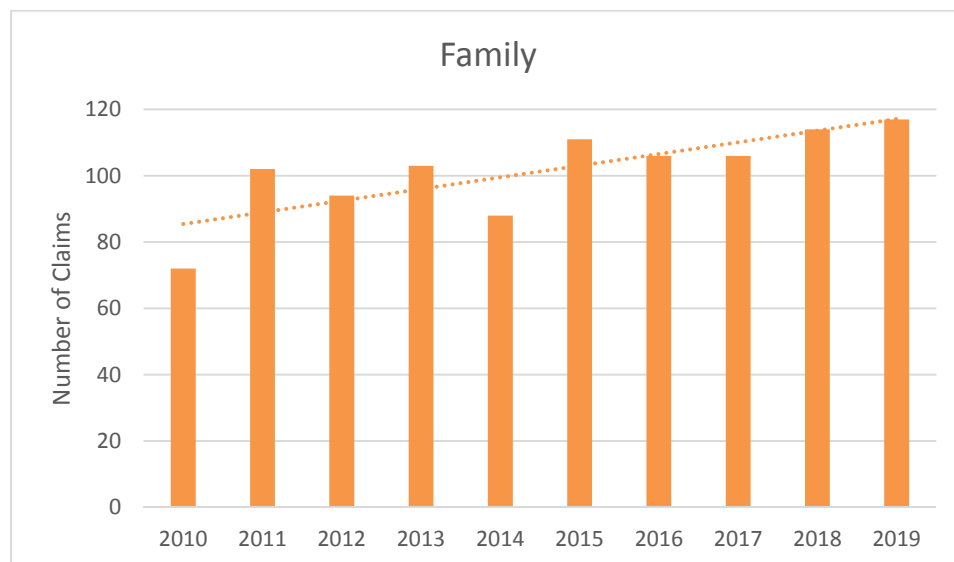


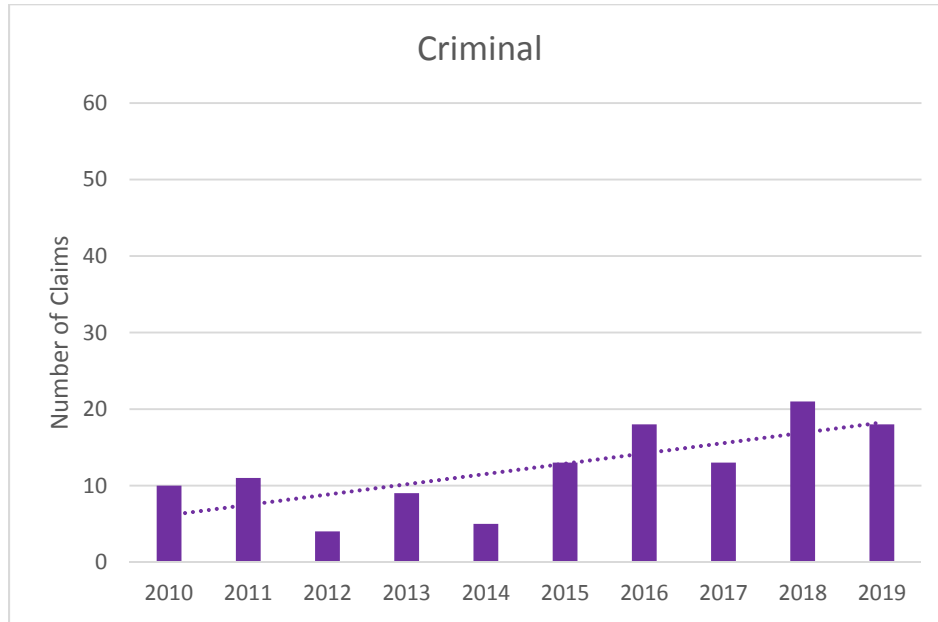
The *Wills, Estates and Succession Act* and probate rules came into effect in March, 2014. They remain likely to give rise to claims against lawyers for failing to adequately satisfy themselves and document that the will reflects the testator's true intentions, free from undue influence. On the other hand, the opportunity to repair faulty wills has expanded under *WESA*, reducing the cost of claims against lawyers for drafting and execution errors. The graph below illustrates that while claims related to wills and estates have increased, given our aging demographic they have not increased as significantly as one might have expected over the 10-year period. Nonetheless, we

foresee the wills and estates practice area generating increasing numbers of future claims as the population ages and passes on substantial wealth to beneficiaries.



Two practice areas whose numbers have grown over the last 10 years are family and criminal (for “ineffective assistance of counsel” claims). See graphs below. Overall, however, criminal generates few reports and family, for the most part, modest indemnity payments.





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

Investment Returns

The fourth factor is the return on investments available to fund the program. The 2019 return on LIF long-term investments – at 14.1% – was slightly higher than the benchmark return of 13.1%. Given the current economic situation, investment returns for the current and subsequent years are difficult to predict, so the long term investment policy rate of return has been budgeted.

Minimum Capital (Net Asset) Requirements

In addition to the investment return, there is a need to maintain a certain amount of the fund for contingencies and adverse developments. Applying the Minimum Capital Test (MCT) – an industry-wide solvency benchmark for insurers – the Fund's actuary analyzed LIF's future risks relative to its net assets and advised on an appropriate level of capital funding. His view was that as of 2020 Q1, LIF's MCT ratio was 220%, and the program was appropriately funded based on an internal target capital ratio of 189%, at a minimum.

Net Assets

The LIF net assets as at December 31, 2019 were \$97.9M, including \$17.5M set aside for trust protection claims under Part B, and fell to \$79.7M as of 2020 Q1. The unrestricted net asset position of the fund at March 31, 2020 was therefore \$62.2M, up \$2.8M from the previous year at \$59.4M.

Revenue

Looking ahead to 2021, the total LIF assessment revenues are budgeted at \$15.7M, which is based on 7,691 full-time and 1,715 part-time covered lawyers. As mentioned above, this is \$352K less than the 2020 budgeted fee revenue of \$16M. Investment income is budgeted at \$8.5M, based on an estimated investment return of 5% (see Appendix D).

Expenses

Operating expenses for 2021, excluding the provision for claim payments, are budgeted at \$8.5M, a decrease of \$250,000, 2.9% less than the 2020 budget (Appendix D). The decrease is largely attributed to a reduction in the budget for office and legal expense relative to the legal and corporate advice and other measures to enhance the separation of LIF. We expect to implement most measures in 2020.

Other Assets

As referenced in our Fee Recommendation Report last year, we expected to and did transfer \$1.16M from Trust Assurance to LIF. This year, we do not expect funds from Trust Assurance.

Recommendation for 2021

The indemnity fee increased to \$1,800 in 2018 after having been set at \$1,750 for the previous seven years. It has remained at \$1,800 for the last three years. Taking all factors into account, the indemnity fee will remain at \$1,800 (full-time) and \$900 (part-time) for 2021.

Annual Practice Fee and Indemnity Fee

The 2021 annual practice fee is set at \$2,289.12 and the indemnity fee is set at \$1,800.00. This is the same as the 2020 annual mandatory fees.

The 2021 mandatory fees for practicing, covered lawyers consists of the following:

The Law Society of BC
2021 Fee Recommendation

	Funding (in 000's)				Per Lawyer			
	2021	2020	Change (\$)	Change (%)	2021	2020	Change (\$)	Change (%)
Law Society Operating Expenses	\$ 29,156	\$ 29,295	(139)	-0.5%	\$ 1,903.99	\$ 1,903.99	\$ -	0.0%
Federation of Law Societies	364	361	3	0.8%	28.12	28.12	-	
CanLII	539	539	0	0.0%	41.94	41.94	-	
CLBC*	2,694	2,615	79	3.0%	203.57	203.57	-	
The Advocate**	347	347	-	0.0%	22.26	22.26	-	
LAP*	792	792	-	0.0%	61.69	61.69	-	
Pro bono/Access*	363	354	9	2.5%	27.56	27.56	-	
Annual Practice Fee					\$ 2,289.12	\$ 2,289.12	\$ -	0.0%
Indemnity Fee					\$ 1,800.00	\$ 1,800.00	\$ -	0.0%
Total Mandatory Fee					\$ 4,089.12	\$ 4,089.12	\$ -	0.0%

*2021 full fee paying equivalent members projected at 12,673

**2021 practicing, non-practicing and retired members projected at 15,601

Bencher Resolutions for 2021 Practice and Indemnity Fees

The following Bencher resolutions are adopted:

Be it resolved that:

- Effective January 1, 2021, the practice fee be set at \$2,289.12, pursuant to section 23(1)(a) of the Legal Profession Act.

Be it resolved that:

- the indemnity fee for 2021 pursuant to section 30(3) of the *Legal Profession Act* be set at \$1,800;
- the part-time indemnity fee for 2021 pursuant to Rule 3-40(2) be set at \$900; and
- the indemnity surcharge for 2021 pursuant to Rule 3-44(2) be set at \$1,000.

APPENDIX A – GENERAL FUND – Operating Budget

THE LAW SOCIETY OF BRITISH COLUMBIA
OPERATING BUDGET (excluding capital/depreciation)
For the Year ended December 31, 2021
GENERAL FUND SUMMARY

	2021 Budget	2020 Budget	2019 Actual	2021B vs 2020B Variance	%	2021B vs 2019A Variance	%
GENERAL FUND REVENUES							
Practice fees	23,187,887	22,833,314	21,999,953				
PLTC and enrolment fees	1,752,750	1,874,050	1,944,095				
Electronic filing revenue	700,000	700,000	766,429				
Interest income	255,000	582,500	643,551				
Credentials and membership services	634,745	678,425	678,612				
Fines & penalties	275,000	315,000	300,752				
Program cost recoveries	122,300	162,300	103,935				
Subscriptions	-	-	1,863				
Insurance recoveries	-	580,000	731,372				
Other cost recoveries	10,000	10,000	24,082				
Other revenue	186,600	181,600	222,971				
Building revenue and recoveries	1,382,214	1,377,963	1,339,447				
TOTAL GENERAL FUND REVENUES	28,506,496	29,295,151	28,757,063	(788,655)	-2.7%	(250,567)	-0.9%
GENERAL FUND EXPENSES							
Benchers Governance and Events	932,745	1,081,527	1,050,355				
Corporate Services	3,685,823	3,751,858	3,350,338				
Education & Practice	5,304,641	5,425,704	5,093,863				
Communications and Information Services	2,266,254	2,216,834	1,949,212				
Policy and Legal Services	2,471,673	2,511,673	2,030,338				
Regulation	12,523,093	12,308,119	10,949,996				
Building costs	1,972,267	1,999,437	1,875,607				
TOTAL GENERAL FUND EXPENSES	29,156,496	29,295,151	26,299,710	(138,655)	-0.5%	2,856,786	10.9%
GENERAL FUND NET CONTRIBUTION	(650,000)	-	2,457,353	(650,000)		(3,107,353)	
Trust Assurance Program							
Trust Administration Fee Revenue	3,300,000	3,593,993	3,470,785				
Trust Administration Department	3,432,737	3,593,993	3,276,744				
Net Trust Assurance Program	(132,737)	-	194,041	(132,737)		(326,778)	
TOTAL NET GENERAL FUND & TAP CONTRIBUTION	(782,737)	-	2,651,394	(782,737)		(3,434,130)	

APPENDIX B – GENERAL FUND – Revenues and Expenses

	2021 Budget	2020 Budget	2019 Actual	2021 vs 2020 Budget Var	2021 v 2019 Actual Var
REVENUES					
Practice Fees	23,187,887	22,833,314	21,999,953	354,574	1,187,934
PLTC and Enrolment Fees	1,752,750	1,874,050	1,944,095	(121,300)	(191,345)
Electronic Filing Revenue	700,000	700,000	766,429	-	(66,429)
Interest income	255,000	582,500	643,551	(327,500)	(388,551)
Credentials and Membership Services	634,745	678,425	678,612	(43,680)	(43,867)
Fines & Penalties	275,000	315,000	300,752	(40,000)	(25,752)
Program Cost Recoveries	122,300	162,300	103,935	(40,000)	18,365
Subscriptions	-	-	1,863	-	(1,863)
Insurance Recoveries	-	580,000	731,372	(580,000)	(731,372)
Other Revenue	186,600	181,600	222,971	5,000	(36,371)
Other Cost Recoveries	10,000	10,000	24,082	-	(14,082)
Building Revenue and Recoveries	1,382,214	1,377,963	1,339,447	4,251	42,767
TOTAL GENERAL FUND REVENUES	28,506,496	29,295,152	28,757,063	(788,656)	(250,567)
EXPENSES					
Bencher Governance and Events					
Benchers Meetings	179,038	256,350	259,782	(77,312)	(80,744)
Office of the President	277,000	240,440	282,209	36,560	(5,209)
Benchers Retreat	132,200	132,200	118,687	-	13,513
Life Benchers Dinner	36,750	35,500	46,891	1,250	(10,141)
Certificate Luncheon	10,000	12,050	9,615	(2,050)	385
LS Award/Bench & Bar Dinner	2,800	6,650	775	(3,850)	2,026
Federation of Law Societies Mtgs	30,000	38,000	56,328	(8,000)	(26,328)
General Meetings	28,550	82,050	67,095	(53,500)	(38,545)
QC Reception	16,000	9,700	8,861	6,300	7,139
Welcome / Farewell Dinner	22,150	16,500	16,065	5,650	6,085
Volunteer Recognition	14,500	14,500	13,669	-	831
Gold Medal Award	6,700	6,700	8,190	-	(1,490)
2019 2nd AGM	-	-	2,231	-	(2,231)
AGM Reform	-	-	8,346	-	(8,346)
Executive Committee	12,700	23,700	24,994	(11,000)	(12,294)
Finance & Audit Committee	1,750	4,200	3,446	(2,450)	(1,696)
Equity & Diversity Advisory Committee	2,500	5,000	4,847	(2,500)	(2,347)
Access to Justice Advisory Committee (formerly Access to L	2,500	5,000	4,060	(2,500)	(1,560)
Rule of Law & Lawyer Independence Advisory Committee	2,500	6,500	8,428	(4,000)	(5,928)
Acts and Rules Committee	1,800	3,600	6,913	(1,800)	(5,113)
Family Law Task Force	-	-	116	-	(116)
Governance Committee	2,500	5,000	3,281	(2,500)	(781)
Legal Services Regulatory Framework Task Force	-	-	87	-	(87)
Law Firm Regulation Task Force	-	2,000	287	(2,000)	(287)
Legal Aid Task Force	-	5,000	19,900	(5,000)	(19,900)
Truth and Reconciliation Advisory Committee	5,000	10,000	8,700	(5,000)	(3,700)
Recruitment and Nominating Advisory Committee	-	-	253	-	(253)
Mental Health Task Force	-	5,000	8,947	(5,000)	(8,947)
Rule of Law and Lawyer Independence Lecture	-	10,000	10,189	(10,000)	(10,189)
Legal Aid Advisory Committee - Public Event	-	-	793	-	(793)
Futures Task Force	-	10,000	6,146	(10,000)	(6,146)
Licensed Paralegal Task Force	3,000	-	2,259	3,000	741
Lawyer Development Task Force	3,000	-	-	3,000	3,000
Anti Money Laundering Working Group	3,000	-	-	3,000	3,000
Bencher Contingency	-	75,000	-	(75,000)	-
Bencher Governance Allocated Funds Recovery	(160,776)	(210,867)	(246,219)	50,091	85,443
Executive Support Department	293,583	261,754	271,111	31,829	22,473
Elections	4,000	10,000	13,075	(6,000)	(9,075)
	932,745	1,081,527	1,050,355	(148,782)	(117,610)

	2021 Budget	2020 Budget	2019 Actual	2021 vs 2020 Budget Var	2021 v 2019 Actual Var
Corporate Services					
General Office	781,919	755,910	820,756	26,009	(38,837)
CEO Department	807,914	888,808	762,247	(80,894)	45,668
Finance	1,125,619	1,117,151	1,009,583	8,468	116,036
Human Resources	699,757	705,619	548,029	(5,862)	151,728
Records Management	270,614	284,370	209,724	(13,757)	60,890
	3,685,823	3,751,858	3,350,338	(66,035)	335,485
Education and Practice					
Licencing and Admissions	1,804,330	1,825,880	1,604,228	(21,549)	200,103
PLTC and Education	2,963,983	2,854,468	2,728,522	109,515	235,461
Practice Standards	483,150	678,652	644,107	(195,502)	(160,957)
Practice Support	53,178	66,704	117,006	(13,526)	(63,828)
	5,304,641	5,425,704	5,093,863	(121,063)	210,778
Communications and Information Services					
Communications	533,779	538,473	527,508	(4,694)	6,271
Information Services	1,732,475	1,678,361	1,421,704	54,114	310,771
	2,266,254	2,216,834	1,949,212	49,420	317,041
Policy and Legal Services					
Policy and Legal Services	1,456,961	1,495,470	1,184,545	(38,509)	272,417
Tribunal & Legislative Counsel	630,387	628,244	556,518	2,143	73,869
External litigation & Interventions	50,000	25,000	14,002	25,000	35,998
Unauthorized Practice	334,325	362,959	275,274	(28,634)	59,051
	2,471,673	2,511,673	2,030,338	(39,999)	441,335
Regulation					
CLO Department	874,959	857,844	542,958	17,116	332,002
Intake & Early Assessment	2,135,243	2,135,399	1,925,682	(156)	209,561
Discipline	2,821,329	2,826,423	2,892,588	(5,094)	(71,259)
Forensic Accounting	1,181,559	1,241,572	818,794	(60,013)	362,766
Investigations, Monitoring & Enforcement	3,663,544	3,406,770	3,152,573	256,773	510,970
Custodianships	1,846,459	1,840,111	1,617,402	6,348	229,056
	12,523,093	12,308,119	10,949,996	214,974	1,573,096
Building Occupancy Costs	1,972,267	1,999,437	1,875,607	(27,170)	96,660
TOTAL GENERAL FUND EXPENSES	29,156,496	29,295,152	26,299,710	(138,656)	2,856,786
GENERAL FUND INCOME/(LOSS)	(650,000)	-	2,457,353	(650,000)	(3,107,353)
TAF Revenue	3,300,000	3,593,993	3,470,785	(293,993)	(170,785)
Trust Assurance Department	3,432,737	3,593,993	3,276,744	(161,256)	155,993
Net Trust Assurance Program	(132,737)	-	194,041	(132,737)	(326,778)
TOTAL GENERAL FUND & TAP INCOME (LOSS)	(782,737)	-	2,651,394	(782,737)	(3,434,131)

APPENDIX C – CAPITAL PLAN

	<u>2021</u>	<u>2020</u>
Computer hardware – Monitors and desktop computers/printers	\$169,000	\$274,000
Computer software – Microsoft office and accounting software upgrades	\$224,000	\$179,000
Computer upgrades – LSIS redesign	\$88,000	\$88,000
Equipment, furniture and fixtures replacement	\$214,000	\$200,000
Building projects – Building cladding and window repairs, 839 Cambie roof replacement	\$1,036,000	\$770,000
Total	\$1,731,000	\$1,511,000

APPENDIX D – LAWYERS INDEMNITY FUND

THE LAW SOCIETY OF BRITISH COLUMBIA
Lawyers Indemnity Fund
For the year ended December 31, 2021
CONSOLIDATED STATEMENT OF REVENUE AND EXPENSE

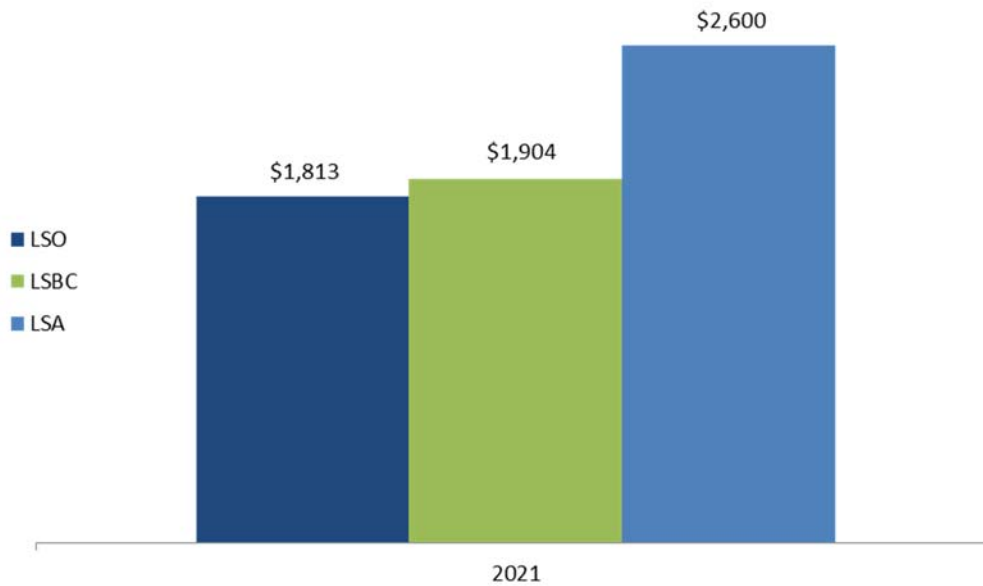
	2021 Budget	2020 Budget	Variance	%
REVENUE				
Annual Assessment	15,669,066	16,021,096		
Investment Income	8,528,272	9,089,849		
Other Income	65,000	65,000		
TOTAL REVENUE	24,262,338	25,175,945	(913,607)	-3.6%
LIF PROGRAM EXPENSE				
Actuaries, consultants and investment management fees	905,577	959,524		
Allocated office rent	323,829	323,829		
Contribution to program and administrative costs of General Fund	1,381,456	1,469,544		
Insurance - LIF e & o, stop-loss, and Part B	444,219	453,169		
Office and Legal	754,635	1,003,938		
Premium taxes	7,640	8,120		
Provision for settlement of claims	17,952,000	17,790,000		
Salaries, wages and benefits	3,598,808	3,621,587		
	25,368,164	25,629,710	(261,545)	-1.0%
LOSS PREVENTION EXPENSE				
Contribution to co-sponsored program costs of General Fund	1,055,628	881,820		
TOTAL EXPENSE	26,423,792	26,511,530	(87,737)	-0.3%
Net Contribution	(2,161,454)	(1,335,585)	(825,869)	

APPENDIX E – PRACTICE FEE COMPARISON

Other Law Societies' Practice Fees

- 2021 LSBC practice fee compared to 2020 LSO & LSA fees as the 2021 fees are not yet available.

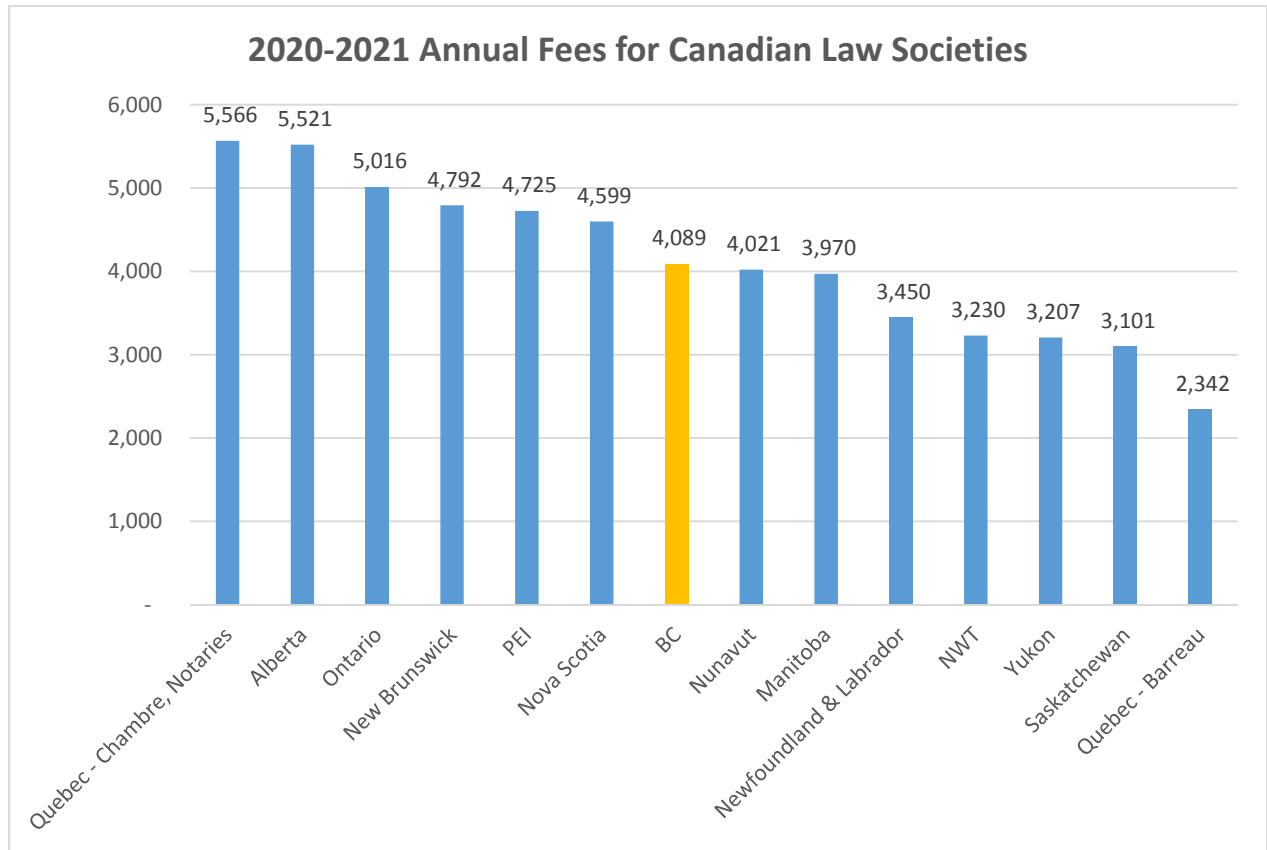
*Fees do not include external funding, if applicable, but include capital funding



APPENDIX F – MANDATORY FEE COMPARISON

Mandatory Fee Comparison - 2021 (Full Time Practicing Covered Lawyers)

*Assumes the same fee from 2020 for all Law Societies as 2021 has not yet been set





Memo

To: The Benchers
From: Natasha Dookie, Chief Legal Officer
Date: September 1, 2020
Subject: 2019 National Discipline Standards Implementation Report

Background

1. The National Discipline Standards were developed as a Federation of Law Societies of Canada initiative to create uniformly high standards for all stages of the processing of complaints and disciplinary matters. They are aspirational.
2. The standards have been revised several times since their official implementation across all law societies on January 1, 2015. The standards that were in effect for 2019 were those approved by the Council of the Federation of Law Societies of Canada in June 2018 [**Attachment 1**].
3. The National Discipline Standards Standing Committee has produced an Implementation Report for 2019 [**Attachment 2**], which also marks the fifth-year anniversary of the project.

Notables in the Implementation Report

4. 2019 was the first year a law society was able to meet all of the standards applicable to it: the Law Society of the Northwest Territories met 16 of the 16 standards. However, to date, no law society has met all 23 of the standards in their entirety.
5. Progress has been made by law societies in meeting the standards since they were officially implemented. In 2015, the average for all law societies for meeting the standards was 72%. For 2019, the average was 80%, representing an increase from 78% in 2018.
6. Our performance as against the standards exceeded the national average:

	2017	2018	2019

LSBC	84%	83%	84%
Average of all Law Societies	76%	78%	80%

We met:

- 18.5/22 standards in 2017; and,
- 19/23 standards in 2018; and
- 21/25¹ standards in 2019.

7. The standards we did not meet in 2019² were:

- Standard 9 (75% of hearings to be commenced within 9 months of the citation being authorized and 90% of hearings to be commenced within 12 months of the citation being authorized) – only 50% of law societies met this standard in 2019. As previously reported, due to staffing issues and an increase in the number of citations over the past couple of years, we were unable to meet this standard in 2019, however we significantly improved our performance in comparison to 2018.
- Standard 10 (90% of hearing panel decisions to be rendered within 90 days of the last submissions) – only 64% of law societies were able to meet this standard in 2019. We achieved 78%, which is our best level of compliance since the inception of the standards.
- Standard 20 (requires that there be a directory available with easily accessible information on discipline history for each lawyer) – only 71% of law societies were able to meet this standard in 2019. We have since made significant progress with regards to pre-September 2003 decisions and discipline histories dating back to 1985 are now posted online. The work on this project continues.

¹ While there are 23 standards in total, Standard 4 is divided into three parts (a, b, and c) which means law societies provide 25 separate responses.

² Standard 2 requires acknowledgment of 100% of written complaints within three days. We achieved 99.89% compliance, as there was one complaint that was not acknowledged within 3 business days due to an administrative error. For 2020, the Standard 2 requirement has been changed to 95% of written complaints have to be acknowledged in writing within 3 business days.

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

NATIONAL DISCIPLINE STANDARDS

(Approved June 11, 2018)

Timeliness

1. Telephone inquiries:

75% of telephone inquiries are acknowledged within one business day and 100% within two business days.

2. Written complaints:

100% of written complaints are acknowledged in writing within three business days.

3. Early resolution:

There is a system in place for early resolution of appropriate complaints.

4. Timeline to resolve or refer complaint:

(a) 80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months.

90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.

(b) Where a complaint is resolved and the complainant initiates an internal review or internal appeal process:

80% of all internal reviews or internal appeals are decided within 90 days.

90% of all internal reviews or internal appeals are decided within 120 days.

(c) Where a complaint has been referred back to the investigation stage from an internal review or internal appeal process:

80% of those matters are resolved or referred for a disciplinary or remedial response within a further 12 months.

90% of those matters are resolved or referred for a disciplinary or remedial response within a further 18 months.

5. Contact with complainant:

For 90% of open complaints there is contact with the complainant at least once every 90 days during the investigation stage.

6. Contact with lawyer or Québec notary:

For 90% of open complaints there is contact with the lawyer or Québec notary at least once every 90 days during the investigation stage.

7. Interim measures:

There is authority and a process for the law society to obtain an interlocutory or interim suspension, restrictions or conditions on a member's practice of law, as the public interest may require.

2

NATIONAL DISCIPLINE STANDARDS**(Approved June 11, 2018)****Hearings**

8. 75% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 60 days of authorization.

95% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 90 days of authorization.
9. 75% of all hearings commence within 9 months of authorization.
90% of all hearings commence within 12 months of authorization.
10. Reasons for 90% of all decisions are rendered within 90 days from the last date the panel receives submissions.

Public Participation

11. There is public participation at every stage of discipline, e.g. on all hearing panels of three or more, at least one public representative; on the charging committee, at least one public representative.
12. There is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee.

Transparency

13. Hearings are open to the public.
14. Reasons are provided for any decision to close hearings.
15. Notices of charge or citation are published promptly after a date for the hearing has been set.
16. Notices of hearing dates are published at least 60 days prior to the hearing, or such shorter time as the pre-hearing process allows.
17. A law society can share information about a lawyer or Québec notary, either upon request or at its own initiative, with any other law society, or can require a lawyer or Québec notary to disclose such information to all law societies to which they are a member. All information must be shared in a manner that protects solicitor-client privilege.
18. There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.

NATIONAL DISCIPLINE STANDARDS

(Approved June 11, 2018)

Accessibility

19. A complaint help form is available to complainants.
20. There is a directory available with status information on each lawyer or Québec notary, including easily accessible information on discipline history.

Qualification of Adjudicators and Volunteers

21. There is ongoing mandatory training for all adjudicators with refresher training no less often than once a year, and the curriculum for mandatory training will comply with the national curriculum.
22. There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.

Reporting on Standards

23. Each law society will report annually to its governing body on the status of the standards.

**Standing Committee on
National Discipline Standards**

2019 IMPLEMENTATION REPORT

August 2020

Five-Year Anniversary Edition

INTRODUCTION

1. The National Discipline Standards were implemented across all law societies on January 1, 2015. This year marks the fifth-year anniversary of the project. Reaching this milestone has prompted the Standing Committee on National Discipline Standards (“the Standing Committee”) to reflect on how the project has progressed, and the tools and resources that have been developed to support law societies in their discipline work. Taking stock of what has been achieved through the standards over the first five years – including the successes and challenges of this work – provides a lens through which to envision the future. Looking back to look forward is also a mark of good governance and helps to assess whether the project is achieving its goals. This report will highlight some of these reflections, which were also presented in a memorandum to Federation Council on June 8, 2020.

2. This is the fourth Implementation Report prepared by the Standing Committee since the standards were implemented. It provides a high-level analysis of law society performance against the standards in 2019, including notable changes from 2018 (and previous years where appropriate). The analysis begins under the heading “2019 Annual Report Summary” beginning at paragraph 25.

3. This report is prepared for internal law society use and distribution only.

GOALS OF THE NATIONAL DISCIPLINE STANDARDS

4. When law societies undertook this project, they chose to set challenging, aspirational standards with the goal that they would promote a culture of performance improvement, including recognition and adoption of best practices (see **Appendix A** for further information). The standards reflect law societies’ recognition of the importance of having complaint and discipline processes that are consistent, timely, efficient and transparent to protect the public and foster public confidence in the regulation of the practice of law.

5. It was always recognized that not all law societies would be able to achieve all of the standards and there are various reasons for their inability to do so. For example, legislation may prohibit standards from being met or the law society’s discipline scheme may render certain standards inapplicable. Also, fluctuating staff resources and volume of matters may have an impact on the ability to meet certain standards in a particular year. Each law society, however, has aspired to meet them and in doing so experienced improvements in performance. In the words of one Standing Committee member: “had they [law societies] been able to meet 100% of the standards within the first couple of years, it would have meant the standards were too easy”.

6. Each law society completes an annual report documenting their progress in meeting the standards. The reports are collected in March for the previous calendar year and are reviewed by the Standing Committee in the spring. An [Implementation Guide](#) was created to accompany the standards and assist law society staff with implementation and reporting. Both documents are reviewed and updated regularly.

EVOLUTION OF THE STANDARDS (2015-2020)

7. The National Discipline Standards address such issues as timeliness (e.g., the time it takes to resolve a complaint or hold a hearing), public participation, transparency, accessibility,

and the qualification and training of adjudicators and investigators. At the time of implementation there were 21 standards. During the first few years of implementation the Standing Committee focused primarily on ensuring the standards, as articulated, met the intended goals. The annual review of law society reports enabled the Standing Committee to examine the language and practical impacts of the standards. This review, along with feedback gathered through the Discipline Administrator's Steering Committee ("DASC") and the Standing Committee members directly, led to clarification and adjustments to the standards and Implementation Guide.

8. The standards have been revised several times since the beginning of the project. In 2016 and 2018, Council approved revisions to (former) Standards 3, 9, 16, and 20. These changes were largely to adjust the language of the standards for greater clarity. In June 2019, Council approved a minor change to Standard 2 lowering the requirement for law societies to acknowledge 100% of written complaints within three business days to 95%. A slightly lower standard was considered more appropriate and in line with the other standards, none of which require 100% compliance.

9. As the Standing Committee's work progressed, it also began to explore issues in the complaints and discipline process that might warrant the creation of new standards. In June 2018 Council approved the addition of two new standards – early resolution of complaints (Standard 3) and interim measures (Standard 7), bringing the total to 23 and resulting in a reorganization of the numbering of the standards.

10. The Committee's process for pursuing new standards involves regular consultation and dialogue with law society discipline administrators. Informally, this occurs with the discipline administrators who participate on the Committee. The Standing Committee also engages directly with, and has a seat on, the DASC. Input from discipline administrators is critical to the work of the Standing Committee and has led, for example, to the Committee changing course when discipline administrators held the view that a proposed standard would not make sense in practice. Ongoing dialogue has been important for enhancing the relationship between the Standing Committee and the DASC and ensuring the continued value of the project.

11. In May 2019 the Standing Committee developed internal guidance for determining when an issue might lead to the development of a standard. It sought input from the DASC in generating a list of factors to be considered in evaluating new ideas or issues. A sampling of factors includes: Can it [the subject of the proposed standard] be measured objectively? Can it be standardized for all? Will it enhance efficiency, timeliness, transparency of processes? Will it allow law societies to avoid, mitigate or manage risk? These factors are intended as general guidance to the Standing Committee in determining when an idea might lead to a standard.

THE PROMOTION OF BEST PRACTICES

12. The National Discipline Standards project encourages law societies to reflect on their own processes: e.g. to identify elements that may be contributing to delay or an inability to meet a standard, and opportunities for improved or alternative processes. Law society discipline administrators have observed that, in some instances, having standards has increased their board members' understanding of and support for changes to existing complaint and discipline processes (e.g. rule changes, added resources).

13. Since its inception, the Standing Committee has also developed tools to assist law societies in implementing the standards and to promote best practices. This work has often included surveys of law society rules and practices and has led to enhanced information sharing and reflection on important issues in this area of work. The following are a sampling of best practices, tools and supports initiated by the Standing Committee since 2015.

Model Rule on Sharing Information

14. In 2015, eight out of 13 law societies reported that they could not meet Standard 17 (i.e. law societies can share information about a lawyer or Quebec notary with one another in a way that protects solicitor-client privilege). Between 2016 and 2017 the Standing Committee identified the main challenge for law societies was that their legislation and/or rules did not permit the sharing of information. In 2018 the Standing Committee proposed revised wording to the standard and the Implementation Guide to clarify its purpose, and it created a model rule. As a result, 13 out of 14 law societies met the standard in 2018 and 2019.

Guidance on Reporting Criminal Activity

15. Standard 18 requires law societies to have the “ability to report to police about criminal activity in a manner that protects solicitor/client privilege”. In 2015, nine out of 14 (64%) law societies met the standard. Discussions between 2018 and 2019, paired with surveys conducted by the DASC, led the Standing Committee to amend the Implementation Guide commentary to clarify the purpose and expectations associated with the standard. Included in that amendment was best practice guidance to help law societies determine when to report criminal activity. The guidance relied largely on the Nova Scotia Barristers’ Society’s policy, with additional guidance and direction provided from other jurisdictions. In 2018 and 2019 law society performance on this standard improved to 12 out of 14 (86%).

Discipline Information-Sharing Database

16. In 2018, the Standing Committee conducted a survey among the DASC to ascertain whether law societies were aware of the discipline status of their members in other jurisdictions; how/if they communicate with each other when discipline is imposed, and what authority and processes they rely on to reciprocally enforce orders. The rationale underpinning this inquiry was that some evidence suggests an increase in the number of lawyers licensed in more than one jurisdiction, and a lack of access to current information about the discipline status of these lawyers raises public protection concerns. The survey revealed that while most law societies have a process available for reciprocally enforcing discipline orders, they are rarely used. The survey also highlighted inconsistencies in law society reporting requirements about sanctions in other jurisdictions, and gaps in information sharing among law societies.

17. The DASC was closely involved in this work and was considered better suited to consider the issues further. A subgroup of the DASC was formed to consider how law societies can more effectively share information among themselves: the Discipline Information Sharing Working Group (“DISWG”). The DISWG is currently engaging the American Bar Association about its national lawyer discipline databank as a possible model for a Canadian databank.

Adjudicator Toolkit

18. In 2019 the Standing Committee created the Adjudicator Toolkit Working Group to explore, gather and develop practical tools and resources for assisting law societies with the hearing-related standards, which tend to be more challenging. Several law societies have tools and resources for their adjudicators and hearing staff such as checklists, document templates, procedure manuals and policies. The Working Group intends to assist law societies, in particular the smaller jurisdictions, by compiling a toolkit that would share and/or build upon these resources and complement the National Adjudicator Training Curriculum requirements.

Abeyances

19. Standards 4 through 6 set timelines for responding to complaints and contacting the member and complainant. The Standing Committee conducted a survey in late 2019 and requested law society policies, if available, to better understand how abeyances are handled in each jurisdiction. The results revealed that not all law societies treat matters held in abeyance (i.e. put on hold pending the outcome of another proceeding) in the same way for the purposes of reporting on the standards, which may be skewing the reporting statistics. The Standing Committee is developing guidance for the Implementation Guide and will share existing abeyance policies with the discipline administrators through the DASC.

SPECIAL PROJECTS

National Adjudicator Training Curriculum

20. Standard 21 requires ongoing mandatory training for all adjudicators. A National Adjudicator Training Curriculum (“NATC”) was launched in 2016 to assist law societies in meeting Standard 21. The NATC was developed through a designated working group of the Standing Committee comprised of individuals with extensive expertise in adjudication and training design.

21. The NATC was developed to be flexible enough to meet the needs of a broad spectrum of trainees. The curriculum identifies “core” and “supplementary” competency areas required for inclusion in law society adjudicator training programs. The competency areas were identified through a rigorous process that involved a national survey of law society adjudicators and review of adjudicator training theory and resources from around the world. Law societies have the discretion to determine the curriculum used for their training, so long as it complies with the national curriculum.

22. In 2015, only half of law societies reported being able to meet the standard. Since that time, and since the release of the NATC, law societies have reported continuous progress. This progress is due in part to the Law Society of Alberta’s creation of a comprehensive adjudicator training program that aligns with the competencies contained in the NATC, and that it licenses for purchase by other law societies. In 2019, 10 out of 14 (71%) law societies reported meeting Standard 21. The creation of the NATC paired with the national sharing of adjudicator training materials is a point of pride and achievement for the National Discipline Standards project.

Peer Review Pilot Project

23. In 2018 the Standing Committee launched a voluntary two-year Peer Review Pilot Project (“PRPP”). The project pairs discipline administrators from different jurisdictions for a peer review of the hosting law society’s complaints and discipline process. The goal is mutual learning. The visiting discipline administrator and the host have the opportunity to learn from each other and identify best practices or other ideas that may be adopted or modified to improve performance in their own jurisdiction.

24. Three pairings have taken place since the launch of the pilot. Preliminary feedback received through exit surveys completed by the participating law societies has been positive. The pilot was set to end on May 31, 2020, but in light of interest in further pairings and the ongoing impacts of COVID-19, the Standing Committee has extended the PRPP for one year. At this early stage, the Standing Committee is optimistic that this initiative is fostering practical benefits and useful guidance in relation to law society complaint and discipline processes.

2019 ANNUAL REPORT SUMMARY

25. The changes to the standards and complementary initiatives outlined above have aided in promoting national discussions on best practices and enhancing law society complaint and discipline processes. While some of the impacts of those changes have already been outlined, the below analysis of the 2019 annual reports provides additional insights and notes the impacts that are anticipated for 2020.

26. The following paragraphs also provide a high-level comparative analysis of the 2019 data with prior years, where appropriate (see **Appendix B** for data between 2017 and 2019)¹. Where it is not possible to draw trends, this report flags observations about law society performance or responses that may be of interest to the law societies. As with past years, law societies should be cautious not to draw too many conclusions from the data without a deeper analysis of why changes have occurred year over year. The analysis takes into consideration the standards’ aspirational nature and the relatively small sample size (i.e. 14 jurisdictions). It also recognizes that several standards are either inapplicable to, or elicit few matters for the smaller jurisdictions, and therefore any small change, for example one outlier case, can skew the data significantly. In addition, the data does not isolate standards that are “almost met”; there are instances when law societies come close to meeting a standard (e.g. 86% of complaints were contacted at least once every 90 days but not 90% for Standard 5), but because they fall short of the threshold the standard is recorded as ‘Not Met’. The analysis makes note of these circumstances where it is relevant to do so.

General Findings

27. All fourteen law societies submitted their annual report for 2019. The national average for meeting the standards was 80%, representing an increase from 78% in 2018. It also represents an overall upward trajectory since 2015 when the national average was 72%. The Standing Committee considers this overall progression in performance to reflect the success of the project in meeting its intended goals.

¹ Data from 2015 has largely been excluded given the breadth of changes to the standards that have been made since that time.

2015	72%
2016	79%*
2017	76%
2018	78%
2019	80%

*only 13 law societies submitted reports in 2016 which may have skewed the national average.

28. As with past years, there continues to be fluctuations in law society performance in meeting specific standards. In 2019, ten out of 14 law societies showed overall improvements. Law societies showed improvement in meeting seven standards (4a, 4c, 8, 10, 12, 21 and 23), a decrease in meeting eight standards (1, 4b, 5, 6, 9, 15, 16, 19) and no change in meeting the remaining eight standards². With few exceptions, the reports indicate that challenges with meeting the standards are minor, and in many cases law societies fell just short of meeting a standard due to reasons outside of their control, a small sample size, process changes or a lack of resources. The Standing Committee continues to monitor the standards that are more challenging to meet and consider ways it may support law societies in meeting them.

Standards Met by All or Most Law Societies

29. Last year was the first year a law society was able to meet all of the standards applicable to it: the Law Society of the Northwest Territories met 16 of the 16 standards.³ To date, no law society has met all of the standards in their entirety (i.e. all 23 standards, when all are applicable).

30. There was high performance on the two new standards implemented in 2019: Standard 3 (early resolution) and Standard 7 (interim measures). In the case of the former, 12 out of 14 (86%) law societies met the standard, with the remaining two reporting that they will likely be able to meet the standard in 2020. In the case of the latter, all 14 law societies were able to meet the standard in 2019.

31. There was also high performance on Standard 23 (annual reporting to governing body) where all 14 law societies reported meeting the standard for the first time since implementation. Standard 18 (accessible complaint help form) has been met by all fourteen law societies every year since 2016.

32. The following standards were met by all law societies that deemed them applicable: Standard 4c (timelines for referring complaint back to investigation), Standard 13 (hearings open to public) and Standard 14 (reasons for decision to close hearing).

33. The following standards were met by all but one or two law societies (where they were deemed applicable): Standard 4a (timeline for resolving or referring complaints), Standard 12 (complaints review process), Standard 15 (publication of notices of charge or citation), Standard 16 (publication of notices of hearing dates), Standard 17 (ability to share information with other law societies) and Standard 18 (ability to report to police).

² Note: the two new standards were not included in this section of the analysis.

³ The LSNWT did not have any hearings in 2019. The majority of the standards deemed “not applicable” were hearing-related.

Most Challenging Standards

34. In 2019, the most challenging standards to meet were: Standard 5 (timeliness for contacting complainant), Standard 6 (timeliness for contacting the lawyer or Quebec notary) and Standard 9 (commencement of hearings). These standards have generally been more challenging than others but in 2019 all three had an average performance of 50%, which is a significant decrease from previous years and the lowest performance of all the standards. A summary of the performance on each standard is provided below.

35. For Standard 5 the reporting highlighted that three of the seven law societies that did not meet the standard were within 5% of meeting it, which suggests that they are not experiencing significant challenges. The other four law societies provided varied reasons for not meeting the standard: two reported that they did not track this data but are looking into tracking options for future reporting; one cited a lack of resources for its performance; and the other reported a high volume of complaints, which makes it challenging to meet the standard.

36. For Standard 6 the reporting showed similar results to Standard 5 with the same three law societies being within 10% of meeting the standard, and the remaining four reporting the same reasons for not meeting it as reported for Standard 5.

37. Standard 9 is divided into two parts. One law society was unable to meet the first part because of one matter but was able to meet the second part. The remaining five law societies reported challenges with both parts in 2019, which is consistent with their reporting on this standard in past years.

- Part 1 (75% of hearings commence within 9 months) performance ranged from 0% to 62%. The reported challenges include: a significant backlog due to an increase in hearing volume and staff turnover, external factors (e.g. parties not adhering to timelines, reasons out of their control), and resource issues. All five law societies identified actions they are taking to improve their performance. Two notable trends in these actions were the hiring of additional outside counsel and/or staff, and an increased use of pre-hearing resolution processes.
- Part 2 (90% of hearings commence within 12 months) performance ranged from 7% to 80%. All five law societies reported the same challenges and actions referenced in Part 1.

38. Reporting on Standard 9 has been consistently lower than other standards, which suggests that it is one of the more challenging standards to meet. The actions planned by law societies demonstrate that they are aware of the challenges and are steadily working to improve their performance. This standard may be an opportunity for law societies to share best practices with one another to assist in their performance. The Standing Committee may also consider how it can assist.

39. The next most challenging standard for law societies to meet in 2019 was Standard 10 (timeline for reasons for decisions) with an average of 64% (7/11). Despite being a challenging standard, the performance in 2019 is an improvement from 2018 when this standard was reportedly the most challenging to meet (45% or 5/11). Various reasons were provided for not meeting the standard in 2018, while none were provided in 2019; only the statistical data was

made available. Three of the four law societies were within 12% of meeting the standard and they all noted that a reminder system is in place (or was recently implemented) to ensure decision-makers are aware of deadlines for finalizing reasons. This suggests that efforts are being made to encourage higher performance.

40. Except Standard 2, explained below, the average performance on all other standards falls between 70% and 100%.

Anticipated Performance Improvements in 2020

41. As mentioned at paragraph 8, the June 2019 revision to lower Standard 2 (timeline for responding to written complaints) from 100% to 95% was implemented in January 1, 2020. The 2019 reporting did not show any change in performance from the previous two years (i.e. 8/14 or 57% meet the standard) but feedback from the six law societies that have not met the standard highlighted that most anticipate meeting it in 2020.

42. As mentioned at paragraph 15, law societies have shown continuous improvement in meeting Standard 18 (disclosure to police about criminal activity). The 2019 reporting showed an average performance of 86% (12/14). One of two remaining law societies that cannot meet the standard noted in its annual report that it anticipates meeting it in 2020 because of recently amended legislation. If so, the anticipated average in 2020 will be 93%.

43. Lastly, as mentioned at paragraph 22, Standard 21 (ongoing mandatory training for adjudicators) showed an average performance of 71% in 2019 (10/14), up from 60% in 2018 (8.5/14)⁴. Three of the four law societies that reported not meeting the standard indicated in their 2019 reports that they purchased the Law Society of Alberta's adjudicator training program between 2019 and early 2020, with the goal of implementation in the 2020 reporting year. As a result, it is anticipated that the average performance will increase significantly in 2020.

Current State and Notable Observations

44. Overall, law societies' progress in meeting the standards between 2017 and 2019 has remained relatively consistent. The Standing Committee observed during its 2019 and 2020 spring meetings that the National Discipline Standards project has hit a period of stability. Law societies appear comfortable with reporting on the standards and are working to improve their performance⁵. There are no new standards or revisions to the standards proposed at this time.

45. Also, while there may be fluctuations from year-to-year in a law society's ability to meet the standards, it is observed that the existence of the standards has generally resulted in process and performance enhancements.

⁴ Note that the average has fluctuated over the years, starting with 50% in 2015, then 62% in 2016 and 75% in 2017, before lowering to 60% in 2018. This fluctuation is due, in part, to inconsistency in the number of law societies who deemed this standard "applicable" to them over the years.

⁵ In the last two years the Standing Committee has asked law societies to explain in the annual reports what steps they are taking or intend to take to address any challenges they are experiencing in meeting the standards. The responses highlight law societies' commitment to identifying and/or implementing new tools, resources and processes to enable them to meet the standard(s) in the future.

46. There has been no change to the reporting on Standard 20 (availability of discipline status information on a directory) for the last three years (10/14 or 71%). The Standing Committee created a dedicated working group in 2017 to look closer at how law societies publish information publicly about their members, particularly discipline information, and to develop recommendations to clarify how the standard should be interpreted and applied. Given the overlap between this work and the work of the DISWG on a national (internal) discipline sharing database, the work of the two groups has been combined under the DISWG. It remains to be seen how these projects may affect the National Discipline Standards in the years ahead.

47. In 2019 there appeared to be some inconsistency in reporting language used (i.e. the use of “Not Met” vs. “Not Applicable”) from previous years. The Standing Committee is aware that it may not be the same person filling out the reports every year, which may account for this change, or it may not be clear when to use specific terms. The Standing Committee plans to clarify this terminology in the Implementation Guide with the aim of encouraging consistent reporting to permit comparative analysis across law societies year-to-year.

LOOKING FORWARD

48. The Standing Committee will continue to monitor progress on the standards annually and watch for developments occurring within complaint and discipline processes. Discussions during the Federation’s 2019 annual conference revealed that promoting well-being and addressing wellness challenges is a growing priority for law societies. There was some discussion on the role of the regulator in recognizing and accommodating mental health and substance use challenges in the disciplinary process. For example, some law societies have developed (or are looking into) diversionary programs (e.g. Fitness to Practice), and others have considered additional training needs and supports for law society staff. This is an area that the Standing Committee is monitoring with interest.

49. The Standing Committee has also been monitoring the work of the Federation’s Truth and Reconciliation Commission Calls to Action Advisory Committee (Advisory Committee) with active interest. The Advisory Committee put forward recommendations to Council in June 2020. The Standing Committee will consider the impact of the recommendations on its work.

50. The impacts of COVID-19 on law society complaint and discipline processes in 2020 remain to be seen. The Standing Committee anticipates that the pandemic will have an impact on the annual reporting next year and as such will amend the report template to invite law societies to share their experience. The Standing Committee will determine from that feedback whether it makes sense to conduct a comparative analysis for 2020 and if there are learning lessons to be observed from COVID-19 that could benefit law societies’ in the future.

CONCLUDING THOUGHTS

51. The National Discipline Standards are unique among Federation initiatives in that they are aspirational and law societies have agreed to report on their progress. They have encouraged law societies to find efficiencies, improve timeliness and transparency and promote national consistency in the public interest. Looking back at the past five years, the Standing Committee is pleased with the progress made on the standards, as well as with the projects developed to support and enhance law society complaint and discipline processes across Canada.

Background: The National Discipline Standards Project

1. The National Discipline Standards project grew out of a desire to strengthen the ways in which complaint and discipline processes are dealt with across the country.
2. This work was initiated by the findings from a benchmarking study undertaken by the law society Discipline Administrators' group in 2007 and 2008. The National Discipline Standards project was launched in 2010 by Canada's law societies through the Federation of Law Societies of Canada ("Federation"). A National Discipline Standards Pilot Project Steering Committee ("Steering Committee") was appointed by the Federation Executive. The Steering Committee developed the standards in consultation with a group comprised of law society complaints resolution, investigation and discipline staff.
3. Twenty-three standards were pilot tested with law societies between 2012 to 2014 to ensure that they were realistic and achievable, yet still ambitious and aspirational in nature. Several refinements were made to the standards based on feedback received during the pilot phase.
4. In April 2014, Federation Council approved 21 National Discipline Standards relating to timeliness, public participation, transparency, accessibility, and the qualification and training of adjudicators and investigators, which were then referred to the law societies for adoption and implementation. The standards were officially implemented by all law societies on January 1, 2015.
5. The standards were not meant to be exhaustive or un-changeable; it was anticipated that they would need to be continuously monitored to ensure they were meeting the intended goals of the project. Since implementation, the national discipline standards have evolved both in number and substance and currently total 23.

Purpose of the National Discipline Standards

6. When law societies undertook this project, they chose to set challenging, aspirational standards. The purpose of the project was measure how complaints and discipline matters were dealt with across law societies and promote a culture of performance improvement, including recognition and adoption of best practices.
7. The National Discipline Standards are a tool designed to address such issues as timeliness (e.g., the time it takes to resolve a complaint or hold a hearing), public participation, transparency (e.g., hearings are open to the public and reasons are given for a decision to close a hearing), accessibility, and the qualification and training of adjudicators and investigators. These are the elements of a discipline process that law societies' agreed are necessary to protect the public and foster public confidence in the regulation of the practice of law.

How are the Standards Monitored?

8. The Standing Committee on National Discipline Standards ("SCNDS") core mandate is to monitor ongoing implementation of the standards and make recommendations to Council for amendments to the standards as deemed appropriate from time to time. The Standing

Committee's Terms of Reference also include liaising with representatives of the Discipline Administrators' Steering Committee ("DASC") and other stakeholders to identify any refinements to the standards that may be desirable.

Law Society Annual Status Reports

9. Law society progress on meeting the standards is reviewed by the Standing Committee on an annual basis, generally occurring in the spring. Law societies are provided with an annual report template early in the calendar year that requests data from January to December of the previous year. It seeks information about whether law societies met the standards or if the standards were applicable, and information about why a standard was not met. The Standing Committee also uses the annual reporting to engage in national discussions around the sharing and/or development of best practice tools and guidance to assist law societies in their efforts to meet the standards.

10. Beginning in the 2018 reporting year, the template was revised to include a column that seeks information about what actions law societies are taking or have planned in response to any standards reported as "unmet". This was done so the committee could get a better sense of law societies' progress in working towards meeting the standards and the circumstances surrounding a law society's inability to meet a standard. This extra column has proved valuable to the Standing Committee in its review of law societies' reports as it has provided greater insight into law society discipline processes and facilitated a more contextual analysis for the implementation report.

Analysis Methodology for the Implementation Report

11. The Implementation Report reflects law society responses on their performance on the standards for the reporting year. The analysis identifies which standards were met or not met and why. **Appendix B** provides the overall number of standards met by each law society in each year and the corresponding percentage calculation. This information is captured in the second row entitled "overview of performance".

12. Appendix B also provides a comparative snapshot of overall performance by standard. This information is captured in the last column entitled "standard totals". The chart makes it easy to compare performance on the standards at a glance from year to year and across law societies. A check mark indicates that the standard was met; an "x" indicates that it was not. For standards with two components, a check mark and an "x" indicate that only one part of the standard was met.

13. Not all law societies report on all the standards each year. In some cases, a standard is not applicable, which is represented in the chart as "N/A". For example, if a law society had no hearings in the year in question, all of the standards that deal with hearings will be marked "not applicable". When a standard is marked as not applicable, it is removed from the performance calculations to avoid skewing the results.

Appendix B - National Discipline Standards Implementation Report 2017-2019

This summary highlights the law societies' progress in meeting the discipline standards in the last three years of implementation. It is based on the data contained in law societies' 2017, 2018 and 2019 annual reports.		LSBC	LSA	LSS	LSM	LSO	BQ	CNQ	LSNB	LSPEI	NSBS	LSNL	LSY	LSNWT	LSN	STANDARD TOTALS	
Overview of Performance by Law Societies	2019	84% 21/25	84% 21/25	71% 17/24	84% 21/25	77% 18.5/24	73% 17.5/24	88% 22/25	59% 13/22	77% 15.5/20	92% 23/25	91% 20/22	82% 13.5/16.5	100% 16/16	55% 12/22	Average:	80%
	2018	83% 19/23	76% 17.5/23	73% 16/22	83% 19/23	75% 16.5/22	68% 15/22	88% 19.5/22	73% 15/20.5	80% 16/20	91% 21/23	90% 17/19	80% 12/15	89% 17/19	40% 6/15	Average:	78%
	2017	84% 18.5/22	83% 19/23	80% 17.5/22	83% 19/23	70% 15.5/22	61% 13.5/22	80% 18.5/23	61% 13.5/22	86% 18/21	93% 21.5/23	83% 16.5/20	86% 12/14	76% 13/17	41% 4.5/11	Average:	76%
Standard 1	2019	✓	✓	✓/X	✓	✓	✓	✓	✓	✓/X	X	✓	✓	✓	X	11/14	(78%)
Telephone inquiries	2018	✓	✓	✓	✓	✓	✓	✓	✓	✓	X	✓	✓	✓	X	12/14	(86%)
	2017	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓/X	✓	✓	✓	X/✓	13/14	(93%)
Standard 2	2019	X	✓	X	✓	✓	X	✓	X	✓	X	✓	✓	✓	X	8/14	(57%)
Written complaints	2018	X	✓	X	✓	✓	X	✓	X	X	X	✓	✓	✓	✓	8/14	(57%)
	2017	✓	✓	X	✓	✓	X	✓	X	✓	X	X	✓	X	✓	8/14	(57%)
Standard 3 *NEW*	2019	✓	✓	X	✓	✓	✓	✓	✓	✓	✓	✓	X	✓	✓	12/14	(86%)
System in place for early resolution of appropriate complaints																	
Standard 4 a)	2019	✓	✓	✓	✓	✓/X	✓/X	✓	✓	✓	✓	✓	✓	✓	✓	13/14	(93%)
Complaint resolved or referred for a disciplinary or remedial response	2018	✓	X/✓	✓	✓	✓	✓	✓/X	X/✓	✓	✓	✓	✓	✓	✓	12.5/14	(89%)
	2017	✓	✓	✓	✓	X	✓	✓/X	✓	✓	✓	✓	✓	✓	✓	12.5/14	(89%)
Standard 4 b)	2019	✓	X	✓/X	✓	X	✓	✓	X	✓	✓	N/A	N/A/✓	N/A	N/A	7/10	(70%)
Complaint initiates an internal review or appeal	2018	✓	X	✓	✓	X	✓	✓	X	✓	✓	N/A	✓	N/A	N/A	8/11	(73%)
	2017	✓	X	✓	✓	X	X	✓	X	✓	✓	N/A	N/A	N/A	N/A	6/10	(60%)

Legend: ✓ = Standard Met X = Standard Not Met N/A = Standard Not Applicable

Appendix B - National Discipline Standards Implementation Report 2017-2019

Standard 4 c)	2019	✓	✓	N/A	✓	✓	✓	✓	N/A	✓	✓	N/A	N/A	N/A	N/A	8/8	(100%)
Complaint referred back to investigation from an internal review or appeal	2018	✓	✓	N/A	✓	X/✓	✓	✓	N/A	N/A	✓	N/A	N/A	N/A	N/A	6.5/7	(93%)
	2017	N/A	✓	N/A	✓	✓	✓	✓	✓	N/A	✓	N/A	N/A	N/A	N/A	7/7	(100%)
Standard 5	2019	✓	✓	X	X	X	X	✓	X	X	✓	✓	✓	✓	X	7/14	(50%)
Contact with complainant	2018	✓	✓	X	X	X	X	✓	✓	✓	✓	✓	✓	✓	X	9/14	(64%)
	2017	✓	✓	✓	X	X	X	Ss	X	✓	✓	✓	✓	✓	X	8/14	(57%)
Standard 6	2019	✓	✓	X	X	X	X	✓	X	X	✓	✓	✓	✓	X	7/14	(50%)
Contact with lawyer or Québec notary	2018	✓	✓	X	X	X	X	✓	X	✓	✓	✓	✓	✓	X	8/14	(57%)
	2017	✓	✓	✓	X	X	X	✓	X	✓	✓	✓	✓	N/A	X	8/13	(62%)
Standard 7 *NEW*	2019	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	14/14	(100%)
Interim measures																	
Standard 8	2019	✓	✓	✓	X	✓	✓	✓	X	N/A	✓	X/✓	N/A	N/A	✓	8.5/11	(77%)
Issuance of citations or notices of hearings	2018	✓	✓	✓	X	✓/X	✓	✓	X	N/A	✓	X	N/A	N/A	N/A	6.5/10	65%
	2017	✓	✓	✓/X	X	✓/X	✓	✓	X	X	✓	X	N/A	✓	N/A	7/12	(58%)
Standard 9	2019	X	X	✓	X	X	✓	✓	X	N/A	✓	X/✓	N/A	N/A	✓	5.5/11	(50%)
Commencement of hearings	2018	X	X	✓	X	✓/X	✓	✓	X	X	✓	✓	N/A	✓	N/A	6.5/12	(54%)
	2017	X/✓	X	✓	X	X	✓	✓	X	X	✓	X/✓	N/A	✓	N/A	6/12	(50%)
Standard 10	2019	X	✓	✓	✓	X	X	✓	✓	N/A	✓	✓	N/A	N/A	X	7/11	(64%)
Reasons for decisions	2018	X	X	X	✓	X	X	✓	✓	N/A	✓	✓	N/A	X	N/A	5/11	(45%)
	2017	X	✓	X	✓	X	X	✓	✓	N/A	✓	✓	N/A	N/A	N/A	6/10	(60%)
Standard 11	2019	✓	✓	X	✓	✓	X	X	✓	✓	✓	✓	✓	✓	X	10/14	(71%)
Public Participation	2018	✓	✓	X	✓	✓	X	X	✓	✓	✓	✓	✓	✓	X	10/14	(71%)
	2017	✓	✓	X	✓	✓	X	X	✓/X	✓	✓	✓	✓	N/A	N/A	8.5/12	(71%)

Legend: ✓ = Standard Met X = Standard Not Met N/A = Standard Not Applicable

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Standard 12	2019	✓	✓	✗	✓	✓	✓	✓	✓	✓	✓	N/A	✓	✓	✗	11/13	(85%)
Complaints review process	2018	✓	✓	X	✓	✓	✓	✓	✓/N/A	✓	✓	N/A	✓	✓	X	10.5/12.5	(84%)
	2017	✓	✓	X	✓	✓	✓	✓	X	✓	✓	N/A	✓	✓	N/A	10/12	(83%)
Standard 13	2019	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	N/A	✓	13/13	(100%)
Hearings open to public	2018	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	N/A	✓	✓	13/13	(100%)
	2017	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	N/A	✓	✓	13/13	(100%)
Standard 14	2019	✓	✓	✓	✓	✓	✓	✓	N/A	✓	✓	✓	N/A	N/A	N/A	10/10	(100%)
Reasons for decision to close hearings	2018	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	N/A	N/A	N/A	N/A	10/10	(100%)
	2017	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	N/A	N/A	N/A	11/11	(100%)
Standard 15	2019	✓	✓	✓	✓	✓	✓	✓	✗	N/A	✓	✓	N/A	N/A	✓	10/11	(91%)
Publication of notices of charge or citation	2018	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	N/A	✓	N/A	12/12	(100%)
	2017	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	N/A	✓	N/A	12/12	(100%)
Standard 16	2019	✓	✓	✓	✓	✓	✓	✓	✗	N/A	✓	✓	N/A	N/A	✗	9/11	(82%)
Publication of notices of hearing dates	2018	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	N/A	✓	N/A	12/12	(100%)
	2017	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	N/A	✓	N/A	12/12	(100%)
Standard 17	2019	✓	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	13/14	(93%)
Ability to share information with other law societies	2018	✓	X	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	13/14	(93%)
	2017	X	X	✓	✓	✓	X	X	X	✓	✓	✓	✓	X	N/A	7/13	(54%)
Standard 18	2019	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓	✗	12/14	(86%)
Disclosure to police about criminal activity	2018	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	X	✓	X	12/14.	(86%)
	2017	✓	✓	✓	✓	✓	X	X	✓	✓	✓	✓	X	✓	N/A	10/13	(77%)
Standard 19	2019	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	14/14	(100%)
Accessible complaint help form	2018	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	14/14	(100%)
	2017	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	14/14	(100%)

Legend: ✓ = Standard Met ✗ = Standard Not Met N/A = Standard Not Applicable

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Standard 20	2019	X	X	✓	✓	✓	X	X	✓	✓	✓	✓	✓	✓	✓	10/14	(71%)
Availability of status information directory	2018	X	X	✓	✓	✓	X	X	✓	✓	✓	✓	✓	✓	✓	10/14	(71%)
	2017	X	X	✓	✓	✓	✓	✓	✓	X	✓	✓	✓	✓	X	10/14	(71%)
Standard 21	2019	✓	✓	✓	✓	✓	✓	✓	X	X	✓	X	X	✓	✓	10/14	(71%)
Ongoing mandatory training for adjudicators	2018	✓	✓	✓	✓	✓	✓/X	✓	✓	X	✓	X	X	X	X	8.5/14	60%
	2017	✓	✓	✓	✓	✓	✓/X	✓	✓	✓	✓	X	✓	X	X	10.5/14	(75%)
Standard 22	2019	✓	✓	✓	✓	N/A	N/A	X	N/A	X	✓	✓	N/A	✓	X	7/10	(70%)
Mandatory volunteer orientation	2018	✓	✓	✓	✓	N/A	N/A	N/A	N/A	X	✓	✓	X	✓	X	7/10	(70%)
	2017	✓	✓	✓	✓	N/A	N/A	X	N/A	✓	✓	✓	X	✓	X	8/11	(73%)
Standard 23	2019	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	14/14	(100%)
Annual reporting to governing body	2018	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	X	13/14	(93%)
	2017	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	X	13/14	(93%)