



Agenda

Benchers

Date: Friday, October 30, 2020

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

Please join the meeting anytime from 8:50 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 September 25, 2020 meeting
2	2021 Fee Schedule Amendment
3	Futures Task Force Wind Up
4	Rule 2-84: Call and Admission
5	Law Society Forms Approval by Executive Director: Rule Amendments
6	Rule 5-8, 5-9 & 5-12: Public Hearings
7	Rule 3-3: Confidentiality of Complaints
8	Tribunal Hearing Procedures
9	Recovery of Investigation Costs: Required Legislative Amendment

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
GUEST PRESENTATION		
13	Update on the Federation of Law Societies of Canada	Morgan C. Cooper Jonathan G. Herman
14	Governance Standards	Harry Cayton
DISCUSSION/DECISION		
15	Review of 2021 – 2025 Strategic Plan Objectives	Don Avison, QC
16	Rule 4-30: Conditional Admissions with Consent to Disciplinary Action	Natasha Dookie
17	Rule 3-43 Amendments to Permit In-house Lawyers to Participate in the LIF Program	Su Forbes, QC
18	Discussion of 2020 AGM Member Resolutions	Craig Ferris, QC (Open Discussion)
UPDATES		
19	Report on Outstanding Hearing & Review Decisions (<i>Materials to be circulated at the meeting</i>)	Craig Ferris, QC
FOR INFORMATION		
20	Anti-Money Laundering Strategic Plan	
21	Message from Len Doust, QC re Law Society Award	
22	Three Month Bench Calendar – November 2020 to January 2021	

Agenda

The Law Society
of British Columbia



IN CAMERA

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Other Business



Minutes

Benchers

Date: Friday, September 25, 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
	Paul Barnett	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
	Lisa Feinberg	Thomas L. Spraggs
	Martin Finch, QC	Michelle D. Stanford, QC
	Brook Greenberg	Michael Welsh, QC
	Sasha Hobbs	Chelsea D. Wilson
	Julie K. Lamb, QC	Guangbin Yan
	Dr. Jan Lindsay	Heidi Zetsche

Unable to Attend: Not Applicable

Staff Present:	Don Avison, QC	Michael Lucas, QC
	Avalon Bourne	Alison Luke
	Jennifer Chan	Tara McPhail
	Natasha Dookie	Jeanette McPhee
	Su Forbes, QC	Doug Munro
	Andrea Hilland	Lesley Small
	Gavin Hoekstra	Adam Whitcombe, QC
	Jeffrey Hoskins, QC	Vinnie Yuen
	Jason Kuzminski	

<p>Guests: Dom Bautista Mark Benton, QC Dr. Susan Breau Trudi Brown, QC Jennifer Brun Ian Burns Michelle Casavant Dr. Cristie Ford</p> <p>Richard Fyfe, QC</p> <p>Alexis Kazanowski Derek LaCroix, QC Robert Lapper, QC Mark Meredith Caroline Nevin Josh Paterson Michele Ross Linda Russell Karen St. Aubin Kerry Simmons, QC</p> <p>Dr. Katie Sykes</p>	<p>Executive Director, Law Courts Center Executive Director, Legal Services Society Dean of Law, University of Victoria Licensed Paralegal Task Force Chair President, CBABC Digital Report, The Lawyer's Daily Member, Aboriginal Lawyers Forum Associate Dean Research and the Legal Profession, Peter A. Allard School of Law Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General Assistant Dean, Faculty of Law, TRU Executive Director, Lawyers Assistance Program of B.C. Lam Chair in Law and Public Policy Treasurer and Board Member, Mediate BC Society CEO, Courthouse Libraries BC Executive Director, Law Foundation of BC President & Education Chair, BC Paralegal Association CEO, Continuing Legal Education Society of BC Membership Director, Trial Lawyers Association of BC Executive Director, Canadian Bar Association, BC Branch Associate Professor, TRU Law</p>
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CONSENT AGENDA

1. Minutes of September 25, 2020, meeting (regular session)

The minutes of the meeting held on September 25, 2020 were approved as circulated.

2. Minutes of July 10, 2020 meeting (*in camera* session)

The *In Camera* minutes of the meeting held on July 10, 2020 were approved as circulated.

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

Mr. Ferris noted the minor change of “(b) (ii) to (iv)” to “(b) (ii) or (iii)” within the resolution.

The following resolution was passed unanimously and by consent.

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, 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) or (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.

4. Rule 2-105 et al.: Payment of Practising Fees by Instalment

Mr. Ferris noted the minor revision of removing a superfluous “the” from the resolution.

The following resolution was passed unanimously and by consent.

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

1. By rescinding Rule 2-105 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 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.***

5. Rule Amendments: 2020 Call and Admission Ceremonies

The Benchers approved in principle to amend 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 and to refer the matter to the Act and Rules Committee to develop the specific language.

6. Proposal to Amend Rules Addressing Law Society Form Approval

The Benchers approved 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. The matter will be referred to the Act and Rules Committee to prepare proposed rule amendments to be returned to the Benchers for approval.

7. 2021 Fee Reduction for Qualifying Lawyers

The following resolution was passed unanimously and by consent.

Provided the firm has completed the required form and meets the criteria for an annual practising fee reduction, 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.

8. Update on Fall Events and Revisions to 2020 Benchers & Executive Committee Meeting Dates

The updated 2020 Benchers & Executive Committee Meeting Dates was approved as circulated.

9. 2020 Law Society Award

The following resolution was passed unanimously and by consent.

The Benchers resolved to recommend Leonard Doust, QC as the 2020 recipient of the Law Society Award.

REPORTS

10. President's Report

Mr. Ferris began his report by speaking about changes the Law Society and the legal profession are facing. Mr. Ferris referenced different types of change, speaking first of Jasmin Ahmad's recent appointment to the Supreme Court of BC and congratulating her on behalf of the Bencher table. Mr. Ferris also spoke about recent loss within the legal community, noting the passing of former Bencher and Life Bencher, Peter Lloyd; former Bencher and Life Bencher, Gerald Lecovin, QC; Judge Suzanne Macgregor of the Provincial Court of BC; Justice Ruth Bader Ginsburg of the Supreme Court of the United States; and Lance Finch, QC, former Chief Justice of BC.

Mr. Ferris then spoke about the Futures Task Force report and its focus on transformative change for the Law Society and the profession. Mr. Ferris noted that the recommendations in the report will require Benchers to engage in bold and innovative decision-making, as referenced in Recommendation 1 of the report, which states: *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 its mandate in section 3 of the Legal Profession Act.*

Mr. Ferris then spoke about how the nature of the legal profession can hold lawyers back from change and innovation, citing the success of the current model; the profession's ethical rules, which embed a certain approach to business issues within the practice; and the tendency of the legal profession to look for fault and to be risk and change adverse. Mr. Ferris spoke about the

need to embrace change and shift this mindset in order to achieve measurable action in addressing access to justice and serving the public.

Mr. Ferris then invited Mr. Lawton to speak to Benchers about Orange Shirt Day. Mr. Lawton informed Benchers that Orange Shirt Day, which takes place on September 30, is a day that reminds us of our promise to Indigenous and non-Indigenous peoples in Canada that the Law Society is dedicated to truth and reconciliation. Mr. Lawton spoke about the importance of building relationships with Indigenous leaders and communities and advancing the objectives of the First Nations Justice Strategy.

Mr. Ferris updated Benchers on the delay of the implementation of the law firm survey to 2021 due to the increase of requirements starting in January 2021. He also updated Benchers on the changes to the Annual Practice Declaration based on the recommendation of the Equity, Diversity, and Inclusion Advisory Committee.

11. CEO's Report

Mr. Avison updated Benchers on a number of operational changes within the Law Society and reviewed specific initiatives of various departments of the Law Society, noting that PLTC will be resuming virtual classes at the beginning of October.

Mr. Avison updated Benchers on the Cullen Commission hearings. The Law Society will be called upon to testify the week of November 16, as will the Federation of Law Societies of Canada.

Mr. Avison then reminded Benchers about advance voting for the Annual General Meeting and the open call for nominations for the Bencher By-election taking place in the County of Vancouver.

Mr. Avison concluded his report by thanking Benchers for responding to the survey regarding the possibility of an in-person Bencher meeting, noting that the results will be reviewed by the Ladder and Executive Committee prior to a decision being made.

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

Ms. Cheema provided an update on recent Federation Council activities, informing Benchers that the Federation Conference would take place virtually on October 14 and 15, with the Federation Council meeting taking place on October 16. Ms. Cheema also informed Benchers that an invitation to attend the Federation Conference will be sent to Benchers of all law societies across Canada. Ms. Cheema noted that the topic of the Federation Conference would be the future of the legal profession in a changing and post-pandemic world.

Ms. Cheema updated Benchers on the recent activities of the National Committee on Accreditation (NCA), noting that policies regarding in-person assessments and exams have been revised due to the pandemic, and that exams had resumed virtually in August. Ms. Cheema then informed Benchers that the report containing the results of a gap analysis conducted by the Federation between Canadian lawyers and lawyers coming to Canada from other countries was available for Bencher review. Ms. Cheema noted that the report was not to be disseminated beyond the Bencher table. Ms. Cheema then informed Benchers that based on the results of the report, the Federation had engaged a service provider to develop a competency profile as recommended within the report.

Ms. Cheema also provided updates on the recent activities of the Public Affairs and Government Relations Committee and the Model Code Committee, noting that the Model Code Committee will be reviewing the incorporation of cultural competency and undergoing training.

Ms. Cheema concluded her report by informing Benchers that the Federation will be carrying out a national survey to determine the well-being of the profession. A steering committee has been formed and Brook Greenberg will be a member of the steering committee.

DISCUSSION/DECISION

13. Futures Task Force: Anticipated Changes in the Legal Profession

Mr. Ferris thanked the Task Force members and staff for their hard work and summarized the report for Benchers. Mr. Ferris then reviewed each of the recommendations within the Report, stating that he hoped that all of the recommendations would be adopted by Benchers and incorporated into the Law Society's strategic plan.

Benchers then engaged in discussions regarding the adoption of the recommendations of the Task Force's report with several Benchers speaking about the aspirational and innovative direction of the report and the importance of leading change within the profession. Benchers also mentioned the inward nature of some of the recommendations and the importance of engaging with the public to determine their needs and to make legal services more accessible and affordable, while also protecting the rule of law.

Benchers asked questions regarding the future of the Task Force and how the implementation of the recommendations would be overseen. Benchers will assume the responsibility for the recommendations within the Task Force, and the Executive Committee will consider how the committees should approach and implement the recommendations, and whether or not new committees will need to be established to achieve this. Benchers discussed the importance of identifying clear short-term and long-term priorities and determining the balance between strategy and operations.

Benchers discussed the need to consider how to provide opportunities for members of the public to get involved in the implementation of the reports' recommendations, noting the importance not to be prescriptive and to work with the communities who have the expertise to design programs and initiatives that meet the legal needs of the public.

Mr. Ferris asked Benchers to provide feedback regarding priorities in terms of the recommendations for the Executive Committee to discuss.

A motion to adopt the recommendations as presented within the final report of the Futures Task Force was unanimously approved.

14. Licensed Paralegal Task Force Report: Proposal for Developing and Regulating Alternate Legal Service Providers

Trudi Brown, QC, Chair of the Licensed Paralegal Task Force, attended to present the report of the Licensed Paralegal Task Force. Ms. Brown summarized the report for Benchers, noting that the report proposed a different approach from that provided in the Task Force's terms of reference, and that the Task Force recommended the shift as set out in the report. Based on the research and data reviewed in preparation of the report, the Task Force recommends a "grass roots" approach to advance the licensed paralegal initiative within a regulatory sandbox. This model would permit individuals to present proposals to the Law Society to provide legal advice or services in areas where it is determined that expanded service provision is needed.

Mr. Welsh added that the regulatory sandbox model would be more effective in that custom regulation could be developed based on the types of proposals brought to the Law Society, as opposed to developing a one size fits all model. Mr. Welsh also added that the recommendations of the Task Force are based on the models of other jurisdictions, which will provide helpful practices on which to build upon.

Benchers then engaged in discussion of the recommendations of the Task Force and the importance of approaching various advocacy and community groups across the province, particularly Indigenous advocacy groups and court workers for Indigenous.

Benchers discussed specifics of the regulatory sandbox model, including whether a bursary program or fund could be provided for groups that are able to provide access to justice solutions, but who may not have the funding available to put together a proposal; maintaining a public database of no action agreements; and developing a strategy to inform and educate the profession about this initiative and to address any concerns.

Mr. Ferris informed Benchers that the Executive Committee will consider the suggestions provided during the discussion.

A motion to approve the recommendations as presented within the report of the Licensed Paralegal Task Force was unanimously approved.

15. Lawyer Development Task Force Report: Exploring Alternatives to Articling

Mr. McKoen summarized the report and thanked the Task Force members and staff for all their help. Mr. McKoen then reviewed each of the recommendations within the report.

Benchers provided feedback on the recommendations of the Task Force, including utilizing more senior lawyers in training options, incorporating practitioners into the alternative pathways being considered, and ensuring that mentorship remains a significant component.

Benchers also discussed the potential increase in costs for the program and suggested that the Task Force conduct a cost-benefit analysis of the recommendations.

A motion to approve the recommendations as presented within the report of the Lawyer Development Task Force was unanimously approved.

16. Unauthorized Practice Committee: Policy Statement on Unauthorized Practice Action

Mr. Maclaren thanked the Committee and staff for all their help and reviewed with Benchers the policy statement on unauthorized practice action. Benchers discussed the policy statement and recommended changing the word “demonstrable” within the statement. Possible alternatives were discussed and the policy statement was revised to amend “demonstrable” to “significant”.

The following motion was made and seconded.

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, as determined in the discretion of the Executive Director, there is significant risk of harm to a person or the public.

The motion was passed unanimously with one abstention.

17. Review of 2021 – 2025 Strategic Plan Survey Results and Priorities

Mr. Avison thanked Deputy Attorney General Fyfe for attending the Bencher meeting and for his support in navigating the COVID-19 pandemic. Mr. Avison informed Benchers that the Cullen Commission hearings will not reconvene until after the BC provincial election, which may affect the testimony timeline. More information will be provided once it is known.

Mr. Avison updated Benchers on the status of and next steps for the 2021-2025 Strategic Plan and reviewed the plan's elements. Mr. Avison also reviewed the themes that emerged from the breakout sessions related to the mission, vision, and values.

Benchers discussed the suggested mission and vision statements and strategic objectives. The preferred draft mission statement was option E, though Benchers suggested using clearer language and incorporating elements from options B and D regarding fostering public confidence, protection of the public, and fair and effective regulation. The preferred draft vision statement was a combination of both options, though several Benchers liked the short succinct format of option B. Several Benchers also disliked the use of the term “user-focused” suggesting public-focused instead.

Benchers discussed the draft strategic objectives with suggestions including building measurability into the objectives, removing the term “influencer”, ensuring clarity between the public and the profession, and incorporating specific objectives regarding diversity and inclusion.

Mr. Avison thanked Benchers for their input and noted that the suggestions would be incorporated into the discussions for the October Bencher meeting. Mr. Avison also spoke about the importance of distinguishing between an overarching strategic objective and the specific initiatives attached to the objectives.

Mr. Avison informed Benchers that a public and internal staff consultation will be conducted, which will include publicizing the plan outline on the Law Society website and social media channels, direct engagement with justice sector partners and stakeholders, and outreach to BC's law schools.

18. Consent Agreements for the Resolution of Complaints without a Citation or Hearing: Professional Regulation Process Review

Ms. Dookie provided an overview of the process review proposal.

Benchers discussed the proposal and provided suggestions, including adding that the Chair and Vice-Chair of the Discipline Committee be able to delegate to another member of the Committee decisions referred to them, as is proposed in the report.

The following motion was made and seconded.

BE IT RESOLVED 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 motion passed unanimously.

19. Equity, Diversity and Inclusion Advisory Committee: Maternity Leave Loan Review

Ms. Dhaliwal provided an overview of the maternity leave loan review performed by the Equity, Diversity, and Inclusion (EDI) Advisory Committee and reviewed the Advisory Committee's recommendation not to continue the Program due to low usage and to replace with alternative options aimed at supporting the retention of new parents in the legal profession.

Benchers discussed challenges with the current requirements of the Program, including the requirement that loan recipients take non-practising status, which renders them unable to serve their clients and to develop new client relationships. Benchers suggested the option of a parental leave member status, along with other leave options be considered as possible solutions to replace the Program. Benchers also discussed that the need to replace the Program was due to the lack of usage and challenges within the requirements, so the onus should be on finding better methods, as opposed to alternative methods.

Benchers expressed concerns that removing the Program entirely without a concrete replacement may send the wrong message and better clarity is needed regarding the intentions of replacing the Program.

The following motion was made and seconded.

BE IT RESOLVED that 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 better methods of supporting the retention of new parents in the legal profession, and in particular birth mothers, and report back to Benchers within the next six months.

Some Benchers expressed concern with the inclusion of “particularly birth mothers” within the motion, stating that in this day and age both women and men take parental leave. A motion was made that the resolution be amended to remove the phrase “particularly birth mothers”.

The motion to amend the resolution was passed.

Some Benchers expressed concern with the inclusion of an end date for the Program without clear alternatives that would be replacing the Program. A motion was made that the resolution be amended to remove sub-paragraph (i).

The motion to amend the resolution failed.

Benchers then voted on the following motion as amended:

BE IT RESOLVED that 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 better methods of supporting the retention of new parents in the legal profession and report back to Benchers within the next six months.

The resolution was passed.

20. Equity, Diversity and Inclusion Advisory Committee: Action Plan

Ms. Dhaliwal summarized the Equity, Diversity, and Inclusion Advisory Committee’s Action Plan.

Mr. Ferris requested that the Advisory Committee provide an annual or six-month progress report on the initiatives contained within the action plan.

A motion to approve the Action Plan as recommended by the Equity, Diversity, and Inclusion Advisory Committee was unanimously approved with one abstention.

21. 2021 Budget & Fees

Mr. Lawton introduced the item, followed by a presentation to Benchers on the proposed 2021 budget and fees delivered by Mr. Avison.

Mr. Avison began by informing Benchers that the Law Society will avoid a projected deficit for 2020 due to the cost savings achieved as a result of the measures taken to minimize the impact of COVID-19.

He then highlighted some of the key financial considerations the Law Society would be focusing on for 2021, including a one-time fee relief for lawyers most in need, no increase to practice and indemnity fees, and a provision for semi-annual instalments of practice and indemnity fees. External organization funding remains the same as 2020 on a per lawyer basis. Mr. Avison reviewed additional areas of operational focus for 2020, including implementation of the new Strategic Plan, a continued focus on anti-money laundering initiatives, education and practice initiatives, and an increased focus on technology.

Benchers discussed the fee required for the Advocate, and whether or not an opt-out option would be appropriate. Mr. Ferris requested that this item be raised and debated in January 2021 with the Finance & Audit Committee.

The following resolution was passed unanimously with one abstention.

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*.

The following resolution was passed unanimously with one abstention.

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 insurance surcharge for 2021 pursuant to Rule 3-44(2) be set at \$1,000.

UPDATES

22. National Discipline Standards: 2020/2021 Implementation Report

Ms. Dookie reviewed the background of the development of the national discipline standards and presented the results of the 2020/2021 Implementation Report. Ms. Dookie reviewed the performance of the Law Society of BC versus the national average, noting that the Law Society of BC consistently meets the standards beyond the national average.

23. 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

24. Three Month Bencher Calendar – October to December 2020

There was no discussion on this item.

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

AB
2020-09-25



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC
Date: October 20, 2020
Subject: **2021 Fee Schedules**

1. Before the end of each calendar year, the Benchers must revise the fee schedules, which appear as schedules to the Law Society Rules, to reflect changes taking effect on the following January 1.
2. Under section 23(1) of the *Legal Profession Act*, the Benchers have set the practice fee and indemnity fee for 2021 at the same amounts as the 2020 fees. No other fees were changed for 2021. It is therefore not necessary to change the amounts set out in Schedule 1.
3. However, there was one significant change in the establishment of two instalments for payment of the practice fee. That requires a re-calculation of prorated fees for new lawyers and returning lawyers called or reinstated in the course of the year. That is set out in Schedule 2, which has been expanded and revised.
4. I attach a suggested resolution that will give effect to the changes.

JGH

Attachments: resolution

2021 FEE SCHEDULES

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules, effective January 1, 2021, as follows:

1. *In the headings of schedules 1, 2 and 3, the year “2020” is struck and “2021” is substituted.*
2. *Schedule 2 is rescinded and the following substituted:*

	Practice fee		Indemnity fee assessment	
	Payable prior to call	Payable by May 31	Payable prior to call	Payable by May 31
Full-time indemnification				
January	1,144.56	1,144.56	900.00	900.00
February	953.80	1,144.56	750.00	900.00
March	763.04	1,144.56	600.00	900.00
April	572.28	1,144.56	450.00	900.00
May	381.52	1,144.56	300.00	900.00
June	190.76	1,144.56	150.00	900.00
July	1144.56	0.00	900.00	0.00
August	953.80	0.00	750.00	0.00
September	763.04	0.00	600.00	0.00
October	572.28	0.00	450.00	0.00
November	381.52	0.00	300.00	0.00
December	190.76	0.00	150.00	0.00
Part-time indemnification				
January	1,144.56	1,144.56	450.00	450.00
February	953.80	1,144.56	375.00	450.00
March	763.04	1,144.56	300.00	450.00
April	572.28	1,144.56	225.00	450.00
May	381.52	1,144.56	150.00	450.00
June	190.76	1,144.56	100.00	450.00
July	1,144.56	0.00	450.00	0.00
August	953.80	0.00	375.00	0.00
September	763.04	0.00	300.00	0.00
October	572.28	0.00	225.00	0.00
November	381.52	0.00	150.00	0.00
December	190.76	0.00	100.00	0.00

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: Benchers
Date: October 22, 2020
Subject: Futures Task Force Wind Up

The Futures Task Force was created by the Benchers in January 2019 with a mandate to identify the anticipated changes in the legal profession, the practice of law and the justice system, 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. The Task Forces' terms of reference provided that the Task Force was to provide its final report to the Benchers by July, 2020.

Barely missing the deadline by just one Benchers meeting, the Task Force presented its final report and recommendations to the Benchers at the September 25, 2020 meeting. A motion to adopt the recommendations as presented in the final report was unanimously approved.

As the Task Force has fulfilled its mandate, the Task Force should be formally wound up.

The Benchers are asked to approve the following resolution:

BE IT RESOLVED that the Futures Task Force established by the Benchers in January 2019, having fulfilled its mandate, is hereby wound up.



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: October 19, 2020
Subject: **Rule 2-84: Requirement for new lawyers to be presented in open court**

1. At the September meeting the Benchers approved a recommendation of the Executive Committee to allow new lawyers called to the bar in 2020 to delay being presented to the Supreme Court until 2021. This is in response to the COVID-19 crisis, which has made it difficult or even risky to appear in court for much of 2020.
2. I attach a copy of the report that was before the Benchers at that meeting, together with rule changes recommended by the Act and Rules Committee to implement the decision. There is also a suggested resolution to effect that result.

Drafting notes

3. Rather than a one-time provision for this particular emergency situation, the Committee suggests a rule that allows the benchers to extend the time for open-court presentation by resolution. That avoids a spent provision that then must be rescinded, which is to be avoided if possible. Also, who knows what the future may hold?

Attachments: report
drafts
resolution

JGH



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.

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Call and admission

Barristers and solicitors' roll and oath

- 2-84** (1) The Executive Director must maintain the barristers and solicitors' roll in paper or electronic form, or a combination of both.
- (2) Every lawyer who is called to the Bar of British Columbia and admitted as a solicitor of the Supreme Court must,
- (a) before beginning the practice of law, take the barristers and solicitors' oath in a form approved by the Benchers before a judge of the Provincial Court or a superior court in British Columbia or before a practising lawyer, and
 - (b) be presented in open court before one or more of the judges of the Supreme Court.
- (3) The Executive Director must enter in the barristers and solicitors' roll the full names of all persons who are called as barristers and admitted as solicitors.
- (4) On proof that an applicant who has otherwise qualified for call and admission has taken the oath required under subrule (2) (a), the Executive Director must issue to the applicant a practising certificate, a non-practising certificate or a Canadian legal advisor certificate, as the case may be.
- (5) The Executive Director must not renew a practising certificate or a Canadian legal advisor certificate issued under subrule (4) unless the lawyer has been presented in open court as required under subrule (2) (b).
- (6) ~~As an exception to~~Despite subrule (5);
- (a) the Executive Director may renew a certificate issued under subrule (24) ~~(b)~~ within four months of its expiry date, and
 - (b) the Benchers may, by resolution, extend the time for a lawyer or a category of lawyers to be presented in open court.

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Call and admission

Barristers and solicitors' roll and oath

- 2-84** (1) The Executive Director must maintain the barristers and solicitors' roll in paper or electronic form, or a combination of both.
- (2) Every lawyer who is called to the Bar of British Columbia and admitted as a solicitor of the Supreme Court must,
- (a) before beginning the practice of law, take the barristers and solicitors' oath in a form approved by the Benchers before a judge of the Provincial Court or a superior court in British Columbia or before a practising lawyer, and
 - (b) be presented in open court before one or more of the judges of the Supreme Court.
- (3) The Executive Director must enter in the barristers and solicitors' roll the full names of all persons who are called as barristers and admitted as solicitors.
- (4) On proof that an applicant who has otherwise qualified for call and admission has taken the oath required under subrule (2) (a), the Executive Director must issue to the applicant a practising certificate, a non-practising certificate or a Canadian legal advisor certificate, as the case may be.
- (5) The Executive Director must not renew a practising certificate or a Canadian legal advisor certificate issued under subrule (4) unless the lawyer has been presented in open court as required under subrule (2) (b).
- (6) Despite subrule (5)
- (a) the Executive Director may renew a certificate issued under subrule (4) within four months of its expiry date, and
 - (b) the Benchers may, by resolution, extend the time for a lawyer or a category of lawyers to be presented in open court.

CALL AND ADMISSION**SUGGESTED RESOLUTION:**

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 2-84 (6) and substituting the following:

(6) Despite subrule (5)

- (a) the Executive Director may renew a certificate issued under subrule (4) within four months of its expiry date, and
- (b) the Benchers may, by resolution, extend the time for a lawyer or a category of lawyers to be presented in open court.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: October 20, 2020
Subject: **Rules addressing Law Society form approvals**

1. At the September meeting the Benchers approved a recommendation of the Executive Committee to change the authority for approving official Law Society forms from a variety of Committees to the Executive Director. This was to be implemented on the understanding that staff would follow a Bencher policy of seeking the approval of the appropriate Committee if substantive changes are made.
2. I attach a copy of the report that was before the Benchers at that meeting, together with a draft of rule changes to implement the decision. The Act and Rules Committee recommends adoption. Also attached is a suggested resolution to effect the changes.

Drafting notes

3. Since there is now only one way for forms to be approved under the rules, the Committee considers that the most efficient way of referring to the approval process is to define “prescribed form” in Rule 1 and use that two-word phrase throughout the rules.

Attachments: report
drafts
resolution

JGH



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.

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

“**articling agreement**” means a contract in ~~a the prescribed~~ form ~~approved by the Credentials Committee~~ executed by an applicant for enrolment and ~~his or her~~ the applicant’s prospective principal;

“**prescribed form**” means a form approved by the Executive Director;

PART 1 – ORGANIZATION

Division 2 – Committees

Powers and duties

1-51 The powers and duties of the Executive Committee include the following:

(d) ~~approving forms under these rules;~~ [rescinded]

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Members

Release from undertaking

2-5 (1) A retired or non-practising member may apply for release from an undertaking given under Rule 2-3 [*Non-practising members*] or 2-4 [*Retired members*] by delivering to the Executive Director

(a) an application in ~~a the prescribed~~ form ~~approved by the Credentials Committee~~, including written consent for the release of relevant information to the Society, and

Certificates and permits

2-7 The Executive Director may approve the form of

(a) practising certificate issued under section 23 [*Annual fees and practising certificate*],

LAW SOCIETY RULES

- (b) retired membership certificate issued under Rule 2-4 [*Retired members*],
- (c) non-practising membership certificate issued under Rule 2-3 [*Non-practising members*],
- (d) practitioner of foreign law permit issued under Rule 2-29 [*Practitioners of foreign law*],
- (e) inter-jurisdictional practice permit issued under Rule 2-20 [*Application for inter-jurisdictional practice permit*], and
- (f) Canadian legal advisor certificate issued under Rule 2-84 [*Barristers and solicitors' roll and oath*].

Member information

Annual practice declaration

- 2-8** (1) In this rule, “**declaration**” means the Annual Practice Declaration in ~~a~~the prescribed form ~~approved by the Executive Committee~~.

Law firms

Definitions and application

- 2-12.1** (1) In Rules 2-12.1 to 2-12.5
- “**registration form**” means ~~a~~the prescribed form required under Rule 2-12.2 completed to the satisfaction of the Executive Director;
- “**self-assessment report**” means a report required under Rule 2-12.3 in ~~a~~the prescribed form ~~approved by the Executive Committee~~ completed to the satisfaction of the Executive Director.

Inter-jurisdictional practice

Inter-jurisdictional practice permit

- 2-19** (3) A visiting lawyer applying under subrule (1) must deliver to the Executive Director
- (a) a completed permit application in ~~a~~the prescribed form ~~approved by the~~ ~~Credentials Committee~~, including a written consent for the release of relevant information to the Society,

LAW SOCIETY RULES

- (c) a certificates of standing dated not more than 30 days before the date of application ~~and in a form acceptable to the Credentials Committee~~, issued by each governing body of which the visiting lawyer is a member,

Practitioners of foreign law

Practitioners of foreign law

- 2-29** (1) A person who qualifies under section 17 [*Practitioners of foreign law*] may apply to the Executive Director for a permit to act as a practitioner of foreign law in British Columbia by delivering to the Executive Director
- (a) a completed permit application in a the prescribed form ~~approved by the Credentials Committee~~, including a written consent for the release of relevant information to the Society, and

Renewal of permit

- 2-34** (2) A renewal application must include
- (a) a completed permit renewal application in a the prescribed form ~~approved by the Credentials Committee~~, including a written consent for the release of relevant information to the Society,

Multi-disciplinary practice

Application to practise law in MDP

- 2-40** (1) Before a lawyer may practise law as a member of an MDP that has not been granted permission under Rule 2-41 [*Consideration of MDP application*], the lawyer must submit the following to the Executive Director:
- (a) an application in a the prescribed form ~~approved by the Credentials Committee~~;
- (2) In addition to any other requirement ~~determined by the Credentials Committee~~, in the prescribed form ~~referred to in subrule (1)~~, the lawyer must report full details of the arrangements that the lawyer has made to ensure that

LAW SOCIETY RULES

Changes in MDP

- 2-42** (2) When a new non-lawyer proposes to become a member of an MDP, the lawyer practising in the MDP must do the following at least 60 days before the proposed membership takes effect:
- (a) notify the Executive Director in the prescribed ~~a form approved by the Credentials Committee~~;

Liability indemnification

- 2-47** (2) If a non-lawyer member of an MDP agrees in writing, in the prescribed ~~a form approved by the Executive Committee~~, to engage in activities on behalf of the MDP for an average of 25 hours or less per week, the applicable indemnity base assessment is the part-time indemnity fee specified in Schedule 1.

Notifying the Society

- 2-49** (1) Each lawyer who practises law in an MDP must report to the Executive Director in the prescribed ~~a form approved by the Credentials Committee~~ concerning the following:

Division 2 – Admission and Reinstatement

Admission program

Enrolment in the admission program

- 2-54** (1) An applicant may apply for enrolment in the admission program at any time by delivering to the Executive Director the following:
- (a) a completed application for enrolment in the prescribed ~~a form approved by the Credentials Committee~~, including a written consent for the release of relevant information to the Society;

Mid-term report

- 2-61** (2) Before the student has completed 60 per cent of ~~his or her~~ the student's articling term, the principal and the student must deliver to the Executive Director a joint report on the student's progress to date in articles in the prescribed ~~a form approved by the Credentials Committee~~.

LAW SOCIETY RULES

Assignment of articles

- 2-67** (1) An articulated student may apply for permission to assign ~~his or her~~ the student's articles to another lawyer qualified to act as a principal by filing with the Executive Director, not later than 7 days after commencing employment at the office of the new principal,
- (a) an assignment of articles in the prescribed ~~a form approved by the Credentials Committee,~~
 - (b) a declaration of principal in the prescribed ~~a form approved by the Credentials Committee,~~ and

Temporary articles

- 2-70** (1) A person may apply for enrolment in temporary articles by filing the following with the Executive Director, not less than 30 days before the enrolment start date:
- (a) an application for enrolment in the prescribed ~~a form approved by the Credentials Committee,~~ including a written consent for the release of relevant information to the Society;
 - (b) an articling agreement in the prescribed ~~a form approved by the Credentials Committee;~~

Call and admission

First call and admission

- 2-77** (1) An articulated student who applies for call and admission must deliver to the Executive Director
- (a) the following in the prescribed ~~form approved by the Credentials Committee:~~
 - (b) a professional liability indemnity application or exemption form,

Transfer from another Canadian jurisdiction

- 2-79** (1) An applicant for call and admission on transfer from another jurisdiction in Canada must deliver the following to the Executive Director:
- (a) an application for call and admission on transfer in the prescribed ~~a form approved by the Credentials Committee,~~ including written consent for the release of relevant information to the Society;
 - (d) a professional liability indemnity application or exemption form;

LAW SOCIETY RULES

Transfer under National Mobility Agreement and Territorial Mobility Agreement

- 2-81** (3) To qualify for call and admission, an applicant under this rule must certify, in ~~a~~the prescribed form, that he or she has reviewed and understands all of the materials reasonably required by the Executive Director.

Transfer as Canadian legal advisor

- 2-82** (1) Subject to subrule (3), a member of the Chambre may apply for call and admission on transfer as a Canadian legal advisor by delivering to the Executive Director the following:
- (a) a completed application for call and admission as a Canadian legal adviser in the prescribed ~~a form approved by the Credentials Committee~~, including written consent for the release of relevant information to the Society;

Barristers and solicitors' roll and oath

- 2-84** (2) Every lawyer who is called to the Bar of British Columbia and admitted as a solicitor of the Supreme Court must,
- (a) before beginning the practice of law, take the barristers and solicitors' oath in a form approved by the Benchers before a judge of the Provincial Court or a superior court in British Columbia or before a practising lawyer, and

Reinstatement

Reinstatement of former lawyer

- 2-85** (1) A former lawyer may apply for reinstatement as a member of the Society by delivering the following to the Executive Director:
- (a) an application for reinstatement in the prescribed ~~a form approved by the Credentials Committee~~, including written consent for the release of relevant information to the Society;

LAW SOCIETY RULES

Division 3 – Fees and Assessments

Trust administration fee

- 2-110** (3) For each quarter year ending on the last day of March, June, September or December, a lawyer must remit the following to the Society within 30 days of the end of the quarter year to which they apply:
- (b) a completed trust administration report in the prescribed a-form-
~~approved by the Executive Committee.~~

PART 3 – PROTECTION OF THE PUBLIC

Division 3 – Education

Practice management course

- 3-28** (1) Within 6 months after and not more than 12 months before the date on which this Rule applies to a lawyer, the lawyer must
- (b) certify to the Executive Director in a-the prescribed form ~~approved by the Executive Director~~ that the lawyer has successfully completed the practice management course.

Professional development

- 3-29** (3) In each calendar year, a practising lawyer must
- (b) certify to the Executive Director in the prescribed a-form ~~approved by the Executive Director~~ that the lawyer has completed the required professional development.

Professional development for family law neutrals

- 3-38** (3) In each calendar year, a family law mediator, arbitrator or parenting coordinator must
- (b) certify to the Executive Director in the prescribed a-form ~~approved by the Executive Director~~ that the lawyer has completed the professional development required under this rule.

LAW SOCIETY RULES

Division 5 – Indemnification

Annual indemnity fee

- 3-40** (2) If a lawyer undertakes, in the prescribed ~~a form approved by the Executive Committee~~, to engage in the practice of law and associated activities for an average of 25 hours or less per week, the applicable base assessment is the part-time indemnity fee specified in Schedule 1.

Division 7 – Trust Accounts and Other Client Property

Electronic transfers from trust

- 3-64.1** (1) In this rule, “**requisition**” means an electronic transfer of trust funds requisition, in a the prescribed ~~form approved by the Discipline Committee~~.

Trust report

- 3-79** (5) A trust report delivered to the Executive Director under this rule must
(a) be in a the prescribed ~~form approved by the Discipline Committee~~,

Division 8 – Unclaimed Trust Money

Investigation of claims

- 3-90** (1) A person may make a claim under section 34 [*Unclaimed trust money*] in writing, in the prescribed ~~form approved by the Executive Committee~~ by delivering it to the Executive Director.

Division 9 – Real Estate Practice

Report of failure to cancel mortgage

- 3-96** A lawyer must deliver to the Executive Director within 5 business days a report in the prescribed ~~a form approved by the Executive Committee~~ when

LAW SOCIETY RULES

PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

Division 1 – Law Corporations

Corporate name certificate

- 9-2 (1) A lawyer may apply to the Executive Director, in the prescribed a-form-
~~approved by the Executive Committee~~, for a certificate that the Society does
not object to the incorporation of a company as a law corporation under a
proposed name.

Law corporation permit

- 9-4 A company may apply to the Executive Director for a law corporation permit by
delivering to the Executive Director
- (a) a completed permit application in the prescribed a-form-~~approved by the
Executive Committee~~,

Change of corporate name

- 9-6 (1) A law corporation may apply to the Executive Director in the prescribed a-
~~form approved by the Executive Committee~~ for a certificate that the Society
does not object to a specific change of name for the law corporation.

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

“**articling agreement**” means a contract in the prescribed form executed by an applicant for enrolment and the applicant’s prospective principal;

“**prescribed form**” means a form approved by the Executive Director;

PART 1 – ORGANIZATION

Division 2 – Committees

Powers and duties

1-51 The powers and duties of the Executive Committee include the following:

(d) [rescinded]

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Members

Release from undertaking

2-5 (1) A retired or non-practising member may apply for release from an undertaking given under Rule 2-3 [*Non-practising members*] or 2-4 [*Retired members*] by delivering to the Executive Director

(a) an application in the prescribed form, including written consent for the release of relevant information to the Society, and

Certificates and permits

2-7 The Executive Director may approve the form of

(a) practising certificate issued under section 23 [*Annual fees and practising certificate*],

(b) retired membership certificate issued under Rule 2-4 [*Retired members*],

LAW SOCIETY RULES

- (c) non-practising membership certificate issued under Rule 2-3 [*Non-practising members*],
- (d) practitioner of foreign law permit issued under Rule 2-29 [*Practitioners of foreign law*],
- (e) inter-jurisdictional practice permit issued under Rule 2-20 [*Application for inter-jurisdictional practice permit*], and
- (f) Canadian legal advisor certificate issued under Rule 2-84 [*Barristers and solicitors' roll and oath*].

Member information

Annual practice declaration

- 2-8** (1) In this rule, “**declaration**” means the Annual Practice Declaration in the prescribed form.

Law firms

Definitions and application

- 2-12.1** (1) In Rules 2-12.1 to 2-12.5

“**registration form**” means the prescribed form required under Rule 2-12.2 completed to the satisfaction of the Executive Director;

“**self-assessment report**” means a report required under Rule 2-12.3 in the prescribed form completed to the satisfaction of the Executive Director.

Inter-jurisdictional practice

Inter-jurisdictional practice permit

- 2-19** (3) A visiting lawyer applying under subrule (1) must deliver to the Executive Director
- (a) a completed permit application in the prescribed form, including a written consent for the release of relevant information to the Society,
 - (c) a certificate of standing dated not more than 30 days before the date of application, issued by each governing body of which the visiting lawyer is a member,

LAW SOCIETY RULES

Practitioners of foreign law

Practitioners of foreign law

- 2-29** (1) A person who qualifies under section 17 [*Practitioners of foreign law*] may apply to the Executive Director for a permit to act as a practitioner of foreign law in British Columbia by delivering to the Executive Director
- (a) a completed permit application in the prescribed form, including a written consent for the release of relevant information to the Society, and

Renewal of permit

- 2-34** (2) A renewal application must include
- (a) a completed permit renewal application in the prescribed form, including a written consent for the release of relevant information to the Society,

Multi-disciplinary practice

Application to practise law in MDP

- 2-40** (1) Before a lawyer may practise law as a member of an MDP that has not been granted permission under Rule 2-41 [*Consideration of MDP application*], the lawyer must submit the following to the Executive Director:
- (a) an application in the prescribed form;
- (2) In addition to any other requirement in the prescribed form, the lawyer must report full details of the arrangements that the lawyer has made to ensure that

Changes in MDP

- 2-42** (2) When a new non-lawyer proposes to become a member of an MDP, the lawyer practising in the MDP must do the following at least 60 days before the proposed membership takes effect:
- (a) notify the Executive Director in the prescribed form;

Liability indemnification

- 2-47** (2) If a non-lawyer member of an MDP agrees in writing, in the prescribed form, to engage in activities on behalf of the MDP for an average of 25 hours or less per week, the applicable indemnity base assessment is the part-time indemnity fee specified in Schedule 1.

LAW SOCIETY RULES

Notifying the Society

- 2-49** (1) Each lawyer who practises law in an MDP must report to the Executive Director in the prescribed form concerning the following:

Division 2 – Admission and Reinstatement

Admission program

Enrolment in the admission program

- 2-54** (1) An applicant may apply for enrolment in the admission program at any time by delivering to the Executive Director the following:
- (a) a completed application for enrolment in the prescribed form, including a written consent for the release of relevant information to the Society;

Mid-term report

- 2-61** (2) Before the student has completed 60 per cent of the student's articling term, the principal and the student must deliver to the Executive Director a joint report on the student's progress to date in articles in the prescribed form.

Assignment of articles

- 2-67** (1) An articulated student may apply for permission to assign the student's articles to another lawyer qualified to act as a principal by filing with the Executive Director, not later than 7 days after commencing employment at the office of the new principal,
- (a) an assignment of articles in the prescribed form,
 - (b) a declaration of principal in the prescribed form, and

Temporary articles

- 2-70** (1) A person may apply for enrolment in temporary articles by filing the following with the Executive Director, not less than 30 days before the enrolment start date:
- (a) an application for enrolment in the prescribed form, including a written consent for the release of relevant information to the Society;
 - (b) an articling agreement in the prescribed form;

LAW SOCIETY RULES

Call and admission

First call and admission

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

Transfer from another Canadian jurisdiction

- 2-79** (1) An applicant for call and admission on transfer from another jurisdiction in Canada must deliver the following to the Executive Director:
- (a) an application for call and admission on transfer in the prescribed form, including written consent for the release of relevant information to the Society;
 - (d) a professional liability indemnity application or exemption form;

Transfer under National Mobility Agreement and Territorial Mobility Agreement

- 2-81** (3) To qualify for call and admission, an applicant under this rule must certify, in the prescribed form, that he or she has reviewed and understands all of the materials reasonably required by the Executive Director.

Transfer as Canadian legal advisor

- 2-82** (1) Subject to subrule (3), a member of the Chambre may apply for call and admission on transfer as a Canadian legal advisor by delivering to the Executive Director the following:
- (a) a completed application for call and admission as a Canadian legal adviser in the prescribed form, including written consent for the release of relevant information to the Society;

Barristers and solicitors' roll and oath

- 2-84** (2) Every lawyer who is called to the Bar of British Columbia and admitted as a solicitor of the Supreme Court must,
- (a) before beginning the practice of law, take the barristers and solicitors' oath in a form approved by the Benchers before a judge of the Provincial Court or a superior court in British Columbia or before a practising lawyer, and

LAW SOCIETY RULES

Reinstatement

Reinstatement of former lawyer

- 2-85** (1) A former lawyer may apply for reinstatement as a member of the Society by delivering the following to the Executive Director:
- (a) an application for reinstatement in the prescribed form, including written consent for the release of relevant information to the Society;

Division 3 – Fees and Assessments

Trust administration fee

- 2-110** (3) For each quarter year ending on the last day of March, June, September or December, a lawyer must remit the following to the Society within 30 days of the end of the quarter year to which they apply:
- (b) a completed trust administration report in the prescribed form.

PART 3 – PROTECTION OF THE PUBLIC

Division 3 – Education

Practice management course

- 3-28** (1) Within 6 months after and not more than 12 months before the date on which this Rule applies to a lawyer, the lawyer must
- (b) certify to the Executive Director in the prescribed form that the lawyer has successfully completed the practice management course.

Professional development

- 3-29** (3) In each calendar year, a practising lawyer must
- (b) certify to the Executive Director in the prescribed form that the lawyer has completed the required professional development.

Professional development for family law neutrals

- 3-38** (3) In each calendar year, a family law mediator, arbitrator or parenting coordinator must
- (b) certify to the Executive Director in the prescribed form that the lawyer has completed the professional development required under this rule.

LAW SOCIETY RULES

Division 5 – Indemnification

Annual indemnity fee

- 3-40** (2) If a lawyer undertakes, in the prescribed form, to engage in the practice of law and associated activities for an average of 25 hours or less per week, the applicable base assessment is the part-time indemnity fee specified in Schedule 1.

Division 7 – Trust Accounts and Other Client Property

Electronic transfers from trust

- 3-64.1** (1) In this rule, “**requisition**” means an electronic transfer of trust funds requisition, in the prescribed form.

Trust report

- 3-79** (5) A trust report delivered to the Executive Director under this rule must
(a) be in the prescribed form,

Division 8 – Unclaimed Trust Money

Investigation of claims

- 3-90** (1) A person may make a claim under section 34 [*Unclaimed trust money*] in writing, in the prescribed form by delivering it to the Executive Director.

Division 9 – Real Estate Practice

Report of failure to cancel mortgage

- 3-96** A lawyer must deliver to the Executive Director within 5 business days a report in the prescribed form when

LAW SOCIETY RULES

PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

Division 1 – Law Corporations

Corporate name certificate

- 9-2** (1) A lawyer may apply to the Executive Director, in the prescribed form, for a certificate that the Society does not object to the incorporation of a company as a law corporation under a proposed name.

Law corporation permit

- 9-4** A company may apply to the Executive Director for a law corporation permit by delivering to the Executive Director
- (a) a completed permit application in the prescribed form,

Change of corporate name

- 9-6** (1) A law corporation may apply to the Executive Director in the prescribed form for a certificate that the Society does not object to a specific change of name for the law corporation.

FORM APPROVAL

SUGGESTED RESOLUTION:

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

1. Rule 1 is amended as follows:

- (a) *the definition of “articling agreement” is rescinded and the following substituted:*

“articling agreement” means a contract in the prescribed form executed by an applicant for enrolment and the applicant’s prospective principal;;

- (b) *the following definition is added:*

“prescribed form” means a form approved by the Executive Director,;

2. Rule 1-51 (d) is rescinded.

3. The following rules are amended by striking out “in a form approved by the Credentials Committee” and substituting “in the prescribed form”:

- (a) *Rule 2-5 (1) (a);*
- (b) *Rule 2-19 (3) (a);*
- (c) *Rule 2-29 (1) (a);*
- (d) *Rule 2-34 (2) (a);*
- (e) *Rule 2-40 (1) (a);*
- (f) *Rule 2-42 (2) (a);*
- (g) *Rule 2-49 (1);*
- (h) *Rule 2-54 (1) (a);*
- (i) *Rule 2-61 (2);*
- (j) *Rule 2-67 (1) (a) and (b);*
- (k) *Rule 2-70 (1) (a) and (b);*
- (l) *Rule 2-79 (1) (a);*
- (m) *Rule 2-82 (1) (a);*

- (n) **Rule 2-85 (1) (a).**
4. ***The following rules are amended by striking out “in a form approved by the Executive Committee” and substituting “in the prescribed form”:***
- (a) **Rule 2-8 (1);**
- (b) **Rule 2-12.1 (1);**
- (c) **Rule 2-47 (2);**
- (d) **Rule 2-110 (3) (b);**
- (e) **Rule 3-40 (2);**
- (f) **Rule 3-96;**
- (g) **Rule 9-2 (1);**
- (h) **Rule 9-4 (a);**
- (i) **Rule 9-6 (1).**
5. ***Rule 2-12.1 (1) is amended by rescinding the definition of “registration form” and substituting the following:***
- “registration form” means the prescribed form required under Rule 2-12.2 completed to the satisfaction of the Executive Director;.**
6. ***Rule 2-19 (3) (c) is rescinded and the following substituted:***
- (c) a certificate of standing dated not more than 30 days before the date of application, issued by each governing body of which the visiting lawyer is a member,.
7. ***Rule 2-40 (2) is amended by striking out “other requirement determined by the Credentials Committee, in the form referred to in subrule (1),” and substituting “other requirement in the prescribed form,”.***
8. ***Rule 2-61 (2) is amended by striking out “60 per cent of his or her articling term,” and substituting “60 per cent of the student’s articling term,”.***
9. ***Rule 2-67 (1) is amended by striking out “permission to assign his or her articles” and substituting “permission to assign the student’s articles”.***
10. ***Rule 2-77 (1) (a) is amended by striking out “in the form approved by the Credentials Committee:” and substituting “in the prescribed form:”.***

11. *Rule 2-81 (3) is amended by striking out “in a prescribed form” and substituting “in the prescribed form”.*
12. *The following rules are amended by striking out “in a form approved by the Executive Director” and substituting “in the prescribed form”:*
 - (a) *Rule 3-28 (1) (b);*
 - (b) *Rule 3-29 (3) (b);*
 - (c) *Rule 3-38 (3) (b).*
13. *The following rules are amended by striking out “in a form approved by the Discipline Committee” and substituting “in the prescribed form”:*
 - (a) *Rule 3-64.1 (1);*
 - (b) *Rule 3-79 (5) (a).*
14. *Rule 3-90 (1) is amended by striking out “in the form approved by the Executive Committee” and substituting “in the prescribed form”:*

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Proposed Amendments to Rules 5-8, 5-9, and 5-12: Nondisclosure of privileged and confidential information

Executive Committee:

Craig Ferris, QC (Chair)
Dean Lawton, QC (Vice-Chair)
Jeevyn Dhaliwal, QC
Lisa Hamilton, QC
Steven McKoen, QC
Christopher McPherson, QC
Mark Rusthon

Date: October 16, 2020

Prepared for: Benchers
Prepared by: Policy and Planning Department

Purpose: Recommendation

Purpose

The Executive Committee has reviewed a recommendation by staff to amend Rules 5-8, 5-9, and 5-12. The purpose of the recommendation is to improve transparency of hearings by more clearly delineating attendance at a hearing, as well as more clearly stating what materials can and cannot be produced following a hearing. The result would be greater clarity in the Rules on these matters in order to reduce the need for routine non-disclosure orders in Law Society hearings.

Problem

The general rule is that hearings are public and therefore open to the public to attend. Members of the public can also ask to obtain a copy of the transcript of the hearing, or a copy of an exhibit. At Law Society hearings, the hearing panel is currently routinely asked, at the close of proceedings, to issue an order to protect confidentiality and privileged information, and if a request for information is made, to redact out privileged and confidential information. This order is made pursuant to Rule 5-8(2).

However, the Committee noted that the protection of privileged and confidential materials in the hands of the Law Society is already provided for in s. 88 of the *Legal Profession Act*. This creates a question as to whether it is necessary to have hearing panels order that privilege and confidential information must be protected from disclosure if a request for a transcript or an exhibit is made. Amending the above-captioned rules regarding non-disclosure of privileged and confidential information would, it is expected, better ensure that such orders were required only in very unusual circumstances where there is a need to protect information from disclosure that is not already statutorily addressed.

At the same time, the Committee noted that there is currently no process outlined in the rules for varying a non-disclosure order at a later date should the need for the order to have changed. The need to seek such a varying order arose on a recent decision and required an initiation of a review well beyond the 30 days provided for in the rules. The committee therefore discussed a proposal to provide for a process to vary orders.

Rules

The Executive Committee was advised that the Act and Rules Committee has had an opportunity to consider the matter and has, in fact, prepared draft rules. That Committee notes the following comments from the Act and Rules Committee:

- The proposed rules are intended to give effect to three objectives:
 - eliminate the need for a separate order at each discipline hearing to protect the confidentiality and privileged information that may be disclosed in the course of the hearing;

- provide criteria on which an order can be made to exclude the public from a hearing;
- provide a process by which an order to “seal” documents and transcripts of a hearing can be varied after the hearing is concluded.

The Committee noted the following drafting notes prepared by the Act and Rules Committee:

- Proposed amendments to Rule 5-9(1) and (2) are to improve the organization of the provisions. The availability of copies of transcripts and copies of exhibits should be parallel. The requirement of a court reporter is a separate concept;
- Reference to the Act, Rules, and “*Freedom of Information and Protection of Privacy Act*” is not really required to give effect to those governing documents. However, the intention is to manage the expectations of people requesting access to hearing documents;
- The proposed Rule 5-9(3) is added because it will eliminate the need for the same or similar “sealing orders” for each discipline hearing. It is consistent with a number of similar provisions in the Rules where a disclosure of information is authorized;
- Changes to Rule 5-12 are to provide a procedure for considering applications to vary a “sealing” order that is parallel to other applications to vary an order.

Recommendation

The Executive Committee recommends that the Benchers resolve to amend the rules in accordance with the attached resolution. Clean and red-lined versions of the proposed amendments are also attached.

MDL/al

Attachments

LAW SOCIETY RULES

PART 5 – HEARINGS AND APPEALS

Public hearing

- 5-8** (1) Every hearing is open to the public, but the panel or review board may exclude some or all members of the public ~~in any circumstances it considers appropriate.~~
- (1.1) The panel or review board must not make an order under subrule (1) unless, in the judgment of the panel or review board
- (a) the public interest or the interest of an individual in the order outweighs the public interest in the principle of open hearings in the present case, or
- (b) the order is required to protect the safety of an individual.
- (2) On application by anyone, or on its own motion, the panel or review board may make the following orders to protect the interests of any person:
- (a) an order that specific information not be disclosed despite Rule 5-9 (2) [Transcript and exhibits];
- (b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).

Transcript and exhibits

- 5-9** (1) All proceedings at a hearing must be recorded by a court reporter, ~~and any person may obtain, at his or her expense, a transcript pertaining to any part of the hearing that he or she was entitled to attend.~~
- (2) Subject to ~~solicitor-client privilege or an order under Rule 5-8 (2) [Public hearing]~~ the Act, these rules and the Freedom of Information and Protection of Privacy Act, any person may obtain, at ~~his or her~~ the person's own expense, a copy of
- (a) a transcript of any part of the hearing that is open to the public, or
- (b) an exhibit entered in evidence when a hearing is open to the public.
- (3) This rule must not be interpreted to permit the disclosure of any information, files or records that are confidential or subject to a solicitor client privilege.

Application to vary certain orders

- 5-12** (2.1) A party or anyone with an interest in information subject to an order made under Rule 5-8 (2) (a) [Public hearing] may make an application in writing to the President for rescission or variation of the order.
- (4) The President must refer an application under subrule (1) or (2.1) to one of the following, as may in the President's discretion appear appropriate:
- (a) the same panel or review board that made the order;
- (b) a new panel;
- (c) the Discipline Committee;

LAW SOCIETY RULES

- (d) the Credentials Committee.
- (5) The panel, review board or Committee that ~~hears~~ decides an application under subrule (1) must
 - (a) dismiss ~~it~~ the application.
- (5.1) The panel, review board or Committee that decides an application under subrule (2.1) must
 - (a) dismiss the application,
 - (b) rescind the order, or
 - (c) vary the order to one that the original panel or review board was permitted to make under Rule 5-8 (2) (a) [Public hearing].
- (6) If, in the view of the President and the chair of the Committee to which an application is referred under subrule (4) (c) or (d), there is a need to act on the application before a meeting of the Committee can be arranged, the chair of the Committee may hear the application and make the determination under subrule (5).
- (7) An application under this rule does not stay the order that the applicant seeks to vary.

LAW SOCIETY RULES

PART 5 – HEARINGS AND APPEALS

Public hearing

- 5-8** (1) Every hearing is open to the public, but the panel or review board may exclude some or all members of the public.
- (1.1) The panel or review board must not make an order under subrule (1) unless, in the judgment of the panel or review board
- (a) the public interest or the interest of an individual in the order outweighs the public interest in the principle of open hearings in the present case, or
 - (b) the order is required to protect the safety of an individual.
- (2) On application by anyone, or on its own motion, the panel or review board may make the following orders to protect the interests of any person:
- (a) an order that specific information not be disclosed despite Rule 5-9 (2) [*Transcript and exhibits*];
 - (b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).

Transcript and exhibits

- 5-9** (1) All proceedings at a hearing must be recorded by a court reporter.
- (2) Subject to the Act, these rules and the *Freedom of Information and Protection of Privacy Act*, any person may obtain, at the person's own expense, a copy of
- (a) a transcript of any part of the hearing that is open to the public, or
 - (b) an exhibit entered in evidence when a hearing is open to the public.
- (3) This rule must not be interpreted to permit the disclosure of any information, files or records that are confidential or subject to a solicitor client privilege.

Application to vary certain orders

- 5-12** (2.1) A party or anyone with an interest in information subject to an order made under Rule 5-8 (2) (a) [*Public hearing*] may make an application in writing to the President for rescission or variation of the order.
- (4) The President must refer an application under subrule (1) or (2.1) to one of the following, as may in the President's discretion appear appropriate:
- (a) the same panel or review board that made the order;
 - (b) a new panel;
 - (c) the Discipline Committee;
 - (d) the Credentials Committee.
- (5) The panel, review board or Committee that decides an application under subrule (1) must

LAW SOCIETY RULES

- (a) dismiss the application,
- (5.1) The panel, review board or Committee that decides an application under subrule (2.1) must
 - (a) dismiss the application,
 - (b) rescind the order, or
 - (c) vary the order to one that the original panel or review board was permitted to make under Rule 5-8 (2) (a) [*Public hearing*].
- (6) If, in the view of the President and the chair of the Committee to which an application is referred under subrule (4) (c) or (d), there is a need to act on the application before a meeting of the Committee can be arranged, the chair of the Committee may hear the application and make the determination under subrule (5).
- (7) An application under this rule does not stay the order that the applicant seeks to vary.

NON-DISCLOSURE

SUGGESTED RESOLUTION:

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

1. Rule 5-8 is amended as follows:

- (a) *in subrule (1), “in any circumstances it considers appropriate” is struck out;*
- (b) *the following subrule is added:*
 - (1.1) The panel or review board must not make an order under subrule (1) unless, in the judgment of the panel or review board
 - (a) the public interest or the interest of an individual in the order outweighs the public interest in the principle of open hearings in the present case, or
 - (b) the order is required to protect the safety of an individual.;
- (c) *subrule (2) (a) is rescinded and the following substituted:*
 - (a) an order that specific information not be disclosed despite Rule 5-9
 - (2) *[Transcript and exhibits];.*

2. Rule 5-9 is rescinded and the following substituted:

- 5-9** (1) All proceedings at a hearing must be recorded by a court reporter.
- (2) Subject to the Act, these rules and the *Freedom of Information and Protection of Privacy Act*, any person may obtain, at the person’s own expense, a copy of
 - (a) a transcript of any part of the hearing that is open to the public, or
 - (b) an exhibit entered in evidence when a hearing is open to the public.
 - (3) This rule must not be interpreted to permit the disclosure of any information, files or records that are confidential or subject to a solicitor client privilege..

3. ***Rule 5-12 is amended as follows:***

(a) ***the following subrule is added:***

- (2.1) A party or anyone with an interest in information subject to an order made under Rule 5-8 (2) (a) [*Public hearing*] may make an application in writing to the President for rescission or variation of the order.;

(b) ***subrule (5) is amended as follows:***

- (i) “that hears an application” ***is struck out and*** “that decides an application” ***is substituted;***

(ii) ***paragraph (a) is rescinded and the following substituted:***

- (a) dismiss the application.;

(c) ***the following subrule is added:***

- (5.1) The panel, review board or Committee that decides an application under subrule (2.1) must
- (a) dismiss the application,
 - (b) rescind the order, or
 - (c) vary the order to one that the original panel or review board was permitted to make under Rule 5-8 (2) (a) [*Public hearing*].

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

Confidentiality of Complaints

Executive Committee:

Craig Ferris, QC (Chair)
Dean P.J. Lawton, QC (Vice-Chair)
Jeevyn Dhaliwal, QC
Lisa J. Hamilton, QC
Steven R. McKoen, QC
Christopher A. McPherson, QC
Mark Rushton

Date: October 15, 2020

Prepared for: Benchers

Prepared by: Policy and Planning

Purpose: Decision

Purpose of Report

The Executive Committee, as part of its regulatory policy function, recommends that the Benchers approve in principle the rule changes proposed in this report. The proposed changes would permit people to disclose the existence of a complaint, as well as information and records when required by law, while preserving the prohibition about disclosing information and records that form part of the investigation or review of a complaint unless exceptions to the statutory prohibitions apply. The proposal addresses issues arising from a strict application of the current rules. If the rule change is approved in principle, the next stage will be a referral to the Act and Rules Committee to draft rules for review by the Benchers.

Rules governing the confidentiality of complaints

Rule 3-3 addresses the confidentiality of complaints investigation process. Rule 3-3(1) provides that:

No one is permitted to disclose any information or records that form part of the investigation of a complaint or the review of a complaint by the Complainants' Review Committee except for the purpose of complying with the objectives of the Act or with these rules.

Some exceptions to that prohibition are set out in Rule 3-3(2) – (6). The Executive Director is permitted to disclose the information referred to in subsection (1) with the consent of the lawyer who is the subject of a complaint and to release certain limited information regarding the status of a complaint if the complaint is already known to the public. Undertakings given by a lawyer to cease or limit areas of practice given in the course of an investigation may be released, and information can be shared with another law society or with law enforcement.

Rule 3-3 dates back to 1997. The stated purpose of the rule was twofold: 1) to be responsive to the obligations to protect confidentiality in the face of the *Freedom of Information and Protection of Privacy Act* ("FOIPPA"); and 2) to help Law Society staff explain to media and others our limits on providing information relating to complaints about lawyers.¹

Rule 3-3(1) was passed to protect the integrity of the Law Society's investigative process, and both the public and lawyers' confidence in that process. The Law Society obtains a vast amount of personal information. Unfettered access to, or disclosure of, that information can cause a range of

¹ Jeffrey G. Hoskins, Memorandum to the Benchers, *Proposed Rule 110 – Confidentiality of Complaints* (June 4, 1997).

harms to the complainant and/or the lawyer who is the subject of the complaint, as well as third parties. In fact, where a freedom of information request is made concerning a complaint against a lawyer, the Law Society generally applies s 8(2) of FOIPPA to refuse to confirm or deny even the existence of the complaint because, given the confidentiality provision in Rule 3-3(1) and s. 87 of the *Legal Profession Act*, it would be viewed as an unreasonable invasion of the lawyer's personal privacy unless the lawyer were to consent otherwise.

The problem the proposed rule change seeks to address

With experience over the last two decades, the interpretation that has been placed on the Rule seems to be unnecessarily restrictive.

While s. 87 of the *Legal Profession Act* statutorily prohibits “reports,” (which as defined to include materials gathered in the course of an investigation), from being disclosed without the consent of the relevant parties, and provides that the materials cannot be produced or be admissible in a proceeding without the Executive Director's consent, Rule 3-3 makes no reference to the provisions of the *Act* in this regard. Given the consent permissions in the statute, it is incongruous that the Rule creates a near-absolute prohibition on disclosure that to prevent a person who made the complaint or a lawyer against whom a complaint was made from disclosing its existence. The Rule appears to go farther than the statute.

The proposed approach

The Executive Committee recommends that the policy regarding disclosure of information and records that form part of the investigation of a complaint should be interpreted as follows:

(a) Members of the public

Subject to s. 87 of the *Act*, a member of the public (apart from those employed by the Law Society) should be free to disclose the existence of a complaint made by that person. The disclosure of information or records relating to the complaint should be governed by s. 87 of the *Act*.

(b) The lawyer who is the subject of the complaint

The lawyer who is subject to a complaint should also be permitted to disclose the existence of a complaint against the lawyer, provided he or she maintains confidentiality and privilege.

Otherwise, the disclosure of records relating to the complaint should again be governed by s. 87 of the *Act* – that is, a prohibition on admissibility of records that form part of the investigation or review of the complaint without consent.

(c) The Law Society

In general, Benchers, committee members and staff should not disclose information or records acquired as a result of an investigation of a complaint except for the purpose of complying with the Act and Rules. However, there are limited circumstances in which the Law Society may need to disclose information or records to third parties, and while there may be no issues with the complainant or lawyer consenting, the onus should nevertheless remain on the Law Society to take the step and potentially utilize Rule 3-3(2)(a) by obtaining consent of the relevant party for this purpose, subject to redacting out third party personal information.

As noted above, current policy regarding requests made under FOIPPA is that complaint information is confidential and the existence of complaints is neither confirmed nor denied. Information identifying personal information of third parties (that is, individuals other than the person making the FOIPPA request) would also be withheld unless there was consent to disclose it. The decision about whether to release such information should remain with the person whose information it is.

Recommendation

The Executive Committee recommends that:

The Benchers approve in principle amending Rule 3-3 to reflect the policy considerations outlined in this report to better ensure that the rule is consistent with the statutory provisions on disclosure set out in s. 87 of the Act, and that the matter be preferred to the Act and Rules Committee to prepare rules for approval by the Benchers at a later date.

/DM

Tribunal Hearing Procedures

Executive Committee:

Craig Ferris, QC (Chair)
Dean P.J. Lawton, QC (Vice-Chair)
Jeevyn Dhaliwal, QC
Lisa J. Hamilton, QC
Steven R. McKoen, QC
Christopher A. McPherson, QC
Mark Rushton

Date: October 30, 2020

Prepared for: Benchers

Prepared by: Policy and Planning Department

Purpose: Decision

Purpose of report

The Executive Committee, as part of its regulatory policy function, recommends that the Benchers adopt in principle a series of rule and policy changes to improve the tribunal hearing process and streamline the existing rules. If the proposals are adopted, the next step would be a referral to the Act and Rules Committee to draft new rules.

The problems addressed in this report

The format of the current rules regarding hearings was set when the current *Legal Profession Act* came into force in 1998. Over the last 20 years, hearings have become longer, more complex, and prone to more pre-hearing applications. The Law Society has also worked to more clearly differentiate the hearing process from the investigation process during that time. The current rules function to accommodate hearings, but two decades of experience with them have identified where some amendments may be considered to improve processes, create more separation from the investigative process, and more transparency of outcome.

Proposed changes

The Executive Committee recommends the follow modifications to the existing rules and procedures for tribunal hearings.

1. Consolidation of hearing rules

At present, the hearing rules are spread throughout the Law Society Rules: Part 2 of the Rules deals with credentials; Part 3 deals with interim suspensions; Part 4 deals with discipline; Part 5 deals with hearings and appeals.

Both for purposes of logical flow and readability, the current approach is not optimal.

In terms of logical flow, it is easier to follow concepts when they are collected with like concepts. There is a risk, when combining the tribunal hearing rules alongside rules relating to the investigation and discipline process, that the reader will fail to recognize that the hearing is an independent adjudication.

In terms of readability, it is also easier to have the content consolidated in one section. This may be more important when people are reading content on electronic devices, depending on the reader's degree of comfort jumping back and forth between sections of an electronic document or tabs.

The proposed change is to consolidate the provisions relating to the hearing process in its own Part. The change does not impact substantive procedure; it merely impacts functionality of navigating the rules, and the Executive Committee does not anticipate it generating adverse consequences.

2. Publication

The Executive Committee recommends mandatory publication of all Tribunal decisions by the Executive Director, subject only to a determination by the Tribunal that extraordinary circumstances dictate that the public interest is best served by not publishing the decision.

Section 3 of the *Legal Profession Act* requires the Law Society to “uphold and protect the public interest in the administration of justice” by way of the means enumerated in the section.

Transparency of a fair administrative process is one of the surest ways for the public to have confidence that the Law Society is discharging its regulatory duties in the public interest. This is particularly important in the age of Internet and social media where misinformation propagates rapidly and with a global reach.

The recommendation for a default of mandatory publication does not limit the Tribunal from making orders to ensure that confidential information is preserved. In addition, the Tribunal has the ability to anonymize personal information when it is necessary to protect the public interest. Mandatory publication of tribunal decisions does not limit the safeguards available to the Tribunal to balance transparency and privacy.

This is the approach recently approved by the Benchers with respect to the publication of citations when they are issued. It puts the quasi-judicial decision-making before the Tribunal rather than the Executive Director or designate.

3. Official Record

The Executive Committee recommends that the Rules allow greater flexibility for creation of the official record, rather than requiring a court reporter.

Technology is constantly improving to support the creation of accurate records, which is the key purpose of using a court reporter for an official record. If technology, or another service provider, can generate a record that is as accurate as a record generated by a court reporter, and in a timely manner and without an unacceptable increase in cost, the Rules should be flexible enough to permit the Law Society to do so in order to generate an official record.

There are some discrete issues that will need to be worked through if the Benchers wish to take this approach, particularly if technology is used. If the Law Society is to be the repository of the recording of the proceeding, it will be necessary to ensure records integrate into the records management system. It is also necessary to have a mechanism to generate accurate transcripts

from the recording. Those however are largely operational considerations. The intent of the recommendation is simply to create more flexible rules should other technologies become available.

A risk that needs to be considered is the optics of the Law Society being the repository and generator of the official transcript. There is a risk some lawyers will make allegations the transcript generated by the Law Society through technology is not accurate. While the risk may be remote, it would come with a cost, and the resolution of one such allegation would not preclude another lawyer at a later date raising the same objection.

The Executive recommends referring the topic to staff to determine what services and/or technology might be used to supplement the use of court reporters.

4. Tribunal Chair

For three of the past five years the President has appointed a designate to take on responsibilities for tribunal duties. The process has worked well, but would benefit from a fixed appointment.

The Executive Committee recommends that the role of “Tribunal Chair”, be established in the Rules. The Tribunal Chair would be appointed for a two-year term by the Benchers, rather than as a designate of the President.

Under the current rule, only a member of the Executive Committee is eligible to be the President’s designate. The proposal is that all Benchers would be eligible for the position of Tribunal Chair. This would provide more stability in the position as well as giving the role the imprimatur of the entire Bencher table.

5. Chambers Bencher

For purposes of improved transparency, the Executive Committee recommends establishing the role of “Chambers Bencher” in the Rules to replace “President’s designate”. The title is a more accurate description and therefore more useful. The concept would be for the Tribunal Chair to appoint the Chambers Bencher on a case-by-case basis. All lawyer Benchers should be eligible for the role, subject to committee conflicts. This would provide a bit more flexibility than the current approach, where the President designates three Benchers each year to take on the role.

6. Interlocutory Applications

The Executive Committee recommends that the Benchers develop a standardized process in the Rules for any application for an order before a hearing starts. All matters should be directed to the President/Chair, potentially with some guidance regarding who should decide the matter: Chambers Bencher, panel or pre-hearing conference. A standardized process provides uniform guidance to the Benchers in dealing with these matters, and is more transparent.

7. Variation of Orders

The Executive Committee recommends creation of a standard procedure to apply for variation of any order. The procedure should be similar to the procedure for an interlocutory application, and should be included in that section of the Rules.

8. Interim Suspensions

Rule 3-10 (Extraordinary action to protect the public) and Rule 4-23 (Interim suspensions or practice conditions) deal with the impositions of interim orders that are available before a citation has been authorized and after citation has been authorized but before the hearing has been held, respectively. While these are not “hearings”, they are processes that can make important orders ostensibly to protect the public interest in regard to regulating lawyers.

The Rules require the process to be conducted by “three benchers.” While this would include appointed benchers, there is no general Law Society policy that an appointed bencher be appointed.

The Executive Committee recommends that the three or more Benchers hearing the matter include an Appointed Bencher in circumstances where an Appointed Bencher is available. Due to the ratio of Appointed Benchers to Benchers, it is important not to delay matters and a mandatory requirement for an Appointed Benchers could create delay, so some flexibility is recommended.

9. Drafting points

There are a few minor Rules drafting points on which the Executive Committee believes improvements can be made to help with clarity. The parties on review should be:

- “Applicant” for Credentials hearings;
- “Respondent” for responding to a citation.

In addition, the Rules use “hearing on” and “hearing of” a citation interchangeably. The Executive Committee recommends choosing one and applying it in all cases.

Summary of recommendations

The Executive Committee recommends referring to the Act and Rules Committee the following changes, on the basis set out in this report:

1. Consolidation of the tribunal hearing rules into a single “Part” of the Law Society Rules;

2. Mandatory publication of all Tribunal decisions by the Executive Director, subject only to a determination by the Tribunal that extraordinary circumstances dictate that the public interest is best served by not publishing the decision;
3. Establish the role of “Tribunal Chair,” in the Rules. The Tribunal Chair will be appointed for a two-year term by the Benchers;
4. Establish the role of “Chambers Bencher” in the Rules to replace “President’s designate,” with all lawyer Benchers being eligible for the position (subject to committee conflicts);
5. Develop a standardized process in the Rules for any application for an order before a hearing starts. All matters should be directed to the President/Chair, potentially with some guidance regarding who should decide the matter: Chambers Bencher, panel or pre-hearing conference;
6. Create a standard procedure to apply for variation of any order. The procedure should be similar to the procedure for an interlocutory application;
7. With respect to interim suspensions under Rule 3-10 and Rule 4-23, that the three or more Benchers hearing the matter include an Appointed Bencher in circumstances where an Appointed Bencher is available;
8. The parties on review should be:
 - a. “Applicant” for Credentials hearings;
 - b. “Respondent” for responding to a citation;
 - c. Choose either “hearing on” and “hearing of” and applying it in all cases in the Rules.

The Executive Committee recommends referring to staff the following:

1. Determine what services and/or technology might be used to supplement the use of court reporters.

/DM



Professional Regulation Process Review: Legislative Amendment for Recovery of Investigation Costs

Executive Committee:

Craig Ferris, QC (Chair)
Dean Lawton, QC (Vice-Chair)
Lisa Hamilton, QC
Jeevyn Dhaliwal, QC
Steve McKoen, QC
Chris McPherson, QC
Mark Rushton

Date: October 20, 2020

Prepared for: Benchers

Prepared by: Executive Committee

Purpose: For Decision

Purpose

1. The Executive Committee has considered a recommendation from staff that the Benchers seek, at an appropriate opportunity, a legislative amendment to clearly permit the Law Society to recover investigation costs from lawyers in appropriate circumstances. The Executive Committee endorses that recommendation.

Problem

2. Currently, there is no process for recovery of actual investigation costs, even in cases where lawyer misconduct is confirmed. This raises fairness considerations because although only 10% of Law Society members fall within the professional conduct and discipline programs each year, these operations represent about 25% of total general fund costs, funded by fees from all. Consequently, the majority of practising lawyers are, through Law Society fees, regularly (and increasingly) called upon to fund the operational costs incurred by the Law Society to regulate the conduct of a minority of lawyers. Effectiveness considerations stem from: (i) the expectation that attaching greater financial consequence to repeated need for investigation may support deterrence, and (ii) recovery of investigation costs may promote timely cooperation from lawyers under investigation.

Proposal

3. To address the problem, staff proposed requesting an amendment to the *Legal Profession Act* (the “*Act*”)¹ that would allow the recovery of investigation costs from a lawyer in appropriate circumstances.² “Investigation costs” refers to the costs incurred by the Law Society during the identification and investigation stages of a complaint, and are distinguished from “hearing costs” which are the costs incurred after a citation has been authorized, up to and including the costs of a citation hearing, review and appeal. Examples of investigation costs include the costs associated with investigator staffing, forensic audits, computer forensic specialists, translators and transcriptionists at interviews, couriers, etc.

Discussion

Authority to Recover Investigation Costs

4. The Law Society’s authority to recover investigation costs must stem from powers granted to the Benchers under the *Act*, either expressly or by application of the common law

¹ *Legal Profession Act*, S.B.C. 1998, c. 9.

² This Report expands on an earlier Report to Executive Committee entitled “Professional Regulation Process Review: Adapting Law Society Processes to Meet Changing Conditions in the Legal Profession,” June 5, 2020, DM2728823.

doctrine of jurisdiction by necessary implication.³ Earlier versions of the *Legal Profession Act* enacted in 1987⁴ and 1996⁵ expressly granted authority for recovery of investigation costs in some form. Pursuant to this authority, it was the Law Society's practice to seek some forensic audit and investigation costs from lawyers in appropriate circumstances.

5. The current *Act*, enacted in 1998, includes no express grant of authority to recover the costs of an investigation into a lawyer's conduct (as opposed to their competence). This omission appears to be inadvertent. Although section 46 of the *Act* authorizes Benchers to "make rules governing the assessment of costs," subsequent case law has clarified that absent express language to the contrary, the use of the word "costs" in an enabling statute is to have its traditional meaning as reflected in the Supreme Court Rules (which does not include investigation costs).⁶

6. In July 2008, the Law Society decided to cease recovery of investigation costs and accepted that section 46 of the *Act* could no longer be interpreted as conferring authority to recover "costs" beyond the traditional meaning of that term.⁷

Other Regulator Practices

7. The Law Society's lack of authority to recover investigation costs makes it an outlier with respect to other law societies and other regulators. Staff reviewed the enabling legislation of various Canadian law societies, which appear to expressly grant authority to recover conduct-related investigation costs in some form. These include the law societies of: the Yukon, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland. Further, a review of recent hearing panel decisions indicates that most Canadian law societies actively exercise their authority to recover investigation costs. Authority to recover investigation costs is also expressly conferred to other professional regulators, for example, pursuant to the *Health Professions Act*⁸ and the *Professional Governance Act*.⁹

³ See *Atco Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, para. 38.

⁴ R.S.B.C. 1987, c. 25.

⁵ R.S.B.C. 1996, c. 255.

⁶ *Roberts v. College of Dental Surgeons of BC*, 1999 BCCA 103; *Shpak v. Institute of Chartered Accountants of BC*, 2003 BCCA 149; See also *LSBC v. Malik*, 2013 BCCA 337.

⁷ Note, s. 38(7) of the *Act* authorizes a hearing panel to "make any other orders and declarations...it considers appropriate." However, courts have declined to interpret such power too broadly. The order power will be limited in scope to what is rationally related to the purpose of the regulatory framework: *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Util. Board)*, [2006] 1 S.C.R. 140, 2006 SCC 4, para. 46, and *Economical Mutual Ins. Co. v. BC (Info. and Privacy Comm.)*, 2013 BCSC 903, paras. 93 to 99. Also, although s. 27(2)(e) of the *Act* authorizes the recovery of the "costs of an investigation", upon consideration of the words of s. 27(2)(e) in their entire context, harmoniously with the scheme of the *Act* and the intention of the Legislature (distilled through review of prior versions of the provision), there is a significant risk that any recovery of conduct investigation costs on the basis of the authority granted under that section would be successfully challenged for lack of jurisdiction. See analysis at DM2813004.

⁸ R.S.B.C. 1996, c. 183, section 19(1)(v.1).

⁹ S.B.C. 2018, c. 47, section 81(1) and (2). Note, these provisions are not yet in force.

Public Interest Considerations

8. The public interest generally supports the adoption of measures that may facilitate timely and effective resolution of complaints, and that may deter lawyer misconduct. The prospect of being held liable for some portion of investigation costs might incentivize some lawyers to cooperate more (particularly if special costs were recoverable for deceptive, misleading or reprehensible conduct during an investigation). If such cooperation allows the complaint to be resolved sooner, this may benefit the public. Increasing the financial consequence that may arise from a complaint may also support deterrence and, consequently, protection of the public.

Lawyer Considerations

9. The costs of regulating the profession are borne by all members of the Law Society through practising fees. The recovery of investigation costs from lawyers where it is appropriate to do so contemplates that those lawyers whose actions have caused greater costs to be incurred may be asked to pay more. The profession as a whole would continue to bear a portion of the investigation costs not recoverable.

10. The potential impact on an investigated lawyer will depend on the cost recovery program ultimately developed following a legislative amendment. Such program ought to avoid creating a “chilling effect” on lawyers subject to investigation – lawyers should not be deterred from defending themselves during an investigation, providing voluminous reply if necessary, or disagreeing with investigators, provided they remain reasonable, forthright and cooperative.

Financial and Operational Considerations

11. Currently, no investigation costs are recovered from lawyers against whom regulatory investigations are conducted. If a portion of investigation costs can be recovered, this may assist in offsetting some of the costs incurred by the Professional Conduct and Forensic Accounting Departments. Discipline Counsel and Hearing Panels may be required to expend additional efforts to seek and consider, respectively, recovery of investigation costs.

Conclusion

12. There are sound policy reasons to impose investigation costs on lawyers in appropriate circumstances. For many years, Benchers were expressly granted the power to recover investigation costs and the Law Society utilized that power. It also appears that many other law societies in Canada have the authority to recover investigation costs, and use it. However, a statutory amendment will be required for the Law Society to safely resume recovery of such costs.

13. The Executive Committee recommends adoption of the following resolution:

THAT the Law Society seek an amendment to the *Legal Profession Act* to permit the Law Society to recover investigation costs from lawyers in appropriate circumstances.



CEO's Report to the Benchers

October 30, 2020

Prepared for: Benchers

Prepared by: Don Avison

1. Planning for the October Benchers Meeting

Despite the challenges of COVID-19, this continues to be a busy and productive year and I expect that will continue through the balance of 2020.

The September 25 Benchers meeting was what I would describe as a pivotal moment where a number of key initiatives came together resulting in significant changes and signaling that there is more to come. As will be evident from the agenda for the October 30th meeting, that trend continues.

The October meeting will include consideration of a number of important proposed Rule changes that will build upon what was achieved at the September meeting.

I can also advise that work to implement decisions made in September is well underway. As an example, the process for receiving proposals to take part in the Law Society Innovation Sandbox is substantially complete and I expect it will be up on the Society's website shortly.

2. An Update from the Federation of Law Societies of Canada

It has long been a tradition for the President and the CEO of the Federation to participate in a Benchers meeting at least once per year and this usually takes place in the context of the annual Benchers Retreat.

With no Retreat in 2020, and with continuing travel restrictions, it will be different this year but the tradition will continue as President Morgan Cooper and CEO Jonathan Herman will join the meeting to provide the Benchers with a summary of the Federation initiatives and plans for 2021. Our meeting will be one of Morgan Cooper's last responsibilities as Federation President as his term ends October 31, 2020 at which time Steve Raby of Alberta takes on the responsibilities of President.

A number of Benchers recently participated in the Federation's Annual Conference. For those who were unable to do so, I would recommend finding time to watch the opening session video with Jordan Furlong. You will find the link to Jordan's Presentation here: <https://vimeo.com/468715079/41a4fb98b3>

3. A Discussion on Governance Standards with Harry Cayton

The Governance Committee recently met with Harry Cayton by video conference and recommended a session with all Benchers. Mr. Cayton brings years of experience with professional self-regulation and will be speaking at our October 30 meeting on governance and regulation. Links to Governance reports Mr. Cayton has done in British Columbia can be found here:

Link to [An Inquiry into the Performance of the College of Dental Surgeons of British Columbia and the Health Professions Act](#)

Link to [Review Conducted for the College of Registered Nurses of British Columbia](#)

Link to [Review of the Legislation and Governance for Engineers and Geoscientist in British Columbia](#)

4. Cullen Commission Update

The Commission suspended hearings during the course of the provincial election which takes place on October 24. Hearings will resume during the last week of October and the Law Society is scheduled to appear before the Commission during the week of November 16th.

A considerable amount of work has been done to prepare extensive background materials for the Commission. I plan to provide a more detailed overview of this at the October 30 meeting.

5. AGM Follow-up

A discussion of AGM Member Resolutions is on the agenda for the upcoming meeting.

Following a discussion at the most recent meeting of the Executive Committee staff have developed a survey for law firms and for students on matters relevant to the resolution regarding working conditions for articulated students. We hope to be able to report back on survey results at the December meeting.

Don Avison, QC
Chief Executive Officer



Conditional Admissions with Consent to Disciplinary Action (Rule 4-30)

Executive Committee

Craig Ferris, QC (Chair)
Dean Lawton, QC (Vice-Chair)
Lisa Hamilton, QC
Jeevyn Dhaliwal, QC
Steve McKoen, QC
Chris McPherson, QC
Mark Rushton

Date: October 20, 2020

Prepared for: Benchers

Prepared by: Executive Committee

Purpose: For Discussion and decision

Purpose

1. In 2019, a review of the Law Society’s professional regulation processes was undertaken by the Professional Regulation department. The department noted several areas for improvement in order to address concerns regarding effectiveness, efficiency, and fiscal responsibility while also improving transparency and public confidence in Law Society processes.
2. Following the review, three proposals were approved in principle by the Benchers at their June 2020 meeting:
 - creation of alternatives to citation hearings through the development of regulatory permissions to create consent agreements that would result in discipline sanctions;
 - recovery of investigation costs for valid complaints and audits; and
 - revising processes to eliminate or reduce referrals to the Discipline Committee for matters that need not require directions from that Committee.
3. This Executive Committee has considered staff recommendations to amendment to Rule 4-30 having regard to the third proposal above; i.e. revising processes to eliminate or reduce referrals to the Discipline Committee where there is a good policy rationale that such referrals are not necessary.
4. Rule 4-30 (conditional admissions with consent to disciplinary action), alongside Rules 4-29 (conditional admissions) and 4-31 (rejection of admissions), allows the Law Society to utilize conditional admissions to resolve citations. Over time, however, the rule has presented certain challenges in practice, largely because it requires the additional step of review by the Discipline Committee before ultimately being reviewed by the hearing panel.
5. The recommended amendment to Rule 4-30 contemplated below will introduce a “joint submission” model to citation resolution, which will address inefficiencies built into the present procedure while allowing for greater certainty and transparency in the process.

Background

Rule 4-30: Conditional admissions with consent to disciplinary action

6. Rule 4-30 allows a citation to be resolved by consent. Under the provisions of the rule, the admissions by the respondent are conditional on acceptance and imposition of a specified disciplinary action. The proposal must first be accepted by the Discipline Committee, and then must be tendered to the hearing panel, which may choose to either accept or reject the proposal. It amounts, in essence, to a consent resolution.
7. Procedurally, if the proposal is rejected by the hearing panel, the parties are back to where they were before the proposal was considered by the Discipline Committee. It is open to the

respondent to make a second proposal for a conditional admission with consent to disciplinary action or proceed to a full hearing.

Problem

8. While it makes sense for the Discipline Committee to be involved in reviewing Rule 4-29 proposals because an acceptance would result in a final action, it is difficult to find a policy rationale for requiring the involvement of the Discipline Committee on admissions under Rule 4-30, as the Committee's involvement is not a final action. The proposal must still be disposed of by the hearing panel.¹

Role of Committee under Rule 4-30 is not a final determination and therefore Committee's role could be dispensed with

9. The Discipline Committee is the Law Society Committee that reviews recommendations by staff regarding the disposition of a complaint. The Committee has a number of options at its disposal when determining what to do with a complaint, one of which is to recommend the authorization of a citation. The issuance of a citation is the process that initiates a hearing.
10. The Committee does not, however, prosecute a citation. That function is undertaken by Law Society staff. The Committee does not engage in the actual investigation undertaken prior to staff referring a matter to it, nor does it engage in the decisions made in the conduct of the litigation undertaken at the hearing of a citation that it has authorized. In matters where no admissions are made, Discipline counsel determines what evidence is led, what arguments are made, and what submissions to make regarding penalty. The hearing panel before which the citation is argued makes the decisions on outcome.
11. It is therefore difficult to establish a good policy rationale for requiring the Discipline Committee to consider and to have to accept a proposal before it is presented to a hearing panel. The Committee has already made a decision to authorize the issuance of the citation. Its role in the matter is, but for the actions outlined in Rule 4-30, otherwise at an end.
12. Discipline counsel, who have authority to present the Law Society's case, should be in as good a position as the Committee to make a determination about whether a proposal should be presented to a hearing panel. Furthermore, the hearing panel itself will have to make a decision, as it is required to do, concerning whether the proposal should be accepted and ordered. The involvement of the Discipline Committee is, therefore, a step that could be dispensed with, thus speeding up the process and reducing the costs of proceeding.
13. Statistics bear out that discipline counsel's considerations of these matters are rarely questioned by the Committee. From 2017 to present, the Discipline Committee has only

¹¹ This may be contrasted with Rule 4-29, where a conditional admission accepted by the Discipline Committee *does* result in a final disposition of a matter as the admission is made in lieu of a hearing.

rejected two Rule 4-30 proposals, but in each case the proposals were made by respondents who did not have the support of discipline counsel because the proposed disciplinary action was considered to be inadequate.²

14. Under the current wording of Rule 4-30, discipline counsel *must* bring a proposal to the Discipline Committee even if it is not supported by discipline counsel. If a respondent makes a proposal at least 14 days before a scheduled hearing, and the Discipline Committee is not scheduled to meet prior to the hearing, a special meeting is called in order to consider the proposal. Even if a proposal is made within the 14-day window, the Chair of the Discipline Committee has the discretion to call a meeting and waive the 14-day limit. This procedure places an unnecessary strain on institutional resources.
15. In 2019, for example, thirteen Rule 4-30 proposals were presented to the Discipline Committee. Each proposal was accompanied by a lengthy memorandum written by discipline counsel. Seven proposals were prepared by internal Law Society discipline counsel, and six were prepared by external *ad hoc* discipline counsel. Not only did the drafting and review of the memoranda create an additional burden on Law Society resources due to the time-sensitive nature of some of the proposals, the Discipline Committee was required to hold four additional special meetings, outside of their regularly scheduled meetings, in order to consider the proposals. To prepare for those meetings, Discipline Committee members were obliged to review each accompanying memorandum on an emergency basis.
16. The Discipline Committee has no shortage of other work. The number of investigations referred to the Discipline Committee has generally increased, and the matters under its consideration are increasingly serious and complex. To better support the Discipline Committee's effectiveness in its deliberation of lawyer misconduct, the Committee should be able to focus its limited time on its principle functions of making determinations about how to dispose of the investigations of conduct complaints referred to it by staff and ordering audits.

Discord with the “open court” principle

17. An added concern is the discord between the “open court” principle, which applies to Law Society hearings, and the rejection of conditional admissions.
18. Because Rule 4-31 mandates that where a conditional admission has been rejected, it must not be used against the respondent in any other Law Society disciplinary proceeding, public notification of a Rule 4-30 hearing is not given, including to a complainant. While this

² It should also be noted that from 2012 to present, a hearing panel has rejected a Rule 4-30 proposal only once—in 2018. That matter eventually went to a full hearing and the new hearing panel ordered exactly what had been initially proposed.

deprives complainants and other members of the public of prior notice that a potential resolution will be tendered at a hearing, it is necessary because of the potential that the proposal will not be accepted.

19. Nevertheless, because hearings are public, it is possible that a member of the public could attend. A further complication is that if a member of the public is in attendance at a Rule 4-30 hearing, a non-disclosure or non-publication order must be sought by counsel, in order to protect the integrity of the Rule 4-30 process. This procedure, while necessary, muddies the desired transparency of Law Society processes.

Potentially Reducing the Pool of Panel Members

20. A third problem with the current Rule 4-30 process is that if a hearing panel rejects a Rule 4-30 proposal, the hearing panel “must advise the chair of the Discipline Committee of its decision and proceed no further with the hearing of the citation”. The members of the first hearing panel are then precluded from sitting on any subsequent hearing panels involving the citation, thus shrinking the pool of potential hearing panel members.

Proposal

21. The Executive Committee considered a staff proposal to amend Rule 4-30 in its current form to address the problems identified above. The Law Society of Ontario (LSO) processes provides an example of how this might work.
22. The LSO does not have any formal legislation or rules pertaining to conditional admissions. Where a consent resolution is desired in disciplinary hearings, LSO Tribunal counsel have applied the common law “amplified public interest test”, as set out in *R. v. Anthony-Cook*, 2016 SCC 43.³ This process differs from the current Rule 4-30 process, as any admissions are not conditional on acceptance.
23. Under the “joint submission” model, the law society and the respondent submit a joint statement of facts and make a joint submission as to the appropriate disciplinary action. The hearing panel accepts the joint submission or denies it and substitutes its own decision. Substitution is not done lightly. Hearing panels only order a different disciplinary action if the joint submission “would bring the administration of justice into disrepute or is otherwise contrary to the public interest”: *Anthony-Cook*, para. 32. This would occur if the joint submission “is so markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the [...] system”: *Anthony-Cook*, para. 33.

³ Law societies in Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, and Newfoundland and Labrador use joint submissions for consent resolutions. They have all adopted the *Anthony-Cook* test.

24. The benefits to the parties are several. Respondents are able to maximize certainty in the outcome, and minimize the stress and costs related to full hearings. For respondents who are remorseful, the process presents an opportunity to make amends for their misdeeds.
25. Law societies gain certainty and less risk that an appropriate resolution will be undercut. A finding of a disciplinary violation is guaranteed, which may be important in a case fraught with potential flaws. Joint submissions save institutional time, resources, and expense—which can all be channeled to other matters. Victims and witnesses are spared the emotional costs of a hearing, and some victims may obtain comfort from a respondent’s admission.
26. If Rule 4-30 were to be rescinded completely, corollary changes would need to be made to Rule 4-31, in order to accommodate the procedure in Rule 4-29, which would remain in effect as there would still be a need for this process even if the Law Society moved to a “joint submission” model.
27. Alternatively, Rule 4-30 could be amended from its current form to create specific regulatory provisions which mirror the “joint submission” model used in Ontario. This may be done either by creating a new process under Rule 4-30 for joint submissions that reflects the law in *Anthony-Cook*, or by delegating the Discipline Committee’s role described under Rule 4-30 to the Executive Director.
28. Delegation to the Executive Director would allow the Law Society to deal with a respondent’s proposal internally and could require agreement between the parties, effectively creating a “joint submission” that could be presented to the hearing panel. There is already some precedent for the Executive Director’s involvement with conditional admissions in other jurisdictions (see Rule 91(1)(a) of the Law Society Rules of Alberta) and this would likely address some of the problems that have been identified; i.e. the Law Society would have the ability to approve or reject a respondent’s proposal and remove the present bureaucratic burden of requiring input from an additional body.

Recommendation

29. After consideration, the Executive Committee recommends that Rule 4-30 be amended to remove the requirement that conditional admissions first be brought to the Discipline Committee before going to the hearing panel.
30. The Executive Committee also recommends the “joint submission” model, as it will best address the problems identified above. Such an amendment would allow the Law Society to replace the current rule with a process that is more efficient and effective.
31. Accordingly, The Executive Committee recommends that the Benchers approve in principle that Rule 4-30 be amended to allow for the following:

- a. proposals for resolution of a disciplinary action cannot be brought unilaterally and must be jointly agreed upon by both the respondent and the Law Society; and
- b. such proposals be brought directly to the hearing panel once the hearing has commenced with no necessary involvement from any other bodies, i.e. the Discipline Committee.



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: October 19, 2020
Subject: **Rule 3-43: Exemption from professional liability indemnification**

1. The Lawyers Indemnity Fund (LIF) proposes to open the professional liability indemnification program to participation by in-house counsel on an optional or voluntary basis. The proposal was recently approved by the Indemnity Subcommittee, and the matter of amending the Law Society Rules to accommodate the changes was referred to the Act and Rules Committee.
2. I attach the report that was before the Indemnity Subcommittee when the proposals were considered.
3. Rule 3-39 states that all practising lawyers must pay the indemnity fee, subject to Rule 3-43 which has been interpreted to state that in-house lawyers are unconditionally exempt, not optionally exempt.
4. A growing number of in-house lawyers who are currently exempt from paying the indemnity fee want to participate in the program. They fall into two groups: those providing pro bono legal services to the public, and those whose legal services are not exclusive to their employer but no fees are charged by the lawyer for the services.
5. The proposal would end the automatic exemption and allow in-house lawyers to choose whether to apply for the exemption or to apply for coverage and pay the indemnity fee.
6. The Act and Rules Committee has considered the proposal and approved the attached draft amendments to allow the changes to the indemnity program, which the Committee recommends to the Benchers for adoption. I also attach a suggested resolution to give effect to the changes.

Drafting notes

7. The draft amendments are basically as requested by LIF, edited slightly for consistency with the Law Society Rules style and drafting convention.

Attachments: report to subcommittee
 drafts
 resolution

JGH



*Lawyers
Indemnity
Fund*

Memo

To: Indemnity Subcommittee
 From: Lawyers Indemnity Fund Staff
 Date: September 30, 2020
 Subject: Permitting in-house lawyers to participate in the indemnification program

Introduction and recommendation

In-house lawyers have historically been excluded from the indemnification program (the “Program”) because most act as corporate counsel providing legal services exclusively to their employer and, with limited exceptions, are not allowed to serve members of the public as part of their employment.

As the role of in-house lawyers in the profession continues to expand and evolve, an increasing number of these lawyers face the real threat of a malpractice claim by a third party. Some have asked LIF to be allowed to buy the coverage and participate in the Program.

We recommend that the Law Society continue to make indemnity coverage mandatory for all practising lawyers, but rather than exclude in-house lawyers from the Program, allow their participation on an optional basis.

Background and history

The Program was established to protect the public from mistakes made by lawyers in private practice and is, by default, compulsory for those members of the Law Society. Of the over 11,000 practising lawyers in BC in 2019, approximately 3,300 (30%) are in-house counsel providing legal services to government, corporations, not-for-profit organizations, and regulatory bodies. Rule 3-39 states that all practising lawyers must pay the indemnity fee, subject to Rule 3-43. Rule 3-43 exempts in-house lawyers from that requirement. The exemption operates as a prohibition and is not optional.

In 1999, as a result of a concern about protecting lawyers employed by unions who may face a malpractice claim by a member of the union that they represent – for example, in a grievance –

lawyers employed by societies and unions were offered the option of participating in the Program. The coverage applies only to claims by those members against the lawyer, and does not extend to claims against the lawyer by the employer, or against the employer itself.

In 2002, in-house lawyers employed by not-for-profit legal aid and public advocacy groups were given the option to participate in the Program, so long as the services were provided *pro bono*.

In-house lawyers are requesting coverage

There are three primary groups of in-house lawyers asking to participate in the Program:

1. In-house lawyers who want to volunteer to provide *pro bono* legal services

These lawyers are inspired by the access to justice crisis and want to volunteer to provide *pro bono* services to the public, completely unrelated to their employment. However, because they are not in private practice, these lawyers are excluded from the Program. There is currently no mechanism for an in-house lawyer voluntarily providing *pro bono* services to be protected by our Program, unless the services are provided through a “sanctioned services” provider administered by Access ProBono.

2. In-house lawyers who provide legal services to third parties at the request of their employer

A small number of in-house counsel also provide legal services to third parties as a term of their employment. These lawyers owe a separate duty of care to these clients, and both the lawyer and the third party are at risk of a loss if the lawyer is negligent.

A common example is in-house litigation lawyers at an insurance company who are in a tripartite relationship. These lawyers provide a defence to an insured pursuant to a liability insurance policy issued by their employer. However, the relationship becomes more akin to lawyers in private practice when the insured client has a contractual right to direct the litigation, or whose deductible and reputation are at stake.

3. In-house lawyers who provide legal services solely to their employers but face claims by third parties in the course of that employment

Lawyers acting in the course of employment may deal with third parties while representing the employer, but not have a separate relationship with them. Examples are: contract negotiations; assisting with mergers; human resource management work, such as downsizing or dismissed employees; review of press releases; or opinion letters

related to a company's financial status. In a subsequent dispute, the third party may advance claims against both the employer and the lawyer alleging misrepresentation or a duty owed and breached.

In the course of day-to-day dealings, a colleague may ask the lawyer a question about exercising options, or about a speeding ticket, a divorce, or an apartment eviction. Resulting from the advice given, the employee could sue the lawyer for professional negligence. However, the employer may not see this exchange as part of the lawyer's employment duties.

Finally, the lawyer may face a malpractice claim by a party to whom no direct or indirect services were provided, but the party has a beef with the lawyer nonetheless.

Considerations

Available commercial insurance

The employer may have directors and officers liability or employment practices liability policies; however, these policies generally do not provide coverage for professional services or legal services by counsel who are not also officers of the company, nor do they provide coverage for legal services for uninsured corporate entities such as holding companies or "internal" claims. Professional liability coverage can be grafted on to a directors and officers policy by endorsement, or an organization can buy a stand-alone professional liability policy, but these options are expensive and very few do. Further, not-for-profits are usually minimally funded and cannot afford professional services coverage for the organization in any form. Individual lawyers are not able to purchase primary professional liability coverage on the commercial market because our compulsory Program is already seen to provide primary coverage for all practising lawyers.

Other provinces

In Ontario, if an in-house lawyer provides services to the employer's customers or clients, or to organizations outside of the "employer group," the lawyer is deemed to be providing these services in private practice and *must* participate in the Law Society program. Their in-house exemption only applies to lawyers exclusively providing legal services to their corporate employer. Lawyers on secondment are included in this exemption. Lawyers providing *pro bono* legal services are considered to be in private practice and must pay the insurance fee, unless through the equivalent of our "sanctioned services provider". The insurance policy excludes claims by a corporate employer, but has an endorsement for indemnification of defence costs.

Alberta excludes all in-house lawyers from its professional liability program, but requires any in-house lawyer with a trust account to purchase the trust protection coverage.

Saskatchewan, Manitoba, Nova Scotia, New Brunswick, Quebec, and Newfoundland all *require* in-house lawyers to be insured by their programs.

PEI will exempt lawyers who seek one and declare that they do not practise outside of their employment and their employer has assumed all risk of liability.

In summary, most provinces require in-house lawyers to participate in their liability programs, while Ontario and PEI will exempt them on conditions. Only Alberta excludes them completely from participation.

Public and lawyer interest benefits

The Law Society has an interest in ensuring that all lawyers providing legal services to the public have professional liability coverage available to them, and that the public has the indirect protection of that coverage in the event of loss through lawyer error. Many in-house lawyers face the risk of a claim, but have very limited insurance options outside of the Program. As a result, some members of the public are not protected from the risk of loss, and some lawyers are providing legal services at their own risk.

Further, the Law Society supports improving access to justice. Some in-house lawyers are not providing volunteer *pro bono* legal services because they don't have a reasonable coverage option. These lawyers are more likely to offer *pro bono* services, thereby increasing the pool of available lawyers, if they are given access to our coverage.

Even where an employer has agreed to indemnify a lawyer for a malpractice claim, such claims may arise well after the legal services have been completed. By the time a claim is made, the lawyer may have changed employers, or the employer may have closed or become bankrupt, resulting in no protection for the lawyer.

Operational Benefits

Broadening the pool of covered lawyers will generate modest additional revenues to LIF. Although most would likely qualify for the part-time indemnity fee, if 300 additional lawyers pay the part-time fee, \$270,000 in additional revenue will be generated annually.

Coverage Terms

Coverage will be comparable to that provided to private practitioners, except that the Policy will continue to not cover the vicarious liability of the employer or claims by the employer. The indemnity fee would be the same, including the part-time discount.

Risk of Claims

Overall, we do not expect in-house lawyers to have a higher risk of claims, in frequency or severity, than lawyers in private practice. If anything, we assess the risk of a claim to be lower. However, there is a likelihood of adverse self-selection: lawyers who will opt for the coverage will be those working in riskier circumstances than most in-house lawyers. So, although in-house activities as a whole are less risky than those of private practice, we may well attract most of the riskier end of the in-house group rather than the lowest risks presented by lawyers working in government and large corporations. This is the risk inherent in offering optional rather than mandatory coverage. That said, we do not expect it to present a material risk to the fund, and we will monitor the claims experience and report back with recommendations if it does.

Recommendation

We recommend that LIF allow in-house lawyers to participate in the indemnification program and buy the policy on an optional basis.

If the Subcommittee agrees with our recommendation, we will refer it to the Benchers as some minor changes to Law Society Rule 3-43 will be necessary.

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 5 – Indemnification

Exemption from professional liability indemnification

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

~~—(a)—~~ not engaged in the practice of law, other than providing pro bono legal services, anywhere ~~in his or her capacity as a member of the Society, or~~

(1.1) A lawyer may apply in the prescribed form to the Executive Director for exemption from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee if the lawyer is —(b)— employed by or seconded to one of the following and is not engaged in the practice of law, other than pro bono legal services, except in the course of that employment:

~~(ia)~~ a federal, provincial, territorial or municipal government department or a Crown corporation;

~~(ib)~~ a society, association, partnership or corporation, other than a law corporation firm;

~~(iic)~~ a society, trade union or a similar organization;

(d) a regulatory body,

and is not engaged in the practice of law, other than providing legal services to that employer or a related organization or providing pro bono legal services.

(2) A lawyer ~~is must~~ not be exempted under subrule (1.1) ~~(b)~~ if the lawyer engages in the practice of law, ~~other than pro bono legal services,~~ in any way other than as described in ~~those that~~ provisions.

(3) Subrule (4) applies to a lawyer who is entitled to practise law in the jurisdiction of a governing body of which the lawyer is a member.

(4) A lawyer may apply in the prescribed form to the Executive Director for exemption from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee, if, in another Canadian jurisdiction ~~in which the governing body allows a similar exemption for members of the Society,~~ the lawyer

(a) is resident or is deemed resident under the National Mobility Agreement, and

LAW SOCIETY RULES

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

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 5 – Indemnification

Exemption from professional liability indemnification

3-43 (1) A lawyer is exempt from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee if the lawyer is not engaged in the practice of law, other than providing pro bono legal services, anywhere as a member of the Society.

(1.1) A lawyer may apply in the prescribed form to the Executive Director for exemption from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee if the lawyer is employed by or seconded to one of the following:

- (a) a federal, provincial, territorial or municipal government department or a Crown corporation;
- (b) a society, association, partnership or corporation, other than a law firm;
- (c) a trade union or a similar organization;
- (d) a regulatory body,

and is not engaged in the practice of law, other than providing legal services to that employer or a related organization or providing pro bono legal services.

(2) A lawyer must not be exempted under subrule (1.1) if the lawyer engages in the practice of law in any way other than as described in that provision.

(3) Subrule (4) applies to a lawyer who is entitled to practise law in the jurisdiction of a governing body of which the lawyer is a member.

(4) A lawyer may apply in the prescribed form to the Executive Director for exemption from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee, if, in another Canadian jurisdiction, the lawyer

- (a) is resident or is deemed resident under the National Mobility Agreement, and
- (b) maintains the full mandatory professional liability insurance coverage required in the other jurisdiction that is reasonably comparable in coverage and limits to the indemnity coverage required of lawyers in British Columbia and extends to the lawyer's practice in British Columbia.

(5) A Canadian legal advisor may apply in the prescribed form to the Executive Director for exemption from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee.

LAW SOCIETY RULES

- (6) On an application under subrule (5), the Executive Director must grant the exemption, provided the Canadian legal advisor maintains the full mandatory professional liability insurance coverage required by the Chambre that extends to the Canadian legal advisor's practice in British Columbia.

EXEMPTION FROM INDEMNIFICATION

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 3-43 (1), (2), (4) and (5) and substituting the following:

3-43 (1) A lawyer is exempt from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee if the lawyer is not engaged in the practice of law, other than providing pro bono legal services, anywhere as a member of the Society.

(1.1) A lawyer may apply in the prescribed form to the Executive Director for exemption from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee if the lawyer is employed by or seconded to one of the following:

- (a) a federal, provincial, territorial or municipal government department or a Crown corporation;
- (b) a society, association, partnership or corporation, other than a law firm;
- (c) a trade union or a similar organization;
- (d) a regulatory body,

and is not engaged in the practice of law, other than providing legal services to that employer or a related organization or providing pro bono legal services.

(2) A lawyer must not be exempted under subrule (1.1) if the lawyer engages in the practice of law in any way other than as described in that provision.

(4) A lawyer may apply in the prescribed form to the Executive Director for exemption from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee, if, in another Canadian jurisdiction, the lawyer

- (a) is resident or is deemed resident under the National Mobility Agreement, and
- (b) maintains the full mandatory professional liability insurance coverage required in the other jurisdiction that is reasonably comparable in coverage and limits to the indemnity coverage required of lawyers in British Columbia and extends to the lawyer's practice in British Columbia.

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- (5) A Canadian legal advisor may apply in the prescribed form to the Executive Director for exemption from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee..

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: Benchers
From: Executive Committee
Date: October 20, 2020
Subject: Anti-Money Laundering Strategic Plan

The anti-money laundering strategic plan was considered and approved by the Executive Committee at its April 7, 2020 meeting

The Plan is attached and presented for information to the Benchers to provide information relating to the strategies underway by the Law Society to minimize the likelihood of the legal profession being utilized by others to launder money.

MDL/al

Attachment.

Anti-Money Laundering Strategic Plan

The Law Society of British Columbia upholds and protects the public interest in the administration of justice by, among other things, requiring that lawyers act with honesty, integrity and respect for the law. This includes taking regulatory and educational actions to ensure that lawyers do not, knowingly or unknowingly, become involved in money laundering by their clients or others. The Law Society also has a unique obligation to address money laundering in a manner that is consistent with the constitutional framework confirmed by the Supreme Court of Canada in *Canada (Attorney General) v. Federation of Law Societies of Canada* (2015 SCC 7).

To that end, the Law Society will take steps to minimize the risk that lawyers assist with money laundering by:

1. Continually reviewing our rules and standards to ensure that the regulation of the legal profession takes into consideration evolving money laundering risks, is appropriately tailored to reflect the circumstances of lawyers in British Columbia, and is guided by regulatory best practices and constitutional imperatives.
2. Ensuring that our oversight of law firms and the use of lawyers' trust accounts remains effective by continually adjusting our compliance audit program to focus on the areas of greatest potential risk, improving audit tools, and ensuring that auditors are trained on current money laundering red flags, typologies and trends.
3. Ensuring that any concerns regarding a lawyer's involvement in money laundering are thoroughly investigated, and that appropriate disciplinary responses are taken, by enhancing our investigations and enforcement program through the use of new tools and information sources, strengthening the anti-money laundering education of investigators, and making appropriate use of the broad investigatory powers we possess.
4. Continuing to support and assist lawyers and articling students in avoiding becoming involved, knowingly or unknowingly, in money laundering by ensuring that relevant educational programs, publications, practice advice and other resources are readily accessible to them, whether from the Law Society or our partner organizations. These resources will include guidance to lawyers on best practices for complying with their anti-money laundering obligations.
5. Acknowledging the cross-sectoral and inter-jurisdictional nature of money laundering and collaborating with government, other regulators, and law enforcement agencies to build working relationships and develop appropriate mechanisms for sharing and receiving information.

From: Leonard Doust
Date: October 3, 2020 at 12:49:08 PM PDT
To: "president@LSBC.org"
Subject: The 2020 Law Society Award

[THIS MESSAGE ORIGINATED FROM OUTSIDE OUR FIRM]

I cannot adequately express my pride and my thanks to you and the Benchers for seeing fit to recognize me as the recipient of this years Law Society Award.

I feel so honoured by this recognition from such an imposing group of my peers and wish to express my gratitude to you and them as it means so much to me.

I look forward to your further advice on this matter in due course.

Yours Most Respectfully,
Len Doust

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