



Agenda

Benchers

Date: Friday, December 4, 2020

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

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

Location: Virtual meeting

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

VIRTUAL MEETING DETAILS

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

CONSENT AGENDA:

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

1	Minutes of October 30, 2020 meeting (regular session)
2	Minutes of October 30, 2020 meeting (<i>in camera</i> session)
3	Licensed Paralegal Task Force Wind Up
4	Rule Amendments: Fees, Non-practising and Retired Member Fees and Refunds of Fees
5	Rule Amendments: Consent Agreements to Resolve Complaints
6	Rule Amendments: Qualifications to Act as a Principal
7	Retired Member Fee Waiver
8	External Appointments: Land Title and Survey Authority
9	External Appointments: Legal Aid BC Board of Directors

Agenda



REPORTS		
10	President's Report	Craig Ferris, QC
11	CEO's Report	Don Avison, QC
12	Briefing by the Law Society's Member of the Federation Council	Pinder K. Cheema, QC
DISCUSSION/DECISION		
13	Approval of 2021 – 2025 Strategic Plan	Don Avison, QC
14	Standards of Governance: Review of Law Society Compliance	Lisa Hamilton, QC
15	Law Society of British Columbia's Access to Justice Vision	Michelle Stanford, QC
UPDATES		
16	Financial Report – September 2020 - Q3 and Forecast	Dean Lawton, QC Jeanette McPhee
17	Practice Standards Update	Jacqui McQueen
18	Discipline Committee Update	Lisa Hamilton, QC
19	LIF Reorganization – Progress Report	Su Forbes, QC
20	Report on Outstanding Hearing & Review Decisions (<i>Materials to be circulated at the meeting</i>)	Craig Ferris, QC
FOR INFORMATION		
21	Year-End Advisory Committee Reports <ul style="list-style-type: none"> • Access to Justice Advisory Committee • Equity and Diversity Advisory Committee • Mental Health Task Force • Rule of Law and Lawyer Independence Advisory Committee • Truth and Reconciliation Advisory Committee 	
22	Rule of Law and Lawyer Independence Advisory Committee Report on Lawyer Independence	



Agenda

23	Ethics Committee Report on the Code of Professional Conduct
24	2021 Benchers Meeting Dates
25	Three Month Benchers Calendar – December 2020 to February 2021
<i>IN CAMERA</i>	
26	Other Business



Minutes

Benchers

Date: Friday, October 30, 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 Zetzsche

Public Session – Staff Attendance:

Staff:	Don Avison, QC	Alison Luke
	Avalon Bourne	Tara McPhail
	Shelley Braun	Jeanette McPhee
	Barbara Buchanan, QC	Doug Munro
	Natasha Dookie	Michelle Robertson
	Su Forbes, QC	Lesley Small
	Andrea Hilland	Michael Soltynski
	Jeffrey Hoskins, QC	Adam Whitcombe, QC
	Jason Kuzminski	Vinnie Yuen
	Michael Lucas, QC	

Guests: Dom Bautista

Executive Director, Law Courts Center

Chase Blair	Member, Law Society of BC
Jennifer Brun	President, CBABC
Michelle Casavant	Member, Aboriginal Lawyers Forum
Harry Cayton CBE FFHP	International Advisor to the Professional Standards Authority
Morgan Cooper	President, Federation of Law Societies of Canada
Jonathan Herman	CEO, Federation of Law Societies of Canada
Alexis Kazanowski	Assistant Dean, Faculty of Law, TRU
Robert Lapper, QC	Lam Chair in Law and Public Policy
Mark Meredith	Treasurer and Board Member, Mediate BC Society
Caroline Nevin	CEO, Courthouse Libraries BC
Linda Russell	CEO, Continuing Legal Education Society of BC
Pamela Shields	Member, Law Society of BC
Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
Ardith Walkem, QC	Co-Chair, Truth and Reconciliation Advisory Committee

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. 2021 Fee Schedule Amendment

The following resolution was passed unanimously and by consent.

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	Payable by	Payable	Payable by
	prior to call	May 31	prior to call	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

3. Futures Task Force Wind Up

The following resolution was passed unanimously and by consent.

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

4. Rule 2-84: Call and Admission

The following resolution was passed unanimously and by consent.

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.

5. Law Society Forms Approval by Executive Director: Rule Amendments

The following resolution was passed unanimously and by consent.

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”:

6. Rule 5-8, 5-9 & 5-12: Public Hearings

The following resolution was passed unanimously and by consent.

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*].

7. Rule 3-3: Confidentiality of Complaints

The Benchers approved in principle amending Rule 3-3 to reflect the policy considerations 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.

8. Tribunal Hearing Procedures

The Benchers approved referring the following to the Act and Rules Committee:

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 Benchers approved referring to staff the following:

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

9. Recovery of Investigation Costs: Required Legislative Amendment

The following resolution was passed unanimously and by consent.

BE IT RESOLVED 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.

REPORTS

10. President's Report

Mr. Ferris began his report by noting that this would be his penultimate report. He spoke about the challenges that the Law Society and the legal profession had faced during the past year with the COVID-19 pandemic. However, in spite of these challenges, the Law Society has tackled an ambitious agenda. Mr. Ferris reviewed the accomplishments achieved thus far in 2020, including the adoption of the report of the Futures Task Force, significant progress made on the implementation of an innovation sandbox, the adoption of an unauthorized practice policy, the implementation of a one-time fee relief program, the development of a legal aid strategy, and significant progress made in reimagining practice standards.

Mr. Ferris also spoke about the importance of keeping up momentum and managing through a period of significant change. Mr. Ferris reviewed the Law Society's mandate of protecting the public and referenced access to justice as a driving force for many of the new initiatives that the Law Society is overseeing. He then spoke about the importance of celebrating progress, communicating milestones, and staying the course. Mr. Ferris concluded by stating that the path the Law Society has chosen is important and meaningful and not to let barriers alter that course for the future that the Law Society is envisioning.

11. CEO's Report

Mr. Avison began his report by echoing Mr. Ferris' words on maintaining momentum. Mr. Avison then informed Benchers that work is already underway on several of the initiatives approved at the last Bencher meeting, including exploring alternatives to articling and the implementation of an innovation sandbox.

Mr. Avison spoke about the Law Society's and other jurisdictions' use of technology to continue to get work done, regulate the legal profession, and to protect public interest, despite the challenges faced by COVID-19. He referenced the International Conference of Legal Regulators, which has been an entirely virtual conference. Mr. Avison provided an overview of the conference, noting sessions on remote regulation were of particular interest.

Mr. Avison spoke about the provincial election and changes to cabinet based on the results of the election. After the election and the appointment of cabinet, staff will provide a briefing note to Benchers.

Mr. Avison gave an update on Law Society operations, noting staff changes within PLTC and preparations underway regarding the changes to the Lawyer's Indemnity Fund, noting that Ms. Forbes would be attending the December Bencher meeting to provide an in-depth update.

Mr. Avison concluded his report by updating Benchers on the Cullen Commission hearings, noting that the Law Society would be providing testimony the week of November 16

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

Ms. Cheema provided a recap of the Federation Conference, which was focused on the COVID-19 pandemic and its effects on the legal profession. Ms. Cheema spoke about the conference presentations including one given by Jordan Furlong, a legal industry analyst, which reviewed the potential impacts of the pandemic on not only lawyers, but regulators and the justice system as a whole, as well as presentation given by Nathalie Cadieux, an Associate Professor at L'Université de Sherbrooke, which focused on the impacts of the pandemic on the legal profession. Professor Cadieux will also be leading the research study undertaken by the Federation and the CBA on the wellbeing of legal professionals. Ms. Cheema recapped additional conference sessions including the digitization of legal services.

Ms. Cheema also provided an update on the Council meeting that followed the conference, informing Benchers that the Federation will be providing testimony at the Cullen Commission hearings on November 16.

GUEST PRESENTATIONS

13. Update on the Federation of Law Societies of Canada

Mr. Ferris welcomed and introduced Morgan Cooper, President of the Federation and Jonathan Herman, Chief Executive Officer of the Federation.

Mr. Cooper spoke about the work of the Law Society and the Federation, and the importance of resource and information sharing to contribute to organizational success. Mr. Cooper thanked Benchers and Law Society staff for all their contributions and involvement with the Federation's committees and initiatives.

Mr. Cooper spoke about the Federation's strategic plan and main priorities including truth and reconciliation and anti-money laundering initiatives. Mr. Cooper provided an overview of the Federation's truth and reconciliation initiatives, including the development of a reconciliation

framework to be applied to all aspects of the Federation, cultural competency training, and a formal statement of commitment to reconciliation. Mr. Cooper also spoke about the reestablishment of a truth and reconciliation working group in partnership with the Canadian Council of Law Deans, as well as collaborative discussions with the Indigenous Bar Association of Canada to share information.

Mr. Cooper updated Benchers on the Federation's efforts to address mental health challenges within the legal profession and the national research study that Nathalie Cadieux from L'Université de Sherbrooke will be conducting on the wellbeing of those in the legal profession.

Mr. Cooper then updated Benchers on the work of the National Committee on Accreditation including the development of a competency-based assessment program.

Mr. Cooper concluded his presentation by reviewing the Federation's efforts to address money laundering, noting the role of Canada's law societies in combatting money laundering. Mr. Cooper also spoke about the amended Federation rules being implemented by law societies to combat money laundering, as well as the development of additional educational materials on how to comply with law society rules. Mr. Cooper ended by reiterating the importance of the relationships between law societies, and between law societies and the Federation in addressing common challenges.

Mr. Herman provided an update on Federation operations and the impacts of COVID-19, as well as the collaborative relationship between the Law Society and the Federation.

Benchers engaged in discussions regarding the priorities of the Federation, including truth and reconciliation and providing additional information to the public regarding the work of the Federation in this area. Benchers also discussed the Federation's initiatives to address discrimination and racism within the legal profession.

Mr. Ferris thanked Mr. Cooper and Mr. Herman for their presentation.

14. Governance Standards

Mr. Ferris welcomed and introduced Harry Cayton, author of the report "An Inquiry into the performance of the College of Dental Surgeons of British Columbia and the Health Professions Act".

Mr. Cayton reviewed the main points of his presentation regarding trends in professional regulation governance, including the changing expectations of public institutions due to social changes and the impact of these changes on regulatory bodies.

Mr. Cayton spoke about factors that affect board performance, including board size, the method of selection of board members and board/committee chairs, terms of office, and overall competencies of board members. Mr. Cayton also spoke about governance in the public interest and the key features needed to be effective, including understanding the link between responsibility and accountability, addressing behaviour that runs contrary to the holding of a public office, exercising corporate responsibility, cultivating effective relationships between the board and staff, managing conflicts of interest appropriately, having transparency in decision-making, and ensuring Board focus on organizational strategy.

Mr. Cayton spoke about the effect of COVID-19 on regulatory bodies, as well as other areas of change that will affect regulatory bodies, including the #metoo movement, the Black Lives Matter movement, the effects of climate change, economic and political tensions, digital developments and artificial intelligence, and the potential recurrence of future pandemics.

Benchers engaged in discussion with Mr. Cayton on the points of his presentation, including the importance of diversity and expertise in board composition and the differences between representation and diversity, as well as the independence of the legal profession, and the necessity of ensuring public understanding of the importance of independence.

Benchers discussed elected vs. appointed boards and the process by which appointments could be made. Mr. Cayton noted the importance of determining what sort of Board is required, and then determining how that composition could be achieved. He also spoke about the role of government in making appointments vs. the role of an independent third-party appointing body.

Benchers discussed the standards of good regulation and how regulatory bodies can demonstrate that they're meeting these standards. Benchers also discussed the role of committees in effective governance, including dividing committees into three types: board committees essential to running the organization, statutory committees that are generally written into law, and advisory committees that need to have clear focus in order to be effective. Mr. Cayton recommended reviewing committees annually to ensure that they're functioning efficiently and adding value to the board.

Mr. Ferris thanked Mr. Cayton for his presentation and comments.

DISCUSSION/DECISION

15. Review of 2021 – 2025 Strategic Plan Objectives

Mr. Avison updated Benchers on the status and next steps for the 2021-2025 Strategic Plan and reviewed the mission, vision, and values. Mr. Avison then presented the objectives of the

strategic plan. Mr. Avison asked Benchers to review the objectives and the initiatives related to each objective with a lens of what will be achievable within the next five years.

Benchers discussed the strategic plan objectives and initiatives, noting the importance of considering timeframes for some of the initiatives under the objectives. Once the strategic plan is approved, timelines and operational considerations will be developed for the initiatives. Benchers also discussed the objectives relating to innovation, as well as including reference to, in addition to the rule of law, the just and civil society.

Mr. Ferris encouraged Benchers to review the objectives, take part in small group discussions about the objectives, and to provide any feedback to Mr. Ferris, Mr. Avison, and Mr. Lucas.

16. Rule 4-30: Conditional Admissions with Consent to Disciplinary Action

Ms. Dookie summarized the proposal to amend Rule 4-30 regarding conditional admissions.

Benchers discussed the need to establish transparent policies in regard to the proposed procedural changes, particularly for tribunal members to ensure clarity. Benchers also discussed developing a procedure guidebook for the tribunal.

The following motion was made and seconded.

BE IT RESOLVED 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

The motion was passed unanimously.

17. Rule 3-43: Amendments to Permit In-house Lawyers to Participate in the LIF Program

Ms. Forbes summarized the proposed amendments to permit in-house lawyers to participate in the Lawyers Indemnity Fund Program. Ms. Forbes also noted the 50th anniversary of the Program.

The following motion was made and seconded.

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.

(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.

The motion was passed unanimously.

18. Discussion of 2020 AGM Member Resolutions

Mr. Ferris reviewed the member resolutions from the Law Society's 2020 annual meeting and noted that the discussion of the member resolution regarding mediators, arbitrators, and parenting coordinators and trust funds had been moved *in camera* in accordance with the Law Society's *in camera* policy.

Mr. Ferris informed Benchers that the Executive Committee is currently gathering information in relation to the member resolutions.

He noted that a survey of current and former articling students and law firms will be conducted to obtain data to assist in the consideration of the member resolution regarding articling students and the *Employment Standards Act*.

He also noted that consultation has begun with the Truth and Reconciliation Advisory Committee in consideration of the member resolution regarding the determination of a new symbol to replace the statue of Sir Matthew Baillie Begbie.

Mr. Ferris also stressed the importance of consultation in considering the responses to the other member resolutions and taking a thoughtful approach.

The Benchers discussed the need to form an additional committee to decide on what would replace the statue of Sir Matthew Baillie Begbie, particularly when the Law Society has an existing Truth and Reconciliation Committee. Benchers noted the complexity of the issue and the importance of being sensitive and thoughtful in considering possible responses to this member resolution.

UPDATES

19. 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**20. Anti-Money Laundering Strategic Plan**

There was no discussion on this item.

21. Message from Len Doust, QC re Law Society Award

There was no discussion on this item.

22. Three Month Bencher Calendar – November 2020 to January 2021

There was no discussion on this item.

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

AB
2020-10-30



Memo

To: Benchers
Date: November 12, 2020
Subject: Licensed Paralegal Task Force Wind Up

The Licensed Paralegal Task Force was created by the Benchers in March 2019 with a mandate to further develop the work of the Alternate Legal Service Provider Working Group and consider and identify opportunities, in consultation with the profession and others, for the delivery of legal services in areas where there is a substantial unmet legal need and the public would benefit from the provision of those services by licensed paralegals.

In its report to the Benchers in September, 2020, the Task Force recognized that the Law Society has been engaged with the issue of recognizing paralegals as independent legal service providers for many years and that during that time, no “top down” approach as provided in its mandate had resulted in the existence of any licensed paralegals. The Task Force therefore suggested that a more fruitful path forward would be to undertake a “grass roots” approach to the issue and, under some supervision, create a space that will let a marketplace develop that might address the unmet or underserved legal needs of the public. The Task Force noted that this approach aligned with the Access to Justice BC Triple Aim, which the Benchers adopted in 2018.

The Task Force therefore recommended the creation of a process that will allow service models to develop under general oversight of the Law Society in a manner that permits creativity and innovation while determining, based on evidence that will be gathered as the market develops, the level of regulation required relative to the risk to the public. The environment in which this process can unfold was described as a regulatory “sandbox” in the report.

The Task Force’s recommendations were unanimously approved by the Benchers and the innovation sandbox has been implemented and is receiving and reviewing proposals for the provision of legal advice and assistance.

As the Task Force has completed its work, the Task Force should be formally wound up.

The Benchers are asked to approve the following resolution:

BE IT RESOLVED that the Licensed Paralegal Task Force established by the Benchers in March 2019, having completed its work, is hereby wound up.



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: November 13, 2020
Subject: **Rules 2-3, 2-4, 2-105.1 (proposed), 2-108, 2-115 and 2-116 and Schedule 1 -- Fees**

1. the Act and Rules Committee was asked to recommend amendments to the Rules to do two things with respect to the rules governing the payment and refund of fees.
2. The current rules establishing the categories of non-practising and retired membership include the only provision requiring the payment of annual fees by members of the Law Society in those categories. Provisions requiring the payment of annual fees by practising lawyers are located in the provisions on fees. Logically, they should all appear in the same place. That would assist members in knowing what fees to pay and when.
3. This will require consequential amendments to Rule 2-108 and the fee schedule, Schedule 1.
4. The change to payment of annual practice fees to allow two instalments per year leaves the provisions allowing refunds of fees paid but not used, either because of incapacity to practise, retirement or judicial appointment, inconsistent with the reality of partial payment by half-year.
5. I attach draft rule amendments intended to address those issues. The Act and Rules Committee recommends adoption of the attached suggested resolution to give effect to the amendments.

Attachments: drafts
resolution

JGH

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Members

Non-practising members

- 2-3** ~~(1)~~—Any member of the Society in good standing may become a non-practising member by
- (a) undertaking in writing to the Executive Director not to engage in the practice of law until released from the undertaking, and
 - (b) paying the application fee specified in Schedule 1 and a prorated annual fee for non-practising members as provided in Schedule 3.
- (2) ~~Non-practising members must pay the annual fee specified in Schedule 1 by the preceding November 30.~~~~[rescinded]~~

Retired members

- 2-4** (1) A member of the Society in good standing who has done one of the following qualifies to become a retired member:
- (a) reached the age of 55 years;
 - (b) been a member of the Society in good standing for 20 of the previous 25 years;
 - (c) engaged in the full-time active practice of law for 20 of the previous 25 years.
- (2) A lawyer who qualifies under subrule (1) may become a retired member by
- (a) undertaking in writing to the Executive Director not to engage in the practice of law until released from the undertaking, and
 - (b) paying the application fee specified in Schedule 1 and the prorated annual fee for retired members as provided in Schedule 3.
- (3) ~~and Retired members must pay the annual fee specified in Schedule 1 by the preceding November 30.~~
- ~~—(4) The Benchers may, by resolution, waive payment of the annual fee by a retired member or group of retired members.~~~~[rescinded]~~

Division 3 – Fees and Assessments

Annual practising and indemnity fee instalments

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

LAW SOCIETY RULES

- (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.

Annual non-practising and retired member fees

2-105.1 (1) Non-practising and retired members must pay the applicable annual fee specified in Schedule 1 by November 30 of the year preceding the year for which it is payable.

(2) The Benchers may, by resolution, waive payment of the annual fee by a retired member or group of retired members.

Late payment

- 2-108** (4) A retired member who has failed to pay the annual fee for retired members in accordance with Rule 2-4 ~~105.1~~ [*Annual non-practising and Retired members fees*] is required to pay the late payment fee for retired members specified in Schedule 1.
- (5) A non-practising member who has failed to pay the annual fee for non-practising members in accordance with Rule 2-3 ~~105.1~~ [*Annual Non-practising and retired members fees*] is required to pay the late payment fee for non-practising members specified in Schedule 1.

Refund when lawyer does not practise law

- 2-115** (1) A lawyer who has paid an instalment of the annual fee ~~for a year~~ but who satisfies the Executive Director that the lawyer has totally abstained from practice in British Columbia during ~~that the portion of the year~~ to which the instalment applies through disability, other than a suspension, is entitled to a refund of
- (a) the difference between the instalment of the practising fee set by the Benchers under section 23 (1) (a) [*Annual fees and practising certificate*] and the portion of the non-practising member fee specified in Schedule 1, and
 - (b) a portion of the annual indemnity fee set under section 30 (3) (a) [*Indemnification*], in an amount determined by the Executive Director.
- (2) On payment of the refund under subrule (1), the lawyer
- (a) immediately ceases to be qualified to practise law, and
 - (b) on compliance with Rule 2-3 [*Non-practising members*], becomes a non-practising member.
- (3) A lawyer who qualifies under Rule 2-4 [*Retired members*] to be a retired member and complies with that rule may elect to become a retired member, rather than a non-practising member under subrule (2) (b), and receive a refund of the difference between the non-practising member fee and the retired member fee specified in Schedule 1, in addition to the refund under subrule (1).

LAW SOCIETY RULES

Refund on exemption during practice year

- 2-116** (1) A lawyer who has paid the annual indemnity fee instalment for a portion of the year and ceases to practise for any reason other than suspension or who becomes exempt under Rule 3-43 [*Exemption from professional liability indemnification*] during that portion of the year, is entitled to a refund of a portion of the indemnity fee in an amount determined by the Executive Director.
- (2) If a lawyer becomes a non-practising or retired member during a portion of the year for which the lawyer has paid the annual practising fee instalment, the Executive Director must apply a prorated portion of the practising fee to the prorated non-practising or retired member fee and refund the difference, if any, to the lawyer.
- (3) A lawyer who ceases practising law under any of the following circumstances is entitled to a refund of the unused portion of the annual practising fee instalment paid, less the administration fee specified in Schedule 1:
- (a) judicial appointment;
 - (b) death;
 - (c) total incapacity such that the lawyer is incapable of applying for non-practising status.

SCHEDULE 1 – 2020 LAW SOCIETY FEES AND ASSESSMENTS

A. Annual fee	\$
5. Retired member fee (Rule 2- 4 <u>105.1</u> (31) [<i>Annual non-practising and Retired members fees</i>])	125.00
7. Non-practising member fee (Rule 2- 3 <u>105.1</u> (21) [<i>Non-practising members</i>])	325.00

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Members

Non-practising members

- 2-3** Any member of the Society in good standing may become a non-practising member by
- (a) undertaking in writing to the Executive Director not to engage in the practice of law until released from the undertaking, and
 - (b) paying the application fee specified in Schedule 1 and a prorated annual fee for non-practising members as provided in Schedule 3.
- (2) [rescinded]

Retired members

- 2-4** (1) A member of the Society in good standing who has done one of the following qualifies to become a retired member:
- (a) reached the age of 55 years;
 - (b) been a member of the Society in good standing for 20 of the previous 25 years;
 - (c) engaged in the full-time active practice of law for 20 of the previous 25 years.
- (2) A lawyer who qualifies under subrule (1) may become a retired member by
- (a) undertaking in writing to the Executive Director not to engage in the practice of law until released from the undertaking, and
 - (b) paying the application fee specified in Schedule 1 and the prorated annual fee for retired members as provided in Schedule 3.
- (3) and (4) [rescinded]

Division 3 – Fees and Assessments

Annual practising and indemnity fee instalments

- 2-105** (1) The annual practising fee and indemnity fee are payable in respect of each calendar year.
- (2) The date for payment of the first instalment of each of the annual practising fee and the indemnity fee is November 30 of the year preceding the year for which they are payable.
- (3) The date for payment of the second instalment of each of the annual practising fee and the indemnity fee is May 31 of the year for which they are payable.

LAW SOCIETY RULES

Annual non-practising and retired member fees

- 2-105.1** (1) Non-practising and retired members must pay the applicable annual fee specified in Schedule 1 by November 30 of the year preceding the year for which it is payable.
- (2) The Benchers may, by resolution, waive payment of the annual fee by a retired member or group of retired members.

Late payment

- 2-108** (4) A retired member who has failed to pay the annual fee for retired members in accordance with Rule 2-105.1 [*Annual non-practising and retired member fees*] is required to pay the late payment fee for retired members specified in Schedule 1.
- (5) A non-practising member who has failed to pay the annual fee for non-practising members in accordance with Rule 2-105.1 [*Annual non-practising and retired member fees*] is required to pay the late payment fee for non-practising members specified in Schedule 1.

Refund when lawyer does not practise law

- 2-115** (1) A lawyer who has paid an instalment of the annual fee but who satisfies the Executive Director that the lawyer has totally abstained from practice in British Columbia during the portion of the year to which the instalment applies through disability, other than a suspension, is entitled to a refund of
- (a) the difference between the instalment of the practising fee set by the Benchers under section 23 (1) (a) [*Annual fees and practising certificate*] and the portion of the non-practising member fee specified in Schedule 1, and
 - (b) a portion of the annual indemnity fee set under section 30 (3) (a) [*Indemnification*], in an amount determined by the Executive Director.
- (2) On payment of the refund under subrule (1), the lawyer
- (a) immediately ceases to be qualified to practise law, and
 - (b) on compliance with Rule 2-3 [*Non-practising members*], becomes a non-practising member.
- (3) A lawyer who qualifies under Rule 2-4 [*Retired members*] to be a retired member and complies with that rule may elect to become a retired member, rather than a non-practising member under subrule (2) (b), and receive a refund of the difference between the non-practising member fee and the retired member fee specified in Schedule 1, in addition to the refund under subrule (1).

LAW SOCIETY RULES

Refund on exemption during practice year

- 2-116** (1) A lawyer who has paid the annual indemnity fee instalment for a portion of the year and ceases to practise for any reason other than suspension or who becomes exempt under Rule 3-43 [*Exemption from professional liability indemnification*] during that portion of the year, is entitled to a refund of a portion of the indemnity fee in an amount determined by the Executive Director.
- (2) If a lawyer becomes a non-practising or retired member during a portion of the year for which the lawyer has paid the annual practising fee instalment, the Executive Director must apply a prorated portion of the practising fee to the prorated non-practising or retired member fee and refund the difference, if any, to the lawyer.
- (3) A lawyer who ceases practising law under any of the following circumstances is entitled to a refund of the unused portion of the annual practising fee instalment paid, less the administration fee specified in Schedule 1:
- (a) judicial appointment;
 - (b) death;
 - (c) total incapacity such that the lawyer is incapable of applying for non-practising status.

SCHEDULE 1 – 2020 LAW SOCIETY FEES AND ASSESSMENTS

A. Annual fee	\$
5. Retired member fee (Rule 2-105.1 (1) [<i>Annual non-practising and retired member fees</i>])	
.....	125.00
7. Non-practising member fee (Rule 2-105.1 (1))	325.00

FEES 2020

SUGGESTED RESOLUTION:

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

1. *Rules 2-3 (2) and 2-4 (3) and (4) are rescinded.*

2. *The following rule is added:*

Annual non-practising and retired member fees

2-105.1(1) Non-practising and retired members must pay the applicable annual fee specified in Schedule 1 by November 30 of the year preceding the year for which it is payable.

(2) The Benchers may, by resolution, waive payment of the annual fee by a retired member or group of retired members..

3. *Rule 2-108 is amended as follows:*

(a) *in subrule (4) by striking “in accordance with Rule 2-4 [Retired members]” and substituting “in accordance with Rule 2-105.1 [Annual non-practising and retired member fees]”;*

(b) *in subrule (5) by striking “in accordance with Rule 2-3 [Non-practising members]” and substituting “in accordance with Rule 2-105.1 [Annual non-practising and retired member fees]”.*

4. *Rule 2-115 (1) is rescinded and the following substituted:*

2-115 (1) A lawyer who has paid an instalment of the annual fee but who satisfies the Executive Director that the lawyer has totally abstained from practice in British Columbia during the portion of the year to which the instalment applies through disability, other than a suspension, is entitled to a refund of

(a) the difference between the instalment of the practising fee set by the Benchers under section 23 (1) (a) *[Annual fees and practising certificate]* and the portion of the non-practising member fee specified in Schedule 1, and

(b) a portion of the annual indemnity fee set under section 30 (3) (a) *[Indemnification]*, in an amount determined by the Executive Director..

5. ***Rule 2-116 is rescinded and the following substituted:***

- 2-116** (1) A lawyer who has paid the annual indemnity fee instalment for a portion of the year and ceases to practise for any reason other than suspension or who becomes exempt under Rule 3-43 [*Exemption from professional liability indemnification*] during that portion of the year, is entitled to a refund of a portion of the indemnity fee in an amount determined by the Executive Director.
- (2) If a lawyer becomes a non-practising or retired member during a portion of the year for which the lawyer has paid the annual practising fee instalment, the Executive Director must apply a prorated portion of the practising fee to the prorated non-practising or retired member fee and refund the difference, if any, to the lawyer.
- (3) A lawyer who ceases practising law under any of the following circumstances is entitled to a refund of the unused portion of the annual practising fee instalment paid, less the administration fee specified in Schedule 1:
- (a) judicial appointment;
 - (b) death;
 - (c) total incapacity such that the lawyer is incapable of applying for non-practising status..

6. ***Schedule 1 is amended as follows:***

- (a) ***in line item A5 by striking “(Rule 2-4 (3) [Retired members])” and substituting “(Rule 2-105.1 (1) [Annual non-practising and retired member fees])”;***
- (b) ***in line item A7 by striking “(Rule 2-3 (2) [Non-practising members])” and substituting “(Rule 2-105.1 (1) [Annual non-practising and retired member fees])”.***

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: November 13, 2020
Subject: **Rules 3-7.1 to 3-7.4 (proposed) – Resolution of complaints by consent agreement**

1. At the September meeting the Benchers approved in principle changes to the Law Society Rules to allow staff to agree with a lawyer who is the subject of a complaint to resolve the complaint by consent. The report considered by the Benchers at that meeting is attached for your reference.
2. The Act and Rules Committee recommends amendments to give effect to the Benchers' policy decision, consisting largely of new rules governing the formation and amendment of agreements, publication of the circumstances giving rise to the complaints and the consequences of possible breaches of the agreements. Clean and redlined versions of the proposed amendments are attached
3. I also attach a suggested resolution, which the Committee recommends to the Benchers for adoption.

Drafting notes

4. A lawyer who is allowed to resign from the Law Society as a term of a consent agreement should be considered to have "as a result of disciplinary proceedings, ... resigned from membership in the society or otherwise ceased to be a member as a result of disciplinary proceedings" under section 15(3) of the *Legal Profession Act*. For that reason, resignation under a conditional agreement constitutes items under the definitions in Rule 1 of "professional conduct record" and "disciplinary record" (discipline by other governing bodies).

5. In addition for the same purpose, section 15(3) is specifically referred to as applying in proposed Rule 3-7.1(8).
6. Incidentally, under the definition of “professional conduct record”, the proposed amendments update paragraph (m), which currently refers to section 31 of the *Legal Profession Act*, which has been repealed. The reference to the former special compensation fund is necessary because there are still lawyers, or more likely, former lawyers, who caused payments from the fund.
7. Discipline staff were concerned that there should be a limit on the categories of amendments to consent agreements that could be sought by resort to the Chair of the Discipline Committee or the Chair’s designate in order to avoid repetitive or frivolous applications. Proposed Rule 3-7.3(3) is intended to limit appeals to appropriate subject matters.
8. Publication of consent agreements is stated to be mandatory, which is in keeping with recent decisions of the Benchers. Since the outcome is negotiated, the lawyer concerned will have some input, but not be able to hold out for anonymity. The Committee considers that the public interest requires a hearing panel decision for that outcome.

Attachments: report to Benchers
 drafts
 resolution

JGH



Professional Regulation Process Review:

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

Prepared for: Benchers

Prepared by: Staff

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

Date: September 10, 2020

Purpose

1. In a June 5, 2020 memo to the Executive Committee,¹ staff identified a pre-citation mechanism to resolve complaints as an additional tool to strengthen the Law Society’s professional regulation program and enhance protection of the public interest. The rationale for a pre-citation resolution option is discussed in greater detail in that memo. In brief, a new mechanism is required for two related reasons: (i) citation hearings are costly, resource-intensive and slow, and in some cases would not be necessary to protect the public interest but for the absence of a sufficiently effective and transparent alternative to hearings; and (ii) existing options that do not involve issuance of a citation may lack tangible, enforceable consequences, and are less transparent.

2. This Report proposes and examines policy considerations for the introduction of “Consent Agreements” as a settlement agreement between the Law Society and the subject lawyer that may be used to address and resolve (including sanctions) complaints by consent, without the need for a citation or hearing.

Issue being Addressed

3. A discipline hearing is one possible outcome of a complaint investigation. However, a hearing consumes a considerable amount of time and resources on the part of a hearing panel members and staff, can be stressful on the parties and witnesses involved, and are also, on average, now taking longer to conclude. The cost in time and resources are operational concerns for the Law Society, as they ultimately impact the cost of Law Society membership, which increases the cost to lawyers of remaining in practice.

4. Hearings are also expensive to respondents. In addition to the cost of retaining counsel, respondents take time away from their practice to instruct counsel and also take time from practice to prepare and attend the hearing. In addition to these financial costs, the process of getting from citation to the conclusion of hearings is inevitably stressful for the respondent.

5. The body of precedent that has been established by the decisions of hearing panels over the years allows for determinations as to what would be likely outcomes of a hearing. Where an agreement can be made between the parties about an outcome that falls within the range of outcomes expected at the conclusion of a hearing, it is in the interests of the Law Society, the respondent and the public that such an agreement can be reached.

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

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

Proposal

Pre-Citation Consent Agreements

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

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

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

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

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

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

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

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

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

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

Discussion

Authority to Implement Proposal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹² *Seifert*, BCSC, paragraph 45.

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

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

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

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

¹³ *Seifert*, BCSC, paragraphs 47-48.

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

¹⁵ *Seifert*, BCSC, paragraph 50.

¹⁶ *Seifert*, BCCA, paragraph 40.

¹⁷ *Seifert*, BCCA, paragraph 37.

¹⁸ *Seifert*, BCCA, paragraph 34.

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

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

²¹ *Seifert*, BCCA, paragraph 41.

²² *Seifert*, BCCA, paragraph 45.

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

Public Interest Considerations

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

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

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

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

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

Lawyer Considerations

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

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

Financial and Operational Considerations

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

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

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

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

Other Regulator Practices

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

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

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

²⁴ R.S.B.C. 1996, c. 183.

²⁵ S.B.C. 2018, c. 47.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Proposed Resolution

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

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

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

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

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

“disciplinary record” includes any of the following, unless reversed on appeal or review:

- (a) any action taken by a governing body as a result of
 - (i) professional misconduct,
 - (ii) incompetence,
 - (iii) conduct unbecoming the profession,
 - (iv) lack of physical or mental capacity to engage in the practice of law,
 - (v) any other breach of a lawyer’s professional responsibilities;
- (b) disbarment;
- (c) a lawyer’s resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings, including resignation as a term of a consent agreement;
- (d) restrictions or limits on a lawyer’s entitlement to practise, other than those imposed as a result of failure to pay fees to a governing body, insolvency or bankruptcy or other administrative matter;
- (e) any interim suspension or restriction or limits on a lawyer’s entitlement to practise imposed pending the outcome of a disciplinary hearing.

“professional conduct record” means a record of all or some of the following information respecting a lawyer:

(d.1) a consent agreement to resolve a complaint under Rule 3-7.1 [Resolution by consent agreement];

- (e) any suspension or disbarment under the Act or these rules, including resignation requiring consent under Rule 4-6 [Continuation of membership during investigation or disciplinary proceedings];
- (f) recommendations made by the Practice Standards Committee under Rule 3-19 [Action by Practice Standards Committee];
- (g) an admission accepted by the Discipline Committee under Rule 4-29 [Conditional admissions];
- (h) an admission and consent to disciplinary action accepted by a hearing panel under Rule 4-30 [Conditional admission and consent to disciplinary action];
- (i) any Conduct Review Subcommittee report delivered to the Discipline Committee under Rule 4-13 [Conduct Review Subcommittee report], and any written dispute of that report considered by the Committee;
- (j) a decision made under section 38 (4) (b) [Discipline hearings];

LAW SOCIETY RULES

- (k) an action taken under section 38 (5), (6) or (7);
- (l) an action taken by a review board under section 47 *[Review on the record]*;
- (m) a payment made ~~under section 31~~ from the former special compensation fund on account of misappropriation or wrongful conversion by the lawyer;

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Application

3-1 This division applies to the following as it does to a lawyer, with the necessary changes and so far as it is applicable:

- (a) a former lawyer;
- (b) an articulated student;
- (c) a visiting lawyer permitted to practise law in British Columbia under Rules 2-16 to 2-20;
- (d) a practitioner of foreign law;
- (e) a law firm.

Resolution by informal means

3-7 The Executive Director may, at any time, attempt to resolve a complaint through mediation or other informal means.

Resolution by consent agreement

3-7.1 (1) At any time before a complaint is referred to a Committee or the chair of the Discipline Committee under Rule 3-8 *[Action after investigation]*, the Executive Director may resolve a complaint by agreement with the lawyer.

(2) A consent agreement under this rule must include admission by the lawyer of a discipline violation and one or more of the following:

- (a) a requirement that the lawyer complete a course of study or remedial program to the satisfaction of the Executive Director;
- (b) conditions or limitations on the practice of the lawyer;
- (c) payment of a fine permitted under section 38 *[Discipline hearings]*;
- (d) suspension of the lawyer from the practice of law or from practice of law in one or more fields of law;
- (e) resignation of the lawyer from membership in the Society;

LAW SOCIETY RULES

- (f) any other disciplinary action that could be ordered by a hearing panel under section 38.
- (3) A consent agreement is not effective unless it is
- (a) signed by the Executive Director,
 - (b) personally signed by the lawyer or, where the complaint is made against a law firm, by the representative of a law firm, and
 - (c) approved by the chair of the Discipline Committee or another member of the Discipline Committee designated for the purpose by the chair.
- (4) Under subrule (3) (c), the chair of the Discipline Committee or the chair's designate may
- (a) approve the agreement as proposed, or
 - (b) decline to approve the agreement.
- (5) Subject to Rule 3-7.2 [Breach of consent agreement], the Society is bound by an effective consent agreement, and no further action may be taken on the complaint that gave rise to the agreement.
- (6) An admission of conduct tendered in good faith by a lawyer during negotiation that does not result in an effective consent agreement under subrule (3) is not admissible in a hearing of a citation arising from the complaint.
- (7) When a complaint is resolved by means of a consent agreement, the Executive Director must notify the complainant in writing of the disposition.
- (8) Section 15 (3) [Authority to practise law] applies to a lawyer who is suspended or disbarred or is permitted to resign from membership in the Society under a consent agreement.

Breach of consent agreement

- 3-7.2 If a lawyer is in breach of a consent agreement, the Executive Director may do one or more of the following:
- (a) treat the breach as a complaint under this division;
 - (b) reopen investigation of the complaint that gave rise to the consent agreement;
 - (c) refer the matter to a Committee or the chair of the Discipline Committee under Rule 3-8 [Action after investigation].

Amending consent agreement

- 3-7.3 (1) A consent agreement may be amended by agreement of the parties reduced to writing and given effect as in Rule 3-7.1 (3) [Resolution by consent agreement].

LAW SOCIETY RULES

- (2) An agreement amended under subrule (1) has the same effect as if given effect under Rule 3-7.1 (3) [Resolution by consent agreement].
- (3) Either party may apply to the chair of the Discipline Committee to approve a proposed amendment concerning
 - (a) a course of study, remedial program or other task to be completed by the lawyer,
 - (b) conditions or limitations on the practice of the lawyer, or
 - (c) an extension of time to pay a fine or begin a suspension.
- (4) On an application under subrule (3), the chair of the Discipline Committee may
 - (a) amend the agreement as proposed, or
 - (b) decline to amend the agreement.
- (5) The chair of the Discipline Committee may designate another member of the Committee to exercise the discretion under subrule (4).

Publication of consent agreement

- 3-7.4 (1) When a consent agreement has been reached and approved under Rule 3-7.1 [Resolution by consent agreement], the Executive Director must publish on the Society's website a summary of the circumstances of the consent agreement and the action taken.
- (2) In addition to that required under subrule (1), publication may be made by any other means.
- (3) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.
- (4) A publication under this rule must identify the lawyer who is a party to the consent agreement.
- (5) The Executive Director may publish a summary of an amendment to a consent agreement by any means used to publish the original agreement.

Action after investigation

- 3-8 (1)** After investigating a complaint, the Executive Director must take no further action if the Executive Director is satisfied that the complaint
 - (a) is not valid or its validity cannot be proven, or
 - (b) does not disclose conduct serious enough to warrant further action.

LAW SOCIETY RULES

- (2) The Executive Director may take no further action on a complaint if the Executive Director is satisfied that the matter giving rise to the complaint has been resolved.
- (3) Unless subrule (1) applies or the Executive Director takes no further action under subrule (2), the Executive Director must refer the complaint to the Practice Standards Committee or to the Discipline Committee.
- (4) Despite subrule (3), the Executive Director may refer a complaint to the chair of the Discipline Committee if the complaint concerns only allegations that the lawyer has done one or more of the following:
 - (a) breached a rule;
 - (b) breached an undertaking given to the Society;
 - (c) failed to respond to a communication from the Society;
 - (d) breached an order made under the Act or these rules.

Notifying the parties

- 3-9** (1) When a decision has been made under Rule 3-8 [*Action after investigation*], the Executive Director must notify the complainant and the lawyer in writing of the disposition.
- (2) When the Executive Director takes no further action on a complaint under Rule 3-8 (1) [*Action after investigation*], notice to the complainant under subrule (1) must include
 - (a) the reason for the decision, and
 - (b) instructions on how to apply for a review of the decision under Rule 3-14 [*Review by Complainants' Review Committee*].

PART 4 – DISCIPLINE

Continuation of membership during investigation or disciplinary proceedings

- 4-6** (1) In this rule, “**lawyer under investigation**” means a lawyer who is the subject of
 - (a) an investigation under Part 3, Division 1, [*Complaints*] or
 - (b) a decision of the Discipline Committee under Rule 4-4 (1) (c) or (d) [*Action on complaints*].
- (2) A lawyer under investigation may not resign from membership in the Society except
 - (a) without the consent of the Executive Director, or
 - (b) under the terms of a consent agreement under Rule 3-7.1 [*Resolution by consent agreement*].

LAW SOCIETY RULES

- (3) A respondent may not resign from membership in the Society except ~~without~~ the consent of the Discipline Committee.

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

“disciplinary record” includes any of the following, unless reversed on appeal or review:

- (a) any action taken by a governing body as a result of
 - (i) professional misconduct,
 - (ii) incompetence,
 - (iii) conduct unbecoming the profession,
 - (iv) lack of physical or mental capacity to engage in the practice of law,
 - (v) any other breach of a lawyer’s professional responsibilities;
- (b) disbarment;
- (c) a lawyer’s resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings, including resignation as a term of a consent agreement;
- (d) restrictions or limits on a lawyer’s entitlement to practise, other than those imposed as a result of failure to pay fees to a governing body, insolvency or bankruptcy or other administrative matter;
- (e) any interim suspension or restriction or limits on a lawyer’s entitlement to practise imposed pending the outcome of a disciplinary hearing.

“professional conduct record” means a record of all or some of the following information respecting a lawyer:

- (d.1) a consent agreement to resolve a complaint under Rule 3-7.1 [*Resolution by consent agreement*];
- (e) any suspension or disbarment under the Act or these rules, including resignation requiring consent under Rule 4-6 [*Continuation of membership during investigation or disciplinary proceedings*];
- (f) recommendations made by the Practice Standards Committee under Rule 3-19 [*Action by Practice Standards Committee*];
- (g) an admission accepted by the Discipline Committee under Rule 4-29 [*Conditional admissions*];
- (h) an admission and consent to disciplinary action accepted by a hearing panel under Rule 4-30 [*Conditional admission and consent to disciplinary action*];
- (i) any Conduct Review Subcommittee report delivered to the Discipline Committee under Rule 4-13 [*Conduct Review Subcommittee report*], and any written dispute of that report considered by the Committee;
- (j) a decision made under section 38 (4) (b) [*Discipline hearings*];

LAW SOCIETY RULES

- (k) an action taken under section 38 (5), (6) or (7);
- (l) an action taken by a review board under section 47 [*Review on the record*];
- (m) a payment made from the former special compensation fund on account of misappropriation or wrongful conversion by the lawyer;

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Application

3-1 This division applies to the following as it does to a lawyer, with the necessary changes and so far as it is applicable:

- (a) a former lawyer;
- (b) an articulated student;
- (c) a visiting lawyer permitted to practise law in British Columbia under Rules 2-16 to 2-20;
- (d) a practitioner of foreign law;
- (e) a law firm.

Resolution by informal means

3-7 The Executive Director may, at any time, attempt to resolve a complaint through mediation or other informal means.

Resolution by consent agreement

3-7.1 (1) At any time before a complaint is referred to a Committee or the chair of the Discipline Committee under Rule 3-8 [*Action after investigation*], the Executive Director may resolve a complaint by agreement with the lawyer.

- (2) A consent agreement under this rule must include admission by the lawyer of a discipline violation and one or more of the following:
 - (a) a requirement that the lawyer complete a course of study or remedial program to the satisfaction of the Executive Director;
 - (b) conditions or limitations on the practice of the lawyer;
 - (c) payment of a fine permitted under section 38 [*Discipline hearings*];
 - (d) suspension of the lawyer from the practice of law or from practice of law in one or more fields of law;
 - (e) resignation of the lawyer from membership in the Society;

LAW SOCIETY RULES

- (f) any other disciplinary action that could be ordered by a hearing panel under section 38.
- (3) A consent agreement is not effective unless it is
 - (a) signed by the Executive Director,
 - (b) personally signed by the lawyer or, where the complaint is made against a law firm, by the representative of a law firm, and
 - (c) approved by the chair of the Discipline Committee or another member of the Discipline Committee designated for the purpose by the chair.
- (4) Under subrule (3) (c), the chair of the Discipline Committee or the chair's designate may
 - (a) approve the agreement as proposed, or
 - (b) decline to approve the agreement.
- (5) Subject to Rule 3-7.2 [*Breach of consent agreement*], the Society is bound by an effective consent agreement, and no further action may be taken on the complaint that gave rise to the agreement.
- (6) An admission of conduct tendered in good faith by a lawyer during negotiation that does not result in an effective consent agreement under subrule (3) is not admissible in a hearing of a citation arising from the complaint.
- (7) When a complaint is resolved by means of a consent agreement, the Executive Director must notify the complainant in writing of the disposition.
- (8) Section 15 (3) [*Authority to practise law*] applies to a lawyer who is suspended or disbarred or is permitted to resign from membership in the Society under a consent agreement.

Breach of consent agreement

3-7.2 If a lawyer is in breach of a consent agreement, the Executive Director may do one or more of the following:

- (a) treat the breach as a complaint under this division;
- (b) reopen investigation of the complaint that gave rise to the consent agreement;
- (c) refer the matter to a Committee or the chair of the Discipline Committee under Rule 3-8 [*Action after investigation*].

Amending consent agreement

3-7.3 (1) A consent agreement may be amended by agreement of the parties reduced to writing and given effect as in Rule 3-7.1 (3) [*Resolution by consent agreement*].

LAW SOCIETY RULES

- (2) An agreement amended under subrule (1) has the same effect as if given effect under Rule 3-7.1 (3) [*Resolution by consent agreement*].
- (3) Either party may apply to the chair of the Discipline Committee to approve a proposed amendment concerning
 - (a) a course of study, remedial program or other task to be completed by the lawyer,
 - (b) conditions or limitations on the practice of the lawyer, or
 - (c) an extension of time to pay a fine or begin a suspension.
- (4) On an application under subrule (3), the chair of the Discipline Committee may
 - (a) amend the agreement as proposed, or
 - (b) decline to amend the agreement.
- (5) The chair of the Discipline Committee may designate another member of the Committee to exercise the discretion under subrule (4).

Publication of consent agreement

- 3-7.4** (1) When a consent agreement has been reached and approved under Rule 3-7.1 [*Resolution by consent agreement*], the Executive Director must publish on the Society's website a summary of the circumstances of the consent agreement and the action taken.
- (2) In addition to that required under subrule (1), publication may be made by any other means.
 - (3) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.
 - (4) A publication under this rule must identify the lawyer who is a party to the consent agreement.
 - (5) The Executive Director may publish a summary of an amendment to a consent agreement by any means used to publish the original agreement.

Action after investigation

- 3-8** (1) After investigating a complaint, the Executive Director must take no further action if the Executive Director is satisfied that the complaint
- (a) is not valid or its validity cannot be proven, or
 - (b) does not disclose conduct serious enough to warrant further action.

LAW SOCIETY RULES

- (2) The Executive Director may take no further action on a complaint if the Executive Director is satisfied that the matter giving rise to the complaint has been resolved.
- (3) Unless subrule (1) applies or the Executive Director takes no further action under subrule (2), the Executive Director must refer the complaint to the Practice Standards Committee or to the Discipline Committee.
- (4) Despite subrule (3), the Executive Director may refer a complaint to the chair of the Discipline Committee if the complaint concerns only allegations that the lawyer has done one or more of the following:
 - (a) breached a rule;
 - (b) breached an undertaking given to the Society;
 - (c) failed to respond to a communication from the Society;
 - (d) breached an order made under the Act or these rules.

Notifying the parties

- 3-9** (1) When a decision has been made under Rule 3-8 [*Action after investigation*], the Executive Director must notify the complainant and the lawyer in writing of the disposition.
- (2) When the Executive Director takes no further action on a complaint under Rule 3-8 (1) [*Action after investigation*], notice to the complainant under subrule (1) must include
 - (a) the reason for the decision, and
 - (b) instructions on how to apply for a review of the decision under Rule 3-14 [*Review by Complainants' Review Committee*].

PART 4 – DISCIPLINE

Continuation of membership during investigation or disciplinary proceedings

- 4-6** (1) In this rule, “**lawyer under investigation**” means a lawyer who is the subject of
 - (a) an investigation under Part 3, Division 1, [*Complaints*] or
 - (b) a decision of the Discipline Committee under Rule 4-4 (1) (c) or (d) [*Action on complaints*].
- (2) A lawyer under investigation may not resign from membership in the Society except
 - (a) with the consent of the Executive Director, or
 - (b) under the terms of a consent agreement under Rule 3-7.1 [*Resolution by consent agreement*].

LAW SOCIETY RULES

- (3) A respondent may not resign from membership in the Society except with the consent of the Discipline Committee.

CONSENT AGREEMENT

SUGGESTED RESOLUTION:

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

1. Rule 1 is amended as follows:

- (a) *paragraph (c) of the definition of “disciplinary record” is rescinded and the following substituted:*

(c) a lawyer’s resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings, including resignation as a term of a consent agreement;;

- (b) *the following paragraph is added to the definition of “professional conduct record”:*

(d.1) a consent agreement to resolve a complaint under Rule 3-7.1
[Resolution by consent agreement];;

- (c) *paragraphs (e) and (m) of the definition of “professional conduct record” are rescinded and the following substituted:*

(e) any suspension or disbarment under the Act or these rules, including resignation requiring consent under Rule 4-6 [Continuation of membership during investigation or disciplinary proceedings];

(m) a payment made from the former special compensation fund on account of misappropriation or wrongful conversion by the lawyer,;

2. The following rules are added:

Resolution by consent agreement

3-7.1(1) At any time before a complaint is referred to a Committee or the chair of the Discipline Committee under Rule 3-8 [Action after investigation], the Executive Director may resolve a complaint by agreement with the lawyer.

(2) A consent agreement under this rule must include admission by the lawyer of a discipline violation and one or more of the following:

(a) a requirement that the lawyer complete a course of study or remedial program to the satisfaction of the Executive Director;

(b) conditions or limitations on the practice of the lawyer;

- (c) payment of a fine permitted under section 38 [*Discipline hearings*];
 - (d) suspension of the lawyer from the practice of law or from practice of law in one or more fields of law;
 - (e) resignation of the lawyer from membership in the Society;
 - (f) any other disciplinary action that could be ordered by a hearing panel under section 38.
- (3) A consent agreement is not effective unless it is
- (a) signed by the Executive Director,
 - (b) personally signed by the lawyer or, where the complaint is made against a law firm, by the representative of a law firm, and
 - (c) approved by the chair of the Discipline Committee or another member of the Discipline Committee designated for the purpose by the chair.
- (4) Under subrule (3) (c), the chair of the Discipline Committee or the chair's designate may
- (a) approve the agreement as proposed, or
 - (b) decline to approve the agreement.
- (5) Subject to Rule 3-7.2 [*Breach of consent agreement*], the Society is bound by an effective consent agreement, and no further action may be taken on the complaint that gave rise to the agreement.
- (6) An admission of conduct tendered in good faith by a lawyer during negotiation that does not result in an effective consent agreement under subrule (3) is not admissible in a hearing of a citation arising from the complaint.
- (7) When a complaint is resolved by means of a consent agreement, the Executive Director must notify the complainant in writing of the disposition.
- (8) Section 15 (3) [*Authority to practise law*] applies to a lawyer who is suspended or disbarred or is permitted to resign from membership in the Society under a consent agreement.

Breach of consent agreement

3-7.2 If a lawyer is in breach of a consent agreement, the Executive Director may do one or more of the following:

- (a) treat the breach as a complaint under this division;

- (b) reopen investigation of the complaint that gave rise to the consent agreement;
- (c) refer the matter to a Committee or the chair of the Discipline Committee under Rule 3-8 [*Action after investigation*].

Amending consent agreement

- 3-7.3(1)** A consent agreement may be amended by agreement of the parties reduced to writing and given effect as in Rule 3-7.1 (3) [*Resolution by consent agreement*].
- (2) An agreement amended under subrule (1) has the same effect as if given effect under Rule 3-7.1 (3) [*Resolution by consent agreement*].
 - (3) Either party may apply to the chair of the Discipline Committee to approve a proposed amendment concerning
 - (a) a course of study, remedial program or other task to be completed by the lawyer,
 - (b) conditions or limitations on the practice of the lawyer, or
 - (c) an extension of time to pay a fine or begin a suspension.
 - (4) On an application under subrule (3), the chair of the Discipline Committee may
 - (a) amend the agreement as proposed, or
 - (b) decline to amend the agreement.
 - (5) The chair of the Discipline Committee may designate another member of the Committee to exercise the discretion under subrule (4).

Publication of consent agreement

- 3-7.4(1)** When a consent agreement has been reached and approved under Rule 3-7.1 [*Resolution by consent agreement*], the Executive Director must publish on the Society's website a summary of the circumstances of the consent agreement and the action taken.
- (2) In addition to that required under subrule (1), publication may be made by any other means.
 - (3) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.
 - (4) A publication under this rule must identify the lawyer who is a party to the consent agreement.

- (5) The Executive Director may publish a summary of an amendment to a consent agreement by any means used to publish the original agreement..

3. *Rule 4-6 (2) and (3) is rescinded and the following substituted:*

- (2) A lawyer under investigation may not resign from membership in the Society except
 - (a) with the consent of the Executive Director, or
 - (b) under the terms of a consent agreement under Rule 3-7.1 [*Resolution by consent agreement*].
- (3) A respondent may not resign from membership in the Society except with the consent of the Discipline Committee..

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society
of British Columbia



Rule 2-57: Proposed Amendments to the Rules Concerning the Qualifications to Act as a Principal

Date:	November 27, 2020
Prepared for:	Benchers
Prepared on behalf of:	Credentials Committee
Purpose:	Proposed Rule Amendments

Purpose

1. The Credentials Committee seeks a rule change to Law Society Rules 2-57 regarding the qualifications to act as a principal in light of unintended consequences resulting from the Committee's previous set of recommendations in 2017.
2. The Committee's experience since 2017 suggests that the current rule requiring principals to have practised for 5 of the previous 6 years immediately preceding the articling start date has created a barrier for lawyers who take time away from practice for family matters.

Background

3. In 2017, the Credentials Committee recommended to the Benchers that the number of years of overall practice in order to qualify to act as a principal be reduced. On May 6, 2017, the Benchers approved the following recommendations:
 - a. That the rules be amended to reduce the period of qualification required to be a principal in Rule 2-57 from 7 of the previous 10 years to 5 of the previous 6 years. Given how the Committee recommends defining "active practice" (see below), the Committee recommends deleting Rule 2-57(2)(a)(ii)
 - b. That the rules be amended to reduce the requirement for practice in BC to 3 years of the overall 5 years of practice necessary to qualify to be a principal.
 - c. That the words "active practice" in Rule 2-57 be replaced by "full-time practice."
 - d. That the rules be amended to permit lawyers to be a principal who have practiced part-time (less than 25 hours per week). For the purposes of qualification, part-time practice should be counted as one-half of full time practice. Any combination of part-time and full time practice that adds up to five will suffice for the purposes of qualification.
 - e. That the rule permitting applications in exceptional circumstances to the Committee to permit a lawyer who does not meet the requirements to be a principal nevertheless remain.
4. In approving these recommendations, the Benchers cautioned that the use of the discretionary exceptional circumstances rule should not drop the overall practice experience requirement much lower than that now required by the new rule.

Discussion

5. In making the 2017 recommendations, the Committee had considered that there was some evidence to suggest that the 7 year requirement disproportionately affected women and underrepresented groups who were capable of serving as principals, given that there are more and more women and underrepresented groups in the earlier years of practice. It was thought that reducing the eligibility requirements could increase the number of principals from these groups and improve the diversity in the profession.
6. Unfortunately, the current formulation of the rules has resulted in an unintended consequence of prohibiting lawyers in that category from qualifying to act as principals if they have taken more than 1 year in 5 years away from the practice of law. While the Committee has retained its discretion to consider exceptional circumstances when a principal does not meet those qualifications, suggesting that taking time away for family matters is “exceptional” seems wrong.
7. The goal is to balance the requirement that principals have sufficient current experience to supervise articulated students while recognizing that lawyers take time away from practice for a variety of reasons.
8. While the Committee supports maintaining the current minimum experience that is required to qualify to act as a principal (i.e. 5 years of full-time experience, with part-time practice counted at a rate of 50 per cent), the Committee recommends expanding the timeframe that is required to qualify as a principal to better accommodate parental leaves.
9. The Committee is of the view that the goal can be accomplished by amending the rule from 5 out of the previous 6 years to 5 out of the previous 8 years.
10. Expanding the timeframe to 5 out the previous 8 years would accommodate two full 18 month maternity/parental leaves. This timeframe would also coincide with the already existing return to practice rules which permit a lawyer to be absent from the practice of law for three years.

Recommendation

11. The Credentials Committee recommends that Benchers approve in principle amendments to the rules to extend the period for calculating the minimum experience in Rule 2-57 from 5 out of the previous 6 years to 5 out of the previous 8 years.



Memo

To: Benchers
From: Staff
Date: November 22, 2020
Subject: Retired Member Fee Waiver Request

Purpose of report

The Law Society received a request from a retired lawyer asking that the Benchers exercise their authority under Rule 2-4(4) to waive his fee on the basis of financial hardship. This is the only such request under this Rule we have received in a number of years. The letter from the member is not included in the agenda materials in order to protect the retired lawyer's privacy.

The fee for retired lawyers

The Society charges a fee for retired lawyers based on Schedule 3 of the Law Society Rules. The fee is \$125 for the whole year and reduces on a prorated basis each month. The fee contributes to the operating costs of the Society, including providing retired lawyers with a subscription to The Advocate. Retired lawyers have almost all the rights of membership in the Law Society, including voting at the Annual General Meeting, and may run as a candidate in Benchers elections. However, they must undertake to refrain from practising law generally, although they may provide pro bono legal services through an accredited pro bono service provider.

Policy considerations regarding the specific request

The retired lawyer who made the request provided limited information beyond indicating he has been retired for 20 years and has been paying the fee, but stated that he finds himself in increasingly strained financial circumstances with no realistic prospect of things improving.

Given the request has been made, the Benchers must decide whether to waive the fee for the coming year and if so, whether to waive it going forward.

Staff recommends accepting the retired lawyer at his word and waiving the fee for 2021, rather than subjecting him to proving he meets a set of objective criteria of financial hardship that do not yet exist. Beyond the Law Society being perceived as insensitive (particularly during a

difficult year due to COVID-19), subjecting the request to empirical testing might have the unintended consequence of requiring the retired lawyer to sever his relationship with his profession.

Staff also recommends considering whether the Rules should be amended to provide that decisions regarding the individual waiver of fees in accordance with Rule 2-4(4) may be made by the Executive Director. Requiring such decisions to be made by the entire board is likely a holdover from a time when the board was much more involved in the day-to-day operations of the Law Society and the infrequent use of the Rule has likely contributed to its continued existence in this form.

The Benchers are asked to approve the following resolution:

BE IT RESOLVED that the retired member's request for waiver of his retired member fee be approved for 2021.



CEO's Report to the Benchers

December 4, 2020

Prepared for: Benchers

Prepared by: Don Avison, QC

1. Reflections on 2020

I plan to take a little time during my CEO's report to the Benchers on December 4 to talk about how – despite all the challenges that came with 2020 – we have managed to make considerable progress over the course of a year that is now drawing to a close.

For all organizations, and for society in general, the rapid emergence of a global pandemic was profoundly disruptive. This certainly was the case for the Law Society.

In February information began to enter the public domain about a new strain of influenza that was causing a lot of concern within the scientific and medical communities.

The potential for risk was very quickly realized. By the time of the March 6 in-person Bencher meeting the Provincial Health Officer was moving to put orders in place to limit the potential for the spread of the disease.

On March 17, following further concerns expressed by Dr. Henry, we made the decision to have most staff work remotely, a situation that continues.

I plan to provide Benchers with an overview of how staff have addressed the challenges of an event that wasn't in our field of vision at this time last year. As I have been preparing that overview I have been greatly impressed by the resiliency, commitment and excellence that my colleagues in every part of the Law Society have consistently demonstrated over the last nine months. We have also benefitted from the continued high level of engagement with the Benchers. The engagement was certainly evident in the work that has resulted in the proposed 2021 – 25 Strategic Plan that Benchers will consider at the December meeting.

2. Cullen Commission Update

Over the course of the past year I have provided Benchers with regular updates on the work of the Commission of Inquiry into Money Laundering in British Columbia.

Earlier this week the Commission submitted an Interim Report to Government and hearings continue with the focus on beneficial ownership this week and next.

The Federation of Law Societies and the Law Society gave evidence during the week of November 16.

Frederica Wilson, the Deputy CEO of the Federation and Co-Chair of the Federation's Anti-Money Laundering Working Group outlined the work that the Federation Council and Canadian law societies have undertaken over the last twenty years. Ms. Wilson covered the work associated with development of the Model Rules, particularly with respect to client identification, verification and the "no cash" limitations, the educational work resulting in "guidance to the profession" materials and she also detailed the work of the Federation/Government of Canada Working Group.

President Craig Ferris QC, CFO Jeanette McPhee, Deputy Chief Legal Officer Gurprit Bains and myself testified on behalf of the Law Society as a panel before the Commission for the two days. Mr. Ferris and I will provide a summary of that aspect of the proceedings at the December meeting.

3. The B.C. Justice Summit

The annual Justice Summit convened through the office of the Attorney General and the Solicitor General, took place on November 20, 21 and 27. Chris McPherson, QC and I attended on behalf of the Law Society.

The sessions considered the utility of short terms of incarceration, the potential for deployment of alternatives, barriers to alternatives, how to increase community engagement and "the path forward".

In looking at the need for alternatives to short-term incarceration, it was recognized that the need was pressing and substantial – particularly in the case of Indigenous communities – but that support levels are modest or simply not available.

Short term sentences were seen as having some use in certain limited circumstances but, where the goal is rehabilitation and reintegration, they were generally regarded as counter-productive. Many comments were offered suggesting that short terms could actually have a destabilizing impact,

particularly for those caught up in the cycle of poverty, addiction and challenges to mental health.

Several concerns were expressed about the unanticipated consequence of short-term mandatory minimum sentences. If new resources were to be allocated, the consensus was that more emphasis should go to community support and any re-allocations should be guided by the same objective. Increased inter-agency collaboration was encouraged.

Gaps in information-sharing were identified as a problem with an imbalance between privacy/confidentiality and the provision of information to protect, or better support, those in crisis.

There was significant support for the increased availability of restorative justice processes and a suggestion that the range of eligible offences should be expanded.

There was also strong support for the “presumption of diversity” set out in the First Nation Justice Strategy.

The overarching theme focused on vision and commitment supported by consistent implementation. This included a recommendation that it would perhaps be useful to develop an inter-agency coordinating or information sharing body. Improving data collection, analysis and communication was also seen as key as was the increased need for non-custodial early interventions.

4. The Innovation Sandbox

We have already received a number of proposals following the decisions made by Benchers at the September 25 meeting. Proposals are being assessed by staff and will be brought to the Executive Committee for consideration.

I will have more to say about this at the December meeting. In the interim, Benchers may wish to read an article on British Columbia’s initiative in the journal of the American Bar Association found here: [Law Society of British Columbia launches 'innovation sandbox' to address access-to-justice gap \(abajournal.com\)](https://www.abajournal.com/news/article/law-society-of-british-columbia-launches-innovation-sandbox-to-address-access-to-justice-gap/).

5. New Cabinet Appointed

The Lieutenant Governor administered the oaths of office and confidentiality to Premier John Horgan and members of the Executive Council (Cabinet) on the 26th of November 2020.

David Eby, QC, was re-appointed as Attorney General of British Columbia (and as Minister responsible for Housing).

Other Ministers continuing in the same roles include Michael Farnsworth as Solicitor General, Adrian Dix as Minister of Health, Harry Bains in Labour, Bruce Ralston at Energy, Mines and Low Carbon Innovation, Lana Popum in Agriculture and George Heyman in Environment.

A number of Ministers who held portfolios in the last government have been assigned new roles. These include:

- Selina Robinson – Finance
- Rob Fleming - Transportation and Infrastructure
- Katrine Conroy - Forests, Lands and Natural Resource Operations (and Rural Development)
- Lisa Beare - Citizens Services
- Melanie Mark - Tourism, Arts, Culture and Sport

Those new to the Cabinet table include:

- Ravi Kahlon - Jobs, Economic Recovery and Innovation
- Josie Osborne - Municipal Affairs
- Sheila Malcolmson - Mental Health and Addictions
- Ann Kang - Advanced Education, Skills and Training
- Mitzi Dean - Children and Families

- Murray Rankin - Indigenous Relations and Reconciliation
- Nicholas Simons - Social Development and Poverty Reduction
- Jennifer Whiteside - Education

MLAs Nathan Cullen, Bowin Ma, Rachna Singh, Andrew Mercier, Fin Donnelly, Katrina Chen, George Chow, Kelly Greene, Grace Lore, Roly Russell, Mable Elmore, Brenda Bailey, Adam Walker, Jennifer Rice, Niki Sharma, Bob D'Eith and Dan Coulter were all appointed either as ministers of state or as Parliamentary Secretaries.

At the Deputy Minister level a substantial degree of continuity was maintained. Richard Fyfe, QC, and Mark Sieben continue in their respective roles as Deputy Attorney General and Deputy Solicitor General and Doug Caul continues as Deputy Minister at Indigenous Relations and Reconciliation.

Lori Wanamaker, who had been the Deputy Minister at Finance, succeeded Don Wright as Deputy Minister to the Premier, as Cabinet Secretary and as Head of the Public Service.

Don Avison, QC
Chief Executive Officer



2021 – 2025 Strategic Plan

Executive Committee:

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

Date: December 4, 2020

Prepared for: Benchers

Prepared by: Michael Lucas, QC and Jason Kuzminski

Purpose: Discussion and Approval

The Executive Committee has considered a further draft of the 2021 – 2025 Strategic Plan based on the comments, suggestions and revisions from a number of Benchers.

The Committee proposes the attached 2021 – 2025 Strategic Plan for consideration and approval by the Benchers.

The objectives and initiatives set out in the Plan are the ones recommended by the Executive Committee. Others will be expected to arise during the course of the Plan as a result of changing circumstances and developments.

A few comments on the attached document are set out below.

1. Mission Statement, Vision and Values

The language of the Mission Statement has been abbreviated slightly to focus on regulation of “competence and integrity” rather than “competence, *standards*, and integrity” of legal service providers. Standards and integrity are closely associated. By regulating integrity, the organization necessarily needs to address standards as well.

“Inclusivity” has been added into the Vision (following “Innovation”), and the word “modern” has been deleted, as it can be assumed that a “leading regulator” will be up-to-date and innovative.

The Values have been re-phrased in the active voice. “Access” has been removed from the “Values” section. The Committee agreed that “Access” was better stated as an “Objective” later in the Plan. It did not therefore fit as a “Value” as it was different from the other values expressed. Some wordsmithing may remain to be done to the expression of the Values to ensure the document reads properly.

2. Objectives and Initiatives

At the suggestion of a number of Benchers, the initiatives under each Objective have been grouped under various headings to improve readability.

Objective One: Leading as an innovative regulator of legal service providers

Some changes have been made to the initiatives on the basis of the feedback received. In particular, the initiatives now reflect that mental health should not only be supported, but it should also be promoted. The initiatives to revise the rules to look at alternative business structures and to reduce complexity in multi-disciplinary partnership rules have been combined as they are related. To address some comments from Benchers about the need to be more outward-looking, an initiative has been added to ensure that policy is informed not only on data and evidence but from public input as well. The initiatives to “collaborate with law schools” and

“to implement educational requirements necessary to develop and maintain a well-educated and qualified Bar” have been removed from earlier drafts because they are expected to be subsumed into the initiative to introduce alternative pathways for entering the legal profession.

Objective Two: Reconciliation

There were many comments from Benchers with respect to the language of this Objective and related initiatives. The language of the Objective itself in this draft remains unchanged from previous versions, although some changes have been made, in light of the feedback received, on how it is explained.

The Committee considered whether specific reference to the United Nations Declaration on the Rights of Indigenous Persons (and British Columbia legislation to implement that Declaration) should be included, and whether language relating to Indigenous laws and legal orders in the justice system ought to be included. Ultimately, the Committee determined not to include them. Identifying exactly how those concepts would reflect in the Plan as initiatives is premature. The Committee agreed that the initiative relating to supporting the First Nations Justice Strategy would leave room for these other two initiatives at the appropriate time.

Some Benchers had suggested including an initiative to improve the delivery of legal services in remote and rural Indigenous communities. The Committee concluded this was better expressed as an Access to Justice initiative, and could be expanded to all rural and remote communities.

Objective Three: Taking action to improve access to justice

In order to reflect concerns that the Law Society tends to focus too much on courts and tribunals, the Committee added “other dispute resolution providers” in to the language of the Objective.

There have been some slight amendments to the language of the initiatives related to this Objective, but no substantive changes have been made. There was a high degree of general support for these initiatives as drafted.

Objective Four: Promoting a profession that reflects the diversity of the public it serves

On the basis of suggestions from some Benchers, the language of the Objective has been amended slightly from previous drafts.

The related initiatives have been largely untouched, although there was some combining of related initiatives from previous drafts.

Objective Five: Increasing confidence in the Law Society, the administration of justice, and the rule of law

After considering comments, the Committee concluded that the Objective was better expressed through “increasing” confidence than through “improving” confidence (as it was earlier stated). “Public confidence” has been changed to simply “confidence.” Public confidence is crucial, but it is equally important to maintain the profession’s confidence in the Law Society. Continued self-regulation requires the confidence of those you regulate.

A few revisions to the language of the initiatives has been made, particularly to the last initiative on the rule of law. It has been broadened to express that it is not addressed solely at communicating about the Law Society’s role in upholding the rule of law, but in the overall importance of the rule of law to the justice system and to society in general.

Mission statement

The Law Society serves the public interest by regulating the competence and integrity of legal service providers, promoting the rule of law and lawyer independence, and improving access to justice.

Vision

To be a leading regulator that promotes a culture of innovation and inclusivity in responding to the challenges and opportunities in the delivery and regulation of legal services

Values

Integrity – We act honestly and ethically.

Transparent – We are open in our processes and communications, and report publicly on our decisions in a timely manner.

Inclusive – We embrace and promote equity, diversity, inclusion and cultural respect within our leadership and staff, and in the legal profession, justice sector and with the public.

Objective – We apply data-driven solutions, evidence-based decision-making and measure our results.

Innovative – We are adaptive in our approach to regulation with the goal of achieving efficient, fair and appropriate outcomes.

Responsive – We are aware of the changing needs of the public and profession and respond to such change.

Fair – We treat the public and legal profession respectfully and are consistent in the application of our policies, procedures and practices.

Strategic objectives

LEADING AS AN INNOVATIVE REGULATOR OF LEGAL SERVICE PROVIDERS

GOAL:

Continuous improvement of regulation and education of lawyers, the legal profession and legal services in the public interest.

Policy, Rules and Governance

- Continuously improve regulatory structures to keep up-to-date with evolving money laundering risks, guided by regulatory best practices and constitutional imperatives
- Revise regulatory processes to support and promote mental and physical health
- Clarify and strengthen governance to support our mandate
- Revise the rules to permit innovations in alternate business structures and reduce the complexity of our current multi-disciplinary partnership rules
- Ensure policy development is data-based, evidence-driven, and informed by the views of the public and the profession

Training and Education

- Introduce alternative pathways for entry into the legal profession
- Create new training on managing the business of practising law
- Develop resources to improve support for in-house counsel and government lawyers

WORKING TOWARD RECONCILIATION

GOAL:

Implementation of initiatives to take meaningful action toward reconciliation with Indigenous peoples in the justice system.

Reconciliation within the Justice System

- Support increased representation and retention of Indigenous lawyers in senior positions throughout the justice system
- Address the unique needs of Indigenous people within our regulatory processes
- Update our Rules and Code to reflect Indigenous law and experiences
- Support implementation of the First Nations Justice Strategy

Training and Education

- Introduce cultural competency training to foster understanding of Indigenous perspectives
- Work with K-12 education providers, including First Nations Schools Association, the First Nations Education Steering Committee and the Métis, to increase awareness within Indigenous communities of careers in law and the wider justice system

TAKING ACTION TO IMPROVE ACCESS TO JUSTICE

GOAL

Greater availability of affordable legal services and better access to the courts, administrative tribunals, other dispute resolution providers, and our regulatory processes.

Access and Innovation

- Reduce regulatory barriers to improve delivery of legal services
- Develop and implement an innovation sandbox for provision of a wider range of legal services and providers, including licensed paralegals
- Increase the availability of legal services to people in the communities where they live

Access and Collaboration

- Engage government to create an improved network for the provision of legal aid, including the provision of “triage hubs”
- Enhanced engagement with governments, courts and other stakeholders to identify improvements in the delivery of legal services

Access and Advocacy

- Advocate for increased role of non-adversarial dispute resolution in family law matters
- Advocate for funding of services that address gaps in the delivery of legal services
- Maintain and enhance measures adopted in response to the COVID pandemic that have improved the access to legal services and access to the justice system

PROMOTING A PROFESSION THAT REFLECTS THE DIVERSITY OF THE PUBLIC IT SERVES

GOAL:

Greater diversity and inclusion in the legal profession with equitable treatment of every individual who interacts with the Law Society.

Policy Development

- Implement and communicate Equity, Diversity and Inclusion work plan
- Ensure current and future regulation and policy development accords with equity, diversity and inclusion principles
- Develop and deliver cultural competency training, as well as training addressing implicit or explicit biases in the profession
- Revise the language of forms and publications to ensure they conform to current principles of inclusion
- Update the demographic data of BC legal professionals to inform policy initiatives

Collaboration

- Partner with community organizations to educate youth from diverse and equity-seeking groups about the role of lawyers and to encourage entry into the legal profession
- Collaborate with organizations to increase the recruitment, retention and advancement of diverse lawyers

INCREASING CONFIDENCE IN THE LAW SOCIETY, THE ADMINISTRATION OF JUSTICE AND THE RULE OF LAW

GOAL:

Greater public confidence in the ability of the Law Society to regulate in the public interest and greater public awareness of the importance of the rule of law and lawyer independence.

Law Society processes

- Increase timeliness of Law Society processes, decisions and communications
- Obtain legislative changes to increase fines and recover investigation costs
- Clarify authority to obtain an order of restitution where misconduct has resulted in a loss to a party
- Increase use of victim impact statements in disciplinary processes
- Enhance the independence of the Law Society Tribunal through further administrative separation from the Law Society
- Update disclosure and privacy policies relating to Law Society processes

Communication and Collaboration

- Increase the Law Society’s engagement with the profession and public about initiatives, regulatory developments and other relevant information, including the basis for decisions affecting regulation
- Engage the Ministry of Education to incorporate more information about rights and obligations, the rule of law and the role of lawyers and judges into school curricula
- Improve communication and outreach explaining the role of the law society in the justice system, the importance of the rule of law in a civil society and the role of an independent, self-governing legal profession in preserving the rule of law

The Law Society
of British Columbia



Standards of Governance: Review of Law Society Compliance

Committee: Governance Committee

Lisa J. Hamilton, QC (Chair)
Pinder K. Cheema, QC
Jennifer Chow, QC
Dr. Jan Lindsay
Jamie Maclaren, QC
Linda I. Parsons, QC
Karen L. Snowshoe

Date: November 5, 2020

Prepared for: Benchers

Prepared by: Staff

Purpose: Discussion

Background

1. At the start of this year, President Ferris suggested that the Committee evaluate and report to the Benchers on Law Society governance using the methodology applied by Harry Cayton in his then recent review of the College of Dental Surgeons.
2. The Committee reviewed Cayton’s report on the College of Dental Surgeons as well as the reviews by the Professional Standards Authority, of which Cayton was head, of the College of Registered Nurses of British Columbia (as it then was) and the Engineers and Geoscientists British Columbia. Each of the reviews relied upon nine governance standards in assessing the performance of each organization.
3. The Committee also heard from Cayton directly at its August meeting. Cayton presented a thought provoking and candid assessment of the governance of professional regulators. His insights were particularly helpful to the Committee in framing its consideration of the nine governance standards and his discussion of whether or not governance matters presented a thoughtful and challenging perspective on the issue of governance.
4. Finally, the Committee had the benefit of the additional presentation by Cayton at the October Bencher meeting during which he covered a number of areas relating to the governance of professional regulators.
5. In the view of Cayton and the Professional Standards Authority, the nine standards they have developed are intended to cover key aspects of governance such as risk management, financial oversight and transparency, as well as an assessment of the effectiveness of the organization. The Committee took note, in particular, of the areas in which the professional regulators previously reviewed were found to have not met one or more of the governance standards.

The College of Dental Surgeons Report¹

6. In its consideration of the Law Society’s governance using Cayton’s methodology, the Committee took into account both the substance of Cayton’s review of the College and the ten recommendations regarding the governance, conduct, and probity of the College made in the Report.
7. In summary, Cayton made a number of observations about the governance of the College.
8. In his view, the use of the term “member”, the requirement for an annual general meeting of the members, and the annual elections by the member dentists created a persistent perception

¹ Formally entitled “An Inquiry into the performance of the College of Dental Surgeons of British Columbia and the Health Professions Act December 2018”

that the College existed for the benefit of dentists, that it is a club rather than a regulator and that volunteerism lies at its heart.²

9. Cayton observed that public members to the board of the College are appointed by the Minister through a process which is opaque. He suggested that transparency could be improved in how names of possible public members come to the attention of the Minister and how they are subsequently selected for appointment to the College.³
10. Cayton was critical of the College's management of board meetings. He noted in particular that voting on resolutions does not lend itself to consensus building. He observed that the practice of proposing formal motions, gathering amendments, and voting on them seemed completely out of step with modern governance. He suggested that an effective board absorbs information, debates and discusses, and aims to reach a consensus.⁴
11. Finally, Cayton also commented on what he discovered during his interviews: that nearly every board member, past and present, told him of a lack of trust between board members and staff. He provided some specific examples in his report, noting that the tension between board members and staff works both ways: if staff do not feel they are treated fairly by the board or committee members they lose confidence in the leadership of the College, and staff can also be disempowered and uncertain about what is expected of them because of unclear messages from the board.⁵

The Governance Standards

The nine governance standards employed by Cayton and the Professional Standards Authority are:

1. The regulator has an effective process for identifying, assessing, escalating and managing organizational risks, and this is communicated and reviewed on a regular basis by the senior staff and the Board.
2. The regulator has clear governance policies that provide a framework within which decisions can be made transparently and in the interests of patients and the public. It has clear terms of reference for committees and working-groups and effective reporting mechanisms.
3. The regulator has effective controls relating to its financial performance, so that it can assure itself that it has the resources it needs to perform its statutory functions

² The College of Dental Surgeons Report, p. 13, paragraphs 3.1 and 3.2

³ p.14, paragraph 3.4

⁴ p. 26, paragraph 3.51

⁵ p. 18, paragraph 3.17, 3.22

effectively, as well as a financial plan that takes into account future risks and developments.

4. The regulator engages effectively with patients and the public.
5. The regulator is transparent in the way it conducts and reports on its business.
6. The Board has effective oversight of the work of the senior staff and effective reporting to measure performance.
7. The Board sets strategic objectives for the organization.
8. The regulator's performance and outcomes for patients and the public are used by the Board when reviewing the strategic objectives of the organization.
9. The Board works cooperatively, with an appropriate understanding of its role as a governing body and members' individual responsibilities.

Review of the Standards of Governance

The regulator has an effective process for identifying, assessing, escalating and managing organizational risks, and this is communicated and reviewed on a regular basis by the senior staff and the Board.

12. The Law Society has an enterprise risk management (ERM) plan that is overseen by the Finance and Audit Committee and reviewed and approved by Benchers each year. The ERM plan also identifies various activities and policies of the Law Society that are intended to mitigate the risks identified in the ERM Plan. For example, there are a number of policies relating to the management of our privacy obligations under the Freedom of Information and Protection of Privacy Act (FIPPA) as well as those that arise as a result of our own Rules relating to the confidentiality of complaints investigations and Discipline Committee decisions.
13. The Committee discussed whether the regulations implemented by the Law Society for the governance of the profession are proportionate to the risks to the public. The Committee also discussed whether the Law Society needs to ensure that the enforcement of the regulations includes the time taken from first contact with an issue in the complaints process through to the conclusion of any disciplinary action. Failure to do so may create a risk that the enforcement of regulations is not seen as fair and appropriate.

The regulator has clear governance policies that provide a framework within which decisions can be made transparently and in the interests of patients and the public. It has clear terms of reference for committees and working-groups and effective reporting mechanisms.

14. The starting place for the Law Society's governance policies is the *Legal Profession Act* (Act). The Act provides the general provisions defining the governance of the Law Society and the authority of the Benchers and committees.
15. For example, the authority of the Benchers is set out in sections 4(2) and (3) of the Act that state: "*The benchers govern and administer the affairs of the society and may take any action they consider necessary for the promotion, protection, interest or welfare of the society.*" and "*The benchers may take any action consistent with this Act by resolution.*"
16. The authority of the members regarding the governance of the Law Society is set out in sections 12 and 13 of the Act. Section 12 provides that the Benchers must make rules regarding a number of governance areas such as elections and general meetings and that the Benchers may not amend or rescind these rules without an affirmative vote of 2/3 of those members voting at a general meeting or in a referendum respecting the proposed rule, or the amendment or rescission of a rule.
17. Section 13 of the Act provides members with the ability to require the Benchers to do or not do something, provided that the Benchers have not acted on a general meeting resolution and 1/3 of all members in good standing of the society vote in the referendum, and 2/3 of those voting vote in favour of the resolution and provided that implementation of the resolution would not constitute a breach of their statutory duties.
18. The governance rules made by the Benchers under the authority of the Act cover roughly the first 39 pages of the Law Society Rules. These Rules include the term of office and removal of Benchers, general and Bencher meetings, elections for both the second vice-president and benchers and the authority of the Executive Director and the Executive Committee.
19. In addition to the Act and Rules, the Benchers have developed governance policies that address a variety of governance matters not otherwise covered in the Act and Rules. Most prominent perhaps is the Bencher Code of Conduct which was recently updated and approved by the Benchers. The policies also cover areas such as privacy, maintaining a respectful workplace, and more general matters such as expense reimbursement.
20. As the work of the Law Society is multi-faceted, the Benchers have established 19 committees, task forces, and working groups. Each of these has terms of references approved by the Benchers and in the case of the standing committees, their responsibilities and authority are also set out in the Rules.

21. The standing committees, such as Discipline and Credentials, report on their activities largely through the provision of public decisions reflected in the outcomes those committees achieve. The advisory committees and task forces provide semi-annual reports to the Benchers regarding their work and, as and when required, provide additional reports to the Benchers containing recommendations for the Benchers' consideration.
22. The Committee discussed how our governance requirements can be fine-tuned to ensure effective governance. It was suggested that the key is how those charged with the responsibility of governing behave. Do the Benchers and committee members listen, learn and then decide? Are conflicts disclosed, conflicts dealt with openly, person with a conflict stays out of the decision-making? Are the people prepared? Do they read all the materials and attend meetings prepared? It was suggested that some training for the President and the Benchers might be a useful in ensuring respectful and productive meetings.

The regulator has effective controls relating to its financial performance, so that it can assure itself that it has the resources it needs to perform its statutory functions effectively, as well as a financial plan that takes into account future risks and developments.

23. Through the work of staff, the Finance and Audit Committee, and the external audits by PriceWaterhouseCoopers, the Law Society maintains a comprehensive system of controls over the revenue and expenses of the Law Society, as well as the financial performance of the funds maintained by the Law Society, most notably the Lawyers Indemnity Fund provided for in s. 30 of the *Act*.
24. The Law Society has both a budget that is reviewed with the Finance and Audit Committee and with the Benchers on an annual basis in conjunction with the setting of the annual fees to be paid by lawyers, and the Benchers also receive quarterly reports on the Law Society's performance against that budget.
25. Future risks and developments in relation to the financial resources of the Law Society are managed through a comprehensive Statement of Investment Policies and Procedures in relation to Law Society investments and the maintenance of an approved amount of net reserves to provide for unanticipated expenses in any given year.

The regulator engages effectively with the public.

26. The Law Society engages with the public through various methods and media.
27. The public is able to attend the annual general meeting, Bencher meetings, and discipline hearings.

28. The Law Society website contains extensive sections with information about the Law Society, working with lawyers, and how the justice system works. The website also provides comprehensive information about our discipline proceedings and provides an online means for the public to make a complaint about a lawyer.
29. Consultations on matters of interest to the public are available on the Law Society website as well as all Law Society publications and news releases.
30. The Law Society issues public statements in response to issues of general interest regarding the justice system and the rule of law and annually presents a lecture on the rule of law which is open to anyone who wishes to attend.
31. Complaints about the conduct of lawyers provide a source of information about the public interaction with the profession and, in particular, about the public's expectations about the services lawyers provide. While the interaction through the complaint process is invariably related to some degree of dissatisfaction, over time the complaints data provides valuable information about how the profession can better meet the public expectations. For example, just over 25% of all complaints received in the last decade relate to client dissatisfaction, delay or inactivity and communication failures.
32. For more than 20 years, the Law Society has been conducting an exit survey of those members of the public who have initiated a complaint. The responses suggest that a majority of those who respond to the exit survey would recommend that someone make a complaint to the Law Society if they had a concern about a lawyer.
33. Despite the work that has been done, the Committee discussed whether we could provide more engagement with the public. Various suggestions included embracing more systematic feedback from the public, consulting more with public representative groups and collaborating regularly with these groups. The Law Society website could also be focused more on public engagement rather than complaints about lawyers. It was suggested that the Law Society might invite the public to not only to provide feedback about discipline matters and other issues but ask if they want to be part of a future consultation group or survey group. It was thought that if the Law Society does this over time, our engagement with the public would enhance our understanding of the public interest.
34. The Committee discussed whether we measure how the Law Society is meeting its mandate and whether the Law Society is improving the reputation of the legal profession with the current programs and initiatives.
35. The Committee also discussed whether the standards set by Law Society are up to date and whether the current standards are appropriate and necessary. It was suggested that our standards should be continually reviewed and that the standards should be both practical and drafted in plain language. The Law Society should also provide guidance for lawyers about the

standards so that the lawyers understand can understand the expectations reflected in the standards.

The regulator is transparent in the way it conducts and reports on its business.

36. While the work of the Privacy and Disclosure Task Force concluded in 2003 and likely needs to be updated, the results of that task force's work substantially modernized the Law Society's provision of information to lawyers and the public. In addition to our own Rules, the Law Society also complies with the requirements of the Freedom of Information and Protection of Privacy Act, which provides for the disclosure of information requested by the public unless exempted under that Act.
37. The Law Society's annual report provides a summary view of the work of the Law Society, including reporting on key performance measures, such as the results of our discipline process.
38. Information about our committees, task forces, and working groups and their membership are available on the Law Society website, along with the Benchers' agendas and minutes of Benchers' meetings. Committee, task force, and working group reports are also available on the website.
39. The results of our current and past discipline and credentials hearings are easily available in full on the website along with summaries that are also produced and available on the website. The Law Society also makes available, through an online lawyer directory, information about the current status, call date, and contact information for every practicing lawyer.

The Board has effective oversight of the work of the senior staff and effective reporting to measure performance.

40. Benchers receive a variety of information about the performance of the Law Society.
41. Information about financial performance is provided by the Chief Financial Officer quarterly and annually, Benchers hear from the Chief Operating Officer of the Lawyers Indemnity Fund on the performance of the indemnity program and from the Chief Legal Officer on the performance of our professional conduct and discipline programs. In addition, the Chief Legal Officer reports annually on our compliance with the National Discipline Standards proposed by the Federation of Law Societies of Canada and adopted by Benchers.
42. The Chief Executive Officer provides a report at each Benchers' meeting and also reports to the Executive Committee at its meetings on matters of operational significance.
43. In addition to these reports, there are regular updates about the progress on the strategic plan, both directly through review of the plan and through the semi-annual reports from the committees, task forces, and working groups.

The Board sets strategic objectives for the organization.

44. The Law Society has a comprehensive strategic planning process that has produced four strategic plans over the past twelve years and is currently developing its fifth.
45. The strategic plans have involved assignment of specific objectives and initiatives to committees, task forces, and working groups for development and recommendations to the Benchers. Progress on each plan has been updated annually and is considered during the course of each year as a result of the semi-annual reports from the committees, task forces, and working groups.
46. The Committee discussed whether the annual mandate letters provided to Law Society committees, task forces and working groups might assist in ensuring that these groups focus their efforts on the objectives of the strategic plan. It was suggested that developing a task list from the elements of the strategic plan could assist in ensuring that various elements of the strategic plan are accomplished and reported on regularly. There was also a suggestion that cross-awareness among the Benchers about the work of all the committees, task forces and working groups would reduce the likelihood that silos of information and activity would arise.

The regulator's performance and outcomes for patients and the public are used by the Board when reviewing the strategic objectives of the organization.

47. The mandate of the Law Society is set out in the *Legal Profession Act* and directs the Law Society to uphold and protect the public interest in the administration of justice by
 - a. preserving and protecting the rights and freedoms of all persons,
 - b. ensuring the independence, integrity, honour and competence of lawyers,
 - c. establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
 - d. regulating the practice of law, and
 - e. supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.
48. The strategic objectives of the Law Society as reflected in the past strategic plans and the current one take into account broad strategic issues such as access to justice, but only take account of the legal outcomes for clients and the public in the context of reports and information about these issues more generally.

The Board works cooperatively, with an appropriate understanding of its role as a governing body and members' individual responsibilities.

49. This Committee will be familiar with its efforts to evaluate the effectiveness of the Benchers as a whole and the various committees, task forces, and working groups.
50. In the past, the Committee has reported to the Benchers about concerns, manifested through the annual Bencher evaluations, that there was some degree of uneasiness about expressing views given the climate around the Bencher table. The Committee's report to the Benchers highlighted this concern and in subsequent years, the concern has been much diminished.
51. This standard is particularly difficult in the context of the work of the Benchers at the Law Society. Benchers are not only the governors of the Law Society but they also perform a legislative function in creating Rules and amendments to the Code of Professional Conduct. They are also asked to participate as panelists on discipline and credentials hearings and participate in conduct reviews and conduct meetings. Benchers also find that they are frequently called upon to provide advice to lawyers about matters of practice and ethics. Overall, the range of Bencher responsibilities complicates the evaluation of an appropriate understanding of the Benchers' collective role as a governing body.

Review of the Standards of Good Regulation

52. The Committee was asked to review the Cayton Standards of Governance in the context of the operation and performance of the Law Society. The Cayton Report also included Standards of Good Regulation. These Standards deal with registration, standards of conduct, guidance to lawyers and complaints and discipline. The Committee did not undertake a detailed analysis of the Standards of Good Regulation but, to the extent related to governance, the Committee considered them when reviewing the Cayton Report. The Committee did not identify any significant issues relating to these standards but raised three questions about the Law Society regulations:
 - a. Are the regulations formulated and implemented in a manner that is proportionate to the risk to the public that such regulations aim to protect?
 - b. Is the enforcement of regulations timely and appropriate to the significance of non-compliance?
 - c. Are the current standards appropriate and necessary and should they be regularly reviewed to ensure they are relevant, practical and understandable to the members?

Discussion

53. Overall, the Committee was of the view that there was substantial compliance at the Law Society with the standards of governance used by Cayton and the Professional Standards Authority.
54. The Committee did note that the Law Society has a fairly large number of committees and that Cayton had been critical of the number of committees that the College of Dental Surgeons had established. On the other hand, the Law Society undertakes a number of initiatives in its strategic plans and on policy matters arising from operations and that, of necessity, the Benchers delegate a great deal of that work to committees, task forces, and working groups.
55. The Committee discussed that fact that in the case of the College of Dental Surgeons, problems arose from the relationship between the Board and staff. The Committee does not believe that this is the case at the Law Society and was of the view that there is an appropriate amount of responsibility and oversight by Benchers to ensure the right balance is maintained.
56. The Committee discussed opportunities for improvement in the relationship the Law Society has with the public. While the Law Society does protect the public, the Law Society should also be ensuring that it is serving the public's needs. The Committee suggests that thought should be given to how this can be determined and evaluated.
57. As was noted in the discussion, the Committee had a number of suggestions for further consideration:
 - a. Are the regulations formulated and implemented in a manner that is proportionate to the risk to the public that such regulations aim to protect?
 - b. Is the enforcement of regulations timely and appropriate to the significance of the non-compliance?
 - c. In considering how the Law Society is governed, do the Benchers and committee members listen, learn and then decide? Are conflicts disclosed and dealt with openly? Are the Benchers and committee members prepared – do they read all the materials and attend meetings? In this context, training for the President and the Benchers might be a useful in ensuring respectful and productive meetings.
 - d. In addition to the work that has been done on engaging the public, we can always improve our engagement with the public. The Law Society could embrace a more systematic engagement with the public, public representative groups and promote more collaboration with these groups. The website could focus more on public engagement rather than complaints about lawyers and could make navigation simpler. The Law

Society might consider inviting more feedback from the public and consider establishing a consultation group or survey group.

- e. Are the current standards appropriate and necessary and should they be regularly reviewed to ensure they are relevant, practical and understandable to the members?
- f. The annual mandate letters to committees, task forces and working groups assist in ensuring that these groups focus their efforts on the objectives in the strategic plan. Developing a task list from the elements of the strategic plan would assist in ensuring that various elements of the strategic plan were accomplished and reported on regularly. Cross-awareness among the Benchers about the work of all the committees, task forces and working groups would also reduce the likelihood that silos of information and activity would arise.

Conclusion

58. The Committee is satisfied that the Law Society generally meets the Professional Standards Authority's standards of governance and has not identified any significant concerns with the substance or application of the Rules, policies and practices of the Law Society as they relate to governance. However, the Committee has noted a number of opportunities for improvement. Moreover, the Committee is also aware that over the past few years, questions have been raised about the role and performance of professional regulatory organizations, both here in British Columbia and in other jurisdictions, and that some organizations have been recently subject to independent assessment, which benchmarked their respective performance against other professional regulators and, in some cases, led to significant changes. As a result, the Benchers may wish to consider whether a review by an independent assessor might be helpful in ensuring compliance by the Law Society with the standards.



An Access to Justice Vision for the Law Society of British Columbia

Access to Justice Advisory Committee:

Michelle D. Stanford, QC (Chair)

Paul Barnett

The Honourable Thomas Cromwell

Cheryl D'Sa

Lisa Feinberg

Claire Hunter, QC

Jacqueline McQueen

Nancy Merrill, QC (Life-Bencher)

Michael F. Welsh, QC

Date: December 4, 2020

Prepared for: *Benchers*

Prepared by: *Policy and Planning Department*

Purpose: *Decision*

Purpose of this report

In the “Mandate Letter” to the Chair of the Access to Justice Advisory Committee at the beginning of the year, the President asked that the Committee “develop a Law Society Vision Statement regarding access to justice, prioritizing access to legal services as specifically within the Law Society’s mandate”.

How the Committee developed the access to justice vision

The Committee developed the appended access to justice vision (the “Vision”) over the course of several meetings. The Committee’s process involved a review of a number of previous Law Society policies that articulated positions about access to justice and legal services. These included:

- The Vision for Publicly Funded Legal Aid (March 2017);
- The Vision for how Lawyers can Advance Access to Justice (September 2017);
- The Pro Bono Funding Policy (July 2013);
- Principles for how to improve access to justice through innovation and regulatory reform;¹
- Mandatory Indigenous Intercultural Competency Training (December 2019);
- Endorsing Access to Justice BC’s Triple Aim Framework (September 2018);
- Section 3 of the *Legal Profession Act*.²

Each of these sources was important in developing the Vision, but the Vision for Publicly Funded Legal Aid stood out as a recent touchstone that directly speaks to an aspect of access to justice and legal services as it contained elements reflective of many of the other sources.

In concert with a review of these supporting resources, the Committee applied the following analytical framework:

1. What are the core elements of access to justice?
2. How is the Law Society’s mandate related to access to justice?

¹ These principles were contained in the Committee’s 2018 year-end report to the Benchers, and are not adopted policy *per se*, but the Committee is of the view they were useful for developing the Vision.

² This included consideration of the policy decision that led to the amendment of s. 3 in 2012 to remove reference to the Law Society being an advocate for members’ interest.

3. What do we mean by access to legal services? How does access to legal services advance access to justice? Are there ways to advance access to justice without access to legal services?
4. What concepts for improving access to justice, including by improving access to legal services, fall within the Law Society's mandate?
5. With concepts that fall within the Law Society's mandate, what concepts are solely within the Law Society's control, and what concepts require collaboration?
6. What concepts for improving access to justice fall outside the Law Society's mandate? Does the Law Society have a role to play in supporting others to address these issues?
7. How can the concepts be categorized in terms of importance, feasibility and potential positive impact?
8. How can the concepts identified be synthesized into the Vision?

This work led to the development of a set of principles that were eventually incorporated into the Vision. Access to justice is a complex subject, and while the Committee recognizes that the sources listed above and the process it followed did not cover all bases, the Committee is of the view the process was sufficient to inform the Vision in a principled manner.

The Committee intends the Vision to be a flexible document that the Law Society can use to inform future policy and Strategic Plan work related to access to justice and legal services.

Recommendation

BE IT RESOLVED that the Benchers adopt the Access to Justice Vision for the Law Society of British Columbia as prepared by the Committee and as appended to this report.

/DM

/Appendix

Appendix: Access to Justice Vision for the Law Society of British Columbia

Preamble

Meaningful Access to Justice means that our justice systems, and the legal services that support them, are available, affordable, understandable and effective. Meaningful Access to Justice not only provides essential service to the people who must resort to our legal systems, but also sustains the rule of law on which our democracy depends. Without Meaningful Access to Justice, people do not receive the legal help that they need and public confidence in the rule of law and indeed, in democracy itself may falter.

The Law Society believes that:

1. Democracy depends on the rule of law and Meaningful Access to Justice is necessary to maintain it;
2. Meaningful Access to Justice can be achieved through several means, including the vindication of legal rights through our formal and informal dispute resolution systems, through law reform, and through political reform;
3. Legal service providers, including lawyers who are authorized to provide legal services for a fee, have an obligation to make their services appropriately accessible to the public;
4. Access to legal services has a regulatory component, and the Law Society should take appropriate steps to allow for legal markets and services to develop to address those needs;
5. Meaningful Access to Justice requires digitization of justice systems and legal services, as well as transformation of how those systems and services are delivered in order to reduce or eliminate the barriers identified below;
6. As the justice systems and legal services are modernized, particularly through technological solutions, it is important to ensure the solutions do not create new systemic barriers to Meaningful Access to Justice. This requires thoughtful design at the creation phase of any new approach to achieve the goal of equal access for all.
7. There are many barriers to Meaningful Access to Justice, including:
 - how our laws are developed - particularly their scope and complexity;
 - how law is implemented, enforced, interpreted and how disputes are resolved;

- how our rules governing practice may prevent lawyers from creating new business models, new partnerships, new services and products, and keep out potential innovators who have made other industries more efficient, effective and resilient;
- the cost of delivering legal services;
- how lawyers direct their services, and how the government funds or does not fund legal services;
- how geographical barriers affect access to legal services and the justice system;
- historic disadvantages due to individual circumstances, including but not limited to economic means, education, race, religion, language skills, sexual orientation, disability, and gender; and
- the systemic barriers people face in accessing the systems and services that exist for managing and resolving legal problems.

The Vision

The Law Society plays an important role in reducing barriers to and enhancing Meaningful Access to Justice in British Columbia. The Law Society will address barriers to Meaningful Access to Justice by:

1. reviewing its regulatory and strategic policy, as needed, and making the necessary changes to reduce or remove barriers that are within the Law Society's authority to control guided by its statutory obligation to ensure the public is well-served by competent and ethical legal professionals;
2. understanding the nature of the barriers that lie outside the Law Society's authority to control and by exploring whether the Law Society has a role to play in helping people and groups overcome those barriers, whether by lending its voice to law and policy reform or by other advocacy efforts;
3. applying Access to Justice BC's Triple Aim measurement framework (which requires improving access to all British Columbians, including groups with particular interests, improving user experience, and improving costs in proportion to the benefits) to the Law society's development of strategic and regulatory policy;
4. analyzing available data and taking an objective, evidence-based approach to the Law Society's decisions and engagement with others in the justice sector;
5. listening to and learning from the diversity of perspectives of British Columbians; in particular, by understanding how some groups are particularly disadvantaged or face

acute barriers to accessing justice, and by striving to develop policy that is responsive to those realities;

6. demonstrating leadership to help British Columbians achieve Meaningful Access to Justice. This leadership may include spearheading policy and rule reforms, and supporting government and other justice system stakeholders in developing new and innovative services. The Law Society recognizes that, from time to time, it will be necessary to advance transformative changes to our laws, legal system and related services.

While the Law Society recognizes that the challenges of access to justice and the barriers people face often manifest themselves as the problems of individuals, they are, in fact, shared problems in our society. Recognizing this, the Law Society commits to advance its Access to Justice Vision in a collaborative and constructive manner, with the Society's public interest mandate at the heart of its efforts.

The Law Society
of British Columbia



Quarterly Financial Report and 2020 Forecast

September 30, 2020

Prepared for: Bencher Meeting - December 4, 2020

Prepared by: The Finance Department

Quarterly Financial Report - End of September 2020

Attached are the financial results and highlights to the end of September 2020.

General Fund

General Fund (excluding capital and TAF)

To the end of September 2020, the General Fund operations resulted in a positive variance to budget. This positive result is mainly due to lower operating expenses from a combination of permanent savings as well as timing differences.

Revenue

Revenue for the period was \$22.3 million \$282,000 (1%) under budget, primarily due to lower D&O insurance recoveries as these recoveries were received in 2019, but budgeted in 2020.

Practice fees are slightly ahead of budget, with the current number of full-time equivalent practicing lawyers very close to the budget of 12,846. We had projected that lawyer numbers would be below budget with the impact of COVID-19. With current results, we are now projecting that the number of FTE lawyers will be on budget.

PLTC student revenues are slightly behind budget and we expect that to continue for the year with 610 students expected versus a budget of 638.

Interest income is currently behind budget by \$57,000, a trend we expect to continue due to reduced interest rates.

Operating Expenses

Operating expenses for the period were \$18.3 million, \$3.0 million (14%) below budget due to some timing differences, reduced travel and meeting costs, along with various initiatives by management to contain costs during these times.

As noted on the attached financial highlights, there have been permanent savings in a number of areas. There were lower compensation costs with increased vacancies and reductions in other compensation costs, along with reduced meeting and travel costs with no in-person meetings, and no Bencher or staff travel. In addition, there are some timing differences for external counsel fees.

TAF-related Revenue and Expenses

TAF revenue for the period was \$1.8 million, equal to the budget. Trust assurance program costs are below budget with lower travel and compensation costs.

Even with the current economic conditions, BCREA is forecasting that real estate unit sales will increase 16.9% over 2019, a significant upturn from the second quarter. It is difficult to project the real estate market in this environment, and the results to date have not yet reflected this increase. We are currently projecting TAF revenues to be close to budget. In the event the results for the year are not as positive as projected, the TAF reserve sits at \$1.7 million.

Special Compensation Fund

The Special Compensation Fund continues to incur costs related to document production for past files. In 2017, \$1 million in SCF net assets was transferred to LIF and the remaining net assets were expected to cover any ongoing costs. This work has continued beyond what was anticipated at the time and the remaining net assets have been spent plus an additional \$18,000. The expected remaining costs to finish this work will be approximately \$60,000.

Lawyers Indemnity Fund

LIF revenues were \$12.5 million to date, compared to a budget of \$12.0 million. LIF operating expenses were \$5.2 million compared to a budget of \$6.5 million, with savings related to compensation costs, external fees, and stop loss insurance costs.

At the end of September 2020, the market value of the LIF long term investment portfolio was \$205.4 million. Although the markets were down significantly over the first part of the year, the investment portfolio has mainly recovered at the end of May. The investment portfolio returns for the period were 3.55% compared to a bench mark of 5.6%, before management fees. Year to date the fund has underperformed due to near-term performance issues with ACM and GWL.

ACM recorded two loan loss provisions early in the year and it has only partially reversed them. All of their mortgages are current, and they do expect to fully reverse the provision by the end of the year.

GWL has performed behind the absolute return target but has done well compared to other real estate funds. Over the longer term, returns have been more in line with the absolute return target.

As approved by the Benchers, the LIF portfolio asset mix now includes infrastructure funds, and a portion of the LIF investment funds are moving to infrastructure funds over the next 12 – 24 months. During May to July, the funds held by Beutel Goodman were transferred to ACM Mortgage Fund and Fiera Capital, with the infrastructure portion being held temporarily in Fiera Capital. It is expected that the infrastructure funds will make their capital calls over the next 12 – 18 months.

Summary of Financial Highlights (\$000's)

2020 General Fund Results - September 2020 (Excluding Capital Allocation & Depreciation)

	Actual	Budget	\$ Var	% Var
Revenue (excluding capital)				
Practice fees	17,357	17,197	160	1%
PLTC and enrolment fees	1,768	1,838	(70)	-4%
Electronic filing revenue	523	525	(2)	0%
Interest income	380	437	(57)	-13%
Credentials & membership services	535	507	28	6%
Fines, penalties & recoveries	363	286	77	27%
Insurance Recoveries	47	435	(388)	-89%
Other revenue	230	154	76	49%
Other cost recoveries	46	128	(82)	-64%
Building revenue & tenant cost recoveries	1,031	1,055	(24)	-2%
	22,280	22,562	(282)	-1%
Expenses (excluding depreciation)*	18,345	21,345	3,000	14%
	3,935	1,217	2,718	

*Summary of Expense Variance to Date - September 2020

Permanent Savings:

Compensation savings	864
Meetings and Travel savings including Benchers retreat and AGM	600
Building savings	174
HR Savings	120
General Office	103
Other miscellaneous permanent savings	306
	2167

Timing Differences:

External Counsel Fees timing differences	447
Other miscellaneous timing differences	386
	833
	3000

Trust Assurance Program Actual

	2020 Actual	2020 Budget	Variance	% Var
TAF Revenue	1,795	1,797	(2)	-0.1%
Trust Assurance Department	2,310	2,651	341	12.9%
Net Trust Assurance Program	(515)	(854)	339	

2020 Lawyers Indemnity Fund Long Term Investments - YTD September 2020 Before investment management fees

Performance	3.55%
Benchmark Performance	5.60%

The Law Society of British Columbia
General Fund
Results for the 9 Months ended September 30, 2020
(\$000's)

	2020 Actual	2020 Budget	\$ Variance	%
REVENUE				
Practice fees (1)	19,617	19,447	170	1%
PLTC and enrolment fees	1,768	1,838	(70)	-4%
Electronic filing revenue	523	525	(2)	0%
Interest income	380	437	(57)	-13%
Credentials and membership services	535	507	28	6%
Fines, penalties and recoveries	363	286	77	27%
Program Cost Recoveries	33	122	(89)	-73%
Insurance Recoveries	47	435	(388)	-89%
Other revenue	230	154	76	49%
Other Cost Recoveries	13	6	7	117%
Building Revenue & Recoveries	1,031	1,055	(24)	-2%
Total Revenues	24,540	24,812	(272)	-1.1%
EXPENSES				
Benchers Governance and Events				
Benchers Governance	301	715	414	58%
Board Relations and Events	184	194	10	5%
	485	909	424	47%
Corporate Services				
General Office	445	550	105	19%
CEO Department	524	624	100	16%
Finance	777	815	38	5%
Human Resources	291	500	209	42%
Records Management	180	185	5	3%
	2,216	2,674	458	17%
Education and Practice				
Licensing and Admissions	1,125	1,390	265	19%
PLTC and Education	1,858	1,917	59	3%
Practice Standards	271	478	207	43%
Practice Support	14	66	52	79%
	3,268	3,851	583	15%
Communications and Information Services				
Communications	324	400	76	19%
Information Services	1,181	1,286	105	8%
	1,505	1,686	181	11%
Policy and Legal Services				
Policy and Legal Services	956	1,123	167	15%
Tribunal and Legislative Counsel	354	464	110	24%
External Litigation & Interventions	10	19	9	47%
Unauthorized Practice	224	266	42	16%
	1,544	1,872	328	18%
Regulation				
CLO Department	679	625	(54)	-9%
Intake & Early Assessment	1,493	1,563	70	4%
Discipline	1,669	1,996	327	16%
Forensic Accounting	653	911	258	28%
Investigations, Monetary & Enforcement	2,409	2,475	66	3%
Custodianships	1,215	1,278	63	5%
	8,118	8,848	730	8%
Building Occupancy Costs	1,209	1,516	307	20%
Depreciation	781	869	88	10%
Total Expenses	19,126	22,225	3,099	13.9%
General Fund Results before Trust Assurance Program	5,414	2,587	2,827	
Trust Assurance Program (TAP)				
TAF revenues	1,795	1,797	(2)	-0.1%
TAP expenses	2,310	2,651	341	12.9%
TAP Results	(515)	(854)	339	39.7%
General Fund Results including Trust Assurance Program	4,899	1,733	3,166	

(1) Membership fees include capital allocation of \$2.26m (Capital allocation budget = \$2.25m)

The Law Society of British Columbia
General Fund - Balance Sheet
As at September 30, 2020
(\$000's)

	Sep 30 2020	Sep 30 2019
Assets		
Current assets		
Cash and cash equivalents	8,929	7,189
Unclaimed trust funds	1,997	2,137
Accounts receivable and prepaid expenses	517	2,118
Due from Lawyers Insurance Fund	16,899	14,723
	<u>28,343</u>	<u>26,167</u>
Property, plant and equipment		
Cambie Street property	11,835	12,359
Other - net	1,844	1,791
	<u>13,680</u>	<u>14,150</u>
Long Term Loan	446	365
	<u>42,469</u>	<u>40,682</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	2,561	2,077
Liability for unclaimed trust funds	1,997	2,137
Current portion of building loan payable	500	500
Deferred revenue	6,077	6,360
Deposits	86	87
	<u>11,222</u>	<u>11,161</u>
Building loan payable	100	600
	<u>11,322</u>	<u>11,761</u>
Net assets		
Capital Allocation	3,946	3,000
Unrestricted Net Assets	27,201	25,921
	<u>31,147</u>	<u>28,921</u>
	<u>42,469</u>	<u>40,682</u>

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
Results for the 9 Months ended September 30, 2020
(\$000's)

	<i>Invested in Capital</i>	<i>Working Capital</i>	Unrestricted Net Assets	Trust Assurance	Capital Allocation	2020 Total	Year ended 2019 Total
	\$	\$	\$	\$	\$	\$	\$
Net assets - At Beginning of Year	12,848	8,409	21,257	1,990	3,000	26,247	23,663
Net (deficiency) excess of revenue over expense for the period	(1,084)	4,237	3,153	(514)	2,261	4,900	2,584
Contribution to LIF				-		-	
Repayment of building loan	500	-	500	-	(500)	-	-
Purchase of capital assets:						-	
LSBC Operations	476	-	476	-	(476)	-	-
845 Cambie	339	-	339	-	(339)	-	-
Net assets - At End of Period	13,079	12,646	25,725	1,476	3,946	31,147	26,247

The Law Society of British Columbia
Special Compensation Fund
Results for the 9 Months ended September 30, 2020
 (\$000's)

	2020 Actual	2020 Budget	\$ Variance
Revenue			
Annual assessment	-	-	-
Recoveries	-	-	-
Loan interest expense	-	-	-
Other income	-	-	-
Total Revenues	<u>-</u>	<u>-</u>	<u>-</u>
Expenses			
Claims and costs, net of recoveries	77	-	77
Administrative and general costs	-	-	-
Total Expenses	<u>77</u>	<u>-</u>	<u>77</u>
Special Compensation Fund Results	<u>(77)</u>	<u>-</u>	<u>(77)</u>

Special Compensation Fund - Balance Sheet
As at September 30, 2020
(\$000's)

	2020 Actual	2019 Actual
Assets		
Current assets		
Due from Lawyers Indemnity Fund	-	95
	<u>-</u>	<u>95</u>
	<u>-</u>	<u>95</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities		
Deferred revenue		
Due to Lawyers Indemnity Fund	18	-
	<u>18</u>	<u>-</u>
Net assets		
Unrestricted net assets	(18)	95
	<u>(18)</u>	<u>95</u>
	<u>-</u>	<u>95</u>

The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
Results for the 9 Months ended September 30, 2020
(\$000's)

	2020	Year ended 2019
	\$	\$
Unrestricted Net assets - At Beginning of Year	59	159
Net excess of revenue over expense for the period	(77)	-
	<hr/>	<hr/>
Unrestricted Net assets - At End of Period	(18)	59

The Law Society of British Columbia
Lawyers Indemnity Fund
Results for the 9 Months ended September 30, 2020
(\$000's)

	2020 Actual	2020 Budget	\$ Variance	% Variance
Revenue				
Annual assessment	12,526	12,026	500	4%
Investment income	7,028	6,817	211	3%
Other income	46	49	(3)	-6%
Total Revenues	19,600	18,892	708	3.7%
Expenses				
Insurance Expense				
Provision for settlement of claims	13,343	13,343	-	0%
Salaries and benefits	2,286	2,716	430	16%
Contribution to program and administrative costs of General Fund	894	1,102	208	19%
Insurance	241	340	99	29%
Office	486	990	504	51%
Actuaries, consultants and investment brokers' fees	701	707	6	1%
Premium taxes	-	8	8	100%
Income taxes	-	-	-	0%
	17,951	19,206	1,255	7%
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	589	661	72	11%
Total Expenses	18,540	19,867	1,327	6.7%
Lawyers Insurance Fund Results	1,060	(975)	2,035	

The Law Society of British Columbia
Lawyers Indemnity Fund - Balance Sheet
As at September 30, 2020
(\$000's)

	Sep 30 2020	Sep 30 2019
Assets		
Cash and cash equivalents	6,296	11,465
Accounts receivable and prepaid expenses	375	346
Current portion General Fund building loan	500	500
Due from Special Compensation Fund	19	
LT Portion of Building Loan	100	600
Investments	205,359	186,673
	<u>212,649</u>	<u>199,584</u>
Liabilities		
Accounts payable and accrued liabilities	524	1,475
Deferred revenue	3,889	3,878
Due to General Fund	16,899	14,723
Due to Special Compensation Fund		95
Provision for claims	80,496	77,432
Provision for ULAE	11,860	10,779
	<u>113,668</u>	<u>108,381</u>
Net assets		
Internally restricted net assets	17,500	17,500
Unrestricted net assets	81,481	73,703
	<u>98,981</u>	<u>91,203</u>
	<u>212,649</u>	<u>199,584</u>

***The Law Society of British Columbia
Lawyers Indemnity Fund - Statement of Changes in Net Assets
Results for the 9 Months ended September 30, 2020***

	Unrestricted	Internally Restricted	2020 Total	2019 Total
	\$	\$	\$	\$
Net assets - At Beginning of Year	80,421	17,500	97,921	76,921
Net excess of revenue over expense for the period	1,060	-	1,060	21,000
Net assets - At End of Period	81,481	17,500	98,981	97,921

Forecast – as at September 30, 2020

Attached is the General Fund forecast to the end of the fiscal year.

Overview

As a result of the impact of COVID-19 on the operations, travel and meetings, and other efforts by management to contain costs this year, it is projected that the 2020 year-end result will be \$1.7 million favourable to budget. Revenue is projected at \$28.7 million, \$619,000 (2%) below budget, and operating expenses are projected at \$27.0 million, \$2.3 million (8%) below budget.

Revenue Forecast

Revenue is projected at \$28.7 million, \$619,000 (2%) below budget, primarily due to lower D&O insurance recoveries and reduced interest income.

Practice Fees: The Q2 forecast for 2020 projected lawyer numbers to be lower than budget due to the impact of COVID-19 on the economy. There has not happened, with current lawyer numbers projected to be close to the budgeted number of 12,846 for the year.

Interest Revenue: With lower interest rates and the deferral of the LIF second instalment fee due date to August 31st, interest revenue is projected to be below budget \$94,000.

D&O Insurance Recoveries: Insurance recoveries will be below budget by \$533,000 as the majority of these recoveries were received in 2019, after the 2020 budget was set.

Operating Expenses Forecast

At this time, operating expenses are projected to be \$27.0 million, \$2.3 million (8%) below budget. We are projecting lower compensation, travel, meetings, general office and building costs, offset by costs for the new online learning platform and online courses.

Compensation Savings: Compensation costs are projected to be \$1.5 million (7%) below budget with increased vacancies and the reduction of other compensation costs.

Meetings and Travel Savings: Meeting and travel costs are projected to be \$400,000 under budget with no in-person meetings and no Bencher, committee and staff meeting and travel costs.

Human Resources Savings: Savings of \$120,000 are expected with reduced consulting and recruitment costs and the cancellation of in-person staff events.

General Office Savings: Projected savings of \$100,000 is primary related to reduced photocopier costs, postage and kitchen supplies.

Building Savings: The City of Vancouver has reduced the school tax portion of the 845 Cambie property taxes which results in savings of \$97,000. Additional building savings of \$160,000 is related to savings in cleaning, repairs and utilities. It should be noted that a large building project to repair the parkade has been deferred until 2021, leading to a timing difference of \$145,000.

External Counsel Fees: External counsel fees are now projected to be close to budget, with some reduced spending on forensic and credentials files, as well as several large discipline files settling before going to a hearing, resulting in savings to budget.

Increased Practice Support Costs: There are additional costs of \$55,000 related to the new online learning platform and the development of online courses.

Zoom Licenses: There will be additional costs of \$20,000 for Zoom licenses to conduct virtual meetings.

The Law Society of British Columbia
General Fund Forecast
For the 12 Months ending December 31, 2020
(\$000's)

	Q3		Forecast vs Budget	
	Forecast	Budget	\$	%
			Variance	
REVENUE				
Practice fees	22,866	22,833	33	0%
PLTC and enrolment fees	1,842	1,874	(32)	-2%
Electronic filing revenue	698	700	(2)	0%
Interest income	489	583	(94)	-16%
Credentials and membership services	678	678	-	0%
Fines, penalties and recoveries	320	315	5	2%
Program Cost Recoveries	162	162	-	0%
Insurance Recoveries	47	580	(533)	-92%
Other revenue	189	182	7	4%
Other Cost Recoveries	10	10	-	0%
Building Revenue & Recoveries	1,375	1,378	(3)	0%
Total Revenues	28,676	29,295	(619)	-2%
EXPENSES				
Benchers Governance and Events				
Benchers Governance	501	917	416	45%
Board Relations and Events	247	272	25	9%
	748	1,189	441	37%
Corporate Services				
General Office	651	750	99	13%
CEO Department	770	889	119	13%
Finance	1,050	1,128	78	7%
Human Resources	676	701	25	4%
Records Management	276	285	9	3%
	3,423	3,753	330	9%
Education and Practice				
Licensing and Admissions	1,566	1,924	358	19%
PLTC and Education	2,529	2,660	131	5%
Practice Standards	455	651	196	30%
Practice Support	283	82	(201)	-245%
	4,833	5,317	484	9%
Communications and Information Services				
Communications	473	542	69	13%
Information Services	1,554	1,675	121	7%
	2,027	2,217	190	9%
Policy and Legal Services				
Policy and Legal Services	1,491	1,498	7	0%
Tribunal and Legislative Counsel	612	628	16	3%
External Litigation & Interventions	60	25	(35)	-139%
Unauthorized Practice	349	361	12	3%
	2,511	2,512	1	0%
Regulation				
CLO Department	851	858	7	1%
Intake & Early Assessment	2,081	2,135	54	3%
Discipline	2,720	2,826	106	4%
Forensic Accounting	891	1,242	351	28%
Investigations, Monitoring & Enforcement	3,455	3,407	(48)	-1%
Custodianships	1,718	1,840	122	7%
	11,716	12,308	592	5%
Building Occupancy Costs	1,709	1,999	290	15%
Total Expenses	26,967	29,295	2,328	8%
General Fund Results	1,709	-	1,709	



2020 Year-End Reports

**Access to Justice Advisory Committee
Equity, Diversity and Inclusion Advisory Committee
Mental Health Task Force
Rule of Law and Lawyer Independence Advisory Committee
Truth and Reconciliation Advisory Committee**

December 4, 2020

Prepared for: Benchers

Purpose: For information

Introduction

1. This report is a compilation of the year-end reports of the four Advisory Committees as well as of the Mental Health Task Force.

I. Access to Justice Advisory Committee

2. This report summarizes the work of the Access to Justice Advisory Committee (the “Committee”) since July.
3. The Committee held meetings in July, September, October, and will hold a meeting in December.
4. The Committee focused on two main priorities in the second half of 2020: developing an access to justice vision for the law society (the “Vision”), and refining the optional access to justice questions on the Annual Practice Declaration (“APD”).
5. In December, the Committee recommended the Vision to the Benchers. The work arose from the mandate letter from the President, which identified developing a vision as a key priority for the Committee.
6. The Vision provides a set of principles regarding access to justice and legal services to guide the Society into the future. The Committee expects adherence to the Vision will strengthen the Law Society’s position as a leader in promoting access to justice and legal services. It also provides the public and other justice system stakeholders a reference document with which to hold the organization accountable.
7. In 2020, the Committee continued its work on analyzing data from the optional access to justice questions on the APD. This continues the work of the Committee over the past three years. By reviewing the data on the APD the Committee is better able to identify real and perceived barriers to lawyers providing pro bono, reduced cost legal services or legal aid.
8. In September, the Committee met with Jason Kuzminski, Director of Communications and Engagement, to discuss how to better profile the data that has been collected, in order to celebrate the good news stories while finding ways to encourage lawyers who are not yet providing pro bono, reduced cost services from time to time, or legal aid to find ways to make it part of their practices.
9. Mr. Kuzminski informed the Committee that work was underway to develop a webpage that reports the APD data, highlights the success of reporting lawyers in exceeding

benchmarks, outlines current barriers some lawyers are encountering for volunteering, and has an appropriate call to action that encourages more lawyers and more volunteering. Once the webpage is published, it will be promoted through social media channels.

10. Building on this, further work is being planned for a campaign approach that targets government and in-house counsel with communications aimed at promoting the value of volunteering, promoting opportunities to volunteer, but also responds to lawyers who say that they are not permitted by their employer to volunteer with potential solutions. Mr. Kuzminski proposed regular, periodic distribution of testimonials from lawyers, service agencies and beneficiaries that express “the Value of Volunteering”.
11. With regard to the pro bono law firm initiative, Mr. Kuzminski recommended that a report be written that chronicles the concept, the work that was done, and why the initiative ultimately stalled. The purposes for the report would be to publicize to the profession and the public that the Committee had been engaged with a big idea which is deserving of recognition that often only comes when initiatives come to fruition, as well as to assist others who may benefit from the lessons learned if they were considering a similar initiative. Because the history and details of the initiative are more familiar to others, Mr. Kuzminski advised that someone other than him or his team should take the lead in drafting the report, but he and his team will assist in getting it published and distributed.
12. In addition to exploring the development of communications content regarding access to justice work, the Committee recommended some modifications to the APD. For the past several years the APD contained fields for verbatim responses for lawyers in circumstances where the lawyer did not provide pro bono, low cost legal services, or legal aid. This led to a fair bit of data that was difficult to analyze. The Committee recognized there are some recurring themes in the verbatim responses, and concluded it would be more effective to provide a range of checkbox options for the most common reasons lawyers do not do this type of work.
13. A checkbox approach has several benefits, including that it makes it less time consuming for lawyers to fill out the optional questions, and it allows the Committee to better compare data.
14. As part of its monitoring function, the Committee considered a range of articles and reports (or summaries) relating to access to justice and legal services issues and initiatives in BC and other jurisdictions.
15. The Committee reviewed reports and summaries of reports, including: West Coast LEAF “Gender Equality Report Card; Saskatchewan Gladue Awareness Project Report”. These

reports confirm that there is considerable work that remains to ensure meaningful access to justice for Indigenous peoples as well as other equity-seeking groups. The Law Society, because of its Equity, Diversity and Inclusion Advisory Committee and its Truth and Reconciliation Advisory Committee, is well situated to develop responsive policy in these areas. The Committee also monitors some of these issues to ensure it is not recommending access to justice policy in a silo, and intends to liaise with the TRC Advisory Committee about improving access to justice and legal services for Indigenous peoples.

16. Articles and opinion pieces the Committee reviewed included the following topics: modernizing the delivery of legal services and the justice system; self-represented litigants; limited scope legal services; risks associated with algorithmic justice and policing; impacts of COVID-19 on legal services and the justice system; the future of law; developments in the law relating to members of equity-seeking groups.
17. Monitoring does not always lead to specific initiatives, but it remains an important function to ensure the Committee is able to advise the Benchers on the current state of access to justice, as well as emerging trends and issues.
18. In terms of looking forward, the Committee observes that on the past Strategic Plan the Benchers identified exploring possible regulatory and rule reform to improve access to justice and legal services. While 2020 saw the Law Society adopt new and important policies designed to increase access to legal services, the Committee observes that much work remains before the public will realize the benefits of those changes. It is essential, therefore, as part of the implementation of those systems to ensure that the regulatory structure that is created strikes the appropriate balance between protecting the public and achieving the type of improved access that is envisioned in the policy changes. As always, the Committee stands ready to assist the Benchers in performing any discrete task or project to support the development of these or other access to justice initiatives.

II. Equity, Diversity and Inclusion Advisory Committee

19. The purpose of this report is to update the Benchers about the work the Committee has undertaken for the latter half of the year. The Committee met four times since the mid-year report, and has discussed the following matters:

Diversity Action Plan

20. The Committee developed a Diversity Action Plan aimed at addressing racial discrimination in the legal profession. The Action Plan builds upon the Law Society's

previous and existing efforts to support diversity in the legal profession, and identifies 30 additional concrete measures to advance the Law Society’s current diversity objectives. The Benchers approved the Action Plan at the September 25, 2020 Benchers meeting. The Committee is now prioritizing the action items.

Diversity Data

21. This year, the Committee has been mandated to “update the equity, diversity, and inclusion data on the legal profession in BC and consider how this data can be kept current in the future.”¹ Demographic data of the legal profession in BC from 2013-2019 was published on the Law Society’s website.² The Committee is reviewing the Law Society’s current approach to collecting demographic data, and considering whether this approach should be adapted.
22. In the interim, the Committee is improving communications to encourage lawyers to answer the demographic self-identification survey, and has proposed amendments to the self-identification survey to gather information regarding year of call, and additional details from respondents who “choose not to answer”. The amendments were endorsed by the Executive Committee in September of 2020, and will appear in the demographic self-identification survey in 2021.

Maternity Leave Benefit Loan

23. In 2009, based on a recommendation from the Women in Law Task Force, the Benchers established the Maternity Leave Benefit Loan Program (“Program”) as a pilot program aimed at assisting self-employed women lawyers to take maternity leaves and return to practice after giving birth. The Committee completed a Program review that revealed the Program is failing to meet its key objectives. The Committee recommended that the Program be phased out by the end of 2020, and replaced with more effective measures to support new parents in the legal profession. The Benchers endorsed the Committee’s recommendations at the September 25, 2020 Benchers meeting. The Committee is now working to identify and propose more effective measures within six months of the Program being phased out.

Model Code Consultation

24. The Committee contributed to the Law Society of BC’s response to a consultation regarding proposed amendments to discrimination and harassment provisions of the

¹ Letter Re: 2020 Mandate for Equity Diversity and Inclusion Advisory Committee, dated January 17, 2020.

² [Demographics of the legal profession | The Law Society of British Columbia](#)

Federation of Law Societies' Model Code of Professional Conduct. The response was submitted to the Federation's Standing Committee on the Model Code of Professional Conduct in September of 2020.

Motto

25. The Law Society's motto: "*lex liberorum rex*," meaning "the law is king of free men," was brought to Committee's attention by a member of the Law Society. The Committee discussed the possibility of updating the motto to be gender neutral. The strategic plan proposes making the Law Society more accessible to the public (e.g. by reviewing publications to improve inclusivity), and a Latin motto may not be appropriate going forward. The Committee will ensure the motto is reviewed within the Law Society's broader strategic plan.

Justicia

26. The Justicia Project is a voluntary program undertaken by law firms, and facilitated by the Law Society of BC, to identify and implement best practices to retain and advance women lawyers in private practice. Justicia was created in response to evidence that women leave the profession at a higher rate than men in the first 10 years of practice. The Justicia Project has been operating in BC since November of 2012, and has produced resources on the following topics: enhancing flexible work arrangements; improving parental leave policies; tracking gender demographics; fostering women's networking and business development; promoting leadership skills for women; and developing paths to partnership initiatives. The Justicia firms have also arranged for preeminent keynote speakers to present on what unconscious biases are, and practical ways to interrupt them. The Justicia participants met in November of 2020 to discuss priorities for the coming year, which will likely involve equity issues related to the Covid-19 pandemic.

III. Mental Health Task Force

27. The Mental Health Task Force (the "Task Force") is responsible for coordinating and assisting the Benchers in implementing the Law Society's strategic goals in relation to improving the mental health of the profession, namely: reducing stigma around mental health and substance use issues and developing an integrated mental health review concerning regulatory approaches to discipline and admissions.
28. Since its inception, the Task Force has produced two Interim Reports, which have resulted in the approval of 20 recommendations that have significantly advanced the Law Society's understanding of, and response to, mental health and substance use issues affecting lawyers.

29. The COVID-19 pandemic has unavoidably resulted in some delay to implementation of prior recommendations, as well as a planned further recommendation report. However, despite these recent challenges, the Task Force continues to pursue its mandate by way of remote meetings, presentations, research and communications. This Year-End Report outlines the key initiatives that have been discussed, developed and implemented in 2020, with a particular focus on the Task Force's work over the last six months.

Implementing recommendations from the First and Second Interim Reports

30. In 2018, the Task Force delivered its First Interim Report, which contained 13 recommendations. In early 2020, the Benchers approved an additional seven recommendations included in the Task Force's Second Interim Report. Although the majority of these recommendations have now been implemented, additional work is occurring on a number of fronts.
31. With respect to the initiatives identified in the First Interim Report, the Human Resource Department continues to support the implementation of the Task Force's recommendations in relation to improving education and training on mental health and substance use issues among Law Society staff, particularly those that work in the areas of admissions, practice standards, practice advice and discipline. In addition to providing a range of training sessions and improving information about wellness resources, steps are being taken to ensure that all new employees are provided with dedicated mental health and substance use training as part of their orientation.
32. Remote learning opportunities for Benchers training are also being explored to overcome the challenges the pandemic has created for delivering in-person training sessions, as was previously planned.
33. Additional guidance has also been developed for inclusion in the law firm regulation self-assessment tool to encourage firms to put in place policies, processes and resources to support lawyers experiencing mental health and substance use issues, and to promote the use of these resources within firms. This material will be reflected in the self-assessment tool when it is rolled out to the profession in 2022.
34. With respect to the recommendations stemming from the Second Interim Report, progress has been made on a number of initiatives. This includes discussions with administrators and student counsellors at UBC, UVic and TRU to consider how the Law Society and the law schools can collaborate to improve the exchange of information about the availability of support services for mental health and substance use issues

within the profession and to assist students in transitioning to these supports from those provided during law school. Engagement is high, and it is anticipated that this work will accelerate in 2021.

35. Work is also underway to improve the manner in which the Benchers interview process can be used as an opportunity to share information with students about mental health and substance use issues and supports as they enter the profession. The Task Force will invite the Lawyer Development Task Force to collaborate with it on reviewing and developing proposals and materials in respect of Benchers interviews.
36. Updates to the practice resources on the use of respectful language, including specific guidance with respect to how to avoid the use of stigmatizing language in relation to mental health and substance use issues, are also progressing.
37. The Second Interim Report also contained a recommendation that the Law Society host a forum to facilitate a discussion between lawyers, legal employers, support service providers and the Law Society about mental health within the profession. The Task Force initially planned to hold this event in September 2020. Event planning was disrupted by the pandemic, however, work is now underway to host a remote forum in early 2021.
38. The Task Force has also spent considerable time discussing, and providing feedback in relation to, a national wellness survey that explores the mental health and well-being of legal professionals, which was approved by the Federation in June 2020. The Chair of the Task Force has been appointed to the study's Steering Committee, which will liaise with the Federation and the lead researchers at the Université de Sherbrooke to advance this project. The Task Force's plans for a British Columbia wide survey have been largely subsumed into consideration of the potential national survey.

Outreach and learning activities

39. Over the last six months, Task Force members have been involved in a variety of outreach activities that aim to improve awareness of, and reduce stigma in relation to, mental health and substance use issues facing lawyers. These efforts have included presentations to law schools, private firms, government legal departments, in-house counsel groups and bar associations. Task Force members have also presented at several national conferences, including those hosted by the Law Societies' Equity Network and the Council on Licensure, Enforcement and Regulation. Task Force members consistently report that engagement within the profession remains extremely high in respect of these issues, and additional presentations are in significant demand.

40. Additionally, the Task Force has benefited from a number of presentations on topics that are relevant to its mandate, including trauma informed practice and the potential application of expert systems in improving support for lawyers experiencing mental health and substance use issues.

Future recommendations

41. The Task Force continues to dedicate considerable time to examining the policy issues surrounding the creation of an alternative discipline processes to address lawyer conduct issues that arise from mental health or substance use issues.
42. The Task Force had originally planned to have a recommendation in respect of an alternative discipline pilot project by the end of 2020. However, delays related to the pandemic have resulted in the Task Force working closely with staff to develop a recommendation that is expected to be presented to the Benchers early next year.
43. Additionally, the Task Force is considering how to improve the Law Society's regulatory processes in relation to lawyers that fail to respond to a complaints investigation as the result of a mental health or substance use issue. The Task Force plans to have recommendations presented to the Benchers early next year.

IV. Rule of Law and Lawyer Independence Advisory Committee

44. The Rule of Law and Lawyer Independence Advisory Committee met eight times in 2020. The focus this year has been on the following matters.

Essay Contest

45. As reported mid-year, the 2020 contest was completed, and the essays of the winners and runners-up have been published in the Benchers' Bulletin. Unfortunately, due to the pandemic, the presentations to the winners and runners-up were unable to be made at a Benchers meeting.
46. The Committee has begun work on the 2021 contest. Two topics have been chosen for the contest:
- (i) How does civil disobedience impact the rule of law? and
 - (ii) What role does the rule of law have in advancing reconciliation with Indigenous people?

47. One essay overall winner and one overall runner-up will be chosen. If the pandemic subsides, arrangements will be made for the awards to be presented at a future in-person meeting with benchers.

Publications

48. The Committee authored an article outlining concerns about comments from the Prime Minister's mandate letters to his Minister of Justice and how they could adversely affect the principle of judicial independence. The article was circulated to the profession via EBrief. Another article on the "Rule of Law vs. the Rule by Law" is being written and is near completion.

Rule of Law Lecture

49. The Rule of Law Lecture, normally held in May or June, was postponed due to the pandemic. The Committee is currently giving consideration to how the Lecture might be undertaken next year, likely through virtual means depending on how conditions play out. A series of podcasts (discussed further below) was implemented in place of the Lecture.

Rule of Law Podcast

50. The Committee has worked with the Communications Department to launch the "Rule of Law Matters" Podcast this summer and fall. Three episodes have been released thus far, featuring Mr. Craig Ferris, QC, Dr. Catherine Dauvergne, QC, and Professor Irwin Cotler, QC as guests. Jon Festinger, QC is the host. Provincial Ombudsman Jay Chalke QC is a guest on an episode to be released soon. Available on Spotify and Apple Podcasts, the podcast aims to garner broader interest in the concept of rule of law, why it matters and how it pertains to other matters in society.
51. Other potential guests are being approached. The intent is to record a few more initial podcasts, and gradually release them to the public. Thus far, the podcast has garnered approximately 500 subscribers on Spotify and Apple Podcasts, 25,000 Twitter engagements, and 400 Twitter media clips plays.

Work Identified From Mandate Letter from President Ferris

52. At the beginning of the year, the Committee received a letter from the President asking it to address in particular two matters relating to lawyer independence and the rule of law.
53. The first matter asked the Committee to consider the development of the law on "lawyer independence" arising from the Federation money laundering case. The Committee has

reviewed and discussed the case in order to assess and report on what that case says about principles that relate to lawyer independence. In its report, which will be presented at the December 2020 Benchers meeting, the Committee advances the position that the rule of law is inextricably linked to the independence of the bar. The report outlines the relevant principles about lawyer independence that the Committee has identified and leaves open the question of how lawyer independence can be maintained when faced with government intervention.

54. The Committee also explored the theme of rule of law vs. rule by law, and is currently completing an article that parses the difference between the two concepts. The article attempts to explore deeper levels of the subtleties of rule of law, outlining how the rule of law creates opportunities through which unfair laws can be challenged in an orderly manner, and through which government actors can be held accountable for how the law is applied. The rule by law, on the other hand creates opportunities for the powerful to pervert the law to their own ends by not allowing laws to be challenged except where convenient and to not provide an avenue to hold those in power accountable to the requirements of the law. Once finalized, the essay will be shared in the Benchers Bulletin or submitted for publishing in the Advocate.

Matters in Light of the Current Pandemic

55. The Committee has monitored the effects on the rule of law arising both domestically and internationally from the COVID-19 pandemic, including the possibility of increased surveillance and the use of emergency powers. Some of the items it has considered have formed topics for the Podcast, including (a) why does the rule of law matter; (b) the pandemic and the rule of law; (c) the rule of law, but which laws; and (d) the rule of law, not the law of rules.

V. Truth and Reconciliation Advisory Committee

56. The purpose of this report is to update the Benchers about the work the Committee has undertaken for the latter half of the year:

Indigenous Intercultural Competence Course

57. The Committee has been kept apprised of the development of the Indigenous intercultural competence course that was approved at the December 6, 2019 Benchers meeting, with a targeted release date of early 2021. The Law Society has retained an external consultant who is an Indigenous lawyer with extensive experience in developing online courses focused on Indigenous content. The course is scheduled to be ready for piloting in mid-December of 2020.

Supporting Indigenous lawyers and law graduates

58. A key priority for the Committee is supporting Indigenous lawyers, law students, and articulated students. The Committee's efforts to advance this priority are bolstered by the BC First Nations Justice Strategy (Strategy), which makes specific reference to the Law Society in relation to developing and promoting a recruitment strategy to increase the number of Indigenous people in roles of authority and responsibility within the justice system, and identifying and encouraging potential First Nations candidates for judicial appointments.
59. To inform efforts to support Indigenous lawyers, law students, and articulated students, staff completed a progress report on the Law Society's "Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers Report". The progress report assessed the extent of advancement on previous recommendations, whether there are any outstanding issues that the Law Society might help to address, and whether any new or updated recommendations are necessary. The progress report revealed that most of the recommendations aimed at the Law Society have been implemented. Even so, there continues to be an underrepresentation of Indigenous lawyers in the province (2.7%),³ as compared to the Indigenous population of BC (5.9%)⁴.
60. Measures to increase the number of Indigenous lawyers in BC are still necessary to meet the Law Society's objective to ensure the legal profession reflects the diversity of the population of BC. Staff has compiled information from previous studies in order to update and refine approaches to supporting Indigenous lawyers and law students. Efforts aimed at bridging the gap between law school and practice will likely be the Committee's focus for the upcoming year.

Annual General Meeting Members' Resolution

61. Until 2017, a statue of Judge Begbie used to be displayed in the Law Society's foyer. In 2017, the TRC Committee (comprised of Indigenous and non-Indigenous representatives) developed a report and recommendation that the statue be taken down because it was perceived as offensive by some members of the Indigenous bar.⁵ The Benchers unanimously endorsed the recommendation, and the statue was removed from the foyer in 2017. In the fall of 2020, a members' resolution was put forward for decision at the Law Society's Annual General Meeting (AGM). The resolution called for the creation of

³ Annual Practice Declaration Demographic Self-Identification Survey Results for 2019.

⁴ Statistics Canada, 2016 Census.

⁵ Judge Begbie was ultimately responsible for sentencing Tsilhqot'in leaders to death in 1864 for their role in the Tsilhqot'in war. These Tsilhqot'in leaders have since been exonerated by the provincial and federal governments (see: [Tsilhqot'in chiefs hanged in 1864 exonerated by B.C. Premier Christy Clark | CBC News](#) and [Trudeau apologizes to Tsilhqot'in community members for 1864 hanging of chiefs | CBC News](#)).

a new committee to rewrite the report and find a unifying symbol for the Law Society. The resolution passed at the October 6, 2020 AGM with 73.5% in favour, and 26.5% opposed.

62. The Committee is of the view that: 1) the TRC Advisory Committee is the appropriate committee to respond to the resolution, 2) the report and recommendation do not need to be rewritten, and 3) the search for a unifying symbol is a low priority given the COVID-19 context and other reconciliatory matters.⁶

Tribunal Training

63. Mandatory training for Law Society tribunal members featured a presentation on trauma informed practices that was facilitated by an Indigenous lawyer in the summer of 2020.

PLTC Indigenous Content

64. The PLTC is continuing to collaborate with the University of Victoria's Indigenous Laws Research Unit to develop modules regarding Indigenous law. The Committee continues to engage with PLTC students about their experience in the program and the Indigenous content.

Indigenous Scholarship

65. The Indigenous scholarship was awarded to two Indigenous Juris Doctor students.

Rule of Law and Lawyer Independence Advisory Committee Collaborations

66. Early in the year, the Committee had expressed interest in collaborating with the Rule of Law and Lawyer Independence Advisory Committee (ROLLIAC) to increase the legal profession's appreciation of the applicability of Indigenous laws within the Canadian legal system. Both the TRC Committee and ROLLIAC had initial discussions around the possibility of including Indigenous law as part of the ROLLIAC's annual rule of law lecture. However, the lecture was cancelled due to COVID-19, and podcasts on rule of law topics are being developed in lieu of this year's lecture. ROLLIAC intends to include an Indigenous law episode within the podcast series that will feature a preeminent member of the Indigenous legal community. The Law Society of BC's 2021 annual rule of law high school essay competition will include a topic on the role of the rule of law in advancing reconciliation with Indigenous people.

⁶ E.g. the Law Society building will be closed to the public until the COVID-19 restrictions are lifted.



Lawyer Independence

Rule of Law and Lawyer Independence Advisory Committee:

Christopher McPherson, QC (Chair)
W. Martin Finch, QC (Vice Chair)
Pinder Cheema, QC
Jon Festinger, QC
Geoffrey McDonald
Jacqueline McQueen
The Honourable Marshall Rothstein, QC
Mark Rushton

Date: October 20, 2020

Prepared for: Benchers

Purpose: For Information

Introduction

In his letter to the Chair of the Committee of January 17, 2020, the Law Society President asked the Rule of Law and Lawyer Independence Advisory Committee to:

Review the decision of *Canada (Attorney General) v. Federation of Law Societies of Canada* 2015, SCC 7 [referred to as “the *Federation* case” below] in relation to the independence of the bar with a view to commenting on the broader principles that underlie how we are where we are at and why.

The Committee has reviewed and discussed the *Federation* case in order to assess and report on what that case says about principles that relate to lawyer independence in a general sense. This will help to lay the groundwork for an understanding of the extent to which lawyer independence can be utilized by the Law Society in developing arguments as necessary to defend and advance the principle.

Setting the Stage

In the *Federation* case, the Supreme Court of Canada determined that broad and narrow versions of the concept of the “independence of the bar” were being proposed by the parties. The broad version was that “lawyers are free from incursions of any sort, including from state authorities”, while the narrower was “anchored in and concerned about state interference with the lawyer’s commitment to the client’s cause.” The majority of the Supreme Court held that it did not have to reach a final determination on the broad version of the independence of the bar. Instead, it held that a narrower understanding of the independence of the bar that related to the lawyer’s duty to the commitment to a client’s cause was relevant to the appeal. While it did not make a finding on the broad version, the court did express concern about too broad a version, noting that it could be seen to put lawyers “above the law.”

In coming to its conclusion, the Supreme Court has held that a narrower version of the independence of the bar, insofar as it relates to a duty of commitment that a lawyer has to a client’s cause, is a principle of fundamental justice. Read with *Lavallee, Rackell & Heintz v. Canada (Attorney General)* 2002 SCC 61, the Supreme Court of Canada has now held that two dimensions of the solicitor-client relationship are principles of fundamental justice. Solicitor-client privilege was the principle underlying the *Lavallee* case, and the duty of commitment to a client’s cause is the other, as found in the *Federation* case. Each of those principles are narrow versions of the “independence of the bar.”

Why this is Important

The Committee advances the proposition that the “independence of the bar” is inextricably linked to upholding the rule of law. The rule of law requires everyone, including the state, to be subject to the law. In dynamic democratic systems, the rule of law is necessarily aspirational; it is something that we are compelled to strive for as we seek to advance our political and governing systems towards a society of meaningful justice for all. A self-regulating, independent bar can and ought to be a critical player in advancing the practical implementation of the rule of law, and transcending theoretical platitudes that have little effect to a diverse populace. A lawyer who is truly independent can advance their client’s unique perspective based on carefully honed and contextualized instructions, drawing attention to perspectives that may have been overlooked. Independent lawyers may forcefully challenge the legal authority of another’s action, or challenge the authority of the action or claim against a client brought by another. This independent lawyer acts without fear of reprisals from the state or of those in more powerful positions than the lawyer’s client.

Our theoretical starting point champions the independent lawyer primarily through the lens of disputes between a state and an individual. The imbalance of power in this relationship is assumed and accepted. The independent lawyer in this context is characterized by the duty of commitment and confidentiality to the client. These duties are both sword and shield. With the sword, the independent lawyer challenges the greater power of the state, calling out excess or corruption, while shielding the individual from reprisal.

But we fail in aspiration if we limit our analysis of the applicability and value of the rule of law to the classic construct of state versus individual. There are many other instances where parties in adverse situations have a diversity in power. Disparities of wealth, resources, information and human capital are many, including where an individual is in a dispute with a corporation, or where a destitute person’s rights are affected by systems designed to preserve the wealth or authority of others. Even in personal, domestic disputes, power is rarely equally distributed. Independent lawyers bring critical skills that bear upon the power balance in these disputes that are as important – and in many cases more tangibly felt in the day to day lives of citizens - than perhaps the more abstract questions often litigated between individual and state.

The independent lawyer must be able to fully and freely advise their clients – even where the client is the state or others with powerful interests – of the duties and obligations that the law implies on them. This is the hallmark of professionalism and a cornerstone of the privileged position occupied by members of the bar. Where lawyers are independent, their adherence to the application of the law rather than strictly to the interests of their clients – who may themselves be primarily interested in evading or perverting the law - are more likely. This critical elevation of professionalism and principle is reflected in British Columbia in the Canons of Legal Ethics found in Chapter 2 of the *Code of Professional Conduct for British Columbia*.

For the rule of law to work, the independent lawyer representing a party in a dispute must have undivided loyalty to their client, regardless of the relative power of the clients in the dispute. If the lawyer's independence is compromised, there is a real risk that the dispute is resolved on the basis of something other than an application of legal principles. Instead, the dispute may get resolved on the basis of threats, purely economic constraints, coercion, or bribes. These risks are real and prevalent, even in systems where the rule of law is actively championed and pursued, most especially where the protections of an independent bar are not afforded. The risk, whenever the rule of law is not fully actualized, is that the application of law will be uneven, arbitrary or unfair, discrediting both the theory and the good faith application of these principals. With critical failures, the rule of law collapses.

As society continues to work to more fully implement and evenly apply the rule of law, the fundamental role of lawyer independence, not simply in dispute of citizen versus state, but more broadly in all aspects of dispute resolution, comes into clear focus.

Principles

Based on its analysis and consideration of this topic, the Committee has identified relevant principles about lawyer independence. It sets these out as follows:

1. The solicitor-client relationship, at its heart, places a duty on lawyers to avoid conflicting interests. This duty aims to avoid the risk of misuse of confidential information and the risk of impairment of the lawyer's representation of the client.
2. Integral to the relationship, lawyers are required to:
 - keep their clients' confidences. This is a professional obligation arising from a lawyer's duty of confidentiality and is reflected in (although not limited to) solicitor-client privilege, which itself is essential to the effective operation of the legal system.
 - maintain a commitment to serve their clients' legitimate interests, including the obligation to preserve confidentiality and privilege, free of other obligations that might interfere with that duty.
 - undertake a "duty of commitment to their clients' cause." It is essential for the integrity of the administration of justice that the client have unrestricted and unbounded confidence in his or her lawyer, so that the client can be assured that the lawyer operates under no divided loyalty that may cause the lawyer to "soft-pedal" the client's representation or interests in favour of another.¹

¹ *Canadian National Railway Co. v. McKercher LLP* [2013] 2 S.C.R. 649

3. The absence of interference with these duties is what comprises the lawyer's independence. The lawyer's independence therefore relies on an absence of interference of the lawyer's duty to the client, and on the lawyer's ability to act with undivided loyalty, within the bounds of the law.
4. The centrality to the administration of justice of preventing misuse of the client's confidential information has resulted in a constitutional imperative to prevent the interference of a lawyer's duty to preserve solicitor-client privilege², resulting in the protection of solicitor-client privilege as a principle of fundamental justice.
5. Equally, there are constitutional protections against the state imposing duties on lawyers that undermine their duty of commitment to their clients' cause, which encompasses maintaining their confidences and not interfering with their obligations or representation for the client and no other³ (*Federation* case). The duty of commitment to a client's cause by a lawyer is also now a principle of fundamental justice.
6. Reflections of these principles arise elsewhere in precedent. For example, it is necessary for a lawyer to "free from state interference in the political sense,"⁴ free to represent citizens without fear or favour in the protection of individual rights against incursions from any source, including the state,⁵ and free of influence by public authorities.⁶
7. Where the state imposes duties on lawyers that conflict with or otherwise undermine the lawyer's duties, there is a legitimate concern that the client can no longer be assured of their lawyer's duty of commitment to their cause and that the principle of undivided loyalty that underlies the relationship will be broken. This compromises a principle of fundamental justice.
8. The Law Society has a responsibility to defend the principle of lawyer independence by limiting or preventing state incursions on these principles of fundamental justice. This is referenced in the provisions in s. 3 of the *Legal Profession Act* regarding "preserving and protecting the rights and freedoms of all persons."

Questions Left Unanswered

In the *Federation* case, the Court specifically stated that it was not necessary to decide the extent to which self-regulation of the legal profession is a principle of fundamental justice.

While the Committee can therefore address the "how we are where we are at" aspect of the issue before it, the important question of how lawyer independence is preserved in the face of state

² *Lavallee, Rackell & Heintz v. Canada (Attorney General)* 2002 SCC 61

³ *Canada (Attorney General) v. Federation of Law Societies of Canada* 2015, SCC 7

⁴ *A.G. Canada v. Law Society of B.C.* [1982] 2 S.C.R. 307 (*Jabour*)

⁵ *Pearlman v. Manitoba Law Society Judicial Committee* [1991] 2 S.C.R. 869

⁶ *Finney v. Barreau du Québec* [2004] 2 S.C.R. 17

action, and in particular, whether self-regulation of the profession – or at least regulation independent of state interference – is necessary in order to uphold and preserve the fundamental principles of justice identified by the Supreme Court relating to lawyer independence are important, unresolved issues.

The Committee also notes that the Supreme Court has to date only identified two constructs of the solicitor-client relationship that are principles of fundamental justice. The Committee has not yet addressed whether there might be others.

MDL/al



Response to the President's Requests from his Mandate Letter to the 2020 Ethics Committee

Ethics Committee:

Pinder Cheema, QC, Chair
W. Martin Finch, QC
Brook Greenberg
Sasha Hobbs
Thomas Spraggs
Michelle Stanford, QC
K. Michael Stephens
Marko Vasely
Chelsea Wilson

Date: November 10, 2020

Prepared for: Benchers

Prepared by: Ethics Committee

Purpose: For Information

Introduction

In January 2020 the Ethics Committee received a letter from Law Society President Craig Ferris, QC, requesting that the Committee consider two matters during the course of the year. The purpose of this memorandum is to provide the Committee's responses to the two requests. Each of the two requests is reproduced *verbatim* below, followed by the Committee's corresponding discussion.

Request #1

Consider whether the Model Code is the right approach to ethical guidance, given its size and complexity, or whether we should adopt a less prescriptive approach, as the Solicitor's Regulation Authority (U.K.) has, with a shorter code based on statements of principle.

Response to Request #1:

The Ethics Committee has spent time reviewing and comparing the different approaches to regulatory and ethical guidance materials taken in relation to the Federation's Model Code of Professional Conduct and the Solicitors' Regulation Authority's (U.K.) Code of Conduct. In particular the Committee has observed that the complexity of the Model Code can be difficult for lawyers seeking guidance from it. The same observation applies to our Code of Professional Conduct for British Columbia. This complexity, with a propensity for situationally relevant and closely related provisions to be located in different sections of the Code, can create what amounts to an accessibility issue. It has been observed that some lawyers and other individuals lacking sufficient familiarity with the Code sometimes need assistance to ensure that they find their way to all of the relevant provisions for their circumstances. To some extent this could be considered a weakness of the Model Code in its present form. However, while the Committee recognizes that the approach of the Model Code may have led to the noted weakness, it is not convinced that the SRA's approach is superior, or even that it is substantially different in respect of provisions for relatively complex circumstances, such as conflicts of interest.

The respective conflict of interest provisions can provide a useful focal point. Superficially the SRA's approach may appear to be leaner and more concise. The specific details of its prescriptions may appear to be relatively simple. The SRA Principles themselves are a list of 7 brief prescriptions of how a lawyer should act, which fit comfortably into a half-page of print. The SRA's Code of Conduct does appear to be somewhat shorter than the Model Code, certainly if the Model Code is taken as including its Commentaries. However, matching the Model Code up against the SRA's Principles and Code of Conduct is not an apples to apples comparison. To compare all of the regulatory guidance covered by the Model Code with the SRA's model, one must also include in the latter, materials linked to the SRA's Code of Conduct under the heading "Guidance," which leads an individual seeking assistance into a much more detailed and

complex discussion of the full extent of a lawyer's potential responsibilities. Moreover, there is a clearly evident prescriptive component to the Guidance materials that is not reducible to the comparatively briefer prescriptive elements in the linked Code of Conduct. One does not know the full extent of the SRA's applicable prescriptive provisions without reading this third level of materials.

The Guidance materials on conflicts of interest for lawyers, for example, takes up approximately six full pages of text. The initial Guidance web page also contains a link to the Index of SRA Standards and Regulations, which contains a section with multiple further links under the heading "Conflicts of interest." Those further links indicate that it may be necessary for the lawyers seeking responsibility information to review the provisions and guidance on "Confidentiality and disclosure", in addition to the "Conflicts of interest" provisions. Moreover, the links indicate that there are different sets of provisions under each of those two headings "for Firms" and "for Solicitors, RELs and RFLs" (representing different categories of legal services providers).

A further relevant difference that can be expected to have some impact on the totality of the respective packages of ethics and regulatory guidance materials is that the SRA regulates solicitors, as opposed to barristers, whereas the Model Code has been developed to be applied to all lawyers, regardless of the nature of their practice. In the U.K., barristers are regulated by a separate regulatory organization, the Bar Standards Board, which has its own separate Code of Conduct and related procedural and administrative rules. Accordingly, completing an exhaustive comparison of the codifications that are the outputs of the different regulatory approaches, with adjustments for 'apples and oranges' differences, would be extremely time-consuming and unlikely to be of significant benefit. Based on the observations of the Committee, the suggestion that the SRA's approach gives rise to a totality of written directives that are generally briefer, less complex, and less prescriptive does not survive investigation.

In accordance with its observations thus far, the Ethics Committee would not recommend that the Law Society contemplate a switch to the SRA's model. Part of what would be involved in such a change would be the replacement of ethical guidance materials that many lawyers have significant familiarity with already, with a new set that virtually no Canadian lawyers would have direct familiarity with. The potential for such a change of appearance to cause stress and havoc for lawyers and other observers of the Code in the nearer term, while initial familiarity is being built up, could be very significant. The observation of the Committee on this point is that even if the end result were deemed marginally better than what exists in Canada now, it might not produce the sought after benefits, particularly in the uncertain world in which we find ourselves. To make such a change worthwhile, either the expected benefit of the change would have to be very clear and substantial or the existing approach would have to be so badly broken that it is beyond repair and improvement by less onerous measures. The Committee is not convinced that either of those circumstances is in fact the case. While the Committee has

identified that the Model Code approach has led to a point where it can be critiqued on complexity and accessibility grounds, the Committee is not convinced that those aspects of the Model Code are beyond improvement. A concerted effort to review the Model Code's organizational structure and placement of relevantly related provisions might well bring about a significant improvement in the Model Code, and in the extent to which it is user-friendly, without altering its relatively familiar appearance and general approach to ethical guidance.

Additionally, to the extent that a significant flaw of the Code may be cast as an accessibility concern, it may be possible to address it satisfactorily through the development of technological tools to assist in the Code of Conduct-user interface. During the course of this year, the Committee has heard from guests regarding the possibility of developing an "intelligent systems" tool, similar to the *Solutions Explorer* developed for the Civil Resolution Tribunal. Such a technological tool could have the potential to dramatically improve individuals' abilities to quickly find their way to those portions of the BC Code and related materials that are relevant to their specific issues and circumstances. The Committee's understanding is that communications aimed at engaging in a prototype development project are ongoing between Law Society staff and some of the experts who were guests of the Committee. The view of the Ethics Committee is that both direct engagement with the Model Code, aimed specifically at improving its organization and identified weaknesses, and the development of an intelligent systems tool, for use in accessing the BC Code and related materials online, can bring about substantial improvements to the user experience of the Model Code and the BC Code. Both of those endeavors would be preferable to an attempt to change the approach more significantly by switching to a model resembling the SRA's. In particular, the Ethics Committee strongly supports the development of a technological solution to assist lawyers and other interested persons in accessing and using the BC Code and related guidance materials.

Request #2

Consider whether our rules regarding referral arrangements and fee-sharing rules unduly inhibit innovation in the delivery of legal services.

Response to Request #2:

The Ethics Committee has considered BC Code rules 3.6-5 through 3.6-7, and Commentary, in relation to the potential for any undue inhibitory effect on innovation in the delivery of legal services. In each case, with respect to the rules restricting referral fees and fee-sharing, it is likely impossible to say with absolute certainty that there has been no inhibitory impact. At the same time, it is not obvious that these rules have had an inhibitory effect on potentially positive developments in the delivery of legal services and it is difficult to see that they are likely to do so. The word “unduly” in the request put to the Committee is of considerable significance. It suggests a question of balancing the rules’ protective benefits to the public, as prospective legal services clients, against any potential inhibitory effect. It suggests that such significant protection may outweigh relatively less significantly beneficial innovation, while significantly beneficial innovation may outweigh relatively less important protective aspects of the rules.

As far as the Committee is aware, there are no examples of significantly beneficial legal services innovations that would exist if not for the rules in question. The term “significantly beneficial innovations” may be somewhat loaded and it is important to note that the Committee has approached this discussion with ‘access to legal services’ and ‘access to justice’ perspectives in mind. Accordingly, the notion of a significantly beneficial innovation has been taken to mean one that would have a positive access effect, such as increasing the availability and uptake of sufficiently competent legal services, by people who would not otherwise have had, or been able to afford, the benefit of those services. The perspective of the Committee has been that such innovation would meet previously unmet needs for legal services and do so in a relevantly affordable manner, by increasing the availability of services and possibly also by improving the quality of available services. The Committee has taken it that those are the kinds of innovations of relevance to the question.

The Committee’s notion of “significantly beneficial innovations” may be contrasted with any developments that might tend to have a primary effect of increasing the profit from legal services by increasing the cost to those who already avail themselves of the services but who could and would afford to pay more for them. Improving the total profit by increasing the cost of legal services, and thereby potentially decreasing the availability of services to those who would otherwise benefit from them but cannot afford the increased cost, would be less likely to outweigh even relatively insignificant losses to the protective capacity of the rules in the required cost/benefit balancing process.

With respect to referral fees, the picture may be the clearest. It is easy to see how innovations incorporating significant referral fees might have the effect of increasing the cost of legal services and have a negative effect from an access perspective. It is much more difficult to envision how adding a new category of fees to be paid in relation to client files would have the effect of reducing the cost of services to the client (with one possible type of exception, which is addressed below). Moreover, in B.C. referral fees are not outlawed but are constrained by the rules to be “reasonable,” not to increase the cost of fees to the client, to be transparent to the client, and to occur only with client consent. To contemplate changing these aspects of the referral fee rules would be to consider legal services context in which referral fees should be allowed to be “unreasonable”, to increase clients’ cost of legal services, and/or to be hidden from clients’ view and to occur without client consent. It is difficult to see those sorts of innovations as leading to a legal services context that warrants reducing the public protection effects of the present rules. It may be instructive in this regard to consider that within the past few years, as a result of substantial research and investigation by a working group, the Law Society of Ontario has imposed ‘new’ restrictions on referral fees. It recognized that a growing and previously unchecked industry based on the widespread payment of referral fees for increasing numbers of client files was not in the public interest. Accordingly it adopted rules restricting the size of referral fees and requiring some transparency to the client and accountability to the Law Society in relation to any referral fee activity.

The one potential exception that has been considered by the Committee would be an innovation that would provide legal services at such a substantially lower cost than otherwise available, such that the imposition of an associated referral fee would be only a fraction of the difference in cost. An example might be, if a legal services provider were to emerge that could provide competent and reliable legal services at a fraction of the cost that lawyers charge. But if such a service provider could emerge, it seems likely that it would be overwhelmed with business. Consequently it is difficult to see how the payment of otherwise prohibited referral fees would be a necessary component of its emergence. And if the referral fees are not necessary for the innovation, then it is difficult to see how the rules restricting referral fees can be significantly inhibiting its development.

The remaining significant aspect of referral fee restrictions is that lawyers may only pay referral fees to other lawyers. Essentially the public is protected from entities or individuals who are not themselves legal services providers’ becoming the gatekeepers of access to legal services and then charging an otherwise unnecessary fee for entry through the gate. However, it may be appropriate here to repeat the point raised above: that adding a new category of fee to be paid to obtain legal services seems unlikely to be a necessary part of a more affordable legal services context, regardless of whether the recipient of the fee is a lawyer or non-lawyer.

The rule against the sharing of fees for legal services between lawyers and non-lawyers is essentially ancillary to the requirement that legal services must be obtained from lawyers (and

their supervised employees), in order to ensure that clients, with all of the vulnerabilities inherent in a solicitor client relationship, receive services from an appropriately qualified, regulated, and insured service provider. If the legal services regulatory context comes to the point of allowing alternative legal service providers who are not lawyers, but who are also appropriately qualified, regulated, and insured, then it may make sense to expand the range of individuals with whom lawyers can share fees paid for legal services. The protections provided to the public through those requirements are very important and at the heart of why the legal services profession is a regulated profession. In absence of significant developments in who may provide legal services to members of the public for a fee, the removal of the fee-sharing restriction would appear to be at odds with the law on the point. In this circumstance, it would appear to misplace the focus of the diagnosis, to suggest that it is the fee sharing rule that has an inhibiting effect on innovation in the delivery of legal services, when it is more significantly the rules limiting who may provide legal services for a fee that are implicated.

If the statutory restriction on who may engage in the practice of law and the restriction on lawyers' sharing fees with non-lawyers are taken as a unit, then the question of whether they amount to an undue inhibition of innovation in the delivery of legal services may be viewed as placing the entire protective effect of professional regulation on one side of the balance. Of course, it is always open to revisit the question of just how much protection the public needs to have provided by the legal regulator and to consider approaching government to address any statutory changes that may be warranted. To the extent that the prohibition against fee-sharing with non-lawyers is an ancillary aspect of those protections, changes to the underlying protections may require changes to the prohibition. Absent the more substantive statutory changes, the removal of the rule prohibiting fee-sharing may not substantially change what lawyers are restricted from doing; it may just make it more difficult to see the restriction from a review of the Code of Professional Conduct.

The Committee notes that the Law Society's recent approval of its 'innovation sandbox' should have the potential to diminish any residual inhibiting effect of the BC Code rules, such as those in question, as specific applications of the rules may be suspended for the purpose of allowing proof of a sufficiently beneficial legal services delivery concept or innovation. Particularly beneficial innovations developed in jurisdictions with less restrictive rules could even be invited into the 'sandbox' to prove their worth. While this may raise the importance of observing and keeping up with innovative developments in the delivery of legal services in foreign jurisdictions, the possibility of this approach may serve to alleviate any previously existing concern about the impact of the existing rules on beneficial innovation. Alternatively, with specific and known beneficial innovations in mind, the question of whether changes to the BC Code rules are warranted can be reviewed in the future, in a less speculative context and with better visibility of the extent of any changes that may be required.

In accordance with the above discussion, the Ethics Committee has not been able to determine definitively whether there has been any actual inhibition of innovation resulting from the BC Code rules that restrict lawyers' payment of referral fees and fee-sharing among lawyers. As a result, the question of whether any such inhibition of innovation may have been undue, in relation to a lack of justifying protection of the public interest, is necessarily moot. However, the Committee is satisfied that the rules do provide a protective public interest benefit and, in absence of a very substantial offsetting public interest benefit that would otherwise be lost, the Committee would not recommend the removal or wholesale change of the relevant rules. This does not mean that these rules should be immune from review and careful revision if change is determined to be warranted at some future time. And certainly, to the extent that the Law Society and the British Columbia government may come to be in the process of revising and updating the restrictions on the authority to engage in the practice of law, especially to enable the participation of any new classes of alternative legal service providers, a consequential review of the rules on referral fees and fee-sharing may well be necessary.

Appendix – BC Code Rules on Referral Fees and Fee-Sharing

For reference, the rules from the Code of Professional Conduct in relation to lawyers' payment of referral fees and fee-sharing among lawyers are as follows:

Division of fees and referral fees

3.6-5 If there is consent from the client, fees for a matter may be divided between lawyers who are not in the same firm, provided that the fees are divided in proportion to the work done and the responsibilities assumed.

3.6-6 If a lawyer refers a matter to another lawyer because of the expertise and ability of the other lawyer to handle the matter, and the referral was not made because of a conflict of interest, the referring lawyer may accept, and the other lawyer may pay, a referral fee, provided that:

- (a) the fee is reasonable and does not increase the total amount of the fee charged to the client; and
- (b) the client is informed and consents.

3.6-6.1 In rule 3.6-7, “another lawyer” includes a person who is:

- (a) a member of a recognized legal profession in any other jurisdiction; and
- (b) acting in compliance with the law and any rules of the legal profession of the other jurisdiction.

3.6-7 A lawyer must not:

- (a) directly or indirectly share, split or divide his or her fees with any person other than another lawyer; or
- (b) give any financial or other reward for the referral of clients or client matters to any person other than another lawyer.

Commentary

[1] This rule prohibits lawyers from entering into arrangements to compensate or reward non-lawyers for the referral of clients. It does not prevent a lawyer from engaging in promotional activities involving reasonable expenditures on promotional items or activities that might result in the referral of clients generally by a non-lawyer. Accordingly, this rule does not prohibit a lawyer from:

- (a) making an arrangement respecting the purchase and sale of a law practice when the consideration payable includes a percentage of revenues generated from the practice sold;
- (b) entering into a lease under which a landlord directly or indirectly shares in the fees or revenues generated by the law practice;
- (c) paying an employee for services, other than for referring clients, based on the revenue of the lawyer's firm or practice; or
- (d) occasionally entertaining potential referral sources by purchasing meals, providing tickets to, or attending at, sporting or other activities or sponsoring client functions.

[End of memorandum]



Memo

To: Benchers
Date: December 4, 2020
Subject: Reminder: 2021 Benchers and Executive Committee Meeting Dates

Just as a reminder, the 2021 Benchers and Executive Committee meeting dates are attached for information.

The dates for the 2021 were approved at the January 2020 Executive Committee meeting and included for information in the January 2020 Benchers meeting package. The dates for meetings in the following year are set by the Executive Committee early each year to allow Benchers to take the dates into account in setting trials and other commitments that are often made more than a year in advance.

The 2021 schedule takes into account the timing of other events throughout the year, such as the Benchers Retreat, Annual General Meeting, and Benchers election, to these events can be accommodated within the schedule of Benchers and Executive Committee meetings.

The meeting schedule is also available in the Benchers only section of the Member Portal and is updated on an ongoing basis as circumstances require.



2021 Bencher & Executive Committee Meetings

Executive Committee	Bencher	Other Dates
Thursday, January 14	Friday, January 29	Jan 1: New Year's Day Jan 29: Welcome/Farewell Dinner
Thursday, February 18	Friday, March 5	Feb 15: Family Day TBD: Federation Spring Meetings March 15 - 26: Spring Break
Thursday, April 8	Friday, April 23	Apr 2 - 5: Easter
Thursday, May 13	Saturday, May 29	May 24: Victoria Day May 27 - 29: LSBC Bencher Retreat TBD: LSA Retreat
Thursday, June 24	Friday, July 9	July 1: Canada Day July 7: Commemorative Certificate Luncheon Aug 2: BC Day Aug 25-29: IILACE Conference
Thursday, September 9	Friday, September 24	Sept 6: Labour Day Sept 6 (sundown)-Sept 8 (sundown): Rosh Hashanah Sept 15 (sundown)-Sept 16 (sundown): Yom Kippur
Thursday, October 14	Friday, October 29	Oct 5: AGM Oct 11: Thanksgiving Day TBD: Federation Fall Meetings Oct 17 - 22: IBA Annual Conference
Thursday, November 18	Friday, December 3	Nov 11: Remembrance Day Nov 15: Bencher By-Election Nov 28 (sundown) – Dec 6 (sundown): Hanukkah Dec 25: Christmas Day Dec 26: Boxing Day