



Agenda

Benchers

Date: Friday, January 29, 2021

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.

OATH OF OFFICE:

The Honourable Chief Justice Christopher E. Hinkson will administer an oath of office (in the form set out in Rule 1-3) to President Dean P.J. Lawton, QC, First Vice-President Lisa J. Hamilton, QC and Second Vice-President Christopher McPherson, QC (individually) and to newly-elected Benchers Lisa Dumbrell and Kevin Westell (en masse).

1	Administer Oaths of Office
2	Indigenous Welcome
3	President's Welcome

CONSENT AGENDA:

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

4	Minutes of December 4, 2020 meeting (regular session)
5	Minutes of December 4, 2020 meeting (<i>in camera</i> session)



Agenda

6	Rule 3-3: Amendments to the confidentiality of complaints
7	Code of Professional Conduct Rule 3.2-7: Amendment to Commentary [3.1] – Improper Use of Trust Accounts
8	Law Society Appointment: Hamber Foundation Board of Governors
9	Law Society Appointment: Queen's Counsel Nomination Advisory Committee

REPORTS

10	President's Report	Dean Lawton, QC
11	CEO's Report	Don Avison, QC
12	Briefing by the Law Society's Member of the Federation Council	Pinder Cheema, QC

DISCUSSION/DECISION

13	AGM Member Resolutions Update	Don Avison, QC
14	Independent Review of Law Society Governance	Dean Lawton, QC

UPDATES

15	2020 Benchers and Committee Evaluations	Jeevyn Dhaliwal, QC
16	Report on Outstanding Hearing & Review Decisions (<i>Materials to be circulated at the meeting</i>)	Dean Lawton, QC

FOR INFORMATION

17	Minutes of January 14, 2021 Executive Committee Meeting
18	Law Society of BC External Appointments Opportunities
19	Three Month Benchers Calendar – February to April 2021

IN CAMERA

20	Other Business
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Minutes

Benchers

Date: Friday, December 04, 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

Unable to Attend: Not Applicable

Staff Present:	Don Avison, QC	Alison Luke
	Avalon Bourne	Jeanette McPhee
	Barbara Buchanan, QC	Doug Munro
	Lance Cooke	Michelle Robertson
	Jennifer Chan	Annie Rochette
	Natasha Dookie	Lainie Shore
	Su Forbes, QC	Lesley Small
	Andrea Hilland	Michael Soltynski
	Jeffrey Hoskins, QC	Adam Whitcombe, QC
	Jason Kuzminski	Vinnie Yuen
	Michael Lucas, QC	

Guests:	<p>Dom Bautista Mark Benton, QC Dr. Susan Breau Jennifer Brun Ian Burns Lisa Dumbrell Dr. Cristie Ford</p> <p>Clare Jennings Alexis Kazanowski Daniel Lee Mark Meredith Caroline Nevin Josh Paterson Linda Russell Kerry Simmons, QC</p> <p>Kevin B. Westell</p>	<p>Executive Director, Law Courts Center Executive Director, Legal Services Society Dean of Law, University of Victoria President, CBABC Digital Report, The Lawyer's Daily 2021 Bencher Associate Dean Research and the Legal Profession, Peter A. Allard School of Law First Vice President, CBABC Assistant Dean, Faculty of Law, TRU Member, Law Society of BC Treasurer and Board Member, Mediate BC Society CEO, Courthouse Libraries BC Executive Director, Law Foundation of BC CEO, Continuing Legal Education Society of BC Executive Director, Canadian Bar Association, BC Branch 2021 Bencher</p>
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CONSENT AGENDA

1. Minutes of October 30, 2020, meeting (regular session)

The minutes of the meeting held on October 30, 2020 were approved as circulated.

2. Minutes of October 30, 2020, meeting (*in camera* session)

The *In Camera* minutes of the meeting held on October 30, 2020 were approved as circulated.

3. Licensed Paralegal Task Force Wind Up

The Licensed Paralegal Task Force wind-up was removed from the consent agenda and moved to Other Business for further discussion.

4. Rule Amendments: Fees, Non-practising and Retired Member Fees and Refunds of Fees

The following resolution was passed unanimously and by consent.

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*])”.

5. Rule Amendments: Consent Agreements to Resolve Complaints

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..

6. Rule Amendments: Qualifications to Act as a Principal

The Benchers approved 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.

7. Retired Member Fee Waiver

The following resolution was passed unanimously and by consent.

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

8. External Appointments: Land Title and Survey Authority

The Benchers reappointed Patrick Julian to the LTSA Board for a second term of three years commencing April 1, 2021.

9. External Appointments: Legal Aid BC Board of Directors

The Benchers appointed Nancy Merrill, QC to the Legal Aid BC Board for a term of three years commencing January 1, 2021.

REPORTS

10. President's Report

Mr. Ferris congratulated the Benchers that were elected to the 2021 Executive Committee and thanked them for putting forward their names.

Mr. Ferris reflected on his time as a Bencher and as President of the Law Society, and the lessons learned from past Presidents of the Law Society. Mr. Ferris provided advice for future Presidents, including the importance of planning and preparation and thinking about setting goals for the President term, planning for the unexpected and managing for change, furthering education on regulatory issues, understanding roles and responsibilities, engaging in challenging discussions, building and fostering a relationship with staff, managing relationships with

different stakeholders, engaging with the Bencher table and leveraging the different perspectives, and finally letting the next President do their job.

Mr. Ferris spoke about how the practice of law has changed fundamentally through the years and that the Law Society should consider these changes in thinking about how it regulates the profession. Mr. Ferris also spoke about the Law Society's governance framework and recommended that Benchers consider whether or not elections are the best way to populate the Bencher table and to provide for a skills-based Board. There are other models that could be considered. Mr. Ferris also suggested that Benchers consider how the Board conducts business and whether or not the current meeting model is the most effective.

Mr. Ferris concluded his report by thanking all of the Benchers for their service.

Ms. Brun, President of the Canadian Bar Association, BC Branch (CBABC) gave a few words thanking Mr. Ferris for his service as President, and thanking the Law Society its collaboration with CBABC. Ms. Brun also presented Mr. Ferris with a gift from the CBABC.

11. CEO's Report

Mr. Avison provided an update on the Cullen Commission hearings. The Law Society and the Federation provided testimony the week of November 16th, and Mr. Avison thanked staff for their preparatory efforts. Mr. Avison also noted that the Law Society has been well represented by Ludmilla Herbst and Catherine George. The hearings are expected to conclude in late spring 2021.

Mr. Avison reviewed the recent provincial cabinet reshuffle, noting that several positions, including Attorney General and Solicitor General, remain the same. Meetings are being organized with Mr. Lawton and Mr. Avison with several key ministries.

Mr. Avison then spoke about zoom-enabled engagement both within the Law Society and with external organizations, including the International Conference of Legal Regulators, the International Institute of Law Association Chief Executives, the CEOs of Canada's law societies, and the BC Justice Summit, which took a different approach with their virtual summit and the various breakout sessions.

Mr. Avison provided an update regarding the Innovation Sandbox, noting the numerous proposals currently under consideration, which are expected to be before the Executive Committee early in 2021. Mr. Avison also noted media interest regarding the Innovation Sandbox, particularly from the Journal of the American Bar Association.

Mr. Avison concluded his report by reflecting on how the Law Society has risen to the challenge of COVID-19 with staff productivity continuing to remain high. Mr. Avison then provided a virtual tour of the Law Society, reviewing the roles and responsibilities of each department.

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

Ms. Cheema began her briefing by thanking Benchers and staff for their assistance and support in regard to the work of the Federation.

Ms. Cheema informed Benchers that the Federation Council would be meeting on December 7 with a number of initiatives on the agenda, including updates on anti-money laundering and the national wellbeing of the profession initiative, as well as numerous reconciliation initiatives, which include a statement on the Federation's commitment to reconciliation and discussion on options to ensure indigenous input into Federation initiatives. The meeting will also include a guest presentation from the federal Minister of Justice and from the Chief Justice of Canada.

Ms. Cheema then provided an update on the activities of the National Committee on Accreditation, which met on November 24. All of the exams were conducted virtually and concluded at the end of October. There was also a review of assessment and appeal policies based on the switch to virtual exams. Ms. Cheema also noted that she had agreed to be the representative to the NCA's Modernization Sub-committee and would be reporting on its activities at the January Bencher meeting.

DISCUSSION/DECISION

13. Approval of 2021 – 2025 Strategic Plan

Mr. Ferris summarized the process of the development of the Law Society's 2021-2025 Strategic Plan, noting that the plan had undergone several drafts and several rounds of Bencher feedback.

Mr. Avison thanked Benchers for their contributions and engagement in developing the Strategic Plan. He then provided a detailed review of each of the components of the plan.

Benchers discussed the strategic plan objectives, including the focus on support for in-house counsel and government lawyers, which was driven by the findings of the Futures Task Force.

Benchers also discussed the development process for the Strategic Plan and the difference between the broad policy directives included in the plan and the specific committee work-plans, which would be focused on determining the best approach to achieving the individual objectives. This could include engaging with experts as well as with the committee members themselves. Benchers then discussed the revision process, which was an iterative process that brought

together the contributions of Benchers into a draft for the Executive Committee to review and then recommend for Bencher's approval.

Benchers also discussed the objective regarding increasing the role of non-adversarial dispute resolution in family law matters, and if this objective should be expanded. The challenge with broadening objectives is that the identification of gaps and areas that require more direct support could be lost. Benchers also discussed the lack of publicly funded non-adversarial dispute resolution services, and that advocating for increased use of non-adversarial dispute resolution in the absence of accessible, available, and affordable services doesn't address the access issue. Benchers discussed focusing on increasing accessibility or availability of non-adversarial dispute resolution as opposed to increasing the role.

Benchers also discussed consistency in the language used for the values, as well as opportunities to be more innovative in processes, particularly with the impact of COVID-19.

Benchers reviewed the objectives related to reconciliation and noted the absence of wording referencing the United Nations Declaration on the Rights of Indigenous Peoples or the Truth and Reconciliation Commission of Canada.

A motion was made and seconded to adopt the Strategic Plan.

Some Benchers expressed concern regarding the wording of the Access and Advocacy section of Objective 3. A motion was made and seconded that the Strategic Plan be amended to replace the first point of the Access and Advocacy section of Objective 3 with *Advocate for greater access to non-adversarial dispute resolution in family law matters*.

The motion to amend the Strategic Plan was passed.

Some Benchers expressed concern regarding the lack of specific support for the United Nations Declaration on the Rights of Indigenous Peoples within the Strategic Plan. A motion was made and seconded that the Strategic Plan be amended to replace the fourth point of the Reconciliation within the Justice System section of Objective 2 with *Support the advancement of the principles set out in the Declaration of the Rights of the Indigenous Peoples Act and the implementation of the First Nations Justice Strategy and support the continued implementation of the recommendations of the Truth and Reconciliation Commission*.

The motion to amend the Strategic Plan was passed.

A motion was made and seconded to adopt the Strategic Plan as amended.

The resolution was passed with one abstention.

14. Standards of Governance: Review of Law Society Compliance

Ms. Hamilton thanked the Governance Committee and staff for their help in conducting the review of Law Society compliance with Harry Cayton and the Professional Standards Authority's standards of governance. Ms. Hamilton reviewed the Committee's approach to conducting the review and areas that may require further consideration, including the conduct of general meetings, determining whether or not the Law Society is meeting its mandate in measurable terms, and having better communication and engagement with the public to ensure that the Law Society is meeting the needs of the public.

Benchers discussed how to best determine whether or not the Law Society is meeting its mandate and increasing access to justice for the public. Benchers also discussed the recommendations of the report, noting the importance of developing terms of reference for an independent assessment for Benchers to review. Benchers also discussed possible consultants to perform the governance assessment.

Benchers agreed that the report recommendations should be referred to the Executive Committee for further discussion.

15. Law Society of British Columbia's Access to Justice Vision

Ms. Stanford thanked the Access to Justice Advisory Committee and staff for their efforts and reviewed with Benchers the Law Society's access to justice vision.

The Benchers discussed the vision and recommended changing *improving access to all British Columbians* to *improving access for all British Columbians* within item 3 of the vision.

The following motion was made and seconded.

BE IT RESOLVED that the Benchers adopt the amended Access to Justice Vision for the Law Society of British Columbia as prepared by the Access to Justice Advisory Committee.

The resolution was passed unanimously.

UPDATES

16. Financial Report – September 2020 - Q3 and Forecast

Mr. Lawton introduced the item and provided a brief overview of the work of the Finance and Audit Committee over the past year.

Ms. McPhee provided an overview of the financial results and highlights to the end of September 2020. Ms. McPhee noted that the general fund operations resulted in a positive variance to budget, which is mainly due to lower operating expenses. Ms. McPhee also provided an overview of forecasted 2020 year-end results, which are projected to be below budget due to the impact of COVID-19 on operations, travel, and meeting costs, as well as other efforts by staff to contain costs.

Benchers discussed the practice fee reductions, which have been funded out of the Law Society's reserves.

17. Practice Standards Update

Ms. McQueen thanked the Practice Standards Committee and staff for their contributions over the past year. Ms. McQueen then provided an update on the mandate of the Committee, which was focused on considering whether the current practice standards model is the most effective, and if there are alternative models that should be considered. Ms. McQueen noted that additional data was required to determine the success of the current program, and this work would continue into 2021. Ms. McQueen also noted that it may be helpful to have a physician or mental health practitioner on the Committee in the future.

18. Discipline Committee Update

Ms. Hamilton thanked the Discipline Committee and staff for their contributions over the past year. Ms. Hamilton then provided an update on the work of the Committee, particularly regarding process improvements and rule changes related to process efficiencies.

Benchers discussed the increased volume of the Committee's workload and what was driving the number of files. The increase in audits conducted by the Law Society has contributed to the increase in caseload for the Committee. Additionally, the Committee has been addressing several complex matters, which has contributed to volume. The Committee requested further data breaking down the caseload by demographic and expertise areas. Benchers also discussed the possibility of having two Discipline Committees in the future if the volume of work continued to remain high.

19. LIF Reorganization – Progress Report

Ms. Forbes reviewed the background structure of the Lawyers' Indemnity Fund (LIF) and provided context as to the reorganization of the program. Ms. Forbes then provided a progress report on the corporate restructuring and rebranding.

The Committee discussed the LIF reorganization and suggested the incorporation of diversity into the photographs displayed on the LIF website.

20. 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**21. Year-End Advisory Committee Reports**

There was no discussion on this item.

22. Rule of Law and Lawyer Independence Advisory Committee Report on Lawyer Independence

There was no discussion on this item.

23. Ethics Committee Report on the Code of Professional Conduct

There was no discussion on this item.

24. 2021 Bencher Meeting Dates

There was no discussion on this item.

25. Three Month Bencher Calendar – December 2020 to February 2021

There was no discussion on this item.

26. Other Business

Mr. Welsh noted that the Licensed Paralegal Task Force did not fully fulfill its mandate this year; however, with the implementation of the Innovation Sandbox, this has provided a different avenue for addressing the objectives of the Task Force. Based on the types of proposals that come through the Sandbox, a new Task Force may be struck. Mr. Welsh also thanked the members of the Task Force for all their contributions.

Benchers discussed the criteria of the Innovation Sandbox, which are focused on addressing access to justice barriers and serving the public. Submitted proposals will be reviewed by the Executive Committee prior to approval.

The following motion was moved and seconded.

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

The resolution was passed unanimously.

Benchers discussed Item 7 regarding the Retired Member Fee Waiver with discussions focusing on if discretion should lie with the Executive Director to waive fees and whether or not fee waiving should be examined on a broader basis. Benchers requested staff to bring materials regarding where fee waiving discretion should lie to the Executive Committee for consideration.

27. Final Remarks

Mr. Avison paid tribute to outgoing President Ferris and thanked him for his dedication, commitment, and significant contributions to the Law Society over the past year. Mr. Avison also thanked Mr. Ferris for his leadership and guidance through the turbulence and challenges of COVID-19. On behalf of Law Society staff, Mr. Avison virtually presented Mr. Ferris with a gift as a token of appreciation for his many efforts and achievements during his time as President.

Mr. Ferris thanked Mr. Avison for his kind words, and then welcomed Mr. Lawton as President for 2021 and virtually presented him with the President's pin.

Mr. Lawton provided a few words to thank Mr. Ferris for his service.

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

AB
2020-12-04



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: January 5, 2021
Subject: **Rule 3-3, Confidentiality of complaints**

1. At the October meeting the Benchers approved the recommendation of the Executive Committee to amend Rule 3-3 to bring it into closer alignment with section 87 of the *Legal Profession Act* while protecting the integrity of Law Society investigations.
2. For your reference, I attach the report from the Executive Committee that was before the Benchers at that time, together with redlined and clean versions of draft amendments recommended by the Act and Rules Committee for adoption by the Benchers. I also attach a suggested resolution to give effect to the Bencher decision

Drafting notes

3. The amendment to subrule (1) would continue the obligation on the Law Society to maintain confidentiality subject to a number of exceptions, including “complying with the objectives of the Act or with these rules.” At the same time, it relieves lawyers of a blanket requirement of confidentiality, which the report suggests is too absolute. It also ends the purported regulation of “all persons”, which far exceeds the jurisdiction of the Law Society Rules.
4. Subrule (1.1) is added to give investigators the discretion to require confidentiality where circumstances of the complaint and investigation require it.
5. The current subrule (6) omits “records” subject to privilege or confidentiality. That word appears elsewhere in the rules where privilege is protected, which makes it clear that physical records are included, not just “information”.

6. Subrule (7) is added to make the reader aware of the over-riding statutory provisions that govern in this area.

Attachments: report from Executive Committee
 drafts
 resolution

JGH

Confidentiality of Complaints

Executive Committee:

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

Date: October 15, 2020

Prepared for: Benchers

Prepared by: Policy and Planning

Purpose: Decision

Purpose of Report

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

Rules governing the confidentiality of complaints

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

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

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

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

Rule 3-3(1) was passed to protect the integrity of the Law Society's investigative process, and both the public and lawyers' confidence in that process. The Law Society obtains a vast amount of personal information. Unfettered access to, or disclosure of, that information can cause a range of harms to the complainant and/or the lawyer who is the subject of the complaint, as well as third

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

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

The problem the proposed rule change seeks to address

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

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

The proposed approach

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

(a) Members of the public

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

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

The lawyer who is subject to a complaint should also be permitted to disclose the existence of a complaint against the lawyer, provided he or she maintains confidentiality and privilege. Otherwise, the disclosure of records relating to the complaint should again be governed by s. 87 of the *Act* – that is, a prohibition on admissibility of records that form part of the investigation or review of the complaint without consent.

(c) The Law Society

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

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

Recommendation

The Executive Committee recommends that:

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

/DM

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Confidentiality of complaints

- 3-3 (1) ~~No one is permitted to disclose any~~ The Society must treat as confidential all information ~~or and~~ records that form part of the investigation of a complaint or the review of a complaint by the Complainants' Review Committee except for the purpose of complying with the objectives of the Act or with these rules.

(1.1) The Executive Director may require a lawyer, including the lawyer who is the subject of the investigation of a complaint, to treat as confidential any or all information and records that form part of the investigation or the review of the complaint by the Complainants' Review Committee.

- (2) Despite subrule (1), the Executive Director may do any of the following:
- (a) disclose information referred to in subrule (1), with the consent of the lawyer who is the subject of the complaint;
 - (b) if a complaint has become known to the public, disclose
 - (i) the existence of the complaint,
 - (ii) its subject matter,
 - (iii) its status, including, if the complaint is closed, the general basis on which it was closed; and
 - (iv) any additional information necessary to correct inaccurate information;
 - (c) if, in the course of the investigation of a complaint, a lawyer has given an undertaking to the Society that restricts, limits or prohibits the lawyer's practice of law, disclose the fact that the undertaking was given and its effect on the lawyer's practice;
 - (d) provide information to a governing body under Rule 2-27.1 [*Sharing information with a governing body*].
- (3) For the purpose of subrule (2) (b), the status of a complaint is its stage of progress through the complaints handling process, including, but not limited to the following:
- (a) opened;
 - (b) under investigation;
 - (c) referred to a Committee;
 - (d) closed.

LAW SOCIETY RULES

- (4) If the Executive Director discloses the existence of an undertaking under subrule (2) (c) by means of the Society's website, the information must be removed from the website within a reasonable time after the undertaking ceases to be in force.
- (4.1) Despite subrule (1), the Executive Director may disclose any information concerning a complaint to a designated representative of a law firm in which the lawyer who is the subject of the complaint engages in the practice of law.
- (5) Despite subrule (1), with the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.
- (6) This division must not be interpreted to permit the disclosure of any information or records subject to solicitor and client privilege or confidentiality.
- (7) This rule is subject to the rights and obligations of individuals under sections 87 [Certain matters privileged] and 88 [Non-disclosure of privileged and confidential information].

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Confidentiality of complaints

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- (2) Despite subrule (1), the Executive Director may do any of the following:
- (a) disclose information referred to in subrule (1), with the consent of the lawyer who is the subject of the complaint;
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 - (i) the existence of the complaint,
 - (ii) its subject matter,
 - (iii) its status, including, if the complaint is closed, the general basis on which it was closed; and
 - (iv) any additional information necessary to correct inaccurate information;
 - (c) if, in the course of the investigation of a complaint, a lawyer has given an undertaking to the Society that restricts, limits or prohibits the lawyer's practice of law, disclose the fact that the undertaking was given and its effect on the lawyer's practice;
 - (d) provide information to a governing body under Rule 2-27.1 [*Sharing information with a governing body*].
- (3) For the purpose of subrule (2) (b), the status of a complaint is its stage of progress through the complaints handling process, including, but not limited to the following:
- (a) opened;
 - (b) under investigation;
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- (7) This rule is subject to the rights and obligations of individuals under sections 87 [*Certain matters privileged*] and 88 [*Non-disclosure of privileged and confidential information*].

CONFIDENTIALITY OF COMPLAINTS INVESTIGATION

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 3-3 (1) and (6) and substituting the following:

- (1) The Society must treat as confidential all information and records that form part of the investigation of a complaint or the review of a complaint by the Complainants' Review Committee except for the purpose of complying with the objectives of the Act or with these rules.
- (1.1) The Executive Director may require a lawyer, including the lawyer who is the subject of the investigation of a complaint, to treat as confidential any or all information and records that form part of the investigation or the review of the complaint by the Complainants' Review Committee.
- (6) This division must not be interpreted to permit the disclosure of any information or records subject to solicitor and client privilege or confidentiality.
- (7) This rule is subject to the rights and obligations of individuals under sections 87 [*Certain matters privileged*] and 88 [*Non-disclosure of privileged and confidential information*].

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Recommendation to amend Code of Professional Conduct rule 3.2-7 Commentary [3.1]: clarification regarding improper use of trust account

2020 Ethics Committee:

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

Date: December 3, 2020

Prepared for: Benchers

Prepared by: Ethics Committee

Purpose: Decision

Introduction

At its December 3, 2020, meeting the Ethics Committee resolved to recommend relatively minor, clarifying amendments to rule 3.2-7 Commentary [3.1] of the Code of Professional Conduct for British Columbia (the “BC Code”), regarding lawyers’ responsibility not to allow the use of their trust accounts, except in relation to the provision of legal services. The purpose of this report is to present the Committee’s amendment recommendation for the Benchers’ approval.

The proposed amendment addresses a potential ambiguity in Commentary [3.1], if read in absence of other regulatory information, and clarifies that there is no inconsistency with Rule 3-58.1(1) of the Law Society Rules. The primary purpose of the amendment is to prevent a potential misunderstanding of lawyers’ responsibilities under the existing provisions. An aspect of the amendment broadens the potential application of the guidance provided by the Commentary but does not otherwise alter lawyers’ responsibilities. In summary, the proposed amendment may be viewed more as a clarification than a substantive change.

Background

Law Society Rule 3-58.1(1) restricts lawyers’ use of their trust accounts to situations involving the provision of legal services. The rule is motivated to prevent the use of lawyers’ trust accounts in connection with fraud or money laundering. BC Code rule 3.2-7 Commentary [3.1] extends a lawyer’s responsibility when receiving a request to use a trust account in absence of the provision of any legal services, such that the lawyer must make inquiries as to the motivation and particulars of the request. Commentary [3.2] requires that the lawyer keep a record of any relevant information received as a result of such inquiries.

The potential ambiguity resides in the fact that the BC Code itself has not contained an express prohibition against a lawyer’s using a trust account in absence of the provision of related legal services. Consequently, it could be argued that, if the BC Code provisions are read alone, they might allow the use of a trust account in absence of related legal services, so long as appropriate attention is paid to asking after the details and purpose of the requested use and to keeping a record of whatever information is provided. The potential for this misunderstanding of a lawyer’s responsibility has been noted by Law Society regulatory staff and was a point of focus during recent proceedings of the Cullen Commission, in its investigation into money laundering in British Columbia. Accordingly, the suggested clarifying amendment to Commentary [3.1] would represent an additional step by the Law Society in strengthening its defense against the involvement of lawyers in money laundering and other illegal uses of trust accounts, by clarifying for anyone seeking guidance from the BC Code provision that such uses are prohibited.

The existing BC Code rule 3.2-7 and Commentary read as follows:

Dishonesty, fraud by client

3.2-7 A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.

[amended 04/2013]

Commentary

[1] A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client, or of others, whether or not associated with the unscrupulous client.

[2] A lawyer should be alert to and avoid unwittingly becoming involved with a client engaged in criminal activities such as mortgage fraud or money laundering. Vigilance is required because the means for these, and other criminal activities, may be transactions for which lawyers commonly provide services such as: establishing, purchasing or selling business entities; arranging financing for the purchase or sale or operation of business entities; arranging financing for the purchase or sale of business assets; and purchasing and selling real estate.

[3] Before accepting a retainer, or during a retainer, if a lawyer has suspicions or doubts about whether he or she might be assisting a client in any dishonesty, crime or fraud, the lawyer should make reasonable inquiries to obtain information about the client and about the subject matter and objectives of the retainer. These should include making reasonable attempts to verify the legal or beneficial ownership of property and business entities and who has the control of business entities, and to clarify the nature and purpose of a complex or unusual transaction where the nature and purpose are not clear.

[3.1] The lawyer should also make inquiries of a client who:

- (a) seeks the use of the lawyer's trust account without requiring any substantial legal services from the lawyer in connection with the trust matter, or
- (b) promises unrealistic returns on their investment to third parties who have placed money in trust with the lawyer or have been invited to do so.

[3.2] The lawyer should make a record of the results of these inquiries.

...

Again, the important aspect to note is that the BC Code provisions do not include the relevant prohibition against lawyers' allowing their trust accounts to be used in absence of providing related legal services. However, Law Society Rule 3-58.1(1) is quite clear on the point, as follows:

Trust account only for legal services

3-58.1 (1) Except as permitted by the Act or these rules or otherwise required by law, a lawyer or law firm must not permit funds to be paid into or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.

Of course lawyers have a responsibility to comply with both the BC Code and the Law Society Rules. As a result they are responsible for ensuring that their trust account is not used in absence of related legal services and for inquiring after the specifics of any request they may receive to allow the use of their trust account in such absence. Taken together, the provisions of the BC Code and the Law Society Rules represent a strong response to the concern about the activities of clients who would ask their lawyers to use trust accounts in the absence of obtaining related legal services. It is not sufficient for the lawyer simply to say no and then carry on as if there were no request received (which might be the result of Rule 3-58.1(1), if taken on its own). In addition to saying no, the lawyer has a responsibility to ask the client or prospective client about the details behind the request and to keep a record of any answer received. The significance of such information then reflects back on the lawyer's understanding and the potential effectiveness of the other requirements of rule 3.2-7 – for example, to avoid engaging in any activity that might encourage fraud or crime. The better-informed lawyer may better avoid the relevant harm.

However, the present BC Code provision must be understood in conjunction with Rule 3-58.1(1). It is not enough to merely ask questions of the person making the request; the lawyer must also refuse to allow what is requested. But the existing BC Code provision neither mentions the latter requirement nor makes any reference to the relevant provision from the Law Society Rules. Someone only looking at the BC Code, and presuming that it presents all relevant prescriptions on the point, might fall victim to the misinterpretation that a lawyer may ask the questions, take down the relevant details, and then proceed to comply with the (problematic) request.

For immediate purposes, including responding to the concern raised in the context of the Cullen Commission discussions, the identified weakness may be addressed by adding to Commentary [3.1] a simple reference to the provision in the Law Society Rules, in a manner that makes clear that a lawyer has a responsibility to refuse the problematic request. The amendment should be sufficient to alert the lawyer to the nature of the responsibility and provide a reference to direct the lawyer's attention to the Law Society Rules' provision. There may be a number of different ways to word such a reference. The following redlined amendment to Commentary [3.1] is

suggested as being sufficient for the purpose, relatively concise, and causing minimal disruption to the existing form of the Commentary. In addition, the amendment broadens the introductory “seeks” to “may be seeking,” which somewhat broadens the range of potential circumstances in which lawyers should be alert to and question the intentions and motivations of clients or potential clients, where the use of a trust account is contemplated:

[3.1] The lawyer should also make inquiries of a client who:

- (a) ~~seeks~~may be seeking, contrary to the prohibition in Rule 3-58.1(1) of the Law Society Rules, the use of the lawyer’s trust account without requiring any substantial legal services from the lawyer in connection with the trust matter, or
- (b) promises unrealistic returns on their investment to third parties who have placed money in trust with the lawyer or have been invited to do so.

Resolution

To clarify lawyers’ professional responsibilities and address important concerns in ensuring that lawyers’ trust accounts not be used for the purpose of money laundering or other prohibited transactions, the Ethics Committee recommends that the Benchers adopt the proposed amendment in accordance with the following resolution:

Be it resolved that rule 3.2-7 Commentary [3.1](a) of the Code of Professional Conduct for British Columbia be amended in accordance with the redlined version of that provision provided for the Benchers’ review.

Future Review

It is likely that the relevant BC Code and Law Society Rules provisions discussed above will receive further attention and be subject to further revision, in light of the eventual conclusions of the Cullen Commission and the Law Society’s ongoing efforts to ensure that its regulatory provisions are as good as they can be and that they provide effective guidance to lawyers who consult them. In the meantime, it is important that lawyers who consult BC Code rule 3.2-7 are thereby made aware of the existence and significance of Law Society Rule 3-58.1(1) and the prohibition against allowing the use of trust accounts in absence of the provision of related legal services.



Memo

To: Benchers
From: Executive Committee
Date: January 17, 2021
Subject: **Law Society Representatives on the 2021 QC Appointments Advisory Committee**

In accordance with the Queen's Counsel Act, two members of the Law Society are appointed annually by the Benchers to participate in an advisory committee that reviews applications for appointment as Queen's Counsel. For a number of years the practice has been to appoint the President and First Vice-President to represent the Law Society.

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

The Executive Committee recommends that the Benchers appoint President Dean P.J. Lawton, QC and First Vice-President Lisa Hamilton, QC as the Law Society's representatives on the 2021 QC Appointments Advisory Committee.



CEO's Report to the Benchers

January 29, 2021

Prepared for: Benchers

Prepared by: Don Avison

1. Implementing the 2021 – 2025 Strategic Plan

As we enter upon a new year much of our work will be guided by the Five Year Strategic Plan that Benchers adopted at the meeting of December 4, 2020.

Some of the areas that I expect will be of particular focus and priority over the course of 2021 include the following:

1. Leading as an Innovative Regulator

With initiatives like the ‘Innovation Sandbox’ approved at the September 25, 2020 meeting, we are exploring options for improving access to justice. Benchers, and the profession, can expect regular updates on the progress of these initiatives.

Taking a lead position with respect to Anti-Money Laundering initiatives also remains an important priority. The Law Society of BC has played a significant role in the national work of the Federation of Law Societies of Canada and I expect that will continue throughout the course of 2021. The Law Society is also an active participant in the work of both the Federation’s Anti-Money Laundering Working Group and, here in BC, with the Counter Illicit Finance Alliance of British Columbia (CIFA-BC).

With the support of Benchers, we made significant improvements to our professional conduct/discipline processes in 2020 and there will be further recommendations for changes and improvements in 2021 which, when implemented, could assist in improving time to completion outcomes in our professional conduct matters.

I am also hopeful that we can make progress this year on elevating our approach to diversion and remediation in those matters where it would be in the public interest to do so. Staff will be working closely with the Mental Health Task Force and the Practice Standards Committee in advancing this work.

2. Working Towards Reconciliation

The priority focus here will be in the completion and the implementation of the Indigenous Cultural Competency program that Benchers mandated towards the end of 2019.

A considerable amount of work has been done on this project but, given COVID-19 and other factors, there will be some delay in getting the materials up and online. My expectation is that the program will begin to go “live” towards the end of March and my advice will be that we should take 3 – 4 months to facilitate feedback, input and editing before the first iteration of the program is finalized. With this in mind, Benchers will likely need to consider extending the deadline for completion of the mandatory program.

The Strategic Plan contemplates several other initiatives and, working closely with the Truth and Reconciliation Advisory Committee, I expect we will make progress on increasing and retaining the numbers of Indigenous lawyers in senior positions throughout the justice system and on engaging some of the education related components of the plan.

3. Action to Improve Access to Justice

In this area I anticipate activity on a number of fronts. I mentioned the Innovation Sandbox earlier and we will continue with our efforts to support the expansion of non-adversarial dispute resolution processes.

Our work this year will also support securing additional investments in legal aid and improvements to eligibility criteria. This is one of a number of areas where the Law Society can, and should, work more closely with the Canadian Bar Association, BC Branch and I anticipate President Lawton will update Benchers at the January meeting on recent discussions with our colleagues at the CBABC.

4. Updates on other Strategic Plan Initiatives

As Benchers know, there are several other important elements to the Strategic Plan and we will be implementing regular progress briefings. In this regard, I plan to update the Benchers on our progress at the May and September meetings later this year.

2. Operations Update

1. COVID-19

Despite the restrictions resulting from COVID-19 and the continuing public health emergency declaration, our overall productivity levels remain stable.

We continue to closely monitor advice and directives from Dr. Henry and from the Center for Disease Control and adapt our policies accordingly.

We have also begun work on modifications to some of our office and cubicle space to improve health and safety protections for our staff.

2. A New LIF Website

The LIF group have recently activated a new website that I would describe as exceptional and I believe it will be not only helpful, but much more accessible for all who turn to LIF for assistance.

I would encourage all Benchers, and all who benefit from coverage through LIF, to take a moment to examine the new website which can be found at <https://www.lif.ca/>

3. Capital Infrastructure Maintenance – Parkade Remediation

There is never an ideal time to be limiting access to the building, but we believe now is the right time to address some deferred maintenance issues with our parking area.

That work will begin in early to mid-February. Access to parking spaces will be limited throughout this project and we appreciate the patience of all who may experience some inconvenience through this period.

4. Law Society of BC Succession Planning

I plan over the course of the next few months to develop, and deliver to Benchers, a detailed briefing on this important subject.

My plan, at this point, is to ask that time be set aside at the April Benchers meeting for that session.

Don Avison, QC
Chief Executive Officer



Memo

To: Benchers
From: Executive Committee
Date: January 21, 2021
Subject: Employment Standards Act and Articling Agreements: Survey Results

Background

1. The Benchers will be aware that at the 2020 Annual General Meeting, a majority of members (57.4%) voted in favour the following resolution:

“To amend the appropriate sections of the Law Society Rules and/or Code of Professional Conduct within 12 months of the date of this resolution, requiring that articulated student agreements provide articulated students with at least such rights and protections as are guaranteed under section 16 and Parts 4 and 5 of the Employment Standards Act, RSBC 1996, c 113, and ensure that articulated students are able to seek financial redress for practices that contravene the amended Law Society Rules and/or Code of Professional Conduct.”

2. The commentary during the pre-voting stage of the AGM indicated considerably differing views on the benefits and consequences of implementing the resolution.
3. In order to assist the Benchers in assessing those benefits and costs, two online surveys were undertaken between November 19 and December 4 of last year. One survey was sent to all current articulated students and lawyers who had articulated in the past three years. The other survey was sent to the designated representatives of firms that currently have articulated students or had hired an articulated student in the past three years.
4. The invitation to the complete the survey stated that:

“at the Law Society's 2020 Annual General Meeting, members passed a resolution that calls upon the Benchers to amend the Law Society Rules and/or the Code of Professional Conduct to provide that articulated student agreements guarantee articulated students the protections provided under section 16 and Parts 4 and 5 of the Employment Standards Act, as well as provide students the opportunity to seek financial redress for practices that contravene the proposed

amendments. Some comments on the resolution expressed support for treating articulated students fairly, while others expressed concern that the requirements were inconsistent with the demands of legal practice and that the amendments may result in fewer articling opportunities.”

5. Recipients of the invitation to complete the survey were advised that responses were anonymous and the purpose of the survey was to assess the potential benefits and impacts of the resolution if implemented, the Benchers were seeking information from firms that offer articling positions, current articulated students, and those members who have articulated in the past three years.
6. In total, 897 articulated students and members who had articulated recently and 181 firms completed their respective surveys.
7. The survey results are attached as Appendix A and B. A summary of the relevant parts and sections of the Employment Standards Act is attached as Appendix C.

Discussion

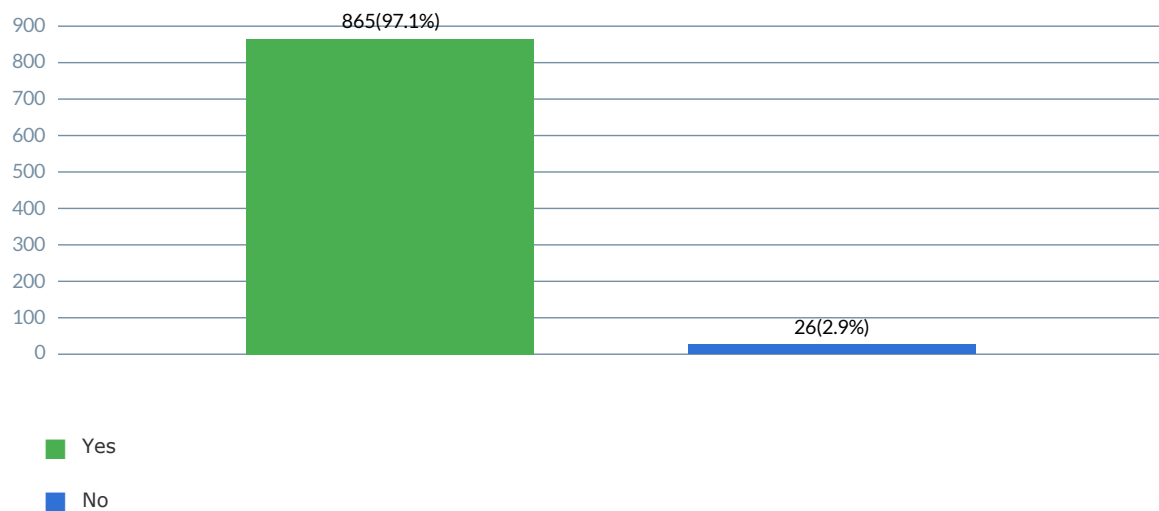
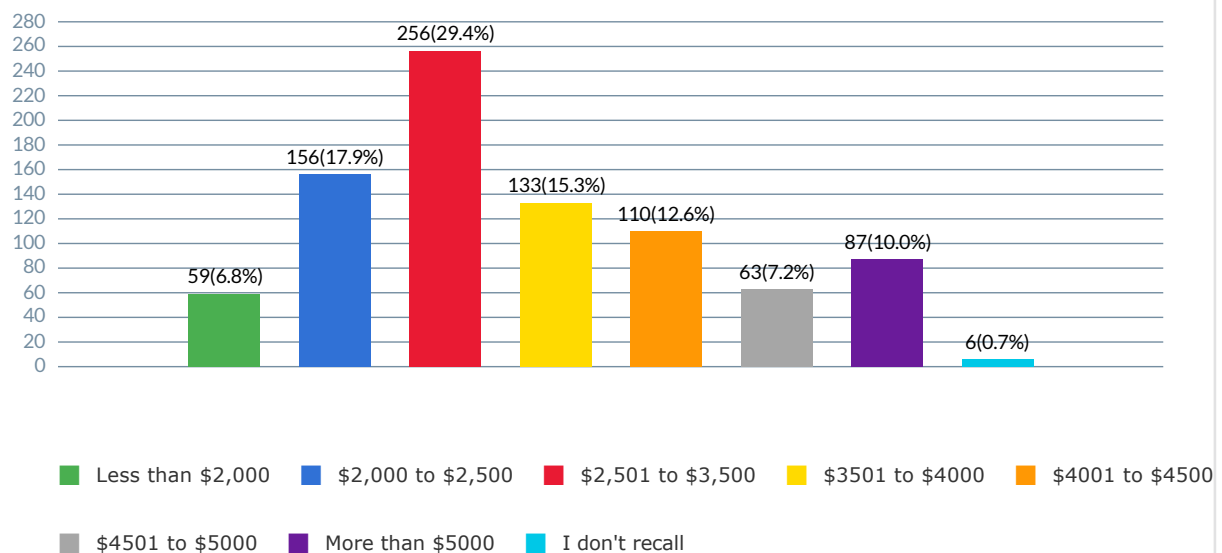
8. Just over 80% of the law firms reported that their students typically worked 8 or more hours per day and 97% of the articulated students and former articulated students reported typically working 8 or more hours a day. Reality probably lies somewhere between 80% and 97%, which means that if the ESA standards applied, the vast majority of firms would have to pay some overtime to articulated students who worked in excess of 8 hours per day.
9. Nearly 2/3rd of the law firms indicated that their students typically work 40 or more hours a week and 89% of the articulated students and former articulated students reported typically working more than 40 hours per week.
10. Just over 23% of the firms and 44% of the articulated students and former articulated students reported typically working 6 or more days a week. This would generally violate the employer requirement to ensure that employees have at least 32 consecutive hours free from work each week or pay 1½ times the regular wage for time worked during that period.
11. 56% the articulated students and former articulated students reported working on a statutory holiday. Firms would be required to pay an articulated student employee who worked on a statutory holiday 1½ times the articulated student’s regular wage
12. Since salary for articulated students is not typically based on an hourly wage, it’s difficult to calculate precisely what the financial consequence of compliance with the ESA would be for law firms. However, based on the statutory minimum wage and a 40 hour week, the minimum amount of compensation per week under the ESA regulations is \$584/week or

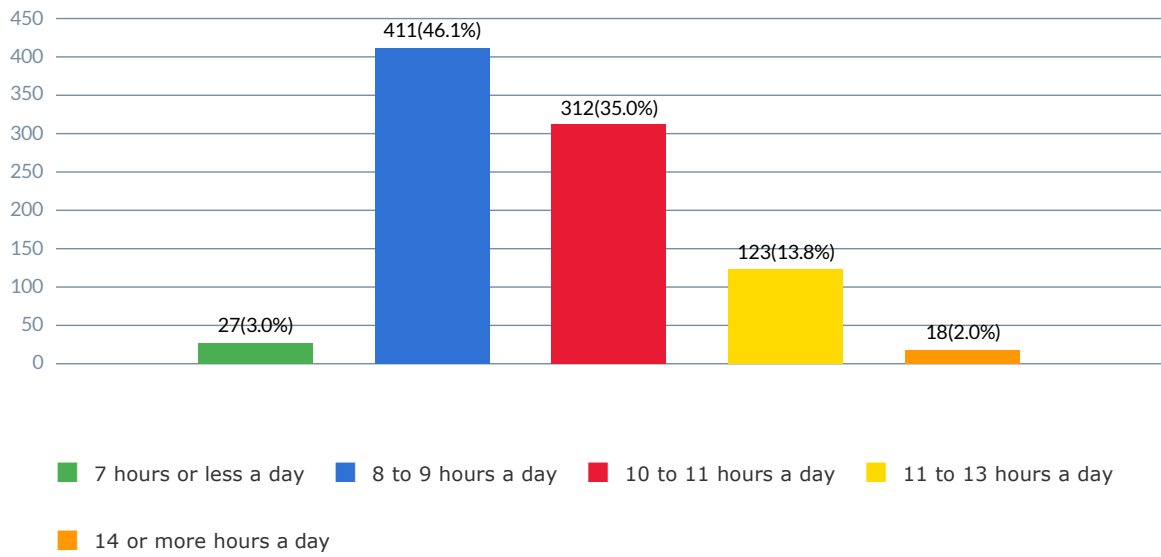
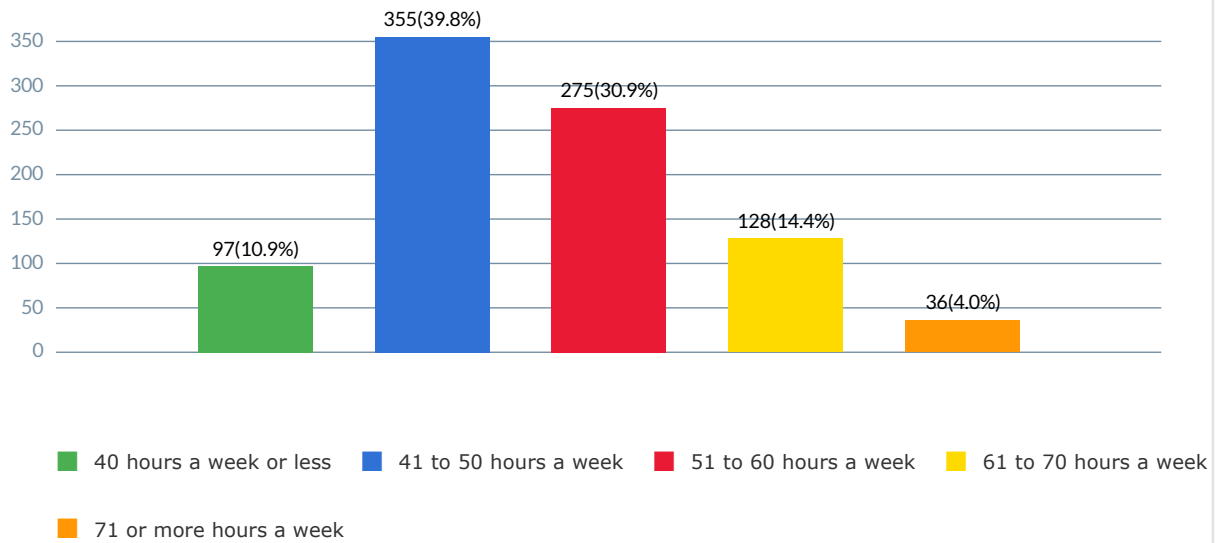
\$2336 for a 4 week period. Just under 25% of the student respondents reported earning \$2,500 or less per month while only 16.5% of the respondent firms reported paying \$2,500 or less per month.

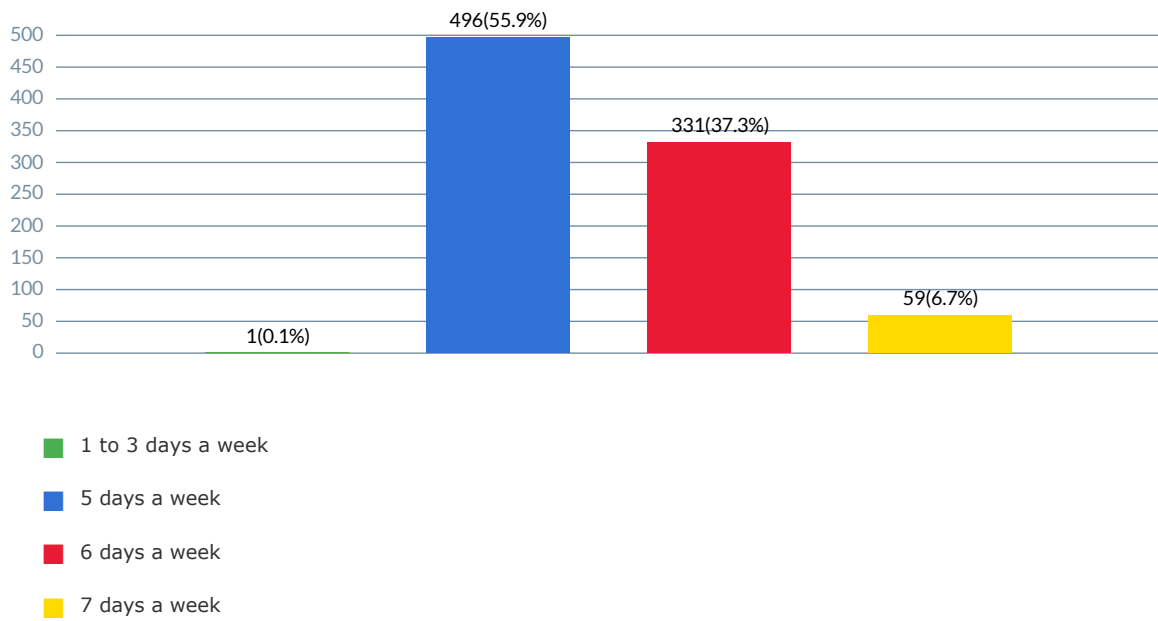
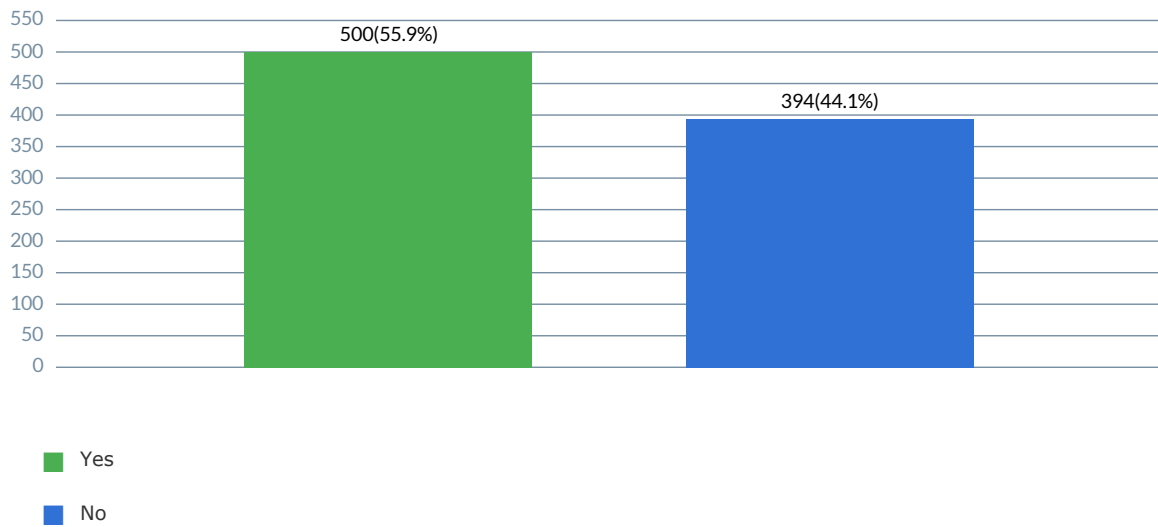
13. Based on the work hours reported by both the firms and the students, it seems likely that a majority of the firms would be paying some overtime compensation to their students during the course of the articling year. As some of the firms report paying more than \$5000/month and overtime is based on a multiple of the regular wage, the overtime amount could be significant. Of course, firms could avoid this by ensuring that articulated students work no more than 8 hours a day, no more than 40 hours a week and no more than 5 ½ days a week.
14. Nearly 100 of the law firms provided comments in addition to completing the survey questions.
15. As a result of these potential financial consequences, as reported in the comments from many of the firms, some firms (26%) are not sure whether they will hire an articulated student in 2021 and some indicated (27%) they will not be hiring an articulated student.
16. In total, nearly 350 articulated students and former articulated students provided comments. Many of the comments spoke about the reality of articling and either implicitly or explicitly supported implementing the resolution.
17. However, some articulated students and former articulated students recognized that implementing the proposed changes to the articling agreement would not necessarily be a completely positive move.
18. The comments of the articulated students and former articulated students make clear what we most likely know already: the articling experience varies considerably across the more than 600 students articling at any given time.
19. As articling is a required step on the path to being called as a lawyer in this province (and in other Canadian jurisdictions), articulated students are vulnerable to exploitation in ways that, once called, they are not. What the results of the survey articulated students and former articulated students and the 2019 Articled Student survey illustrate is what the Lawyer Development Task Force has already recommended to the Benchers: that the Law Society commence a process of exploring and developing options for the creation additional pathways to licensing that provide candidates with an alternate means of obtaining the necessary pre-call experiential training.
20. However, what the results of the law firm survey suggest is that changing only two elements of the articling experience, being the compensation and hours of work, will likely have the unintended consequence of reducing the opportunities for articling for at least some of those

who would seek to article in British Columbia. It also seems likely that the loss of opportunity would disproportionately affect those who are already disadvantaged in the search for articles, particularly those who seek articles having completed the NCA qualification process.

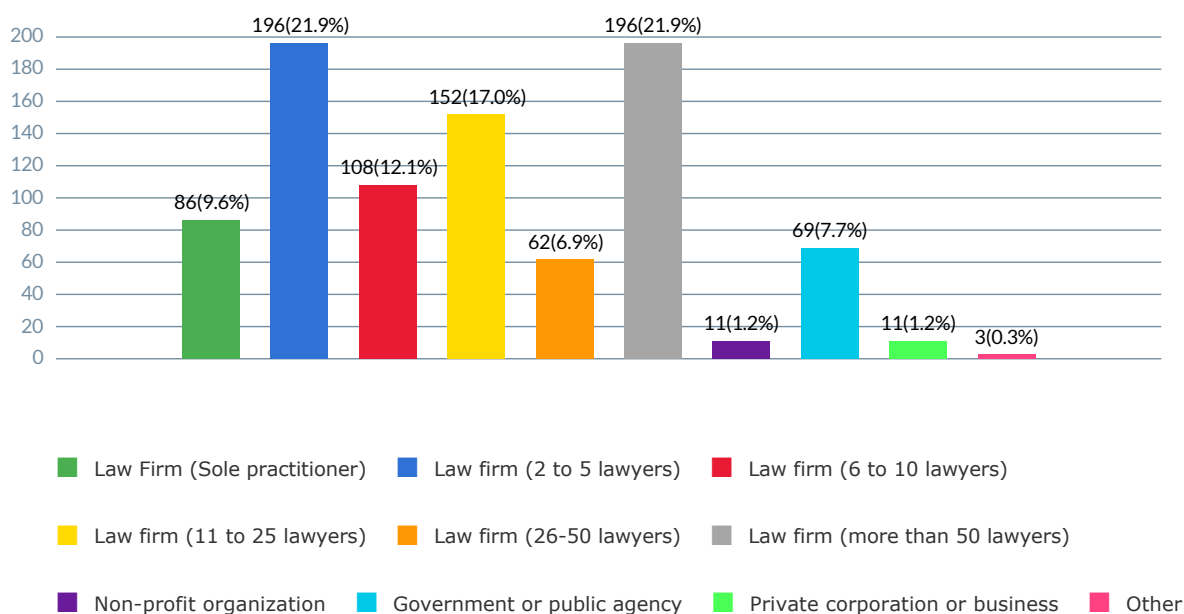
21. In light of the potentially significant consequence of reducing the opportunities for articling if the Benchers implemented the member resolution, the Executive Committee recommends that the issue of conditions of work for articulated students be specifically added to the terms of reference of the Lawyer Development Task Force and that the Task Force be directed to address conditions of work in considering necessary changes to the current articling process and provide recommendations to the Benchers.

**Did you receive a salary during your articles?****If you received a salary, what was the approximate monthly amount?**

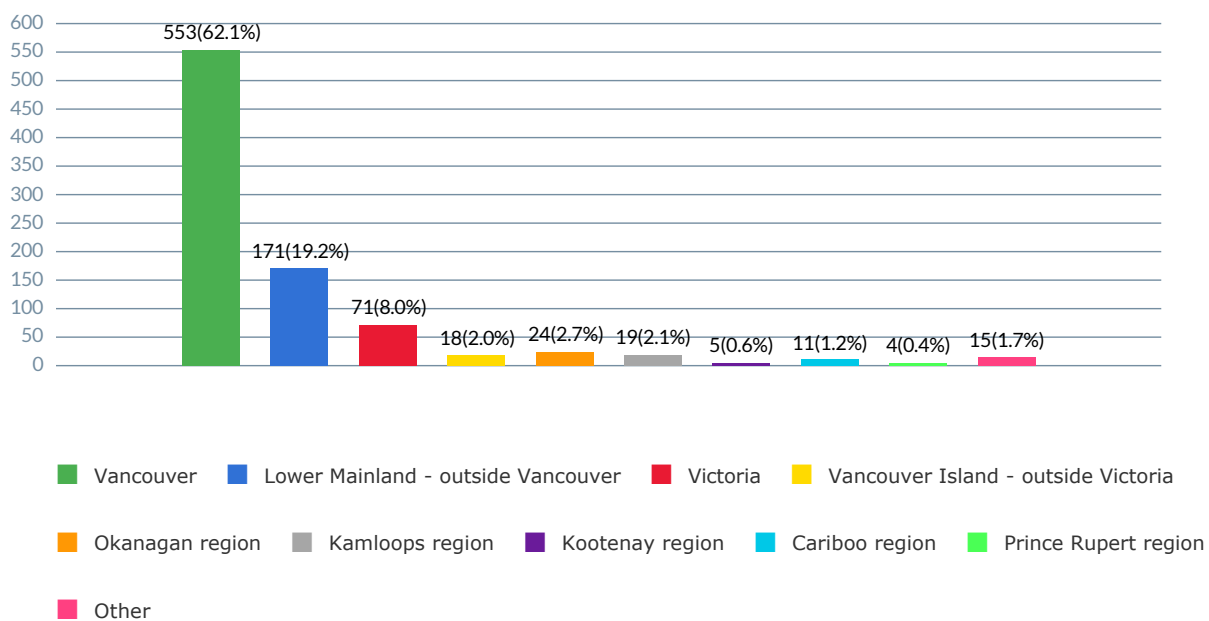
How many hours a day did you typically work during your articles?**How many hours a week did you typically work during your articles?**

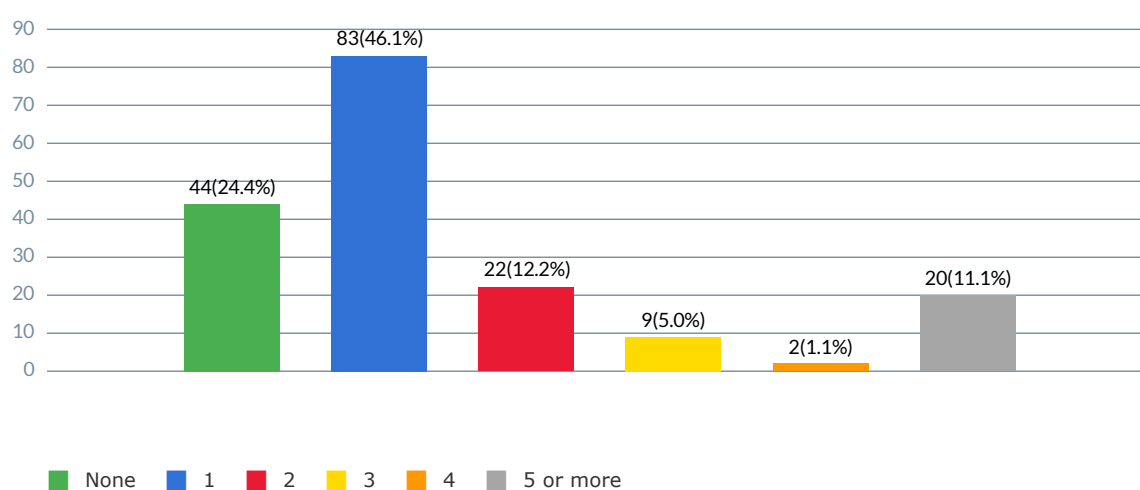
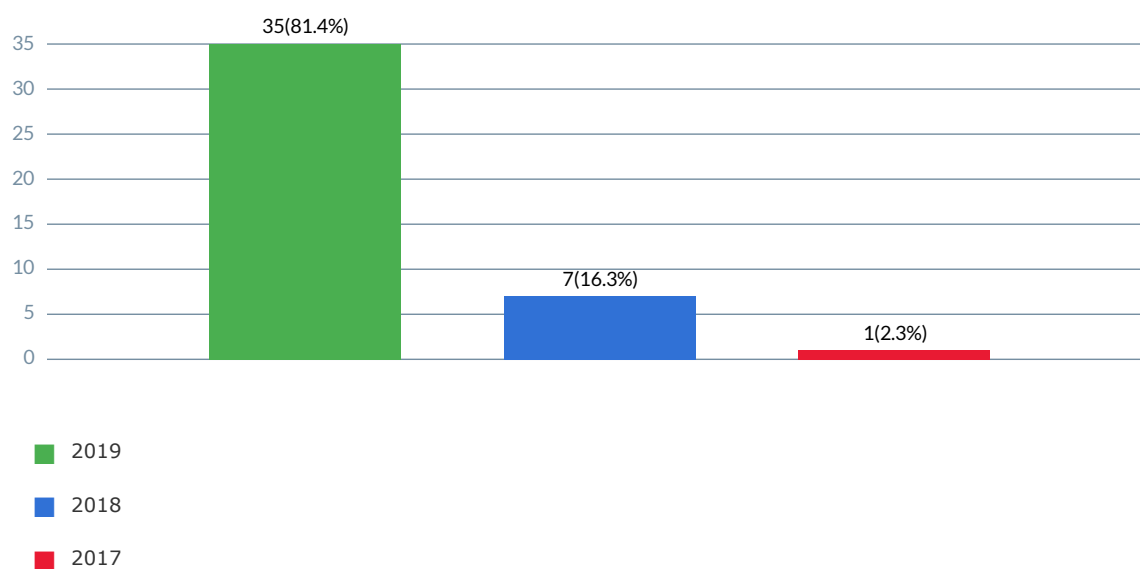
How many days each week did you typically work during your articles?**Did you work on any statutory holidays during articles?**

What was the setting of your articling placement?

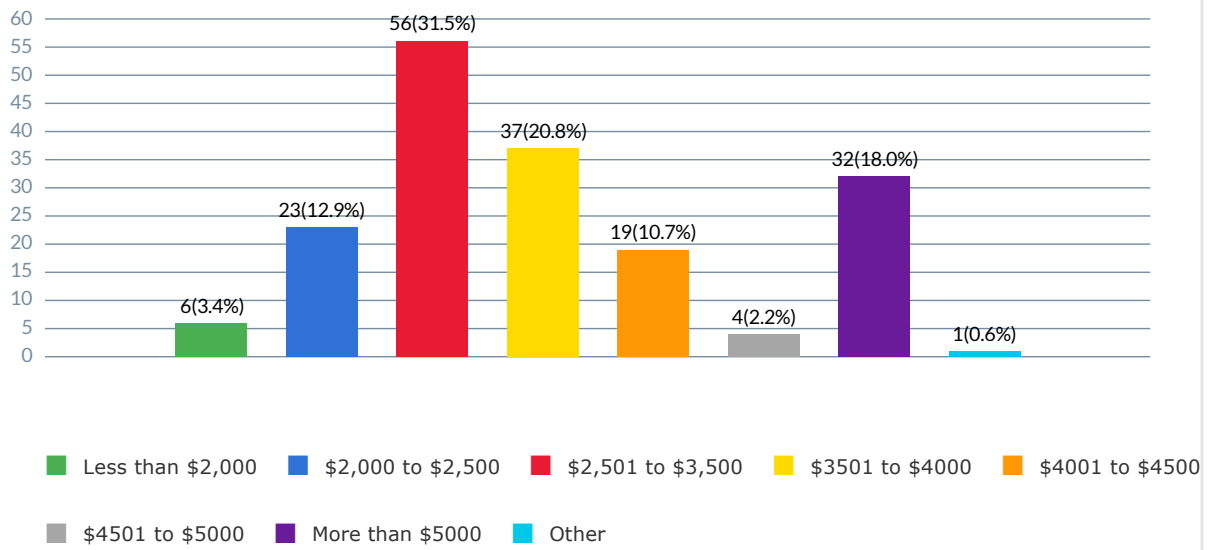


Where was your articling placement located?

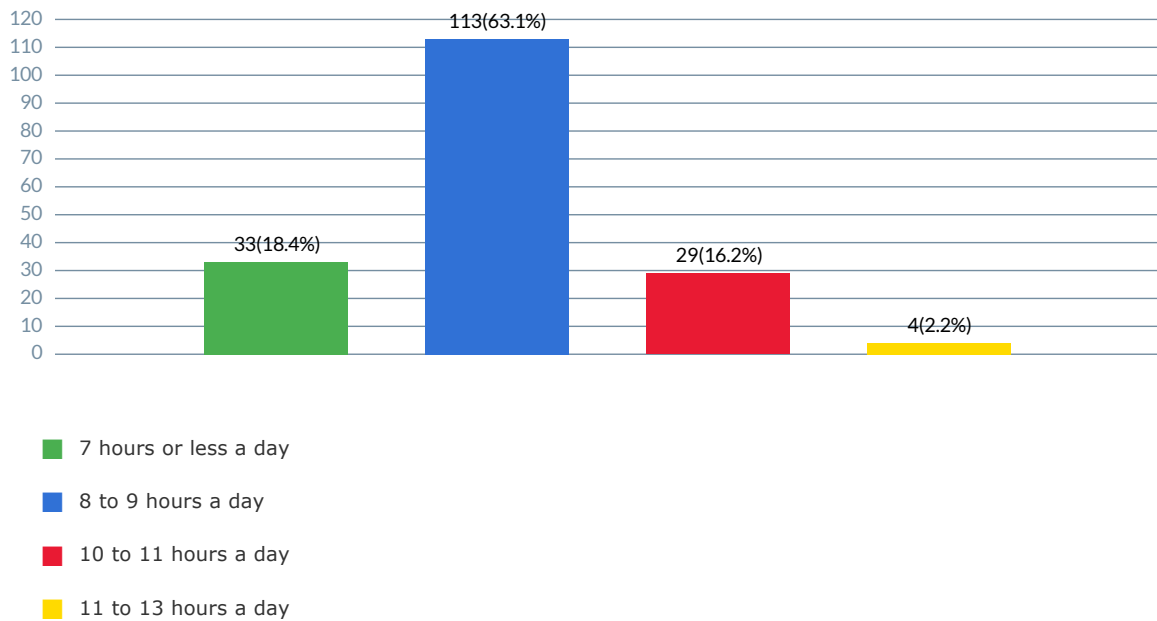


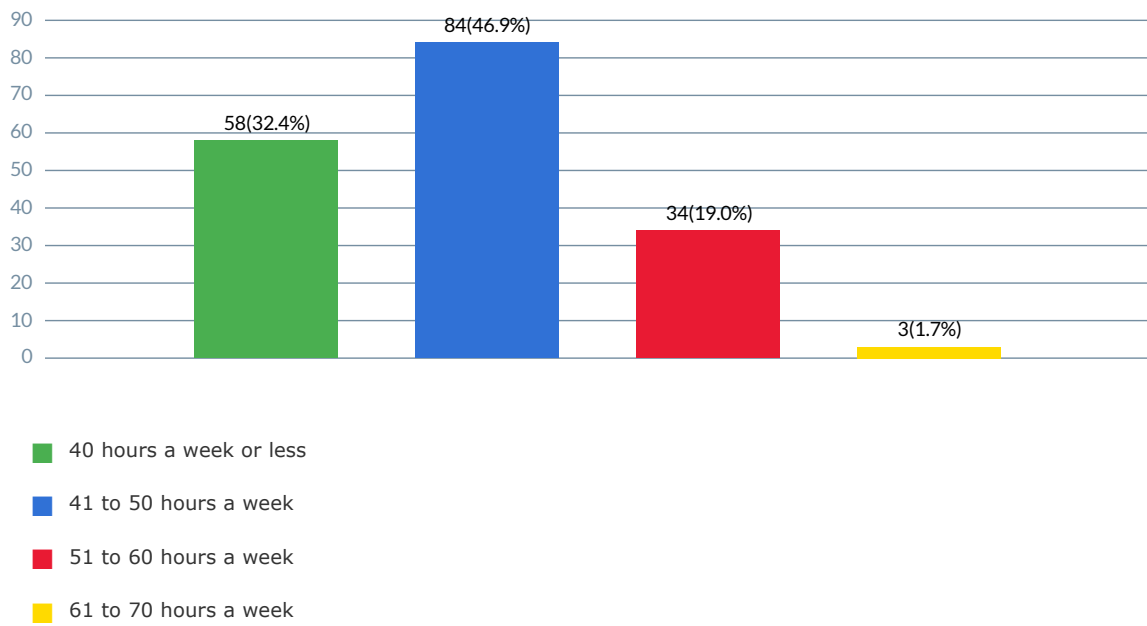
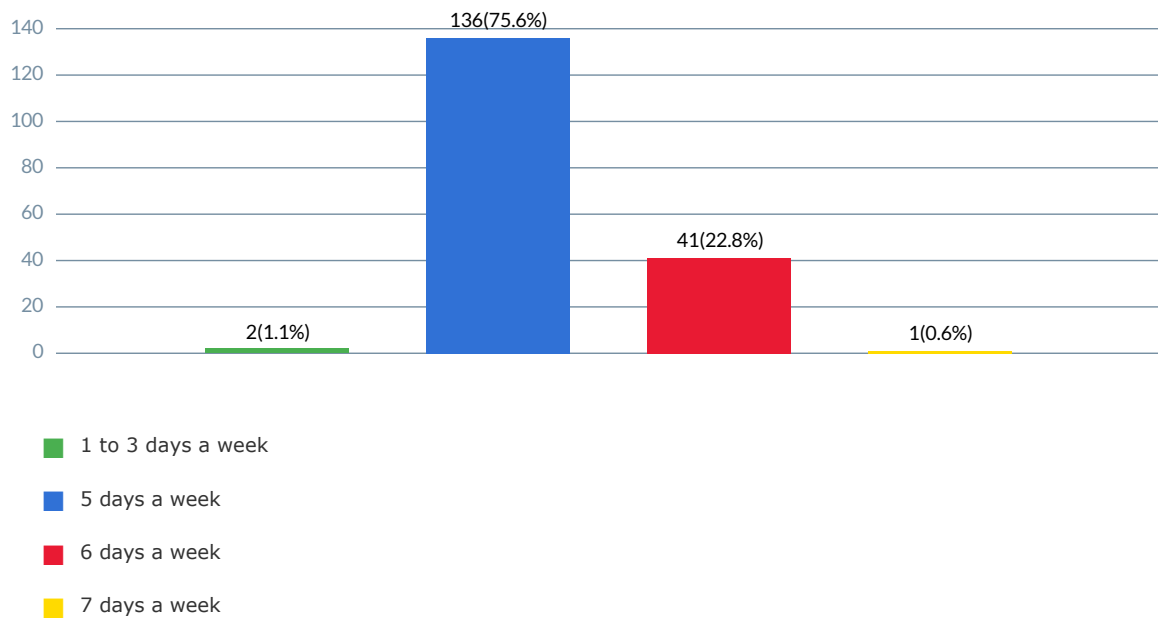
How many articulated students started with your firm or organization in 2020?**When was the last year that your firm or organization took on an articulated student?**

What was your approximate monthly salary of your students?

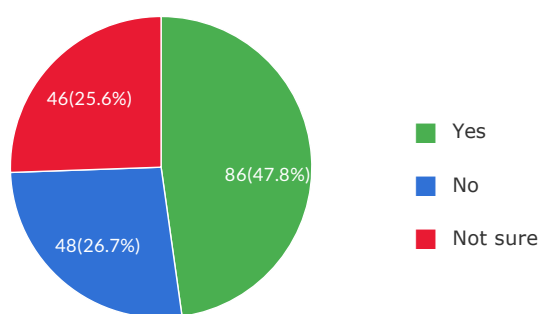


How many hours each day do your articulated students typically work?



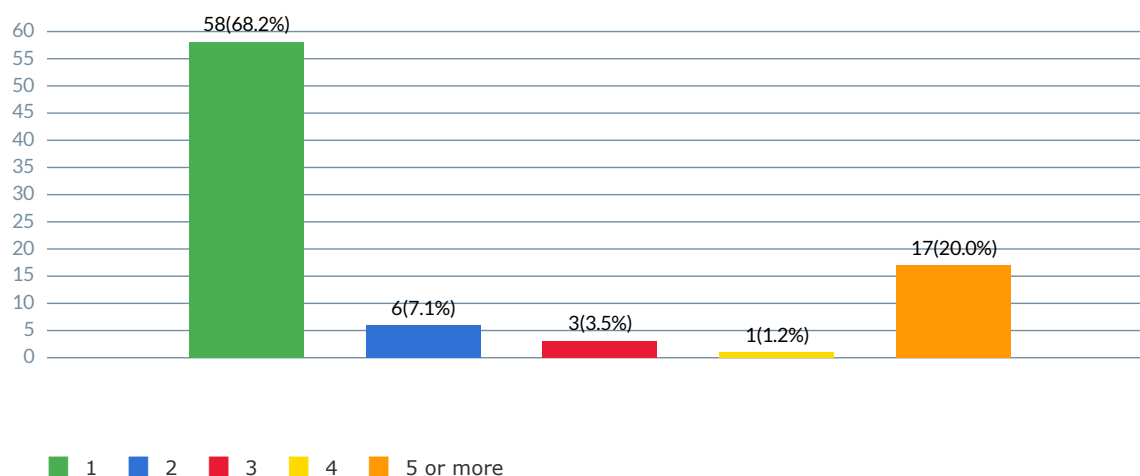
How many hours a week do your articulated students typically work?**How many days each week do your articulated students typically work?**

Do you expect that your firm will hire articulated students in 2021?



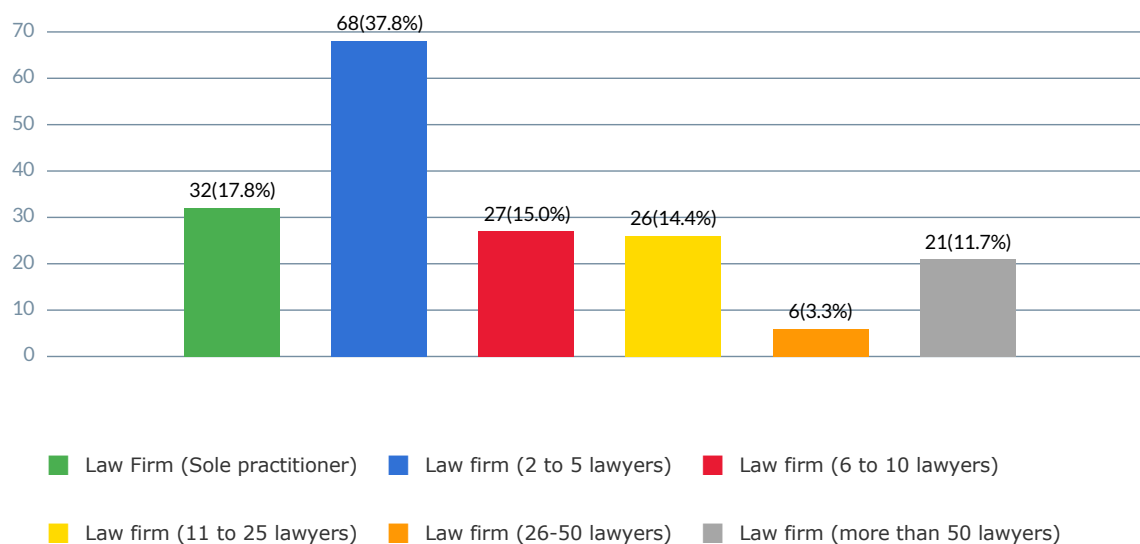
Do you expect that your firm will hire articulated students in 2021?			
	Yes	No	Not sure
How many articulated students started with your firm or organization in 2020?			
None	8 (9.30%)	24 (50.00%)	11 (23.91%)
1	40 (46.51%)	21 (43.75%)	22 (47.83%)
2	10 (11.63%)	3 (6.25%)	9 (19.57%)
3	6 (6.98%)	-	3 (6.52%)
4	1 (1.16%)	-	1 (2.17%)
5 or more	20 (23.26%)	-	-

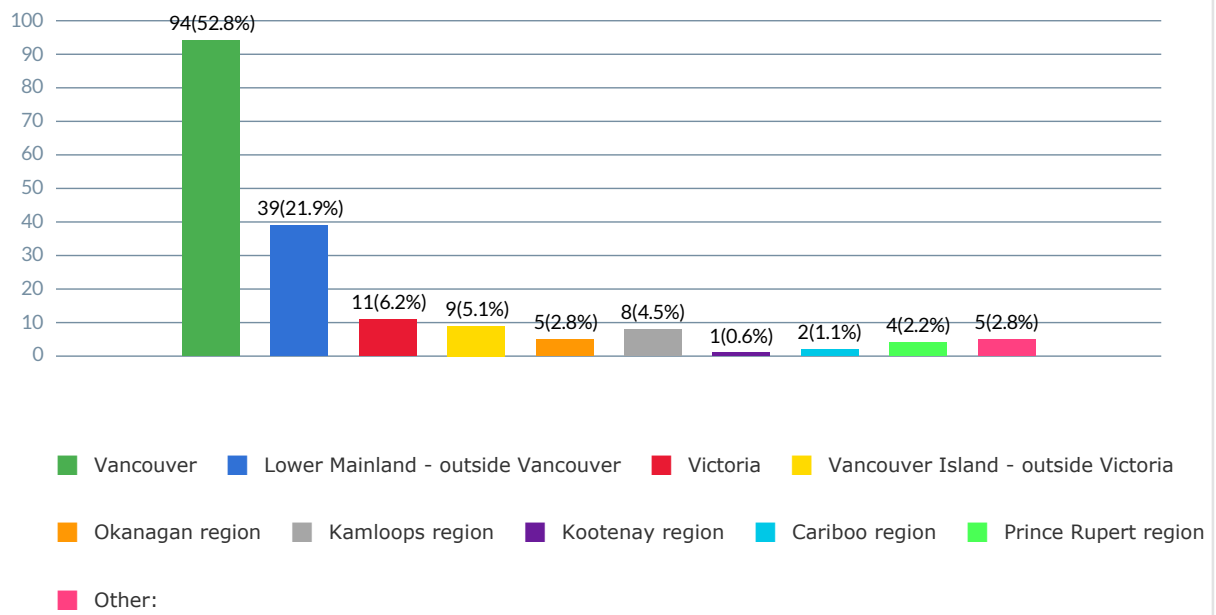
How many articulated students do you expect to start with your firm in 2021?



	How many articulated students do you expect to start with your firm in 2021?				
	1	2	3	4	5 or more
How many articulated students started with your firm or organization in 2020?					
None	8 (13.79%)	-	-	-	-
1	39 (67.24%)	-	-	-	-
2	6 (10.34%)	4 (66.67%)	-	-	-
3	1 (1.72%)	2 (33.33%)	3 (100.00%)	-	-
4	1 (1.72%)	-	-	-	-
5 or more	2 (3.45%)	-	-	1 (100.00%)	17 (100.00%)

Which choice best describes your firm or organization?



Where is your firm or organization located?

Appendix C: Employment Standards Act Parts and Sections Summary

Employers required to pay minimum wage

16 (1) An employer must pay an employee at least the minimum wage as prescribed in the regulations (currently \$14.60/hour)

(2) An employer must not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages in a pay period to comply with subsection (1) in relation to any other pay period.

Part 4 — Hours of Work and Overtime

- ensure no employee works more than 5 consecutive hours without a meal break, and each meal break lasts at least a 1/2 hour
- an employee working a split shift must be allowed to complete the shift within 12 hours of starting work
- must pay a minimum of 2 hours at the regular wage to any employee who reports for work on any day,
- must pay an employee for a minimum of 4 hours at the employee's regular wage if the employer had previously scheduled the employee to work for more than 8 hours that day
- must pay an employee overtime wages of 1 ½ regular wages for time over 8 hours and double for time over 12 hours and 1 ½ regular wages for time over 40 hours a week
- ensure that an employee has at least 32 consecutive hours free from work each week, or pay an employee 1 ½ times the regular wage for time worked by the employee during the 32 hour period the employee would otherwise be entitled to have free from work
- ensure that each employee has at least 8 consecutive hours free from work between each shift worked
- the employer and employee may enter in an average agreement covering up to 4 weeks
- must not require or directly or indirectly allow an employee to work excessive hours or hours detrimental to the employee's health or safety
- at the employee's request may establish a time bank for the employee and credit the employee's overtime wages to the time bank

Part 5 — Statutory Holidays

- An employee who is given a day off on a statutory holiday, or is given a day off instead of the statutory holiday, must be paid an amount equal to at least an average day's pay determined by a formula
- An employee who works on a statutory holiday must be paid 1 ½ times the employee's regular wage for the time worked up to 12 hours and double the employee's regular wage for any time worked over 12 hours



The Law Society of BC External Appointments

Appointing Authority

President

Federal Judicial Advisory
Committee for British
Columbia

Provincial Judicial Council

Canadian Bar Association of
British Columbia Branch
("CBABC") Provincial Council

Provincial Court Family Rules
Project Working Group

Committee on Relations with
the Judiciary

Canadian Bar Association of
BC Benevolent Society
("CBABS") Board of Directors

Continuing Legal Education
Society of BC ("CLE") Board
of Directors

Executive Committee

Law Foundation of British
Columbia ("Law Foundation")

British Columbia Law Institute
("BCLI") Board of Directors

Land Title and Survey
Authority Stakeholder
Advisory Committee

Benchers

Land Title and Survey
Authority ("LTSA") Board
of Directors

Legal Services Society
("LSS") Board of Directors /
Legal Aid BC

Federation of Law Societies
of Canada ("FLSC") Council

Vancouver Airport Authority
Board of Directors

Hamber Foundation Board of
Governors

Building Board of Appeal,
City of Vancouver

Vancouver Foundation Board
of Directors

Full information at: [External Appointments Guidebook \(lawsociety.bc.ca\)](http://lawsociety.bc.ca)