



# Agenda

## Benchers

Date: Friday, March 5, 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](mailto: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 January 29, 2021 meeting (regular session)
2	Minutes of January 29, 2021 meeting ( <i>in camera</i> session)
3	Rule 4-30: Amendment re Admission and consent to disciplinary action
4	Rule 2-74(4)(b): Amendment re Review of Failed Standing
5	Rule 2-57: Amendment re Principals
6	Code of Professional Conduct Rule 3.4-4: Correcting Commentary Reference to Screening Measures

### GUEST PRESENTATION

7	The Canadian Bar Association of BC: Agenda for Justice	Jennifer Brun
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# Agenda

REPORTS		
8	President’s Report	Dean Lawton, QC
9	CEO’s Report <ul style="list-style-type: none"><li>Update on Innovation Sandbox</li></ul>	Don Avison, QC
10	Briefing by the Law Society’s Member of the Federation Council	Pinder Cheema, QC
DISCUSSION/DECISION		
11	Law Society’s 2020 Audited Financial Statements and Financial Reports: Review and Approval	Lisa Hamilton, QC Jeanette McPhee
12	Independent Review of Law Society Governance	Dean Lawton, QC
13	Conduct Assessment and Disposition Guidelines: Revisions	Natasha Dookie
UPDATES		
14	National Discipline Standards Report	Natasha Dookie Tara McPhail
FOR INFORMATION		
15	Minutes of February 18, 2021 Executive Committee Meeting	
16	Equity Ombudsperson Program: July 2019 – December 2020 Report	
17	Judicial Advisory Committee for BC Appointment	
18	Three Month Benchers Calendar – March to May 2021	
IN CAMERA		
19	Other Business	



# Minutes

## Benchers

Date: Friday, January 29, 2021

Present:	Dean P.J. Lawton, QC, President Lisa Hamilton, QC, 1 <sup>st</sup> Vice-President Christopher McPherson, QC, 2 <sup>nd</sup> Vice-President Paul Barnett Pinder K. Cheema, QC Jennifer Chow, QC Barbara Cromarty Jeevyn Dhaliwal, QC Cheryl S. D'Sa Lisa Dumbrell Lisa Feinberg Martin Finch, QC Brook Greenberg, QC Sasha Hobbs Julie K. Lamb, QC	Dr. Jan Lindsay Jamie Maclaren, QC Claire Marshall Geoffrey McDonald Steven McKoen, QC Jacqueline McQueen, QC Elizabeth J. Rowbotham Mark Rushton Karen Snowshoe Thomas L. Spraggs Michelle D. Stanford, QC Michael Welsh, QC Kevin B. Westell Chelsea D. Wilson Guangbin Yan
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Unable to Attend: Heidi Zetzsche

Staff Present:	Don Avison, QC Avalon Bourne Shelley Braun Lance Cooke Natasha Dookie Su Forbes, QC Andrea Hilland Jeffrey Hoskins, QC Jason Kuzminski	Michael Lucas, QC Alison Luke Jeanette McPhee Cary Ann Moore Doug Munro Michelle Robertson Lesley Small Adam Whitcombe, QC Vinnie Yuen
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Guests:	Karen St. Aubin	Director of Membership & Education, Trial Lawyers Association of BC
	Dom Bautista	Executive Director & Managing Editor, Law Courts Center
	Dr. Susan Breau	Dean of Law, University of Victoria
	Dr. Cristie Ford	Associate Dean Research and the Legal Profession, Peter A. Allard School of Law
	Chief Justice Christopher E. Hinkson	Chief Justice of the Supreme Court of British Columbia
	Clare Jennings	First Vice-President, Canadian Bar Association, BC Branch
	Alexis Kazanowski	Assistant Dean, Faculty of Law, TRU
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program of B.C.
	Mark Meredith	Treasurer and Board Member, Mediate BC Society
	Caroline Nevin	CEO, Courthouse Libraries BC
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
	Carleen Thomas	Manager of Special Projects, Tsleil-Waututh Nation

## 1. President's Welcome

Mr. Lawton welcomed Benchers, staff, and guests to the first Bencher meeting of 2021. Mr. Lawton spoke about the challenges of 2020 and the importance of collaboration in surmounting them.

## 2. Indigenous Welcome

President Lawton welcomed Carleen Thomas, a member of the Tsleil-Waututh Nation in North Vancouver, to the Bencher meeting. Ms. Thomas introduced herself to the Benchers and provided information about her family history. She thanked Benchers for the invitation to attend and welcomed them to the meeting.

## CONSENT AGENDA

### 3. Minutes of December 4, 2020, meeting (regular session)

The minutes of the meeting held on December 4, 2020 were approved as circulated.

### 4. Minutes of December 4, 2020, meeting (*in camera* session)

The minutes of the *In Camera* meeting held on December 4, 2020 were approved as circulated.

### 5. Rule 3-3: Amendments to the confidentiality of complaints

The following resolution was passed unanimously and by consent:

*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*].

## **6. Code of Professional Conduct Rule 3.2-7: Amendment to Commentary [3.1] – Improper Use of Trust Accounts**

The following resolution was passed unanimously and by consent:

*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.

## **7. Law Society Appointment: Hamber Foundation Board of Governors**

The following resolution was passed unanimously and by consent:

*BE IT RESOLVED* that the Benchers reappoint Paul Barbeau and appoint Greg Allen to the Hamber Foundation Board of Governors for three-year terms commencing March 1, 2021.

## **8. Law Society Appointment: Queen's Counsel Nomination Advisory Committee**

The following resolution was passed unanimously and by consent:

*BE IT RESOLVED* 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.

## **REPORTS**

### **9. President's Report**

Mr. Lawton began his report by reviewing the first month of his presidency and made announcements concerning Benchers and members of the profession, including the appointment of Madam Justice Ardith Walkem to the Supreme Court of British Columbia. Mr. Lawton also congratulated Mr. Greenberg and Ms. McQueen for receiving their Queen's Counsel title.

Mr. Lawton spoke about the recent passing of Joseph Arvay, QC, and the impact he had on BC's social and legal landscape. Mr. Lawton also spoke about the passing of Dr. Constance Isherwood, QC, senior-most counsel in Canada and oldest practicing BC lawyer, noting that Dr. Isherwood was the guest speaker at the last in-person call ceremony in BC before the declaration of the COVID-19 pandemic.

Mr. Lawton provided an overview of his activities over the last month, including meeting individually with each Bencher; speaking with Ian Mulgrew, journalist with the Vancouver Sun, regarding his interest in the Law Society's new initiatives; meeting with Steve Raby, President of the Federation of Law Societies; meeting with Len Doust, QC, recipient of the 2020 Law Society Award; speaking with the University of Victoria's Faculty of Law students regarding ethics and professionalism within the law profession; and meeting with Chief Justice Robert Bauman, who is very interested in advancing a holistic approach to advancing matters in family law. Mr. Lawton reviewed his upcoming activities including meetings next week with Chief Justice Christopher Hinkson and Chief Judge Melissa Gillespie.

Mr. Lawton spoke about the importance of social connection in maintaining relationships, particularly during these challenging times.

Mr. Lawton discussed his priorities for 2021, including determining a different name for the regulatory sandbox initiative, while continuing to examine new ideas for the provision of legal services, as well as examining the pathways to call and admission.

## **OATH OF OFFICE**

### **10. Administer Oaths of Office**

The Honourable Chief Justice Christopher E. Hinkson administered oaths of office to President Dean P.J. Lawton, QC, First Vice-President Lisa Hamilton, QC and Second Vice-President Christopher McPherson, QC, and the newly elected Benchers, Kevin B. Westell and Lisa Dumbrell, whose terms began on January 1, 2021.

Chief Justice Hinkson spoke about the importance of the Law Society and the role of the Benchers. He spoke about the work of the Supreme Court of BC in continuing to provide access to justice for British Columbians through these trying times, noting that the suspension of civil jury trials will continue for some time, and the Attorney General will be consulting with the Law Society about the use of civil juries. Chief Justice Hinkson noted that the demand for court hearings has lessened likely due to concerns over appearing in-person, though the Court has been able to provide access to the majority of people who do want trials. Chamber hearings have also taken place via telephone and video, though there have been challenges, and the Court is continuing to work with the Bar to provide as much access as possible. Chief Justice Hinkson informed Benchers that the new courthouse in Abbotsford would be opening on February 4 with three Supreme Court justices residing. Chief Justice Hinkson reviewed current vacancies, noting that the Attorney General had increased the complement of the Court by five positions, which are to be finalized once the federal budget has been approved. Chief Justice Hinkson asked Benchers to encourage members to put their names forward for federal judicial appointments.

Benchers asked Chief Justice Hinkson about case rescheduling due to COVID-19, and if there were opportunities to have cases heard earlier. Chief Justice Hinkson noted that the Bar is encouraged to move cases to Abbotsford, as there is flexibility in scheduling there.

Benchers also asked whether trials conducted entirely through the written record would be considered by the Court in the future. Chief Justice Hinkson noted the challenges in ensuring reliable evidence with such a method, and that hybrid trials will likely continue beyond the pandemic, but having cases conducted entirely through written applications wouldn't be likely.

Mr. Lawton thanked Chief Justice Hinkson for taking the time to attend the meeting, and noted the Court and the Law Society's common interest to protect the public.

## **REPORTS (continued)**

### **11. CEO's Report**

Mr. Avison began his report by updating the Committee on the implementation of the Law Society's 2021-2025 Strategic Plan, which was approved at the December Bencher meeting. A great deal of progress was made last year, and the strategic plan sets the trajectory for this year and following years to continue with that momentum. Mr. Avison noted that the committees are also getting to work in relation to the strategic plan, as well as what is set out in their mandate letters. The next step will be to give shape to the plan through setting milestones for each year. Detailed progress reports will be presented at the May and September/October Bencher meetings.

Mr. Avison then updated Benchers on the Indigenous Inter-cultural Awareness Program. The Truth and Reconciliation Advisory Committee is reviewing the written material, and Mr. Avison noted the considerable amount of material, not including video content. In reviewing the timeline for implementation, Mr. Avison noted that the current plan is to launch the program sometime between the end of March and the end of April, and that a soft launch might be considered in order to receive feedback from the profession to make adaptations as necessary. Mr. Avison noted that Benchers would need to consider the timeline for requiring the profession to complete training.

Mr. Avison informed Benchers that the Lawyers' Indemnity Fund's new website is operational, and encouraged Benchers to visit the new website. LIF is currently focused on raising awareness regarding the lifting of the suspension of limitation periods happening in March.

Mr. Avison then spoke about succession planning, noting that he proposes to do a more detailed review of the Law Society's succession planning at the April meeting.



Mr. Avison updated Benchers on Law Society operations, noting that the first diagnoses of COVID-19 took place one year ago, and that dealing with the challenges of COVID-19 will likely continue for some time, due to delays in the production and provision of vaccines. Mr. Avison informed Benchers that staff productivity remains high and that changes to capital infrastructure have been made to ensure staff health and safety within the Law Society offices. Mr. Avison updated Benchers on schedule changes, noting that the Bencher Retreat would be moved to the fall. Mr. Avison also updated Benchers on recent staffing changes.

Mr. Avison ended his report by remembering Paula Littlewood, former Executive Director of the Washington State Bar Association, who passed away in December. Mr. Avison spoke about Ms. Littlewood's presentation at the March 2019 Bencher meeting and remarked upon her exemplary leadership in championing legal reform.

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

Ms. Cheema began her briefing by providing an overview of the Federation and Federation Council for the new Benchers. She then updated Benchers on the work of the Standing Committee on the Model Code, which has been focused on reviewing feedback from the law societies regarding the discrimination and harassment provisions to the code, as well as determining how to incorporate the Truth and Reconciliation Commission's guiding principles into every aspect of the model code.

Ms. Cheema updated Benchers on the December Council meeting, informing them of the formation of the NCA Assessment Modernization Committee, which is working towards a competency based model of assessment to address performance gaps between Canadian lawyers and lawyers from other jurisdictions.

Ms. Cheema informed Benchers that the national well-being survey was launched in November with the goal of collecting data on the mental health of legal professionals in Canada. The Federation has partnered with the CBA on this study.

Ms. Cheema also informed Benchers that a new joint working group has been formed between Canada's law deans and Federation members to work collaboratively in responding to the Truth and Reconciliation Commission's calls to action.

Ms. Cheema concluded her briefing by thanking all the Benchers and staff involved in the Federation committees.

## DISCUSSION/DECISION

### 13. AGM Member Resolutions Update

Mr. Avison gave a brief overview of all three resolutions and informed Benchers that a recommendation regarding Resolution 5 would be on the agenda for the March Bencher meeting.

#### **Resolution 3: Articling Agreement resolution and Employment Standards Act and Articling Agreement Survey responses**

Mr. Avison reviewed the survey responses from current articulated students, lawyers who had articulated in the past three years, and representatives of firms that currently have articulated students or had hired an articulated student in the past three years. Mr. Avison informed Benchers that there had been quite a bit of confusion regarding whether or not this resolution would be implemented by the Law Society with many members thinking it already had been implemented. Mr. Avison noted that the issue is quite complex, and that it had been directed to the Lawyer Development Task Force to consider. Mr. Avison also spoke about the concerning aspects from some of the reports of articling students, and that this matter will require careful consideration.

Benchers asked if there would be a public link to the survey results available for members. There were a great number of responses, and consideration will need to be given as to what is appropriate to share more broadly.

Benchers discussed the survey results, noting that the accounts of exploitation are quite alarming, and that these concerns need to be addressed. Benchers also considered whether the Law Society should make a public statement committing to addressing the concerns raised through the surveys. Benchers discussed the importance of protecting students and the need to address power imbalances, so that students are not exploited. Benchers suggested examining the demographic information of those students who are/were unpaid or underpaid to see if there are any trends.

Benchers discussed the need to examine how aspiring lawyers are mentored, as this will have an impact on their conduct within the profession. Benchers also discussed the need to consider alternative pathways to admission to the bar.

Benchers discussed the process by which members can submit resolutions to be considered at the Law Society's annual general meeting, noting that proposals with financial impacts should include a financial impact assessment, as the Law Society's fees should not be a barrier for advancing change. Benchers also discussed the importance of member resolutions demonstrating how they serve the public interest.

Mr. McKoen stated that as Chair of the Lawyer Development Task Force, the Task Force would appreciate input on how to best address this issue. Considering alternative pathways will take

time, and many of the concerns brought forward through the surveys need to be addressed now. Mr. McKoen asked that comments and ideas be sent to the Task Force to consider.

#### **Resolution 4: Sir Matthew Baillie Begbie resolution**

Mr. Avison noted that this matter was being considered by the Truth and Reconciliation Advisory Committee.

Mr. Lawton updated Benchers on the work of the Truth and Reconciliation Advisory Committee, noting that the Advisory Committee is anticipating the striking of a sub-committee to address this matter. The sub-committee would engage with consultants as part of its work, before eventually coming to a recommendation for Benchers to consider. Benchers discussed the potential for divisiveness with this matter, and the challenges with determining a single symbol to represent a diverse group.

#### **Resolution 5: Mediators, Arbitrators, and Parenting Coordinators resolution**

This item will be on the March Bencher meeting agenda.

### **14. Independent Review of Law Society Governance**

Mr. Lawton reviewed the report presented by the Governance Committee at the December Meeting, which reviewed the Law Society against the standards of governance developed by Harry Cayton and the Professional Standards Authority. The conclusion of the report indicated that the Law Society was in substantial compliance with the standards of governance; however, there could be areas for improvement. Mr. Lawton spoke about the importance of conducting regular independent governance reviews, and that his recommendation was to retain Mr. Cayton to conduct an independent governance review due to Mr. Cayton's background, qualifications, and expertise.

The following motion was made.

*BE IT RESOLVED* that the Law Society retain Harry Cayton, CBE to conduct a review this year of the Law Society's governance, substantially on the terms as set out in the provided memorandum.

Some Benchers expressed concerns regarding the lack of information included within the terms of reference and that the terms of reference should be more comprehensive in relation to what the governance review would actually entail prior to moving forward with retention of Mr. Cayton. Some Benchers also spoke about the importance of including important issues at the outset, particularly truth and reconciliation; equity, diversity, and inclusion; as well as access to justice.

Some Benchers expressed concerns regarding comments made by Mr. Cayton in relation to diversity and representation, and that while an independently conducted governance review is needed, alternate proposals to conduct the review should be solicited from various consultants. Benchers also spoke about how equity, diversity, and inclusion are intrinsically linked to governance, and should be a significant focus of any governance review and included in the terms of reference.

Benchers discussed the retaining of Mr. Cayton with some Benchers noting his particular expertise and qualifications in the governance field. Benchers also discussed that any governance review could elicit significant recommendations that would need to be considered seriously, including moving away from the current governance model to a competency-based Bencher table.

A motion was made and seconded that the resolution be amended so as to retain Mr. Cayton to conduct the governance review and to defer the approval of the terms of reference to the March Bencher meeting.

A procedural motion was made and seconded to defer the resolution to the March Bencher meeting.

Procedural motion passed.

## **UPDATES**

### **14a. Innovation Sandbox**

Mr. Avison gave a brief update on the Innovation Sandbox, noting that 28 proposals have been received thus far since the launch of the initiative at the end of November last year. A staff working group has been formed to review proposals prior to bringing them before the Executive Committee with recommendations. To date, the Executive Committee has considered 12 proposals and conditionally approved 4 with the approved proposals offering services to assist the public with matters before administrative tribunals, legal coaching services to navigate court processes, and legal guidance to families and individuals regarding advocacy support for people with dementia.

Mr. Avison noted that regular updates on the Innovation Sandbox would be provided.

### **15. 2020 Bencher and Committee Evaluations**

Ms. Dhaliwal provided a brief report on the 2020 Bencher and Committee annual evaluations, noting that less than two thirds of Benchers completed the evaluations and less than 40 percent of committee members completed their evaluations. These types of evaluations are an essential

component of ensuring the Law Society’s good governance, and as a result of the relatively low response rate, Ms. Dhaliwal recommended revisiting the evaluation process to elicit better engagement and better feedback. The Governance Committee will review this matter and bring forward a proposed updated process.

## **16. Report on Outstanding Hearing & Review Decisions**

Mr. Lawton provided an update on outstanding hearing and review decisions.

## **FOR INFORMATION**

### **17. Minutes of January 14, 2021 Executive Committee Meeting**

There was no discussion on this item.

### **18. Law Society of BC External Appointments Opportunities**

There was no discussion on this item.

### **19. Three Month Bencher Calendar – February to April 2021**

There was no discussion on this item.

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

AB  
2021-01-29



# Memo

To: Benchers  
From: Jeffrey G. Hoskins, QC for Act and Rules Committee  
Date: February 4, 2021  
Subject: **Rule 4-30, Admission and consent to disciplinary action**

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1. At the October 2020 meeting the Benchers approved the recommendation of the Executive Committee to amend Rule 4-30 to provide for discipline counsel and the respondent to a citation bringing directly to a hearing panel a joint submission for a finding of a discipline violation and a specific disciplinary action. This would eliminate the current intermediary step requiring the Discipline Committee to approve the proposal and instruct discipline counsel to recommend the proposed resolution to the hearing panel.
2. The new process would also allow the hearing panel, in unusual but appropriate circumstances, the discretion to substitute its own disciplinary action for that proposed in the joint submission.
3. I attach the report from the Executive Committee that was before the Benchers at that time.
4. The Act and Rules Committee recommends the adoption of the attached proposed amendments to implement the Benchers' policy decision. I also attach a suggested resolution to effect the changes.
5. For context and comparison I have included with the draft amendments Rule 4-29, Conditional admissions, which would remain unchanged by the policy decision. It is a separate process by which a respondent can make an admission conditional on the Discipline Committee accepting the admission and not taking disciplinary action. That is applied in two very different situations: in relation to matters so minor that no action is required or in relation to matters so serious that the respondent is allowed to resign from membership in the Law Society.

## Drafting notes

6. Since the respondent's admission is no longer conditional on acceptance by the Discipline Committee and a hearing panel, the modifier "conditional" and other references have been dropped, which has led to a number of consequential amendments.
7. The Act and Rules Committee considered that the provision for the discretion of a hearing panel to reject a proposed disciplinary action and substitute another should make it clear that that would only happen in extraordinary circumstances. In particular, the common law test for a trial judge departing from a joint submission should be reflected in the rule. The proposed amendments limit the ability of the hearing panel to change the agreed disciplinary action to cases where the proposal would be "contrary to the public interest in the administration of justice."
8. The Supreme Court of Canada has said in [\*R. v. Anthony-Cook\*](#), 2016 SCC 43, [2016] 2SCR 204, that the proper test is "whether the proposed sentence would bring the administration of justice into disrepute, or would otherwise be contrary to the public interest." The Law Society Rules do not refer to the administration of justice being brought into disrepute, but frequently apply the standard of the public interest. That, of course, tracks the language of section 3 of the *Legal Profession Act*, which is the governing mandate of the Law Society.
9. In Rule 4-30(5)(c) it becomes the responsibility of staff to inform the complainant of the outcome of the hearing, not the hearing panel.
10. Subrules (6) and (7) codify the common law and are probably not necessary, but they are included included for transparency of the process. Subrule (6) says that the panel must hear submissions from counsel before imposing disciplinary action that was not agreed to by the parties. Subrule (7) says that negotiation to a settlement is without prejudice in the matter at hand.
11. The proposed amendment to Rule 4-44(1) corrects a historical drafting error.

Attachments:      report from Executive Committee  
                         drafts

JGH



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

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### Executive Committee

Craig Ferris, QC  
Dean Lawton, QC  
Lisa Hamilton, QC  
Jeevyn Dhaliwal, QC  
Steve McKoen, QC  
Chris McPherson, QC  
Mark Rushton

Date: October 20, 2020

Prepared for: Benchers

Prepared by: Executive Committee

Purpose: For Discussion and decision



## Purpose

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

## Background

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

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

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

## Problem

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

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

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

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

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

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

### **Discord with the “open court” principle**

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

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

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

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

### **Potentially Reducing the Pool of Panel Members**

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

## **Proposal**

21. The Executive Committee considered a staff proposal to amend Rule 4-30 in its current form to address the problems identified above. The Law Society of Ontario (LSO) processes provides an example of how this might work.
22. The LSO does not have any formal legislation or rules pertaining to conditional admissions. Where a consent resolution is desired in disciplinary hearings, LSO Tribunal counsel have applied the common law “amplified public interest test”, as set out in *R. v. Anthony-Cook*, 2016 SCC 43.<sup>3</sup> This process differs from the current Rule 4-30 process, as any admissions are not conditional on acceptance.
23. Under the “joint submission” model, the law society and the respondent submit a joint statement of facts and make a joint submission as to the appropriate disciplinary action. The hearing panel accepts the joint submission or denies it and substitutes its own decision. Substitution is not done lightly. Hearing panels only order a different disciplinary action if the joint submission “would bring the administration of justice into disrepute or is otherwise contrary to the public interest”: *Anthony-Cook*, para. 32. This would occur if the joint submission “is so markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the [...] system”: *Anthony-Cook*, para. 33.

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

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

## Recommendation

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

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

# LAW SOCIETY RULES

## RULE 1 – DEFINITIONS

### Definitions

**1** In these rules, unless the context indicates otherwise:

**“discipline violation”** means any of the following:

- (a) professional misconduct;
- (b) conduct unbecoming the profession;
- (c) a breach of the Act or these rules;
- (d) incompetent performance of duties undertaken by a lawyer in the capacity of a lawyer;
- (e) conduct that would constitute professional misconduct, conduct unbecoming the profession or a contravention of the Act or these rules if done by a lawyer;

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

- (g) an admission accepted by the Discipline Committee under Rule 4-29 *[Conditional admissions]*;
- (h) an admission accepted and ~~consent to~~ disciplinary action accepted-imposed by a hearing panel under Rule 4-30 *[~~Conditional a~~Admission and consent to disciplinary action]*;

## PART 4 – DISCIPLINE

### Conditional admissions

- 4-29** (1) A respondent may, at least 14 days before the date set for a hearing under this part, tender to the Discipline Committee a conditional admission of a discipline violation.
- (2) The chair of the Discipline Committee may waive the 14-day time limit in subrule (1).
- (3) The Discipline Committee may, in its discretion,
- (a) accept the conditional admission,
  - (b) accept the conditional admission subject to any undertaking that the Committee requires the respondent to give in order to protect the public interest, or
  - (c) reject the conditional admission.

## LAW SOCIETY RULES

- (4) If the Discipline Committee accepts a conditional admission tendered under this rule,
  - (a) those parts of the citation to which the conditional admission applies are resolved,
  - (b) the Executive Director must
    - (i) record the respondent's admission on the respondent's professional conduct record, and
    - (ii) notify the respondent and the complainant of the disposition, and
  - (c) subject to solicitor and client privilege and confidentiality, the Executive Director may disclose the reasons for the Committee's decision.
- (5) A respondent who undertakes under this rule not to practise law is a person who has ceased to be a member of the Society as a result of disciplinary proceedings under section 15 (3) [*Authority to practise law*].

### **Conditional admission and consent to disciplinary action**

- 4-30** (1) ~~A Discipline counsel and the~~ respondent may, ~~at least 14 days before the date set for a hearing under this part, tender to the Discipline Committee jointly submit to the hearing panel an agreed statement of facts and the respondent's~~ a conditional admission of a discipline violation and ~~the respondent's~~ consent to a specified disciplinary action.
- (2) ~~to (4) [rescinded] — The chair of the Discipline Committee may waive the 14 day limit in subrule (1).~~
- ~~(3) The Discipline Committee may, in its discretion, accept or reject a conditional admission and proposed disciplinary action.~~
- ~~(4) If the Discipline Committee accepts the conditional admission and proposed disciplinary action, it must instruct discipline counsel to recommend its acceptance to the hearing panel.~~
- (5) If the panel accepts the agreed statement of fact and the respondent's ~~proposed disciplinary action it must~~ admission of a discipline violation
- (a) ~~instruct the Executive Director to record the lawyer's admission on~~ forms part of the lawyer's respondent's professional conduct record,
  - (b) the panel must find that the respondent has committed the discipline violation and impose ~~the disciplinary action that the respondent has proposed,~~ and
  - (c) the Executive Director must notify the respondent and the complainant of the disposition.



## LAW SOCIETY RULES

- (6) The panel must not impose disciplinary action under subrule (5) (b) that is different from the specified disciplinary action consented to by the respondent unless
- (a) the respondent and discipline counsel have been given the opportunity to make submissions respecting the disciplinary action to be substituted, and
- (b) imposing the specified disciplinary action consented to by the respondent would be contrary to the public interest in the administration of justice.
- (7) An admission of conduct tendered in good faith by a lawyer during negotiation that does not result in a joint submission under subrule (1) is not admissible in a hearing of the citation.

### Rejection of admissions

**4-31** (1) A conditional admission tendered under Rule 4-29 [*Conditional admissions*] must not be used against the respondent in any proceeding under this part or Part 5 [*Hearings and ~~appeals~~Appeals*] unless the admission is accepted by the Discipline Committee.

(2) ~~An conditional~~ admission tendered under Rule 4-30 [~~*Conditional admission and consent to disciplinary action*~~] must not be used against the respondent in any proceeding under this part or Part 5 [*Hearings and Appeals*] unless

- (a) ~~the admission is accepted by the Discipline Committee, and~~
- (b) ~~the hearing panel accepts the admission and imposes proposed disciplinary action is accepted by a hearing panel.~~

(3) ~~to (5) If a panel rejects the respondent's proposed disciplinary action tendered in accordance with Rule 4-30 [*Conditional admission and consent to disciplinary action*], it must advise the chair of the Discipline Committee of its decision and proceed no further with the hearing of the citation[rescinded]~~

- (4) ~~On receipt of a notification under subrule (3), the chair of the Discipline Committee must instruct discipline counsel to proceed to set a date for the hearing of the citation.~~

- (5) ~~When a panel rejects a proposed disciplinary action tendered in accordance with Rule 4-30 [*Conditional admission and consent to disciplinary action*], no member of that panel is permitted to sit on the panel that subsequently hears the citation.~~

# LAW SOCIETY RULES

## Preliminary matters

- 4-41** (3) Despite subrule (1), before the hearing begins, the panel may receive and consider.
- (d) ~~a the respondent's conditional~~ admission of a discipline violation and consent to a specified disciplinary action ~~tendered-submitted jointly~~ by discipline counsel and the respondent ~~and accepted by the Discipline Committee~~ under Rule 4-30 [Admission and c~~Consent to disciplinary action~~], and

## Disciplinary action

- 4-44** (1) Following a determination under Rule 4-43 [*Submissions and determination*] adverse to the respondent, the panel must
- (d) prepare a written record, with reasons, of its action taken under ~~subrule~~ paragraph (b) and any action taken under ~~paragraph~~subrule (c),
- (2) ~~If a panel gives reasons orally for its decision under Rule 4-43 (2) (a) [*Submissions and determination*], the A~~ panel may proceed under subrule (1) before written reasons are prepared under Rule 4-43 (2) (b)-
- (a) if the panel gives reasons orally for its decision under Rule 4-43 (2) (a) [*Submissions and determination*], or
- (b) when the panel accepts an admission jointly submitted by discipline counsel and the respondent under Rule 4-30 [*Admission and consent to disciplinary action*].

## Publication of disciplinary action

- 4-48** (1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of any decision, reasons and action taken
- (g) when a lawyer or former lawyer is suspended or disbarred under Rule 4-52 [*Conviction*], ~~or~~
- (h) when an admission is accepted under Rule 4-29 [*Conditional admissions*], or
- (i) when an admission is accepted and disciplinary action is imposed under Rule 4-30 [~~Conditional a~~Admission and consent to disciplinary action].
- (2) The Executive Director may publish and circulate to the profession a summary of any decision, reasons and action taken not enumerated in subrule (1), other than
- (a) a decision not to accept an an conditional admission under Rule 4-29 [*Conditional admissions*] or 4-30 [~~Conditional A~~admission and consent to disciplinary action], or

# LAW SOCIETY RULES

## PART 5 – HEARINGS AND APPEALS

### Hearing panels

- 5-2 (2) A panel may consist of one Benchers who is a lawyer if
- (b) the hearing is to consider ~~an conditional~~ admission under Rule 4-30  
~~[Conditional Admission and consent to disciplinary action],~~

## SCHEDULE 4 – TARIFF FOR HEARING AND REVIEW COSTS

[Rule 5-11 *Costs of hearings*]

Item no.	Description	Number of units
<b>Hearings under Rule 4-30</b> <del>[Conditional Admission and consent to disciplinary action]</del>		
25.	Complete hearing, based on the following factors: (a) complexity of matter; (b) number and nature of allegations; and (c) the time at which respondent <del>elected</del> <u>agreed</u> to make <del>conditional</del> <u>an</u> admission relative to scheduled hearing and amount of pre-hearing preparation required.	\$1,000 to \$3,500

# LAW SOCIETY RULES

## RULE 1 – DEFINITIONS

### Definitions

**1** In these rules, unless the context indicates otherwise:

**“discipline violation”** means any of the following:

- (a) professional misconduct;
- (b) conduct unbecoming the profession;
- (c) a breach of the Act or these rules;
- (d) incompetent performance of duties undertaken by a lawyer in the capacity of a lawyer;
- (e) conduct that would constitute professional misconduct, conduct unbecoming the profession or a contravention of the Act or these rules if done by a lawyer;

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

- (g) an admission accepted by the Discipline Committee under Rule 4-29 *[Conditional admissions]*;
- (h) an admission accepted and disciplinary action imposed by a hearing panel under Rule 4-30 *[Admission and consent to disciplinary action]*;

## PART 4 – DISCIPLINE

### Conditional admissions

- 4-29** (1) A respondent may, at least 14 days before the date set for a hearing under this part, tender to the Discipline Committee a conditional admission of a discipline violation.
- (2) The chair of the Discipline Committee may waive the 14-day time limit in subrule (1).
- (3) The Discipline Committee may, in its discretion,
- (a) accept the conditional admission,
  - (b) accept the conditional admission subject to any undertaking that the Committee requires the respondent to give in order to protect the public interest, or
  - (c) reject the conditional admission.

## LAW SOCIETY RULES

- (4) If the Discipline Committee accepts a conditional admission tendered under this rule,
  - (a) those parts of the citation to which the conditional admission applies are resolved,
  - (b) the Executive Director must
    - (i) record the respondent's admission on the respondent's professional conduct record, and
    - (ii) notify the respondent and the complainant of the disposition, and
  - (c) subject to solicitor and client privilege and confidentiality, the Executive Director may disclose the reasons for the Committee's decision.
- (5) A respondent who undertakes under this rule not to practise law is a person who has ceased to be a member of the Society as a result of disciplinary proceedings under section 15 (3) [*Authority to practise law*].

### Admission and consent to disciplinary action

- 4-30** (1) Discipline counsel and the respondent may jointly submit to the hearing panel an agreed statement of facts and the respondent's admission of a discipline violation and consent to a specified disciplinary action.
- (2) to (4) [rescinded]
- (5) If the panel accepts the agreed statement of fact and the respondent's admission of a discipline violation
  - (a) the admission forms part of the respondent's professional conduct record,
  - (b) the panel must find that the respondent has committed the discipline violation and impose disciplinary action, and
  - (c) the Executive Director must notify the respondent and the complainant of the disposition.
- (6) The panel must not impose disciplinary action under subrule (5) (b) that is different from the specified disciplinary action consented to by the respondent unless
  - (a) the respondent and discipline counsel have been given the opportunity to make submissions respecting the disciplinary action to be substituted, and
  - (b) imposing the specified disciplinary action consented to by the respondent would be contrary to the public interest in the administration of justice.
- (7) An admission of conduct tendered in good faith by a lawyer during negotiation that does not result in a joint submission under subrule (1) is not admissible in a hearing of the citation.

## LAW SOCIETY RULES

### Rejection of admissions

- 4-31** (1) A conditional admission tendered under Rule 4-29 [*Conditional admissions*] must not be used against the respondent in any proceeding under this part or Part 5 [*Hearings and Appeals*] unless the admission is accepted by the Discipline Committee.
- (2) An admission tendered under Rule 4-30 [*Admission and consent to disciplinary action*] must not be used against the respondent in any proceeding under this part or Part 5 [*Hearings and Appeals*] unless the hearing panel accepts the admission and imposes disciplinary action.
- (3) to (5) [rescinded]

### Preliminary matters

- 4-41** (3) Despite subrule (1), before the hearing begins, the panel may receive and consider.
- (d) the respondent's admission of a discipline violation and consent to a specified disciplinary action submitted jointly by discipline counsel and the respondent under Rule 4-30 [*Admission and consent to disciplinary action*], and

### Disciplinary action

- 4-44** (1) Following a determination under Rule 4-43 [*Submissions and determination*] adverse to the respondent, the panel must
- (d) prepare a written record, with reasons, of its action taken under paragraph (b) and any action taken under paragraph (c),
- (2) A panel may proceed under subrule (1) before written reasons are prepared under Rule 4-43 (2) (b)
- (a) if the panel gives reasons orally for its decision under Rule 4-43 (2) (a) [*Submissions and determination*], or
- (b) when the panel accepts an admission jointly submitted by discipline counsel and the respondent under Rule 4-30 [*Admission and consent to disciplinary action*].

### Publication of disciplinary action

- 4-48** (1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of any decision, reasons and action taken
- (g) when a lawyer or former lawyer is suspended or disbarred under Rule 4-52 [*Conviction*],
- (h) when an admission is accepted under Rule 4-29 [*Conditional admissions*], or

## LAW SOCIETY RULES

- (i) when an admission is accepted and disciplinary action is imposed under Rule 4-30 *[Admission and consent to disciplinary action]*.
- (2) The Executive Director may publish and circulate to the profession a summary of any decision, reasons and action taken not enumerated in subrule (1), other than
  - (a) a decision not to accept an admission under Rule 4-29 *[Conditional admissions]* or 4-30 *[Admission and consent to disciplinary action]*, or

### PART 5 – HEARINGS AND APPEALS

#### Hearing panels

- 5-2** (2) A panel may consist of one Benchers who is a lawyer if
- (b) the hearing is to consider an admission under Rule 4-30 *[Admission and consent to disciplinary action]*,

### SCHEDULE 4 – TARIFF FOR HEARING AND REVIEW COSTS

[Rule 5-11 *[Costs of hearings]*]

Item no.	Description	Number of units
<b>Hearings under Rule 4-30 <i>[Admission and consent to disciplinary action]</i></b>		
25.	Complete hearing, based on the following factors: <ul style="list-style-type: none"> <li>(a) complexity of matter;</li> <li>(b) number and nature of allegations; and</li> <li>(c) the time at which respondent agreed to make an admission relative to scheduled hearing and amount of pre-hearing preparation required.</li> </ul>	\$1,000 to \$3,500

## ADMISSION AND CONSENT TO DISCIPLINARY ACTION

### SUGGESTED RESOLUTION:

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

1. *Rule 1, definition of “professional conduct record” paragraph (h) is rescinded and the following substituted:*

(h) an admission accepted and disciplinary action imposed by a hearing panel under Rule 4-30 [*Admission and consent to disciplinary action*];.

2. *Rule 4-30 is rescinded and the following substituted:*

#### **Admission and consent to disciplinary action**

**4-30** (1) Discipline counsel and the respondent may jointly submit to the hearing panel an agreed statement of facts and the respondent’s admission of a discipline violation and consent to a specified disciplinary action.

(5) If the panel accepts the agreed statement of facts and the respondent’s admission of a discipline violation

(a) the admission forms part of the respondent’s professional conduct record,

(b) the panel must find that the respondent has committed the discipline violation and impose disciplinary action, and

(c) the Executive Director must notify the respondent and the complainant of the disposition.

(6) The panel must not impose disciplinary action under subrule (5) (b) that is different from the specified disciplinary action consented to by the respondent unless

(a) the respondent and discipline counsel have been given the opportunity to make submissions respecting the disciplinary action to be substituted, and

(b) imposing the specified disciplinary action consented to by the respondent would be contrary to the public interest in the administration of justice.

(7) An admission of conduct tendered in good faith by a lawyer during negotiation that does not result in a joint submission under subrule (1) is not admissible in a hearing of the citation..



3. ***Rule 4-31 (2) to (5) is rescinded and the following substituted:***

- (2) An admission tendered under Rule 4-30 [*Admission and consent to disciplinary action*] must not be used against the respondent in any proceeding under this part or Part 5 unless the hearing panel accepts the admission and imposes disciplinary action..

4. ***Rule 4-41 (3) (d) is rescinded and the following substituted:***

- (d) the respondent's admission of a discipline violation and consent to a specified disciplinary action submitted jointly by discipline counsel and the respondent under Rule 4-30 [*Admission and consent to disciplinary action*], and

5. ***Rule 4-44 is amended as follows:***

- (a) ***in subrule (1) (d) by striking "taken under subrule" where it occurs and substituting "taken under paragraph"; and***
- (b) ***subrule (2) is rescinded and the following substituted:***

- (2) A panel may proceed under subrule (1) before written reasons are prepared under Rule 4-43 (2) (b)
  - (a) if the panel gives reasons orally for its decision under Rule 4-43 (2) (a) [*Submissions and determination*], or
  - (b) when the panel accepts an admission jointly submitted by discipline counsel and the respondent under Rule 4-30 [*Admission and consent to disciplinary action*]..

6. ***Rule 4-48 is amended as follows:***

- (a) ***subrule (1) (g) and (h) is rescinded and the following substituted:***
  - (g) when a lawyer or former lawyer is suspended or disbarred under Rule 4-52 [*Conviction*],
  - (h) when an admission is accepted under Rule 4-29 [*Conditional admissions*], or
  - (i) when an admission is accepted and disciplinary action is imposed under Rule 4-30 [*Admission and consent to disciplinary action*].

- 3 -

- (b) *in subrule (2) (a) by striking “accept a conditional admission” and substituting “accept an admission”.*
7. *Rule 5-2 (2) (b) is amended by striking “to consider a conditional admission” and substituting “to consider an admission”.*
8. *Schedule 4, item 25 (c) is amended by striking “respondent elected to make conditional admission” and substituting “respondent agreed to make an admission”.*

**REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT**



# Memo

To: Benchers  
From: Jeffrey G. Hoskins, QC for Act and Rules Committee  
Date: February 2, 2021  
Subject: **Rule 2-74(4)(b) – Review of failed standing**

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1. Last year, the Benchers adopted changes to Rule 2-74 to allow the Executive Director to consider applications for review of PLTC failures, rather than the Credentials Committee. Unfortunately, one consequential amendment that should have been made at the time was missed.
2. While the rule was amended to give the Executive Director authority to decide on an application to reconsider failed standing in PLTC, subrule (4)(b) still reads as follows:
  - (4) An articulated student applying for a review under this rule must state the following in the application:
    - (b) any grounds, based on the student's past performance, that would justify the Credentials Committee granting opportunities for further remedial work;
3. The phrase "the Credentials Committee granting" is now out of place, since only the Executive Director currently can grant a student an opportunity to do remedial work. The Act and Rules Committee is of the view that that the phrase is extraneous and recommends that it be deleted altogether.
4. Paragraph (b) would then read:
  - (b) any grounds, based on the student's past performance, that would justify opportunities for further remedial work;
5. I attach a redlined draft showing the change and a suggested resolution, which the Committee recommends to the Benchers for adoption.

Attachments: draft  
resolution

# LAW SOCIETY RULES

## PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

### Division 2 – Admission and Reinstatement

#### Admission program

#### Review of failed standing

- 2-74** (1) Subject to subrule (2), an articulated student who has failed the training course may apply in writing to the Executive Director for a review of the student's failed standing, not more than 21 days after the date on which the Executive Director issued the transcript under Rule 2-72 (5) [*Training course*].
- (2) An articulated student may not apply under subrule (1) if the student has failed in 3 attempts to pass the training course, including any of the following:
- (a) the original attempt;
  - (b) a further attempt to pass examinations, assignments or assessments;
  - (c) any attempt to meet a requirement under subrule (7).
- (3) The Executive Director may consider an application for review received after the period specified in subrule (1).
- (4) An articulated student applying for a review under this rule must state the following in the application:
- (a) any compassionate grounds, supported by medical or other evidence, that relate to the student's performance in the training course;
  - (b) any grounds, based on the student's past performance, that would justify ~~the~~ ~~Credentials Committee granting~~ opportunities for further remedial work;
  - (c) the relief that the student seeks under subrule (7).

**REVIEW OF PLTC FAILURE****SUGGESTED RESOLUTION:**

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

*Rule 2-74 (4) (b) is rescinded and the following substituted:*

- (b) any grounds, based on the student's past performance, that would justify opportunities for further remedial work,;

**REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT**



# Memo

To: Benchers  
From: Jeffrey G. Hoskins, QC for Act and Rules Committee  
Date: February 2, 2021  
Subject: **Rule 2-57, Principals**

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1. At the December meeting the Benchers approved the recommendation of the Credentials Committee to amend Rule 2-57 to extend the period for calculating the minimum practice experience required to qualify to act as a principal to an articulated student from 5 out of the previous 6 years to 5 out of the previous 8 years
2. I attach for your reference the report of the Credentials Committee that was before the Benchers at that time.
3. I also attach a draft of proposed amendments, in redlined and clean versions, recommended by the Act and Rules Committee to give effect to the Benchers' policy decision. Also attached is suggested resolution to effect the changes.

## Drafting notes

4. Subrule (2)(c) is added both to ensure that a principal has a minimum of recent practice experience and to convey to potential principals and others that the Law Society's concern in imposing recent practice requirements is to ensure currency in practice experience, as it is in the rules governing lawyers returning to practice after an absence.
5. Similarly, subrule (2.1)(b) is amended to ensure that a potential principal has at least some practice experience for a minimum of two of the past five years before engaging an articulated student. This amendment replaces "24 months" with "3 years", rather than "36 months" for consistency with the other references in the rule to "5 years" and "8 years". The rule refers to "aggregate time", so a calculation of time in months or even smaller units would still be mandated and expected.

Attachments: report from Credentials Committee  
drafts, resolution

The Law Society  
*of British Columbia*



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

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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 of 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.

# LAW SOCIETY RULES

## PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

### Division 2 – Admission and Reinstatement

#### Admission program

#### Principals

**2-57** (1) A lawyer engaged in full-time practice may act as principal to no more than 2 articled students at one time.

(1.1) In this rule

“**associated activities**” includes practice management, administration and promotion and voluntary activities associated with the practice of law;

“**full-time practice**” means the practice of law and associated activities for an average of more than 25 hours per week;

“**part-time practice**” means the practice of law and associated activities for an average of not more than 25 hours per week.

(2) Subject to subrules (2.1) and (3), to qualify to act as a principal, a lawyer must ~~have~~

(a) ~~have~~ engaged in full-time practice in Canada for 5 of the ~~6-8~~ years immediately preceding the articling start date, ~~and~~

(b) ~~have~~ spent at least 3 years of the time engaged in the practice of law required under paragraph (a) in

(i) British Columbia, or

(ii) Yukon while the lawyer was a member of the Society, ~~and~~

~~(c) not be prohibited from practising law under Rule 2-89 [Returning to practice after an absence].~~

(2.1) When a lawyer engages in part-time practice

(a) any period in which the lawyer engages in part-time practice is counted at a rate of 50 per cent for the purposes of the full-time practice requirement in subrule (2), and

(b) the ~~68~~-year period in subrule (2) (a) is extended by the length of the period in which the lawyer engages in part-time practice, provided that the aggregate time in which the lawyer ~~is-was~~ not engaged in the practice of law does not exceed ~~24 months~~ 3 years in the ~~entire period~~ 5 years immediately preceding the articling start date.

## **LAW SOCIETY RULES**

- (3) In exceptional circumstances, the Credentials Committee may allow a lawyer
  - (a) who does not qualify under subrule (2) to act as principal to an articulated student, or
  - (b) to act as principal to more than 2 articulated students at one time, despite subrule (1).

# LAW SOCIETY RULES

## PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

### Division 2 – Admission and Reinstatement

#### Admission program

#### Principals

**2-57** (1) A lawyer engaged in full-time practice may act as principal to no more than 2 articulated students at one time.

(1.1) In this rule

“**associated activities**” includes practice management, administration and promotion and voluntary activities associated with the practice of law;

“**full-time practice**” means the practice of law and associated activities for an average of more than 25 hours per week;

“**part-time practice**” means the practice of law and associated activities for an average of not more than 25 hours per week.

(2) Subject to subrules (2.1) and (3), to qualify to act as a principal, a lawyer must

- (a) have engaged in full-time practice in Canada for 5 of the 8 years immediately preceding the articling start date,
- (b) have spent at least 3 years of the time engaged in the practice of law required under paragraph (a) in
  - (i) British Columbia, or
  - (ii) Yukon while the lawyer was a member of the Society, and
- (c) not be prohibited from practising law under Rule 2-89 [*Returning to practice after an absence*].

(2.1) When a lawyer engages in part-time practice

- (a) any period in which the lawyer engages in part-time practice is counted at a rate of 50 per cent for the purposes of the full-time practice requirement in subrule (2), and
- (b) the 8-year period in subrule (2) (a) is extended by the length of the period in which the lawyer engages in part-time practice, provided that the aggregate time in which the lawyer was not engaged in the practice of law does not exceed 3 years in the 5 years immediately preceding the articling start date.

## **LAW SOCIETY RULES**

- (3) In exceptional circumstances, the Credentials Committee may allow a lawyer
  - (a) who does not qualify under subrule (2) to act as principal to an articulated student,  
or
  - (b) to act as principal to more than 2 articulated students at one time, despite subrule (1).

## PRINCIPALS

### SUGGESTED RESOLUTION:

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

*Rule 2-57 is amended as follows:*

- (a) *Subrule (2) is rescinded and the following substituted:*
  - (2) Subject to subrules (2.1) and (3), to qualify to act as a principal, a lawyer must
    - (a) have engaged in full-time practice in Canada for 5 of the 8 years immediately preceding the articling start date,
    - (b) have spent at least 3 years of the time engaged in the practice of law required under paragraph (a) in
      - (i) British Columbia, or
      - (ii) Yukon while the lawyer was a member of the Society, and
    - (c) not be prohibited from practising law under Rule 2-89 [*Returning to practice after an absence*].;
- (b) *Subrule (2.1) (b) is rescinded and the following substituted:*
  - (b) the 8-year period in subrule (2) (a) is extended by the length of the period in which the lawyer engages in part-time practice, provided that the aggregate time in which the lawyer was not engaged in the practice of law does not exceed 3 years in the 5 years immediately preceding the articling start date..

**REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT**



# Memo

To: Benchers  
From: Ethics Committee  
Date: January 28, 2021  
Subject: Recommendation to Amend Code of Professional Conduct Rule 3.4-4 Commentary [4]: Correcting Reference to Screening Measures

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## Discussion

At its January 28, 2021 meeting, the Ethics Committee resolved to recommend an amendment to Commentary [4] of rule 3.4-4 of the *Code of Professional Conduct for British Columbia* (the “BC Code”). The proposed amendment would remove a reference to a previously deleted provision and replace it with the correct reference to the intended guidance elsewhere in the BC Code.

Rule 3.4-4 is in the portion of the *BC Code* that addresses conflicts of interest. Commentary [4] under that rule currently states:

[4] In cases of concurrent representation lawyers should employ, as applicable, the reasonable screening measures to ensure non-disclosure of confidential information within the firm set out in the rule on conflicts from transfer between law firms (see rule 3.4-26).

Unfortunately, rule 3.4-26 has been rescinded and is no longer in the *BC Code*. Fortunately, the referenced list of reasonable screening measures is preserved in the *BC Code*, but is now located in rule 3.4-20 Commentary [3].

As the list of reasonable screening measures is still in the *BC Code*, correcting the numerical provision reference in rule 3.4-4 Commentary [4] is simple. However, in addition to the numerical reference error, the existing Commentary [4] text describes the list as: “... set out in the rule on conflicts from transfer between law firms ....” As mentioned above, the present location of the list is actually in the Commentary to the rule on law firm disqualification.

Accordingly the Committee recommends amending rule 3.4-4 Commentary [4] as follows:

**[4]** In cases of concurrent representation lawyers should employ, as applicable, the reasonable screening measures to ensure non-disclosure of confidential information within the firm set out in the Commentary to the rule on law firm disqualification ~~rule on conflicts from transfer between law firms~~ (see rule ~~3.4-26~~ 3.4-20 Commentary [3]).

## Resolution

To correct an obvious error in BC Code rule 3.4-4 Commentary [4], the Ethics Committee recommends that the Benchers adopt the proposed amendment in accordance with the following resolution:

*Be it resolved that rule 3.4-4 Commentary [4] 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.*





## **CEO's Report to the Benchers**

March 5, 2021

Prepared for:     Benchers

Prepared by:     Don Avison

## **1. COVID-19 Update**

When Benchers meet – virtually – on March 5, 2021 it will also be one year since the last in-person meeting.

While we have effectively deployed the available technology to maintain the business of the Law Society, we all look forward to the opportunity for more direct engagement. Given the current pace of the vaccination program it appears likely that we will not see a return to in-person meetings until at least September.

At the March meeting I will provide a summary of actions we have taken to improve workplace safety.

## **2. Allan Castle – New Strategic Coordinator at Access to Justice B.C.**

Allan Castle, who will be known to many for his work on the B.C. Justice Summits, has been appointed as the Strategic Coordinator at A2JBC, replacing Jane Morley Q.C. who has been at the heart of that organization since its inception. Congratulations and thanks go to Jane for her dedicated work with the organization, and for everything she has done to raise the profile of access to justice and the implications for those with unmet legal needs.

## **3. Plans for the Federation Conference and the Law Society Retreat in October**

While it may be optimistic, planning is underway for both of these events which are scheduled for mid-October.

If travel is permitted and prudent, the Federation event will take place in Saskatoon, Saskatchewan. If not, the Federation will likely hold a virtual event. There have been discussions about a theme that would focus on the challenges facing new entrants to the profession and how to best support them.

The Law Society Retreat is scheduled for October 14 to 17 and more information will be provided in the coming months regarding the proposed content.

#### **4. Updating our Enterprise Risk Management Plan**

Work is currently underway to update the Law Society's Enterprise Risk Management Plan and Benchers can expect to see the draft plan later this spring.

Consultants with MNP have been retained to assist in developing the plan and the process is underway to develop a draft plan for consideration by the Finance and Audit Committee.

#### **5. Law Society Webinar on Articling in a Pandemic**

On February 24, I was one of the panelists in this webinar, coordinated by Courthouse Libraries BC that saw participation from about 65 students from Allard, TRU and from UVic. This was the second session I have participated in (there have been four) and I found it quite worthwhile. Other participants included representatives of the Criminal Defence Advocacy Society, a recently called lawyer in a solo practice and a current articled student nearing the end of her term.

The questions from students included the challenges of articling in the context of a pandemic, concerns about the availability of articling positions, what the Law Society is doing to help students find positions, what action is being taken to encourage under-represented students to enter and remain in the practice of law and what supports are available for articling students who may be faced with ethical concerns.

#### **6. Innovation Sandbox Summary**

At the meeting I will provide a detailed overview of the proponents and the types of proposals received during the first four months of our experience with the innovation sandbox. To date, we have received 32 proposals and the Executive Committee has considered 16 as of their February meeting. The 16 proposals not yet considered are being followed up on by staff in anticipation of presenting them for consideration by the Committee at upcoming meetings.

Don Avison, QC  
Executive Director/Chief Executive Officer

The Law Society  
*of British Columbia*



## 2020 Year-end Financial Report

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December 31, 2020

Prepared for: Finance & Audit Committee - February 18, 2021  
Benchers - March 5, 2021

Prepared by: The Finance Department

## **Year-end Financial Report - December 31, 2020**

Attached are the financial results for the 2020 fiscal year.

### **General Fund**

#### **General Fund (excluding capital and TAF)**

To the end of the year, the General Fund operations resulted in a positive variance to budget. This positive result is mainly due to lower operating expenses attributable to COVID-19 measures partially offset by lower revenues than projected for the year.

#### **Revenue**

Revenue for the period was \$28.8 million, \$532,000 (2%) under budget, primarily due to lower D&O insurance recoveries as these recoveries were received in 2019, but budgeted in 2020.

Practice fees were slightly ahead of budget, with the number of full-time equivalent practicing lawyers at 12,893 compared to a budget of 12,846. We had initially projected that lawyer numbers would be below budget with the impact of COVID-19 but there has not been a decrease in the number of practicing lawyers to date.

PLTC student revenues are slightly behind budget with 621 students for the year versus a budget of 638.

Interest income was behind budget by \$126,000 due to reduced interest rates.

#### **Operating Expenses**

Operating expenses for the period were \$26.3 million, \$3.0 million (10%) below budget.

As noted on the attached financial highlights, there have been savings in a number of areas due to the impact of COVID-19 on travel, meetings and events, along with actions taken by management to reduce costs in the year, anticipating reduced revenues. There were lower compensation costs with targeted increased vacancies and reductions in other compensation costs. In addition, there were lower travel and meeting costs with no in-person meetings, and no Bencher or staff travel after March 2020. In addition, there were savings in general office expenses and building costs related to having a lower number of staff and tenants in the building during the year. This is slightly offset by an increase in external counsel fees.

#### **TAF-related Revenue and Expenses**

TAF revenue for the period was \$3.9 million, ahead of budget by \$182,000 (4.9%) due to an unexpected surge in the real estate market in the last half of the year. Trust assurance program costs of \$3.1 million are below budget by \$515,000 (14.3%) with lower travel and reduced compensation costs.

In accordance with TAF reserve policy, \$700,000 of the TAF net assets were transferred to LIF in 2020.

### **Special Compensation Fund**

The Special Compensation Fund continues to incur costs related to court document production for past files. In 2017, \$1.0 million in SCF net assets was transferred to LIF and the remaining net assets were expected to cover any ongoing costs. As this work has continued longer than expected, the Special Compensation Fund net assets have been expended, and the fund has been wound up. Any remaining costs to finish the court document production fees will be funded through LIF.

### **Lawyers Indemnity Fund**

LIF revenues were \$16.5 million to date, compared to a budget of \$16.0 million. LIF operating expenses were \$6.5 million compared to a budget of \$7.8 million, with savings related to compensation costs, external fees, and stop loss insurance costs.

At the end of the year, the market value of the LIF long term investment portfolio was \$213.2 million. Although the markets were down significantly over the first part of the year, the portfolio had recovered by the end of the year. The investment returns before management fees for the period were 7.5% compared to a bench mark of 9.6%. The underperformance to the benchmark is due to performance issues with one of the balanced managers, who is no longer in place, plus lower returns in real estate and mortgage funds.

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 temporarily to Fiera Capital, and the infrastructure funds will move to the two new infrastructure fund managers over the next 12 - 18 months.

Summary of Financial Highlights (\$000's)

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

	Actual	Budget	\$ Var	% Var
<b>Revenue (excluding capital)</b>				
Practice fees	22,977	22,833	144	1%
PLTC and enrolment fees	1,819	1,874	(55)	-3%
Electronic filing revenue	746	700	46	7%
Interest income	457	583	(126)	-22%
Credentials & membership services	753	678	75	11%
Fines, penalties & recoveries	356	315	41	13%
Insurance Recoveries	47	580	(533)	-92%
Other revenue	248	182	66	36%
Other cost recoveries	64	172	(108)	-63%
Building revenue & tenant cost recoveries	1,296	1,378	(82)	-6%
	28,763	29,295	(532)	-2%
<b>Expenses (excluding depreciation)*</b>	26,308	29,295	2,987	10%
	2,455	-	2,455	

**\*Summary of Expense Variances**

Compensation savings	1307
Meetings & Travel savings inc. Benchers and staff travel, events and retreat	949
Building savings	349
HR consulting and recruiting savings	206
General Office savings	153
External Counsel Fees overage	(221)
Other miscellaneous savings	244
	2987

**Trust Assurance Program Actual**

	2020 Actual	2020 Budget	Variance	% Var
<b>TAF Revenue</b>	3,862	3,680	182	4.9%
Trust Assurance Department	3,079	3,594	515	14.3%
<b>Net Trust Assurance Program</b>	783	86	697	

**2020 Lawyers Indemnity Fund Long Term Investments - December 2020**

Performance	7.5%
Benchmark Performance	9.6%

**The Law Society of British Columbia**  
**General Fund**  
**Results for the 12 Months ended December 31, 2020**  
(\$000's)

	2020 Actual	2020 Budget	\$ Variance	%
<b>REVENUE</b>				
Practice fees (1)	25,246	25,094	152	1%
PLTC and enrolment fees	1,819	1,874	(55)	-3%
Electronic filing revenue	746	700	46	7%
Interest income	457	583	(126)	-22%
Credentials and membership services	753	678	75	11%
Fines, penalties and recoveries	356	315	41	13%
Program Cost Recoveries	50	162	(112)	-69%
Insurance Recoveries	47	580	(533)	-92%
Other revenue	248	182	66	36%
Other Cost Recoveries	14	10	4	40%
Building Revenue & Recoveries	1,296	1,378	(82)	-6%
<b>Total Revenues</b>	<b>31,032</b>	<b>31,556</b>	<b>(524)</b>	<b>-1.7%</b>
<b>EXPENSES</b>				
<b>Benchers Governance and Events</b>				
Benchers Governance	361	917	556	61%
Board Relations and Events	248	272	24	9%
	609	1,189	580	49%
<b>Corporate Services</b>				
General Office	592	750	158	21%
CEO Department	784	889	105	12%
Finance	1,063	1,128	65	6%
Human Resources	534	701	167	24%
Records Management	240	285	45	16%
	3,213	3,753	540	14%
<b>Education and Practice</b>				
Licensing and Admissions	1,681	1,924	243	13%
PLTC and Education	2,521	2,660	139	5%
Practice Standards	375	651	276	42%
Practice Support	202	82	(120)	-146%
	4,779	5,317	538	10%
<b>Communications and Information Services</b>				
Communications	424	542	118	22%
Information Services	1,585	1,675	90	5%
	2,009	2,217	208	9%
<b>Policy and Legal Services</b>				
Policy and Legal Services	1,480	1,498	18	1%
Tribunal and Legislative Counsel	528	628	100	16%
External Litigation & Interventions	62	25	(37)	-148%
Unauthorized Practice	301	361	60	17%
	2,371	2,512	141	6%
<b>Regulation</b>				
CLO Department	974	858	(116)	-14%
Intake & Early Assessment	2,107	2,135	28	1%
Discipline	2,765	2,826	61	2%
Forensic Accounting	869	1,242	373	30%
Investigations, Monitoring & Enforcement	3,316	3,407	91	3%
Custodianships	1,646	1,840	194	11%
	11,677	12,308	631	5%
<b>Building Occupancy Costs</b>	1,650	1,999	349	17%
<b>Depreciation</b>	1,057	1,159	102	9%
<b>Total Expenses</b>	<b>27,365</b>	<b>30,454</b>	<b>3,089</b>	<b>10.1%</b>
<b>General Fund Results before Trust Assurance Program</b>	<b>3,667</b>	<b>1,102</b>	<b>2,565</b>	
<b>Trust Assurance Program (TAP)</b>				
TAF revenues	3,862	3,680	182	4.9%
TAP expenses	3,079	3,594	515	14.3%
<b>TAP Results</b>	<b>783</b>	<b>86</b>	<b>697</b>	
<b>General Fund Results including Trust Assurance Program</b>	<b>4,450</b>	<b>1,188</b>	<b>3,262</b>	
<b>Contribution from Trust Assurance Program to Lawyers Indemnity Fund</b>	<b>700</b>			
<b>General Fund Results</b>	<b>3,750</b>			

(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 December 31, 2020**  
(\$000's)

	Dec 31 2020	Dec 31 2019
<b>Assets</b>		
<b>Current assets</b>		
Cash and cash equivalents	24,920	37,681
Unclaimed trust funds	2,144	2,215
Accounts receivable and prepaid expenses	1,871	1,927
Due from Lawyers Indemnity Fund	9,015	6,024
	<u>37,950</u>	<u>47,845</u>
<b>Property, plant and equipment</b>		
Cambie Street property	11,735	12,213
Other - net	1,816	1,736
	<u>13,551</u>	<u>13,950</u>
<b>Long Term Loan</b>	452	365
	<u><b>51,953</b></u>	<u><b>62,160</b></u>
<b>Liabilities</b>		
<b>Current liabilities</b>		
Accounts payable and accrued liabilities	5,407	7,080
Liability for unclaimed trust funds	2,144	2,215
Current portion of building loan payable	500	500
Deferred revenue	13,719	25,431
Deposits	86	87
	<u>21,856</u>	<u>35,313</u>
<b>Building loan payable</b>	100	600
	<u>21,956</u>	<u>35,913</u>
<b>Net assets</b>		
Capital Allocation	3,693	3,000
Unrestricted Net Assets	26,304	23,247
	<u>29,997</u>	<u>26,247</u>
	<u><b>51,953</b></u>	<u><b>62,160</b></u>

**The Law Society of British Columbia**  
**General Fund - Statement of Changes in Net Assets**  
**Results for the 12 Months ended December 31, 2020**  
(\$000's)

	<i>Invested in Capital</i> \$	<i>Working Capital</i> \$	<i>Unrestricted Net Assets</i> \$	<i>Trust Assurance</i> \$	<i>Capital Allocation</i> \$	<i>2020 Total</i> \$	<i>Year ended 2019 Total</i> \$
<b>Net assets - At Beginning of Year</b>	12,849	8,409	21,258	1,989	3,000	26,247	23,663
Net (deficiency) excess of revenue over expense for the period	(1,474)	2,873	1,399	783	2,269	4,450	2,584
Contribution to LIF				(700)		(700)	
Repayment of building loan	500	-	500	-	(500)	-	-
Purchase of capital assets:							
LSBC Operations	601	-	601	-	(601)	-	-
845 Cambie	475	-	475	-	(475)	-	-
<b>Net assets - At End of Period</b>	<b>12,951</b>	<b>11,282</b>	<b>24,233</b>	<b>2,072</b>	<b>3,693</b>	<b>29,997</b>	<b>26,247</b>

**The Law Society of British Columbia**  
**Special Compensation Fund**  
**Results for the 12 Months ended December 31, 2020**  
(\$000's)

	<b>2020</b>	<b>2020</b>	<b>\$</b>
	<b>Actual</b>	<b>Budget</b>	<b>Variance</b>
<b>Revenue</b>			
Annual assessment	-	-	-
Recoveries	-	-	-
Loan interest expense	-	-	-
Other income	-	-	-
<b>Total Revenues</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Expenses</b>			
Claims and costs, net of recoveries	59	-	59
Administrative and general costs	-	-	-
<b>Total Expenses</b>	<b>59</b>	<b>-</b>	<b>59</b>
<b>Special Compensation Fund Results</b>	<b>(59)</b>	<b>-</b>	<b>(59)</b>

**Special Compensation Fund - Balance Sheet**  
**As at December 31, 2020**  
(\$000's)

	2020 Actual	2019 Actual
<b>Assets</b>		
<b>Current assets</b>		
Due from Lawyers Indemnity Fund	-	59
	<u>-</u>	<u>59</u>
	<u><u>-</u></u>	<u><u>59</u></u>
<b>Liabilities</b>		
<b>Current liabilities</b>		
Accounts payable and accrued liabilities		
Deferred revenue		
Due to Lawyers Indemnity Fund	-	-
	<u>-</u>	<u>-</u>
<b>Net assets</b>		
Unrestricted net assets	-	59
	<u>-</u>	<u>59</u>
	<u><u>-</u></u>	<u><u>59</u></u>

***The Law Society of British Columbia***  
***Special Compensation Fund - Statement of Changes in Net Assets***  
***Results for the 12 Months ended December 31, 2020***  
(\$000's)

	<b>2020</b>	<b>Year ended 2019</b>
	\$	\$
<b>Unrestricted Net assets - At Beginning of Year</b>	59	159
Net excess of revenue over expense for the period	(59)	-
	<hr/>	<hr/>
<b>Unrestricted Net assets - At End of Period</b>	<b>0</b>	<b>59</b>

**The Law Society of British Columbia**  
**Lawyers Indemnity Fund**  
**Results for the 12 Months ended December 31, 2020**  
(\$000's)

	<b>2020 Actual</b>	<b>2020 Budget</b>	<b>\$ Variance</b>	<b>% Variance</b>
<b>Revenue</b>				
Annual assessment	16,517	16,021	496	3%
Investment income	14,890	9,090	5,800	64%
Other income	44	65	(21)	-32%
<b>Total Revenues</b>	<b>31,451</b>	<b>25,176</b>	<b>6,275</b>	<b>24.9%</b>
<b>Expenses</b>				
<b>Indemnity Expense</b>				
Provision for settlement of claims	11,369	17,790	6,421	36%
Salaries and benefits	3,073	3,622	549	15%
Contribution to program and administrative costs of General Fund	1,229	1,470	241	16%
Provision for ULAE	362	-	(362)	0%
Insurance	380	453	73	16%
Office	764	1,319	555	42%
Actuaries, consultants and investment brokers' fees	1,087	943	(144)	-15%
Premium taxes	11	8	(3)	-38%
Income taxes	5	5	-	0%
	<b>18,280</b>	<b>25,610</b>	<b>7,330</b>	<b>29%</b>
<b>Loss Prevention Expense</b>				
Contribution to co-sponsored program costs of General Fund	658	882	224	25%
<b>Total Expenses</b>	<b>18,938</b>	<b>26,492</b>	<b>7,554</b>	<b>28.5%</b>
<b>Lawyers Indemnity Fund Results before Contributions</b>	<b>12,513</b>	<b>(1,316)</b>	<b>(1,279)</b>	
<b>Contribution from Trust Assurance Program</b>	<b>700</b>			
<b>Lawyers Indemnity Fund Results</b>	<b>13,213</b>			

**The Law Society of British Columbia**  
**Lawyers Indemnity Fund - Balance Sheet**  
**As at December 31, 2020**  
(\$000's)

	Dec 31 2020	Dec 31 2019
<b>Assets</b>		
Cash and cash equivalents	3,545	8,474
Accounts receivable and prepaid expenses	496	358
Current portion General Fund building loan	500	500
LT Portion of Building Loan	100	600
Investments	213,188	191,282
	<u><b>217,829</b></u>	<u><b>201,214</b></u>
<b>Liabilities</b>		
Accounts payable and accrued liabilities	1,981	2,141
Deferred revenue	8,371	8,144
Due to General Fund	9,015	6,024
Due to Special Compensation Fund		58
Provision for claims	75,105	75,066
Provision for ULAE	12,222	11,860
	<u><b>106,695</b></u>	<u><b>103,293</b></u>
<b>Net assets</b>		
Internally restricted net assets	17,500	17,500
Unrestricted net assets	93,634	80,421
	<u><b>111,134</b></u>	<u><b>97,921</b></u>
	<u><b>217,829</b></u>	<u><b>201,214</b></u>

***The Law Society of British Columbia***  
***Lawyers Indemnity Fund - Statement of Changes in Net Assets***  
***Results for the 12 Months ended December 31, 2020***

	Unrestricted	Internally Restricted	2020 Total	2019 Total
	\$	\$	\$	\$
<b>Net assets - At Beginning of Year</b>	80,421	17,500	97,921	76,921
Net excess of revenue over expense for the period	13,213	-	13,213	21,000
<b>Net assets - At End of Period</b>	<b>93,634</b>	<b>17,500</b>	<b>111,134</b>	<b>97,921</b>





To Benchers  
From Finance and Audit Committee  
Date February 18, 2021  
Subject **Benchers Approval of the 2020 Audited Financial Statements**

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The annual audited financial statements are to be reviewed and recommended for approval by the Finance and Audit Committee, and approved by the Benchers.

Attached are the 2020 audited financial statements for the General and Special Compensation Funds, and the consolidated Lawyers Indemnity Fund. These statements were reviewed by the Finance and Audit Committee at their February 18, 2021 meeting.

The Finance and Audit Committee recommends the following resolution for approval by the Benchers:

*BE IT RESOLVED to approve the Law Society's 2020 Combined Financial Statements for the General & Special Compensation Funds, and the 2020 Consolidated Financial Statements for the Lawyers Indemnity Fund.*

**The Law Society of British  
Columbia - General and Special  
Compensation Funds**

Fund Financial Statements  
**December 31, 2020**

DRAFT

# The Law Society of British Columbia - General and Special Compensation Funds

## Fund Statement of Financial Position

As at December 31, 2020

	2020		2019	
	General Fund \$	Special Compensation Fund \$	Total \$	Total \$
<b>Assets</b>				
<b>Current assets</b>				
Cash (note 2)	24,919,747	-	24,919,747	37,681,219
Unclaimed trust funds (note 2)	2,144,416	-	2,144,416	2,215,017
Accounts receivable and prepaid expenses (note 3)	1,871,173	-	1,871,173	1,926,518
Due from Lawyers Indemnity Fund (note 9)	9,015,334	-	9,015,334	6,082,021
	37,950,670	-	37,950,670	47,904,775
<b>Non-current assets</b>				
Cambie Street property – net (note 4 (a))	11,735,274	-	11,735,274	12,212,617
Other property and equipment – net (note 4 (b))	1,296,660	-	1,296,660	1,236,982
Intangible assets – net (note 4 (c))	518,908	-	518,908	498,909
Long-term loan receivable (note 5)	451,725	-	451,725	365,469
	51,953,237	-	51,953,237	62,218,752
<b>Liabilities</b>				
<b>Current liabilities</b>				
Accounts payable and accrued liabilities (note 6)	5,436,275	-	5,436,275	7,110,499
Liability for unclaimed trust funds (note 2)	2,144,416	-	2,144,416	2,215,017
Current portion of building loan payable (note 8)	500,000	-	500,000	500,000
Deferred revenue (note 2)	13,718,957	-	13,718,957	25,431,367
Deposits	55,805	-	55,805	56,005
	21,855,453	-	21,855,453	35,312,888
<b>Building loan payable</b> (notes 8 and 9)	100,000	-	100,000	600,000
	21,955,453	-	21,955,453	35,912,888
<b>Net assets</b>				
Unrestricted (note 7)	29,997,784	-	29,997,784	26,305,864
	51,953,237	-	51,953,237	62,218,752

**Commitments** (note 14)

### Approved by

\_\_\_\_\_ President \_\_\_\_\_ Chair of Finance and Audit Committee

The accompanying notes are an integral part of these fund financial statements.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT  
NOT TO BE FURTHER COMMUNICATED**

# The Law Society of British Columbia - General and Special Compensation Funds

Fund Statement of Changes in Net Assets

For the year ended December 31, 2020

	2020		2019
	General Fund - Unrestricted \$	Special Compensation Fund - Unrestricted \$	Total \$
<b>Net assets – Beginning of year</b>	26,247,367	58,497	26,305,864
Net excess (deficiency) of revenue over expenses for the year	3,750,417	(58,497)	3,691,920
<b>Net assets – End of year</b> (note 7)	29,997,784	-	29,997,784

The accompanying notes are an integral part of these fund financial statements.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT  
NOT TO BE FURTHER COMMUNICATED**

# The Law Society of British Columbia - General and Special Compensation Funds

## Fund Statement of Revenue and Expenses

For the year ended December 31, 2020

	2020		2019	
	General Fund \$	Special Compensation Fund \$	Total \$	Total \$
<b>Revenue</b>				
Practice fees	25,246,037	-	25,246,037	24,212,553
Trust administration fees	3,861,523	-	3,861,523	3,470,785
Enrolment fees	1,753,250	-	1,753,250	1,882,422
E-filing revenue	745,535	-	745,535	766,429
Fines, penalties and recoveries	405,820	-	405,820	403,378
Application fees	698,950	-	698,950	616,188
Investment income (note 9)	435,256	308	435,564	633,151
Other income	451,251	-	451,251	1,118,950
Rental revenue	1,039,101	-	1,039,101	1,043,490
	<b>34,636,723</b>	<b>308</b>	<b>34,637,031</b>	<b>34,147,346</b>
<b>Expenses</b>				
Benchers governance and support	792,357	-	792,357	1,693,301
Communications and publications	483,299	-	483,299	700,378
Information services	1,843,335	-	1,843,335	1,675,716
Education and practice				
Credentials	822,638	-	822,638	839,436
Member services	902,279	-	902,279	902,539
Membership assistance programs	65,778	-	65,778	78,360
Practice advice	788,089	-	788,089	665,597
Practice standards	384,526	-	384,526	644,107
Professional legal training course and education	2,586,170	-	2,586,170	2,728,522
General and administrative				
Finance	1,247,656	-	1,247,656	1,191,870
Amortization of other property and equipment	521,923	-	521,923	446,470
General administration	1,609,234	-	1,609,234	1,283,743
Human resources	624,260	-	624,260	646,979
Records management and library	281,327	-	281,327	247,591
Policy and legal services				
Policy, ethics and tribunal counsel	2,016,002	-	2,016,002	1,985,329
External litigation and interventions	339,300	-	339,300	110,678
Unauthorized practice	301,098	-	301,098	275,274
Regulation				
Custodianship costs	1,645,616	-	1,645,616	1,617,402
Discipline	2,764,687	-	2,764,687	2,892,588
Professional conduct – intake and investigations	6,398,057	-	6,398,057	5,597,760
Forensic accounting	869,320	-	869,320	818,794
Trust assurance	2,777,950	-	2,777,950	2,975,003
Occupancy costs, net of tenant recoveries	2,006,925	-	2,006,925	2,475,257
Carried forward	32,071,826	-	32,071,826	32,492,694

The accompanying notes are an integral part of these fund financial statements.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT  
NOT TO BE FURTHER COMMUNICATED**

# The Law Society of British Columbia - General and Special Compensation Funds

Fund Statement of Revenue and Expenses ...continued

For the year ended December 31, 2020

	2020		2019	
	General Fund \$	Special Compensation Fund \$	Total \$	Total \$
Brought forward	32,071,826	-	32,071,826	32,492,694
Special Compensation Fund				
General and administrative costs	-	58,805	58,805	103,608
	32,071,826	58,805	32,130,631	32,596,302
<b>Costs recovered Lawyers Indemnity Funds</b>				
Co-sponsored program costs	(657,991)	-	(657,991)	(701,657)
Program and administrative costs	(1,227,529)	-	(1,227,529)	(1,390,398)
	(1,885,520)	-	(1,885,520)	(2,092,055)
	30,186,306	58,805	30,245,111	30,504,247
<b>Net excess (deficiency) of revenue over expenses for the year before contribution to Lawyers Indemnity Fund</b>	4,450,417	(58,497)	4,391,920	3,643,099
<b>Contribution from Trust Assurance Net Assets to Lawyers Indemnity Fund</b>				
(note 7)	700,000	-	700,000	1,160,000
<b>Net excess (deficiency) of revenue over expenses for the year</b>	3,750,417	(58,497)	3,691,920	2,483,099

The accompanying notes are an integral part of these fund financial statements.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT  
NOT TO BE FURTHER COMMUNICATED**

# The Law Society of British Columbia - General and Special Compensation Funds

## Fund Statement of Cash Flows

For the year ended December 31, 2020

	2020		2019
	General Fund \$	Special Compensation Fund \$	Total \$
<b>Cash provided by (used in)</b>			
<b>Operating activities</b>			
Net excess (deficiency) of revenue over expenses for the year	3,750,417	(58,497)	3,691,920
Items not affecting cash			
Amortization of Cambie Street building and tenant improvements	951,913	-	951,913
Amortization of other property and equipment	367,431	-	367,431
Amortization of intangible assets	154,492	-	154,492
Amortization of deferred capital contributions	-	-	-
Reclass and adjustment of capital assets	-	-	-
Loss on disposal of other property and equipment	111	-	111
Contributions to Lawyers Indemnity Fund	700,000	-	700,000
	5,924,364	(58,497)	5,865,867
Decrease (increase) in current assets			
Unclaimed trust funds	70,601	-	70,601
Accounts receivable and prepaid expenses	55,347	-	55,347
(Decrease) increase in current liabilities			
Accounts payable and accrued liabilities	(1,674,224)	-	(1,674,224)
Liability for unclaimed trust funds	(70,601)	-	(70,601)
Deferred revenue	(11,712,410)	-	(11,712,410)
Courthouse Libraries BC Fund	-	-	-
Deposits	(200)	-	(200)
	(7,407,123)	(58,497)	(7,465,620)
<b>Financing activities</b>			
Decrease in building loan payable	(500,000)	-	(500,000)
Interfund transfers	(3,691,810)	58,497	(3,633,313)
	(4,191,810)	58,497	(4,133,313)
<b>Investing activities</b>			
Purchase of property and equipment	(901,790)	-	(901,790)
Purchase of intangible assets	(174,492)	-	(174,492)
Long-term loan receivable	(86,257)	-	(86,257)
	(1,162,539)	-	(1,162,539)
<b>(Decrease) increase in cash</b>	(12,761,472)	-	(12,761,472)
<b>Cash – Beginning of year</b>	37,681,219	-	37,681,219
<b>Cash – End of year</b>	24,919,747	-	24,919,747
<b>Supplementary cash flow information</b>			
Interest paid	10,410	-	10,410
Interest income received	456,601	-	456,601

The accompanying notes are an integral part of these fund financial statements.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT  
NOT TO BE FURTHER COMMUNICATED**

# **The Law Society of British Columbia - General and Special Compensation Funds**

## **Notes to Fund Financial Statements**

**For the year ended December 31, 2020**

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### **1 Nature of operations**

The Law Society of British Columbia (the Society) regulates the legal profession in British Columbia, protecting public interest in the administration of justice by setting and enforcing standards of professional conduct for lawyers. The Society is a not-for-profit organization.

The funds covered in these fund financial statements are for the Society's General Fund and Special Compensation Fund with the following activities:

The General Fund comprises the assets, liabilities, net assets, revenue and expenses of the operations of the Society other than those designated to the statutory Special Compensation Fund and the Lawyers Indemnity Fund (including its wholly owned subsidiary, LSBC Captive Insurance Company Ltd.). This includes collecting revenues associated with practice fees, trust administration fees, enrollment fees, and various other administrative fees and penalties used to cover the costs of the Society to regulate the legal profession and educate and enforce adherence of its members to act within the rules of professional conduct for lawyers.

The Special Compensation Fund was maintained by the Society pursuant to Section 31 of the Legal Profession Act (the LPA). The Special Compensation Fund claims were recorded net of recoveries from the Special Compensation Fund's insurers when they were approved for payment by the Special Compensation Fund Committee as delegated by the Benchers and the settlement has been accepted by the claimant. The LPA provides that the assets of the Special Compensation Fund are not subject to process of seizure or attachment by creditors of the Society.

Effective January 1, 2013, the Legal Profession Amendment Act, 2012 repealed Section 31 of the LPA. The legislation was changed pursuant to Section 50 of the Legal Profession Amendment Act, 2012 (SBC 2012, C16), to initiate the transfer of unused reserves that remain within the Special Compensation Fund, after all recoveries are received and expenses and claims are paid, to be used in the Lawyers Indemnity Fund. Additionally, Section 23 of the LPA was amended to remove the requirement that practising lawyers pay the Special Compensation Fund assessment. Accordingly, for 2020, the per member Special Compensation Fund assessment remained at \$nil (2019 – \$nil) and at December 31, 2020 the Special Compensation Fund was wound up.

Effective May 1, 2004, Part B to the B.C. Lawyers' Compulsory Professional Liability Insurance Policy provides defined insurance coverage for dishonest appropriation of money or other property entrusted to and received by insured lawyers in their capacity as barrister and solicitor and in relation to the provision of professional services. Part B (Trust Protection Coverage) is recorded in the Lawyers Indemnity Fund.

The Society's Lawyers Indemnity Fund is presented separately in consolidated fund financial statements, including the Society's wholly owned LSBC Captive Insurance Company Ltd. (the Captive). The Lawyers Indemnity Fund underwrites the program by which errors and omissions insurance is provided to members of the Society. The Lawyers Indemnity Fund's consolidated fund financial statements provide further detail on the various insurance coverages provided.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT NOT TO BE FURTHER COMMUNICATED**



# **The Law Society of British Columbia - General and Special Compensation Funds**

## **Notes to Fund Financial Statements**

**For the year ended December 31, 2020**

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The COVID-19 global pandemic has resulted in measures taken by various governments, including emergency measures to combat the spread of the virus, which has affected economic activity. The Law Society has taken a number of measures to monitor and mitigate the effects of COVID-19, such as implementing safety and health measures, effectively transforming the operations to a virtual workplace, and providing support to lawyers who may be significantly affected by the pandemic through targeted initiatives. At this stage, there has not been a decline in fees or assessment revenues as a result of the pandemic and we will continue to monitor this closely.

## **2 Significant accounting policies**

These fund financial statements are prepared in accordance with Canadian accounting standards for not-for-profit organizations (ASNPO) as issued by the Canadian Accounting Standards Board.

### **Allocated administrative expenses**

Administrative expenses are recovered by the General Fund from both the Lawyers Indemnity and Special Compensation Funds. Recoveries are based on amounts derived either on percentage of use, the proportion of the Lawyers Indemnity Fund's staff compared to the Society's total staff costs, or a set amount.

### **Cash**

Cash comprises cash on hand and held with a Canadian chartered bank.

### **Claims liabilities**

In accordance with the absolute discretionary nature of the Special Compensation Fund arrangements, the claims become a liability only when approved by the Special Compensation Fund Committee and accepted by the claimant.

### **Deferred capital contributions**

Contributions restricted for the purchase of capital assets are deferred and recognized as revenue on the same basis as the capital assets are amortized.

### **Fair value of financial instruments**

The fair values of cash, accounts receivable and accounts payable and accrued liabilities correspond to their carrying values due to their short-term nature.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT NOT TO BE  
FURTHER COMMUNICATED**

# The Law Society of British Columbia - General and Special Compensation Funds

## Notes to Fund Financial Statements

For the year ended December 31, 2020

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### Intangible assets

Intangible assets comprise computer software. Software is recorded at cost and amortized on a straight-line basis at 10% – 20% per annum.

### Property and equipment

Property and equipment, including leasehold improvements, are recorded at cost less accumulated amortization. The Society provides for amortization on a straight-line basis as follows:

Buildings	40 years from purchase date
Building – Envelope	7% per annum
Computer hardware	10% - 20% per annum
Furniture and fixtures	10% per annum
Leasehold improvements	10% per annum
Building improvements and equipment	10% per annum
Tenant improvements	over lease period

The Society recognizes a full year's amortization expense in the year of acquisition, with the exception of building improvements and equipment and leasehold improvements which are amortized from their date of completion.

### Revenue recognition

The Society follows the deferral method of accounting for practice fees and assessments. Fees and assessments are billed and received in advance on a calendar-year basis. Accordingly, fees and assessments for the next fiscal year received prior to December 31 have been recorded as deferred revenue for financial reporting purposes and will be recognized as revenue in the next calendar year. The Society began billing practice fees in two instalments beginning with the collection of the 2021 practice fees. At year-end only one practice fee instalment has been collected. Revenue will be recognized on a monthly basis as earned. Surplus funds are invested in a high interest savings account.

All other revenues are recognized when earned if the amount to be received can be reasonably estimated and collection is reasonably assured.

### Unclaimed trust funds

The General Fund recognizes unclaimed trust funds as an asset as well as a corresponding liability on the fund statement of financial position. If these funds are claimed, the owner of the trust fund balance is entitled to the principal balance plus interest at prime rate minus 2%. Due to the historically low collection rates on these balances, the General Fund does not accrue for any interest owing on the trust fund amounts held and recognizes income earned from the unclaimed trust fund investments in the fund statement of revenue and expenses. Unclaimed funds outstanding for more than five years are transferred to the Law Foundation of British Columbia.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT NOT TO BE FURTHER COMMUNICATED**

# The Law Society of British Columbia - General and Special Compensation Funds

## Notes to Fund Financial Statements

For the year ended December 31, 2020

### Use of estimates

The preparation of fund financial statements in accordance with ASNPO requires management to make estimates and assumptions that affect the reported amounts of certain assets and liabilities and disclosure of contingent assets and liabilities at the date of the fund financial statements and the reported amounts of certain revenues and expenses during the year. Actual results could differ from these estimates.

The Society continues to monitor these estimates; however, they have not to date been significantly impacted by the economic uncertainty related to COVID 19.

### 3 Accounts receivable and prepaid expenses

Accounts receivable are presented net of the allowance for doubtful accounts of \$1,224,884 (2019 – \$1,106,645).

### 4 Property, equipment and intangible assets

#### a) 845 Cambie Street property

	2020		
	Cost \$	Accumulated amortization \$	Net \$
Land	4,189,450	-	4,189,450
Buildings and equipment	16,825,340	10,623,021	6,202,319
Leasehold improvements	7,813,202	6,549,917	1,263,285
Tenant improvements	826,619	746,399	80,220
	<u>29,654,611</u>	<u>17,919,337</u>	<u>11,735,274</u>
	2019		
	Cost \$	Accumulated amortization \$	Net \$
Land	4,189,450	-	4,189,450
Buildings and equipment	16,706,689	10,094,290	6,612,399
Leasehold improvements	7,639,317	6,331,689	1,307,628
Tenant improvements	826,619	723,479	103,140
	<u>29,362,075</u>	<u>17,149,458</u>	<u>12,212,617</u>

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT NOT TO BE FURTHER COMMUNICATED**

# The Law Society of British Columbia - General and Special Compensation Funds

Notes to Fund Financial Statements

For the year ended December 31, 2020

b) Other property and equipment

	2020		
	Cost \$	Accumulated amortization \$	Net \$
Furniture and fixtures	2,970,009	2,259,380	710,629
Computer hardware	1,908,049	1,325,775	582,274
Artwork and collectibles	49,161	45,405	3,756
Law libraries – at nominal value	1	-	1
	<u>4,927,220</u>	<u>3,630,560</u>	<u>1,296,660</u>
	2019		
	Cost \$	Accumulated amortization \$	Net \$
Furniture and fixtures	2,920,478	2,118,195	802,283
Computer hardware	1,536,233	1,105,291	430,942
Artwork and collectibles	49,161	45,405	3,756
Law libraries – at nominal value	1	-	1
	<u>4,505,873</u>	<u>3,268,891</u>	<u>1,236,982</u>

c) Intangible assets

	2020		
	Cost \$	Accumulated amortization \$	Net \$
Computer software	2,259,177	1,762,415	496,762
Website development	110,733	88,587	22,146
	<u>2,369,910</u>	<u>1,851,002</u>	<u>518,908</u>

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT NOT TO BE  
FURTHER COMMUNICATED**

# The Law Society of British Columbia - General and Special Compensation Funds

## Notes to Fund Financial Statements

For the year ended December 31, 2020

	2019		
	Cost \$	Accumulated amortization \$	Net \$
Computer software	2,084,686	1,630,070	454,616
Website development	110,733	66,440	44,293
	2,195,419	1,696,510	498,909

### 5 Long-term loan receivable

In 2018, the Society agreed to participate with other Canadian law societies in a collective loan of \$2 million to the Canadian Legal Information Institute (CanLII), a wholly owned subsidiary of the Federation of Law Societies of Canada (FLSC). The loan is part of the financing for the purchase by CanLII of LexUM, a corporation providing support services to CanLII for the implementation of CanLII's legal information website. The Law Society's participation in this loan was \$276,390 in 2018. Part of the Society's support of this transaction are annual repayable capital payments of \$89,079 in 2019, \$86,257 in 2020 and \$83,435 in 2021 to fund three annual balance of sale payments to the vendors of Lexum as provided in a Subordination and Commitment Agreement. Amounts advanced under this agreement earn interest at the same rate as the amount advanced under the collective loan. In 2020, the Society's total participation in this loan is \$451,725 (2019 – \$365,469). The loan has a five-year term with an annual interest rate of 4.74%, payable annually. The interest earned in the current year relating to the loan was \$21,345.

### 6 Accounts payable and accrued liabilities

Accounts payable and accrued liabilities include the following amounts collected on behalf of external organizations, but not yet paid:

	2020 \$	2019 \$
Advocate	193,193	331,487
Courthouse Libraries BC	1,707,199	2,775,015
Lawyers Assistance Program	423,184	791,161
Pro bono	191,603	355,733
CanLII	236,493	484,063
Federation of Law Societies	197,519	365,915

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT NOT TO BE FURTHER COMMUNICATED**

# The Law Society of British Columbia - General and Special Compensation Funds

## Notes to Fund Financial Statements

For the year ended December 31, 2020

### 7 Unrestricted net assets

The General Fund unrestricted net assets include \$3,693,174 (2019 – \$3,000,219), which has been allocated to capital expenditures in accordance with the capital plan.

The General Fund unrestricted net assets also include \$2,072,034 (2019 – \$1,989,501), which has been appropriated for future trust assurance expenses. During the year, \$3,861,523 (2019 – \$3,470,785) in trust administration fee revenue was collected and \$3,078,990 (2019 – \$3,276,744) in trust assurance expenses were incurred.

Pursuant to the reserve policy, \$700,000 of the net assets related to trust assurance was transferred to the Lawyers Indemnity Fund for Part B coverage 2020 (2019 – \$1,160,000).

The remaining General Fund net assets represent \$12,950,843 (2019 – \$12,848,509) invested in capital assets, and working capital of \$11,281,734 (2019 – \$8,409,140), combining for a total unrestricted net asset amount of \$24,232,577 (2019 – \$21,257,649).

	(in 000s)					2020	2019
	Invested in capital \$	Working capital \$	Unrestricted \$	Trust assurance \$	Capital plan \$	Total \$	Total \$
Net assets – Beginning of year	12,849	8,409	21,258	1,989	3,000	26,247	23,663
Net (deficiency) excess of revenue over expenses before contribution to Lawyers Indemnity Fund	(1,474)	2,873	1,399	783	2,269	4,451	3,744
Contribution to Lawyers Indemnity Fund	-	-	-	(700)	-	( 700)	(1,160)
Repayment of building loan payable (note 8)	500	-	500	-	(500)	-	-
Purchase of capital assets (note 4)	1,076	-	1,076	-	(1,076)	-	-
<b>Net assets – End of year</b>	<b>12,951</b>	<b>11,282</b>	<b>24,233</b>	<b>2,072</b>	<b>3,693</b>	<b>29,998</b>	<b>26,247</b>

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT NOT TO BE  
FURTHER COMMUNICATED**

# The Law Society of British Columbia - General and Special Compensation Funds

## Notes to Fund Financial Statements

For the year ended December 31, 2020

### 8 Building loan payable

In 1992, the Benchers authorized the borrowing of monies from the Lawyers Indemnity Fund to fund the capital development of the Society's buildings at 845 Cambie Street, Vancouver, BC. The loan is secured by the buildings, has no fixed repayment terms and bears interest calculated monthly at a rate equal to the stated monthly bond yield to maturity earned on the Lawyers Indemnity Fund investment portfolio. Interest paid on the building loan is disclosed in note 9. The outstanding building loan balance at year-end is \$600,000 (2019 – \$1.1 million). It is the intention of the Benchers to require the General Fund to repay a minimum of \$500,000 of the principal each year. During 2020, principal of \$500,000 (2019 – \$500,000) was repaid. The loan will be paid off in total by 2022.

	2020 %	2019 %
Weighted average rate of interest	1.36	2.29

### 9 Interfund transactions

The operations of the General, Lawyers Indemnity and Special Compensation Funds are controlled by the management of the Society. Balances between the funds generally arise from transactions of an operating nature and are recorded at the exchange amount at the dates of the transactions. Surplus funds are kept in the General Fund bank accounts or invested in a high interest savings account.

Amounts due to and from the Lawyers Indemnity Fund are due on demand and have no fixed terms of repayment. The Lawyers Indemnity Fund has authorized a loan facility of up to \$1 million, of which \$nil has been drawn down at December 31, 2020 (2019 – \$nil), to the General Fund to fund capital expenditures in accordance with the capital plan. The Lawyers Indemnity Fund has also authorized a loan facility of up to \$8 million, to the Special Compensation Fund, which is not expected to be used as the Special Compensation Fund is in the process of being wound up. As of December 31, 2020, no amounts have been drawn down from the facilities (2019 – \$nil).

Monthly interest on the Lawyers Indemnity Fund's net loan position with the General and Special Compensation Funds is earned at the rate equal to the stated monthly bond yield to maturity earned on the Lawyers Indemnity Fund investment portfolio. The average bond yield for 2020 was 1.36% (2019 – 2.29%). The General Fund's net loan position includes the General Fund's building loan and other operating balances with the Lawyers Indemnity Fund. The net loan position fluctuates during the year as amounts are transferred between the General Fund, the Special Compensation Fund and the Lawyers Indemnity Fund to finance ongoing operations.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT NOT TO BE FURTHER COMMUNICATED**

# **The Law Society of British Columbia - General and Special Compensation Funds**

## **Notes to Fund Financial Statements**

**For the year ended December 31, 2020**

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During 2020, interest of \$10,410 was paid on the building loan and interest revenue of \$202,807 was received from General Fund cash balances held by the Lawyers Indemnity Fund and \$308 was received from Special Compensation Fund cash balances held by the Lawyers Indemnity Fund for a net interest income of \$192,705.

During 2019, interest of \$25,780 was paid on the building loan and interest revenue of \$264,139 was received from General Fund cash balances held by the Lawyers Indemnity Fund and \$2,755 was received from Special Compensation Fund cash balances held by the Lawyers Indemnity Fund for a net interest income of \$241,114.

Other interfund transactions are disclosed elsewhere in these fund financial statements.

### **10 Special Compensation Fund claims and program changes**

#### **Outstanding claims**

Pursuant to section 31(6) of the Legal Profession Act, the payment of Special Compensation Fund claims is at the discretion of the Special Compensation Fund Committee as delegated by the Benchers. As at December 31, 2020, there were no remaining claims for which statutory declarations had been received. All claims for which statutory declarations were received have been reviewed by the Special Compensation Fund Committee, and accordingly, at December 31, 2020 the Special Compensation Fund was wound up

For claims reported prior to May 1, 2004, the insurance bond provided that total claims attributable to the period in excess of \$25,000,000 were 100% reimbursed by a commercial insurer up to a maximum of \$15,000,000 for claims against one lawyer and in total, other than as noted in note 10. As set out in note 1, claims reported after May 1, 2004 are subject to Part B coverage by the Lawyers Indemnity Fund.

### **11 Related parties**

The elected Benchers include members drawn from law firms across the province. These law firms may at times be engaged by the Society in the normal course of business. During the year ended December 31, 2020, expenses of \$nil (2019 – \$28,826) recorded at the carrying amount were incurred by the General Fund during the normal course of business with these law firms.

### **12 Capital management**

The Society defines its capital as the amounts included in its unrestricted net assets. Its objective when managing capital is to safeguard its ability to continue as a going concern so that it can continue to fulfill its objectives and meet its requirements.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT NOT TO BE FURTHER COMMUNICATED**



# The Law Society of British Columbia - General and Special Compensation Funds

Notes to Fund Financial Statements

For the year ended December 31, 2020

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## 13 Financial instruments

The General and Special Compensation Funds' financial instruments consist of cash, accounts receivable and accounts payable and accrued liabilities.

The significant financial risks to which the Society is exposed are credit risk and liquidity risk.

### a) Credit risk

Cash and accounts receivable expose the Funds to credit risk.

The maximum exposure to credit risk arising from the above-noted items is \$26,169,122 (2019 – \$38,787,865). Credit risk arises from the possibility that a counterparty to an instrument fails to meet its obligations.

### b) The Society's assets mainly consist of cash and therefore are not subject to any heightened credit risk as a result of COVID-19.

### c) Liquidity risk

Liquidity risk is the risk that the Funds will not be able to meet all cash outflow requirements. Financial instruments held by the Society are limited to cash, accounts receivable and accounts payable and accrued liabilities and, therefore, bear no significant liquidity risk.

## 14 Obligations and commitments under operating leases

The Society has committed to payments under certain operating leases relating to vehicle costs. Future minimum lease payments required in each of the next three fiscal years are:

	\$
2021	5,304
2022	5,304
2023	<u>2,652</u>
Total future minimum lease payments	<u>13,260</u>

For the year ended December 31, 2020, an amount of \$5,304 representing payments under operating leases was expensed (2019 – \$6,037).

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT NOT TO BE FURTHER COMMUNICATED**

**The Law Society of British  
Columbia – Lawyers  
Indemnity Fund**

Consolidated Fund Financial Statements  
**December 31, 2020**

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**The Law Society of British Columbia – Lawyers Indemnity Fund**

## Consolidated Fund Statement of Financial Position

As at December 31, 2020

	2020 \$	2019 \$
<b>Assets</b>		
<b>Cash</b>	3,029,869	927,269
<b>Accounts receivable</b> – net of allowance (note 3)	439,339	312,371
<b>Prepaid expenses</b>	56,434	45,945
<b>Short-term investments</b> (note 5)	515,438	7,546,680
<b>Member deductibles</b>	1,270,504	1,442,764
<b>General Fund building loan</b> (note 7)	600,000	1,100,000
<b>Investments</b> (note 6)	213,187,539	191,282,480
	<u>219,099,123</u>	<u>202,657,509</u>
<b>Liabilities</b>		
<b>Accounts payable and accrued liabilities</b> (notes 4 and 8)	1,981,060	2,141,921
<b>Deferred revenue</b>	8,371,389	8,143,703
<b>Due to General Fund</b> (note 10)	9,015,334	6,023,524
<b>Due to Special Compensation Fund</b> (note 10)	-	58,496
<b>Provision for claims</b> (note 9)	76,375,620	76,509,061
<b>Provision for ULAE</b> (note 9)	12,222,000	11,860,000
	<u>107,965,4033</u>	<u>104,736,705</u>
<b>Net assets</b>		
<b>Unrestricted net assets</b>	93,633,720	80,420,804
<b>Internally restricted net assets</b> (note 11)	17,500,000	17,500,000
	<u>111,133,720</u>	<u>97,920,804</u>
	<u>219,099,123</u>	<u>202,657,509</u>
<b>Commitments</b> (note 10)		

**Approved by**

\_\_\_\_\_ President \_\_\_\_\_ Chair of Finance and Audit Committee

The accompanying notes are an integral part of these consolidated fund financial statements.

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**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT  
NOT TO BE FURTHER COMMUNICATED**

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Consolidated Fund Statement of Revenue and Expenses

**For the year ended December 31, 2020**

	2020 \$	2019 \$
<b>Revenue</b>		
Annual assessments	16,518,443	16,140,477
Investment income (note 6)	6,742,564	7,849,782
Other income	44,149	76,230
	<u>23,305,156</u>	<u>24,066,489</u>
<b>Indemnity expenses</b>		
Actuary, consultant and investment manager fees	1,043,028	839,918
Allocated office rent from General Fund	323,829	323,829
Contribution to program and administrative costs of General Fund	1,228,752	1,391,788
Insurance	379,933	394,044
Office	484,463	331,579
Premium taxes	11,084	9,056
Provision for settlement of claims (note 9)	11,369,370	12,896,115
Provision for ULAE (note 9)	362,000	1,081,000
Salaries, wages and benefits	<u>3,073,329</u>	<u>2,913,092</u>
	18,275,788	20,180,421
<b>Loss prevention expenses</b>		
Contribution to co-sponsored program costs of General Fund	<u>657,991</u>	<u>701,657</u>
	18,977,986	20,882,078
<b>Excess (deficiency) of revenue over expenses before the following</b>	4,371,377	3,184,411
<b>Fair value increase in investments</b> (note 6)	<u>8,146,950</u>	<u>16,661,358</u>
	12,518,327	19,845,769
<b>Provision for income taxes</b>	<u>5,411</u>	<u>5,630</u>
	12,512,916	19,840,139
<b>Contribution from Trust Assurance Net Assets in General Fund</b> (note 10)	<u>700,000</u>	<u>1,160,000</u>
<b>Excess of revenue over expenses for the year</b>	<u>13,212,916</u>	<u>21,000,139</u>

The accompanying notes are an integral part of these consolidated fund financial statements.

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**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT  
NOT TO BE FURTHER COMMUNICATED**

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Consolidated Fund Statement of Changes in Net Assets

**For the year ended December 31, 2020**

	<u>2020</u>		<u>2019</u>
	Unrestricted \$	Internally restricted \$	Total \$
<b>Net assets – Beginning of year</b>	80,420,804	17,500,000	97,920,804
Excess of revenue over expenses for the year	13,212,916	-	13,212,916
<b>Net assets – End of year</b>	93,633,720	17,500,000	111,133,720

The accompanying notes are an integral part of these consolidated fund financial statements.

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**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT  
NOT TO BE FURTHER COMMUNICATED**

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Consolidated Fund Statements of Cash Flow

December 31, 2020

	2020 \$	2019 \$
<b>Cash provided by (used in)</b>		
<b>Operating activities</b>		
Excess of revenue over expenses for the year	13,212,916	21,000,139
Items not affecting cash		
Unrealized gain on investments	(4,215,946)	(15,803,698)
Realized gain on disposal of investments	(3,931,005)	(857,660)
Pooled distributions from investments	(6,858,317)	(7,826,035)
Contribution from General and Special Funds	700,000	1,160,000
	(1,092,352)	(2,327,254)
(Increase) decrease in assets		
Accounts receivable	(126,969)	(18,014)
Prepaid expenses	(10,489)	(13,152)
Short-term investments	7,031,242	(155,959)
Members' share of provision for claims	172,260	(149,677)
(Decrease) increase in liabilities		
Accounts payable and accrued liabilities	(160,859)	558,024
Deferred revenue	227,686	186,092
Provision for claims	(133,442)	2,252,844
Provision for ULAE	362,000	1,081,000
	(6,930,528)	1,413,904
<b>Investing activities</b>		
Decrease in General Fund building loan	500,000	500,000
Purchase of investments	(90,663,440)	(7,587,810)
Proceeds from disposal of investments	83,763,648	7,692,106
	(6,399,792)	604,296
<b>Financing activities</b>		
Interfund transfers (note 10)	2,233,313	(11,959,695)
<b>Increase (decrease) in cash</b>	(11,097,007)	(9,941,495)
<b>Cash – Beginning of year</b>	927,269	10,868,764
<b>Cash – End of year</b>	3,029,869	927,269
<b>Supplementary cash flow information</b>		
Interest paid	203,115	250,102
Interest income received	44,750	144,697

The accompanying notes are an integral part of these consolidated fund financial statements.

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**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT  
NOT TO BE FURTHER COMMUNICATED**

# The Law Society of British Columbia – Lawyers Indemnity Fund

Notes to Consolidated Fund Financial Statements

December 31, 2020

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## 1 Nature of operations

The Law Society of British Columbia (the Society) regulates the legal profession in British Columbia, protecting public interest in the administration of justice by setting and enforcing standards of professional conduct for lawyers.

The Society's fund covered in these consolidated fund financial statements is for the Lawyers Indemnity Fund (the Fund) and the Society's only subsidiary, LSBC Captive Insurance Company (the Captive), that together comprise the Society's indemnification program.

The Society's General Fund and Special Compensation Fund are presented in separate fund financial statements.

The Fund is maintained by the Society pursuant to Section 30 of the Legal Profession Act. The Captive is considered assessable for income tax under current legislation and was wound up at December 31, 2020 and is no longer subject to regulation by the BC Financial Services Authority (BCFSA). Effective January 1, 1990, the Fund underwrites the program by which professional liability indemnity is provided to eligible members of the Society.

The COVID-19 global pandemic has resulted in measures taken by various governments, including emergency measures to combat the spread of the virus, which has affected economic activity. The Law Society has taken a number of measures to monitor and mitigate the effects of COVID-19, such as implementing safety and health measures, effectively transforming the operations to a virtual workplace, and providing support lawyers who may be significantly affected by the pandemic through targeted initiatives. At this stage, there has not been a decline in fees or assessment revenues as a result of the pandemic and we will continue to monitor this closely.

### Part A

The Society's members have limits of coverage for claims and potential claims arising from negligent acts, errors or omissions under Part A of the BC Lawyers Compulsory Professional Liability Indemnification Policy (the Policy) as follows:

	\$	\$
The Fund	995,000 or	990,000
Deductible – applicable to indemnity payments only	5,000 or	10,000
		<hr/>
Limit per error or related errors		1,000,000
		<hr/>
Annual aggregate limit for all errors per covered lawyer		2,000,000
		<hr/>

The amount of the member deductible is \$5,000 for each initial claim resulting in an indemnity payment and \$10,000 for each additional claim within a three-year reporting period resulting in an indemnity payment.

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

December 31, 2020

For the 2020 and 2019 policy years, the Society and the Captive have obtained stop-loss reinsurance in the amount of \$12 million to cover aggregate payments over \$25 million for Parts A and C of the Policy. This limit is co-indemnified 80/20 with the reinsurer paying 80% of losses over \$25 million to a maximum of \$12 million and the Fund paying 20%.

### Part B

Effective May 1, 2004, Part B of the Policy provides defined indemnity coverage for dishonest appropriation of money or other property entrusted to and received by covered lawyers in their capacity as barristers and solicitors and in relation to the provision of professional services.

For the 2020 and 2019 policy years, there is a \$300,000 per claim limit and a \$17.5 million profession-wide annual aggregate limit. The Society and the Captive have obtained insurance in the amount of \$5 million to cover a portion of the annual aggregate limit. There is no deductible payable by the member. This insurance is subject to a \$3 million group deductible and is co-insured 80/20 with the indemnified paying 80% of losses over \$3 million to a maximum of \$5 million, and the Fund paying 20%.

### Part C

Effective January 1, 2012, Part C of the Policy provides defined indemnity coverage for trust shortages suffered by covered lawyers as a result of relying on fraudulent certified cheques. Effective January 1, 2017, Part C was expanded to include coverage for certain other social engineering frauds.

For the 2020 and 2019 policy years, there is a limit of \$500,000 per claim, and per lawyer and firm annually, a profession-wide annual aggregate of \$2 million, and a deductible of 35% of the client trust fund shortage (reduced by the amount of any overdraft paid). Coverage, for relying on fraudulent certified cheques, is contingent upon compliance with the Society's client identification and verification rules.

## 2 Significant accounting policies

These consolidated fund financial statements are prepared in accordance with Canadian accounting standards for not-for-profit organizations (ASNPO) as issued by the Canadian Accounting Standards Board.

### Basis of consolidation

These consolidated fund financial statements include the accounts of the Fund and the Captive, a wholly owned subsidiary.

### Allocated administrative expenses

Administrative expenses are recovered by the General Fund of the Society from the Fund. Recoveries are based on amounts derived either on percentage of use or the proportion of the Fund's staff compared to the Society's total staff cost, or a set amount.



**The Law Society of British Columbia – Lawyers Indemnity Fund**

Notes to Consolidated Fund Financial Statements

December 31, 2020

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**Cash**

Cash comprises cash on hand and held with a Canadian chartered bank.

**Fair value of financial instruments**

The fair values of cash, accounts receivable, short-term investments and accounts payable and accrued liabilities correspond to their carrying values due to their short-term nature.

The fair values of the provision for claims correspond to their carrying values because they are discounted.

The interfund balances including the building loan receivable and other interfund transactions are recorded at their carrying amounts which approximate their exchange amounts.

**Short-term investments**

Short-term investments consist of pooled money market funds, whose investments have original maturities of less than 90 days, and the carrying amount approximates the fair value at the reporting date due to their short-term maturities.

**Investments**

The Fund's investments consist of units in pooled equity, bond, real estate and mortgage funds and are initially and subsequently measured at fair value. Changes in fair value are recognized in the consolidated fund statement of revenue and expenses in the year incurred. Transaction costs that are directly attributable to the acquisition of these investments are recognized in the consolidated fund statement of revenue and expenses in the year incurred.

**Investment income**

Investment income and pooled fund distributions are recorded on an accrual basis. Dividends are recorded on the date of record. Gains and losses realized on the disposal of investments are taken into income on the date of disposal.

**The Law Society of British Columbia – Lawyers Indemnity Fund**

Notes to Consolidated Fund Financial Statements

December 31, 2020

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**Provision for claims**

The provision for claims and unallocated loss adjustment expenses (ULAE) represent an estimate for all external costs of investigating and settling claims and potential claims reported prior to the date of the consolidated fund statement of financial position. The provision is adjusted as additional information on the estimated amounts becomes known during the course of claims settlement. All changes in estimates are expensed in the current period. The provision for unpaid claims is established according to accepted actuarial practice in Canada. It is carried on a discounted basis and therefore reflects the time value of money. To recognize the uncertainty in establishing best estimates, the Fund includes a provision for adverse deviations (PfAD).

**Revenue recognition**

The Fund follows the deferral method of accounting for annual assessments. Assessments are billed and received in advance on a calendar-year basis. Accordingly, assessments for the next fiscal year received prior to December 31 have been recorded as deferred revenue for financial reporting purposes and will be recognized as revenue in the next calendar year.

All other revenues are recognized when receivable if the amount to be received can be reasonably estimated and collection is reasonably assured.

**Use of estimates**

The preparation of financial statements in conformity with ASNPO requires management to make estimates and assumptions which affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated fund financial statements and revenues and expenses for the period reported.

The Society continues to monitor these estimates; however, they have not to date been significantly impacted by the economic uncertainty related to COVID 19.

The determination of the provision for claims and ULAE involves significant estimation. Actual results could differ from those estimates and the differences could be material.

**Financial instruments**

The Fund's financial instruments consist of cash, accounts receivable, short-term investments, investments and accounts payable and accrued liabilities.

The significant financial risks to which the Fund is exposed are credit risk, market risk, price risk, and liquidity risk.

**The Law Society of British Columbia – Lawyers Indemnity Fund**

## Notes to Consolidated Fund Financial Statements

December 31, 2020

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**Credit risk**

Cash, short-term investments, accounts receivable, members' share of provision for claims, bond pooled funds and the investment in real estate mortgage indirectly expose the Fund to credit risk.

The maximum exposure to credit risk arising from the above-noted items is \$119,144,897 (2019 – \$97,440,093).

Credit risk arises from the possibility that a counterparty to an instrument fails to meet its obligations.

The cash deposits are held only with Schedule I banks. The accounts receivable balances are spread across the broad membership base with no significant exposure to any one individual. The guidelines of the Society's statement of investment policies and procedures (SIPP) mitigate credit risk by ensuring the investments in the bond pooled funds have an adequate minimum credit rating and well-diversified portfolios. These mitigating factors have also protected the Fund against any increased credit risk associated with the COVID-19 pandemic.

**Market risk**

Market risk is the potential for loss to the Fund from changes in the value of its financial instruments due to changes in interest rates, foreign exchange rates or equity prices.

The Fund manages market risk by diversifying investments within the various asset classes and investing in pooled funds as set out in the Society's SIPP.

**Price risk**

Price risk is the risk that the fair value of the Society's investments will fluctuate due to changes in the market prices whether these changes are caused by factors specific to the individual financial instrument, its issuer, or factors affecting all similar financial instruments traded in the market. It arises primarily on pooled equity, bond, real estate and mortgage fund investments.

To manage price risk, the Society has guidelines on the diversification and weighting of investments within pooled funds that are set and monitored against the Society's SIPP.

As at December 31, 2020, if pooled fund prices increased or decreased by 10% with all other factors remaining constant, net assets would have increased or decreased by approximately \$21.3 million (2019 – \$19.1 million).

**Liquidity risk**

Liquidity risk is the risk that the Fund will not be able to meet all cash outflow requirements. At December 31, 2020, the sum of the Fund's cash, short-term investments and pooled fund investments, at fair value, which are available to settle the liabilities of the Society as they come due, exceeded the sum of the liabilities by \$108 million, or 99% (2019 – \$95 million, or 91%).

# The Law Society of British Columbia – Lawyers Indemnity Fund

Notes to Consolidated Fund Financial Statements

December 31, 2020

## 3 Accounts receivable

	2020 \$	2019 \$
Member deductibles	743,296	572,740
Allowance for doubtful accounts	(422,256)	(376,238)
GST/HST receivable	118,299	113,523
Income tax receivable	-	5
Other receivables	-	2,341
	<u>439,339</u>	<u>312,371</u>

## 4 Government remittances

The following government remittances are included in accounts payable:

	2020 \$	2019 \$
Ministry of Finance – premium tax	<u>1,241</u>	<u>9,056</u>

## 5 Short-term investments

Short-term investments comprise pooled money market funds with the following balances:

	2020 \$	2019 \$
Money market funds	<u>515,438</u>	<u>7,546,680</u>

## 6 Investments

	2020 \$	2019 \$
Investments – at fair value	<u>213,187,539</u>	<u>191,282,480</u>

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

**December 31, 2020**

2020				
	Carrying cost \$	Gross unrealized gains \$	Gross unrealized losses \$	Estimated fair value \$
Bonds				
Pooled Funds	52,308,669	549,970	-	52,858,639
Equities				
Canadian Pooled Funds	22,830,786	10,145,055	-	32,975,841
International Pooled Funds	37,336,707	29,027,437	-	66,364,144
	60,167,493	39,172,492	-	99,339,985
Real Estate & Mortgage				
Real Estate Fund	14,521,175	5,041,804	-	19,562,979
Mortgage Fund	40,983,238	442,698	-	41,425,936
	55,504,413	5,484,502	-	60,988,915
	167,980,575	45,206,964	-	213,187,539
2019				
	Carrying cost \$	Gross unrealized gains \$	Gross unrealized losses \$	Estimated fair value \$
Bonds				
Pooled Funds	51,527,919	-	(216,811)	51,311,108
Equities				
Canadian Pooled Funds	25,901,689	15,024,426	-	40,926,115
International Pooled Funds	41,394,505	21,750,850	-	63,145,355
	67,296,194	36,775,276	-	104,071,470
Real Estate & Mortgage				
Real Estate Fund	14,521,175	4,562,792	-	19,083,967
Mortgage Fund	16,988,365	-	(172,430)	16,815,935
	31,509,540	4,562,792	(172,430)	35,899,902
	150,333,653	41,338,068	(389,241)	191,282,480

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**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT  
NOT TO BE FURTHER COMMUNICATED**

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# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

**December 31, 2020**

The effective yield on the Bonds, Mortgages and Equities portion of the investment portfolio was 2.0% (2019 – 2.58%).

### **Investment risk management**

The Society has adopted policies that establish the guidelines for all investment activities. These guidelines apply to the investment funds controlled by the Fund.

The Society's overall investment philosophy is to maximize the long-term real rate of return subject to an acceptable degree of risk.

The Society's long-term funding requirements and relatively low level of liquidity dictate a portfolio with a mix of fixed income, equities, as well as real estate and mortgages. The Society invests in bonds, equities, real estate and mortgages through pooled funds.

### **Investment income**

	<b>2020</b>	<b>2019</b>
	<b>\$</b>	<b>\$</b>
Interest on cash	34,340	118,918
Pooled distributions	6,900,929	7,971,978
Net interfund loan interest expense (note 10)	(192,705)	(241,114)
	<hr/>	<hr/>
Investment income	6,742,564	7,849,782

### **Fair value changes in investments**

	<b>2020</b>	<b>2019</b>
	<b>\$</b>	<b>\$</b>
Realized gain on disposal of investments	3,931,005	857,660
Unrealized gain on investments measured at fair value	4,215,945	15,803,698
	<hr/>	<hr/>
Fair value increase in investments	8,146,950	16,661,358

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

December 31, 2020

### 7 General Fund building loan

In 1992, the Benchers authorized the lending of monies from the Fund to support the capital development of the Society's buildings at 845 Cambie Street, Vancouver, BC. The loan has no fixed repayment terms and bears interest calculated monthly at a rate equal to the stated monthly bond yield to maturity earned on the Fund's investment portfolio. It is the intention of the Benchers to require the General Fund to repay a minimum of \$500,000 of the principal each year. During 2020, principal of \$500,000 (2019 – \$500,000) was repaid.

	2020 %	2019 %
Weighted average rate of return	1.36	2.29

### 8 Accounts payable and accrued liabilities

	2020 \$	2019 \$
Trade payables	1,664,427	1,865,030
Accrued trade expenses	303,586	267,835
Premium taxes payable	11,084	9,056
Provincial sales taxes payable	1,241	-
Income taxes payable	723	-
	1,981,061	2,141,921

# The Law Society of British Columbia – Lawyers Indemnity Fund

Notes to Consolidated Fund Financial Statements

December 31, 2020

## 9 Provision for claims and unallocated loss adjustment expenses (ULAE)

The changes in unpaid claims recorded in the consolidated fund statement of financial position are as follows:

	2020 \$	2019 \$
<b>Part A Indemnity Coverage</b>		
Provision for claims – Beginning of year	75,174,017	73,309,091
Provision for losses and expenses for claims reported in the current year	19,382,000	19,839,622
Decrease in estimated losses and expenses for losses reported in prior years	(8,364,859)	(8,176,687)
Provision for claims liability	86,191,158	84,972,026
(Subtract) add:		
Payments on claims reported in the current year	(832,332)	(1,746,698)
Payments on claims reported in prior years	(10,144,993)	(9,369,245)
Recoveries on claims	61,895	1,314,977
Change in due from members	(64,470)	2,957
Claim payments – net of recoveries	(10,979,900)	(9,798,009)
Part A Provision for claims – End of year	75,211,258	75,174,017
<b>Part B Indemnity Coverage</b>		
Unpaid claims – Beginning of year	319,490	593,694
Provision for losses and expenses for claims	355,034	(34,599)
	674,524	559,095
(Subtract) add:		
Payments on claims	(255,443)	(246,992)
Recoveries on claims	36,088	7,387
Claim payments – net of recoveries	(219,355)	(239,605)
Part B Provision for claims – End of year	455,169	319,490
<b>Part C Indemnity Coverage</b>		
Provision for claims – Beginning of year	1,015,554	437,595
Provision for losses and expenses for claims reported in the current year	(2,805)	1,267,779
	1,012,749	1,705,374
(Subtract) add:		
Payments on claims	(195,766)	(752,378)
Change in due from members	(107,790)	62,558
Part C Provision for claims – End of Year	709,193	1,015,554
<b>Total provision for Parts A, B and C Indemnity Coverage</b>	<b>76,375,620</b>	<b>76,509,061</b>



# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

**December 31, 2020**

The determination of the provision for unpaid claims and adjustment expenses requires the estimation of two major variables or quanta, being development of claims and the effect of discounting, to establish a best estimate of the value of the respective liability or asset.

The provision for unpaid claims and adjustment expenses is an estimate subject to variability, and the variability could be material in the near term. The variability arises because all events affecting the ultimate settlement of claims have not taken place and may not take place for some time. Variability can be caused by receipt of additional claim information, changes in judicial interpretation of contracts, significant changes in severity of claims from historical trends, the timing of claims payments and future rates of investment return. The estimates are principally based on the Fund's historical experience. Methods of estimation have been used that the Society believes produce reasonable results given current information.

The provision for ULAE is an actuarially determined estimate of the Fund's future operational costs relating to the administration of claims and potential claims reported up to the consolidated fund statement of financial position date.

The Fund discounts its best estimate of claims provisions at a rate of interest of 1.84% (2019 – 2.47%). The Fund determines the discount rate based upon the expected return on its investment portfolio of assets with appropriate assumptions for interest rates relating to reinvestment of maturing investments.

A 1% increase in the discount rate will have a favourable impact on the discounted claims liability of \$2.589 million (2019 – \$2.563million) and a 1% decrease in the discount rate will have an unfavourable impact on the discounted claims liability of \$2.738 million (2019 – \$2.750 million).

To recognize the uncertainty in establishing these best estimates, to allow for possible deterioration in experience, and to provide greater comfort that the actuarial estimates are adequate to pay future claims liabilities, the Fund includes a Provision for Adverse Deviations (PFAD) in some assumptions relating to claims development and future investment income. The PFAD is selected based on guidance from the Canadian Institute of Actuaries.

The effects of discounting and the application of PFAD, net of members' share of provision for claims, are as follows (in thousands of dollars):

	<b>2020</b>	<b>2019</b>
	<b>\$</b>	<b>\$</b>
Undiscounted	78,996	79,942
Effect of present value	(4,333)	(5,926)
PFAD	12,665	12,910
	<hr/>	<hr/>
Discounted	87,328	86,926
	<hr/>	<hr/>

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

December 31, 2020

### Claims development tables (net of members' share of provision for claims)

A review of the historical development of the Fund's insurance estimates provides a measure of the Fund's ability to estimate the ultimate value of claims. The top half of the following tables illustrates how the Fund's estimate of total undiscounted claims costs for each year has changed at successive year-ends. The bottom half of the tables reconciles the cumulative claims to the amount appearing in the consolidated fund statement of financial position.

#### Part A indemnity claims (in thousands of dollars)

Claims year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Estimate of undiscounted ultimate claims costs											
At end of claims year	14,560	13,390	15,230	12,690	15,090	16,720	15,720	19,767	18,522	17,877	
One year later	13,550	13,080	15,100	12,390	16,590	15,440	15,791	19,219	17,580		
Two years later	11,570	11,970	17,780	12,240	15,210	15,956	16,005	18,802			
Three years later	10,920	10,690	20,300	11,760	13,153	14,548	14,807				
Four years later	11,100	10,490	20,460	12,256	12,775	13,875					
Five years later	11,810	10,100	18,983	11,862	10,385						
Six years later	12,300	9,571	18,087	11,062							
Seven years later	12,078	8,870	17,283								
Eight years later	11,596	8,765									
Nine years later	11,698										
Current estimate of cumulative claims	11,698	8,765	17,283	11,062	10,385	13,875	14,807	18,802	17,580	17,877	142,134
Cumulative payments to date	(10,082)	(8,231)	(16,221)	(8,661)	(7,712)	(10,052)	(6,480)	(4,918)	(4,466)	(1,051)	(77,874)
Undiscounted unpaid liability	1,616	534	1,062	2,401	2,673	3,823	8,327	13,884	13,114	16,826	64,260
Undiscounted unpaid liability in respect of 2010 and prior years											2,647
Undiscounted unallocated loss adjustment expense reserve											10,881
<b>Total undiscounted unpaid claims liability</b>											77,788
Discounting adjustment (includes Claim PFAD)											8,258
<b>Total discounted unpaid claims liability</b>											86,046

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

December 31, 2020

### Part B indemnity claims (in thousands of dollars)

Claims year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Estimate of undiscounted ultimate claims costs											
At end of claims year	28	18	53	562	41	274	1,588	135	152	93	
One year later	24	13	82	500	184	134	1,764	126	51		
Two years later	23	12	100	421	180	62	1,696	178			
Three years later	23	13	115	372	157	65	2,039				
Four years later	23	8	108	205	120	70					
Five years later	25	8	100	185	101						
Six years later	25	20	100	199							
Seven years later	24	14	100								
Eight years later	24	14									
Nine years later	24										
Current estimate of cumulative claims	24	14	100	199	101	70	2,039	178	51	93	2,869
Cumulative payments to date	(23)	(5)	(100)	(190)	(92)	(65)	(1,813)	(134)	(32)	(6)	(2,460)
Undiscounted unpaid liability	1	9	-	9	9	5	226	44	19	87	409
Undiscounted unpaid liability in respect of 2010 and prior years											6
Undiscounted unallocated loss adjustment expense reserve											67
<b>Total undiscounted unpaid claims liability</b>											482
Discounting adjustment (includes Claim PFAD)											46
<b>Total discounted unpaid claims liability</b>											528

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

December 31, 2020

### Part C indemnity claims (in thousands of dollars)

Claims year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Estimate of undiscounted ultimate claims costs											
At end of claims year	-	-	-	-	-	-	-	65	650	91	
One year later	-	-	-	-	-	-	423	65	723		
Two years later	-	-	-	-	-	-	923	65			
Three years later	-	-	-	-	-	-	923				
Four years later	-	-	-	-	-	-					
Five years later	-	-	-	-	-	-					
Six years later	-	-	-	-	-	-					
Seven years later	-	-	-	-	-	-					
Eight years later	-	-	-	-	-	-					
Nine years later	-	-	-	-	-	-					
Current estimate of cumulative claims	-	-	-	-	-	-	923	65	723	91	1,802
Cumulative payments to date	-	-	-	-	-	-	(429)	(65)	(692)	-	(1,186)
Undiscounted unpaid liability	-	-	-	-	-	-	494	-	31	91	616
Undiscounted unpaid liability in respect of 2010 and prior years											-
Undiscounted unallocated loss adjustment expense reserve											109
<b>Total undiscounted unpaid claims liability</b>											725
Discounting adjustment (includes Claim PFAD)											29
<b>Total discounted unpaid claims liability</b>											754

The expected maturity of the unpaid claims provision is analyzed below (undiscounted and gross of reinsurance):

(in thousands of dollars)	Less than one year \$	One to two years \$	Two to three years \$	Three to four years \$	Four to five years \$	Over five years \$	Total \$
December 2020	20,540	16,023	12,058	8,591	5,931	15,853	78,996
December 31, 2019	19,652	16,587	12,690	8,936	6,371	15,706	79,942

**The Law Society of British Columbia – Lawyers Indemnity Fund**

Notes to Consolidated Fund Financial Statements

December 31, 2020

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**Role of the actuary**

The actuary is appointed to fulfill reporting requirements pursuant to the Insurance (Captive Company) Act of B.C. With respect to preparation of these consolidated fund financial statements, the actuary is required to carry out a valuation of the Fund's policy liabilities and to provide an opinion regarding their appropriateness at the date of the consolidated fund statement of financial position. The factors and techniques used in the valuation are in accordance with accepted actuarial practice, applicable legislation and associated regulations. The scope of the valuation encompasses the policy liabilities as well as any other matter specified in any direction that may be made by the regulatory authorities. The policy liabilities consist of a provision for unpaid claims and adjustment expenses. In performing the valuation of the liabilities for these contingent future events, which are by their very nature inherently variable, the actuary makes assumptions as to future loss ratios, trends, expenses and other contingencies, taking into consideration the circumstances of the Fund and the nature of the indemnity policies.

The valuation is based on projections for settlement of reported claims and claim adjustment expenses. It is certain that actual claims and claim adjustment expenses will not develop exactly as projected and may, in fact, vary significantly from the projections.

The actuary relies on data and related information prepared by the Fund. The actuary also analyzes the Fund's assets for its ability to support the amount of policy liabilities.

**10 Interfund transactions**

The operations of the Fund, the General Fund and the Special Compensation Fund are administered by the management of the Society. Balances between the funds arise from transactions of an operating nature and are recorded at exchange amounts at the dates of the transactions. Amounts due to and from the General Fund and the Special Compensation Fund are due on demand and have no fixed terms of repayment. The Fund has authorized a loan facility of up to \$1 million to the General Fund to fund capital expenditures in accordance with the 10-year capital plan. The Fund has also authorized a loan facility of up to \$8 million to the Special Compensation Fund which is not expected to be used as the Special Compensation Fund is in the process of being wound up. As of December 31, 2020, no amounts have been drawn on the facilities (2019 – \$nil).

Pursuant to reserve policy, \$0.70 million of the net assets related to trust assurance was transferred during 2020 (2019 – \$1.16 million).

# The Law Society of British Columbia – Lawyers Indemnity Fund

## Notes to Consolidated Fund Financial Statements

December 31, 2020

Monthly interest on the Fund's net loan position with the General Fund and Special Compensation Fund is paid to the Fund at a rate equal to the stated monthly bond yield to maturity earned on the Fund's investment portfolio. The average bond yield for 2020 was 1.36% (2019 – 2.29%). The Fund's net loan position at December 31, 2020 was \$9.3 million (2019 – \$5.0 million) which includes the General Fund building loan, other operating balances with the General Fund and the Special Compensation Fund. This net loan position fluctuates during the year as amounts are transferred between the General Fund, the Special Compensation Fund and the Fund to finance ongoing operations.

During the year ended December 31, 2020, interest revenue of \$10,410 (2019 – \$25,780) was received on the General Fund building loan, interest of \$202,807 (2019 – \$264,139) was paid on General Fund cash balances held by the Fund, and \$308 (2019 – \$2,755) was paid on the Special Compensation Fund cash balances held by the Fund for a net interest expense of \$192,705 (2019 – \$241,114).

Other interfund transactions are disclosed elsewhere in these consolidated fund financial statements.

### 11 Internally restricted net assets

The Benchers have allocated \$17.5 million (2019 – \$17.5 million) of the net assets to Part B coverage for dishonest appropriation of trust funds or property.

### 12 Regulatory requirements and capital management

Under regulation of the Insurance (Captive Company) Act of B.C. the Captive was required to maintain a minimum of \$200,000 in shareholder's equity and \$100,000 in reserves; the Captive was in compliance with these regulations throughout the year. During the year, BCFSA was informed of the intention to wind up LSBC Captive Company Ltd. and at the time of wind up on December 31, 2020, the Captive was no longer subject to the regulatory requirements.

### 13 Related parties

The elected Benchers include members drawn from law firms across the province. These law firms may at times be engaged by the Society in the normal course of business. During the year ended December 31, 2020, expenses of \$146,602 (2019 – \$54,354) were incurred by the Fund with these law firms.

### 14 Subsequent events

As of January 1, 2021, BC Lawyers Indemnity Association (BCLIA) was incorporated to issue the indemnity policies to covered lawyers. As a subsidiary of the Society that is exempt from regulation by the BCFSA, BCLIA will assume from the Society the rights and obligations of the Captive under all outstanding professional liability policies, except the Business Innocent Covered Party (BIC) policies. Effective December 31, 2020, all the assets and liabilities of the Captive have been transferred to the Law Society.

## **Management Discussion and Analysis**

The Law Society of British Columbia accounts for its financial activities through three separate funds: the General Fund, the Special Compensation Fund and the Lawyers Indemnity Fund. Society management has the responsibility for assisting the Benchers in fulfilling the Society's mandate, while ensuring that operating expenditures are closely controlled and that appropriate accounting and internal controls are maintained. The 2020 audited financial statements for the three funds are set out in this report. The statements are presented in accordance with the presentation and disclosure standards of the Chartered Professional Accountants of Canada.

During 2020, in addition to the general oversight by the Benchers, the Finance and Audit Committee assisted the Benchers in ensuring that management and staff properly managed and reported on the financial affairs of the Society. The oversight by the Benchers and the Finance and Audit Committee included:

- Reviewing periodic financial statements of the General, Special Compensation and Consolidated Lawyers Indemnity Fund
- Reviewing investment performance as managed by the appointed investment managers
- Reviewing with the Law Society's auditors their approach, scope and audit results
- Reviewing the annual Audit Report prepared by the Law Society auditors
- Recommending the 2020 practice fees and insurance assessments, and reviewing corresponding budgets
- Reviewing the enterprise risk management plan

## **General Fund**

### **Overview**

Overall, the 2020 results for the General Fund resulted in an operating surplus of \$3.8 million, after the transfer of net assets from the trust assurance program to the Lawyers Indemnity Fund. Revenues were higher than expected, particularly in the areas of practice fees, application fees, and trust administration fees. Operating expenses decreased over the prior year primarily due to lower staffing costs, and decreased travel, event, and office costs as a result of the COVID-19 pandemic.

### **Revenues**

General Fund revenue was \$34.6 million, \$500,000 higher than 2019 due to the growth in the number of lawyers, an increase in the practice fee, and increased trust administration fees. During 2020, net growth in the number of full-time equivalent practising lawyers was 2.6% resulting in a total of 12,893 full fee paying equivalent lawyers for the year, compared to 12,572 in 2019. Professional Legal Training Course (PLTC) enrolment revenue was lower in 2020, with 621 PLTC students during the year, compared with 656 in the prior year. The trust administration fee (TAF) revenue increased 11% due to an increase in the number of transactions arising from an increase in activity in the real estate

market, mainly in the last half of the year. Other income decreased over 2019 due to decreased insurance recoveries.

The Lawyers Indemnity Fund contributed \$1.9 million to the General Fund for co-sponsored program costs and for general program and administrative expenses attributable to operations.

## **Expenses**

The 2020 General Fund expenses decreased by \$421,000 (1.3%) to \$32.1 million, compared to \$32.5 million in 2019.

Bencher Governance and Support expenses decreased by \$901,000 over 2019 due to travel restrictions, the cancellation of in person events and increased virtual meetings, as a result of the COVID-19 pandemic.

Communication and Information Services total costs were the similar to 2019, with decreased staffing costs partially offset by increased software and hardware computer maintenance costs.

Education and Practice expenses were lower than 2019 by \$309,000, with decreases in staffing costs.

General and administration costs increased \$468,000 over 2019, mainly due the movement of costs into this program area in 2020 that were included in other program areas last year.

Policy and Legal Services expenses increased \$285,000 over 2019, with increases in external counsel fees for external litigation.

Regulation operating expenses increased \$111,000 over 2019, primarily due to higher external counsel fees and increased staffing costs.

Occupancy costs decreased \$469,000 from 2019, with lower property taxes and building maintenance costs.

## **Net Assets**

Overall, the General Fund remains financially sound. As of December 31, 2020, net assets in the General Fund were \$30 million. The net assets include \$3.7 million in capital funding for planned capital projects related to the 845 Cambie Street building and workspace improvements for Law Society operations. Pursuant to reserve policy, during the year \$700,000 of net assets related to trust assurance was transferred to the Lawyers Indemnity Fund for Part B coverage. After this transfer, at December 31, 2020, the net assets include \$2.1 million of trust assurance reserves. The remaining General Fund net assets are \$24.2 million, of which \$13 million is invested in capital assets, mainly the 845 Cambie Street building, and \$11.3 million is working capital.



## **Special Compensation Fund**

### **Overview**

Previously, the Special Compensation Fund, maintained pursuant to Section 31 of the *Legal Profession Act*, was financed by members' annual assessments, and claims were recorded net of recoveries when they had been approved for payment. In 2012, the *Legal Profession Amendment Act, 2012* repealed section 31 of the *Legal Profession Act*. In addition, Section 23 of the *Legal Profession Act* was amended to remove the requirement that practising lawyers pay the Special Compensation Fund assessment. Section 50 of the *Legal Profession Amendment Act 2012* provides for the transfer of unused reserves that remain within the Special Compensation Fund to the Lawyers Indemnity Fund for the purposes of the indemnification program, which has provided coverage since 2004 for dishonest appropriation of money or other property entrusted to and received by lawyers. In 2017, pursuant to Section 50 of the *Legal Profession Amendment Act*, \$1 million of unused reserves were transferred to the Lawyers Indemnity Fund and the remainder was held in the Special Compensation Fund to offset expected external counsel fees. At December 31, 2020, the unused Special Compensation Fund reserves were depleted and the Special Compensation Fund was wound up.

### **Revenues/Expenses**

There were no claims costs in 2020 since the Lawyers Indemnity Fund has been providing coverage for dishonest appropriation of funds by lawyers since 2004. During the year, a small amount of interest income was earned. In addition, external counsel costs of \$58,800 were incurred during the year.

### **Net Assets**

At the end of 2020, the Special Compensation Fund net assets were \$nil.

## **Lawyers Indemnity Fund**

### **Overview**

The Lawyers Indemnity Fund remains in a strong financial position at the end of 2020. Revenue from annual assessments was slightly higher than 2019 due to additional covered members, but investment income was lower than the previous year with economic uncertainty.

### **Revenues**

The 2020 indemnity assessment remained at \$1,800 per full-time lawyer, resulting in total revenue of \$16.5 million, compared to \$16.1 million in 2019.

During 2020, the long term investment portfolio earned a return of 7.5% during the year. All increases in the market value of the investment portfolio have been recognized through the statement of revenue and expenses in accordance with Canadian accounting standards for not-for-profit organizations.

## Expenses

In 2020, the Lawyers Indemnity Fund general operating costs, including the \$1.9 million contribution to the General Fund, but excluding claims payments and unallocated loss adjustment expenses (ULAE), were \$7.3 million, compared to \$6.9 million in 2019. The increase is primarily due to increased external counsel, accounting and consultants' fees relating to the wind-up of the LSBC Captive Insurance Company Ltd. (the "Captive") and the creation of the BC Lawyers Indemnity Association ("BCLIA"), and the rebranding of LIF.

The net actuarial provision for settlement of claims for the year was \$11.4 million, a decrease of \$1.5 million from 2019. The 2020 claims provision was lower due to an adjustment to required reserves for claims relating mainly to prior years. The provision for claims liabilities on the balance sheet at the end of 2020 was \$76.4 million, compared to \$76.5 million at the end of 2019.

## Net Assets

As of December 31, 2020, LIF net assets were \$111.1 million, which includes \$17.5 million internally restricted for Part B claims, leaving \$93.6 million in unrestricted net assets.

## Other Matters

Effective January 1, 2020, Section 30 of the *Legal Profession Act* was amended to convert the "insurance" program to an "indemnification" program. New Section 30.1 provides that the Law Society or any subsidiary (except for a captive insurer) that operates such a program is not an insurer as defined in the *Financial Institutions Act* or the *Insurance Act*, nor are they carrying on insurance business in B.C.

Effective January 1, 2020, the Lawyers Insurance Fund became the Lawyers Indemnity Fund. The Captive was wound up on December 31, 2020, and all of its assets and liabilities have been transferred to the Law Society.

As of January 1, 2021, BCLIA was incorporated to issue the indemnity policies to covered lawyers. As a subsidiary of the Society that is exempt from regulation by the BC Financial Services Authority, BCLIA will assume from the Society the rights and obligations of the Captive under all outstanding professional liability policies, except the Business Innocent Covered Party (BIC) policies.



# Memo

To: Benchers  
From: Executive Committee  
Date: February 25, 2021  
Subject: Law Society Governance Review: Next Steps

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The Executive Committee considered the discussion at the January 29, 2021 Benchers meeting regarding a proposal to retain Harry Cayton to conduct a governance review of the Law Society. At that January Benchers meeting, there was a general consensus that the Law Society should conduct a governance review, but the discussion highlighted three issues. The first was that the Benchers would like to see the specific terms of reference for the review. The second was a concern that a review conducted by Mr. Cayton would not take into account issues of equity, diversity, and inclusion in relation to the Law Society's governance. The third was that other consultants in addition to Mr. Cayton should be considered through a Request for Proposal process.

The Committee agreed to provide the terms of reference to the Benchers for approval and the proposed terms of reference are attached. The proposed terms of reference specifically require consideration of equity, diversity, and inclusivity as part of the review.

The Committee also agreed to recommend to the Benchers the development of a Request for Proposals based on the proposed terms of reference.

Provided the Benchers approve the proposed terms of reference, the Executive Committee expects to initiate the process for developing and distributing a Request for Proposals shortly after the March Benchers meeting with a view to assessing the responses and authorizing the retainer of the selected consultant later this spring.

## **ADVISORY GOVERNANCE REVIEW OF THE LAW SOCIETY OF BRITISH COLUMBIA**

### **PROPOSED TERMS OF REFERENCE**

#### **PURPOSE**

To advise the Law Society of British Columbia (LSBC) on good practice in regulatory governance and on the extent to which its governance structures enable effective and efficient conduct of its business in line with the Standards of Good Governance and in the interests of a diverse public and profession and to advise on changes which might be made.

#### **REQUIREMENTS**

1. To review the governance structure of the LSBC and the relationships between its constituent parts
2. To consider how the governance structure assists or inhibits the delivery of the LSBC's purpose and statutory functions
3. To appropriately consider how the governance structure enables and supports equality, diversity, and inclusivity
4. To review the extent to which the governance structure meets good practice in regulatory governance as set out in the Standards of Good Governance
5. To report on the outcome of the review and to advise the LSBC on any changes that might be made to improve its governance structure.

#### **STANDARDS OF GOOD GOVERNANCE<sup>1</sup>**

1. The regulator has an effective process for identifying, assessing, escalating, and managing risk of harm, and this is communicated and reviewed on a regular basis by the board and senior staff.
2. The regulator has clear governance policies that provide a framework within which decisions can be made in-line with its statutory responsibilities.
3. The regulator demonstrates a commitment to transparency in the way it conducts and reports on its work.
4. The regulator engages appropriately and effectively with the legal profession and the public.
5. The board sets strategic objectives for the organisation and monitors performance and outcomes against those objectives for the legal profession and the public.
6. The board takes account of equality, diversity, and inclusivity in its decision-making.
7. The board has appropriate and effective oversight of the operations of the organization.
8. The board works corporately, with an appropriate understanding of its role as a governing body and of members' individual responsibilities.

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<sup>1</sup> Based on the Standards of Good Governance developed by the Professional Standards Authority in consultation with regulatory boards in the UK, Canada, and Australia.

## **CONDUCT OF THE REVIEW**

The review will involve seven steps.

Step 1: Evidence gathering

Step 2: Analysis of evidence

Step 3: Consideration of current good practice in regulatory governance

Step 4: Presentation and discussion of provisional findings

Step 5: Writing and submission of a draft report

Step 6: Response from LSBC to the draft report

Step 7: Writing and presentation of final report



# Memo

To: Benchers  
From: Executive Committee  
Date: February 21, 2021  
Subject: Conduct Assessment and Disposition Guidelines: Revisions

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## Request

The Executive Committee recommends that the Benchers approve the Revised Conduct Assessment and Disposition Guidelines, in the form attached.

## Background

In 2011, the Benchers approved the Conduct Assessment and Disposition Guidelines, which were developed by the Discipline Guidelines Task Force. Those guidelines were intended to assist the Discipline Committee in reaching appropriate and consistent dispositions of professional conduct matters that come before them.

In 2019, the Law Society's Anti-Money Laundering Task Force was created. One of the items identified on the anti-money laundering operational plan, created by the Task Force, was to review the Conduct Assessment and Disposition Guidelines with a view of incorporating guidance concerning anti-money laundering related matters.

Staff prepared a revised draft of the Guidelines that has been reviewed by the Executive Committee. The revisions proposed by staff paid particular attention to providing specific considerations regarding issues relating to fraud, anti-money laundering, and misappropriation of funds. These provisions have been added in section II.3 and changes have been made (in section II.1 of the revised version) to clarify the manner by which the analysis is brought to bear on the conduct. These amendments have been prepared to clarify that the public interest is paramount in consideration of conduct, reflecting the process established by the hearing panel in *Law Society of BC v. Nguyen*, 2016 LSBC 21. Lawyer rehabilitation is a secondary purpose, and must not take precedence over the paramount purpose. Other drafting changes have been made as well, primarily for clarity and readability. Some sections have had their wording revised and have been moved (such as sections on the seriousness of conduct and progressive discipline) and some have been subsumed into other sections (such as the role of the Discipline Committee).

Changes to the formatting with respect to the various factors or circumstances or that may be relevant to the Discipline Committee's assessment of the objectives of remediation, rehabilitation of specific deterrence have also been made. (See section III.8B).

The Executive Committee has reviewed the amendments prepared by staff and recommend that they be approved by the Benchers. In making the recommendation, the Executive Committee is mindful that the document is a *guideline*. The information contained in the Guidelines is not a set of directives. They are designed to maintain the discretion of the Discipline Committee when determining the appropriate assessment of the conduct under consideration.

## CONDUCT ASSESSMENT AND DISPOSITION GUIDELINES

### ~~TABLE OF HEADINGS~~

#### **I. PREAMBLE**

#### **~~II. SOME GENERAL GUIDELINES~~**

- ~~1. The Public Interest~~
- ~~2. Consistency~~
- ~~3. Progressive Discipline~~
- ~~4. Seriousness of Conduct~~
- ~~5. Role of Discipline Committee~~

#### **~~III. A FRAMEWORK FOR ANALYSIS~~**

- ~~6. Citation Threshold~~
- ~~7. Assessing Complaints/Potential Citations~~
- ~~8. Alternative Disciplinary Outcomes~~

#### **~~IV. POTENTIALLY RELEVANT CIRCUMSTANCES~~**

- ~~9. An Open-Ended List~~

#### **~~V. DISCIPLINARY OUTCOMES~~**

- ~~10. Citation~~
- ~~11. Conduct Review~~
- ~~12. Conduct Meeting~~
- ~~13. Conduct Letter from the Chair~~
- ~~14. No Further Action~~



## **I. — PREAMBLE**

The purposes of ~~the these~~ guidelines ~~set forth in this document~~ is to guide the members of the Discipline Committee in their evaluation and disposition of ~~the various~~ professional conduct ~~matters-complaints~~ referred for that Committee's assessment. These guidelines should be used as an aid and reference to balance and inform the deliberations of the Discipline Committee. The guidelines do not restrict the discretion of the Discipline Committee and do not prescribe limits on what circumstances may be relevant or what facts may be determinative in a given case.

The Discipline Committee exercises its independent judgment in reviewing the opinions prepared by investigating counsel, including:

- a. Considering whether sufficient, relevant evidence has been gathered and assessed;
- b. Evaluating the strength of the evidence gathered, having regard to issues of admissibility, credibility and reliability; and
- c. Ensuring the relevant conduct issues have been addressed.

Rule 4-4 of the Law Society Rules sets out the actions available to the Discipline Committee after considering a complaint (the “Actions”). The Actions are described further in Appendix A. The Actions available to the Discipline Committee, other than a Citation, are referred to in these Guidelines as Alternative Actions.

## **II. SOME GENERAL GUIDELINES**

### **1. The Public Interest is Paramount**

The Discipline Committee's assessment and disposition of ~~investigations-complaints~~ referred for its review should ~~have regard for the~~ be in furtherance of the Law Society's mandate “to uphold and protect the public interest in the administration of justice”, as set out in s. 3 of the *Legal Profession Act*.

Actions that are consistent with the paramount objective of protecting the public interest can serve to protect members of the public from lawyer misconduct, provide effective regulation of general deterrence to the profession and should be consistent with these guidelines. , and preserve the public's confidence in the profession and in self-regulation.

The public interest can also be furthered by fair, transparent and effective regulation including Actions that may remediate, rehabilitate and deter the subject lawyer from engaging in future misconduct.

The Review Board in *Law Society of BC v. Nguyen*, 2016 LSBC 21 at para. 36, discussed the two main purposes of the disciplinary process and emphasized that the protection of the public and maintaining public confidence in the profession is paramount and that promoting rehabilitation of the lawyer is a secondary objective:

The first and overriding purpose is to ensure the public is protected from acts of professional misconduct, and to maintain public confidence in the legal profession generally. The second purpose is to promote the rehabilitation of the respondent lawyer. If there is conflict between these two purposes, the protection of the public and the maintenance of public confidence in the profession must prevail, but in many instances the same disciplinary action will further both purposes.

## **2. Nature and Seriousness of Conduct**

In matters involving allegations of significant serious misconduct, absent exceptional circumstances, the public interest may only be upheld if the Law Society proceeds with a Citation, which will result in a transparent, public outcome. Proceeding with a Citation in matters where serious misconduct is alleged may be the only effective way to serve the objective of general deterrence and to preserve public confidence in the legal profession. Accordingly, provided there is sufficient evidence to support the Action, the more serious the alleged misconduct in a matter before the Committee, the more likely it will be that upholding the public interest requires the issuance of a Citation.

Citations should not, however, only be reserved for the most serious misconduct. Any provable discipline violation (i.e. a breach of a provision of the *Legal Profession Act*, the *Law Society Rules*, or the *Code of Professional Conduct for British Columbia*) might warrant a Citation. However, a Citation may not be necessary if an Alternative Action is consistent with the public interest.

## **3. Fraud, Money Laundering, and Misappropriation of Funds**

The Discipline Committee should have regard for the importance of protecting the public from lawyer misconduct, whether intentional or otherwise, which facilitated, or increased the risk of, fraud, money laundering, misappropriation of funds or other illegal activities. Such conduct may include:

- Allowing one's trust account to be used in the absence of legal services;
- Failing to make reasonable inquiries in the face of suspicious circumstances; or
- Assisting or encouraging dishonesty, crime or fraud by another person either knowingly or in circumstances where the lawyer ought to have known.

Where a lawyer's conduct has placed the public interest in the administration of justice itself at risk, such as by aiding and abetting criminal activity, concerns such as maintaining public confidence in the legal profession and effective general deterrence of similar conduct may only be addressed by the transparency and public nature of a Citation process.

#### **4. Progressive Discipline**

To maintain public confidence in the profession and in self-regulation, Actions should take into account any history of similar problematic conduct resulting in a previous Action. Accordingly, the Discipline Committee should consider and apply progressive discipline, whereby the Committee's successive reviews of relevantly similar conduct by the subject lawyer result in more significant Action. In addition, even where the specifics of successive discipline violations are different, a pattern of failing to fulfill a lawyer's professional responsibilities generally may also warrant a more significant Action.

#### **5. Consistency**

The Discipline Committee should strive for consistency in its decisions. ~~Consistency~~This does not mean that prior decisions in circumstantially similar matters should be determinative of the Action to be taken in a subsequent matter involving a different lawyer. Rather, consistency- requires that decisions be made on a principled basis and not be made arbitrarily, capriciously or in an ad hoc manner. The underlying principles stated in these guidelines should guide the Discipline Committee in exercising its discretion in a consistent manner.

##### **1.—Progressive Discipline**

~~The Discipline Committee should consider and apply progressive discipline, whereby the Committee's successive reviews of relevantly similar conduct by the same lawyer result in a more significant disciplinary response. In addition, a pattern of failing to fulfill a lawyer's professional responsibilities may also warrant more significant disciplinary responses on successive referrals to the Discipline Committee.~~

##### **2.—Seriousness of Conduct**

~~While the most serious misconduct must attract a Citation, Citations should not be reserved exclusively for such misconduct. Any provable discipline violation (i.e. a breach of a provision of the *Legal Profession Act*, the *Law Society Rules*, or the *Professional Conduct Handbook* including any conduct unbecoming) might warrant a Citation. However, a given provable discipline violation may not require a Citation, if an alternative disciplinary response is consistent with the public interest and would be more effective response to the lawyer's conduct than the issuance of a Citation (see paragraphs 6 and 7(c) following).~~

### **3.—Role of Discipline Committee**

The Discipline Committee should read opinions prepared by investigating counsel (internal or external) with a critical eye. In doing so, the Committee needs to exercise its independent judgment and:

- (a) — consider whether the relevant evidence has been gathered and assessed;
- (b) — evaluate the strength of evidence gathered and needed in each case having regard to issues of admissibility and overall credibility of the evidence and the disciplinary outcome(s) being considered;
- (c) — ensure the relevant issues have been addressed.

## **III. A FRAMEWORK FOR ANALYSIS**

### **6. Citation Threshold**

In considering whether a lawyer's conduct may warrants a Citation, the Discipline Committee should first have regard to determine whether the Citation Threshold is met in the circumstances. The Citation Threshold will be met where:

- (a) the lawyer's alleged conduct amounts to a discipline violation; and
- (b) having regard to the available admissible evidence, there is a reasonable prospect (which requires less than a balance of probabilities) that the lawyer would receive an adverse determination at following a hearing. ~~A conclusion that there is a reasonable prospect does not require a conclusion that an adverse determination is more likely than not.~~

### **~~4.—Assessing Complaints / Potential Citations~~**

### **7. Action if Citation Threshold Not Met**

If the Discipline Committee concludes-determines that the Citation Threshold has been is not met, absent exceptional circumstances, the matter it should go on to consider whether an alternative disciplinary outcome would be not result in the public interest and a more effective response to authorization of a Citation, as the likelihood of an adverse determination is low.

Where the Citation Threshold is not met, the Committee may direct one of the Alternative Actions if satisfied that the lawyer's conduct. ~~In determining consistency with the public interest, however, the Discipline Committee should have regard to the fact that a Citation is falls below the standard of conduct expected by the Law Society's most public disciplinary process.~~

### **Alternative Disciplinary Outcomes**

Society. The range of ~~alternative disciplinary outcomes~~ Alternative Actions includes Conduct Review, Conduct Meeting, and Conduct Letter , and the Committee may consider a referral to the Practice Standards Committee from the Chair of (see Appendix A). It is also open to the Discipline Committee to take , and No Further Action on a matter.

## **8. Action if Citation Threshold Met**

### **A. General Deterrence and Confidence in the Profession and in Self-Regulation.**

Where the Discipline Committee determines that the Citation Threshold is ~~not met in the circumstances of a particular matter,~~ it may direct ~~an alternative disciplinary outcome.~~ met, the Committee should consider whether the paramount objective of protecting the public interest can be achieved with any of the Alternative Actions.

- (a) ~~Even where the Citation Threshold may be met in the circumstances of a particular matter, the Discipline Committee may choose an alternative disciplinary outcome, where it is in the public interest and a more effective disposition of the matter.~~

## **IV. — POTENTIALLY RELEVANT CIRCUMSTANCES**

### **An Open-Ended List**

The Discipline Committee should consider whether a response less than a Citation will provide effective general deterrence to the legal profession and preserve the public's confidence in the profession and in self-regulation, having regard to the nature and severity of the alleged misconduct. Where the Committee determines that these objectives are not met with any of the Alternative Actions then it may be that the authorization of a Citation is the only action consistent with the public interest.

### **B. Remediation, Rehabilitation and Specific Deterrence**

Where the Discipline Committee is satisfied that the objectives of general deterrence and maintaining confidence in the legal profession and in self-regulation will be met with one of the Alternative Actions, the Committee should then consider whether the Alternative Action will also meet the objectives of remediation, rehabilitation and specific deterrence.

The following factors or circumstances, alone or in combination, may be relevant to the Discipline Committee's assessment of whether ~~an alternative disciplinary outcome should be preferred instead of a Citation in a particular matter;~~ the objectives of remediation, rehabilitation and specific deterrence may be met with any of the Alternative Actions:

a. Specific Deterrence:

Does tThe lawyer's conduct requires the specific ~~and/or general~~ deterrence provided by publication of a written decision and disciplinary sanctions following a hearing; or can specific deterrence be addressed sufficiently through direct communications with the lawyer?

~~the desire for specific and/or general deterrence may be addressed sufficiently through direct communications with the lawyer and/or a summary publication following a Conduct Review.~~

b. Experience:

How long has the lawyer been called to the bar and what level of practice experience does the lawyer have? The lawyer was only recently called to the bar; or

~~the lawyer has been called from some years and has significant practice experience.~~

c. Record:

(i)How long has the lawyer practised with no disciplinary action, or, conversely, how many other recent complaints and conduct concerns has the lawyer has been the subject of?

The Discipline Committee should apply to principle of progressive discipline.

- ~~The lawyer has practiced for a significant period of time with no significant conduct concerns; or~~
- (ii) ~~the lawyer has been the subject of other recent complaints and professional conduct concerns.~~

e.d.Support:

Does tThe lawyer lacks supervision or other supportive professional relationships; or is the lawyer supervised by a senior practitioner or have supportive relationships with other lawyers and ready access to informal advice on professional conduct issues?

- (ii) ~~the lawyer is supervised by a senior practitioner or has supportive relationships with other lawyers and ready access to informal advice on professional conduct issues.~~

d.e.Knowledge:

Was t(i) —There was a significant misunderstanding or lack of understanding component by the lawyer leading to the lawyer's problematic conduct; or did the lawyer appear to have acted despite understanding the nature and significance of his or her problematic conduct?

(ii) —~~the lawyer appears to have acted despite understanding the nature and significance of his or her problematic conduct.~~

e.f. Voluntariness:

Were tThere ~~were~~any involuntary or health-related factors leading to the lawyer's problematic conduct; or was the lawyer's conduct voluntary and free from the effects of addiction, ill health, and duress?

(i) —~~the lawyer's conduct was voluntary and free from the effects of addiction, ill health, and duress.~~

f.g. Conduct After the Fact:

Has tThe lawyer ~~has~~, in a timely manner, voluntarily self-reported or acknowledged his or her error, accepted responsibility, and offered a genuine apology; or has the lawyer has been resistant, evasive or less than candid in responding and communicating in the course of the Law Society's investigation.

(i) —~~The lawyer has been resistant, evasive or less than candid in responding and communicating in the course of the Law Society's investigation.~~

g.h. Resulting Harm:

Has tThe lawyer's conduct resulted in significant harm to the interests of a client, to one or more members of the public, to the reputation of the legal profession?; ~~or to the administration of justice; or~~  
the lawyer's conduct did not result in the suffering of a significant harm.

h.i. Recompense:

Where possible, has the lawyer has taken positive steps to remedy any loss or damage caused by his or her conduct; or has the lawyer has made no recompense in respect of the consequences of his or her conduct.

(i) —~~the lawyer has made no recompense in respect of the consequences of his or her conduct.~~

i.j. Remediation:

Where potential repetition of the problematic conduct could be avoided by changes in the practices of the lawyer or his or her staff, have such changes have been implemented; or does the lawyer not appear to have changed any practices to prevent a repetition of the problematic conduct?

- (i) ~~the lawyer does not appear to have changed any practices to prevent a repetition of the problematic conduct.~~

j-k. Risk:

What is the level of ~~There appears to be little~~ risk that the lawyer will engage in further problematic conduct? ~~or~~

~~There appears to be significant risk that the lawyer will engage in further problematic conduct.~~

k-l. Rehabilitation Prospect:

Will a ~~An alternative disciplinary outcome~~ Alternative Action is ~~be~~ likely to provide a superior rehabilitation or remedial result, or will it be unlikely to have a meaningful effect on the lawyer's future conduct.

- (i) ~~an alternative disciplinary outcome is unlikely to have a significant effect on the lawyer's future conduct.~~

l-m. Other Considerations:

Other relevant factors or circumstances as determined by the Discipline Committee.

## **~~V~~ — DISCIPLINARY OUTCOMES**

~~— Citation~~

## **APPENDIX A** **DISCIPLINE COMMITTEE ACTIONS ON COMPLAINTS**

The Actions available to the Discipline Committee when considering a lawyer's conduct include the following.

### **1. Citations**

The issuance of a Citation results in the Law Society's most public and transparent disciplinary process. Salient characteristics of the Citation include ~~the following~~ elements:



- a. Publication of the Citation on the Law Society's website including the Lawyer Directory and publication of the hearing panel decisions;
- b. A Citation that is issued and not rescinded leads to a hearing, at which the allegations about the lawyer's conduct and any required facts must be proven or admitted, before disciplinary action may be ordered;
- c. If there is an adverse determination made by the hearing panel, the outcome of the Citation will form part of the lawyer's "Professional Conduct Record" which may be considered at the disciplinary action determination phase of a subsequent hearing involving the same lawyer; and
- e.d. In addition to facing a potential costs assessment, a lawyer who receives an adverse determination upon the hearing of a Citation may be subject to one or more of the following disciplinary actions:

- (i) a reprimand;
- (ii) a fine;
- (iii) a suspension; or
- (iv) disbarment.

### **5.1. Conduct Reviews**

The Conduct Review is the most significant of the ~~alternative disciplinary outcomes~~ Alternative Actions. Its salient characteristics include ~~the following elements~~:

- (a) Conducted by a subcommittee that must include at least one lawyer and must be chaired by a Bencher or Life Bencher;
- (b) May provide an opportunity for a complainant to discuss his or her views and concerns with the Subcommittee;
- (c) Provides an opportunity for face-to-face communication between the subcommittee and the lawyer regarding the conduct in question and any issues of concern;
- (d) Provides an opportunity for the subcommittee to test and confirm the lawyer's understanding of the issues of concern to the Discipline Committee;

- (e) May provide a more effective remedial or rehabilitative opportunity to manage the lawyer's conduct in the legal profession (in contrast with a Citation and hearing process);
- (f) Results in the subcommittee's written report to the Discipline Committee, which may then direct that no further action be taken, that a Citation be issued, that the Conduct Review be rescinded in favour of a different alternative disciplinary outcome, or that the lawyer be referred to the Practice Standards Committee;
- (g) Unless subsequently rescinded, is reflected in the lawyer's "Professional Conduct Record," which may be considered at the disciplinary action determination phase of a subsequent hearing involving the same lawyer,
- (h) Unless subsequently rescinded, will likely be reflected in a summary publication, issued to the profession and made available to the public without naming the lawyer.

## **6.2. Conduct Meeting**

In contrast with the Conduct Review, the Conduct Meeting is a less serious ~~alternative disciplinary outcome~~Alternative Action. Its salient characteristics include ~~the following elements~~:

- (a) Conducted by one or more Benchers or lawyers;
- (b) When a Conduct Meeting is directed, the complainant (where applicable) is informed and provided with a general explanation of what a Conduct Meeting is; the complainant does not ~~meet with the lawyer in question and the person(s) conducting~~attend the Conduct Meeting;
- (c) ~~Aside from the notice to a complainant of the fact that a Conduct Meeting has been directed, there~~There is no publication of the Conduct Meeting by the Law Society, the Conduct Meeting is held in private, and neither the fact of the Conduct Meeting nor any record of the Conduct Meeting, nor any record of the Law Society's investigation of the matter is recorded in the lawyer's "Professional Conduct Record";
- (d) ~~Provides a direct opportunity for education and~~Does not engage the objective of general deterrence ~~for the subject lawyer but not for as there is no publication of the broader~~Conduct Meeting to the legal communityprofession;
- (e) ~~Provides an opportunity for face-to-face communication between the person(s) conducting the Conduct Meeting and the lawyer regarding advice on conduct and any issues of concern;~~

- ~~(f) Provides an opportunity for the person(s) conducting the Conduct Meeting to test and confirm the lawyer's understanding of the issues of concern to the Discipline Committee;~~
- ~~(g) May provide a more effective remedial (education) or rehabilitative opportunity to manage the lawyer's conduct in the legal profession (in contrast with a Citation and hearing process);~~
- ~~(h)~~(e) A Conduct Meeting is ~~necessarily a~~ final disposition of matter, ~~but does not result in a~~ and, unlike a Conduct Review, ~~there is no~~ written report ~~to the Discipline Committee~~following the Conduct Meeting.

### 7.3. Conduct Letter ~~from the Chair~~

Like the Conduct Meeting, the Conduct Letter ~~form the Chair~~ (“Conduct Letter”) is also a less serious ~~alternative disciplinary outcome~~Alternative Action than the Conduct Review. The Conduct Letter’s salient characteristics include ~~the following elements~~:

- a. Issued in the name of the Chair of the Discipline Committee, to confirm that the matter has been reviewed by the Committee, to express the Committee’s concerns regarding the matter, ~~but also~~and to confirm that no further action (beyond issuance of the Letter) will be taken in the matter;
- b. When a Conduct Letter is issued, the complainant (where applicable) receives notice of the Discipline Committee’s direction and a copy of the Conduct Letter;
- c. Aside from the notice and copy of the Conduct Letter to a complainant, there is no publication of the fact or content of the Conduct Letter by the Law Society and neither the fact nor the content of the Conduct Letter, nor any record of the Law Society’s investigation of the matter, is recorded in the lawyer’s “Professional Conduct Record”;
- d. A copy of the Conduct Letter is placed on the lawyer’s “~~Personal Member~~ File” with the Law Society;
- e. Provides an opportunity for an expression of the Discipline Committee’s concerns in circumstances where it is determined that face-to-face communication is not needed; and
- f. A Conduct Letter is necessarily a final disposition of a matter and, in contrast with a Conduct Review, a Conduct Letter does not result in a subsequent written report to the Discipline Committee.

### 8.4. No Further Action

Under Rule 4-4 of the Law Society Rules, the Discipline Committee also has the option of directing that a matter be concluded with no further action taken, where it determines that the circumstances of the matter do not warrant any ~~disciplinary action~~ response. This may be on the basis that the Committee is satisfied that the conduct, on a balance of probabilities, cannot be proven or does not fall below the standard of conduct expected by the Law Society.

A record of the complaint, though, along with the Discipline Committee's decision, is retained by the Law Society.

~~Although a direction for no further action does not impose any further disciplinary process, the investigation and complaint referral processes may have an impact on the future conduct of the subject lawyer.~~

#### **6. Referral to the Practice Standards Committee**

The Discipline Committee may refer a matter to the Practice Standards Committee either on its own or concurrently with another action such as a Conduct Review. The Practice Standards Committee has the authority to assist lawyers to achieve and maintain competency by assisting lawyer's in implementing appropriate office systems and procedures, recommending remedial studies or mentoring, and, where necessary, the imposition of practice restrictions.

## CONDUCT ASSESSMENT AND DISPOSITION GUIDELINES

### I. PREAMBLE

The purposes of these guidelines is to guide the members of the Discipline Committee in their evaluation and disposition of professional conduct complaints referred for that Committee's assessment. The guidelines should be used as an aid and reference to balance and inform the deliberations of the Discipline Committee. The guidelines do not restrict the discretion of the Discipline Committee and do not prescribe limits on what circumstances may be relevant or what facts may be determinative in a given case.

The Discipline Committee exercises its independent judgment in reviewing the opinions prepared by investigating counsel, including:

- a. Considering whether sufficient, relevant evidence has been gathered and assessed;
- b. Evaluating the strength of the evidence gathered, having regard to issues of admissibility, credibility and reliability; and
- c. Ensuring the relevant conduct issues have been addressed.

Rule 4-4 of the Law Society Rules sets out the actions available to the Discipline Committee after considering a complaint (the "**Actions**"). The Actions are described further in **Appendix A**. The Actions available to the Discipline Committee, other than a Citation, are referred to in these Guidelines as **Alternative Actions**.

### II. SOME GENERAL GUIDELINES

#### 1. The Public Interest is Paramount

The Discipline Committee's assessment and disposition of complaints referred for its review should be in furtherance of the Law Society's mandate "to uphold and protect the public interest in the administration of justice", as set out in s. 3 of the *Legal Profession Act*.

Actions that are consistent with the paramount objective of protecting the public interest can serve to protect members of the public from lawyer misconduct, provide effective

general deterrence to the profession, and preserve the public's confidence in the profession and in self-regulation.

The public interest can also be furthered by fair, transparent and effective regulation including Actions that may remediate, rehabilitate and deter the subject lawyer from engaging in future misconduct.

The Review Board in *Law Society of BC v. Nguyen*, 2016 LSBC 21 at para. 36, discussed the two main purposes of the disciplinary process and emphasized that the protection of the public and maintaining public confidence in the profession is paramount and that promoting rehabilitation of the lawyer is a secondary objective:

The first and overriding purpose is to ensure the public is protected from acts of professional misconduct, and to maintain public confidence in the legal profession generally. The second purpose is to promote the rehabilitation of the respondent lawyer. If there is conflict between these two purposes, the protection of the public and the maintenance of public confidence in the profession must prevail, but in many instances the same disciplinary action will further both purposes.

## **2. Nature and Seriousness of Conduct**

In matters involving allegations of significant serious misconduct, absent exceptional circumstances, the public interest may only be upheld if the Law Society proceeds with a Citation, which will result in a transparent, public outcome. Proceeding with a Citation in matters where serious misconduct is alleged may be the only effective way to serve the objective of general deterrence and to preserve public confidence in the legal profession. Accordingly, provided there is sufficient evidence to support the Action, the more serious the alleged misconduct in a matter before the Committee, the more likely it will be that upholding the public interest requires the issuance of a Citation.

Citations should not, however, only be reserved for the most serious misconduct. Any provable discipline violation (i.e. a breach of a provision of the *Legal Profession Act*, the Law Society Rules, or the *Code of Professional Conduct for British Columbia*) might warrant a Citation. However, a Citation may not be necessary if an Alternative Action is consistent with the public interest.

## **3. Fraud, Money Laundering, and Misappropriation of Funds**

The Discipline Committee should have regard for the importance of protecting the public from lawyer misconduct, whether intentional or otherwise, which facilitated, or increased the risk of, fraud, money laundering, misappropriation of funds or other illegal activities. Such conduct may include:

- Allowing one's trust account to be used in the absence of legal services;
- Failing to make reasonable inquiries in the face of suspicious circumstances; or

- Assisting or encouraging dishonesty, crime or fraud by another person either knowingly or in circumstances where the lawyer ought to have known.

Where a lawyer's conduct has placed the public interest in the administration of justice itself at risk, such as by aiding and abetting criminal activity, concerns such as maintaining public confidence in the legal profession and effective general deterrence of similar conduct may only be addressed by the transparency and public nature of a Citation process.

#### **4. Progressive Discipline**

To maintain public confidence in the profession and in self-regulation, Actions should take into account any history of similar problematic conduct resulting in a previous Action. Accordingly, the Discipline Committee should consider and apply progressive discipline, whereby the Committee's successive reviews of relevantly similar conduct by the subject lawyer result in more significant Action. In addition, even where the specifics of successive discipline violations are different, a pattern of failing to fulfill a lawyer's professional responsibilities generally may also warrant a more significant Action.

#### **5. Consistency**

The Discipline Committee should strive for consistency in its decisions. This does not mean that prior decisions in circumstantially similar matters should be determinative of the Action to be taken in a subsequent matter involving a different lawyer. Rather, consistency requires that decisions be made on a principled basis and not be made arbitrarily, capriciously or in an ad hoc manner. The underlying principles stated in these guidelines should guide the Discipline Committee in exercising its discretion in a consistent manner.

### **III. A FRAMEWORK FOR ANALYSIS**

#### **6. Citation Threshold**

In considering whether a lawyer's conduct may warrants Citation, the Discipline Committee should first determine whether the Citation Threshold is met in the circumstances. The Citation Threshold will be met where:

- (a) the lawyer's alleged conduct amounts to a discipline violation; and
- (b) having regard to the available admissible evidence, there is a reasonable prospect (which requires less than a balance of probabilities) that the lawyer would receive an adverse determination following a hearing.

## **7. Action if Citation Threshold Not Met**

If the Discipline Committee determines that the Citation Threshold is not met, absent exceptional circumstances, the matter should not result in the authorization of a Citation, as the likelihood of an adverse determination is low.

Where the Citation Threshold is not met, the Committee may direct one of the Alternative Actions if satisfied that the lawyer's conduct falls below the standard of conduct expected by the Law

Society. The range of Alternative Actions includes Conduct Review, Conduct Meeting, and Conduct Letter, and the Committee may consider a referral to the Practice Standards Committee (see Appendix A). It is also open to the Discipline Committee to take No Further Action on a matter.

## **8. Action if Citation Threshold Met**

### **A. General Deterrence and Confidence in the Profession and in Self-Regulation.**

Where the Discipline Committee determines that the Citation Threshold is met, the Committee should consider whether the paramount objective of protecting the public interest can be achieved with any of the Alternative Actions.

The Discipline Committee should consider whether a response less than a Citation will provide effective general deterrence to the legal profession and preserve the public's confidence in the profession and in self-regulation, having regard to the nature and severity of the alleged misconduct. Where the Committee determines that these objectives are not met with any of the Alternative Actions then it may be that the authorization of a Citation is the only action consistent with the public interest.

### **B. Remediation, Rehabilitation and Specific Deterrence**

Where the Discipline Committee is satisfied that the objectives of general deterrence and maintaining confidence in the legal profession and in self-regulation will be met with one of the Alternative Actions, the Committee should then consider whether the Alternative Action will also meet the objectives of remediation, rehabilitation and specific deterrence.

The following factors or circumstances, alone or in combination, may be relevant to the Discipline Committee's assessment of whether the objectives of remediation, rehabilitation and specific deterrence may be met with any of the Alternative Actions:

#### **a. Specific Deterrence:**

Does the lawyer's conduct require the specific deterrence provided by publication of a written decision and disciplinary sanctions following a hearing; or can specific deterrence be addressed sufficiently through direct communications with the lawyer?



b. Experience:

How long has the lawyer been called to the bar and what level of practice experience does the lawyer have?

c. Record:

How long has the lawyer practised with no disciplinary action, or, conversely, how many other recent complaints and conduct concerns has the lawyer has been the subject of?

The Discipline Committee should apply to principle of progressive discipline.

d. Support:

Does the lawyer lack supervision or other supportive professional relationships or is the lawyer supervised by a senior practitioner or have supportive relationships with other lawyers and ready access to informal advice on professional conduct issues?

e. Knowledge:

Was there was a significant misunderstanding or lack of understanding component by the lawyer leading to the lawyer's problematic conduct or did the lawyer appear to have acted despite understanding the nature and significance of his or her problematic conduct?

f. Voluntariness:

Were there any involuntary or health-related factors leading to the lawyer's problematic conduct or was the lawyer's conduct voluntary and free from the effects of addiction, ill health, and duress?

g. Conduct After the Fact:

Has the lawyer, in a timely manner, voluntarily self-reported or acknowledged his or her error, accepted responsibility, and offered a genuine apology or has the lawyer has been resistant, evasive or less than candid in responding and communicating in the course of the Law Society's investigation.

h. Resulting Harm:

Has the lawyer's conduct resulted in significant harm to the interests of a client, to one or more members of the public, to the reputation of the legal profession?

i. Recompense:

Where possible, has the lawyer has taken positive steps to remedy any loss or damage caused by his or her conduct or has the lawyer has made no recompense in respect of the consequences of his or her conduct.

j. Remediation:

Where potential repetition of the problematic conduct could be avoided by changes in the practices of the lawyer or his or her staff, have such changes have been implemented or does the lawyer not appear to have changed any practices to prevent a repetition of the problematic conduct?

k. Risk:

What is the level of risk that the lawyer will engage in further problematic conduct?

l. Rehabilitation Prospect:

Will an Alternative Action be likely to provide a superior rehabilitation or remedial result, or will it be unlikely to have a meaningful effect on the lawyer's future conduct.

m. Other Considerations:

Other relevant factors or circumstances as determined by the Discipline Committee.

## **APPENDIX A DISCIPLINE COMMITTEE ACTIONS ON COMPLAINTS**

The Actions available to the Discipline Committee when considering a lawyer's conduct include the following.

### **1. Citations**

The issuance of a Citation results in the Law Society's most public and transparent disciplinary process. Salient characteristics of the Citation include:

- a. Publication of the Citation on the Law Society's website including the Lawyer Directory and publication of the hearing panel decisions;
- b. A Citation that is issued and not rescinded leads to a hearing, at which the allegations about the lawyer's conduct and any required facts must be proven or admitted, before disciplinary action may be ordered;
- c. If there is an adverse determination made by the hearing panel, the outcome of the Citation will form part of the lawyer's "Professional Conduct Record" which may be considered at the disciplinary action determination phase of a subsequent hearing involving the same lawyer; and

- d. In addition to facing a potential costs assessment, a lawyer who receives and adverse determination upon the hearing of a Citation may be subject to one or more of the following disciplinary actions:
  - (i) a reprimand;
  - (ii) a fine;
  - (iii) a suspension; or
  - (iv) disbarment.

## **2. Conduct Reviews**

The Conduct Review is the most significant of the Alternative Actions. Its salient characteristics include:

- (a) Conducted by a subcommittee that must include at least one lawyer and must be chaired by a Benchers or Life Benchers;
- (b) May provide an opportunity for a complainant to discuss his or her views and concerns with the Subcommittee;
- (c) Provides an opportunity for face-to-face communication between the subcommittee and the lawyer regarding the conduct in question and any issues of concern;
- (d) Provides an opportunity for the subcommittee to test and confirm the lawyer's understanding of the issues of concern to the Discipline Committee;
- (e) May provide a more effective remedial or rehabilitative opportunity to manage the lawyer's conduct in the legal profession (in contrast with a Citation and hearing process);
- (f) Results in the subcommittee's written report to the Discipline Committee, which may then direct that no further action be taken, that a Citation be issued, that the Conduct Review be rescinded in favour of a different alternative disciplinary outcome, or that the lawyer be referred to the Practice Standards Committee;
- (g) Unless subsequently rescinded, is reflected in the lawyer's "Professional Conduct Record," which may be considered at the disciplinary action determination phase of a subsequent hearing involving the same lawyer;
- (h) Unless subsequently rescinded, will likely be reflected in a summary publication, issued to the profession and made available to the public without naming the lawyer.

### **3. Conduct Meeting**

In contrast with the Conduct Review, the Conduct Meeting is a less serious Alternative Action. Its salient characteristics include:

- (a) Conducted by one or more Benchers or lawyers;
- (b) When a Conduct Meeting is directed, the complainant (where applicable) is informed and provided with a general explanation of what a Conduct Meeting is; the complainant does not attend the Conduct Meeting;
- (c) There is no publication of the Conduct Meeting by the Law Society, the Conduct Meeting is held in private, and neither the fact of the Conduct Meeting nor any record of the Conduct Meeting, nor any record of the Law Society's investigation of the matter is recorded in the lawyer's "Professional Conduct Record";
- (d) Does not engage the objective of general deterrence as there is no publication of the Conduct Meeting to the legal profession;
- (e) A Conduct Meeting is the final disposition of matter, and, unlike a Conduct Review, there is no written report following the Conduct Meeting.

### **4. Conduct Letter**

Like the Conduct Meeting, the Conduct Letter is also a less serious Alternative Action than the Conduct Review. The Conduct Letter's salient characteristics include:

- a. Issued in the name of the Chair of the Discipline Committee, to confirm that the matter has been reviewed by the Committee, to express the Committee's concerns regarding the matter, and to confirm that no further action (beyond issuance of the Letter) will be taken in the matter;
- b. When a Conduct Letter is issued, the complainant (where applicable) receives notice of the Discipline Committee's direction and a copy of the Conduct Letter;
- c. Aside from the notice and copy of the Conduct Letter to a complainant, there is no publication of the fact or content of the Conduct Letter by the Law Society and neither the fact nor the content of the Conduct Letter, nor any record of the Law Society's investigation of the matter, is recorded in the lawyer's "Professional Conduct Record";
- d. A copy of the Conduct Letter is placed on the lawyer's "Member File" with the Law Society;

- e. Provides an opportunity for an expression of the Discipline Committee's concerns in circumstances where it is determined that face-to-face communication is not needed; and
- f. A Conduct Letter is necessarily a final disposition of a matter and, in contrast with a Conduct Review, a Conduct Letter does not result in a subsequent written report to the Discipline Committee.

## **5. No Further Action**

Under Rule 4-4 of the Law Society Rules, the Discipline Committee also has the option of directing that a matter be concluded with no further action taken, where it determines that the circumstances of the matter do not warrant any response. This may be on the basis that the Committee is satisfied that the conduct, on a balance of probabilities, cannot be proven or does not fall below the standard of conduct expected by the Law Society.

A record of the complaint, though, along with the Discipline Committee's decision, is retained by the Law Society.

## **6. Referral to the Practice Standards Committee**

The Discipline Committee may refer a matter to the Practice Standards Committee either on its own or concurrently with another action such as a Conduct Review. The Practice Standards Committee has the authority to assist lawyers to achieve and maintain competency by assisting lawyer's in implementing appropriate office systems and procedures, recommending remedial studies or mentoring, and, where necessary, the imposition of practice restrictions.



# Memo

To: The Benchers  
From: Natasha Dookie, Chief Legal Officer  
Date: February 23, 2021  
Subject: National Discipline Standards - 2020

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## Background

1. The National Discipline Standards were developed as a Federation of Law Societies of Canada initiative to create uniformly high standards for the handling of complaints and disciplinary matters. The Benchers approved the adoption and implementation of the National Discipline Standards at their meeting on June 13, 2014. All law societies in Canada have adopted the standards.
2. The standards address timeliness, openness, public participation, transparency, accessibility and training of adjudicators and investigators.
3. The standards are aspirational. As of 2019 year end, no law society has met all of the standards in their entirety. In 2019 Canadian law societies met on average 80% of the standards and LSBC met 87% of the standards.
4. Standard 23 requires us to report to you annually. As such, I provide that report below.

## Report on LSBC Progress

5. LSBC progress on each of the standards is set out at Attachment 1.
6. For 2020, we met 20 of 23 standards, which is similar to our performance in previous years.
7. Of significance we met the standards regarding:
  - a. timely complaint resolution or referral to the Discipline Committee (Standard 4); and,
  - b. ongoing contact with complainants during the investigation process (Standard 5).

8. The three standards we did not meet in 2020 are:

- a. Standard 9 requires 75% of hearings to be commenced within 9 months of the citation being authorized. In 2020 we met this standard with 9% of the hearings. Standard 9 also requires that 90% of hearings be commenced within 12 months of the citation being authorized. In 2020 we met this standard with 44% of hearings (58% for in-house counsel). COVID-19 was the primary reason the department was unable to sustain the gains it made in 2019, however, other factors were also at play. It is noteworthy that the department continued to handle a large number of hearings in 2020 (54), which compares to 64 in 2019 (a record), and 31 in 2018.

The reasons we did not attain standard 9 in 2020 include:

- i. Due to the pandemic lockdown, there were no hearings between approximately March 15, 2020 and May 27, 2020. Hearings that had been scheduled, or could have been scheduled during that time, were adjourned or postponed. This had a domino effect on hearings that were scheduled, or could have been scheduled, in the summer and fall months.
- ii. We had a record number of very lengthy hearings in 2020, which meant that a small number of files took up an inordinate amount of resources. For example, we had two Facts & Determination hearings which were over 10 days each, and two other Facts & Determination hearings in respect of which at least 5 days of hearing have occurred with additional dates scheduled. It is highly unusual for Law Society hearings to be this lengthy, and particularly unusual to have so many lengthy hearings in one year.
- iii. We had a record number of hearing continuations in 2020 (i.e. hearings that started in 2019 and continued into 2020. Ten hearings from 2019 continued into 2020.
- iv. We had a record number of applications to contend with in 2020. Twenty applications were submitted to the President, a hearing panel or the Discipline Committee (this compares to 6 applications in 2019). These applications pertained to a variety of matters and in some cases required significant resources.
- v. We had a vacancy in the Discipline Counsel role for approximately six months.
- vi. We had a backlog of old files to contend with (stemming from the influx of files of 2018 combined with staffing issues at that time). To this end, we closed a record number of files (47).

We look forward to reverting to the gains we made in 2019 as our process for conducting hearings by Zoom is well underway, and we are fully staffed in terms of counsel.

<b>Year</b>	<b>75% of hearings commenced within 9 months</b>	<b>90% of hearings commenced within 12 months</b>
2020	9%	44%
2019	36%	72%
2018	16%	26%
2017	66%	92%

- b. Standard 10 requires 90% of hearing panel decisions to be rendered within 90 days of the last submissions. We are at 67% which is less than last year due in large part to hearings not occurring in the first few months of the pandemic.

<b>Year</b>	<b>Percentage of decisions rendered within 90 days</b>
2020	67%
2019	78%
2018	62%
2017	65%
2016	70%
2015	55%
2014	71%

- c. Standard 19 requires that there be a directory available with easily accessible information on discipline history for each lawyer. In 2016, changes were made to



the Lawyer Directory to allow easy access to post-September 2003 discipline decisions. We have since made significant progress with regards to pre-September 2003 decisions and discipline histories dating back to 1983 are now posted online. The work on this project continues.

**ATTACHMENT 1**

**NATIONAL DISCIPLINE STANDARDS**

**ANNUAL REPORT ON LSBC STATUS FOR 2020**

STANDARD		CURRENT STATUS
<b>Timeliness</b>		
1.	<p><i>Telephone inquiries:</i></p> <p>75% of telephone inquiries are acknowledged within one business day and 100% within two business days.</p>	<p><b>MET</b></p> <p>99.8% of telephone inquiries were acknowledged within one business day; 100% were acknowledged within two business days.</p>
2.	<p><i>Written complaints:</i></p> <p>95% of written complaints are acknowledged in writing within three business days.</p>	<p><b>MET</b></p> <p>99.9% of written complaints were acknowledged within two business days.</p>
3.	<p><i>Early Resolution:</i></p> <p>There is a system in place for early resolution of appropriate complaints.</p>	<p><b>MET</b></p> <p>The Intake &amp; Early Resolution Group within Professional Conduct implements early resolution of appropriate complaints.</p>
4.	<p><i>Timeline to resolve or refer complaint:</i></p> <p>(a) 80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months.</p> <p>90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.</p>	<p><b>MET</b></p> <p>88% of all complaints were resolved or referred for a disciplinary or remedial response within 12 months.</p> <p>97% of all complaints were resolved or referred for a disciplinary or remedial response within 18 months.</p>

STANDARD		CURRENT STATUS
	<p>(b) Where a complaint is resolved and the complainant initiates an internal review or internal appeal process:</p> <p>80% of all internal reviews or internal appeals are decided within 90 days.</p> <p>90% of all internal reviews of internal appeals are decided within 120 days.</p>	<p><b>MET</b></p> <p>100% of all internal reviews were decided within 90 days.</p> <p>See above.</p>
	<p>(c) Where a complainant has been referred back to the investigation stage from an internal review or internal appeal process:</p> <p>80% of those matters are resolved or referred for a disciplinary or remedial response within a further 12 months.</p> <p>90% of those matters are resolved or referred for a disciplinary or remedial response within a further 18 months.</p>	<p><b>MET</b></p> <p>3 complaints were referred back to staff for further investigation: 1 was concluded within 3 months; and 2 have not yet been concluded but are within the 12 and 18 month periods.</p> <p>See above.</p>
5.	<p><i>Contact with complainant:</i></p> <p>For 90% of open complaints there is contact with the complainant at least once every 90 days during the investigation stage.</p>	<p><b>MET</b></p> <p>For 94.4% of open complaints there was contact with the complainant at least once every 90 days during the investigation stage.</p>
6.	<p><i>Contact with lawyer or Québec notary:</i></p> <p>For 90% of open complaints there is contact with the lawyer or Québec notary at least once every 90 days during the investigation stage.</p>	<p><b>MET</b></p> <p>For 91.2% of open complaints there was contact with the lawyer at least once every 90 days during the investigation stage.</p>

STANDARD		CURRENT STATUS
7.	<p><i>Interim Measures:</i></p> <p>There is authority and a process for the law society to obtain an interlocutory or interim suspension, restrictions or conditions on a member's practice of law, as the public interest may require.</p>	<p><b>MET</b></p> <p>Rule 3-10 or voluntary undertakings.</p>
<b>Hearings</b>		
8.	<p>75% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 60 days of authorization.</p> <p>95% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 90 days of authorization.</p>	<p><b>MET</b></p> <p>100% of citations issued and served in this reporting period were issued and served within 60 days of authorization.</p> <p><b>MET</b></p> <p>See above.</p>

STANDARD		CURRENT STATUS
9.	75% of all hearings commence within 9 months of authorization.	<p><b>NOT MET</b></p> <p>9% of hearings commenced in this reporting period were commenced within 9 months.</p> <p>Covid-19 resulted in an almost three month shutdown of hearings. This caused a number of adjournments for matters that had been scheduled during this three-month period which negatively impacted our ability to set down other matters for hearing. The shutdown of the office (even with staff working remotely) also had an initial yet significant impact on our ability to complete disclosure in a timely manner. Finally, we had several very complicated and lengthy hearings this year (over 10 days each), which consumed a number of department resources.</p>
	90% of all hearings commence within 12 months of authorization.	<p><b>NOT MET</b></p> <p>44% of hearings commenced in this reporting period were commenced within 12 months.</p> <p>See above.</p>
10.	Reasons for 90% of all decisions are rendered within 90 days from the last date the panel receives submissions.	<p><b>NOT MET</b></p> <p>67% of hearing decisions issued in 2020 were issued within 90 days of the final submissions. This is not as good as 78% in 2019, as a result of COVID pressures and a significant increase in the number of hearings. A reminder system has been implemented. The Chair (President's designate) makes personal contact with panel chairs.</p>
Public Participation		

STANDARD		CURRENT STATUS
11.	There is public participation at every stage of discipline; e.g. on all hearing panels of three or more; at least one public representative; on the charging committee, at least one public representative.	<b>MET</b>  There was one public representative on every disciplinary panel, at least one public representative on every review board and a public representative on our charging body (i.e., Discipline Committee).
12.	There is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee.	<b>MET</b>  There is a public representative on each of the two Complainants' Review Committees.
<b>Transparency</b>		
13.	Hearings are open to the public.	<b>MET</b>  Hearings are open to the public unless the panel exercises its discretion under Rule 5-8 to exclude some or all members of the public.
14.	Reasons are provided for any decision to close hearings.	<b>MET</b>  Rule 5-8(5) requires panels to give written reasons for orders to exclude the public or to require non-disclosure of information.
15.	Notices of charge or citation are published promptly after a date for the hearing has been set.	<b>MET</b>  In all cases, we publish the fact that a citation has been authorized as soon as the respondent has been informed and the content of the citation after the respondent has been served.
16.	Notices of hearing dates are published at least 60 days prior to the hearing, or such shorter time as the pre-hearing process allows.	<b>MET</b>  In all cases, we publish dates of hearings as soon as they are set.

STANDARD		CURRENT STATUS
17.	A law society can share information about a lawyer or Québec notary, either upon request or at its own initiative, with any other law society, or can require a lawyer or Québec notary to disclose such information to all law societies to which they are a member. All information must be shared in a manner that protects solicitor-client privilege.	<b>MET</b>  In 2018, we enacted Rule 2-27.1, which gives us discretion to share information when it is in the public interest to do so and to provide confidential or privileged information if the information will be adequately protected against disclosure.
18.	There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.	<b>MET</b>  Rule 3-3(5) allows the Discipline Committee to consent to delivery of such information to a law enforcement agency. Rule 3-3(6) indicates we cannot share privileged material.
<b>Accessibility</b>		
19.	A complaint help form is available to complainants.	<b>MET</b>  There are online materials available on the Law Society website to assist the public in making complaints as well as printed brochures describing the complaint process and jurisdiction.
20.	There is a directory available with status information on each lawyer or Québec notary, including easily accessible information on discipline history.	<b>NOT MET</b>  We have easily accessible information on discipline histories on our website, including on our Lawyer Directory for discipline decisions complete back to 1989 and largely complete back to 1983.
<b>Qualification of Adjudicators and Volunteers</b>		

STANDARD		CURRENT STATUS
21.	There is ongoing mandatory training for all adjudicators, with refresher training no less often than once a year, and the curriculum for mandatory training will comply with the national curriculum.	<b>MET</b>  Before participating in a hearing, all adjudicators have taken a basic course on the principles of administrative law, Law Society procedures and decision-writing. All lawyer adjudicators have taken an advanced workshop on decision writing and, before chairing a panel or review board, an advanced workshop on hearing skills. All adjudicators attend the annual refresher training in person or by video recording.
22.	There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.	<b>MET</b>  Orientation was provided to all new members of the Discipline Committee. There are no volunteers involved in conducting investigations.
<b>Qualification of Adjudicators and Volunteers</b>		
23.	Each law society will report annually to its governing body on the status of the standards.	<b>MET</b>  Report to the Benchers will occur in March 2021.



**The Law Society**  
*of British Columbia*



## **July 2019 – December 2020 Report**

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### **Equity Ombudsperson Program**

Claire Marchant (Equity Ombudsperson)

January 6, 2021

Prepared for: Benchers

Prepared by: Claire Marchant  
Manager, Practice Support/Equity Ombudsperson

Purpose: Information

## Introduction

1. The purpose of this report is to provide a review of the work undertaken as part of the Law Society of British Columbia (“**Law Society**”) Equity Ombudsperson Program (the “**Program**”) from July 1, 2019 to December 31, 2020 (the “**Term**”).
2. This report provides anonymized data about the volume and nature of contact received by the Program, in addition to describing the other work undertaken by the Program during the Term.
3. The Term of this report is an 18 month period to serve as a transition to future reports being provided on an annual, calendar year basis.

## Equity Ombudsperson Program

4. The purpose of the Program is to provide confidential advice on issues of discrimination to lawyers, articulated students, law students and support staff of legal employers.
5. Please find attached as **Appendix “A”** to this report a copy of the briefing document included in your Benchers Orientation Manual for reference.
6. Please find an Information Sheet about the Program attached as **Appendix “B”** to this report, which can be distributed by Benchers at their individual discretion.

## Program Initiatives

7. From July 1, 2019 to December 31, 2020, a number of initiatives were undertaken to promote awareness of the Program including:
  - a. Working with the Communications Department to develop and post videos about the Program to the Law Society website;
  - b. Setting up a booth at the PLTC fair in Vancouver, meeting PLTC students and distributing snacks and Program materials;

- c. Giving a session for CLE BC with the Deputy CLO, Gurprit Bains, on sexual misconduct in the legal profession on November 5, 2019; and
- d. Attending Thompson Rivers University in March 2020 to speak to students on shifting perspectives on diversity and inclusion and the value proposition of inclusive work environments.

## The Term in Review – Statistics

- 8. I can report the following information about contacts with the Program during the Term:
  - a. I was contacted by 91 individuals to discuss matters, with initial contact (subsequent contact may have been made in a subsequent month, not captured here) broken down by month as follows:

<b>July 2019</b>	<b>August</b>	<b>September</b>	<b>October</b>
1	4	3	5
<b>November</b>	<b>December</b>	<b>January 2020</b>	<b>February</b>
6	5	3	3
<b>March</b>	<b>April</b>	<b>May</b>	<b>June</b>
5	4	2	6
<b>July</b>	<b>August</b>	<b>September</b>	<b>October</b>
14	3	3	9
<b>November</b>	<b>December</b>		
11	4		

- b. Of the 91 individuals who contacted me, 45 made initial contact by email and 46 made initial contact by phone.
- c. Some individuals contacted the Program once, others multiple times on the same or similar issues.

- d. Of the 91 individuals who contacted me, 37 of the new matters were within the mandate of the Program.
- e. Of the 37 matters that were within the mandate of Program:
  - i. I spoke to lawyers, articling students, law students, and staff in the following numbers:

<b>Lawyers</b>	<b>Articled Students</b>	<b>Law Students</b>	<b>Staff</b>
22	8	3	4

- ii. I spoke to individuals about discrimination and harassment on the basis of sex, race, physical/mental impairment, gender identity/expression, sexual orientation, religion, family status, age, and requests for general information in the following numbers (noting that a contact may have covered multiple subjects):

<b>Equity Issue Raised</b>	<b>Number of Times Raised</b>
Sex	17
Race	3
Physical/Mental Impairment	7
Gender Identity/Expression	1
Sexual Orientation	1
Religion	1
Age	1
Family status	1
Information	4

- iii. I also spoke to 6 individuals about personal harassment (i.e. bullying).
9. Although the mandate of the Program includes mediating disputes if all parties consent, I did not perform any mediations during the Term.

## Term in Review – Overall Observations

10. In terms of contact content, discrimination and/or harassment on the basis of sex generated the highest volume of contacts. I anticipate these issues, sexual harassment in particular, will continue to generate a high contact volume.
11. I think the number of contacts about bullying is worthy of note.
12. Overall, I think the Program is functioning well within the Law Society and there have been major advantages to its integration into the Practice Support department in 2017, including:
  - a. **Identifying the overlap in contact content between the Program and the Practice Advisors on matters of equity and wellness.** Indeed, the Practice Advisors had 68 inquiries related to wellness and 13 inquiries related to equity issues during the Term. Having both programs in-house and trackable gives us a better idea of the need for, and usage of, Law Society resources regarding equity and wellness issues;
  - b. **Presenting enhanced service to contacts by being able to address both ethics and practice management issues and equity issues.** Matters can start as an exchange on practice advice and turn into a discussion about equity and wellness. I think there is real benefit in being able to address an issue from a variety of perspectives, in terms of providing tailored advice to individuals and increasing awareness about the Program and the breadth of advice available;
  - c. **Connecting individuals to resources and appropriate Law Society contacts.** I think there is also real benefit in having individuals connect with a person who knows the institution. People are understandably intimidated by the Law Society, and I think I help mitigate that by being able to explain the processes, how the departments work, and put them in touch with the myriad of people who are here to help; and
  - d. **Collaboration with other departments.** I think collaboration between the Program and other Law Society departments presents a great value proposition, particularly in terms of creating meaningful resources for members. For example, discussions of sexual misconduct in the legal profession with Gurprit Bains led to companion articles in the Benchers Bulletin and a joint presentation for CLE BC on the topic. I look forward to continued collaboration to create meaningful resources on equity issues.

13. The title of the Program continues to present a challenge. Similar to my previous reports, I received a number of contacts from members of the public that were outside the mandate of the Program. I attribute it to confusion created by the Program's title which gives the impression to the public that I can address issues involving fairness more generally. Despite these contacts being outside of the mandate of the Program, attending to these individuals still takes a significant amount of time particularly if they are frustrated or upset. Similarly, I think confusion around the Program's title may be impacting awareness and understanding of the function amongst lawyers and students.

## Looking Forward

14. Members continue to seek support on issues of equity and wellness and I am heartened by the important role the Practice Support Department does and will continue to play in assisting the profession with equity and wellness.
15. As noted in previous reports, I think it is time for the title of the Program to change to better reflect its function and mandate – for example, instead of Equity Ombudsperson the title could be Equity Advisor or Practice Advisor, Equity & Wellness.

# Equity Ombudsperson

## Objective

The Equity Ombudsperson, Claire Marchant, assists individuals and employers with resolving concerns about discrimination and harassment.

Lawyers, articulated students, law students and support staff of legal employers are all free to contact the Equity Ombudsperson. The service is voluntary, confidential and free to participants.

Claire is an employee of the Law Society of British Columbia in the Practice Advice department. Calls to her will remain strictly confidential, protected by the same measures that safeguard the confidentiality of all calls to Practice Advisors.

## Operations

The Equity Ombudsperson is responsible for:

- a. Intake and advice: receiving complaints, providing information, and discussing options.
- b. Mediation: resolving complaints informally with the consent of both the complainant and respondent.
- c. Reporting: providing statistical reports on the incidents of discrimination and harassment dealt with by the Equity Ombudsperson, as well as the number of proactive measures undertaken by the Equity Ombudsperson (such as educational presentations, policy development, etc.);
- d. Education: collaborating with Law Society staff in developing the content of the Law Society's educational initiatives to prevent discrimination and harassment in the legal profession; and
- e. Program design: assisting Law Society staff in the development of model equity and diversity policies.

## What can you do as Benchers to support this program?

- Some lawyers may contact their local Benchers for assistance with concerns regarding discrimination or harassment. Benchers may refer such inquiries to the Equity

Ombudsperson. Claire may be reached directly at 604.605.5303 or [equity@lsbc.org](mailto:equity@lsbc.org). Claire can also be reached outside business hours on her cell phone at 236.888.2133. Benchers may also consult with the Equity Ombudsperson prior to providing information to the lawyer.

- The Equity Ombudsperson will make a short document outlining the program and her services available to Benchers. Your support in providing this document to lawyers, articulated students, law students, and support staff of legal employers would much appreciated. For example, you may wish to provide the document to articling students during Bencher interviews.
- Benchers are welcome to review the online practice resources made available to lawyers by the department. The information can be accessed through the [Support and Resources for Lawyers](#) section of the website under the Equity Ombudsperson heading.

## Key Performance Measures

- The Equity Ombudsperson joined the Practice Advice Department in August 2017; accordingly, Key Performance Measures will be developed for 2018.





# Information

## Equity Ombudsperson Program

*The Law Society provides the legal profession in British Columbia with the services of an Equity Ombudsperson, who can assist with resolving concerns about discrimination and discriminatory harassment.*

### Who can contact the Equity Ombudsperson?

Lawyers, articulated students, law students and support staff of legal employers are all free to contact the Equity Ombudsperson.

The service is voluntary, confidential and free to participants.

### Who is the Equity Ombudsperson?

Claire Marchant is the Equity Ombudsperson. Claire is an employee of the Law Society of British Columbia in the Practice Advice department. Calls to her will remain strictly confidential, protected by the same measures that safeguard the confidentiality of all calls to Practice Advisors.

### What is discrimination?

Discrimination may involve unwelcome comments or actions related to:

- Race
- Colour
- Ancestry
- Place of origin
- Political belief
- Religion
- Marital status
- Family status
- Physical impairment
- Mental health issue
- Sex
- Sexual orientation
- Gender identity or expression

- Age
- Conviction of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

It is the impact of the behaviour — not the intention behind it — that determines if the behaviour is discriminatory.

## **What is discriminatory harassment?**

Discriminatory harassment can take many forms, including:

- Name-calling
- Racial slurs
- Religious jokes
- Sexual harassment
- Sexual harassment is a form of discrimination based on sex and may include:
  - Unwanted touching, sexual flirtation, advances or propositions
  - Leering
  - Suggestive comments about a person's sexuality or sexual orientation
  - Unwanted questions about a person's sex life
  - Persistent unwanted contact or attention after the end of a consensual relationship.

## **What can the Equity Ombudsperson do to help?**

- Intake and Advice: Receive inquiries, provide information, and discuss options.
- Mediation: Resolve concerns informally with the consent of both the complainant and respondent.
- Reporting: Provide anonymized statistical reports on the incidents of discrimination and discriminatory harassment dealt with by the Equity Ombudsperson, as well as the proactive measures undertaken by the Equity Ombudsperson to prevent discrimination and discriminatory harassment in the legal profession.

## **Contact the Equity Ombudsperson**

You can reach Equity Ombudsperson Claire Marchant at [equity@lsbc.org](mailto:equity@lsbc.org), 604.605.5303, or 236.888.2133.