



Agenda

Benchers

Date: Friday July 9, 2021

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

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

Location: Virtual meeting

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

VIRTUAL MEETING DETAILS

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

OATH OF OFFICE

President Lawton will administer the oath of office (in the form set out in Rule 1-3) to newly elected Bencher, Kim Carter.

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 May 28, 2021 meeting (regular session)
2	Minutes of May 28, 2021 meeting (<i>in camera</i> session)
3	Law Society Scholarship for Graduate Studies
4	Law Society Indigenous Scholarship
5	External Appointment: Legal Aid BC
6	Abeyance Policy



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7	Revisions to Benchers Code of Conduct	
8	Code of Professional Conduct Rules 3.4-26.2: Amendments to Commentaries 1 and 2 regarding Insurance References and Gendered Language	
9	Rule 1-7(2): Benchers Resignation Rule	
10	Rule 1-41(11): Executive Committee Elections	
11	Rule 2-84: Call Ceremony Attendance	
12	Rule 3-58.1: Exception for Mediators, Arbitrators, and Parenting Coordinators	
13	Rule 3-64.3: Withdrawal from Trust by Bank Draft	
REPORTS		
14	President’s Report	Dean Lawton, QC
15	CEO’s Report	Don Avison, QC
16	Briefing by the Law Society’s Member of the Federation Council	Pinder Cheema, QC
DISCUSSION/DECISION		
17	Regulatory Review: Terms of Reference	Dean Lawton, QC
UPDATES		
18	2021 May Financial Report	Lisa Hamilton, QC Jeanette McPhee
FOR INFORMATION		
19	Mid-Year Advisory Committee Reports	
20	Rule of Law Secondary School Essay Contest	
21	External Appointment: Continuing Legal Education Society of BC	
22	External Appointment: Supreme Court of BC Rules Committee	
23	Minutes of June 24, 2021 Executive Committee Meeting (regular session)	



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24	Three Month Benchers Calendar – July to September 2021
IN CAMERA	
25	Other Business



Minutes

Benchers

Date: Friday, May 28, 2021

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

Unable to Attend: Not Applicable

Public Session – Staff Attendance:

Staff:	Don Avison, QC	Barbara Lohmann
	Avalon Bourne	Alison Luke
	Barbara Buchanan, QC	Claire Marchant
	Jennifer Chan	Jeanette McPhee
	Lance Cooke	Doug Munro
	Natasha Dookie	Michelle Robertson
	Su Forbes, QC	Lesley Small
	Andrea Hilland	Adam Whitcombe, QC
	Jeffrey Hoskins, QC	Vinnie Yuen
	Jason Kuzminski	

<p>Guests:</p> <p>Dom Bautista</p> <p>Janine Benedet, QC</p> <p>Dr. Susan Breau</p> <p>Dr. Cristie Ford</p> <p>Clare Jennings</p> <p>Derek LaCroix, QC</p> <p>Caroline Nevin</p> <p>Robin Phillips</p> <p>Michèle Ross</p> <p>Linda Russell</p> <p>Kerry Simmons, QC</p>	<p>Executive Director & Managing Editor, Law Courts Center</p> <p>Dean pro tem, Peter A. Allard School of Law</p> <p>Dean of Law, University of Victoria</p> <p>Professor, Peter A. Allard School of Law</p> <p>First Vice-President, Canadian Bar Association, BC Branch</p> <p>Executive Director, Lawyers Assistance Program of B.C.</p> <p>CEO, Courthouse Libraries BC</p> <p>Board Director, Mediate BC Society</p> <p>President, BC Paralegal Association</p> <p>CEO, Continuing Legal Education Society of BC</p> <p>Executive Director, Canadian Bar Association, BC Branch</p>
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Mr. Lawton welcomed Benchers and guests to the meeting and acknowledged the Coast Salish peoples on whose traditional lands the meeting is being held, as well as all the traditional territories from where the other Benchers are participating remotely.

Mr. Lawton then paused to acknowledge the devastating news from Kamloops, noting that more information would become available over the coming days. Mr. Lawton stated that our hearts, prayers, and thoughts are with all of those in Kamloops and beyond who are impacted by this discovery. Mr. Lawton then invited Benchers and guests to join him in a moment of silence.

CONSENT AGENDA

1. Minutes of April 23, 2021, meeting (regular session)

The minutes of the meeting held on April 23, 2021 were approved unanimously and by consent as circulated.

2. Minutes of April 23, 2021, meeting (*In Camera* session)

The minutes of the *In Camera* meeting held on April 23, 2021 were approved unanimously and by consent as circulated.

3. Rule 1-9.1 – AGM entirely or partly by internet connection

The following resolution was passed unanimously and by consent:

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

1. ***In Rule 1-9 (5) by striking out “The Executive Committee must” and substituting “Subject to Rule 1-9.1 [AGM by internet connection], the Executive Committee must”.***
2. ***By enacting the following rule:***

AGM by internet connection

1-9.1 (1) Despite any other rule, and in its sole discretion, the Executive Committee may direct that the annual general meeting be held by internet connection

- (a) entirely and without the physical presence of individuals in a meeting place, or
- (b) with the physical presence of individuals in one or more meeting places.

- (2) When the Executive Committee makes a direction under subrule (1), the annual general meeting is governed by Rules 1-8 to 1-13.2 that apply to a general meeting by internet connection.
- (3) Despite subrule (2), at an annual general meeting held entirely by internet connection, the President may
 - (a) preside from any location in British Columbia, and
 - (b) allow any person participating in the meeting who has the appropriate electronic equipment to be heard by all others participating, to speak at the meeting.

4. Rule 2-117 – Failure to pay fine, costs or penalty

The following resolution was passed unanimously and by consent:

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

1. Rule 2-117 (1) and (2) is rescinded and the following substituted:

Money owed to the Society

2-117 (1) Where there is any amount of money due and owing to the Society by a lawyer or former lawyer, the Executive Director must apply any money received from the lawyer or former lawyer to the debt before money is applied to the annual fee or a special assessment.

5. Rule 3-58.1 – Trust account only for legal services: Exception for Mediators, Arbitrators and Parenting Coordinators

This item was removed from the agenda and referred back to the Act and Rules Committee to reconsider the language in light of the resolution that was passed at the April Bencher meeting, which stated “that Rule 3-58.1 be amended to allow retainers received by lawyers providing mediation, arbitration, and parenting coordination services to be deposited into their lawyer trust accounts.” The resolution does not explicitly support a limitation to family law mediators or arbitrators, although the context in which it came to pass might.

6. Rule Amendments – Gender Inclusive Language

The following resolution was passed unanimously and by consent:

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

- 1. The following rules are amended by striking out “his or her” and substituting “the student’s”:*

- (a) *Rule 1, definition of “articling start date”;*
 - (b) *Rule 2-59 (1) and (5) (b);*
 - (c) *Rule 2-62 (2).*
- 2. *The following rules are amended by striking out “he or she” and substituting “the Bencher”:*
 - (a) *Rule 1, definition of “Second Vice-President-elect”;*
 - (b) *Rule 1-2 (1);*
 - (c) *Rule 1-5 (4).*
- 3. *The following rules are amended by striking out “his or her” and substituting “the Bencher’s”:*
 - (a) *Rule 1-1 (3);*
 - (b) *Rule 1-2 (2).*
- 4. *Rule 1-6 is amended by striking out “he or she” where it occurs and substituting “the President or Vice-President”.*
- 5. *Rule 1-10 (6) is amended by striking out “his or her” and substituting “the auditor’s”.*
- 6. *The following rules are amended by striking out “his or her vote” and substituting “a vote”.*
 - (a) *Rule 1-13.1 (4);*
 - (b) *Rule 1-27.1 (3).*
- 7. *The following rules are amended by striking out “he or she” and substituting “the member”:*
 - (a) *Rule 1-13.2 (2);*
 - (b) *Rule 1-22 (1) (d);*
 - (c) *Rule 1-25 (1.1).*
- 8. *Rule 1-22 (1) (c) is rescinded and the following is substituted:*

- (c) if a practising lawyer, maintain the chief place of the lawyer's practice or employment in the district in which the lawyer seeks to be a candidate, and.

9. Rule 1-25 (4) and (5) is rescinded and the following is substituted:

- (4) A resident member of the Society may vote only in the district in which the member maintains
 - (a) the chief place of the member's practice or employment, in the case of a practising lawyer, or
 - (b) the member's residence, in the case of a retired or non-practising member.
- (5) A member of the Society may apply to the Executive Committee to be placed on the voter list for a District other than the one required by this rule, and the Executive Committee may direct the Executive Director to make the change if it is satisfied that the member has a significantly greater connection to the District the member wishes to vote in..

10. Rule 1-27 (5) is rescinded and the following is substituted:

- (5) The Executive Director may issue a new set of ballot materials to a member entitled to vote who informs the Executive Director in writing that the original ballot material sent to the member relates to a district other than the one in which the member is entitled to vote..

11. Rule 1-44.1 (2) is rescinded and the following is substituted:

- (2) In the absence of evidence to the contrary, a person employed or retained by the Society is the Executive Director's delegate when acting within the scope of the person's employment or retainer to exercise a power or authority delegated to the Executive Director under these rules..

12. Rule 1-51 (e) is amended by striking out "him or her" and substituting "the Executive Director".

13. The following rules are amended by striking out "his or her" and substituting "the lawyer":

- (a) **Rule 2-14 (2);**
- (b) **Rule 2-81 (4);**
- (c) **Rule 3-47;**

- (d) **Rule 3-50 (1);**
- (e) **Rule 3-51 (1);**
- (f) **Rule 3-66 (1);**
- (g) **Rule 3-67 (2);**
- (h) **Rule 3-87 (1);**
- (i) **Rule 3-99 (1.1) and (2).**

14. Rule 2-16 (2) and (8) is rescinded and the following is substituted:

- (2) Visiting lawyers must not hold themselves out or allow themselves to be held out as willing or qualified to provide legal services, except as visiting lawyers.
- (8) Notwithstanding Rules 2-15 to 2-27, members of the Canadian Forces who are entitled to practise law in a home jurisdiction in which they are members of the governing body
 - (a) may provide legal services for or on behalf of the Office of the Judge Advocate General without a permit, and
 - (b) do not establish an economic nexus with British Columbia under Rule 2-17 [Disqualifications], provided that they provide legal services exclusively for or on behalf of the Office of the Judge Advocate General..

15. Rule 2-17 is amended by striking out “his or her” and substituting “the visiting lawyer’s”.

16. Rule 2-23 (2) is amended by striking out “he or she” where it occurs and substituting “the visiting lawyer”.

17. The following rules are amended by striking out “he or she” and substituting “the practitioner of foreign law”:

- (a) **Rule 2-30 (5);**
- (b) **Rule 2-33.**

18. Rule 2-31 is amended

- (a) **by rescinding subrule (2) (c) and substituting the following:**

- (c) not be subject to conditions of or restrictions on membership in the governing body of the practitioner of foreign law or on qualification to practise law in any jurisdiction imposed as a result of or in connection with proceedings related to discipline, competency or capacity,, **and**
 - (b) **in subrule (5) by striking out “in his or her home jurisdiction” and substituting “in the home jurisdiction of the practitioner of foreign law”.**
- 19. **Rule 2-34 is amended by striking out “before his or her permit expires.” and substituting “before it expires.”**
- 20. **Rule 2-36 is amended by striking out “he or she” and substituting “the Canadian legal advisor”.**
- 21. **The following rules are amended by striking out “his or her” and substituting “the Executive Director’s”:**
 - (a) **Rule 2-43 (1);**
 - (b) **Rule 2-108 (7);**
 - (c) **Rule 3-80 (4).**
- 22. **The following rules are amended by striking out “his or her” and substituting “the applicant’s”:**
 - (a) **Rule 2-62 (1);**
 - (b) **2-79 (7).**
- 23. **The following rules are amended by striking out “his or her principal” and substituting “a principal”:**
 - (a) **Rule 2-63 (2);**
 - (b) **Rule 2-69 (1).**
- 24. **Rule 2-66 (1) is rescinded and the following is substituted:**

- (1) With the principal's consent, an articulated student may work in the office of another lawyer qualified to act as a principal, for not more than a total of 8 weeks of the student's articling period..
25. ***Rule 2-69 (8) and (9) is amended by striking out “within 2 years of his or her enrolment” and substituting “within 2 years of enrolment”.***
26. ***The following rules are amended by striking out “he or she” where it occurs and substituting “the applicant”:***
- (a) ***Rule 2-79 (1), (4) and (7);***
- (b) ***Rule 2-81 (3).***
27. ***Rule 2-81 (2) is rescinded and the following is substituted:***
- (2) An applicant under this rule must fulfill all of the requirements in Rule 2-79 [Transfer from another Canadian jurisdiction] for call and admission on transfer from another Canadian jurisdiction, except that the applicant does not need to pass any transfer examination..
28. ***Rule 2-82 (3) is rescinded and the following is substituted:***
- (3) This rule applies to those members of the Chambre who have earned a bachelor's degree in civil law in Canada or a foreign degree and a certificate of equivalency from the Chambre..
29. ***Rule 2-87 (1) is amended by striking out “a lawyer who was a judge or a master must restrict his or her practice of law” and substituting “the practice of law by a lawyer who was a judge or a master is restricted”.***
30. ***Rule 2-96 (1) is amended by striking out “his or her” and substituting “the President's”.***
31. ***The following rules are amended by striking out “he or she” and substituting “the lawyer”:***
- (a) ***Rule 3-6 (1);***
- (b) ***Rule 3-51 (1);***
- (c) ***Rule 3-108;***
- (d) ***Rule 3-109 (1);***

- (e) **Rule 4-13 (1).**
32. **Rule 3-11 (2) is amended by striking out “to complete his or her articles” and substituting “to complete articles”.**
33. **Rule 3-12 (4) is rescinded and the following is substituted:**
- (4) The lawyer or articled student and counsel for the lawyer or articled student may be present at a proceeding under this rule..
34. **Rule 3-51 (2) is amended by striking out “has conducted himself or herself in a manner unbecoming the profession” and substituting “has committed conduct unbecoming the profession”.**
35. **Rule 3-72 (2) is amended**
- (a) **in the preamble by striking out “in his or her general account records” and substituting “in general account records”, and**
- (b) **in paragraph (b) by striking out “his or her” and substituting “the lawyer’s”.**
36. **Rule 3-75 (2) and (3) is rescinded and the following is substituted:**
- (2) A lawyer must keep all records for as long as the records apply to money held as trust funds or to valuables held in trust for a client and for at least 10 years from the final accounting transaction or disposition of valuables.
- (3) A lawyer must keep records, other than electronic records, at the lawyer’s chief place of practice in British Columbia for at least 3 years from the final accounting transaction or disposition of valuables..
37. **Rule 3-87 (2) (c) is rescinded and the following is substituted:**
- (c) the lawyer or former lawyer has notified all clients and other persons for whom the lawyer is or may become a personal representative, executor, trustee or other fiduciary regarding the lawyer or former lawyer’s withdrawal from practice and any change in the lawyer’s membership status..
38. **Rule 3-90 (3) is amended by striking out “he or she” and substituting “the Executive Director”.**
39. **Rule 4-5 (1) is amended by striking out “him or her” and substituting “the chair”.**
40. **Rule 4-26 (7) is amended**

- (a) *by striking out “his or her” and substituting “the person’s”, and*
 - (b) *by striking out “he or she” and substituting “the person”.*
41. ***Rule 4-38 (7) is rescinded and the following is substituted:***
- (7) The Bencher presiding at a pre-hearing conference may allow any person to participate in a conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this rule..
42. ***Rule 5-25 (7) is rescinded and the following is substituted:***
- (7) The Bencher presiding at a pre-review conference may allow any person to participate in the conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this Rule..
43. ***Rule 9-2 (3) is amended by striking “his or her decision” and substituting “the decision”.***
44. ***Rule 9-10 is amended by striking out “his or her” and substituting “the president’s”.***
45. ***Rule 9-15 (1) is amended by striking out “he or she” and substituting “the person”.***
46. ***Rule 9-17 (3) is amended by striking out “Each partner is personally liable for his or her own actions,” and substituting “Partners are personally liable for their own actions,”.***
47. ***Rule 10-4 is amended***
- (a) *by rescinding subrule (1) and substituting the following:*
 - (1) A lawyer must protect all records related to the lawyer’s practice and the information contained in them by making reasonable security arrangements against all risks of loss, destruction and unauthorized access, use or disclosure.,
and
 - (b) *by rescinding subrule (2) (a) and substituting the following:*
 - (a) the lawyer has lost custody or control of any records related to the lawyer’s practice for any reason.,

REPORTS

7. President’s Report

Mr. Lawton began his report by announcing the Benchers' nominee for the 2022 second Vice-President, Jeevyn Dhaliwal, QC. Mr. Lawton congratulated Ms. Dhaliwal.

Mr. Lawton then informed Benchers that arrangements were being made for a virtual Bencher social event to take place the Thursday before the July Bencher meeting.

Mr. Lawton spoke about the *Bronstein* decision, noting that he anticipated that all Benchers had had an opportunity to be aware that the decision in the *Bronstein* case was issued yesterday. It was a very lengthy decision, 125 pages long. Mr. Lawton noted that his following remarks were not directed at the panel, and he recognized that the panel is that of an independent tribunal. Mr. Lawton noted that while the majority and the dissent disagreed about accepting the proposed consent resolution and disciplinary action, both the majority and the dissent accepted that to ensure public confidence in the Law Society's ability to self-regulate requires that it be able to appropriately ensure the safety and protection of the most vulnerable and marginalized members of society within a regulatory process. In *Bronstein*, the Chair, in dissent, recommended that the Law Society undertake a comprehensive review of its disciplinary process, perhaps similar to a review undertaken by the Law Society of Ontario following the *Keshen* decision in that jurisdiction. Mr. Lawton stated that the Law Society's experience in the *Bronstein* matter has demonstrated a need for a review, and the dissent invited an opportunity to ensure that the Law Society's regulatory processes are responsive and accessible to all. To do this is consistent with one of the objectives in the Law Society's Strategic Plan, in particular that part of the Strategic Plan that addresses the unique needs of Indigenous people within Law Society regulatory processes. Mr. Lawton noted that he expected the terms of reference for the review be brought to the July Bencher meeting for discussion and decision by the Benchers and, if accepted, the Benchers would then begin the review shortly thereafter.

Mr. Lawton then updated Benchers regarding Claire Marshall's resignation. Ms. Marshall will be taking on the role of Executive Director for the Millbrook First Nation in Nova Scotia. Mr. Lawton thanked Ms. Marshall for her significant contributions, and informed Benchers that she would continue to serve as a member of the Truth and Reconciliation Advisory Committee.

Mr. Lawton acknowledged the appointment of Madam Justice Julianne Lamb's appointment to the Supreme Court of BC. Mr. Lawton noted that her contributions will be missed. Mr. Lawton reviewed the committee changes he has made to address this vacancy, including the appointment of Ian McIver to the Discipline Committee, the appointment of Karen Orr to the Lawyer Development Task Force, and the appointment of Chelsea Wilson as Vice-Chair for the Practice Standards Committee.

Mr. Lawton informed Benchers that this meeting marked Jeff Hoskins, QC's 300th Bencher meeting. Mr. Lawton acknowledged Mr. Hoskins tenure and contributions.

Mr. Lawton then provided an update of his recent quarterly meeting with CBABC. Mr. Avison, Kerry Simmons, QC, Jennifer Brun, and incoming President Clare Jennings were all in attendance. Mr. Lawton noted that these meetings have been helpful in sharing ideas and providing opportunities to collaborate on issues in the public interest.

Mr. Lawton spoke about the recent sessions put on by the Mental Health Task Force that engaged with members regarding mental health challenges within the profession, particularly in regard to COVID-19. Mr. Lawton noted that turn-out was good with 120 members attending the first session and 70 members attending the second session. Mr. Greenberg echoed Mr. Lawton's comments and thanked staff for all their help with the Mental Health sessions.

Mr. Lawton informed Benchers that he had participated as a panel member in the Northern BC Law Talks. Mr. Lawton noted that Mr. MacDonald had been organizing these sessions for over a decade. Shannon Salter had also been involved, and Mr. Lawton noted that that he'd had a lively discussion with her regarding the importance of lawyer independence.

Mr. Lawton spoke about the Law Courts Inn's search for new space. The Law Courts Inn would be auctioning off photographic memorabilia and paintings, and Mr. Lawton had been asked to be an auctioneer.

Mr. Lawton spoke about addressing the issue of retaining women in the profession, as well as the particular challenges that women face in the profession. He noted that this matter had been on the agenda of the May Executive Committee meeting, but as the meeting ran late, the matter was adjourned to the June meeting. Mr. Lawton stated that this was an important issue, and it would be addressed.

Mr. Lawton concluded his report by recognizing the high level of support he has received thus far from staff over the past five months of his presidency.

8. CEO's Report

Mr. Avison began his report by Benchers with a status update regarding the governance review. Four proposals have been submitted and are currently being analyzed, and this matter will be on the June Executive Committee meeting agenda for decision, and then Benchers will be updated at the July Bencher meeting. Mr. Avison noted that his expectation would be to have a report available no later than the second quarter of 2022.

Mr. Avison then updated Benchers regarding the Cullen Commission hearings. The evidence phase is now complete, and submissions are expected on June 11 with replies on June 25. Following that, there will be three days of oral submissions. A full briefing will be provided to Benchers after the oral submissions. Mr. Avison also noted that the Law Society of Ontario had passed the Model Rules.

Mr. Avison confirmed that the Bencher Retreat will take place this year in October, though the level of participation will need to be determined based on BC's Restart Plan, which details an incremental approach to public gatherings. Mr. Avison noted that it would likely be possible to meet in-person for the September Bencher meeting as well. Ms. Hamilton provided a brief overview of the core themes for the Retreat, noting that the intention would be to hold an in-depth workshop to review the Law Society's discipline process both for timeliness and appropriateness. Discussion topics will also include the Abrametz decision, as well as the Bronstein case.

Mr. Avison then spoke about call ceremonies, which have not taken place since the onset of COVID-19, with the exception of some smaller, regional ceremonies. The Law Society has been in discussions with the Supreme Court and the Chief Justice about how to best manage the number of call ceremonies needed to address the backlog in the most effective way possible. Mr. Avison noted that the approach would likely be to accommodate a number of events about the usual size to keep as meaningful as possible for the newly called. Mr. Avison also noted that Benchers should give some consideration to changing call ceremony requirements for lawyers transferring from other jurisdictions, and potentially making call ceremonies optional for all.

Mr. Avison then updated Benchers on the budget development process for 2022, which is well underway. The Finance and Audit Committee will be meeting in July to review the budget, and then it will be on the agenda for the September Bencher meeting. There will also be a session in advance of the September meeting to brief Benchers in detail.

Mr. Avison concluded his report with recognizing Mr. Hoskins significant milestone. Mr. Avison also updated Benchers on staffing changes within Colliers and recognized the exemplary work of the Law Society's points of contact within Colliers.

Ms. Snowshoe thanked Mr. Lawton and Mr. Avison for the acknowledgement regarding Kamloops and the discovery of mass graves on the site of a former residential school. Ms. Snowshoe spoke about her experiences as an adjudicator with the Independent Assessment Process, which adjudicated over 38,000 claims of abuse from survivors of residential schools. Ms. Snowshoe noted that there were 139 residential schools across Canada, and the likelihood of more graves being discovered is significant. Ms. Snowshoe also spoke about the importance of giving a voice to all those who didn't survive the residential school system.

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

Ms. Cheema began her report with an overview of the May Federation Council meeting, which dealt with a continuation of discussions regarding the role of reconciliation and the Truth and Reconciliation Commission in the decisions of the Federation going forward. Discussions also included the constitution of an Indigenous advisory council and the terms of reference, as well as

determining whether or not the Council should first consult and engage with Indigenous members of the profession to help inform the constitution and terms of reference for the advisory group, which the Council ultimately agreed was the appropriate way forward. The process for this advisory group will be finalized at the June Council meeting. The Council also discussed the national requirement, which sets the competencies for graduates of Canadian common law programs. The national requirement has a review cycle of every five years, and it must be reviewed again by June 2022. This item will also be on the agenda for the June Council meeting. Ms. Hobbs thanked Ms. Cheema for her update, and noted that she greatly supported the early engagement with Indigenous communities in relation to the advisory council, and stressed the importance of continuing to do better in regard to promoting justice and giving voice to Indigenous peoples, particularly in relation to the recent news in Kamloops. The loss of those children cannot be changed, but it is important to acknowledge what happened and commit to ensuring that something like this never happens again.

Ms. Cheema then updated Benchers on the Law Society of Alberta's Retreat, which would be taking place in Jasper. The topic of the Retreat would focus on alternatives to articling with sub-topics including the integrated practice curriculum. There will also be a panel discussion put on by the western law school deans regarding what law schools can do to prepare students for articles. The moderator of the panel will be Jordan Furlong. Ms. Cheema noted the significant BC presence invited to the retreat, including Mr. Avison, Mr. Lawton, Mr. Whitcombe, Mr. Lucas, and Ms. Small.

Ms. Cheema concluded her report with a brief update regarding the June Federation Council meeting. The agenda will likely focus on current strategic priorities, including the national wellness survey, as well as the criteria for engaging external council in light of the Abrametz decision. Mr. Greenberg provided further details regarding the national wellbeing survey, noting that roll-out has started in the smaller provinces and in the territories. Mr. Greenberg also invited Benchers to encourage all members of the profession to participate.

DISCUSSION/DECISION

10. 2021 Enterprise Risk Management Plan – Update

Mr. Avison began by recognizing Ms. McPhee's recent milestone of 15 years with the Law Society. Mr. Avison then updated Benchers on the Law Society's Enterprise Risk Management Plan for 2021. Mr. Avison summarized the Law Society's major strategic risks and spoke about the staff member responsible for each. Mr. Avison then reviewed each risk in detail, discussing the context, mitigating factors, potential impacts, and risk action plan if applicable. Mr. Avison reviewed how the risks linked to the goals of the strategic plan. Mr. Avison also noted that part of the risk management process was to think about and determine risks that may not be seen as risks, for example the COVID-19 pandemic.

Benchers discussed the Enterprise Risk Management Plan and the role of tribunal councils in mitigating Risk Number 1: *Failure to address lawyer misconduct, incompetence and/or breach of Rules in an appropriate and/or timely manner*, with some Benchers noting that tribunal councils should undertake mandatory Indigenous awareness training.

Benchers also discussed whether or not there were any areas that weren't covered by the current plan. Mr. Avison noted that the process of developing the plan with the consultant was quite helpful in terms of focus. The number of indicators was decreased; however, nothing was really removed from the plan itself. Having less items on the list makes it easier to consider the plan a working document and to keep on hand for decision making. Mr. Avison noted that the Federation Council meeting in June would be focused on training standards for staff in relation to mental health and trauma informed responses, and these are the areas where the Law Society needs to elevate its attention.

Benchers asked if the plan had been compared to other law societies' plans to see if there were any risks that had been identified by other law societies that hadn't been identified by the Law Society of BC. Mr. Avison noted that this hasn't been included in the process, but it could be helpful. Mr. Avison would bring forward the plan to his meeting with the CEOs of other law societies and suggest that all plans be shared to see commonalities or gaps.

11. Proposed Rule Amendment to provide for Bencher Resignation

Ms. Dhaliwal reviewed the proposed rule amendment by which to provide for Bencher resignation.

The following motion was made and seconded.

BE IT RESOLVED that the Benchers approve in principle an amendment to the Rules to provide for the resignation of a Bencher and to refer the matter to the Act and Rules Committee.

The resolution was passed unanimously.

FOR INFORMATION

12. External Appointment: Continuing Legal Education Society of BC

There was no discussion on this item.

13. External Appointment: British Columbia Law Institute

There was no discussion on this item.

14. Kamloops Lawyer Petition: Paralegals

There was no discussion on this item.

15. Minutes of May 13, 2021 Executive Committee Meeting (regular session)

There was no discussion on this item.

16. Three Month Bencher Calendar – June to August 2021

There was no discussion on this item.

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

AB
2021-05-28



Memo

To: Benchers
From: Credentials Committee
Date: July 9, 2021
Subject: 2021 Law Society Scholarship for Graduate Legal Studies

The Benchers are asked to ratify the recommendation of the Credentials Committee to award the 2021 Law Society Scholarship to [REDACTED].

The Law Society Scholarship of \$20,000 is offered annually to eligible candidates to encourage and financially assist those candidates in completing graduate legal studies which will, in turn, ultimately benefit the individual, the province, and the legal profession in British Columbia.

Guidelines

In addition to examining how the candidate's proposed graduate studies will benefit the individual, the province, and the legal profession in British Columbia, the Committee also takes into consideration:

- i. The candidate's academic standing;
- ii. The candidate's positive social contributions, such as volunteer work;
- iii. Whether the candidate intends to practise in British Columbia after their graduate studies;
- iv. Financial need; and
- v. Importance or significance of proposed graduate work.

Candidates awarded the Scholarship are required to provide a reporting letter on the use of the Scholarship and a copy of the relevant work.

Recipient

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Attachments

1. Letter of application from [REDACTED], dated April 28, 2021.



Memo

To: Benchers
From: Credentials Committee
Date: July 9, 2021
Subject: 2021 Indigenous Law Society Scholarship

The Benchers are asked to ratify the recommendation of the Credentials Committee to award the 2021 Indigenous Scholarship equally between [REDACTED] and [REDACTED].

The Indigenous Scholarship is offered for Indigenous students enrolled in full time legal studies in the province of British Columbia. The scholarship may be awarded to one student (\$20,000) or divided equally between two students (\$10,000 per student) at the discretion of the Credentials Committee. The Indigenous Scholarship aims to enhance the demographic representation of Indigenous lawyers in British Columbia by supporting their legal education.

Eligibility

The Indigenous Scholarship is open to Canadian Indigenous students who are enrolled in full-time studies at the University of British Columbia, University of Victoria, or Thompson Rivers University law schools.

Criteria

The Credentials Committee takes the following criteria into consideration:

- i. Academic standing;
- ii. Positive social contributions, such as volunteer work;
- iii. The applicant's intention to practise in British Columbia after completing legal studies; and
- iv. Financial need.

Recipients

The Credentials Committee resolved to recommend to the Benchers that the \$20,000 Indigenous Scholarship be divided equally between [REDACTED] and [REDACTED].

1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Attachments

1. Letter of application from [REDACTED], dated April 3, 2021.
2. Letter of application from [REDACTED], dated April 14, 2021.



Memo

To: Benchers
From: Governance Committee
Date: July 9, 2021
Subject: Benchers Code of Conduct: Appearing as Counsel

Background

When the Benchers Code of Conduct was last considered by the Governance Committee, the *Appearing as Counsel* section was left largely unchanged. As a result, the question of whether a current Benchers could appear as counsel for a respondent in a Law Society proceeding is unanswered by the current provisions in the *Appearing as Counsel* section of the Code.

The closest provision is: “19. A current Benchers must not appear before the courts on behalf of a member or the Law Society in a discipline or credentials matter”, which specifically references appearing before the courts. As the Law Society’s discipline panels are not courts, the section of the Code dealing with current Benchers appearing as counsel may fail to address an obvious conflict.

In addition to addressing the lacunae with respect to *current* Benchers appearing as counsel in Law Society discipline proceedings, the Governance Committee was of the view that further consideration of this section of the Benchers Code of Conduct was also warranted.

Analysis

As drafted, the *Appearing as Counsel* section of the Code encompasses three concepts: who is appearing as counsel (current Benchers, former Benchers, committee members), who is being represented (the Law Society, any member, a particular member) and when the prohibitions apply (for a period of time, forever). The Governance Committee was of the view that a more logical analysis of this section would make the Code more easily understood and more consistent.

To assist with this analysis, staff created a matrix to represent the three dimensions of who is appearing, who is being represented and when, so that the current language in this section is clear.

Counsel	Represented Party		
	Law Society	Any Member	Particular Member
Current Benchers	Must not appear as counsel in any proceeding	Must not appear as counsel in any proceeding	Must not appear as counsel for a particular member until 3 years after the completion of a hearing in which the Benchers was a member of the panel and the member was the subject of the hearing
Former Benchers	Must not appear as counsel in discipline or credentials proceedings	Must not appear as counsel until three years after ceasing to be a Benchers	Must not appear as counsel for a particular member until 3 years after the completion of a hearing in which the Benchers was a member of the panel and the member was the subject of the hearing
Committee Member	Must not appear as counsel in any proceeding that relates to the work of the committee on which the lawyer is a member.	Must not appear as counsel in any proceeding that relates to the work of the committee on which the lawyer is a member.	

Once the current sections are allocated to various parts of the matrix, it becomes easier to evaluate whether the current language is adequate. The Governance Committee noted, for example, that a permanent prohibition on former Benchers appearing on behalf of the Law Society in discipline and credentials hearings might not be consistent with the three year rule for appearing on behalf of members. Similarly, the Governance Committee noted that the committee member prohibition as worded implies that the prohibition only applies while a current committee member and that perhaps the prohibition should extend for a period of time after the committee member ceases to be a member of the committee.

Based on the matrix and discussion amongst the Governance Committee, including the observation that there are a several forums referred to in the section (“court”, “Law Society proceeding”, “hearing”, “discipline or credentials matter”), the Governance Committee recommends adoption of the following resolution.

BE IT RESOLVED THAT the Benchers Code of Conduct section *Appearing as Counsel* be rescinded and replaced with the following:

Appearing as Counsel

1. *A current Benchers must not appear as counsel for the Law Society or any member in any proceeding.*
2. *A former Benchers must not appear as counsel:*
 - (a) *for the Law Society in any proceeding;*
 - (b) *any member in any Law Society proceeding until three years after ceasing to be a Benchers; and*
 - (c) *for a member in a Law Society proceeding if the member was the subject of a hearing in which the Benchers was a member of the panel until 3 years after the completion of the hearing.*
3. *A committee member must not appear as counsel for the Law Society or any member in any proceeding that relates to the work of the committee while a member of that committee and for a period of three years after the member ceases to be a member of the committee.*



Memo

To: Benchers
From: Ethics Committee
Date: June 15, 2021
Subject: Recommended Amendments to *Code of Professional Conduct* rule 3.4-26.2 commentaries 1 and 2 regarding insurance references and gendered language

This memorandum presents the Ethics Committee's recommendation for amendments to the two commentaries to rule 3.4-26.2 of the *Code of Professional Conduct for British Columbia* (the BC Code). The primary motivation for these amendments is to correct occurrences of the word "insurance" in reference to the coverage provided by the Lawyers Indemnity Fund (LIF). Consequent on the name change of LIF to "Lawyers Indemnity Fund", references to "insurance" and related terms in the rules of the BC Code and in the *Law Society Rules* were changed to "indemnity," "indemnify," or related terms. The change recommended below would complete the updating of such language to accurately reflect that LIF provides members with indemnity coverage. In keeping with the motivation for the name change to LIF, it is important that all such references in Law Society materials present a consistent and accurate picture of LIF as an indemnity provider. When the presence of the insurance references in the commentaries was recently noted, the issue was drawn to the attention of Su Forbes, QC, Chief Operating Officer of LIF, and Ms. Forbes suggested the specific amendment language to address the insurance terminology. The Ethics Committee has accepted Ms. Forbes' suggestion in this respect, in making its own recommendation to the Benchers.

At the same time, a very minor amendment is included in commentary [1] below, to remove an unnecessary gendered and binary language reference, without loss of clarity or significant meaning. As part of its ongoing review of the BC Code commentaries and annotations, the Ethics Committee has turned its attention to potentially unnecessary occurrences of gendered language. Such revision would be in keeping with the B.C. government's planned review and revision of all legislation and regulations and similarly in keeping with the court's recent directives on providing one's pronouns for use in the context of court proceedings. The motivation for removing unnecessary gendered language is to work toward making such documents as the BC Code commentaries and annotations more inclusive, welcoming, and representative for all readers. While in some cases such potential changes can present challenges and occasion significant debate, the present example is relatively straightforward and unproblematic.

Recommendation

In view of the above considerations, the Ethics Committee recommends that the Benchers adopt the amendments to the rule 3.4-26.2 commentaries reflected in the red-lined version presented below.

The existing text and recommended changes

The existing text of commentaries [1] and [2] to BC Code rule 3.4-26.2 reads as follows:

Commentary

[1] Generally speaking, a lawyer may act as legal advisor or as business associate, but not both. These principles are not intended to preclude a lawyer from performing legal services on his or her own behalf. Lawyers should be aware, however, that acting in certain circumstances may cause them to be uninsured as a result of Exclusion 6 in the B.C. Lawyers Compulsory Professional Liability Insurance Policy and similar provisions in other insurance policies.

[2] Whether or not insurance coverage under the Compulsory Policy is lost is determined separate and apart from the ethical obligations addressed in this chapter. Review the current policy for the exact wording of Exclusion 6 or contact the Lawyers Insurance Fund regarding the application of the Exclusion to a particular set of circumstances.

The recommended changes to commentaries [1] and [2] are reflected in the following red-lined version, based on the existing text:

Commentary

[1] Generally speaking, a lawyer may act as legal advisor or as business associate, but not both. These principles are not intended to preclude ~~a lawyer~~lawyers from performing legal services on ~~his or her~~their own behalf. Lawyers should be aware, however, that acting in certain circumstances may cause them to ~~be uninsured~~lose coverage as a result of Exclusion 6 in the B.C. Lawyers Compulsory Professional Liability ~~Insurance~~Indemnity Policy and similar provisions in other insurance policies.

[2] Whether or not ~~insurance~~ coverage under the Compulsory Policy is lost is determined separate and apart from the ethical obligations addressed in this chapter. Review the current policy for the exact wording of Exclusion 6 or contact the Lawyers ~~Insurance~~Indemnity Fund regarding the application of the Exclusion to a particular set of circumstances.

[End of memorandum]



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: June 16, 2021
Subject: **Rule 1-7(2) -- Benchers resignation rule**

1. At the meeting in May, the Benchers approved the recommendation of the Governance Committee to adopt a new rule that would provide a process for a Benchers resign from office. This is the recommendation that was approved:

The Committee recommends that the Benchers approve in principle amending the Rules to provide for the resignation of a Benchers and refer the matter to the Act and Rules Committee.

2. For your reference, I attach the brief report that was before the Benchers at the meeting.
3. The Act and Rules Committee recommends a simple provision that requires a Benchers intending to resign to put the intention in writing, tells the Benchers where to submit it and allows the Benchers to specify the effective date.
4. We have used as a model s. 17(2) of the *Provincial Court Act*:

(2) A judge may resign by submitting a written resignation to the Attorney General stating the effective date of the resignation and the resignation becomes effective on that date.

5. This is very similar to, but more tightly drafted than, the *Supreme Court Act*, s. 11.2(2).
6. I attach a draft of a proposed new subrule to give effect to the Benchers' decision. The Committee recommends the adoption of the attached suggested resolution to give effect to the Benchers decision.

Drafting notes

7. The only current rule dealing with a Bencher leaving office mid-term is Rule 1-7, which is currently headed “Bencher ceasing to be member.” It provides that, an elected Bencher who ceases to be a member in good standing (i.e., fails to pay fees or is suspended or disbarred) ceases to be a Bencher.
8. The Committee considered that to be the right place to codify the more likely possibility of resignation. Although the heading is not part of the rule and can be changed editorially, for clarity the draft shows a proposed a change to “Bencher ceasing to hold office,” which covers both possibilities.

Attachments: report of Governance Committee
 draft
 resolution

JGH

Proposed Rule Amendment to provide for Bencher Resignation

Governance Committee

Jeevyn Dhaliwal, QC (Chair)
Christopher A. McPherson, QC (Vice-Chair)
Pinder K. Cheema, QC
Dr. Jan Lindsay
Linda I. Parsons, QC
Michael F. Welsh, QC
Guangbin Yan

Date: May 28, 2021

Prepared for: Benchers

Prepared by: Staff

Purpose: Decision

Background

1. Under the current Rules, there are four ways one can cease to be a Benchers. The first is to reach the term limit set out in Rule 1-2. The second is to not run for re-election or decline to be reappointed. The third is, in the case of elected Benchers, to cease to be a member of the Law Society as set out in Rule 1-7. The fourth and most dramatic is to not get re-elected or reappointed. There is, however, no provision for the resignation of a Benchers.
2. When Benchers have resigned, the Law Society has taken the resignation at face value and accepted that the individual has ceased to be Benchers. However, as the Benchers by-election Rule 1-38(1) requires that “*an elected Benchers ceases to hold office*”, the question of how and when a Benchers might cease to hold office is more than academic.

Discussion

3. At the April 2021 Governance Committee meeting, the Committee noted that the Rules do not provide any direction or procedure for the resignation of a Benchers and that the uncertainty this creates should be addressed by amending the Rules.

Recommendation

4. The Committee recommends that the Benchers approve in principle amending the Rules to provide for the resignation of a Benchers and refer the matter to the Act and Rules Committee.

LAW SOCIETY RULES

PART 1 – ORGANIZATION

Division 1 – Law Society

Benchers

Bencher ceasing to ~~be member~~hold office

1-7 (1) A Bencher, other than an appointed Bencher, must be a member of the Society in good standing to take or hold office as a Bencher.

(2) A Bencher may resign by submitting a written resignation to the President stating the effective date of the resignation, and the resignation becomes effective on that date.

LAW SOCIETY RULES

PART 1 – ORGANIZATION

Division 1 – Law Society

Benchers

Bencher ceasing to hold office

- 1-7** (1) A Bencher, other than an appointed Bencher, must be a member of the Society in good standing to take or hold office as a Bencher.
- (2) A Bencher may resign by submitting a written resignation to the President stating the effective date of the resignation, and the resignation becomes effective on that date.

BENCHER RESIGNATION**SUGGESTED RESOLUTION:**

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

Rule 1-7 is rescinded and the following substituted:

Bencher ceasing to hold office

- 1-7** (1) A Bencher, other than an appointed Bencher, must be a member of the Society in good standing to take or hold office as a Bencher.
- (2) A Bencher may resign by submitting a written resignation to the President stating the effective date of the resignation, and the resignation becomes effective on that date.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

Proposed Amendments to Executive Committee Election Rules

Governance Committee

Jeevyn Dhaliwal, QC (Chair)
Christopher A. McPherson, QC (Vice-Chair)
Pinder K. Cheema, QC
Dr. Jan Lindsay
Linda I. Parsons, QC
Michael F. Welsh, QC
Guangbin Yan

Date: July 9, 2021

Prepared for: Benchers

Prepared by: Staff

Purpose: Decision

Background

At the July 2019 Benchers meeting, the Benchers considered a report from the Governance Committee recommending changes to Law Society Rule 1-41 relating to the procedure for the election of Benchers to the Executive Committee. The Governance Committee recommended the Benchers resolve several issues with the implementation of Rule 1-41 and proposed the following resolution at the July 2019 Benchers meeting:

Be it resolved that the Benchers approve amending Rule 1-41:

1. To recognize that there are four Benchers to be elected under the Rule;
2. To reconcile the voting methods described in the Rule such that the voting for both the elected and appointed Benchers positions, if necessary, occurs in the manner provided for the elected Benchers positions; and
3. To clarify the processes provided for in the Rule for nominating elected and appointed Benchers such that they are consistent.

The resolution passed. Since those amendments were approved and implemented, we encountered another difficulty with the Executive election rules. When Roland Kruger, who had been elected to the 2020 Executive Committee, was not re-appointed as an appointed Benchers, it was necessary to replace him on the Executive Committee with another appointed Benchers.

As there were two candidates for the appointed Benchers position, an election was held at *the next Benchers meeting* on January in accordance with Rule 1-41(11). As that election resulted in a tie, the appointed Benchers were required to wait until the next regular meeting of the Benchers on March 6th to hold a second election to fill the vacancy. This created a significant delay in the appointment of the appointed Benchers to the 2020 Executive Committee, as well as confusion about the process. In an environment where elections can easily be conducted electronically and do not need to be in person, it is difficult to justify retaining the requirement to hold the election *at the next regular meeting of the Benchers*.

Discussion

At its April 2021 Governance Committee meeting, the Committee considered this matter, and agreed that Rule 1-41(11) should be amended in order to prevent a significant delay in the election of a new member of the Executive Committee should there be a vacancy. The Committee also agreed that an election of the Executive Committee to fill a vacancy should only be held when there is a meaningful amount of time remaining in the term.

The Committee also considered the existing process to address a tie vote in an Executive Committee election. The Rules relating to the procedure for the election of Benchers to the Executive Committee require that another election be held at the next regular meeting of the Benchers, regardless of final vote count. For example, should four elected Benchers put forth their names for consideration for the three elected Bencher positions on the Executive Committee, and the result is a tie between the two Benchers with the fewest votes, the current Rule requires that an election must be held again in its entirety, as opposed to considering the two Benchers with the most votes elected, and then holding a second election solely for the remaining vacancy on the Executive Committee. The Committee agreed that a revised process was needed in order to address both the potential for delay with holding a new election and the requirement to hold the election again in its entirety.

The Committee recommends that the Benchers approve the following resolution and refer the matter to the Act and Rules Committee.

BE IT RESOLVED that Rule 1-41(11) be amended to provide that if the Benchers fail to elect four members to the Executive Committee for any reason or if there is a vacancy before September 1st during the term of any elected member of the Executive Committee, there will be an election to fill the position at the earliest opportunity. If the reason for the election is a tie vote, then the election will only be among those candidates with tied votes.



Memo

To: Benchers
From: Executive Committee
Date: June 30, 2021
Subject: Mandatory Call Ceremonies

The purpose of this memorandum is to recommend to the Benchers an amendment to Rule 2-84 to make presentation in open court optional.

Since the Pandemic...

As a result of the COVID pandemic-related restriction on public gatherings in British Columbia, the last in-person call and admission ceremony in Vancouver was held on March 13, 2020.

The result of the postponement of call and admission ceremonies since that date is that preliminary reports indicate that there will be approximately 1,700 - 1,900 candidates through to the end of 2021 who will be required to be presented in open court under the current rule. Even with our former practice of calling roughly 200 lawyers in two ceremonies a day in Vancouver, the current backlog would require roughly eight to nine ceremonies of this size, assuming everyone was to be called in Vancouver. As some of the calls ceremonies will be regional and much smaller than the ones in Vancouver, the number of actual ceremonies would likely be much greater than eight or nine.

Discussion

With the impending implementation of Phase 3 of the province's Restart Plan, we anticipate resuming in-person call ceremonies. Based on discussions with Chief Justice Hinkson, it seems likely that we may be able to hold in-person call ceremonies as early as this fall. However, given the sheer number of candidates to be called, the Executive Committee recommends that an amendment to Rule 2-84 be made to provide that transfers from other jurisdictions may choose to be called in accordance with Rule 2-84 and, for the period of time necessary to eliminate the backlog of those waiting to be called, that articulated students seeking first call and admission may also choose whether to be called in accordance with Rule 2-84.

Even if Rule 2-84 is amended as proposed, it remains highly unlikely that everyone who would choose to attend a ceremony will be able to do so by the end of 2021. It is therefore also recommended that the Benchers be asked to pass a resolution in accordance with Rule 2-84(6)(b) extending the time for a lawyer, or category or lawyers, to be presented in open court in order that they are able to receive a practising certificate in 2022.

BE IT RESOLVED THAT:

- (a) Rule 2-84 be amended to provide that transfers from other jurisdictions have the option whether to be called in accordance with Rule 2-84;
- (b) For a period of time to be determined by the Executive Director, that articulated students awaiting their first call and admission have the option whether to be called in accordance with Rule 2-84; and
- (c) The time for an articulated student or transfer lawyer to be presented in open court be extended to the end of 2022.



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: June 15, 2021
Subject: **Rule 3-58.1—Trust account only for legal services:
Exception for mediators, arbitrators and parenting coordinators**

1. The Benchers returned this matter to the Act and Rules Committee for consideration of further draft amendments that would not limit the proposed exception to family law mediators, arbitrators and parenting coordinators.
2. At the meeting in April 2021 the Benchers adopted this resolution:

THAT Rule 3-58.1 be amended to allow retainers received by lawyers providing mediation, arbitration and parenting co-ordination services to be deposited to their lawyer trust accounts.
3. There is considerable history to this issue, which is briefly explained in the attached memorandum from the Executive Committee, which was before the Benchers at the meeting.
4. The Act and Rules Committee recommends for adoption draft amendments that would not limit the exception but apply it to all mediators and arbitrators. Parenting coordinators are of course confined to family law. There are redlined and clean versions as well as a redlined version showing changes from the draft that was before the Benchers in May.

Drafting notes

5. The Committee has taken the opportunity to improve the drafting somewhat, simplifying the language in proposed subrule (3) and adding clarification in proposed subrule (4).

6. Rule 3-60 is amended to allow deposit of appropriate retainers to pooled trust accounts. It is not proposed to amend Rule 3-61 to allow them to be deposited in separate trust accounts since the point of the requested amendment was to avoid the need to open separate accounts.
7. The Committee recommends the adoption of the attached suggested resolution to give effect to the Benchers' policy decision.

Attachments: memo from Executive Committee
 drafts
 resolution

JGH



Memo

To: Benchers
From: Executive Committee
Date: April 13, 2021
Subject: Mediators, Arbitrators and Parenting Co-ordinators Retainers and Trust Accounts

Background

In July 2019, the Benchers unanimously approved the implementation of Rule changes recommended by the Act and Rules Committee based on the October 2018 report of the Federation of Law Societies' Anti-Money Laundering and Terrorist Financing Working Group. That report recommended a Model Rule that restricted the use of trust accounts to transactions or matters for which the legal professional or the legal professional's firm is providing legal services..

Acting on that recommendation, the Benchers created Rule 3-58.1 that states *"a lawyer or law firm must not permit funds to be paid into or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm."*

In February 2020, the Law Society advised the profession that, because neither mediation or arbitration is the practice of law, *"mediators and arbitrators who take pre-payment of fees for their services from parties or the parties' counsel must not deposit these funds into their trust account regulated by the Law Society."* Soon after the advisory was released, lawyers who provide family law mediation services responded that the Law Society's direction would require two accounts – one for the mediation and one for the agreement preparation - and that it was impossible to parse out the time allocated to the mediation and time allocated to *"legal services"* in order to determine what portion of retainers must be deposited into a trust account.

The Executive Committee considered the matter in the spring of 2020, and proposed that the definition of "trust funds" be amended to exclude retainers received for the provision of legal services incidental to the provision of mediation or arbitration services by a lawyer. The amendment would permit the entire retainer to be placed in an account other than the lawyer's trust account, and therefore lawyers would not have to bifurcate the retainer.

At the 2020 Annual General Meeting, a member resolution was passed directing the Benchers, inter alia, to permit practising lawyers acting as mediators, arbitrators and parenting coordinators to deposit retainers received into their lawyer trust accounts in accordance with the Law Society Rules.

Consideration

The intention behind Rule 3-58.1 is to ensure that lawyers use their trust accounts only for the legitimate purposes for which they are established, namely to aid in the completion of a transaction in which the lawyer or law firm plays a role as legal advisor and facilitator.¹ The use of the phrase “directly related to legal services” in Rule 3-58.1 was intended to encapsulate this concept in the Rule.

Although mediation, arbitration and parenting coordinator services are provided by lawyers, none of these services is the practice of law in British Columbia. However, since providing the direction regarding mediation and arbitration retainers and lawyer trust account, it has become apparent that the provision of mediation and arbitration services by lawyers is more complicated than the direction supposed.

Where services that are the practice of law are provided in conjunction with mediation and arbitration services, which the Committee was advised does happen, the careful segregation of the retainer into the amount that *must* go into the lawyer’s trust account from the amount of the retainer that *must not* is difficult, if not impossible, to do in advance.

The Committee was also advised that the implementation of the Model Rule on which Rule 3-58.1 is based in other Canadian jurisdictions is not being consistently applied to preclude mediation and arbitration retainers from being deposited in lawyer trust accounts.

Finally, the Committee was advised that it is highly unlikely that the deposit of mediation and arbitration retainers in lawyer trust accounts is the type of mischief that the Model Rule was intended to prevent and that the risk of money laundering or other illegal activity is, in this context, low.

Recommendation

After considering all of the options that have been advanced since the communication in February 2020, the Executive Committee agreed to recommend to the Benchers that Rule 3-58.1 be amended to allow retainers received by lawyers providing mediation, arbitration and parenting co-ordination services to be deposited to their lawyer trust accounts. The Committee believes this is a practical response to the issues raised since the February 2020 communication as it would only apply to the deposit of retainers for these services and is unlikely to compromise the purpose for which Rule 3-58.1 was created.

¹ *Law Society of BC v. Skogstad*, 2008 LSBC 19 at paragraph 61. See also *Law Society of BC v. Gurney* 2017 LSBC 15 and *Law Society of BC v. Hammond* 2020 LSBC 18.

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 7 – Trust Accounts and Other Client Property

Trust account only for legal services

- 3-58.1** (1) Except as permitted by the Act or these rules or otherwise required by law, a lawyer or law firm must not permit funds to be ~~paid into~~deposited to or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.
- (2) A lawyer or law firm must take reasonable steps to obtain appropriate instructions and pay out funds held in a trust account as soon as practicable on completion of the ~~legal~~ services to which the funds relate.
- (3) Despite subrule (1), a lawyer or law firm may deposit to and withdraw from a trust account funds that are received as a retainer for services as a mediator, arbitrator or parenting coordinator.
- (4) Funds deposited to a trust account by a lawyer or law firm under subrule (3) are subject to all the rules pertaining to trust funds as if the funds were received from a client in relation to legal services provided by the lawyer or law firm.

Pooled trust account

- 3-60** (4) Subject to subrule (5) and Rule 3-74 [*Trust shortage*], a lawyer must not deposit to a pooled trust account any funds other than
- (a) trust funds, ~~or~~
- (b) funds that are fiduciary property, ~~or~~
- (c) funds the lawyer is permitted to deposit to a trust account under Rule 3-58.1 (3) [*Trust account only for legal services*].
- (5) A lawyer may maintain in a pooled trust account up to \$300 of the lawyer's own funds.

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 7 – Trust Accounts and Other Client Property

Trust account only for legal services

- 3-58.1** (1) Except as permitted by the Act or these rules or otherwise required by law, a lawyer or law firm must not permit funds to be deposited to or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.
- (2) A lawyer or law firm must take reasonable steps to obtain appropriate instructions and pay out funds held in a trust account as soon as practicable on completion of the services to which the funds relate.
- (3) Despite subrule (1), a lawyer or law firm may deposit to and withdraw from a trust account funds that are received as a retainer for services as a mediator, arbitrator or parenting coordinator.
- (4) Funds deposited to a trust account by a lawyer or law firm under subrule (3) are subject to all the rules pertaining to trust funds as if the funds were received from a client in relation to legal services provided by the lawyer or law firm.

Pooled trust account

- 3-60** (4) Subject to subrule (5) and Rule 3-74 [*Trust shortage*], a lawyer must not deposit to a pooled trust account any funds other than
- (a) trust funds,
 - (b) funds that are fiduciary property, or
 - (c) funds the lawyer is permitted to deposit to a trust account under Rule 3-58.1 (3) [*Trust account only for legal services*].
- (5) A lawyer may maintain in a pooled trust account up to \$300 of the lawyer's own funds.

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 7 – Trust Accounts and Other Client Property

Trust account only for legal services

- 3-58.1** (1) Except as permitted by the Act or these rules or otherwise required by law, a lawyer or law firm must not permit funds to be deposited to or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.
- (2) A lawyer or law firm must take reasonable steps to obtain appropriate instructions and pay out funds held in a trust account as soon as practicable on completion of the services to which the funds relate.
- (3) Despite subrule (1), a lawyer or law firm may deposit to and withdraw from a trust account funds that are received as a retainer for ~~the lawyer or law firm providing~~ services ~~of~~as a ~~family law~~ mediator ~~or~~, arbitrator or a parenting coordinator.
- (4) Funds deposited to a trust account by a lawyer or law firm under subrule (3) are subject to all the rules pertaining to trust funds: as if the funds were received from a client in relation to legal services provided by the lawyer or law firm.

Pooled trust account

- 3-60** (4) Subject to subrule (5) and Rule 3-74 [*Trust shortage*], a lawyer must not deposit to a pooled trust account any funds other than
- (a) trust funds,
 - (b) funds that are fiduciary property, or
 - (c) funds the lawyer is permitted to deposit to a trust account under Rule 3-58.1 (3) [*Trust account only for legal services*].
- (5) A lawyer may maintain in a pooled trust account up to \$300 of the lawyer's own funds.

MAPC RETAINERS IN TRUST

SUGGESTED RESOLUTION:

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

1. Rule 3-58.1 is rescinded and the following substituted:

- 3-58.1** (1) Except as permitted by the Act or these rules or otherwise required by law, a lawyer or law firm must not permit funds to be deposited to or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.
- (2) A lawyer or law firm must take reasonable steps to obtain appropriate instructions and pay out funds held in a trust account as soon as practicable on completion of the services to which the funds relate.
- (3) Despite subrule (1), a lawyer or law firm may deposit to and withdraw from a trust account funds that are received as a retainer for services as a mediator, arbitrator or parenting coordinator.
- (4) Funds deposited to a trust account by a lawyer or law firm under subrule (3) are subject to all the rules pertaining to trust funds as if the funds were received from a client in relation to legal services provided by the lawyer or law firm.

2. Rule 3-60 (4) is rescinded and the following substituted:

- (4) Subject to subrule (5) and Rule 3-74 [*Trust shortage*], a lawyer must not deposit to a pooled trust account any funds other than
- (a) trust funds,
 - (b) funds that are fiduciary property, or
 - (c) funds the lawyer is permitted to deposit to a trust account under Rule 3-58.1 (3) [*Trust account only for legal services*].

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC Act and Rules Committee
Date: June 15, 2021
Subject: **Rule 3-64.3 (proposed) – Withdrawal from trust by bank draft**

1. At the meeting in April, the Benchers approved the recommendation of the Executive Committee to amend the trust accounting rules to allow lawyers and law firms to withdraw money from a trust account by way of a bank draft.

2. This is the recommendation that was approved:

That the Benchers agree in principle to permit the withdrawal of funds by way of bank draft from a trust account on the conditions described above, and to refer the matter to the Act and Rules Committee to amend the Rules accordingly.

3. These are the conditions referred to:

1. the lawyer has written consent from the recipient to receive the funds via a bank draft;
 2. the lawyer obtains a signed requisition form, similar to the Law Society's electronic fund transfer form),¹ indicating the source of the funds and the payee (the lawyer would bring a standard form for signature or stamping at the bank or savings institution); and
 3. the lawyer documents acknowledgement by the payee of receipt of the bank draft.
4. I attach for your reference the memorandum of the Executive Committee that was before the Benchers in that meeting.

¹ For reference purposes, see: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/forms/trust/eft-requisition.pdf>

5. Also attached is the Act and Rules Committee's recommendation for rule amendments to give effect to the Benchers' policy decision. The Committee recommends adoption of the attached suggested resolution.

Drafting notes

6. I include in the materials the entire Rule 3-64.1, which deals with the withdrawal of funds from trust by electronic fund transfer (EFT). These rules were adopted in 2017 based on the Federation model rules, which are generally much more complex and detailed than the BC rules. The Committee recommends adoption of a new simpler rule to govern the use of bank drafts. The details would be dealt with in a prescribed form required for use of a bank draft to withdraw funds. I attach the prescribed form, prepared by the Trust Assurance department, to be used under this rule if it is adopted by the Benchers.
7. There is also a minor amendment to Rule 3-64.1(2)(g) to correct a drafting error.

Attachments: Exec Committee memo
 drafts
 resolution
 draft form

JGH



Memo

To: Benchers
From: Executive Committee
Date: April 12, 2021
Subject: Discrete Issues Relating to Bank Drafts

Background and Request

The Trust Assurance Department and the Custodianship Department have identified some issues relating to the use of bank drafts.

1. Some lawyers purchase bank drafts on the trust account and the savings institution does not process the trust cheque. The savings institution simply recognizes there are sufficient funds in the account and issues a bank draft. This effectively ends the audit trail;
2. Some lawyers have left bank drafts in their files, without sending them to the payee.

These were brought to the Executive Committee for consideration, The Committee recommends that the Benchers approve, in principle, a policy and rule change to address these concerns. The matter should then be referred to the Act and Rules Committee to draft amended rules.

Problem and Analysis

The permitted forms of withdrawal from trust are set out in Rule 3-64(4). They do not currently permit a lawyer to withdraw funds from trust via bank draft.¹ Information gathered via audits indicates that some lawyers withdraw funds from trust by way of trust cheque, and then use the trust cheque to purchase bank drafts. This is not prohibited by the Rules. Although payment could be made instead via Electronic Fund Transfer, some contractual arrangements require the payment to be made by bank draft, and therefore purchasing a bank draft is sometimes necessary. While not prohibited, this practice is not ideal as the accounting records are less robust. More

¹ See, for example, *The Law Society of British Columbia v. Chaudhry* 2018 LSBC 31 at para. 82.
DM3113883

troubling, however, is the fact that some banks return the trust cheque to the lawyer without processing it, and instead transfer funds from the trust account to a holding account from which to draw the bank draft. This practice ends the audit trail because the trust cheque is never processed, and there is no link between bank draft and the trust account.

There are also instances of lawyers having closed out trust accounts by way of purchasing a bank draft, but then leaving the bank draft in the files without sending it to the payee. This frustrates the spirit of the rule because while the account has been reduced to zero, the intended recipient of the trust funds does not have them.

An alternative is possible. Rules in Alberta (see Appendix) create a possible solution to the traceability of bank drafts. Staff are of the view that this approach would better facilitate the auditing processes of tracking where funds went or are supposed to go.

Proposed Solution

As a result of the review of the matter by the Executive Committee, the Committee recommends adopting an approach, similar to that in used Alberta, that would permit withdrawal from trust by way of bank draft, but would also require the keeping of certain records, as follows:

1. the lawyer has written consent from the recipient to receive the funds via a bank draft;
2. the lawyer obtains a signed requisition form, similar to the Law Society's electronic fund transfer form),² indicating the source of the funds and the payee (the lawyer would bring a standard form for signature or stamping at the bank or savings institution); and
3. the lawyer documents acknowledgement by the payee of receipt of the bank draft.

Current policy, as reflected in the Law Society Rules, is to prohibit the withdrawal of funds from trust by way of bank draft. This proposal would change Law Society policy on that matter, recognizing limited circumstances where bank drafts were desirable, while providing for particular documents to be in place in order to preserve an audit trail. It would also reduce the availability of lawyers clearing their trust balances by buying a bank draft with left over trust funds but leaving the draft in the account and never assuring that the true owner of the funds has received them.

The Committee noted that it was unsure how long bank drafts would remain as an effective same day payment regime, and it might be that bank drafts fall out of use at a future date, at least for the purpose of closing transactions. However, this proposed policy change will create an audit trail where bank drafts are used, and will prevent the practice of purchasing bank drafts in order

² For reference purposes, see: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/forms/trust/eft-requisition.pdf>

to close out trust accounts unless the proper recipient of the funds acknowledges receipt of the bank draft.

Proposed Resolution and Next Steps

The Committee recommends the following resolution:

That the Benchers agree in principle to permit the withdrawal of funds by way of bank draft from a trust account on the conditions described above, and to refer the matter to the Act and Rules Committee to amend the Rules accordingly.

/Appendix

Appendix

Law Society Rules (Alberta)

119.46 (1) Trust withdrawals may be made by a bank draft or money order in the form designated by the Executive Director.

(2) If a withdrawal is made by a bank draft or money order, the lawyer shall:

- (a) obtain the recipient's authorization to receive the funds in the form of a bank draft or money order in writing;
- (b) document the transaction on the client's file using the designated form;
- (c) purchase the money order only at a financial institution where the law firm has a pooled trust account;
- (d) maintain a copy of the bank draft or money order on the client's file; and
- (e) obtain acknowledgment of receipt of the funds by the recipient in writing

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 7 – Trust Accounts and Other Client Property

Withdrawal from trust

- 3-64** (4) A lawyer must not make or authorize the withdrawal of funds from a pooled or separate trust account, except
- (a) by cheque as permitted by subrule (5) or Rule 3-65 (1.1) (a) [*Payment of fees from trust*],
 - (b) by electronic transfer as permitted by Rule 3-64.1 [*Electronic transfers from trust*],
 - (b.1) by bank draft as permitted by Rule 3-64.3 [*Withdrawal from trust by bank draft*],
 - (c) by instruction to a savings institution as permitted by subrule (9), or
 - (d) in cash if required under Rule 3-59 (5) or (6) [*Cash transactions*].

Electronic transfers from trust

- 3-64.1** (1) In this rule, “**requisition**” means an electronic transfer of trust funds requisition, in the prescribed form.
- (2) A lawyer may withdraw funds from a pooled or separate trust account by electronic transfer, provided all of the following conditions are met:
- (a) the electronic funds transfer system used by the lawyer must not permit an electronic transfer of funds unless,
 - (i) a person other than the lawyer, using a password or access code, enters data into the electronic funds transfer system describing the details of the transfer, and
 - (ii) the lawyer, using another password or access code, enters data into the electronic funds transfer system authorizing the financial institution to carry out the transfer;
 - (b) the lawyer using an electronic funds transfer system to withdraw trust funds must not
 - (i) disclose the lawyer’s password or access code associated with the electronic funds transfer system to another person, or
 - (ii) permit another person, including a non-lawyer employee, to use the lawyer’s password or access code to gain such access;

LAW SOCIETY RULES

- (c) the electronic funds transfer system used by the lawyer must produce, no later than the close of the banking day immediately after the day on which the electronic transfer of funds is authorized, a confirmation in writing from the financial institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer were received;
 - (d) the confirmation required in paragraph (c) must contain all of the following:
 - (i) the name of the person authorizing the transfer;
 - (ii) the amount of the transfer;
 - (iii) the trust account name, trust account number and name of the financial institution from which the money is drawn;
 - (iv) the name, branch name and address of the financial institution where the account to which money is transferred is kept;
 - (v) the name of the person or entity in whose name the account to which money is transferred is kept;
 - (vi) the number of the account to which money is transferred;
 - (vii) the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution;
 - (viii) the time and date that the confirmation in writing from the financial institution was sent to the lawyer authorizing the transfer;
 - (e) before any data describing the details of the transfer or authorizing the financial institution to carry out the transfer is entered into the electronic funds transfer system, the lawyer must complete and sign a requisition authorizing the transfer;
 - (f) the data entered into the electronic funds transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer must be as specified in the requisition;
 - (g) the lawyer must retain in the lawyer's records a copy of
 - (i) the requisition, and
 - (ii) the confirmation required in paragraph (c).
- (3) Despite subrule (2) (a), a lawyer who practises law as the only lawyer in a law firm and who has no non-lawyer staff may transfer funds electronically if the lawyer personally uses
- (a) one password or access code to enter data into the electronic funds transfer system describing the details of the transfer, and

LAW SOCIETY RULES

- (b) a different password or access code to enter data into the electronic funds transfer system authorizing the financial institution to carry out the transfer.
- (4) No later than the close of the banking day immediately after the day on which the confirmation required in subsection (2) (c) is sent to a lawyer, the lawyer must
 - (a) produce a printed copy of the confirmation,
 - (b) compare the printed copy of the confirmation and the signed requisition relating to the transfer to verify that the money was drawn from the trust account as specified in the signed requisition,
 - (c) indicate on the printed copy of the confirmation
 - (i) the name of the client,
 - (ii) the subject matter of the file, and
 - (iii) any file number
 in respect of which the money was drawn from the trust account, and
 - (d) after complying with paragraphs (a) to (c), sign, date and retain the printed copy of the confirmation.
- (5) A transaction in which a lawyer personally uses an electronic funds transfer system to authorize a financial institution to carry out a transfer of trust funds is not exempted under Rule 3-101 (c) (ii) [*Exemptions*] from the client identification and verification requirements under Rules 3-102 to 3-106.
- (6) Despite subrules (2) to (4), a lawyer may withdraw funds from a pooled or separate trust account by electronic transfer using the electronic filing system of the land title office for the purpose of the payment of property transfer tax on behalf of a client, provided that the lawyer
 - (a) retains in the lawyer's records a copy of
 - (i) all electronic payment authorization forms submitted to the electronic filing system,
 - (ii) the property transfer tax return, and
 - (iii) the transaction receipt provided by the electronic filing system,
 - (b) digitally signs the property transfer tax return in accordance with the requirements of the electronic filing system, and
 - (c) verifies that the money was drawn from the trust account as specified in the property transfer tax return.

LAW SOCIETY RULES

Withdrawal from trust by bank draft

3-64.3 A lawyer may withdraw funds from a pooled or separate trust account by bank draft, provided all of the following conditions are met:

(a) the recipient of the funds must provide the following in writing:

(i) consent in advance to receive the funds in the form of a bank draft;

(ii) acknowledgement of receipt of the funds;

(b) the lawyer using a bank draft to withdraw trust funds must

(i) document the transaction on the client's file using the prescribed form,

(ii) obtain the bank draft at a financial institution where the lawyer's law firm has a trust account, and

(iii) maintain in the lawyer's records

(A) the documents obtained from the recipient under paragraph (a),

(B) the completed form required under subparagraph (i), and

(C) a copy of the bank draft.

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 7 – Trust Accounts and Other Client Property

Withdrawal from trust

- 3-64** (4) A lawyer must not make or authorize the withdrawal of funds from a pooled or separate trust account, except
- (a) by cheque as permitted by subrule (5) or Rule 3-65 (1.1) (a) [*Payment of fees from trust*],
 - (b) by electronic transfer as permitted by Rule 3-64.1 [*Electronic transfers from trust*],
 - (b.1) by bank draft as permitted by Rule 3-64.3 [*Withdrawal from trust by bank draft*],
 - (c) by instruction to a savings institution as permitted by subrule (9), or
 - (d) in cash if required under Rule 3-59 (5) or (6) [*Cash transactions*].

Electronic transfers from trust

- 3-64.1** (1) In this rule, “**requisition**” means an electronic transfer of trust funds requisition, in the prescribed form.
- (2) A lawyer may withdraw funds from a pooled or separate trust account by electronic transfer, provided all of the following conditions are met:
- (a) the electronic funds transfer system used by the lawyer must not permit an electronic transfer of funds unless,
 - (i) a person other than the lawyer, using a password or access code, enters data into the electronic funds transfer system describing the details of the transfer, and
 - (ii) the lawyer, using another password or access code, enters data into the electronic funds transfer system authorizing the financial institution to carry out the transfer;
 - (b) the lawyer using an electronic funds transfer system to withdraw trust funds must not
 - (i) disclose the lawyer’s password or access code associated with the electronic funds transfer system to another person, or
 - (ii) permit another person, including a non-lawyer employee, to use the lawyer’s password or access code to gain such access;

LAW SOCIETY RULES

- (c) the electronic funds transfer system used by the lawyer must produce, no later than the close of the banking day immediately after the day on which the electronic transfer of funds is authorized, a confirmation in writing from the financial institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer were received;
 - (d) the confirmation required in paragraph (c) must contain all of the following:
 - (i) the name of the person authorizing the transfer;
 - (ii) the amount of the transfer;
 - (iii) the trust account name, trust account number and name of the financial institution from which the money is drawn;
 - (iv) the name, branch name and address of the financial institution where the account to which money is transferred is kept;
 - (v) the name of the person or entity in whose name the account to which money is transferred is kept;
 - (vi) the number of the account to which money is transferred;
 - (vii) the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution;
 - (viii) the time and date that the confirmation in writing from the financial institution was sent to the lawyer authorizing the transfer;
 - (e) before any data describing the details of the transfer or authorizing the financial institution to carry out the transfer is entered into the electronic funds transfer system, the lawyer must complete and sign a requisition authorizing the transfer;
 - (f) the data entered into the electronic funds transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer must be as specified in the requisition;
 - (g) the lawyer must retain in the lawyer's records a copy of
 - (i) the requisition, and
 - (ii) the confirmation required in paragraph (c).
- (3) Despite subrule (2) (a), a lawyer who practises law as the only lawyer in a law firm and who has no non-lawyer staff may transfer funds electronically if the lawyer personally uses
- (a) one password or access code to enter data into the electronic funds transfer system describing the details of the transfer, and

LAW SOCIETY RULES

- (b) a different password or access code to enter data into the electronic funds transfer system authorizing the financial institution to carry out the transfer.
- (4) No later than the close of the banking day immediately after the day on which the confirmation required in subsection (2) (c) is sent to a lawyer, the lawyer must
 - (a) produce a printed copy of the confirmation,
 - (b) compare the printed copy of the confirmation and the signed requisition relating to the transfer to verify that the money was drawn from the trust account as specified in the signed requisition,
 - (c) indicate on the printed copy of the confirmation
 - (i) the name of the client,
 - (ii) the subject matter of the file, and
 - (iii) any file number
 in respect of which the money was drawn from the trust account, and
 - (d) after complying with paragraphs (a) to (c), sign, date and retain the printed copy of the confirmation.
- (5) A transaction in which a lawyer personally uses an electronic funds transfer system to authorize a financial institution to carry out a transfer of trust funds is not exempted under Rule 3-101 (c) (ii) [*Exemptions*] from the client identification and verification requirements under Rules 3-102 to 3-106.
- (6) Despite subrules (2) to (4), a lawyer may withdraw funds from a pooled or separate trust account by electronic transfer using the electronic filing system of the land title office for the purpose of the payment of property transfer tax on behalf of a client, provided that the lawyer
 - (a) retains in the lawyer's records a copy of
 - (i) all electronic payment authorization forms submitted to the electronic filing system,
 - (ii) the property transfer tax return, and
 - (iii) the transaction receipt provided by the electronic filing system,
 - (b) digitally signs the property transfer tax return in accordance with the requirements of the electronic filing system, and
 - (c) verifies that the money was drawn from the trust account as specified in the property transfer tax return.

LAW SOCIETY RULES

Withdrawal from trust by bank draft

3-64.3 A lawyer may withdraw funds from a pooled or separate trust account by bank draft, provided all of the following conditions are met:

- (a) the recipient of the funds must provide the following in writing:
 - (i) consent in advance to receive the funds in the form of a bank draft;
 - (ii) acknowledgement of receipt of the funds;
- (b) the lawyer using a bank draft to withdraw trust funds must
 - (i) document the transaction on the client's file using the prescribed form,
 - (ii) obtain the bank draft at a financial institution where the lawyer's law firm has a trust account, and
 - (iii) maintain in the lawyer's records
 - (A) the documents obtained from the recipient under paragraph (a),
 - (B) the completed form required under subparagraph (i), and
 - (C) a copy of the bank draft.

BANK DRAFTS

SUGGESTED RESOLUTION:

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

1. In Rule 3-64 the following paragraph is added:

- (b.1) by bank draft as permitted by Rule 3-64.3 [*Withdrawal from trust by bank draft*],

2. Rule 3-64.1 (2) (g) (i) is rescinded and the following substituted:

- (i) the requisition, and

3. The following rule is added:

Withdrawal from trust by bank draft

3-64.3 A lawyer may withdraw funds from a pooled or separate trust account by bank draft, provided all of the following conditions are met:

- (a) the recipient of the funds must provide the following in writing:
 - (i) consent in advance to receive the funds in the form of a bank draft;
 - (ii) acknowledgement of receipt of the funds;
- (b) the lawyer using a bank draft to withdraw trust funds must
 - (i) document the transaction on the client's file using the prescribed form,
 - (ii) obtain the bank draft at a financial institution where the lawyer's law firm has a trust account, and
 - (iii) maintain in the lawyer's records
 - (A) the documents obtained from the recipient under paragraph (a),
 - (B) the completed form required under subparagraph (i), and
 - (C) a copy of the bank draft.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

Requisition

The Law Society
of British Columbia



Withdrawal from Trust by Bank Draft

Rule 3-64.3 Requires using the **prescribed form**

845 Cambie Street, Vancouver, BC, Canada V6B 4Z9
t 604.669.2533 | BC toll-free 1.800.903.5300
f 604.646.5917 | TTY 604.443.5700
Email trustaccounting@lsbc.org | lawsociety.bc.ca

PART A: Details of bank draft withdrawal

Amount	Recipient
Date of written consent to receive bank draft	
Delivery method of bank draft	
Source account	
Financial institution	Account number
Branch address	

PART B: Client matter

Client name	Client file number
Reason for withdrawal	

Part C: Lawyer(s) authorizing bank draft withdrawal

Lawyer (required)	Signature	Date
Second lawyer (optional)	Signature	Date

PART D: Written acknowledgement from recipient

Date of acknowledgement of bank draft received
--

Maintain all documents obtained from the recipient under Rule 3-64.3 (a), the completed prescribed form and a copy of the bank draft together in a centralized location with your accounting records.



CEO's Report to the Benchers

July 9, 2021

Prepared for: Benchers

Prepared by: Don Avison, QC

1. COVID-19 Update

As Benchers will have heard, vaccination rates are up, infection rates have declined dramatically and, as a result, the Province of British Columbia has moved to Phase Three of the COVID Recovery Plan. While the provincial state of emergency has been lifted, the public health emergency remains in place.

The tight restrictions on group meetings that have been in place for more than 15 months are being relaxed with the result that larger meetings will again be permitted.

These are some of the implications of specific relevance to the Law Society:

- While the July 9 meeting of Benchers will remain a virtual event, our plan is for the September 24 meeting to be in-person;
- We are planning for the October Retreat and Benchers meeting to be in-person;
- As of July 19, 2021 the public will again have access to the 6th and 8th floor. Visitors will continue to be required to wear masks and staff will be asked to wear masks while away from their workstations;
- We anticipate a return to a greater number of in-person hearings to be held at the Law Society building but we will continue to make use of virtual meeting technology;
- To minimize disruption, the fall session of the PLTC program will continue to be delivered virtually; and
- We are working with the Supreme Court of B.C. to establish dates for the resumption of call ceremonies. Benchers will be asked to consider a number of rule changes that, if approved, could assist with managing the volume of applicants who have not yet had the benefit of a formal call and admission ceremony.

At the staff level, we continue to benefit from the work of our “Return to the New Normal” [R2N²] Committee and we have retained the services of CBRE to work with us on workforce and office configuration strategies.

I should also note that we will be conducting a hybrid meeting pilot project in Room 914 over the next few months and, based on outcomes, will consider extending capacity to the Benchers Room, the Hearing Room, and Room 910.

2. Cullen Commission Announces New Witnesses and Delay of Closing Submission Dates

Commissioner Cullen has recently made a ruling that the evidence phase of the proceedings will be reconvened to hear from two additional witnesses and, as a result, closing submissions will now be delayed until September of 2021. The Commissioner's Final Report is still expected to be delivered to government on December 15, 2021.

3. Indigenous Cultural Awareness Course

I am pleased to report that the course is essentially complete.

We have begun the process of a 'soft launch' to seek input over the summer months. Benchers will be provided access to the course during the soft launch. Work will continue on some additional material that we will edit into the course and we anticipate making further edits based on feedback received during this next phase.

Our plan is for a formal release to the profession in early September with the two-year period for all lawyers to complete to run from that date.

4. Harry Cayton Appointed to Conduct Law Society Governance Review

Following the direction of the Benchers at the March 5, 2021 meeting to initiate a governance review, a Request for Proposals (RFP) process was issued and four responses were received.

Although all of the proposals were responsive to the requirements of the RFP and reflected thoughtful consideration by the proponents, the Executive Committee at their meeting on June 24, 2021 selected Harry Cayton to carry out the review.

Mr. Cayton will commence his work shortly and we expect he will have a final report ready for Bencher consideration at the December 3, 2021 meeting.

5. Update on Miscellaneous Items

At the July Bencher meeting I will also provide brief summaries regarding the following matters:

- Additional Innovation Sandbox Approvals

- TRU Admission Challenges
- Fall Conference of the Federation
- 2022 Budget Development Process
- Debates on the Budget Estimates of the Ministry of the Attorney General – Discussion of Law Society Progress on Licensed Paralegals
- Law Society of Saskatchewan v. Abrametz – SCC
- The Federation’s National Well-Being Survey
- The Law Society of Alberta’s ‘Virtual Jasper Retreat’

Don Avison, QC
Chief Executive Officer



Memo

To: Benchers
From: Dean Lawton, QC
President
Date: July 9, 2021
Subject: The Review Terms of Reference

As I noted at the last Benchers meeting, the dissent in the *Bronstein* decision recommended that the Law Society undertake a comprehensive review of its disciplinary processes, similar perhaps to the review undertaken by the Law Society of Ontario following the *Keshen* decision.

In my view, our experience in the *Bronstein* matter demonstrates a need for a review to ensure that the Law Society's regulatory processes are responsive and accessible to all. Such a review would implement the initiative in our current Strategic Plan to address the unique needs of Indigenous people within Law Society regulatory processes.

I said at the last meeting that I expected terms of reference for such a review would be brought to this meeting for discussion and decision by the Benchers. As a result, the Executive Committee gave significant consideration to the scope of the review and the specific duties and responsibilities the Task Force would have. As the Minutes of the meeting reflect, it is not expected that the review would be an inquiry into the *Bronstein* decision but that it would create a larger discussion regarding Indigenous engagement with Law Society processes.

I believe there are two decisions the Benchers need to make today.

The first is to decide whether the Law Society should conduct a review of Law Society disciplinary processes to establish and maintain a culturally competent regulatory process, particularly with respect to the unique needs of Indigenous people within our regulatory processes.

The second is to discuss and decide on the terms of reference for such a review.

The proposed terms of reference reviewed and considered by the Executive Committee are attached.



Indigenous Engagement in Regulatory Matters Task Force

Terms of Reference

Updated: July 2, 2021

Preamble

The decision in *Re Bronstein* raised serious questions about the ability of the Law Society's regulatory process to engage, address and accommodate marginalized complainants and witnesses, particularly Indigenous persons. In particular, the Law Society accepts the recommendation that the Law Society undertake a comprehensive review of its regulatory processes as they relate to access to justice and its responsiveness to all members of the diverse public it serves. Such a review will inform the steps to be taken by the Law Society, as contemplated within the 2021-2025 Strategic Plan, to address the unique needs of Indigenous people within our regulatory processes and to establish and maintain a culturally competent regulatory process.

Mandate

The Task Force will examine the Law Society's regulatory processes, specifically its complaints, investigation, prosecution and adjudication processes, as they relate to vulnerable and marginalized complainants and witnesses, particularly Indigenous persons, and make recommendations to the Benchers to ensure that the Law Society's regulatory processes accommodate the full participation of vulnerable and marginalized complainants and witnesses.

Composition

The Task Force shall consist of seven members.

Meeting Practices

1. The Task Force shall operate in a manner that is consistent with the Benchers' governance policies.
2. The Task Force shall meet as required.
3. Quorum is four members of the Task Force (Rule 1-16(2)).

Accountability

The Task Force is accountable to the Benchers as a whole.

Reporting Requirements

The Task Force will deliver its report containing any recommendations for future action to the Benchers within nine months from the date on which its work plan is delivered.

Duties and Responsibilities

1. Following its appointment, the Task Force will prepare a work plan which will be provided to the Benchers at their September 2021 meeting, outlining the anticipated scope of the review, including interviews and any anticipated research, and the procedures to be undertaken to gather information to complete its work.
2. Conduct interviews with key stakeholders, including Law Society staff and members of the Law Society Tribunal and any others that the Task Force considers necessary for the purpose of preparing its report.
3. Conduct research into the engagement, accommodation and participation of Indigenous people in regulatory processes in other professions and jurisdictions.
4. The Task Force should include the following in developing any recommendations:
 - a. An analysis of the effects on Indigenous complainants of the processes used to gather, assess, introduce and submit evidence during investigations and hearings;
 - b. An analysis of the nature and goals of proceedings that involve Indigenous people and Indigenous communities;
 - c. Consideration and comparison of the differences that exist between Indigenous perspectives regarding conflict resolution, and the conventional approach of the Law Society and the Law Society Tribunal to investigation, discipline and adjudication;
 - d. Consideration of how to incorporate Indigenous perspectives into Law Society complaints, investigation, discipline and Tribunal processes and procedures;
 - e. An assessment of cultural competence at the Law Society, and identification of opportunities for training and development;
 - f. Consideration of the use of culturally competent expertise in Indigenous issues by Law Society staff, the Tribunal and outside counsel; and
 - g. Identification of actions to prevent and remedial measures to address the impacts of members' misconduct on Indigenous complainants and Indigenous communities.
5. The Task Force should also consider and make recommendations where lessons learned as a result of this review could have relevance to the interests of vulnerable non-Indigenous witnesses and complainants

Staff Support

Andrea Hilland
Jennifer Chan

DRAFT

The Law Society
of British Columbia



Quarterly Financial Report

Year to Date May 2021

Prepared for: Finance & Audit Committee Meeting – July 6, 2021
Bencher Meeting – July 9, 2021

Prepared by: The Finance Department

Quarterly Financial Report - End of May 2021

Attached are the financial results and highlights to the end of May 2021.

General Fund

General Fund (excluding capital and TAF)

For the period ended May 31, 2021, the General Fund operations resulted in a positive variance to budget. This was due to a combination timing differences and permanent variances for both revenues and operating expenses.

Revenue

The revenue to the end of May 2021 was \$12.5 million, \$818,000 (7%) ahead of budget. This was primarily due to higher than expected practice fees and electronic filing revenue for the period.

The 2021 practice fee budget projected a lower number of practicing lawyers due to the unknown impact of COVID-19, with the budget set at 12,673. Over 2020 and into 2021, the number of practicing lawyers has not decreased and we are now forecasting 13,215 members for the year. Due to this increase the practice fee revenue is projected to be over budget, as noted in the attached 2021 forecast report.

Additionally, electronic filing revenue is ahead of budget to date and this trend is expected to continue. Electronic filing revenue is directly related to the real estate market which has seen a significant upturn this year. The BC Real Estate Association is currently forecasting 2021 real estate unit sales to increase 33% over 2020 unit sales.

At this time, the majority of the other revenue variances are timing differences.

Operating Expenses

Operating expenses for the period were \$10.8 million, \$1.3 million (11%) below budget. This variance for the period is a combination of permanent variances and timing differences, mainly in the areas of compensation, meeting and travel costs and external counsel fees, as noted on the attached Summary of Financial Highlights.

TAF-related Revenue and Expenses

To date, TAF revenue was \$1.3 million for the first quarter, compared to a budget of \$825,000. Of this, \$143,000 relates to amounts collected from the prior year after the 2020 year-end cut-off.

As BCREA is forecasting 2021 real estate unit sales to increase 33% over 2020 unit sales, it is expected that TAF revenue will continue to be over budget throughout the year.

Trust assurance program costs are below budget with lower travel costs.

Lawyers Indemnity Fund

LIF revenues were \$13.6 million to date, compared to a budget of \$8.7 million, primarily due to higher than budgeted investment income.

LIF operating expenses were \$2.8 million compared to a budget of \$3.4 million, with savings primarily related to compensation costs and external fees.

At the end of May 2021, the market value of the LIF long term investment portfolio was \$220 million. The investment return to the end of May was 3.04% compared to a benchmark of 2.71%.

As approved by the Benchers, the LIF portfolio asset mix now includes infrastructure funds, and these contracts are now in place. To date, \$13.6 million has been called by the infrastructure investment managers, with the remainder of the funds to be called over the next 12 - 18 months.

Summary of Financial Highlights (\$000's)

2021 General Fund Results - YTD May 2021 (Excluding Capital Allocation & Depreciation)

	Actual	Budget	\$ Var	% Var
Revenue (excluding capital)				
Practice fees	9,959	9,662	297	3%
PLTC and enrolment fees	514	546	(32)	-6%
Electronic filing revenue	513	292	221	76%
Interest income	134	106	28	26%
Credentials & membership services	398	264	134	51%
Fines, penalties & recoveries	281	115	166	144%
Insurance recoveries	25	-	25	0%
Other revenue	57	57	-	0%
Other cost recoveries	45	51	(6)	-12%
Building revenue & tenant cost recoveries	594	609	(15)	-2%
	12,520	11,702	818	7%
Expenses (excluding depreciation)	10,752	12,023	1,271	11%
	1,768	(321)	2,089	

Summary of Variances to Date - May 2021

Revenue Variances:

Permanent Variances

Practice fees	297
Electronic filing revenue	221
Other miscellaneous permanent variances	20
	538

Timing Differences

Other miscellaneous timing differences	280
	818

Expense Variances:

Permanent Variances

Compensation savings	274
Meetings and travel savings	140
Other miscellaneous permanent savings	68
	482

Timing Differences

Compensation costs	66
External counsel fees	49
Meetings and travel costs - including Benchers retreat	206
Building costs	80
Other miscellaneous timing differences	388
	789
	1,271

Trust Assurance Program Actual

	2021 Actual	2021 Budget	Variance	% Var
TAF Revenue	1,296	825	471	57.1%
Trust Assurance Department	1,295	1,411	116	8.2%
Net Trust Assurance Program	1	(586)	587	

2021 Lawyers Indemnity Fund Long Term Investments - YTD May 2021 Before investment management fees

Performance	3.04%
Benchmark Performance	2.71%

The Law Society of British Columbia
General Fund
Results for the 5 Months ended May 31, 2021
(\$000's)

	2021 Actual	2021 Budget	\$ Variance	%
REVENUE				
Practice fees (1)	11,616	11,301	315	3%
PLTC and enrolment fees	514	546	(32)	-6%
Electronic filing revenue	513	292	221	76%
Interest income	134	106	28	26%
Credentials and membership services	398	264	134	51%
Fines, penalties and recoveries	281	115	166	144%
Program Cost Recoveries	44	51	(7)	-14%
Insurance Recoveries	25	-	25	0%
Other revenue	57	57	-	0%
Other Cost Recoveries	1	-	1	0%
Building Revenue & Recoveries	594	609	(15)	-2%
Total Revenues	14,177	13,341	836	6.3%
EXPENSES				
Benchers Governance and Events				
Benchers Governance	222	364	142	39%
Board Relations and Events	106	121	15	12%
	328	485	157	32%
Corporate Services				
General Office	216	320	104	33%
CEO Department	292	315	23	7%
Finance	430	459	29	6%
Human Resources	158	281	123	44%
Records Management	79	111	32	29%
	1,175	1,486	311	21%
Education and Practice				
Licensing and Admissions	596	653	57	9%
PLTC and Education	1,047	1,190	143	12%
Practice Standards	181	188	7	4%
Practice Support	-	22	22	100%
	1,824	2,053	229	11%
Communications and Information Services				
Communications	190	236	46	19%
Information Services	797	754	(43)	-6%
	987	990	3	0%
Policy and Legal Services				
Policy and Legal Services	623	605	(18)	-3%
Tribunal and Legislative Counsel	225	260	35	13%
External Litigation & Interventions	-	21	21	100%
Unauthorized Practice	124	136	12	9%
	972	1,022	50	5%
Regulation				
CLO Department	370	350	(20)	-6%
Intake & Early Assessment	859	874	15	2%
Discipline	1,114	1,169	55	5%
Forensic Accounting	324	485	161	33%
Investigations, Monitoring & Enforcement	1,415	1,502	87	6%
Custodianships	666	809	143	18%
	4,748	5,189	441	8%
Building Occupancy Costs				
Depreciation	712	798	86	11%
	424	483	59	12%
Total Expenses	11,170	12,506	1,336	10.7%
General Fund Results before Trust Assurance Program	3,007	835	2,172	
Trust Assurance Program (TAP)				
TAF revenues	1,296	825	471	57.1%
TAP expenses	1,295	1,411	116	8.2%
TAP Results	1	(586)	587	100.2%
General Fund Results including Trust Assurance Program	3,008	249	2,759	

(1) Membership fees include capital allocation of 1657k (Capital allocation budget = 1639k)

	2021 Actual	2021 Budget	\$ Variance	%
(1) Capital Allocation:				0
Membership fees include capital allocation:	1657	1,639	18	1%

The Law Society of British Columbia
General Fund - Balance Sheet
As at May 31, 2021
(\$000's)

	May 31 2021	May 31 2020
Assets		
Current assets		
Cash and cash equivalents	23,703	17,223
Unclaimed trust funds	2,088	2,300
Accounts receivable and prepaid expenses	4,143	431
Due from Lawyers Insurance Fund	9,827	15,061
	<u>39,761</u>	<u>35,014</u>
Property, plant and equipment		
Cambie Street property	11,674	11,874
Other - net	1,810	1,790
	<u>13,484</u>	<u>13,665</u>
Long Term Loan	535	446
	<u>53,780</u>	<u>49,125</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	3,390	2,572
Liability for unclaimed trust funds	2,088	2,300
Current portion of building loan payable	100	500
Deferred revenue	15,110	14,189
Deposits	86	87
	<u>20,774</u>	<u>19,648</u>
Building loan payable	<u>-</u>	<u>100</u>
	20,774	19,748
Net assets		
Capital Allocation	4,714	3,693
Unrestricted Net Assets	28,292	25,684
	<u>33,006</u>	<u>29,378</u>
	<u>53,780</u>	<u>49,125</u>

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
Results for the 5 Months ended May 31, 2021
(\$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>2021 Total</i> \$	<i>Year ended 2020 Total</i> \$
Net assets - At Beginning of Year	12,951	11,282	24,233	2,071	3,693	29,998	26,247
Net (deficiency) excess of revenue over expense for the period	(603)	1,953	1,350	1	1,657	3,008	3,750
Contribution to LIF				-		-	
Repayment of building loan	100	-	100	-	(100)	-	-
Purchase of capital assets:						-	
LSBC Operations	189	-	189	-	(189)	-	-
845 Cambie	347	-	347	-	(347)	-	-
Net assets - At End of Period	12,984	13,235	26,219	2,072	4,714	33,006	29,998

The Law Society of British Columbia
Lawyers Indemnity Fund
Results for the 5 Months ended May 31, 2021
(\$000's)

	2021 Actual	2021 Budget	\$ Variance	% Variance
Revenue				
Annual assessment	7,163	6,553	610	9%
Investment income	6,400	2,106	4,294	204%
Other income	107	27	80	296%
Total Revenues	13,670	8,686	4,984	57.4%
Expenses				
Insurance Expense				
Provision for settlement of claims	7,480	7,480	-	0%
Salaries and benefits	1,284	1,500	216	14%
Contribution to program and administrative costs of General Fund	543	576	33	6%
Provision for ULAE	-	-	-	0%
Insurance	62	185	123	66%
Office	195	456	261	57%
Actuaries, consultants and investment brokers' fees	331	252	(79)	-31%
Special fund - external counsel fees	12		(12)	0%
Premium taxes	-	8	8	100%
Income taxes	-	5	5	100%
	9,907	10,462	555	5%
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	357	422	65	15%
Total Expenses	10,264	10,884	620	5.7%
Lawyers Insurance Fund Results	3,406	(2,198)	5,604	

The Law Society of British Columbia
Lawyers Indemnity Fund - Balance Sheet
As at May 31, 2021
(\$000's)

	May 31 2021	May 31 2020
Assets		
Cash and cash equivalents	3,550	7,816
Accounts receivable and prepaid expenses	606	545
Current portion General Fund building loan	100	500
LT Portion of Building Loan	-	100
Investments	219,711	188,948
	<u>223,967</u>	<u>197,910</u>
Liabilities		
Accounts payable and accrued liabilities	115	111
Deferred revenue	9,577	1,575
Due to General Fund	9,827	15,061
Due to Special Compensation Fund	-	12
Provision for claims	77,687	77,098
Provision for ULAE	12,222	11,860
	<u>109,427</u>	<u>105,717</u>
Net assets		
Internally restricted net assets	17,500	17,500
Unrestricted net assets	97,040	74,693
	<u>114,540</u>	<u>92,193</u>
	<u>223,967</u>	<u>197,910</u>

***The Law Society of British Columbia
Lawyers Indemnity Fund - Statement of Changes in Net Assets
Results for the 5 Months ended May 31, 2021***

	Unrestricted \$	Internally Restricted \$	2021 Total \$	2020 Total \$
Net assets - At Beginning of Year	93,634	17,500	111,134	97,921
Net excess of revenue over expense for the period	3,406	-	3,406	13,213
Net assets - At End of Period	<u>97,040</u>	<u>17,500</u>	<u>114,540</u>	<u>111,134</u>

The Law Society
of British Columbia



2021 Forecast - General Fund

May 2021

Prepared for: Finance & Audit Committee Meeting – July 6, 2021
Bencher Meeting – July 9, 2021

Prepared by: The Finance Department

2021 Forecast - as at May 2021

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

Overview

Although still early in the year, revenue is projected to be over budget by \$1.2 million, and expenses under budget by \$477,000, leading to a surplus of \$1 million by year end.

Revenue Forecast

At this time, total revenue is projected at \$29.7 million, \$1.2 million (4%) ahead of budget, primarily related to an increase in projected practicing lawyers and electronic filing revenues.

At the time the budget was prepared, it was difficult to project the impact that a global pandemic may have on the legal profession so it was assumed that the level of lawyers would stay the same as April 2020 through the 2021 fiscal year, with the budget set at 12,673. Although this was a challenging time, there has not been a reduction in the number of practicing lawyers in BC. Increases in lawyer numbers have been on track with historical averages and this is projected to continue during 2021. The number of practicing lawyers for 2021 is currently projected at 13,215, providing \$938,000 in additional practice fee revenue for the year.

Additionally, with a very strong real estate market, electronic filing revenue is projected to be ahead of budget for the year by \$222,000. The BC Real Estate Association is currently forecasting real estate unit sales will increase 33% in 2021.

Operating Expenses Forecast

Operating expenses are projected to be \$28.7 million, \$477,000 (2%) under budget. We are projecting savings primarily in compensation costs and meetings and travel expenses. These savings will be partially offset by additional external counsel fees, and additional costs associated with the governance review and cybersecurity measures.

Compensation savings: We are expecting compensation costs to be below budget by \$477,000, primarily due to vacancy savings.

Meetings and Travel Cost Savings: The 2021 budget assumed Benchers and staff meetings would be conducted 50% fully virtually. As all meetings continue to be conducted virtually, we are projecting another \$280,000 in savings for Benchers and staff travel and meeting costs.

External Counsel Fees: External counsel fees are projected to be over budget by \$217,000. Investigations has an increase in external counsel costs due to a higher number of files requiring specialized expertise. Additionally there has been an increase in the number of Legal Defense files. These increases are partially offset by reductions in external fees in other areas.

Governance Review: The unbudgeted costs of the governance review are expected to be in the range of \$100,000.

Information services: With increased risks in cyber security, our cyber security program has been enhanced, with new programs and training in place to detect and protect against cyber threats, with costs estimated at \$60,000 per year.

Net Asset Reserve Forecast

Net assets will be impacted by the fee relief that was provided to qualifying members. The amount for the year is \$487,000. The relief was provided to 369 firms with a total of 382 members. The net asset projection for 2021 is:

<u>2021</u>	
Opening Balance - per 2020 audited financial statements	\$ 11,282,000
Forecasted 2021 Surplus	\$ 1,000,000
Estimated reserve used for one-time fee reductions	\$ (487,000)
Projected 2021 Reserve Closing Balance	\$11,795,000

The Law Society of British Columbia
General Fund Forecast
For the 12 Months ending December 31, 2021
(\$000's)

	Forecast vs Budget			
	Q2		\$	%
	Forecast	Budget	Variance	
REVENUE				
Practice fees	24,126	23,188	938	4%
PLTC and enrolment fees	1,753	1,753	-	0%
Electronic filing revenue	922	700	222	32%
Interest income	268	255	13	5%
Credentials and membership services	634	634	-	0%
Fines, penalties and recoveries	295	275	20	7%
Program Cost Recoveries	122	122	-	0%
Other revenue	180	187	(7)	-4%
Other Cost Recoveries	9	9	-	-
Building Revenue & Recoveries	1,364	1,382	(18)	-1%
Total Revenues	29,673	28,505	1,168	4%
EXPENSES				
Benchers Governance and Events				
Bencher Governance	701	635	(66)	-10%
Board Relations and Events	288	298	10	3%
	989	933	(56)	-6%
Corporate Services				
General Office	661	778	117	15%
CEO Department	810	808	(2)	0%
Finance	1,115	1,133	18	2%
Human Resources	640	695	55	8%
Records Management	245	271	26	10%
	3,471	3,685	214	6%
Education and Practice				
Licensing and Admissions	1,815	1,904	89	5%
PLTC and Education	2,783	2,864	81	3%
Practice Standards	464	466	2	0%
Practice Support	56	70	14	20%
	5,117	5,304	187	4%
Communications and Information Services				
Communications	524	541	17	3%
Information Services	1,748	1,725	(23)	-1%
	2,272	2,266	(6)	0%
Policy and Legal Services				
Policy and Legal Services	1,798	1,459	(339)	-23%
Tribunal and Legislative Counsel	615	630	15	2%
External Litigation & Interventions	43	50	7	14%
Unauthorized Practice	309	333	24	7%
	2,765	2,472	(293)	-12%

The Law Society of British Columbia
General Fund Forecast
For the 12 Months ending December 31, 2021
(\$000's)

	Forecast vs Budget			
	Q2		\$	%
	Forecast	Budget	Variance	
Regulation				
CLO Department	868	875	7	1%
Intake & Early Assessment	2,179	2,135	(44)	-2%
Discipline	2,753	2,821	68	2%
Forensic Accounting	801	1,182	381	32%
Investigations, Monitoring & Enforcement	3,664	3,664	-	0%
Custodianships	1,851	1,846	(5)	0%
	12,116	12,523	407	3%
Building Occupancy Costs	1,948	1,972	24	1%
Total Expenses	28,678	29,155	477	2%
General Fund Results	995	(650)	1,645	
Reduction in Net Assets- COVID Fee Relief	(487)			
Surplus after COVID Fee Relief	508			

The Law Society
of British Columbia



2021 Mid-Year Reports

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

July 9, 2021

Prepared for: Benchers

Prepared by: Policy and Planning Staff

Purpose: For information

Introduction

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

I. Access to Justice Advisory Committee

2. The Committee is considering several topics in 2021. President Lawton asked the Committee to explore how the Law Society might advocate for greater access to non-adversarial dispute resolution in family law matters and also consider how to maintain and enhance measures adopted in response to the COVID pandemic that have improved access to legal services and access to the justice system. With respect to the latter, the Committee is also exploring ways access has been diminished as a result of COVID. In addition, the Committee is considering how to reduce regulatory barriers to accessing justice and legal services, which is part of the Strategic Plan. This report provides a brief of the work undertaken to July 2021.
3. At its March and April meeting the Committee met with Josh Patterson, CEO, Veenu Saini, Director of Programs, and Darcie Bennett, Director of Policy of the Law Foundation of British Columbia. Each year the Committee meets with representatives of the Law Foundation as part of its mandate to discuss how the \$60,000 access to justice funding provided by the Law Society to the Foundation should be allocated.
4. This year the Committee recommended that the funding support legal services to women who are at greater risk of intimate partner violence due to COVID-19. Data suggests that an additional harm caused by the pandemic has been the rise in intimate partner violence, and the increased barriers to justice that women in such relationships face.
5. After a robust discussion, the Committee decided to recommend that the Law Foundation direct the \$60,000 to support Rise Women's Legal Clinic in developing its Virtual Advocate Program.
6. The program will help expand the services Rise already provides, and help deliver much needed legal services to some of the more vulnerable members of our society by leveraging the existing infrastructure Rise has in place with greater use of technology to expand its reach. The Committee favoured this approach for a range of reasons, including Rise's history of providing quality services and the advantage of leveraging existing infrastructure rather than directing the fund to a project that does not yet exist or have a service model.

7. With respect to the referrals from the President and the topic of regulatory barriers, the Committee decided to address how to advocate for less adversarial family law resolution first, and spend the second half of 2021 addressing the other items.
8. The Committee intends to report to the Benchers in September with recommendations regarding what the Law Society might do to advocate for less adversarial family law resolution.
9. The Committee's work to date on the topic has been extensive. It has reviewed materials on the Provincial Court reforms, particularly the Victoria and Surrey projects to reform family law; it has reviewed recent and historical research on the topic, including reports of the CBA BC Branch and CBA National and Access to Justice BC's current work.
10. At its May 26th meeting, Jane Morley, QC presented on work A2JBC is undertaking to reform family law, with particular emphasis on the effect of adverse childhood experiences on the developing brain. The work explores the need for collaboration and a shift in objects and outcomes in health, social and legal sectors. Stephen McPhee, QC and Kerry Simmons, QC, CEO of CBA BC also participated in the discussion. The Committee's report in September will provide greater analysis of this topic.
11. The Committee held an additional meeting on June 29th to speak to Nancy Carter, QC and Darryl Hrenyk to explore the work the government is undertaking related to the object of reducing the adversarial nature of family law resolution, and to discuss the idea of whether a modernized unified family court might provide some solutions. Information from that session will also be summarized in greater detail in the September report.
12. At its July 8th meeting the Committee will finalize its review of non-adversarial family law and work on its report over the summer.
13. In addition to the work above, the Committee started to gather information from lawyers and other justice system stakeholders about the impact of COVID-19 on the delivery of legal services and access to justice, and the topic of regulatory reform to improve access.
14. In June and July the Committee will hold a series of consultations/discussions by Zoom video conference, similar to the work of the Mental Health Task Force. The Committee decided on this approach, rather than a survey, as it hoped to develop its understanding of the situation from the ground up, rather than providing a fixed set of topics for a survey. In addition, the Committee invited written feedback from lawyers to supplement these sessions.

15. The Committee plans to report on the topic of family law in September, and provide its report regarding access issues during COVID-19 and regulatory barriers to access in December.

II. Equity, Diversity and Inclusion Advisory Committee

16. The mandate of the Equity Diversity and Inclusion Advisory Committee is to monitor and advise the Benchers on developments and issues affecting equity, diversity, and inclusion in the legal profession and the justice system, and promote equity, diversity, and inclusion in the legal profession.
17. The Committee met four times in 2021 and discussed the following matters:

Diversity Action Plan

18. Last year, the Equity Diversity and Inclusion Advisory Committee (“Committee”) developed a Diversity Action Plan that contains more than 30 action items intended to increase diversity in the Law Society and the legal profession. The Diversity Action Plan was approved by the Benchers in September 2020, and The Action Plan contains a requirement for the Committee to provide regular progress reports.
19. The Committee has identified three priority areas to pursue in 2021: refining the demographic data collection, conducting outreach, and fostering diversity within the Law Society.

Demographics

20. The President’s mandate letter to the Committee this year asked that the Committee continue to update the equity, diversity, and inclusion data on the legal profession in B.C. and continue to assess whether the Annual Practice Declaration’s Anonymous Demographic Questions provide meaningful data, and what changes to the anonymous questions, if any, the Committee might recommend.
21. Regarding demographic data collection, the Committee continues to track the demographics of the legal profession through a demographic self-identification survey that is circulated to practising lawyers through the Annual Practice Declaration. Over the past three years, the data shows increases in the proportion of BC lawyers who identify as diverse. The largest shift can be seen in the growing proportion of lawyers who identify as racialized, although slight increases in the proportion of lawyers who identify as Indigenous, LGBT, or a person with a disability have also occurred:

Lawyer Demographics	2018		2019		2020	
	Response	Percent	Response	Percent	Response	Percent
Indigenous	334	2.65%	344	2.68%	359	2.73%
Racialized/Person of Colour	1937	15.34%	2101	16.37%	2305	17.56%
Lesbian/Gay/Bisexual/Trans-gender	397	3.14%	456	3.55%	501	3.82%
Person with a Disability	241	1.91%	278	2.17%	297	2.26%
Do not identify	6803	53.89%	6640	51.73%	6888	52.46%
Choose not to answer	2912	23.07%	3017	23.5%	2780	21.17%
Total Responses	12625		12836		13130	

22. For 2021, the Committee has added questions to the survey to obtain the year of call in BC and other jurisdictions to gather information about seniority, and to ask why lawyers choose not to answer the diversity question with the intention of increasing the response rate in future years.

Outreach

23. Regarding outreach, the Diversity Action Plan is available on the Law Society's website, and an update regarding the Committee's priorities for the year was featured in the Law Society's E-Brief on June 3, 2021. The Committee has discussed the possibility of sending a letter to diversity groups in the profession, and will continue to provide updates and invite feedback regarding the Diversity Action Plan through the Law Society's existing communication mechanisms.
24. The Committee was a founding member of the Legal Equity and Diversity Roundtable (LEADR). LEADR's purpose is "to foster dialogues and initiatives that relate to the advancement of diversity and inclusion in the legal profession of BC," and its objectives are "to collaborate, to support each other, to share best practices and issues of common concern, and to identify opportunities to make the legal profession more inclusive and welcoming." A representative from the Committee continues to attend LEADR meetings, including the most recent meeting held on May 31, 2021.
25. The Committee has also created a calendar of legal diversity events that occur throughout the province with a view to encouraging representatives from the Law Society to attend these events.

26. This year, the Law Society's Equity Diversity and Inclusion Award will be awarded, and the Committee intends to use the Award to generate interest and awareness about the contributions of diverse lawyers in British Columbia.

Diversity within the Law Society

27. The Diversity Action Plan includes an action to facilitate diverse representation within Law Society governance. The Benchers have committed to undertaking a governance review this year, and the Request for Proposals specifically directs the review to consider how the our current governance enables and supports equality, diversity, and inclusivity
28. Actions to facilitate diversity in the organization that are already underway include: the Law Society's Appointments Policy that incorporates diversity as a key factor for consideration for internal and external appointments, and a diversity statement is included in the Law Society's calls for nomination.
29. The Law Society's Rules and Code have been updated for gender neutrality.
30. Justicia is a voluntary program for law firms, facilitated by the Law Society, and undertakes initiatives to retain and advance women lawyers in private practice. The Justicia in BC project has been actively underway since 2012. The Justicia group has met twice this year to plan for a presentation by a renowned speaker in November of 2021.
31. Staff has prepared a process for inclusive identification of gender pronouns in Law Society tribunals, for consideration by the Tribunal Chair.
32. Staff is currently updating the Law Society's "Inclusive Language Guide" for publication as a practice resource on the Law Society's website.

III. Mental Health Task Force

33. Pursuant to section 3(b) of its Terms of Reference, the Mental Health Task Force is required to produce a mid-year report to the Benchers on its activities. This report is therefore intended to serve as an informational update on the Task Force's work from January to July 2021.
34. The Task Force met on three occasions in the first half of the year. At the January meeting, it was determined that the focus of the Task Force's efforts in 2021 would be to finalize the development of a recommendation to the Benchers with respect to introducing an alternative to discipline program ("ADP") designed to address situations in which mental health, substance use or other health issues have contributed to lawyer misconduct.

35. Working collaboratively with the Professional Regulation and Policy departments to resolve a series of outstanding policy and regulatory issues, this work – which has been ongoing for over two years – entered its final phase and is expected to be completed by the fall.
36. The Task Force also considered, in further detail, how the Law Society's regulatory approach may be adapted to address circumstances in which lawyers fail to respond to the Law Society as the result of a health issue and is currently refining a recommendation in this regard.
37. To ensure its work is comprehensive, the Task Force completed a detailed review of the recommendations arising from nearly a dozen mental health-related task forces in the United States, most of which were established following the release of the ground-breaking report from the US National Task Force on Lawyer Well-Being in 2016. These recommendations were considered in the context of identifying gaps in the Task Force's current approaches to its mandate and highlighting any opportunities for future work.
38. Recognizing that the COVID pandemic has exacerbated, and created new, stressors for many lawyers, the Task Force also worked closely with the Communications department to host two virtual sessions that provided lawyers with an opportunity to participate in a discussion on mental health and wellbeing during this unprecedented time. Nearly 200 participants attended the sessions, which involved a series of poll questions designed to generate discussion and a period of facilitated dialogue. Participants were also asked what topics they would like to see covered at future events, with relatively equal proportions expressing a desire to hear about the lived experiences of other practitioners, to be exposed to additional resources provided by mental health experts and to learn more about strategies employed by firms of various sizes to address mental health and substance use issues.
39. The Task Force has also continued planning for the fall mental health forum, which is currently being developed in collaboration with CLE-BC.
40. In addition the work of the collective, individual Task Force members have been involved in a number of other mental health-related activities. This includes serving on the Steering Committee, and completing a pre-validation of, the national survey on the well-being of members of the legal profession in Canada, which is part of a study being carried out by the Université de Sherbrooke in partnership with the Federation of Law Societies, all Canadian law societies and the Canadian Bar Association.
41. Task Force members also continued to liaise with the law schools in various capacities, including serving as guest lectures in upper year ethics courses to discuss the topic of

mental health within the profession, as well as discussing the role of accommodations in the PLTC program with university administrators.

42. Looking forward to the second half of 2021 the Task Force expects to refine its proposal on the ADP and to present its recommendation to the Benchers for discussion and decision this fall.
43. The Task Force is also contemplating the contents of a potential fourth report that will build on the work of its first and second interim reports and the forthcoming ADP report. It is anticipated that this future report will include a number of additional recommendations arising from work currently being undertaken by the Task Force, including adapting the regulatory approach in circumstances where lawyers fail to respond to the Law Society, improving mental health resources through the development of expert systems and defining a future role for the Task Force.

IV. Rule of Law and Lawyer Independence Advisory Committee

44. The Rule of Law and Lawyer Independence Advisory Committee met two times in 2021. The focus this year has been on the following matters:

Essay Contest

45. The 2020-2021 high school essay contest is currently underway. Two topics were identified for this year (1) How does civil disobedience impact the rule of law? and (2) What role does the rule of law have in advancing reconciliation with Indigenous people?
46. The Committee received 40 essay submissions. They have been sent to the judges for review. The winners will be determined by early July.
47. There will be one essay winner and one runner-up in each category. Arrangements will be made for the awards at a future in-person meeting with benchers, or the award will be mailed, depending on how conditions play out over the summer and fall.

Rule of Law Lecture

48. The Rule of Law Lecture, normally held in May or June, was postponed again due to continuing public health orders in response to the pandemic. The Committee is currently giving consideration to how the Lecture might be undertaken in the fall.

Events in Hong Kong

49. The Committee has written an opinion article drawing attention to the threats to lawyer independence under authoritarianism, presenting the recent events in Hong Kong as its primary case study. The article was published in the *Globe and Mail* in April.

Rule of Law Podcast

50. The Committee and the Communications department are continuing to produce and publish episodes of the Rule of Law Matters podcast. Thus far, five episodes have been published in 2021. Season 1 is scheduled to wrap up this summer, while planning for season 2 has begun.

V. Truth and Reconciliation Advisory Committee

51. The mandate of the Truth and Reconciliation Advisory Committee is to advise the Law Society of British Columbia on legal issues affecting Indigenous people in the province.
52. The President's mandate letter to the Committee asked that the Committee provide advice to the Benchers on the content of the Law Society's Indigenous course, increasing the retention of Indigenous lawyers throughout the justice system, and engaging education providers in increasing awareness within Indigenous communities of the possibility of careers in law and about the wider justice system.
53. The Committee has met four times this year and has discussed the following matters.

Indigenous Course

54. The Committee has provided extensive feedback regarding the content, structure, and roll out of the Indigenous course, including during two course feedback sessions with the course developer that were held on February 8 and 10, 2021.
55. The course pilot is scheduled to be launched in July of 2021, with the finalized course to be launched to all practicing lawyers in province in September of this year. In developing the course, the abundance of content has enabled the Committee to begin considering approaches to continuing educational opportunities that will build on the baseline course in future years.
56. Staff has drafted a Rule to mandate completion of the Indigenous course for consideration by the Act and Rules Committee that will be presented to the Benchers for approval.

Supporting Indigenous Lawyers

57. The Committee has discussed the demographic data that is collected through a self-identification survey circulated with the Annual Practice Declaration each year. Over the past five years, on average, fewer than 10 Indigenous lawyers per year have joined the British Columbia bar. This number seems low considering there are three law schools operating in the province, many law school graduates from other provinces article in BC (e.g. of Canadian law school graduates enrolled in the PLTC course, approximately 30% graduated from a law school outside of BC), and experienced Indigenous lawyers sometimes transfer from other provinces to BC.
58. The demographic data suggests that there is a gap between law school and practice. The Committee continues to consider approaches to bridging the gap. The Committee is being updated about the Lawyer Development Task Force's assessment of the viability of providing alternative paths to practice in BC, and is interested in providing input as the assessment progresses.
59. The demographic data shows that once Indigenous lawyers are called to the bar, they rarely cease membership entirely, but sometimes transfer to non-practising status. The Committee has discussed options for continuing to support the retention of Indigenous lawyers as practising members.

Indigenous Mentorship

60. The Law Society's Indigenous Mentorship Program continues to operate, but on average, only three mentorship pairs are made each year. The low number of mentorship pairs is not unexpected in light of the low number of Indigenous lawyers joining the profession each year, and the existence of other mentorship programs such as the Canadian Bar Association of BC's law student mentorship program (although aimed at law students, mentorship pairs often continue into the early years of practice), and the CBA BC Women Lawyers Forum mentorship program. The Committee has discussed the shortcomings of the existing mentorship program, and raised the possibility of providing group mentorship opportunities for Indigenous lawyers in the province.

Symbolism

61. At the 2020 Annual General Meeting (AGM), some members who were dissatisfied with the removal of a statue of Judge Begbie from the Law Society of BC's foyer made a resolution to review the decision and create a subcommittee to select a new symbol. The resolution passed in October of 2020. Following the AGM, the Committee was of the view that the motion was a low priority because the Law Society building is closed to the public due to COVID-19 restrictions, and the Committee has more pressing priorities, such as finalizing the Indigenous course, and supporting the recruitment, retention, and advancement of Indigenous lawyers in BC.

62. This year, the Committee established a symbolism subcommittee to advise the Committee on how the Law Society should respond to the members' resolution regarding the Begbie statue. The members of the subcommittee are: Claire Marshall, Michael McDonald, QC, Christopher McPherson, QC, and Terri-Lynn Williams-Davidson. The subcommittee met on April 9, 2021. A key point from the discussion was that the members' resolution provides a teachable moment to help the movers and all lawyers to understand why some colonial figures are so emotionally triggering for Indigenous Peoples. The subcommittee reiterated the point made during previous TRC Committee discussions: that the members' resolution is a low priority, and therefore, no action should be taken at this time.

Oaths

63. The Committee engaged in a discussion about the use of Indigenous symbols for making oaths. The Committee observed that the purpose of the oath is to bind the conscience of a person to tell the truth, that an object may help to symbolize the binding of conscience, and that there is nothing in the *Evidence Act* that would preclude the use of any particular object. The Committee thought the information should be included in the Law Society's practice resources.
64. There was also a suggestion that the Law Society of BC's Barristers and Solicitors' Oath should include an acknowledgement of the constitutional significance of Aboriginal and treaty rights.

Presentations

65. In 2017, the Law Society of BC and the Continuing Legal Education Society of BC developed a mini-documentary entitled "*But I was Wearing a Suit*," regarding racism experienced by lawyers in the province. On April 16 of 2021, a follow up mini-documentary regarding micro-aggressions against Indigenous people in the legal system entitled "*But I was Wearing a Suit II*" was launched. The launch involved a discussion about micro-aggressions against Indigenous people, facilitated by Law Society staff. The mini-documentary is available online: [Watch Part II of the widely acclaimed "But I Was Wearing A Suit" mini-documentary | The Continuing Legal Education Society of British Columbia \(cle.bc.ca\)](#).
66. Law Society staff presented on the Law Society's progress on its Truth and Reconciliation Action Plan for the BC Council of Administrative Tribunals "Reconciliation Roundtable" on June 3, 2021.



Memo

To: Benchers
From: Rule of Law and Lawyer Independence Advisory Committee
Date: June 30, 2021
Subject: Rule of Law Secondary School Essay Contest

The Law Society's essay contest that is overseen by the Rule of Law and Lawyer Independence Advisory Committee has recently completed. Despite the wrench thrown into the school year again this year by the COVID-19 pandemic, 40 students submitted essays, which was a sizeable increase over last year, and the winners have now been chosen.

Students were asked to write on one of two topics:

1. How does civil disobedience impact the rule of law?
2. What role does the rule of law have in advancing reconciliation with Indigenous people?

The winning essays were:

Winner: Tianna Lawton (Mulgrave School) "The Role of Disorder in Order: Civil Disobedience and the Rule of Law"

Runner-Up: Ireland Waal (Sardis Secondary School) "Civil Disobedience and The Rule of Law: How "Valuable" Lawbreaking Can Progress Society"

Their essays are attached for your advance information, before publication in the Benchers Bulletin.

It is usual that the winners and runners-up are invited to attend a Bencher meeting where a certificate and cheques are presented. That is currently not possible as Bencher meetings are still being held virtually. We will investigate the opportunities to have the winners and runners-up attend at a future meeting. In the meantime, the essays will be published in the *Benchers Bulletin*, and steps will be taken to have the cheques and the certificates issued to the winners and runners-up through mail.

MDL/al

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The Role of Disorder in Order: Civil Disobedience and the Rule of Law

From anti-war protestors burning their draft cards in the 1960s to 'Tank Man' standing in Tiananmen Square in 1989, civil disobedience has played a key role throughout history in creating a sense of discomfort to enact change. Civil disobedience is the purposeful defiance of the law to peacefully protest. When more palatable and legal methods have been exhausted, civil disobedience calls attention to the issue at hand, and orders a reassessment of justice in the law¹. Henry David Thoreau introduced this concept in his essay 'On the Duty of Civil Disobedience', in which he wrote "let every man make known what kind of government would command his respect, and that will be one step toward obtaining it."² With regards to the rule of law, civil disobedience presents a complication. The rule of law is fundamental in democratic societies, despite differences in interpretation and application. At its most basic, the Rule of Law protects order and mandates objectivity in the legal system. The Supreme Court of Canada described the Rule of Law as conveying "a sense of orderliness, of subjection to known legal rules and of executive accountability to legal authority."³ There are 4 key principles: the government enacts law transparently, the law is clear and applied equally, the law governs the actions of government and private persons and their relationship, and the courts apply the law independently of political or outside influence. Thus, the Rule of Law and its principles protects the rights of citizens to equality and justice.⁴ The relationship between civil disobedience and the Rule of Law, both historically crucial to the development and maintenance of democracy, is worth exploration.

There are a variety of perspectives to be offered and questions to be assessed on this matter. In the interest of preserving long-term democracy, civil disobedience and the rule of law must be viewed as fundamental and connected.

¹ Kimberley Brownlee, "Civil Disobedience," Stanford Encyclopedia of Philosophy (Stanford University, December 20, 2013), <https://plato.stanford.edu/entries/civil-disobedience/>.

² Henry David Thoreau, *Civil Disobedience* (Boston: Houghton Mifflin, 1906), <https://xroads.virginia.edu/~Hyper2/thoreau/civil.html>.

³ Joseph Magnet, "Rule of Law," Constitutional Law of Canada, 2013, http://www.constitutional-law.net/index.php?option=com_content&view=article&id=23&Itemid=37.

⁴ "What Is the Rule of Law - and Why Does It Matter?," Provincial Court of British Columbia, April 11, 2020, <https://www.provincialcourt.bc.ca/enews/enews-04-11-2020>.

The Rule of Law outlines that no individual is above the objective law. This raises an interesting philosophical debate: to what extent should people follow the law? Thomas Hobbes introduced the Social Contract Theory, which is the “mutual transferring of right,”⁵ noting that we release our ‘right to everything’ in exchange for protection from the state. This transfer, thus, is consent to the laws of the state. One relinquishes their political obligation when, and only when, the state either threatens or stops protecting its citizens’ right to life. Later theories of the social contract are not absolutist. John Locke, for example, prioritizes the protection of natural rights to “life, liberty, and property”⁶ by the state, and thus, political obligation is dependent on whether or not these rights are preserved. Locke has been highly influential in the adoption of constitutions in various democratic states, including Canada. Interestingly, section 52(1) of the Constitution Act 1982 declares that Canada’s constitution is the supreme law of Canada.⁷ This means that any law that is ‘unconstitutional’ is “of no force or effect.”⁸ Here, civil disobedience can prompt an evaluation of the constitutionality of a particular law. Direct civil disobedience - the purposeful breaking of the law that the perpetrator wants changed - can be especially influential. One example of where this notion of unconstitutionality was successfully applied was in the *R. v. S.A.* case in Alberta in 2011. A young person was deemed to be trespassing on public transportation on multiple occasions, because of a previous ban on her use of the Edmonton Public Transport system. In this case, the court found that banning people from public property that generally the public has open access to is in violation of the right to liberty defined under s.7 of the Charter.⁹ This example is one in which civil disobedience protected the rights and freedoms of our democracy. Here, and in many other cases of civil disobedience, the rule of law was strengthened by adapting a law deemed unjust and unconstitutional, and thus not commanding

⁵ Thomas Hobbes, *Leviathan*, ed. David Johnston (New York, NY: W. W. Norton & Company, Inc., 2021).

⁶ John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988).

⁷ “Section 52(1) – The Supremacy Clause,” Charterpedia (Government of Canada Department of Justice, June 17, 2019), <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd/check/art521.html>.

⁸ Charterpedia, “Section 52(1) – The Supremacy Clause.”

⁹ *R. v. S.A.*, 2011 ABPC 269.

the respect of the society in which it is meant to serve. Civil disobedience contests laws that no longer suit the needs of the public, thus allowing for the maintenance of a respected legal system and rule of law. This opportunity for progress in the legal system concurrent with social evolution is a key aspect of democracy that has allowed it to survive.

On the other hand, some believe that civil disobedience is a disrespect to the rule of law. As citizens of a system which upholds liberty, there is an expectation to respect and not seek to undermine the very laws that allow for the rights of citizens. The rule of law, in indicating that the law is above all individuals, prevents people from releasing themselves from their obligation to obedience. By defying the law through civil disobedience, one is placing their own moral compass and normative ideas above the law, which is a disrespect to the rule of law.¹⁰ However, if a law is morally questionable, why should one follow it? Many believe, in fact, that laws which conflict with morality are not to be followed at all. In the *R. v. Drainville* case, the defendant was charged with mischief for participating in a protest/blockade. He did not deny that he disobeyed the law, but used a colour of right defence to argue that he believed in his moral right to his criminal acts according to the superior laws of God.¹¹ Justice Fournier denied the applicability of this defence, and noted that in conflicts “between our ‘legal’ rules and our ‘moral’ rules, courts invariably have ruled in favour of... the rule of law.”¹² The position that civil disobedience disrespects the rule of law is not exactly correct, however, because civil disobedience is purposeful, perpetrators understand the legality - or lack thereof - of their actions, and that they could be punished by the court as a result. Civil disobedience is not revolution: rather than denying the legitimacy of law in general, the civil disobedient accepts the system of laws and

¹⁰Morris I. Leibman, “Civil Disobedience: A Threat to Our Society Under Law,” FEE (Foundation for Economic Education, July 1, 1992), <https://fee.org/articles/civil-disobedience-a-threat-to-our-society-under-law/>.

¹¹John Helis (2011), https://curve.carleton.ca/system/files/etd/27b06d80-1ab9-42a6-aabe-15a5b3e9ddab/etd_pdf/f815621b08e8ae0db40f4fa87215f25f/helis-godandtheconstitutionthesignificanceofthe.pdf.

¹²*R. v. Drainville*, [1991] OJ No 340, [1992] 3 CNLR 44, 5 CR (4th) 38, 12 WCB (2d) 59 (The Ontario Court of Justice).

their authority, but seeks to change one specific rule. They act within the frame of legal authority and the rule of law, whereas the revolutionary neglects that frame.¹³

Justice Fournier's conclusion in the *R. v. Drainville* case raises further philosophical questions about the role of morality in the law. There are two rival views on this: natural law theory and legal positivism. Natural law operates off of the assumption that humans hold natural rights. Supporters of natural law believe that legal systems have a purpose of justice. Laws that do not adhere to this purpose of justice are not in fact laws, and are rather corruptions of the law. This view largely advocates for the use of morality in law. Of course, there are laws that are strictly practical, such as jaywalking laws. A natural law theorist notes that these laws are to be followed, as long as they respect justice and the inherent rights of people. If not, there is no moral or legal obligation to obey.¹⁴ However, this system would raise complexity about which ethical view would be acceptable for the legal system - consequentialism, deontology, or religious rules? On the opposing side, legal positivism supports the separation of legality and morality. For something to be a valid law, it must be imposed by a certain authority, follow a specific procedure, and be enforced in society.¹⁵ HLA Hart highlights the 'separation thesis', which dictates that legal validity/right/justification is not defined by moral validity/right/justification and vice versa¹⁶. The more widely accepted legal position, particularly when discussing the rule of law, is Lon Fuller's view on natural law. He accepts that a legal system can be formally just, but still have specific laws that are not. This society would be one with a rule of law: similar cases must be treated as similar, there is no punishment without crime, and there is no crime without pre-existing and public law.¹⁷

¹³ Carl Cohen, "DEFENDING CIVIL DISOBEDIENCE," *The Monist* 54, no. 4 (October, 1970): 469-487. <https://www.jstor.org/stable/27902193>

¹⁴ "LEGAL POSITIVISM vs. NATURAL LAW THEORY," n.d.

¹⁵ Andrei Marmor and Alexander Sarch, "The Nature of Law," Stanford Encyclopedia of Philosophy (Stanford University, August 22, 2019), <https://plato.stanford.edu/entries/lawphil-nature/>.

¹⁶ Hart, H. L. A. "Positivism and the Separation of Law and Morals." *Harvard Law Review* 71, no. 4 (1958): 593-629. doi:10.2307/1338225.

¹⁷ Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1978).

At one point, residential schools were written into Canadian law under the Indian Act. At one point, Japanese internment was written into Canadian law under the War Measures Act. Both of these unjust laws had no place in a democracy, and were removed. Civil disobedience, a method of protest for unjust laws such as these, is beneficial for a healthy democracy. It ensures that the law advances with society, orders the re-evaluation of unjust law after legal methods have been exhausted, and ensures that the society in which we live is one that maintains our rights and freedoms - including the rule of law. Civil disobedience and the rule of law are not mutually exclusive: civil disobedience aids in the establishment and maintenance of the rule of law, and the rule of law ensures that these cases and reassessments of the law are treated equally and fairly. Both the rule of law and civil disobedience have been, and will continue to be, fundamental to our democratic society.

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Civil Disobedience and The Rule of Law: How “Valuable” Lawbreaking Can Progress Society

"If a plant cannot live according to its nature, it dies; and so a man," declared Henry David Thoreau in regards to civil disobedience in the mid 19th century. The idea of civil disobedience has been at the forefront of civil law for generations, and democratic global societies are nothing short of fervent when it comes to this concept. The main goal of civil disobedience is to demonstrate the unjust nature of a particular law and to move society toward changing that law for the better. This is not to assume that the entire legal system is unjust, but a particular policy or bill that has been passed. From a traditional standpoint, one would say that civil disobedience undermines the rule of law; However, the reality is quite the opposite. There is an undeniable correlation between civil disobedience and The Rule of Law when it comes to striking down unjust, discriminatory laws. The Rule of Law in its most simple definition being that all persons, institutions, and entities are accountable to laws that are: publicly promulgated, equally enforced, and independently adjudicated. Civil disobedience allows a nation's citizens to be granted justice, ensures that their rights and freedoms as granted by the Canadian Charter remain protected, and progress as an ever-changing society.

When civilians go against a specific law that they view as unjust, social rights movements are born. Civil disobedience can strengthen The Rule of Law by leading to the corrections of unfair or seriously wrong laws before further discrimination can occur. Many social rights movements are created to protest against specific laws or actions that occur under the law. A recent and relevant example of this is the "Black Lives Matter" movement, the "Me Too" movement, and "The Women's March". In each of these examples, individuals both nationally and globally participated in various forms of civil disobedience that led to changing laws or behavioural habits within the legal system that actively discriminated against a specific demographic or group of people (Lebron #76). During these times, there were laws in place that

deliberately discriminated toward certain individuals while actively benefiting others under the law. A more specific example is that women were legally not allowed to vote until 1918 due to the Person's case (Lahey #404). This, by nature, is problematic and goes against the Charter in many ways, however, was only amended due to the demand for justice that occurred through the noncooperation of the “famous five”. Although there will always be critics of civil disobedience, engaging with these movements leads to substantial change and justice while creating a larger community of understanding within the legal system. Another crucial example of young people engaging in civil disobedience as a "call to action" to elected officials is the "Fridays for Future" climate strikes (Thackeray #243). Students of all ages engaged in resistance by not attending school and instead choosing to spend their Friday striking as a result of feeling unsatisfied with the lack of environmental related action from their government. This is a prime example of how acts of civil unrest forces the government and lawmakers alike to reflect and correct previously mishandled situations (Thackeray #248). With these acts of civil disobedience, the justice system was reminded to reflect on the rule of law and what it entails. Elected officials were also reminded of the crucial relationship between the way laws are enforced and the impact this has upon people, as well as the importance of equality under the law. Without civil disobedience or the social emphasis on improving individual and collective rights, the legal system would remain flawed indefinitely.

The "Equality Rights" section under the Canadian Charter of Rights and Freedoms states that "all persons, entities, or institutions must be held accountable under equally enforced laws", and therefore has lead to a heavy emphasis on laws being non-discriminatory by specific definitions in the justice system (Canadian Charter of Rights and Freedoms). Civil disobedience and social justice movements take this into consideration and fight for equality rights to be

protected under law. The sole purpose of civil disobedience is to fight for the protection of equality as outlined in the Canadian Charter and in several other official documents (Canadian Charter of Rights and Freedoms). Section 52(1) of the Constitution Act, 1982 states that any law that is inconsistent with the provisions of the Constitution is "of no force or effect" (Koshan). Statutes which conflict with the Constitution are essentially invalid and technically do not become law. This particular section of the Constitution Act has been outlined incontestably with the main goal being to deter governments from passing unjust or harmful laws (Koshan). This further proves that social justice movements and protests are not technically classified as forms of civil disobedience in many circumstances, as long as they remain inline with the fundamental freedoms under the Charter (Fudge and Jensen #100). This means that civil disobedience can be legally justified as a reflection of certain radical laws that are not legitimate as they are not supported by the Charter of Rights and Freedoms. As granted by the Charter's equality rights, everyone is equal and has the right to equal protection and equal benefit of the law without discrimination (Canadian Charter of Rights and Freedoms). Those who participate in civil disobedience with reasonable cause to fight for equal distribution of equal rights are protected by the Charter and are entitled to proper representation under the Rule of Law.

Civil disobedience also can strengthen the Rule of Law by allowing a society's judicial system to grow and change. A society's laws reflect the core values and morals of that nation, and civil disobedience allows these laws to be truly reflective on what the people need. It is nearly inevitable that there will in fact be laws that are unjust or discriminatory however, social justice movements allow the repeal of unjust laws. The Rule of Law is fluid, and it can be changed as a result of civil disobedience. This is important to Canada's democracy and to Canada's legacy as a dynamic and forward looking society (Peerenboom #70). As a progressive

nation, and as a state who values multiculturalism, and diversity, it is necessary for civil disobedience to maintain the fluidity of the Rule of Law. Although the Rule of Law is a foundational part of Canada's justice system, it is malleable and subject to change as society develops. The Rule of Law "guarantees to the citizens and residents of the country a stable, predictable, and ordered society in which to conduct their affairs", this protects individuals from arbitrary state action (Billingsley). As times change and the world becomes more modern and intricate, it is important that Canada's legal system emulates this. Civil disobedience is the true way for the people of a state to give their unsolicited opinion and demonstrate their values to the legal system. It is essential to modernize the Rule of Law and maintain current social standards and equal practices. For the citizens of a country to respect the law, their judicial and governmental systems must seem legitimate to them and accurately portray their modern concerns as expressed by engaging in civil disobedience (Peerenboom #71). A new wave of civil disobedience in the COVID-19 era that has had a heavy impact on the Rule of Law has been "digital disobedience" (Scheurman #302). This refers to the new wave of online and social media activism that has been seen in the past year as an effort to hold governments accountable and demand social justice. Digital disobedience as a form of civil disobedience has been able to change the Rule of Law for the better and allow governments to adapt their judicial decisions to modern concerns (Scheurman #310). Without these acts of unrest, the Rule of Law would not accurately portray the values of Canadians.

Civil disobedience is necessary to strengthen the Rule of Law by leading to the correction of unjust or seriously wrong laws and reforming the justice system in the process in addition to allowing a nation's citizens to find justice under the law through social justice movements and protests. The power remains with the people to find a community fighting for equality. Civil

disobedience ensures that peoples' rights and freedoms as granted by the Canadian Charter remain protected under the Rule of Law by allowing them to publicly dispute any discriminatory law and demand reformation, and finally, civil disobedience encourages Canada to progress as an ever-changing society in a modern world, and plays an essential role in Canadian justice system to remain its classification a forward moving country. As the world progresses, we as individuals begin to see that a nation with its citizens' voices silenced is a nation that will continue to fall behind in history.

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