The Law Society of British Columbia

Agenda

Benchers

Date:	Friday, December 3, 2021
Time:	**7:30 am – Continental breakfast** **8:30 am - Call to order** ***For those attending virtually, please join the meeting anytime from 8:15 am to allow enough time to resolve any video/audio issues before the meeting commences.***
Location:	Hybrid: Bencher Room, 9th Floor, Law Society Building & Zoom
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 in a hybrid format, with all guests attending virtually. If you would like to attend the meeting, please email BencherRelations@lsbc.org.

CONSENT AGENDA:

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

1	Minutes of October 16, 2021 meeting (regular session)		
2	Minutes of October 16, 2021 meeting (*in camera* session)		
3	Rules Governing Tribunal Procedures		
4	Law Society Appointments to Outside Bodies		
5	Retired Member Fee Waiver Request		
6	2022 Committees, Task Forces and Working Groups		

REPORTS

7	President's Report	15 min	Dean Lawton, QC

The Law Society of British Columbia

Agenda

8	CEO's Report	15 min	Don Avison, QC
DISCUSSION/DECISION			
9	Report of a Governance Review of The Law Society of BC	2 hours	Harry Cayton
10	Responding to COVID-19 and Adjusting Regulation to Improve Access to Legal Services and Justice	30 min	Lisa Hamilton, QC
11	Indigenous Intercultural Course – Rule Requirements	10 min	Dean Lawton, QC
12	Data on Law School Graduates Seeking Articles	15 min	Don Avison, QC
UPDATES			
13	Financial Report – 2021 – Q3 and Forecast	10 min	Lisa Hamilton, QC Jeanette McPhee
14	Report on Outstanding Hearing & Review Decisions (*Materials to be circulated at the meeting*)	1 min	Dean Lawton, QC
FOR INFORMATION			
15	Bencher and Committee Evaluation Surveys		
16	Revision to Schedule of 2022 Bencher & Executive Committee Meeting Dates and Meeting Format		
17	Year-End Advisory Committee Reports • Access to Justice Advisory Committee • Equity, Diversity and Inclusion Advisory Committee • Indigenous Engagement in Regulatory Matters Task Force • Mental Health Task Force • Rule of Law and Lawyer Independence Advisory Committee • Truth and Reconciliation Advisory Committee		
18	Practice Standards Committee Consideration of President's Mandate Letter		
19	Continuing Professional Development for Pro Bono Work		
20	Report on the Benchers' Retreat Conference – October 15, 2021		
21	Minutes of November 18, 2021 Executive Committee Meeting		

The Law Society of British Columbia

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22	Three Month Bencher Calendar – December 2021 to February 2022
23	External Appointments • Law Foundation of BC • BC Law Institute
IN CAMERA	
24	Other Business

The Law Society of British Columbia

Minutes

Benchers

Date:	Saturday, October 16, 2021	
Present:	Dean P.J. Lawton, QC, President	Jamie Maclaren, QC
	Lisa Hamilton, QC, 1st Vice-President	Geoffrey McDonald
	Christopher McPherson, QC, 2nd Vice-President	Steven McKoen, QC
	Paul Barnett	Jacqueline McQueen, QC
	Kim Carter	Elizabeth J. Rowbotham
	Pinder K. Cheema, QC	Mark Rushton
	Cheryl S. D'Sa	Karen Snowshoe
	Jeevyn Dhaliwal, QC	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	Gaynor C. Yeung
	Dr. Jan Lindsay	Heidi Zetzsche
Unable to Attend:	Jennifer Chow, QC	
	Barbara Cromarty	
Staff:	Don Avison, QC	Michael Lucas, QC
	Avalon Bourne	Alison Luke
	Lance Cooke	Claire Marchant
	Natasha Dookie	Tara McPhail
	Kerryn Holt	Jeanette McPhee
	Jeffrey Hoskins, QC	Lainie Shore
	Alison Kirby	Lesley Small
	Jason Kuzminski	

Guests:	Harry Cayton	Advisor, Professional Regulation and Governance
	Paul Craven	Superintendent, Professional Governance
	The Honourable David Eby, QC	Attorney General and Minister responsible for ICBC, Liquor, and Gamble
	Jane Morley, QC	Consultant, Restorative Solutions

CONSENT AGENDA

1. Minutes of September 24, 2021, meeting (regular session)

The minutes of the meeting held on September 24, 2021 were approved unanimously and by consent as circulated.

2. Minutes of September 24, 2021, meeting (*in camera* session)

The minutes of the *In Camera* meeting held on September 24, 2021 were approved unanimously and by consent as circulated.

3. 2022 Fee Schedules

The following resolution was passed unanimously and by consent:

BE IT RESOLVED to amend the Law Society Rules, effective January 1, 2022, as follows:

1. ***In Schedule 1, by striking "$2,289.12" at the end of item A 1 and substituting "$2,289.00";***

2. ***In Schedule 2, by revising the prorated figures in the columns headed "Practice fee" accordingly; and***

3. ***In the headings of schedules 1, 2 and 3, by striking the year "2021" and substituting "2022".***.

4. Recommended Amendments to the *Code of Professional Conduct for British Columbia* Commentaries

The amendments to the *Code of Professional Conduct for British Columbia* as recommended by the Ethics Committee were adopted as circulated by consent.

REPORTS

5. President's Report

Mr. Lawton began his report by updating Benchers on his recent events and activities, including chairing the Law Society's recent Annual General Meeting (AGM), his continued involvement with the Council of Canadian Law Deans and the Federation joint working group, chairing an Executive Committee meeting focused on planning for the Bencher Retreat, and his involvement as an adjudicator in the Law Society's Tribunal processes.

Mr. Lawton also spoke about the Bencher Retreat program, noting that discussions would continue at future Bencher meetings.

6. CEO's Report

Mr. Avison began his report with a summary of the recent virtual Federation Conference, which focused on new entrants into the profession and the challenges they faced. Mr. Avison spoke about the different groups who presented during the conference, including students currently in law schools, current articling students, and newly called lawyers who spoke about their first five years of practice. Mr. Avison noted that the conference began with a welcome from Cree elder Sid Fiddler, who spoke about being in a time of difficult truths as a result of the continuing and pervasive harm of systemic racism. Mr. Avison then spoke about the issues raised by the Barreau du Québec, including whether or not new entrants have the skills and supports needed to be successful practitioners, and whether or not the processes and practices of law schools and law societies are equitable and free from barriers and discrimination. Over the course of the conference, Mr. Avison indicated that several barriers to the profession were identified, particularly in regard to the Law School Admission Test. Mr. Avison then reviewed several of the pilot projects that different jurisdictions were exploring to address the challenges facing new entrants to the profession.

Mr. Avison then provided an update on the Law Society's recent AGM, which took place on October 5. Mr. Avison noted that the technical format of the meeting proceeded smoothly, which enabled a high degree of participation, both in terms of voting and attendance at the meeting. He also indicated that the success of the AGM's technical format would help inform some of the Law Society's decisions regarding the virtual set-up for meeting rooms at the Law Society offices.

Mr. Avison informed Benchers that the call for nominations for the Bencher elections would close on October 18 at 5:00 pm. He indicated that voting would take place from November 1 to 15 with results announced on November 16.

Regarding the Bencher Retreat program, Mr. Avison indicated that a report would be developed based on the discussions that took place during the conference portion of the Retreat, and the report would be on the agenda for the December Bencher meeting. Mr. Avison also mentioned that Harry Cayton was expected to attend the December Bencher meeting to present his report on his review of the Law Society's governance.

Mr. Avison spoke about the Indigenous Intercultural Course, noting that the course has entered the second phase of review, which included making the course available to a number of organizations and individuals for input, as well as to the profession with the caveat that the course has not yet been finalized. Mr. Avison noted the high degree of interest from members of

the profession seeking access to the course. Mr. Avison also spoke about timing for the profession in regard to completing the course, and that recommendations regarding dates for completion would be on the agenda for the December Bencher meeting.

Mr. Avison concluded his report with an update regarding the Cullen Commission hearings, noting that the final oral submissions had begun and would continue into the week following the Bencher meeting. He noted that counsel for the Government of Canada recognized the engagement of the Federation and the Law Society in regard to the work of the National Anti-Money Laundering Working Group.

6a. Attorney General's Report

Mr. Lawton welcomed Attorney General David Eby, QC to the meeting.

Attorney General Eby began by thanking Benchers and the Law Society for all their work during the COVID-19 pandemic to help address the challenges facing the legal system.

Benchers then engaged in discussions with the Attorney General, including plans for the return of civil jury trials; steps being taken by the provincial government to expand access to non-adversarial resolution in family law matters for those who are on legal aid due to financial barriers; and work being conducted to increase the availability of internet access across the province. Benchers also discussed with the Attorney General the recent uncovering of the lost children from the residential schools and how the provincial government will be involved in terms of investigation. Attorney General Eby spoke about the importance of working with the First Nations communities to determine how best to move forward.

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

Ms. Cheema began her report with a summary of the recent Federation Conference, which focused on new entrants to the profession. She spoke about the program on Day 3, which focused on embracing change in the legal landscape with views from the Indigenous Bar. Ms. Cheema also spoke about the presentation given by Professor Val Napoleon, Interim Dean of the Faculty of Law at the University of Victoria and Law Foundation Chair of Indigenous Justice and Governance regarding the Indigenous Law program at the University of Victoria, which incorporates Indigenous legal traditions and processes. Ms. Cheema spoke further about Professor Napoleon's presentation, particularly the discussion regarding the jurisdiction of law societies over Indigenous practitioners and the development of Indigenous justice principles.

Ms. Cheema then provided a summary of the recent Federation Council meeting, which included a presentation from Stephen Rotstein, President of the CBA regarding the CBA's current priorities. Ms. Cheema informed Benchers that the executive officers of the Council had been elected, and that Batonnier Nicolas Plourde will be the next President of the Federation. Ms.

Cheema then provided an update on the Council's strategic priorities, including the national wellbeing survey. Data collection has been completed, and Ms. Cheema noted that a report was expected by the end of June 2022. Ms. Cheema then spoke about the Federation's truth and reconciliation initiatives, noting that the terms of reference for the Indigenous Advisory Council had been developed, and the next step would be to determine composition with input from the law societies.

Ms. Cheema informed Benchers that the Law Society of Ontario has now adopted the Model Rules regarding anti-money laundering with enforcement to start in January 2022. She also informed Benchers that the Barreau du Québec had also adopted the Model Rules, but they haven't yet been enforced as the Barreau du Québec is awaiting formal approval from L'Office Nationale in Québec. Ms. Cheema then spoke about proposed amendments in regard to client identification and verification rules, which would be circulated to the law societies for comment by the end of the year. She also spoke about educational modules being developed for the profession regarding the client verification and identification and anti-money laundering rules.

Ms. Cheema noted that KPMG had issued a clean audit of the Federation with no recommendations for changes. She also noted that the Federation's draft budget would be presented at the December Federation meeting.

Ms. Cheema concluded her report with an update on the activities of the National Committee on Accreditation (NCA), noting that in 2020 and 2021 the NCA issued 1,561 certificates of qualification, which is quite a considerable increase in comparison to prior years.

Benchers discussed the increase in numbers of applicants, as well as demographic information related to the applicants. Mr. Avison indicated that he would provide more detailed data on this matter.

DISCUSSION/DECISION

8. Mental Health Task Force: Recommendation on the Development of an Alternative Discipline Process

Mr. Lawton reviewed with Benchers the recommendations from the Mental Health Task Force regarding the implementation of an alternative discipline process, which had first been presented to Benchers for discussion at the September Bencher meeting.

Benchers discussed the provision of health information to the alternative discipline process counsel once threshold eligibility has been established, ensuring a coordinated approach across processes and discipline matters versus competency matters. In addition, Benchers discussed the types of cases that would be recommended through the alternative discipline process, as well as

the importance of taking care with how words are being defined to ensure a common understanding between lawyers and members of the public.

Mr. Greenberg noted that guidelines would be developed prior to the launch of the alternative discipline process pilot, which would help provide better clarity as to the mechanics of the program, and also guide operations. He also noted that the alternative discipline process would be an additional discipline process to use along with existing processes.

Benchers discussed the importance of giving consideration to the response of complainants, and that once the pilot is launched, further consultation should take place in order to incorporate necessary changes into the process.

Mr. Avison noted that the Professional Conduct department would be managing the operations of the alternative discipline process, and specialized staff members would be brought in as needed.

A motion to adopt the recommendations as presented within the report from the Mental Health Task Force was unanimously approved.

9. Lawyer Development Task Force: Recommendations Concerning Remuneration and Hours of Work for Articled Students

Mr. Lawton reviewed with Benchers the recommendations from the Lawyer Development Task Force regarding remuneration and hours of work for articled students, which had first been presented to Benchers for discussion at the September Bencher meeting.

Mr. Maclaren referenced the two additional recommendations he had brought forward for consideration at the September Bencher meeting and informed Benchers that he intended to put forward only the second recommendation regarding the establishment of an articles registry to determine the supply and demand gap for articling positions, and to obtain demographic data concerning the population of law graduates seeking articling positions.

Mr. McKoen noted that Mr. Maclaren's recommendation could stand as separate recommendation, as opposed to an amendment to the three recommendations put forward by the Lawyer Development Task Force. Mr. McKoen also clarified that the timing referenced in the Task Force's third recommendation was included, so as to give an opportunity to other organizations to bring forward ideas for alternative pathways to licensing.

Benchers discussed the role of the Law Society in creating alternative pathways to articling with some Benchers suggesting that the Innovation Sandbox could be used to pilot alternative pathway initiatives. Benchers also discussed the cost of law schools as a barrier to both access to practice and access to type of practice. Mr. Avison noted that dialogue has already begun with

the Law Society of Ontario regarding its alternate pathway program, so there is an opportunity for the Law Society to collaborate and build off of existing ideas.

Benchers discussed possible challenges in obtaining data from articling students, and the prevailing view was that additional information would be needed in order to make an informed decision on whether or not the Law Society should proceed with the collection of race-based data.

Based on the discussions of Benchers, Mr. Maclaren revised the wording of his recommendation regarding the establishment of an articles registry and made the following motion, which was seconded:

> *BE IT RESOLVED* that the Law Society shall pursue means to collect information that would assist it to: i) determine the supply and demand gap for articling positions in British Columbia; and ii) obtain race-based data, and other demographic information concerning the population of law graduates seeking articling positions in British Columbia.

Some Benchers expressed concerns about the proposed data collection, indicating participation should be voluntary, and about how the data would be treated, particularly due to the sensitivity of the information. Some Benchers also expressed concerns regarding the need for further consultation prior to making a decision.

A procedural motion was made and seconded to defer the motion to the December Bencher meeting to allow time for additional information to be provided.

The procedural motion passed unanimously.

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

10. Access to Justice Advisory Committee: Increasing Access to Non- Adversarial Resolution of Family Law Matters

Mr. Lawton reviewed with Benchers the recommendations from the Access to Justice Advisory Committee regarding access to non-adversarial resolution of family law matters, which had first been presented to Benchers for discussion at the September Bencher meeting.

Benchers discussed the importance of having publicly funded and accessible non-adversarial resolution of family law matters and how best to use the Law Society's resources to actively facilitate change in terms of providing greater access to non-adversarial dispute resolution. Benchers also discussed how the Law Society could further lobby for additional publicly funded alternative dispute options.

Benchers discussed the role of Adverse Childhood Experiences (ACEs) in non-adversarial resolution of family law matters, as well as the role of the Law Society in providing resources and guidance regarding ACEs to help educate the profession.

Ms. Hamilton noted that the Access to Justice Advisory Committee had spent a great deal of time viewing expert material and consulting with other groups in determining its recommendations. She noted that the goal of the Advisory Committee was to align its recommendations with the objectives of Access to Justice BC, so as to have a holistic approach to family law.

Benchers discussed the Access to Justice Advisory Committee's recommendations, particularly recommendation 7. Some Benchers expressed concerns about the operational nature of some of the recommendations, particularly recommendation 7.

A motion to approve all of the recommendations contained in the report of the Access to Justice Advisory Committee was made and seconded.

Some Benchers suggested approving the recommendations one by one.

Ms. Hamilton noted that the Committee came up with the recommendations as a package with many working inter-dependently. She suggested removing Recommendation 7 from the slate of recommendations and addressing it separately.

The motion to amend the resolution by removing Recommendation 7 was passed by the majority of Benchers with one abstention.

Benchers then voted on the amended motion to approve recommendations 1 through 6 and 8 through 12 as presented within the report of the Access to Justice Advisory Committee.

The motion was passed by the majority of Benchers with one abstention.

A motion to approve recommendation 7 as presented within the report of the Access to Justice Advisory Committee was made and seconded.

The motion failed with one abstention.

UPDATES

11. Report on Outstanding Hearing & Review Decisions

President Lawton provided an update on outstanding hearing and review decisions and thanked Benchers for their efforts to get decisions in on time, as timeliness is important to the public and those involved in proceedings.

FOR INFORMATION

12. Three Month Bencher Calendar – November 2021 to January 2022

There was no discussion on this item.

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

AB
2021-10-16

The Law Society of British Columbia

Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: November 23, 2021
Subject: **Rules governing Tribunal procedures**

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1. At their meeting October 30, 2020 the Benchers considered a report from the Executive Committee on reforms to the procedures of the Law Society Tribunal. I attach a copy of the report for your reference.

2. The Benchers approved the recommendations contained in the report and referred them to the Act and Rules Committee for recommendations on implementation "on the basis set out in [the] report." These were the recommendations:

    1) Consolidation of the tribunal hearing rules into a single "Part" of the Law Society Rules;

    2) Mandatory publication of all Tribunal decisions by the Executive Director, subject only to a determination by the Tribunal that extraordinary circumstances dictate that the public interest is best served by not publishing the decision;

    3) Allow for greater flexibility for creation of the official record;

    4) Establish the role of "Tribunal Chair," in the Rules. The Tribunal Chair will be appointed for a two-year term by the Benchers;

    5) Establish the role of "Chambers Bencher" in the Rules to replace "President's designate," with all lawyer Benchers being eligible for the position (subject to committee conflicts);

    6) Develop a standardized process in the Rules for any application for an order before a hearing starts. All matters should be directed to the President/Chair, potentially with some guidance regarding who should decide the matter: Chambers Bencher, panel or pre-hearing conference;

7) Create a standard procedure to apply for variation of any order. The procedure should be similar to the procedure for an interlocutory application;

8) With respect to interim suspensions under Rule 3-10 and Rule 4-23, that the three or more Benchers hearing the matter include an Appointed Bencher in circumstances where an Appointed Bencher is available;

9) The parties on review should be:

   a. "Applicant" for Credentials hearings;

   b. "Respondent" for responding to a citation;

   c. Choose either "hearing on" and "hearing of" and applying it in all cases in the Rules.

3. The Act and Rules Committee has considered a number of draft amendments over the intervening months and resolved to recommend adoption of the changes contained in the attached drafts. I also attach a suggested resolution recommended to effect the changes.

4. The attachments show two versions of the proposed changes. One is the usual clean version that shows the relevant changes as they would look after adoption of the changes. Because the consolidation mandated in the first recommendation above required moving and re-ordering a large number of current rules, the redlined version is a little different from the usual.

5. In the redlined version, where a current rule is to be moved, the heading and current rule number are shown together with the new rule number assigned. Where the rule is to be assigned under the re-ordering, the current rule number is shown, struck through, with the new number and any changes shown with redlining.

6. Since this is a consolidation of rules from various parts of the rules, in some cases there are multiple versions re-located from elsewhere combined into a single provision. Where that occurs, I have shown second, and occasionally third, versions in a box. Only the single final provision is shown in clean version.

7. This set of amendments is intended to implement the changes already mandated by the Benchers. However, it does not represent a final version of the relevant rules, which are already the subject of much thought and discussion relating to the provision in the Law Society strategic plan for 2021-2025:

Enhance the independence of the Law Society Tribunal through further administrative separation from the Law Society.

8. The Committee recommends that the changes, if adopted, be made effective January 1, 2022. Although there are few substantive changes involved, one major one will require the Benchers to name a Tribunal Chair from among their numbers.

9. I think that many of the changes are fairly self-explanatory, but taken together they make this project fairly complicated. As a result, I will provide some commentary on each of the nine items in the Bencher resolution.

Consolidation

10. One of the most significant changes is the consolidation of Tribunal rules into a single part of the Law Society Rules, as mandated by the first recommendation adopted by the Benchers. This is accomplished by moving many rules currently located in Parts 2 *[Membership and Authority to Practise Law]*, 3 *[Protection of the Public]* and 4 *[Discipline]* to Part *5 [Hearings and Appeals]*. Accordingly, the Committee proposes expanding the title of Part 5 to Tribunal, Hearings and Appeals.

11. Where the provisions are repetitive or overlap, they have been consolidated so that they apply to both credentials and discipline. In a few cases, there are separate rules in Part 5 for credentials and for discipline where the Tribunal is required to treat them differently. Matters that do not directly involve the Tribunal and appear to be operational or part of committee functions are left in place in the parts that relate to credentials or discipline.

12. The provisions relating to interim suspension or practice restrictions are also consolidated, but in Part 3 under a new Division 1.1 *[Extraordinary action to protect the public]*, which contains provisions from the current Part 3 rules and others from Part 4.

13. Currently, the Part 3 rules govern interim suspension and other measures regarding lawyers who are under investigation by the Law Society but who have not been cited. The Part 4 rules are more fully developed, but they are essentially the same except that they apply to lawyers who are the subject of an outstanding citation. There are historical reasons as to why these provisions are separated in the Act and the Rules, but there does not appear to be any principled reason. There is no reason that the procedure should not be the same whether there is an outstanding citation or not.

14. The Committee proposes to leave these proceedings under Part 3 because they are not hearings (but proceedings) and are not, in the first instance, heard by the Tribunal or a hearing panel. The *Legal Profession Act* provides that these matters are heard by three or more benchers, not a hearing panel. The draft amendments call these proceedings "public protection proceedings" because it is important to link these proceedings to protection of the public, the over-all topic of Part 3, and to continue to label action against a lawyer before anything has been proven in a hearing as "extraordinary action." It emphasizes that they are extraordinary measures to keep them separate from the every-day hearings and reviews governed under Part 5.

15. Since the provision would now apply to a respondent to a citation, it would not be appropriate to leave the provisions under the heading of a Division on complaints. So it is proposed to take the opportunity use the "extraordinary action" phrase in a new division heading, taking it from the current heading of Rule 3-10. The group of "3 or more Benchers," which is awkward in the current rules, have been given a fairly neutral title, "interim action board."

16. This is a list of Tribunal-related rules, in the proposed new order with some new numbering. Where the rule has been moved from elsewhere, the source rule is shown in square brackets. Note that some subheadings have been added to Part 5 to try to make the newly-expanded Tribunal provisions easier to navigate.

RULE 1 – DEFINITIONS

1 Definitions

PART 1 – ORGANIZATION

Division 1 – Law Society

General

1-48 Appointment of Law Society counsel

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Credentials hearings

2-91 Notice to applicant

2-92 Security for costs

2-93 Law Society counsel

2-102 Inactive applications

2-103 Publication of credentials decision

2-104 Anonymous publication

PART 3 – PROTECTION OF THE PUBLIC

Division 1.1 – Extraordinary action to protect public

3-10 Interim suspension or practice conditions

3-11 Medical examination

3-12 Public protection proceeding [3-12; 4-23]

3-12.1 Notice to lawyer or articled student [4-24]

3-12.2 Non-disclosure [4-25]

3-12.3 Review of interim suspension or practice conditions [4-26]

Division 1.2 – Complainants' Review Committee

3-13 Appointment of Complainants' Review Committee

PART 4 – DISCIPLINE

4-17 Direction to issue, expand or rescind citation

4-18 Contents of citation

4-19 Notice of citation

4-20 Publication of citation

4-20.1 Anonymous publication of citation

4-27 Appointment of Law Society counsel

4-29 Conditional admission

4-45 Discipline proceedings involving members of other governing bodies

4-46 Discipline involving lawyers practising in other jurisdictions

PART 10 – GENERAL

10-1 Service and notice

10-2 Duty not to disclose

10-2.1 Communication with Ombudsperson confidential [5-7]

SCHEDULE 4 – TARIFF FOR HEARING AND REVIEW COSTS

SCHEDULE 5 – FORM OF SUMMONS

Mandatory publication with review by Tribunal

17. The Benchers have recently reviewed and revised the rules on publications relating to credentials decisions and the issuance of citations. The current rules are consistent with the Bencher policy decision.

18. Amendments to Rule 4-48 would require publication of all written decisions of the Tribunal, rather than the list of particular decisions that appears in the current rule. This would be subject to a delay of publication of interim orders and rejected admissions until the matter is concluded. Currently there is no provision for eventual publication of those decisions, which is less than transparent and leaves a gap in the accessible Tribunal jurisprudence.

19. Rule 4-49 as amended would allow for naming a respondent in the publication of a decision to dismiss a citation if that decision is reversed on review or appeal.

20. Since the rule as amended removes the discretion whether to publish at all from the Executive Director and makes publication mandatory in all cases (although sometimes delayed), questions for adjudication are limited to the question of whether or not the respondent is named in the publication. Rule 4-49 would put that function on the Tribunal, and the Executive Director is not tasked with making quasi-judicial decisions.

Official record

21. The bencher resolution would make creating a transcript of hearings, reviews and proceedings an operational matter. The current rule does not allow that to the extent that it limits the form to one created by an official court reporter.

22. Where the current rules require a record created "by a court reporter," "or by other means" is added to allow operational flexibility.

Tribunal Chair and motions adjudicator

23. These positions are created under new definitions in Rule 1 and, in the case of the chair, a provision at the beginning of Part 5 calling for the appointment of the chair by the Benchers for a two-year term coinciding with the term of office of Benchers.

24. Although we currently refer to the President's designate on motions and prehearing conferences as a "Chambers Bencher," the Committee proposes "motions adjudicator" for the rules as less like legal jargon to the public and less appearing to the profession to elevate the Tribunal to judicial status.

25. The role of the President (or designate) in the current rules is replaced with the Tribunal Chair or a motions adjudicator, as appropriate, throughout the rules as revised.

Preliminary motions

26. The proposed amendments consolidate the separate credentials and discipline provisions for the adjudication of interlocutory applications into one rule under the Tribunal rules, proposed Rule 5-4.3. An addition to Rule 5-15 applies that rule by reference to preliminary questions pertaining to a review.

Variation of order

27. Rule 5-12 is revised to allow for applications to vary any order that is not yet fully executed. That rule is also revised to make the procedure more like a preliminary motion, as directed by the Bencher resolution. That would allow a decision by a single motions adjudicator, as with a preliminary matter.

28. The option of referring the matter to the Credentials or Discipline Committee for adjudication is eliminated. Those committees are essentially the other party in the proceeding. It does not seem right that the order of the Tribunal should be varied in that way. Hearing panels often provide for the possibility of the parties agreeing on an alternative date for payment or to start a suspension. If the panel does not do that for any reason, that should

be respected and the consent of the Tribunal required to vary the order. Of course, the parties can agree and make a joint submission to the Tribunal for variation of an order.

Interim suspension—participation of public representation

29. The Bencher resolution calls for the participation of an appointed bencher among the "3 or more Benchers" on an interim suspension or restriction application. The Committee does not consider that a requirement that should be placed on the Tribunal Chair through the Rules. It would be more appropriately implemented less formally as a policy matter. There is no proposed rule change in that regard.

Drafting points

30. The definitions of "applicant" and "respondent" in the *Legal Profession Act* leave us no option but to continue those designations through the review process. The current rules are consistent with that.

31. There does not seem to be any reason why an applicant subject to a credentials hearing and the Law Society could not construct and submit an agreed statement of facts. The definition of ASF is amended accordingly.

32. It was pointed out that the *Human Rights Code* has expanded as to prohibited forms of discrimination and the definition of "Ombudsperson" in Rule 1 has not kept up. Rather than expand the definition, the Committee suggests that the Ombudsperson is open to assisting victims of discrimination of all sorts and a list of prohibited forms is unnecessary.

33. We opted for the hearing *of* a citation and have made the change for consistency throughout.

34. In a number of rules applications are made to the tribunal by delivering them to the Tribunal and to the other party. In order to better distinguish the adjudicator from the parties, amendments to several rules are proposed to require that the application be filed with the Tribunal and delivered to the opposing party.

35. Proposed Rule 5-1.4 is an attempt to give practice directions by the Tribunal Chair some more formal authority. The proposed rule is based on a similar provision in the *Administrative Tribunals Act*. That provision of that Act does not apply to the Law Society, but there is no reason why it could not.

Attachments: report of Executive Committee
drafts
resolution

JGH

The Law Society of British Columbia

Tribunal Hearing Procedures

Executive Committee:

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

Date: October 30, 2020

Prepared for: Benchers

Prepared by: Policy and Planning Department

Purpose: Decision

Purpose of report

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

The problems addressed in this report

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

Proposed changes

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

1. Consolidation of hearing rules

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

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

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

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

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

2. Publication

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

Section 3 of the *Legal Profession Act* requires the Law Society to "uphold and protect the public interest in the administration of justice" by way of the means enumerated in the section. Transparency of a fair administrative process is one of the surest ways for the public to have confidence that the Law Society is discharging its regulatory duties in the public interest. This is particularly important in the age of Internet and social media where misinformation propagates rapidly and with a global reach.

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

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

3. Official Record

The Executive Committee recommends that the Rules be amended to allow for greater flexibility for creation of the official record, rather limiting the creation of an official record to that prepared by a court reporter.

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

There are some discrete issues that will need to be worked through if the Benchers wish to take this approach, particularly if technology is used. If the Law Society is to be the repository of the recording of the proceeding, it will be necessary to ensure records integrate into the records

management system. It is also necessary to have a mechanism to generate accurate transcripts from the recording. Those however are largely operational considerations. The intent of the recommendation is simply to create more flexible rules should other technologies become available. Staff can investigate what if any options may currently exist, or as they become available

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

4. Tribunal Chair

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

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

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

5. Chambers Bencher

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

6. Interlocutory Applications

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

7. Variation of Orders

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

8. Interim Suspensions

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

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

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

9. Drafting points

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

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

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

Summary of recommendations

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

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

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

3. Allow for greater flexibility for creation of the official record;

4. Establish the role of "Tribunal Chair," in the Rules. The Tribunal Chair will be appointed for a two-year term by the Benchers;

5. Establish the role of "Chambers Bencher" in the Rules to replace "President's designate," with all lawyer Benchers being eligible for the position (subject to committee conflicts);

6. Develop a standardized process in the Rules for any application for an order before a hearing starts. All matters should be directed to the President/Chair, potentially with some guidance regarding who should decide the matter: Chambers Bencher, panel or pre-hearing conference;

7. Create a standard procedure to apply for variation of any order. The procedure should be similar to the procedure for an interlocutory application;

8. With respect to interim suspensions under Rule 3-10 and Rule 4-23, that the three or more Benchers hearing the matter include an Appointed Bencher in circumstances where an Appointed Bencher is available;

9. The parties on review should be:

    a. "Applicant" for Credentials hearings;

    b. "Respondent" for responding to a citation;

    c. Choose either "hearing on" and "hearing of" and applying it in all cases in the Rules.

/DM

LAW SOCIETY TRIBUNAL RULES 2022

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

"agreed statement of facts" means a written statement of facts signed by Law Society counsel and by or on behalf of an applicant or respondent;

"applicant" means a person who has applied under Part 2 *[Membership and Authority to Practise Law]* for enrolment as an articled student, for call and admission or for reinstatement;

"chair" means a person appointed to preside at meetings of a committee, panel or review board;

"costs" includes costs assessed under Rule 3-25 *[Costs]* or 3-81 *[Failure to file trust report]* or Part 5 *[Tribunal, Hearings and Appeals]*;

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

(a) any action taken by a governing body as a result of

(i) professional misconduct,

(ii) incompetence,

(iii) conduct unbecoming the profession,

(iv) lack of physical or mental capacity to engage in the practice of law, or

(v) any other breach of a lawyer's professional responsibilities;

(b) disbarment;

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

(d) restrictions or limits on a lawyer's entitlement to practise, other than those imposed as a result of failure to pay fees to a governing body, insolvency or bankruptcy or other administrative matter;

(e) any interim suspension or restriction or limits on a lawyer's entitlement to practise imposed pending the outcome of a disciplinary hearing.

"discipline violation" means any of the following:

(a) professional misconduct;

(b) conduct unbecoming the profession;

(c) a breach of the Act or these rules;

(d) incompetent performance of duties undertaken by a lawyer in the capacity of a lawyer;

(e) conduct that would constitute professional misconduct, conduct unbecoming the profession or a contravention of the Act or these rules if done by a lawyer;

"interim action board" means a board appointed under Rule 3-10 *[Interim suspension or practice conditions]*;

"motions adjudicator" means a lawyer Bencher designated by the Tribunal Chair to decide a matter or conduct a pre-hearing or pre-review conference under these rules;

"Ombudsperson" means a person appointed by the Executive Director to provide confidential dispute resolution and mediation assistance to lawyers, articled students, law students and support staff of legal employers, regarding allegations of harassment or discrimination by lawyers and includes anyone employed to assist the Ombudsperson in that capacity;

"panel" means a panel established in accordance with Part 5 *[Tribunal, Hearings and Appeals]*;

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

(a) an order under Rule 2-57 (5) *[Principals]*, prohibiting the lawyer from acting as a principal for an articled student;

(b) any conditions or limitations of practice or articles accepted or imposed under the Act or these rules;

(c) a decision by a panel or a review board to reject an application for enrolment, call and admission or reinstatement;

(d) a decision by the Credentials Committee to reject an application for an inter-jurisdictional practice permit;

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

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

(f) recommendations made by the Practice Standards Committee under Rule 3-19 *[Action by Practice Standards Committee]*;

(g) an admission accepted by the Discipline Committee under Rule 4-29 *[Conditional admission]*;

(h) an admission accepted and disciplinary action imposed by a hearing panel under Rule 5-6.5 *[Admission and consent to disciplinary action]*;

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(i) any Conduct Review Subcommittee report delivered to the Discipline Committee under Rule 4-13 *[Conduct Review Subcommittee report]*, and any written dispute of that report considered by the Committee;

(j) a decision made under section 38 (4) (b) *[Discipline hearings]*;

(k) an action taken under section 38 (5), (6) or (7);

(l) an action taken by a review board under section 47 *[Review on the record]*;

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

(n) an order for costs made against the lawyer under Part 5 *[Tribunal, Hearings and Appeals]*;

(o) any failure to pay any fine, costs or penalty imposed under the Act or these rules by the time that it is to be paid;

(p) the outcome of an application made by the lawyer under the *Judicial Review Procedure Act* concerning a decision taken under the Act or these rules, including a predecessor of either;

(q) the outcome of an appeal under section 48 *[Appeal]*;

(r) any disciplinary or remedial action taken by a governing body or body regulating the legal profession in any other jurisdiction;

(s) a decision of or action taken by the Benchers on a review of a decision of a hearing panel;

"respondent" means a person whose conduct or competence is

(a) the subject of a citation directed to be issued under Rule 4-17 (1) *[Direction to issue, expand or rescind citation]*, or

(b) under review by a review board under section 47 *[Review]*

and includes a representative of a respondent law firm;

"review board" means a review board established in accordance with Part 5 *[Tribunal, Hearings and Appeals]*;

"suspension" means temporary disqualification from the practice of law;

"Tribunal" means persons or bodies performing the adjudicative function of the Society or providing legal or administrative support to that function;

"Tribunal Chair" means the Bencher appointed under Rule 5-1.3 *[Tribunal Chair]*;

"Tribunal Office" means the principal place of business of the Tribunal;

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PART 1 – ORGANIZATION

Division 1 – Law Society

General

Appointment of Law Society counsel

1-48 (1) Subject to Rule 1-51 (a) *[Powers and duties]*, the Executive Director may appoint a lawyer employed by the Society or retain another lawyer to advise or represent the Society in any legal matter.

(2) When Rule 1-51 (a) *[Powers and duties]* applies and it is not practicable to call a meeting of the Executive Committee before the advice of counsel is required, the Executive Director may appoint counsel on an interim basis.

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Credentials hearings

Notice to applicant

2-91 (1) When a hearing is ordered under this division, the Executive Director must promptly notify the applicant in writing of

(a) the purpose of the hearing,

(b) [rescinded]

(c) the circumstances to be inquired into at the hearing, and

(d) the amount of security for costs set by the Credentials Committee under Rule 2-92 *[Security for costs]*.

(1.1) [5-4.1(1)]

(1.2) [5-4.1(2)]

(2) The notice referred to in subrule (1) must be served

(a) in accordance with Rule 10-1 *[Service and notice]*, and

(b) not less than 30 days before the date set for the hearing, unless the applicant consents in writing to a shorter period.

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Security for costs

2-92 (1) When the Credentials Committee orders a hearing under this division, it must set an amount to be deposited by the applicant as security for costs.

(2) In setting the amount to be deposited as security for costs under this rule, the Credentials Committee may take into account the circumstances of the matter, including but not limited to, the applicant's

(a) ability to pay, and

(b) likelihood of success in the hearing.

(3) The amount to be deposited as security for costs must not exceed an amount that approximates the amount that the panel may order to be paid under Rule 5-11 *[Costs of hearings]*.

(4) On application by the applicant or Law Society counsel, the Credentials Committee may vary the amount to be deposited as security for costs under this rule.

(5) If, 15 days before the date set for a hearing, the applicant has not deposited with the Executive Director the security for costs set under this rule, the hearing is adjourned.

(6) Before the time set for depositing security for costs under subrule (5), an applicant may apply to the Credentials Committee for an extension of time, and the Committee may, in its discretion, grant all or part of the extension applied for.

Law Society counsel

2-93 The Executive Director must appoint a lawyer employed by the Society or retain another lawyer to represent the Society when

(a) a hearing is ordered under this division,

(b) a review is initiated under section 47 *[Review on the record]*,

(c) an applicant appeals a decision to the Court of Appeal under section 48 *[Appeal]*, or

(d) the Society is a respondent in any other action involving an application relating to sections 19 to 22 or this division.

Preliminary questions

2-94 [5-4.3]

Compelling witnesses and production of documents

2-95 [5-5(5) – (7)]

Pre-hearing conference

2-96 [5-5.1]

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Appointment of panel

2-97 [5-2(1)]

Adjournment of hearing

2-98 [5-5.2]

Attendance at the hearing

2-99 [5-6.1]

Onus and burden of proof

2-100(1)[5-6.2]

(2) [5-6.3(3)]

Procedure

2-101(1), (3)-(5) [5-6.3]

(2) [5-5.3]

Inactive applications

2-102 (1) When the Credentials Committee has ordered a hearing and the applicant has taken no steps for one year to bring the application to a hearing, the application is deemed abandoned.

(2) When an application is abandoned under this rule, Law Society counsel may apply for an order that some or all of the funds paid under Rule 2-92 *[Security for costs]* as security for costs be retained by the Society.

(3) An application under subrule (2) is made by filing with the Tribunal and delivering to the applicant written notice of the application.

(4) On an application under subrule (3), a motions adjudicator may order that some or all of the funds deposited as security for costs be retained by the Society, and the remainder, if any, be refunded to the applicant.

(5) [rescinded]

Publication of credentials decision

2-103 (1) When a hearing panel or review board issues a final or interlocutory decision on an application under this division, the Executive Director must

(a) publish and circulate to the profession a summary of the circumstances and decision of the hearing panel or review board,

(b) publish the full text of the decision on the Law Society website, and

(c) publish the final outcome of the hearing or review, including any conditions or limitations of practice or articles imposed or accepted.

(1.1) When a court issues a decision on a judicial review of or appeal from a credentials decision, the Executive Director must circulate to the profession a summary of the decision.

(2) and (3) [rescinded]

(4) This rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

Anonymous publication

2-104 (1) Except as required or allowed under this rule, a publication under Rule 2-103 (1) (a) or (b) *[Publication of credentials decision]* must not identify the applicant.

(2) A publication under Rule 2-103 (1) (a) or (b) may identify the applicant if

(a) the applicant consents in writing, or

(b) the subject matter of the application, including the identity of the applicant, is known to the public.

(3) to (7) [rescinded]

(8) A publication under Rule 2-103 (1) (a) or (b) must identify the applicant if the applicant is a disbarred lawyer applying for reinstatement.

(9) A summary circulated under Rule 2-103 (1.1) may identify an applicant who is identified by the court.

PART 3 – PROTECTION OF THE PUBLIC

Division 1.1 – Extraordinary action to protect public

Interim suspension or practice conditions

3-10 (1) Under this rule, an interim action board may make an order with respect to a lawyer or articled student who is the subject of

(a) an investigation or intended investigation under Rule 3-5 *[Investigation of complaints]*, or

(b) a citation under Part 4 *[Discipline]*.

(1.1) When a proceeding is initiated under Rule 3-12 (3) *[Public protection proceeding]*, the President must appoint an interim action board, consisting of 3 or more Benchers who are not members of the Discipline Committee.

(2) If satisfied, on reasonable grounds, that extraordinary action is necessary to protect the public, an interim action board may

(a) impose conditions or limitations on the practice of a lawyer or on the enrolment of an articled student, or

(b) suspend a lawyer or the enrolment of an articled student.

(3) An order made under subrule (2) or varied under Rule 3-12 *[Public protection proceeding]* is effective until the first of

(a) final disposition of the existing citation or any citation authorized under Part 4 *[Discipline]* arising from the investigation, or

(b) rescission, variation or further variation under Rule 3-12.

(4) Subject to an order under subrule (6), when a condition or limitation is imposed under this rule on the practice of a lawyer or the enrolment of an articled student, the Executive Director may disclose the fact that the condition or limitation applies and the nature of the condition or limitation.

(5) An interim action board that makes an order under subrule (2) (a) must consider the extent to which disclosure of the existence and content of the order should be made public.

(6) Where, in the judgment of the interim action board that made an order under subrule (2) (a), there are extraordinary circumstances that outweigh the public interest in the disclosure of the order, the board may make an order

(a) that the Executive Director not disclose all or part of the order, or

(b) placing limitations on the content, means or timing of disclosure.

(7) An order made under subrule (6) does not apply to disclosure of information for the purposes of

(a) enforcement of the order,

(b) investigation and consideration of a complaint under this part or Part 4 *[Discipline]* or a proceeding under Part 5 *[Tribunal, Hearings and Appeals]*, or

(c) obtaining and executing an order under Part 6 *[Custodianships]*.

(8) An interim action board must give written reasons for an order under subrule (6).

(9) An order under subrule (6) may be made by a majority of the interim action board.

(10) If the Executive Director discloses the existence of a condition or limitation under subrule (2) (a) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.

(11) Subrule (10) does not apply to a decision of a hearing panel or a review board.

(12) This rule is subject to the requirement to publish discipline decisions under Rule 4-48 (2) *[Publication of discipline decisions]*.

Medical examination

3-11 (1) This rule applies to a lawyer or articled student who is the subject of

(a) an investigation or intended investigation under Rule 3-5 *[Investigation of complaints]*, or

(b) a citation under Part 4 *[Discipline]*.

(2) An interim action board that is of the opinion, on reasonable grounds, that the order is likely necessary to protect the public may make an order requiring a lawyer or articled student to

(a) submit to an examination by a medical practitioner specified by the interim action board, and

(b) instruct the medical practitioner to report to the Executive Director on the ability of the lawyer to practise law or, in the case of an articled student, the ability of the student to complete articles.

(3) The Executive Director may deliver a copy of the report of a medical practitioner under this rule to the Discipline Committee or the Practice Standards Committee.

(4) The report of a medical practitioner under this rule

(a) may be used for any purpose consistent with the Act and these rules, and

(b) is admissible in any hearing or proceeding under the Act and these rules.

Public protection proceeding

3-12 (1) [rescinded]

(2) Before an interim action board takes action under Rule 3-10 *[Interim suspension or practice conditions]* or 3-11 *[Medical examination]*, there must be a proceeding before the board at which Law Society counsel is present.

(3) The proceeding referred to in subrule (2)

(a) must be initiated on the application of one of the following:

(i) the Discipline Committee;

(ii) the Practice Standards Committee;

(iii) the Executive Director, and

(b) may take place without notice to the lawyer or articled student if the interim action board is satisfied, on reasonable grounds, that notice would not be in the public interest.

(4) The lawyer or articled student and counsel for the lawyer or articled student may be present at a proceeding under this rule.

(5) All proceedings under this rule must be recorded by a court reporter or by other means.

(6) Subject to the Act and these rules, the interim action board may determine the practice and procedure to be followed.

(7) Unless the interim action board orders otherwise, the proceeding is not open to the public.

(8) A party may request an adjournment of a proceeding conducted under this rule.

(9) Rule 5-5.2 *[Adjournment]* applies to an application for an adjournment made before the proceeding begins as if it were a hearing.

(10) [rescinded]

(11) After a proceeding has begun, the interim action board may adjourn the proceeding, with or without conditions, generally or to a specified date, time and place.

(12) On the application of a party, the interim action board may rescind or vary an order made or previously varied under this rule.

(13) On an application under subrule (12) to vary or rescind an order,

(a) each party must be given a reasonable opportunity to make submissions in writing, and

(b) the interim action board may allow oral submissions if, in the board's discretion, it is appropriate to do so.

(14) If, for any reason, any member of the interim action board that made an order under this rule is unable to participate in the decision on an application under subrule (12), the President may appoint another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of the member of the board unable to participate.

Notice to lawyer or articled student

3-12.1 When an order is made under Rule 3-10 (2) *[Interim suspension or practice conditions]* without notice to the lawyer or articled student, the Executive Director must immediately notify the lawyer or articled student in writing, that

(a) the order has been made,

(b) the lawyer or articled student is entitled, on request, to a transcript of the proceeding under Rule 3-12 *[Public protection proceeding]*, and

(c) the lawyer or articled student may apply under Rule 3-12.3 *[Review of interim suspension or practice conditions]* to have the order rescinded or varied.

Non-disclosure

3-12.2 (1) Unless an order is made under Rule 3-10 (2) *[Interim suspension or practice conditions]*, no one is permitted to disclose that a proceeding was initiated, scheduled or took place under this division except for the purpose of complying with the objects of the Act or with these rules.

(2) When an order has been made or refused under Rule 3-10 (2) *[Interim suspension or practice conditions]*, before publication of the decision is permitted under Rule 4-48 (2) *[Publication of discipline decisions]*, the Executive Director may, on request, disclose the fact of the order or refusal and the reasons for it.

Review of interim suspension or practice conditions

3-12.3 (1) If an order has been made under Rule 3-10 (2) *[Interim suspension or practice conditions]*, the lawyer or articled student may apply in writing to the Tribunal at any time for rescission or variation of the order.

(2) An application under subrule (1) must be heard as soon as practicable and, if the lawyer or articled student has been suspended without notice, not later than 7 days after the date on which it is received by the Tribunal, unless the lawyer or articled student consents to a longer time.

(3) When application is made under subrule (1), the Tribunal Chair must appoint a panel under Part 5 *[Tribunal, Hearings and Appeals]*.

(4) The panel appointed under subrule (3) must not include a person who

(a) participated in the decision that authorized the issuance of a citation related to the application,

(b) was a member of the interim action board that made the order under review, or

(c) is a member of a panel assigned to hear a citation related to the application.

(5) A hearing under this rule is open to the public, but the panel may exclude some or all members of the public in any circumstances it considers appropriate.

(6) On application by anyone, the panel may make the following orders to protect the interests of any person:

(a) an order that specific information not be disclosed;

(b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).

(7) All proceedings at a hearing under this rule must be recorded by a court reporter or by other means, and any person may obtain, at the person's expense, a transcript of any part of the hearing that the person was entitled to attend.

(8) Each party may call witnesses to testify who

(a) if competent to do so, must take an oath or make a solemn affirmation before testifying, and

(b) are subject to cross-examination.

(9) If the order under Rule 3-10 (2) *[Interim suspension or practice conditions]* took effect without notice to the lawyer or articled student, witnesses called by Law Society counsel must testify first, followed by witnesses called by the respondent.

(10) If subrule (9) does not apply, witnesses called by the lawyer or articled student must testify first, followed by witnesses called by Law Society counsel.

(11) The panel may

(a) accept an agreed statement of facts, and

(b) admit any other evidence it considers appropriate.

(12) Following completion of the evidence, the panel must

(a) invite each party to make submissions on the issues to be decided by the panel,

(b) decide by majority vote whether cause has been shown by the appropriate party under subrule (13) or (14), as the case may be, and

(c) make an order if required under subrule (13) or (14).

(13) If an order has been made under Rule 3-10 (2) *[Interim suspension or practice conditions]* with notice to the respondent, the panel must rescind or vary the order if cause is shown on the balance of probabilities by or on behalf of the respondent.

(14) If an order has been made under Rule 3-10 (2) *[Interim suspension or practice conditions]* without notice to the respondent, the panel must rescind or vary the order, unless Law Society counsel shows cause, on the balance of probabilities, why the order should not be rescinded or varied.

Division 1.2 – Complainants' Review Committee

Appointment of Complainants' Review Committee

3-13 (1) For each calendar year, the President must appoint a Complainants' Review Committee.

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PART 4 – DISCIPLINE

Direction to issue, expand or rescind citation

4-17 (1) The Discipline Committee or the chair of the Committee may order a hearing into the conduct or competence of a lawyer by directing that the Executive Director issue a citation against the lawyer.

(2) After a hearing has been ordered under subrule (1), the Discipline Committee may direct the Executive Director to add an allegation to a citation.

(3) At any time before a panel makes a determination under Rule 5-6.4 *[Disciplinary action]*, the Discipline Committee may rescind a citation or an allegation in a citation and substitute another decision under Rule 4-4 (1) *[Action on complaints]*.

Contents of citation

4-18 (1) A citation may contain one or more allegations.

(2) Each allegation in a citation must

(a) be clear and specific enough to give the respondent notice of the misconduct alleged, and

(b) contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proven against the respondent and to identify the transaction referred to.

Notice of citation

4-19 The Executive Director must serve a citation on the respondent

(a) in accordance with Rule 10-1 *[Service and notice]*, and

(b) not more than 45 days after the direction that it be issued, unless the Discipline Committee or the chair of the Committee otherwise directs.

Publication of citation

4-20 (1) When there has been a direction to issue a citation, the Executive Director must publish on the Society's website the fact of the direction to issue the citation, the content of the citation and the status of the citation.

(1.1) Publication under subrule (1) must not occur earlier than 7 clear days after the respondent has been notified of the direction to issue the citation.

(2) The Executive Director may publish the outcome of a citation, including dismissal by a panel, rescission by the Discipline Committee or the acceptance of a conditional admission.

(3) Publication under this rule may be made by means of the Society's website and any other means.

(4) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.

(5) Except as allowed under Rule 4-20.1 *[Anonymous publication of citation]*, a publication under this rule must identify the respondent.

Anonymous publication of citation

4-20.1 (1) A party or an individual affected may apply to the Tribunal for an order that publication under Rule 4-20 *[Publication of citation]* not identify the respondent.

(2) When an application is made under this rule before publication under Rule 4-20, the publication must not identify the respondent until a decision on the application is issued.

(3) On an application under this rule, where, in the judgment of a motions adjudicator, there are extraordinary circumstances that outweigh the public interest in the publication of the citation, the motions adjudicator may

(a) grant the order, or

(b) order limitations on the content, means or timing of the publication.

(4) [rescinded]

(5) The motions adjudicator making a determination on an application under this rule must state in writing the specific reasons for that decision.

Amending an allegation in a citation

4-21 [5-4.2]

Severance and joinder

4-22 [5-4.4]

Interim suspension or practice conditions

4-23 (1)-(3) [rescinded]

(3)-(16) [3-12]

Notification of respondent

4-24 [3-12.1]

Disclosure

4-25 [3-12.2]

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Review of interim suspension or practice conditions

4-26 [3-12.3]

Appointment of Law Society counsel

4-27 The Executive Director must appoint a lawyer employed by the Society or retain another lawyer to represent the Society when

(a) a direction to issue a citation is made under Rule 4-17 *[Direction to issue, expand or rescind citation]*,

(b) a person initiates a review under section 47 *[Review on the record]*,

(c) a person appeals a decision to the Court of Appeal under section 48 *[Appeal]*, or

(d) the Society is a respondent in any other action involving the investigation of a complaint or the discipline of a lawyer.

Notice to admit

4-28 [5-4.8]

Conditional admission

4-29 (1) A respondent may, at least 14 days before the date set for a hearing under this part, tender to the Discipline Committee a conditional admission of a discipline violation.

(2) The chair of the Discipline Committee may waive the 14-day time limit in subrule (1).

(3) The Discipline Committee may, in its discretion,

(a) accept the conditional admission,

(b) accept the conditional admission subject to any undertaking that the Committee requires the respondent to give in order to protect the public interest, or

(c) reject the conditional admission.

(4) If the Discipline Committee accepts a conditional admission tendered under this rule,

(a) those parts of the citation to which the conditional admission applies are resolved,

(b) the Executive Director must

(i) record the respondent's admission on the respondent's professional conduct record, and

(ii) notify the respondent and the complainant of the disposition, and

(c) subject to solicitor and client privilege and confidentiality, the Executive Director may disclose the reasons for the Committee's decision.

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(5) A respondent who undertakes under this rule not to practise law is a person who has ceased to be a member of the Society as a result of disciplinary proceedings under section 15 (3) *[Authority to practise law]*.

Admission and consent to disciplinary action

4-30 [5-6.5]

Rejection of admission

4-31 [5-6.6]

Notice of hearing

4-32 [5-4.1]

Summary hearing

4-33 [5-4.5]

Demand for disclosure of evidence

4-34 [5-4.6]

Application for details of the circumstances

4-35 [5-4.7]

Preliminary questions

4-36 [5-4.3]

Compelling witnesses and production of documents

4-37 [5-5(5)-(7)]

Pre-hearing conference

4-38 [5-5.1]

Appointment of panel

4-39 [5-2]

Adjournment

4-40 [5-5.2]

Preliminary matters

4-41 [5-6.1]

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Evidence of respondent

4-42 [5-5(2.1)]

Submissions and determination

4-43 [5-6.3]

Disciplinary action

4-44 [5-6.4]

Discipline proceedings involving members of other governing bodies

4-45 (1) The Executive Director must send written notice of the action to every governing body of which the person concerned is known to be a member when

(a) a citation is authorized under Rule 4-17 *[Direction to issue, expand or rescind citation]*,

(b) a disciplinary action is imposed under Rule 5-6.4 *[Disciplinary action]*, or

(c) a conditional admission tendered under Rule 4-29 *[Conditional admission]* is accepted by the Discipline Committee.

(2) When a citation is authorized against a lawyer who is a member of a governing body or when a governing body initiates disciplinary proceedings against a member of the Society, the Discipline Committee must consult with the governing body about the manner in which disciplinary proceedings are to be taken and the Society is bound by any agreement the Discipline Committee makes with the other governing body.

(3) The Discipline Committee may agree that the venue of disciplinary proceedings be changed to or from that of the Society, if it is in the public interest or if there is a substantial savings in cost or improvement in the convenience of any person without compromising the public interest.

(4) The Discipline Committee may take action under Rule 4-4 *[Action on complaints]* against a lawyer who

(a) has violated a prohibition against practice imposed by a governing body,

(b) is the subject of a declaration by a governing body under a provision similar to Rule 5-6.4 (3) (d) *[Disciplinary action]*, or

(c) has made an admission that is accepted under a provision similar to Rule 4-29 *[Conditional admission]*.

(5) The fact that a lawyer is or has been the subject of disciplinary proceedings by a governing body does not preclude any disciplinary action for the same or related conduct under this part.

(6) In a proceeding under this part, the filing of a duly certified copy of the disciplinary decision of a governing body against a lawyer found guilty of misconduct is proof of the lawyer's guilt.

Discipline involving lawyers practising in other jurisdictions

4-46 (1) If it is alleged that a member of the Society has committed misconduct while practising temporarily in another Canadian jurisdiction under provisions equivalent to Rules 2-15 to 2-27 *[Inter-jurisdictional practice]*, the Discipline Committee will

(a) provide information to the governing body under Rule 2-27.1 *[Sharing information with a governing body]*;

(b) subject to subrule (2), assume responsibility for the conduct of the disciplinary proceedings under this part.

(2) The Discipline Committee may agree to allow the governing body concerned to assume responsibility for the conduct of disciplinary proceedings under subrule (1), including the expenses of the proceeding.

(3) In deciding whether to agree under subrule (2), the primary considerations will be the public interest, convenience and cost.

(4) To the extent that is reasonable in the circumstances, the Executive Director must do the following at the request of a governing body that is investigating the conduct of a member or former member of the Society or a visiting lawyer who has provided legal services:

(a) provide information to the governing body under Rule 2-27.1 *[Sharing information with a governing body]*;

(b) co-operate fully in the investigation and any citation and hearing.

(5) Subrule (4) applies when the Discipline Committee agrees with a governing body under subrule (2).

(6) When the Executive Director provides information or documentation to a governing body under subrule (4) or (5), the Executive Director may inform any person whose personal, confidential or privileged information may be included of that fact and the reasons for it.

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Public notice of suspension or disbarment

4-47 (1) When a person is suspended under this part or Part 5 *[Tribunal, Hearings and Appeals]*, is disbarred or, as a result of disciplinary proceedings, resigns from membership in the Society or otherwise ceases to be a member of the Society as a result of disciplinary proceedings, the Executive Director must immediately give effective public notice of the suspension, disbarment or resignation by means including but not limited to the following:

(a) publication of a notice in

(i) the British Columbia Gazette,

(ii) a newspaper of general circulation in each municipality and each district referred to in Rule 1-21 *[Regional election of Benchers]*, in which the person maintained a law office, and

(iii) the Society website, and

(b) notifying the following:

(i) the Registrar of the Supreme Court;

(ii) the Public Guardian and Trustee.

(2) When a person is suspended under Part 2 *[Membership and Authority to Practise Law]* or 3 *[Protection of the Public]*, the Executive Director may take any of the steps referred to in subrule (1).

(3) A lawyer who is suspended under this part or Part 5 *[Tribunal, Hearings and Appeals]* must inform all clients who reasonably expect the lawyer to attend to their affairs during the period of the suspension and clients or prospective clients who inquire about the availability of the lawyer's services during the suspension period of the following:

(a) the period during which the lawyer will not be practising;

(b) the arrangements the lawyer has put in place to protect the clients' interests while the lawyer will not be practising;

(c) the fact that the lawyer is not practising during the relevant period because of the suspension.

(4) A panel that suspends a lawyer may relieve the lawyer of any of the obligations set out in subrule (3) if the panel is satisfied that it is consistent with the public interest and that imposing the obligation would be unreasonable in the circumstances.

Publication of discipline decisions

4-48 (1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of any decision, reasons and action taken by a hearing panel, a motions adjudicator or a review board.

(1.1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of an admission of a discipline violation accepted by the Discipline Committee under Rule 4-29 *[Conditional admission]*.

(2) Despite subrules (1) and (3), but subject to Rule 4-47 *[Public notice of suspension or disbarment]*, the Executive Director must not make public any decision, reasons or action taken as follows:

(a) a decision not to accept an admission under Rule 5-6.5 *[Admission and consent to disciplinary action]*;

(b) any decision under Rule 3-10 *[Interim suspension or practice conditions]* or 3-11 *[Medical examination]*

before the matter is concluded and any prescribed period to initiate an appeal or review has expired.

(3) When a publication is required or permitted under this rule, the Executive Director may also publish generally all or part of

(a) [rescinded]

(b) the written reasons for the decision,

(c) an agreed statement of facts, or

(d) admissions made in response to a Notice to Admit.

(4) This rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

Anonymous publication

4-49 (1) Except as allowed under this rule, a publication under Rule 4-48 *[Publication of discipline decisions]* must identify the respondent.

(2) The publication of a decision dismissing all allegations in the citation and any subsequent decision in the matter must not identify the respondent unless

(a) the respondent consents in writing, or

(b) an allegation is held to be proven on a review or appeal.

(3) An individual affected, other than the respondent, may apply to the panel for an order under subrule (4) before the written report on findings of fact and determination is issued or oral reasons are delivered.

(4) On an application under subrule (3) or on its own motion, the panel may order that publication not identify the respondent if

(a) the panel has imposed a disciplinary action that does not include a suspension or disbarment, and

(b) publication of the identity of the respondent could reasonably be expected to identify an individual, other than the respondent, and that individual would suffer serious prejudice as a result.

(5) If a panel orders that a respondent's identity not be disclosed under subrule (4), the panel must state in writing the specific reasons for that decision.

Disclosure of practice restrictions

4-50 (1) When, under this part or Part 4 *[Discipline]* of the Act, a condition or limitation is imposed on the practice of a lawyer or a lawyer is suspended, the Executive Director may disclose the fact that the condition, limitation or suspension applies and the nature of the condition, limitation or suspension.

(2) If a lawyer gives an undertaking that restricts, limits or prohibits the lawyer's practice in one or more areas of law, the Executive Director may disclose the fact that the undertaking was given and its effect on the lawyer's practice.

(3) If the Executive Director discloses the existence of a condition, limitation or suspension under subrule (1) or an undertaking under subrule (2) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition, limitation or suspension ceases to be in force.

(4) Subrule (3) does not apply to a decision of Benchers, a hearing panel or a review board.

Disbarment

4-51 When a lawyer is disbarred, the Executive Director must strike the lawyer's name from the barristers and solicitors' roll.

Conviction

4-52 (1) In this rule, **"offence"** means

(a) an offence that was proceeded with by way of indictment, or

(b) an offence in another jurisdiction that, in the opinion of the Benchers, is equivalent to an offence that may be proceeded with by way of indictment.

(2) If the Discipline Committee is satisfied that a lawyer or former lawyer has been convicted of an offence, the Committee may refer the matter to the Benchers to consider taking action under subrule (3).

(3) Without following the procedure provided for in the Act or these rules, the Benchers may summarily suspend or disbar a lawyer or former lawyer on proof that the lawyer or former lawyer has been convicted of an offence.

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Notice

4-53 (1) Before the Benchers proceed under Rule 4-52 *[Conviction]*, the Executive Director must notify the lawyer or former lawyer in writing that

(a) proceedings will be taken under that rule, and

(b) the lawyer or former lawyer may, by a specified date, make written submissions to the Benchers.

(2) The notice referred to in subrule (1) must be served in accordance with Rule 10-1 *[Service and notice]*.

(3) In extraordinary circumstances, the Benchers may proceed without notice to the lawyer or former lawyer under subrule (1).

Summary procedure

4-54 (1) This rule applies to summary proceedings before the Benchers under Rule 4-52 *[Conviction]*.

(2) The Benchers may, in their discretion, hear oral submissions from the lawyer or former lawyer.

(3) Subject to the Act and these rules, the Benchers may determine practice and procedure.

Failure to pay costs or fulfill practice condition

4-56 (1) An applicant or respondent must do the following by the date set by a hearing panel, review board or Committee or extended under Rule 5-12 *[Application to vary order]*:

(a) pay in full a fine or the amount owing under Rule 5-11 *[Costs of hearings]*;

(b) fulfill a practice condition as imposed under section 21 *[Admission, reinstatement and requalification]*, 22 *[Credentials hearings]*, 27 *[Practice standards]*, 32 *[Financial responsibility*], 38 *[Discipline hearings*] or 47 *[Review on the record]*, as accepted under section 19 *[Applications for enrolment, call and admission, or reinstatement]*, or as varied under these Rules.

(2) If, on December 31, an applicant or respondent is in breach of subrule (1), the Executive Director must not issue to the applicant or respondent a practising certificate or a non-practising or retired membership certificate, and the applicant or respondent is not permitted to engage in the practice of law.

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Recovery of money owed to the Society

4-57 (1) A lawyer or former lawyer who is liable to pay the costs of an audit or investigation must pay to the Society the full amount owing by the date set by the Discipline Committee.

(2) A lawyer who is liable to pay an assessment under Rule 3-80 *[Late filing of trust report]* must pay to the Society the full amount owing by the date specified in that Rule or as set or extended by the Executive Director.

(3) A lawyer who has not paid the full amount owing under subrule (1) or (2) by the date set or extended is in breach of these Rules and, if any part of the amount owing remains unpaid by December 31 following the making of the order, the Executive Director must not issue a practising certificate to the lawyer unless the Benchers order otherwise.

PART 5 – TRIBUNAL, HEARINGS AND APPEALS

Application

5-1 (1) This part applies to

(a) a hearing of an application for enrolment, call and admission or reinstatement,

(b) a hearing of a citation, and

(c) unless the context indicates otherwise, a review by a review board of a hearing decision.

(2) In this part, a law firm may act through its designated representative or another lawyer engaged in the practice of law as a member of the law firm.

The Tribunal

Tribunal

5-1.1 (1) The Tribunal comprises

(a) the Tribunal Chair,

(b) hearing panels,

(c) review boards, and

(d) motions adjudicators.

(2) Subject to the Act and these Rules, the Tribunal may determine the practice and procedure to be followed at a hearing, review or other proceeding.

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Service, filing and communication

5-1.2 (1) The provisions of Rule 10-1 *[Service and notice]* are subject to this rule.

(2) A document to be filed with the Tribunal must be delivered by

(a) leaving it at or sending it by ordinary or registered mail to the Tribunal Office,

(b) sending it by email to the Tribunal Office, subject to size limits set by practice direction, or

(c) sending it by other means permitted under a practice direction.

(3) The parties to a proceeding must inform the Tribunal and every other party of any change of address, regardless of any other notice to the Society.

(4) The Tribunal may use and rely on the address of a respondent or an applicant provided at the outset of proceeding or the most recently received change of address.

(5) All correspondence to the Tribunal or any of its constituent parts must be

(a) sent to the Tribunal Office, and

(b) copied to all parties.

(6) The fact that correspondence is received and accepted by the Tribunal Office does not, for that reason alone, indicate compliance with requests or demands contained in the correspondence.

(7) All correspondence between parties or counsel and with the Tribunal must be respectful and formal to an extent appropriate to the circumstances.

Tribunal Chair

5-1.3 (1) The Benchers must appoint a Bencher as Tribunal Chair.

(2) The Tribunal Chair must not be a member of the Discipline, Credentials or Practice Standards Committee.

(3) The term of office of the Tribunal Chair is two years, beginning and ending January 1 of each even-numbered year.

(4) If the office of Tribunal Chair becomes vacant for any reason, the Benchers must promptly appoint a Bencher to complete the term of office.

(5) The Tribunal Chair may designate another Bencher to fulfill the functions of the Tribunal Chair from time to time.

Practice directions

5-1.4 (1) The Tribunal Chair may issue practice directions that are consistent with the Act and these rules.

(2) A hearing panel or review board is not bound by a practice direction.

(3) Practice directions must be made accessible to the public.

Hearing panels

Appointment of hearing panel

5-2 (1) When a hearing is ordered under this part, Part 2, Division 2 *[Admission and Reinstatement]* or Part 4 *[Discipline]*, the Tribunal Chair must appoint a panel consisting of 3 persons.

(2) Despite subrules (1) and (3), a panel may consist of one Bencher who is a lawyer if

(a) no facts are in dispute,

(b) the hearing is to consider an admission under Rule 5-6.5 *[Admission and consent to disciplinary action]*,

(c) the hearing proceeds under Rule 5-4.5 *[Summary hearing]*,

(d) the hearing is to consider a preliminary question under Rule 5-4.3 *[Preliminary questions]*, or

(e) it is not otherwise possible, in the opinion of the Tribunal Chair, to convene a panel in a reasonable period of time.

(3) A panel must

(a) be chaired by a lawyer, and

(b) include at least

(i) one Bencher or Life Bencher who is a lawyer, and

(ii) one person who is not a lawyer.

(4) Panel members must be permanent residents of British Columbia over the age of majority.

(5) The chair of a panel who ceases to be a lawyer may, with the consent of the Tribunal Chair, continue to chair the panel, and the panel may complete a hearing already scheduled or begun.

(5.1) If a member of a panel ceases to be a Bencher and does not become a Life Bencher, the panel may, with the consent of the Tribunal Chair, complete a hearing already scheduled or begun.

(6) Two or more panels may proceed with separate matters at the same time.

(7) The Tribunal Chair may refer a matter that is before a panel to another panel, fill a vacancy on a panel or terminate an appointment to a panel.

(8) Unless otherwise provided in the Act and these Rules, a panel must decide any matter by a majority, and the decision of the majority is the decision of the panel.

Panel member unable to continue

5-3 (1) Despite Rule 5-2 *[Hearing panels]*, if a member of a hearing panel cannot, for any reason, complete a hearing that has begun, the Tribunal Chair may order that the panel continue with the remaining members.

(2) If the chair of a hearing panel cannot, for any reason, complete a hearing that has begun, the Tribunal Chair may appoint another member of the hearing panel who is a lawyer as chair of the hearing panel.

Disqualification

5-4 (1) The following persons must not participate in a panel hearing a citation:

(a) a person who participated in the decision that authorized issuing the citation;

(b) a member of an interim action board that made an order under Rule 3-10 *[Interim suspension or practice conditions]* or 3-11 *[Medical examination]* regarding a matter forming the basis of the citation;

(c) a member of a panel that heard an application under Rule 3-12.3 *[Review of interim suspension or practice conditions]* to rescind or vary an interim suspension or practice condition or limitation in respect of a matter forming the basis of the citation.

(2) A person who participated in the decision to order the hearing of an application for enrolment as an articled student, for call and admission or for reinstatement must not participate in the panel on that hearing.

(3) A person must not appear as counsel for any party for three years after

(a) serving as a Bencher, or

(b) the completion of a hearing in which the person was a member of the panel.

Practice and procedure before a hearing panel

Hearing date and notice

5-4.1 (1) The date, time and place for the hearing to begin must be set

(a) by agreement between the parties, or

(b) on the application of a party, by the Tribunal Chair or by the motions adjudicator presiding at a pre-hearing conference.

(2) When a date is set under subrule (1) (b), the Tribunal must notify the parties in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the applicant or respondent consents to a shorter notice period.

(3) Written notice under subrule (2) may be made at the same time that the citation is served under Rule 4-19 *[Notice of citation]*, or at a later time.

Amending an allegation in a citation

5-4.2 (1) Law Society counsel may amend an allegation contained in a citation

(a) before the hearing begins, by giving written notice to the respondent and the Tribunal, and

(b) after the hearing has begun, with the consent of the respondent.

(2) The panel may amend a citation after the hearing has begun

(a) on the application of a party, or

(b) on its own motion.

(3) The panel must not amend a citation under subrule (2) unless each party has been given the opportunity to make submissions respecting the proposed amendment.

Preliminary questions

5-4.3 (1) Before a hearing begins, any party may apply for the determination of a question relevant to the hearing by filing with the Tribunal and delivering to the other party, written notice setting out the substance of the application and the grounds for it.

(2) When an application is made under subrule (1), the Tribunal Chair must do one of the following as appears to the Tribunal Chair to be appropriate:

(a) appoint a panel to determine the question;

(b) refer the question to a motions adjudicator;

(c) refer the question to the panel at the hearing of the application.

(3) A panel appointed under subrule (2) (a) is not seized of the application or any question pertaining to the application other than that referred under that provision.

Severance and joinder

5-4.4 (1) Before a hearing begins, any party may apply in writing to the Tribunal for an order that

(a) one or more allegations in a citation be determined in a separate hearing from other allegations in the same citation, or

(b) two or more citations be determined in one hearing.

(2) An application under subrule (1) must

(a) be copied to the party not making the application, and

(b) state the grounds for the order sought.

(3) When an application is made under this rule, the Tribunal Chair must designate a motions adjudicator to make a determination.

(4) The motions adjudicator designated under subrule (3)

(a) must consider the submissions of the parties,

(b) may require a pre-hearing conference before making a determination, and

(c) must dismiss the application or allow the application, with or without conditions.

Summary hearing

5-4.5 (1) This rule may be applied in respect of the hearing of a citation comprising only allegations that the respondent has done one or more of the following:

(a) breached a rule;

(b) breached an undertaking given to the Society;

(c) failed to respond to a communication from the Society;

(d) breached an order made under the Act or these rules.

(2) Unless the panel orders otherwise, the parties may adduce evidence by

(a) affidavit,

(b) an agreed statement of facts, or

(c) an admission made or deemed to be made under Rule 5-4.8 *[Notice to admit]*.

(3) Despite Rules 5-6.3 *[Submissions and determination]* and 5-6.4 *[Disciplinary action]*, the panel may consider facts, determination, disciplinary action and costs and issue a decision respecting all aspects of the proceeding.

Demand for disclosure of evidence

5-4.6 (1) At any time after a citation has been issued and before the hearing begins, a respondent may demand in writing that Law Society counsel disclose the evidence that the Society intends to introduce at the hearing.

(2) On receipt of a demand for disclosure under subrule (1), Law Society counsel must provide the following to the respondent by a reasonable time before the beginning of the hearing:

(a) a copy of every document that the Society intends to tender in evidence;

(b) a copy of any statement made by a person whom the Society intends to call as a witness;

(c) if documents provided under paragraphs (a) and (b) do not provide enough information, a summary of the evidence that the Society intends to introduce;

(d) a summary of any other relevant evidence in Law Society counsel's possession or in a Society file available to counsel, whether or not counsel intends to introduce that evidence at the hearing.

(3) Despite subrule (2), Law Society counsel must not provide any information or documents about any discussion or other communication with the Ombudsperson in that capacity.

Application for details of the circumstances

5-4.7 (1) Before a hearing begins, the respondent may apply for disclosure of the details of the circumstances of misconduct alleged in a citation by filing with the Tribunal and delivering to Law Society counsel written notice setting out the substance of the application and the grounds for it.

(2) If a motions adjudicator is satisfied that an allegation in the citation does not contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proven and to identify the transaction referred to, the motions adjudicator must order Law Society counsel to disclose further details of the circumstances.

(3) Details of the circumstances disclosed under subrule (2) must be

(a) in writing, and

(b) delivered to the respondent or respondent's counsel.

Notice to admit

5-4.8 (1) At any time, but not less than 45 days before a date set for the hearing of a citation, a party may request the other party to admit, for the purposes of the hearing only, the truth of a fact or the authenticity of a document.

(2) A request made under subrule (1) must

(a) be made in writing in a document clearly marked "Notice to Admit" and served in accordance with Rule 10-1 *[Service and notice]*, and

(b) include a complete description of the fact, the truth of which is to be admitted, or attach a copy of the document, the authenticity of which is to be admitted.

(3) A party may make more than one request under subrule (1).

(4) A party that receives a request made under subrule (1) must respond within 21 days by serving a response on the other party in accordance with Rule 10-1 *[Service and notice]*.

(5) The time for response under subrule (4) may be extended by agreement of the parties or by an order under Rule 5-4.3 *[Preliminary questions]* or 5-5.1 *[Pre-hearing conference]*.

(6) A response under subrule (4) must contain one of the following in respect of each fact described in the request and each document attached to the request:

(a) an admission of the truth of the fact or the authenticity of the document attached to the request;

(b) a statement that the party making the response does not admit the truth of the fact or the authenticity of the document, along with the reasons for not doing so.

(7) If a party who has been served with a request does not respond in accordance with this rule, the party is deemed, for the purposes of the hearing only, to admit the truth of the fact described in the request or the authenticity of the document attached to the request.

(8) If a party does not admit the truth of a fact or the authenticity of a document under this rule, and the truth of the fact or authenticity of the document is proven in the hearing, the panel may consider the refusal when exercising its discretion respecting costs under Rule 5-11 *[Costs of hearings]*.

Compelling witnesses and production of documents

5-5 (1) In this rule **"respondent"** includes a shareholder, director, officer or representative of a respondent law firm.

(2) A panel may

(a) compel the applicant or respondent to give evidence under oath, and

(b) at any time before or during a hearing, order the applicant or respondent to produce all files and records that are in the applicant's or respondent's possession or control that may be relevant to the matters raised by the application or in the citation.

(2.1) A party applying for an order under subrule (2) (a) must give reasonable notice to the applicant or respondent.

(3) A person who is the subject of an order under subrule (2) (a) may be cross-examined by Law Society counsel.

(4) A party to a proceeding under the Act and these Rules may prepare and serve a summons requiring a person to attend an oral or electronic hearing to give evidence in the form prescribed in Schedule 5 *[Form of Summons]*.

(5) Before a hearing begins, any party may apply for an order under section 44 (4) *[Witnesses]* by filing with the Tribunal and delivering to the other party written notice setting out the substance of the application and the grounds for it.

(6) After considering any submissions of the parties, a motions adjudicator must

(a) make the order requested or another order consistent with section 44 (4) *[Witnesses]*, or

(b) refuse the application.

(7) On the motion of any party, the motions adjudicator may apply to the Supreme Court under section 44 (5) *[Witnesses]* to enforce an order made under subrule (6).

Pre-hearing conference

5-5.1 (1) With or without a request from any party, the Tribunal Chair may order a pre-hearing conference at any time before a hearing begins.

(2) When a conference has been ordered under subrule (1), the Tribunal Chair must

(a) set the date, time and place of the conference, and

(b) designate a motions adjudicator to preside at the conference.

(3) Law Society counsel and the applicant or applicant's counsel or both, must be present at the conference.

(4) A respondent may attend the conference in person, through counsel or both.

(5) If the respondent fails to attend the conference, the motions adjudicator presiding may proceed with the conference in the absence of the respondent and may make any order under this rule, if the motions adjudicator is satisfied that the respondent had notice of the conference.

(6) Any person may 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.

(7) The conference may consider any matters that may aid in the fair and expeditious disposition of the matter, including but not limited to

(a) setting a date for the hearing,

(b) simplification of the issues,

(c) admissions or an agreed statement of facts,

(d) amendments to the citation,

(e) any matter for which the motions adjudicator may make an order under this rule,

(f) conducting all or part of the hearing in written form or by video conference or teleconference,

(g) disclosure and production of documents,

(h) agreement for the hearing panel to receive and consider documents or evidence under Rule 5-6.1 (3) (e) *[Preliminary matters]*,

(i) the possibility that privilege or confidentiality might require closure of all or part of the hearing to the public, or exclusion of exhibits and other evidence from public access,

(j) any application to withhold the identity or locating particulars of a witness, and

(k) any other matters that may aid in the disposition of the matter.

(8) The motions adjudicator may

(a) adjourn a pre-hearing conference generally or to a specified date, time and place,

(b) order discovery and production of documents,

(c) set a date for the hearing, and

(d) allow or dismiss an application under subrule (5) (f).

(9) A party may apply to the motions adjudicator for an order

(a) to withhold the identity or contact information of a witness,

(b) to adjourn the hearing of the citation,

(c) for severance of allegations or joinder of citations under Rule 5-4.4 *[Severance and joinder]*,

(d) for disclosure of the details of the circumstances of misconduct alleged in a citation under Rule 5-4.7 *[Application for details of the circumstances]*,

(e) that the motions adjudicator may make under subrule (10), or

(f) concerning any other matters that may aid in the fair and expeditious disposition of the citation.

(10) The motions adjudicator may, on the application of a party or on the motions adjudicator's own motion, make an order that, in the judgment of the motions adjudicator, will aid in the fair and expeditious disposition of the matter, including but not limited to orders

(a) adjourning the conference generally or to a specified date, time and place,

(b) setting a date for the hearing to begin,

(c) allowing or dismissing an application made under subrule (9) or referred to the conference by the Tribunal Chair,

(d) specifying the number of days to be scheduled for the hearing,

(e) establishing a timeline for the proceeding including, but not limited to, setting deadlines for the completion of procedures and a plan for the conduct of the hearing,

(f) directing a party to provide a witness list and a summary of evidence that the party expects that any or all of the witnesses will give at the hearing,

(g) respecting expert witnesses, including but not limited to orders

(i) limiting the issues on which expert evidence may be admitted or the number of experts that may give evidence,

(ii) requiring the parties' experts to confer before service of their reports, or

(iii) setting a date by which an expert's report must be served on a party, or

(h) respecting the conduct of any application, including but not limited to allowing submissions in writing.

(11) If an order made under this rule affects the conduct of the hearing, the hearing panel may rescind or vary the order on the application of a party or on the hearing panel's own motion.

Adjournment

5-5.2 (1) Before a hearing begins, a party may apply for an order that the hearing be adjourned by filing with the Tribunal and delivering to the other party written notice setting out the reasons for the application.

(2) Before a hearing begins, a motions adjudicator must decide whether to grant the adjournment, with or without conditions, and advise the parties accordingly.

(3) After a hearing has begun, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

(4) Rule 5-4.1 (2) *[Hearing date and notice]* does not apply when a hearing is adjourned and re-set for another date.

(5) When a hearing is adjourned under Rule 2-92 (5) *[Security for costs]*, Law Society Counsel must file a notice with the Tribunal and deliver a copy to the applicant.

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Application moot

5-5.3 If the circumstances of the applicant have changed so as to make the outcome of the hearing moot, after hearing submissions on behalf of the parties, the panel may do one of the following:

(a) adjourn the hearing generally;

(b) reject the application;

(c) begin or continue with the hearing.

Procedure

5-6 (1) [5-1.1(2)]

(2) If a court reporter is employed to record the proceedings of a hearing, the chair of the panel must ensure that the reporter first takes an oath or makes a solemn affirmation to faithfully and accurately report and transcribe the proceedings.

(2.1) Unless the chair of the panel otherwise orders, an applicant must personally attend the entire hearing.

(2.2) If a respondent fails to attend or remain in attendance at a hearing, the panel may proceed under section 42 *[Failure to attend]*.

(3) The parties may call witnesses to testify.

(4) All witnesses, including an applicant or respondent ordered to give evidence under section 41 (2) (a) *[Panels]*,

(a) must take an oath or make a solemn affirmation, if competent to do so, before testifying, and

(b) are subject to cross-examination.

(5) The panel may make inquiries of a witness as it considers desirable.

(6) The hearing panel may accept any of the following as evidence:

(a) an agreed statement of facts;

(b) oral evidence;

(c) affidavit evidence;

(d) evidence tendered in a form agreed to by the respondent or applicant and Law Society counsel;

(e) an admission made or deemed to be made under Rule 5-4.8 *[Notice to admit]*;

(f) any other evidence it considers appropriate.

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Preliminary matters

5-6.1 (1) Before hearing any evidence on the allegations set out in a citation, the panel must determine whether

(a) the citation was served in accordance with Rule 4-19 *[Notice of citation]*, or

(b) the respondent waives any of the requirements of Rule 4-19.

(2) If the requirements of Rule 4-19 *[Notice of citation]* have been met, or have been waived by the respondent, the citation or a copy of it must be filed as an exhibit at the hearing, and the hearing may proceed.

(3) Despite subrule (1), before the hearing begins, the panel may receive and consider

(a) the citation,

(b) an agreed statement of facts,

(c) an admission made or deemed to be made under Rule 5-4.8 *[Notice to admit]*,

(d) the respondent's admission of a discipline violation and consent to a specified disciplinary action submitted jointly by the parties under Rule 5-6.5 *[Admission and consent to disciplinary action]*, and

(e) any other document or evidence by agreement of the parties.

Burden of proof

5-6.2 At a hearing ordered under Part 2, Division 2 [Admission and Reinstatement], the onus is on the applicant to satisfy the panel on the balance of probabilities that the applicant has met the requirements of section 19 (1) *[Applications for enrolment, call and admission, or reinstatement]* and that division.

Submissions and determination

5-6.3 (1) Following completion of the evidence, the panel must invite the parties to make submissions on the issues to be decided by the panel.

(2) After submissions under subrule (1), the panel must find the facts and

(a) make a determination on each allegation in a citation, or

(b) decide whether to

(i) grant the application

(ii) grant the application subject to conditions or limitations that the panel considers appropriate, or

(iii) reject the application.

(3) A panel must reject an application for enrolment if it considers that the applicant's qualifications referred to in Rule 2-54 (2) *[Enrolment in the admission program]* are deficient.

(4) The panel must prepare written reasons for its findings.

(5) A copy of the panel's reasons prepared under subrule (3) must be delivered promptly to each party.

Disciplinary action

5-6.4 (1) Following a determination under Rule 5-6.3 *[Submissions and determination]* adverse to the respondent, the panel must

(a) invite the parties to make submissions as to disciplinary action,

(b) take one or more of the actions referred to in section 38 (5) to (7) *[Discipline hearings]*,

(c) include in its decision under this rule

(i) any order, declaration or imposition of conditions under section 38(7), and

(ii) any order under Rule 5-11 *[Costs of hearings]* on the costs of the hearing, including any order respecting time to pay,

(d) prepare a written record, with reasons, of its action taken under paragraph (b) and any action taken under paragraph (c),

(e) if it imposes a fine, set the date by which payment to the Society must be completed, and

(f) if it imposes conditions on the respondent's practice, set the date by which the conditions must be fulfilled.

(2) A panel may proceed under subrule (1) before written reasons are prepared under Rule 5-6.3 (2) (b) *[Submissions and determination]*

(a) if the panel gives reasons orally for its decision under Rule 5-6.3 (2) (a), or

(b) when the panel accepts an admission jointly submitted by the parties under Rule 5-6.5 *[Admission and consent to disciplinary action]*.

(3) Despite subrule (1) (b), if the respondent is a member of another governing body and not a member of the Society, the panel may do one or more of the following:

(a) reprimand the respondent;

(b) fine the respondent an amount not exceeding $50,000;

(c) prohibit the respondent from practising law in British Columbia permanently or for a specified period of time;

(d) declare that, had the respondent been a member of the Society, the panel would have

(i) disbarred the respondent,

(ii) suspended the respondent, or

(iii) imposed conditions or limitations on the practice of the respondent.

(4) A copy of the panel's reasons prepared under subrule (1) (d) must be delivered promptly to each party.

(5) The panel may consider the professional conduct record of the respondent in determining a disciplinary action under this rule.

(6) Regardless of the nature of the allegation in the citation, the panel may take disciplinary action based on the ungovernability of the respondent by the Society.

(7) The panel must not take disciplinary action under subrule (6) unless the respondent has been given at least 30 days' notice that ungovernability may be raised as an issue at the hearing on disciplinary action.

(8) The panel may adjourn the hearing on disciplinary action to allow compliance with the notice period in subrule (7).

Admission and consent to disciplinary action

5-6.5 (1) The parties may jointly submit to the hearing panel an agreed statement of facts and the respondent's admission of a discipline violation and consent to a specified disciplinary action.

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

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

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

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

(3) The panel must not impose disciplinary action under subrule (2) (b) that is different from the specified disciplinary action consented to by the respondent unless

(a) each party has been given the opportunity to make submissions respecting the disciplinary action to be substituted, and

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

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

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Rejection of admission

5-6.6 (1) A conditional admission tendered under Rule 4-29 *[Conditional admission]* must not be used against the respondent in any proceeding unless the admission is accepted by the Discipline Committee.

(2) An admission tendered under Rule 5-6.5 *[Admission and consent to disciplinary action]* must not be used against the respondent in any proceeding unless the hearing panel accepts the admission and imposes disciplinary action.

Communication with Ombudsperson confidential

5-7 [10-2.1]

Public hearing

5-8 (1) Every hearing is open to the public, but the panel or review board may exclude some or all members of the public.

(1.1) The panel or review board must not make an order under subrule (1) unless, in the judgment of the panel or review board

(a) the public interest or the interest of an individual in the order outweighs the public interest in the principle of open hearings in the present case, or

(b) the order is required to protect the safety of an individual.

(2) On application by anyone, or on its own motion, the panel or review board may make the following orders to protect the interests of any person:

(a) an order that specific information not be disclosed despite Rule 5-9 (2) *[Transcript and exhibits]*;

(b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).

(3) Despite the exclusion of the public under subrule (1) in a hearing of a citation, the complainant and one other person chosen by the complainant may remain in attendance during the hearing, unless the panel orders otherwise.

(4) Except as required under Rule 5-9 *[Transcript and exhibits]*, when a hearing is in progress, no one is permitted to possess or operate any device for photographing, recording or broadcasting in the hearing room without the permission of the panel or review board, which the panel or review board in its discretion may refuse or grant, with or without conditions or restrictions.

(5) When a panel or review board makes an order or declines to make an order under this rule, the panel or review board must give written reasons for its decision.

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Transcript and exhibits

5-9 (1) All proceedings at a hearing must be recorded by a court reporter or by other means.

(2) Subject to the Act, these rules and the *Freedom of Information and Protection of Privacy Act*, any person may obtain, at the person's own expense, a copy of

(a) a transcript of any part of the hearing that is open to the public, or

(b) an exhibit entered in evidence when a hearing is open to the public.

(3) This rule must not be interpreted to permit the disclosure of any information, files or records that are confidential or subject to a solicitor client privilege.

Decision

5-10 (1) A decision of a hearing panel is made by majority vote.

(2) On request, the Executive Director must disclose a panel's written reasons for its decision, subject to the protection of solicitor and client privilege and confidentiality.

(3) When a hearing panel gives written reasons for its decision, it must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.

Costs of hearings

5-11 (1) A panel may order that an applicant or respondent pay the costs of a hearing referred to in Rule 5-1 *[Application]*, and may set a time for payment.

(2) A review board may order that an applicant or respondent pay the costs of a review under section 47 *[Review on the record]*, and may set a time for payment.

(3) Subject to subrule (4), the panel or review board must have regard to the tariff of costs in Schedule 4 *[Tariff for hearing and review costs]* to these Rules in calculating the costs payable by an applicant, a respondent or the Society.

(4) A panel or review board may order that the Society, an applicant or a respondent recover no costs or costs in an amount other than that permitted by the tariff in Schedule 4 *[Tariff for hearing and review costs]* if, in the judgment of the panel or review board, it is reasonable and appropriate to so order.

(5) The cost of disbursements that are reasonably incurred may be added to costs payable under this rule.

(6) In the tariff in Schedule 4 *[Tariff for hearing and review costs]*,

(a) one day of hearing includes a day in which the hearing or proceeding takes 2 and one-half hours or more, and

(b) for a day that includes less than 2 and one-half hours of hearing, one-half the number of units or amount payable applies.

(7) If no adverse finding is made against the applicant, the panel or review board has the discretion to direct that the applicant be awarded costs.

(8) If the citation is dismissed or rescinded after the hearing has begun, the panel or review board has the discretion to direct that the respondent be awarded costs in accordance with subrules (3) to (6).

(9) Costs deposited under Rule 2-92 *[Security for costs]* must be applied to costs ordered under this rule.

(10) An applicant must not be enrolled, called and admitted or reinstated until the costs ordered under this rule or the Act are paid in full.

(11) As an exception to subrule (10), the Credentials Committee may direct that an applicant be enrolled, called and admitted or reinstated even though costs ordered under this rule have not been paid in full and may make the direction subject to any conditions that the Committee finds appropriate.

Application to vary order

5-12 (1) A party may apply in writing to the Tribunal for

(a) an extension of time

(i) to pay a fine or the amount owing under Rule 5-11 *[Costs of hearings]*, or

(ii) to fulfill a condition imposed under section 22 *[Credentials hearings]*, 38 *[Discipline hearings]*, or 47 *[Review on the record]*,

(b) a variation of a condition referred to in paragraph (a) (ii),

(c) a change in the start date for a suspension imposed under section 38 or 47, or

(d) a variation or rescission of another order that has not been fully executed or fulfilled.

(2) An application under subrule (1) (c) must be made at least 7 days before the start date set for the suspension.

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

(4) The Tribunal Chair must refer an application under subrule (1) or (2.1) to one of the following, as may, in the discretion of the Tribunal Chair, appear appropriate:

(a) the same panel or review board that made the order;

(b) a new panel;

(c) a motions adjudicator.

(5) The panel, review board or motions adjudicator that hears an application under subrule (1) must

(a) dismiss the application,

(b) extend to a specified date the time for payment,

(c) vary the conditions imposed, or extend to a specified date the fulfillment of the conditions,

(d) specify a new date for the start of a period of suspension imposed under section 38 *[Discipline hearings]* or 47 *[Review on the record]*, or

(e) grant the variation or rescission applied for or as otherwise appears appropriate to the panel, review board or motions adjudicator.

(5.1) The panel, review board or motions adjudicator that decides an application under subrule (2.1) must

(a) dismiss the application,

(b) rescind the order, or

(c) vary the order to one that the original panel or review board was permitted to make under Rule 5-8 (2) (a) *[Public hearing]*.

(6) [rescinded]

(7) An application under this rule does not stay the order that the applicant seeks to vary.

Failure to pay costs or fulfill practice condition

5-13 [4-56]

Recovery of money owed to the Society

5-14 [4-57]

The review board

Review by review board

5-15 (1) In Rules 5-15 to 5-28, **"review"** means a review of a hearing panel decision by a review board under section 47 *[Review on the record]*.

(2) [rescinded]

(2.1) Rule 5-4.3 *[Preliminary questions]* applies, with any necessary changes, to an application by a party to a review for the determination of a question relevant to the review.

(3) Delivery of documents to a respondent or applicant under Rules 5-15 to 5-28 may be effected by delivery to counsel representing the respondent or the applicant.

(4) If the review board finds that there are special circumstances and hears evidence under section 47 (4) *[Review on the record]*, the Rules that apply to the hearing of evidence before a hearing panel apply.

Review boards

5-16 (1) When a review is initiated under Rule 5-19 *[Initiating a review]*, the Tribunal Chair must establish a review board consisting of

(a) an odd number of persons, and

(b) more persons than the hearing panel that made the decision under review.

(2) A review board must be chaired by a Bencher who is a lawyer.

(3) Review board members must be permanent residents of British Columbia over the age of majority.

(4) The chair of a review board who ceases to be a lawyer may, with the consent of the Tribunal Chair, continue to chair the review board, and the review board may complete any hearing or hearings already scheduled or begun.

(5) Two or more review boards may proceed with separate matters at the same time.

(6) The Tribunal Chair may refer a matter that is before a review board to another review board, fill a vacancy on a review board or terminate an appointment to a review board.

(7) Unless otherwise provided in the Act and these Rules, a review board must decide any matter by a majority, and the decision of the majority is the decision of the review board.

Disqualification

5-17 The following must not participate in a review board reviewing the decision of a hearing panel:

(a) a member of the hearing panel;

(b) a person who was disqualified under Rule 5-4 *[Disqualification]* from participation in the hearing panel.

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Review board member unable to continue

5-18 (1) Despite Rule 5-16 *[Review boards]*, if a member of a review board cannot, for any reason, complete a review that has begun, the Tribunal Chair may order that the review board continue with the remaining members, whether or not the board consists of an odd number of persons.

(2) If the chair of a review board cannot, for any reason, complete a review that has begun, the Tribunal Chair may appoint another member of the review board who is a lawyer as chair of the review board.

Practice and procedure before a review board

Initiating a review

5-19 (1) Within 30 days after being notified of the decision of the panel in a credentials hearing, the applicant may initiate a review by filing with the Tribunal and delivering to Law Society counsel a notice of review.

(2) Within 30 days after being notified of the decision of a panel under Rule 5-6.4 *[Disciplinary action]* or 5-11 *[Costs of hearings]*, the respondent may initiate a review by filing with the Tribunal and delivering to Law Society counsel a notice of review.

(3) Within 30 days after a decision of the panel in a credentials hearing, the Credentials Committee may initiate a review by resolution.

(4) Within 30 days after a decision of the panel in a hearing of a citation, the Discipline Committee may initiate a review by resolution.

(5) When a review is initiated under subrule (3) or (4), Law Society counsel must promptly file with the Tribunal and deliver to the other party a notice of review.

(6) Within 30 days after the order of the Practice Standards Committee under Rule 3-25 (1) *[Costs]*, the lawyer concerned may initiate a review by filing a notice of review with the Tribunal.

Extension of time to initiate a review

5-19.1 (1) A party may apply to the Tribunal to extend the time within which a review may be initiated under Rule 5-19 *[Initiating a review]* by filing with the Tribunal and delivering to the other party a notice of the application.

(2) When a party makes an application under subrule (1), a motions adjudicator must

(a) refuse the extension of time, or

(b) grant the extension, with or without conditions or limitations.

(3) [rescinded]

Stay of order pending review

5-20 (1) When a review is initiated under Rule 5-19 *[Initiating a review]*, the order of the panel or the Practice Standards Committee with respect to costs is stayed.

(2) When the Credentials Committee initiates a review under Rule 5-19 (3) *[Initiating a review]*, an order of the hearing panel to call and admit or reinstate the applicant is stayed.

(3) When a review has been initiated under Rule 5-19 *[Initiating a review]*, any party to the review may apply to the Tribunal for a stay of any order not referred to in subrule (1) or (2).

(4) When an application is made under this rule, a motions adjudicator must make a determination under subrule (3).

Notice of review

5-21 A notice of review must contain the following in summary form:

(a) a clear indication of the decision to be reviewed by the review board;

(b) the nature of the order sought;

(c) the issues to be considered on the review.

Record of credentials hearing

5-22 (1) Unless the parties agree otherwise, the record for a review of a credentials decision consists of the following:

(a) the application;

(b) a transcript of the proceedings before the panel;

(c) exhibits admitted in evidence by the panel;

(d) any written arguments or submissions received by the panel;

(e) the panel's written reasons for any decision;

(f) the notice of review.

(2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

Record of discipline hearing

5-23 (1) Unless the parties agree otherwise, the record for a review of a discipline decision consists of the following:

(a) the citation;

(b) a transcript of the proceedings before the panel;

(c) exhibits admitted in evidence by the panel;

(d) any written arguments or submissions received by the panel;

(e) the panel's written reasons for any decision;

(f) the notice of review.

(2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

Record of an order for costs by the Practice Standards Committee

5-24 (1) Unless the parties agree otherwise, the record for a review of an order for costs under Rule 3-25 *[Costs]* consists of the following:

(a) the order;

(b) all correspondence between the Society and the lawyer relating to the assessment and ordering of costs;

(c) the Committee's written reasons for any decision on costs;

(d) the notice of review.

(2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

Preparation and delivery of record

5-24.1 (1) The party initiating a review must prepare the record for the review in accordance with the relevant rule.

(1.1) Within 60 days of filing a notice of review, a party must file the record with the Tribunal in the form specified in the relevant practice direction and deliver a copy to the other party.

(2) The time for producing the record may be extended by agreement of the parties.

(3) No date may be set for the hearing of a review unless the party initiating the review has delivered all copies of the record required under subrule (1.1).

(4) By filing with the Tribunal written notice setting out the grounds for the application, and delivering a copy to the other party, the party initiating the review may apply for

(a) an extension of time to prepare and deliver the record, or

(b) an order that the Society bear all or part of the cost of obtaining and copying all or part of the record.

(5) When an application is made under subrule (4), a motions adjudicator must decide whether to grant all or part of the relief sought, with or without conditions, and must notify the parties accordingly.

(6) [rescinded]

(7) A determination under subrule (5) is without prejudice to an order of the review board under Rule 5-11 *[Costs of hearings]*.

Notice of review hearing

5-24.2 (1) The date, time and place for the hearing of a review to begin must be set

(a) by agreement between the parties, or

(b) on the application of a party, by the Tribunal Chair or by the motions adjudicator presiding at a pre-review conference.

(2) When a date is set under subrule (1), the Tribunal must notify the parties in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the parties agree to a shorter notice period.

Pre-review conference

5-25 (1) The Tribunal Chair may order a pre-review conference at any time before the hearing of a review, at the request of a party, or on the Tribunal Chair's own initiative.

(2) When a conference has been ordered under subrule (1), the Tribunal Chair must

(a) set the date, time and place of the conference and notify the parties, and

(b) designate a motions adjudicator to preside at the conference.

(3) Law Society counsel must be present at the conference.

(4) [rescinded]

(5) The applicant or the respondent, as the case may be, may attend the conference in person, through counsel or both.

(6) If the applicant or the respondent, as the case may be, fails to attend the conference, the motions adjudicator presiding may proceed with the conference in the absence of that party and may make any order under this rule, if the motions adjudicator is satisfied that the party had been notified of the conference.

(7) The motions adjudicator 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.

(8) The conference may consider

(a) the simplification of the issues,

(b) any issues concerning the record to be reviewed,

(c) the possibility of agreement on any issues in the review,

(d) the exchange of written arguments or outlines of argument and of authorities,

(e) the possibility that privilege or confidentiality might require that all or part of the hearing be closed to the public or that exhibits and other evidence be excluded from public access,

(f) setting a date for the review, and

(g) any other matters that may aid in the disposition of the review.

(9) The motions adjudicator presiding at a pre-review conference may

(a) adjourn the conference or the hearing of the review generally or to a specified date, time and place,

(b) order the exchange of written arguments or outlines of argument and of authorities, and set deadlines for that exchange,

(c) set a date for the review, subject to Rule 5-24.1 (3) *[Preparation and delivery of record]*, and

(d) make any order or allow or dismiss any application consistent with this part.

Adjournment

5-26 (1) Before a hearing of a review begins, a party may apply for an order that the hearing be adjourned by filing with the Tribunal and delivering to the other party written notice setting out the grounds for the application.

(3) Before the hearing begins, a motions adjudicator must decide whether to grant the adjournment, with or without conditions, and must notify the parties accordingly.

(4) [rescinded]

(5) After a hearing has begun, the chair of the review board may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

Decision on review

5-27 (1) The decision of the review board on a review is made by majority vote.

(2) The review board must prepare written reasons for its decision on a review.

(3) When the review board gives written reasons for its decision, it must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.

(4) A copy of the review board's written reasons prepared under subrule (2) must be delivered promptly to the each party.

(5) On request, the Executive Director must disclose the review board's written reasons for its decision.

Inactive reviews

5-28 (1) If no steps have been taken for 6 months or more, a party may apply for an order dismissing a review by filing with the Tribunal and delivering to the other party a notice in writing that sets out the basis for the application.

(3) If it is in the public interest and not unfair to the respondent or applicant, a motions adjudicator may dismiss the review.

(4) [rescinded].

Corrections

Slip rule

5-28.1 At any time, the Tribunal may

(a) correct an error in an order or decision that arose from a clerical mistake or from any other accidental slip or omission, or

(b) amend an order or decision to provide for any matter that should have been but was not adjudicated.

PART 10 – GENERAL

Service and notice

10-1 (0.1) In this rule, **"recipient"** means a lawyer, former lawyer, law firm, articled student or applicant.

(1) A recipient may be served with a notice or other document by

(a) leaving it at the place of business of the recipient,

(b) sending it by

(i) registered mail, ordinary mail or courier to the last known business or residential address of the recipient,

(ii) electronic facsimile to the last known electronic facsimile number of the recipient,

(iii) electronic mail to the last known electronic mail address of the recipient, or

(iv) any of the means referred to in paragraphs (a) to (c) to the place of business of the counsel or personal representative of the recipient or to an address given to Law Society counsel by a respondent for delivery of documents relating to a citation, or

(c) posting it to an electronic portal operated by the Society to which the recipient has been given access and notifying the recipient of the posting by a method enumerated in paragraph (b) (ii) or (iii).

(2) If it is impractical for any reason to serve a notice or other document as set out in subrule (1), a motions adjudicator may order substituted service, whether or not there is evidence that

(a) the notice or other document will probably

(i) reach the intended recipient, or

(ii) come to the intended recipient's attention, or

(b) the intended recipient is evading service.

(3) [rescinded]

(4) A document may be served on the Society or on the Benchers by

(a) leaving it at or sending it by registered mail or courier to the principal offices of the Society, or

(b) personally serving it on an officer of the Society.

(4.1) A document required under the Act or these rules to be delivered to the President or the Executive Director must be left at or sent by registered mail or courier to the principal offices of the Society.

(5) A document sent by ordinary mail is deemed to be served 7 days after it is sent.

(6) A document that is left at a place of business or sent by registered mail or courier is deemed to be served on the next business day after it is left or delivered.

(7) A document sent by electronic facsimile or electronic mail is deemed to be served on the next business day after it is sent.

(7.1) A document that is posted to an electronic portal operated by the Society is deemed to be served the next business day after the document is posted and notice is sent to the recipient.

(8) Any person may be notified of any matter by ordinary mail, registered mail, courier, electronic facsimile or electronic mail to the person's last known address.

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Duty not to disclose

10-2 A person performing any duty or fulfilling any function under the Act or these rules who receives or becomes privy to any confidential information, including privileged information,

(a) has the same duty that a lawyer has to a client not to disclose that information, and

(b) must not disclose and cannot be required to disclose that information except as authorized by the Act, these rules or an order of a court.

Communication with Ombudsperson confidential

10-2.1 (1) This rule must be interpreted in a way that will facilitate the Ombudsperson assisting in the resolution of disputes through communication without prejudice to the rights of any person.

(2) Communication between the Ombudsperson acting in that capacity and any person receiving or seeking assistance from the Ombudsperson is confidential and must remain confidential in order to foster an effective relationship between the Ombudsperson and that individual.

(3) The Ombudsperson must hold in strict confidence all information acquired in that capacity from participants.

(4) [rescinded]

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SCHEDULE 4 – TARIFF FOR HEARING AND REVIEW COSTS

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

Item no.	Description	Number of units
Citation hearing		
1.	Preparation/amendment of citation, correspondence, conferences, instructions, investigations or negotiations after the authorization of the citation to the completion of the discipline hearing, for which provision is not made elsewhere	Minimum 1 Maximum 10
2.	Proceeding under s. 26.01 *[Suspension during investigation]*, 26.02 *[Medical examination]* or 39 *[Suspension]* and any application to rescind or vary an order under the Rules, for each day of hearing	30
3.	Disclosure under Rule 4-34 *[Demand for disclosure of evidence]*	Minimum 5 Maximum 20
4.	Application for particulars/preparation of particulars under Rule 5-4.7 *[Application for details of the circumstances]*	Minimum 1 Maximum 5
5.	Application to adjourn under Rule 4-40 *[Adjournment]* • if made more than 14 days prior to the scheduled hearing date • if made less than 14 days prior to the scheduled hearing date	 1 3
6.	Pre-hearing conference	Minimum 1 Maximum 5
7.	Preparation of agreed statement of facts • if signed more than 21 days prior to hearing date • if signed less than 21 days prior to hearing date • delivered to Respondent and not signed	 Min. 5 to max. 15 Min. 10 to max. 20 Min. 10 to max. 20

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Item no.	Description	Number of units
8.	Preparation of affidavits	Minimum 5 Maximum 20
9.	Preparation of Notice to Admit	Minimum 5 Maximum 20
10.	Preparation of response to Notice to Admit	Minimum 5 Maximum 20
11.	All process and correspondence associated with retaining and consulting an expert for the purpose of obtaining opinion(s) for use in the proceeding	Minimum 2 Maximum 10
12.	All process and communication associated with contacting, interviewing and issuing summons to all witnesses	Minimum 2 Maximum 10
13.	Interlocutory or preliminary motion for which provision is not made elsewhere, for each day of hearing	10
14.	Preparation for interlocutory or preliminary motion, per day of hearing	20
15.	Attendance at hearing, for each day of hearing, including preparation not otherwise provided for in tariff	30
16.	Written submissions, where no oral hearing held	Minimum 5 Maximum 15
S. 47 review		
17.	Giving or receiving notice under Rule 5-21 *[Notice of review]*, correspondence, conferences, instructions, investigations or negotiations after review initiated, for which provision is not made elsewhere	Minimum 1 Maximum 3
18.	Preparation and settlement of hearing record under Rule 5-23 *[Record of discipline hearing]*	Minimum 5 Maximum 10
19.	Pre-review conference	Minimum 1 Maximum 5

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Item no.	Description	Number of units
20.	Application to adjourn under Rule 5-26 *[Adjournment]* • If made more than 14 days prior to the scheduled hearing date • If made less than 14 days prior to the scheduled hearing date	 1 3
21.	Procedural or preliminary issues, including an application to admit evidence under Rule 5-23 (2) *[Record of discipline hearing]*, per day of hearing	10
22.	Preparation and delivery of written submissions	Minimum 5 Maximum 15
23.	Attendance at hearing, per day of hearing, including preparation not otherwise provided for in the tariff	30
Summary hearings		
24.	Each day of hearing	$2,000
Hearings under Rule 5-6.5 *[Admission and consent to disciplinary action]*		
25.	Complete hearing, based on the following factors: (a)complexity of matter; (b)number and nature of allegations; and (c)the time at which respondent agreed to make an admission relative to scheduled hearing and amount of pre-hearing preparation required.	$1,000 to $3,500
Credentials hearings		
26.	Each day of hearing	$2,000

Value of units:

Scale A, for matters of ordinary difficulty:	$100 per unit
Scale B, for matters of more than ordinary difficulty:	$150 per unit

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SCHEDULE 5 – FORM OF SUMMONS

[Rule 5-5 (4) *[Compelling witnesses and production of documents]*

IN THE MATTER OF THE LEGAL PROFESSION ACT

AND

IN THE MATTER OF A HEARING CONCERNING

_____

(As the case may be: a [former] member of the Law Society of British Columbia/ an articled student/an applicant for enrolment/call and admission/reinstatement)

SUMMONS

TO: _____

TAKE NOTICE that you are required to attend to testify as a witness at the time, date and place set out below.

Time: _____

Date: _____

Place: The Law Society of British Columbia
845 Cambie Street
Vancouver BC V6B 4Z9 (or other venue)

Dated at _____, _____ _____
Party/Counsel

this day of _____, 20___

LAW SOCIETY TRIBUNAL RULES 2022

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

"agreed statement of facts" means a written statement of facts signed by ~~discipline~~ Law Society counsel and by or on behalf of an applicant or ~~the~~ respondent;

"applicant" means a person who has applied under Part 2 *[Membership and Authority to Practise Law]* for enrolment as an articled student, for call and admission or for reinstatement;

"chair" means a person appointed to preside at meetings of a committee, panel or review board;

"costs" includes costs assessed under Rule 3-25 *[Costs]* or 3-81 *[Failure to file trust report]* or Part 5 *[Tribunal, Hearings and Appeals]*;

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

(a) any action taken by a governing body as a result of

(i) professional misconduct,

(ii) incompetence,

(iii) conduct unbecoming the profession,

(iv) lack of physical or mental capacity to engage in the practice of law, or

(v) any other breach of a lawyer's professional responsibilities;

(b) disbarment;

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

(d) restrictions or limits on a lawyer's entitlement to practise, other than those imposed as a result of failure to pay fees to a governing body, insolvency or bankruptcy or other administrative matter;

(e) any interim suspension or restriction or limits on a lawyer's entitlement to practise imposed pending the outcome of a disciplinary hearing.

"discipline violation" means any of the following:

(a) professional misconduct;

(b) conduct unbecoming the profession;

(c) a breach of the Act or these rules;

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(d) incompetent performance of duties undertaken by a lawyer in the capacity of a lawyer;

(e) conduct that would constitute professional misconduct, conduct unbecoming the profession or a contravention of the Act or these rules if done by a lawyer;

"interim action board" means a board appointed under Rule 3-10 *[Interim suspension or practice conditions];*

"motions adjudicator" means a lawyer Bencher designated by the Tribunal Chair to decide a matter or conduct a pre-hearing or pre-review conference under these rules;

"Ombudsperson" means a person appointed by the Executive Director to provide confidential dispute resolution and mediation assistance to lawyers, articled students, law students and support staff of legal employers, regarding allegations of harassment or discrimination by lawyers ~~on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age,~~ and includes anyone employed to assist the Ombudsperson in that capacity;

"panel" means a panel established in accordance with Part 5 *[Tribunal, Hearings and Appeals]*;

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

(a) an order under Rule 2-57 (5) *[Principals]*, prohibiting the lawyer from acting as a principal for an articled student;

(b) any conditions or limitations of practice or articles accepted or imposed under the Act or these rules;

(c) a decision by a panel or a review board to reject an application for enrolment, call and admission or reinstatement;

(d) a decision by the Credentials Committee to reject an application for an inter-jurisdictional practice permit;

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

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

(f) recommendations made by the Practice Standards Committee under Rule 3-19 *[Action by Practice Standards Committee]*;

(g) an admission accepted by the Discipline Committee under Rule 4-29 *[Conditional admission~~s~~]*;

(h) an admission accepted and disciplinary action imposed by a hearing panel under Rule ~~4-30~~5-6.5 *[Admission and consent to disciplinary action]*;

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(i) any Conduct Review Subcommittee report delivered to the Discipline Committee under Rule 4-13 *[Conduct Review Subcommittee report]*, and any written dispute of that report considered by the Committee;

(j) a decision made under section 38 (4) (b) *[Discipline hearings]*;

(k) an action taken under section 38 (5), (6) or (7);

(l) an action taken by a review board under section 47 *[Review on the record]*;

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

(n) an order for costs made against the lawyer under Part 5 *[Tribunal, Hearings and Appeals]*;

(o) any failure to pay any fine, costs or penalty imposed under the Act or these rules by the time that it is to be paid ~~.~~ ;

(p) the outcome of an application made by the lawyer under the *Judicial Review Procedure Act* concerning a decision taken under the Act or these rules, including a predecessor of either;

(q) the outcome of an appeal under section 48 *[Appeal]*;

(r) any disciplinary or remedial action taken by a governing body or body regulating the legal profession in any other jurisdiction;

(s) a decision of or action taken by the Benchers on a review of a decision of a hearing panel;

"respondent" means a person whose conduct or competence is

(a) the subject of a citation directed to be issued under Rule 4-17 (1) *[Direction to issue, expand or rescind citation]*, or

(b) under review by a review board under section 47 *[Review]*

and includes a representative of a respondent law firm;

"review board" means a review board established in accordance with Part 5 *[Tribunal, Hearings and Appeals]*;

"suspension" means temporary disqualification from the practice of law;

"Tribunal" means persons or bodies performing the adjudicative function of the Society or providing legal or administrative support to that function;

"Tribunal Chair" means the Bencher appointed under Rule 5-1.3 *[Tribunal Chair]*;

"Tribunal Office" means the principal place of business of the Tribunal;

LAW SOCIETY TRIBUNAL RULES 2022

PART 1 – ORGANIZATION

Division 1 – Law Society

General

Appointment of Law Society counsel

1-48 (1) Subject to Rule 1-51 (a) *[Powers and duties]*, the Executive Director may appoint ~~an~~ a lawyer ~~employee~~ employed by ~~of~~ the Society or retain another lawyer to advise or represent the Society in any legal matter.

(2) When Rule 1-51 (a) *[Powers and duties]* applies and it is not practicable to call a meeting of the Executive Committee before the advice of counsel is required, the Executive Director may appoint counsel on an interim basis.

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 2 – Admission and Reinstatement

Credentials hearings

Notice to applicant

2-91 (1) When a hearing is ordered under this division, the Executive Director must promptly notify the applicant in writing of

(a) the purpose of the hearing,

(b) [rescinded]

(c) the circumstances to be inquired into at the hearing, and

(d) the amount of security for costs set by the Credentials Committee under Rule 2-92 *[Security for costs]*.

(1.1) [5-4.1(1)]

(1.2) [5-4.1(2)]

(2) The notice referred to in subrule (1) ~~or (1.2)~~ must be served

(a) in accordance with Rule 10-1 *[Service and notice]*, and

(b) not less than 30 days before the date set for the hearing, unless the applicant consents in writing to a shorter period.

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Security for costs

2-92 (1) When the Credentials Committee orders a hearing under this division, it must set an amount to be deposited by the applicant as security for costs.

(2) In setting the amount to be deposited as security for costs under this rule, the Credentials Committee may take into account the circumstances of the matter, including but not limited to, the applicant's

(a) ability to pay, and

(b) likelihood of success in the hearing.

(3) The amount to be deposited as security for costs ~~cannot~~ must not exceed an amount that approximates the amount that the panel may order to be paid under Rule 5-11 *[Costs of hearings]*.

(4) On application by the applicant or Law Society counsel ~~for the Society~~, the Credentials Committee may vary the amount to be deposited as security for costs under this rule.

(5) If, 15 days before the date set for a hearing, the applicant has not deposited with the Executive Director the security for costs set under this rule, the hearing is adjourned.

(6) Before the time set for depositing security for costs under subrule (5), an applicant may apply to the Credentials Committee for an extension of time, and the Committee may, in its discretion, grant all or part of the extension applied for.

Law Society counsel

2-93 The Executive Director must appoint a~~n~~ lawyer ~~employee~~ employed by ~~of~~ the Society or retain another lawyer to represent the Society when

(a) a hearing is ordered under this division,

(b) a review is initiated under section 47 *[Review on the record]*,

(c) an applicant appeals a decision to the Court of Appeal under section 48 *[Appeal]*, or

(d) the Society is a respondent in any other action involving an application relating to sections 19 to 22 or this division.

Preliminary questions

2-94 [5-4.3]

Compelling witnesses and production of documents

2-95 [5-5(5) – (7)]

Pre-hearing conference

2-96 [5-5.1]

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Appointment of panel

2-97 [5-2(1)]

Adjournment of hearing

2-98 [5-5.2]

Attendance at the hearing

2-99 [5-6.1]

Onus and burden of proof

2-100(1)[5-6.2]

(2) [5-6.3(3)]

Procedure

2-101(1), (3)-(5) [5-6.3]

(2) [5-5.3]

Inactive applications

2-102 (1) When the Credentials Committee has ordered a hearing ~~under this division~~ and the applicant has taken no steps for one year to bring the application to a hearing, the application is deemed abandoned.

(2) When an application is abandoned under this rule, Law Society counsel ~~for the Society~~ may apply for an order that some or all of the funds paid under Rule 2-92 *[Security for costs]* as security for costs be retained by the Society.

(3) An application under subrule (2) is made by filing with the Tribunal and delivering to the applicant written ~~notification of~~ notice of the application.~~the following:~~

~~(a) the applicant;~~

~~(b) the President.~~

(4) On an application under subrule (3), ~~the President~~a motions adjudicator may order that some or all of the funds deposited as security for costs be retained by the Society, and the remainder, if any, be refunded to the applicant.

(5) ~~The President may designate another Bencher to make a determination under subrule (4).~~[rescinded]

LAW SOCIETY TRIBUNAL RULES 2022

Publication of credentials decision

2-103 (1) When a hearing panel or review board issues a final or interlocutory decision on an application under this division, the Executive Director must

(a) publish and circulate to the profession a summary of the circumstances and decision of the hearing panel or review board,

(b) publish the full text of the decision on the Law Society website, and

(c) publish the final outcome of the hearing or review, including any conditions or limitations of practice or articles imposed or accepted.

(1.1) When a court issues a decision on a judicial review of or appeal from a credentials decision, the Executive Director must circulate to the profession a summary of the decision.

(2) and (3) [rescinded]

(4) This rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

Anonymous publication

2-104 (1) Except as required or allowed under this rule, a publication under Rule 2-103 (1) (a) or (b) *[Publication of credentials decision]* must not identify the applicant.

(2) A publication under Rule 2-103 (1) (a) or (b) may identify the applicant if

(a) the applicant consents in writing, or

(b) the subject matter of the application, including the identity of the applicant, is known to the public.

(3) to (7) [rescinded]

(8) A publication under Rule 2-103 (1) (a) or (b) must identify the applicant if the applicant is a disbarred lawyer applying for reinstatement.

(9) A summary circulated under Rule 2-103 (1.1) may identify an applicant who is identified by the court.

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PART 3 – PROTECTION OF THE PUBLIC

Division 1.1 – Extraordinary action to protect public

~~Extraordinary action to protect public~~Interim suspension or practice conditions

3-10 (1) ~~An order may be made u~~Under this rule, an interim action board may make an order with respect to a lawyer or articled student who is the subject of

(a) ~~the subject of~~ an investigation or intended investigation under Rule 3-5 *[Investigation of complaints]*, ~~and~~or

(b) ~~not the subject of~~ a citation ~~in connection with the matter under investigation or intended to be under investigation~~under Part 4 *[Discipline]*.

(1.1) When a proceeding is initiated under Rule 3-12 (3) *[Public protection proceeding]*, the President must appoint an interim action board, consisting of 3 or more Benchers who are not members of the Discipline Committee.

(2) If ~~they are~~ satisfied, on reasonable grounds, that extraordinary action is necessary to protect the public, ~~3 or more Benchers~~ an interim action board may

(a) impose conditions or limitations on the practice of a lawyer or on the enrolment of an articled student, or

(b) suspend a lawyer or the enrolment of an articled student.

(3) An order made under subrule (2) or varied under Rule 3-12 *[P*ublic protection ~~rocedure~~*proceeding]* is effective until the first of

(a) final disposition of the existing citation or any citation authorized under Part 4 *[Discipline]* arising from the investigation, or

(b) rescission, variation or further variation under Rule 3-12.

(4) Subject to an order under subrule (6), when a condition or limitation is imposed under this rule on the practice of a lawyer or the enrolment of an articled student, the Executive Director may disclose the fact that the condition or limitation applies and the nature of the condition or limitation.

(5) ~~The Benchers who~~An interim action board that makes an order under subrule (2) (a) must consider the extent to which disclosure of the existence and content of the order should be made public.

(6) Where, in the judgment of the ~~Benchers who~~interim action board that made an order under subrule (2) (a), there are extraordinary circumstances that outweigh the public interest in the disclosure of the order, ~~those Benchers~~the board may make an order

(a) that the Executive Director not disclose all or part of the order, or

(b) placing limitations on the content, means or timing of disclosure.

(7) An order made under subrule (6) does not apply to disclosure of information for the purposes of

(a) enforcement of the order,

(b) investigation and consideration of a complaint under this part or Part 4 *[Discipline]* or a proceeding under Part 5 *[Tribunal, Hearings and ~~appeals~~Appeals]*, or

(c) obtaining and executing an order under Part 6 *[Custodianships]*.

(8) ~~The Benchers who~~ An interim action board ~~make an order under subrule (6)~~ must give written reasons for~~ their decision~~ an order under subrule (6).

(9) An order under subrule (6) may be made by a majority of the ~~Benchers who made the order under subrule (2) (a)~~interim action board.

(10) If the Executive Director discloses the existence of a condition or limitation under subrule (2) (a) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.

(11) Subrule (10) does not apply to a decision of a hearing panel or a review board.

(12) This rule is subject to the requirement to publish discipline decisions under Rule 4-48 (2) *[Publication of discipline decisions]*.

Medical examination

3-11 (1) This rule applies to a lawyer or articled student who is the subject of

(a) an investigation or intended investigation under Rule 3-5 *[Investigation of complaints]*, or

(b) a citation under Part 4 *[Discipline]*.

(2) ~~If they are~~An interim action board that is of the opinion, on reasonable grounds, that the order is likely necessary to protect the public~~, 3 or more Benchers~~ may make an order requiring a lawyer or articled student to

(a) submit to an examination by a medical practitioner specified by ~~those Benchers~~the interim action board, and

(b) instruct the medical practitioner to report to the Executive Director on the ability of the lawyer to practise law or, in the case of an articled student, the ability of the student to complete articles.

(3) The Executive Director may deliver a copy of the report of a medical practitioner under this rule to the Discipline Committee or the Practice Standards Committee.

(4) The report of a medical practitioner under this rule

(a) may be used for any purpose consistent with the Act and these rules, and

(b) is admissible in any hearing or proceeding under the Act and these rules.

~~Procedure~~ Public protection proceeding

3-12 (1) ~~The Benchers referred to in Rules 3-10 to 3-12 must not include a member of the Discipline Committee.~~[rescinded]

(2) Before ~~Benchers~~ an interim action board takes action under Rule 3-10 *[~~Extraordinary action to protect public~~Interim suspension or practice conditions]* or 3-11 *[Medical examination]*, there must be a proceeding before the board at which ~~3 or more Benchers and discipline~~ Law Society counsel ~~are~~ is present.

~~4-23~~(42) Before ~~Benchers take~~an interim action board takes action under ~~this rule,~~Rule 3-10 *[Interim suspension or practice conditions]* or 3-11 *[Medical examination]*, there must be a proceeding before the board at which ~~3 or more Benchers and discipline~~ Law Society counsel ~~must be~~is present.

(3) The proceeding referred to in subrule (2)

(a) must be initiated ~~by~~ on the application of one of the following:

(i) the Discipline Committee;

(ii) the Practice Standards Committee;

(iii) the Executive Director, and

(b) may take place without notice to the lawyer or articled student if the ~~majority of Benchers present are~~ interim action board is satisfied, on reasonable grounds, that notice would not be in the public interest.

~~4-23~~ (~~5~~3) The proceeding referred to in subrule (~~4~~) 2)

(a) must be initiated on the application of one of the following:

(i) the Discipline Committee;

(ii) the Practice Standards Committee;

(iii) the Executive Director, and

(b) may take place without notice to the ~~respondent~~lawyer or articled student if the ~~majority of Benchers present are~~ interim action board is satisfied, on reasonable grounds, that notice would not be in the public interest.

(4) The lawyer or articled student and counsel for the lawyer or articled student may be present at a proceeding under this rule.

~~4-23~~ (~~6~~4) The ~~respondent~~lawyer or articled student and ~~respondent's~~ counsel for the lawyer or articled student may be present at a proceeding under this rule.

(5) All proceedings under this rule must be recorded by a court reporter or by other means.

~~4-23~~ (~~7~~5) All proceedings under this rule must be recorded by a court reporter or by other means.

(6) Subject to the Act and these rules, the ~~Benchers present at a proceeding~~interim action board may determine the practice and procedure to be followed.

~~4-23~~ (~~8~~6) Subject to the Act and these rules, the ~~Benchers present~~interim action board may determine the practice and procedure to be followed ~~at a proceeding~~.

(7) Unless the ~~Benchers present~~interim action board orders otherwise, the proceeding is not open to the public.

~~4-23~~ (~~9~~7) Unless the ~~Benchers present order~~interim action board orders otherwise, the proceeding is not open to the public.

(8) ~~The lawyer or articled student or discipline counsel~~A party may request an adjournment of a proceeding conducted under this rule.

~~4-23~~ (~~10~~8) ~~The respondent or discipline counsel~~A party may request an adjournment of a proceeding conducted under this rule.

(9) Rule ~~4-40~~5-5.2 *[Adjournment]* applies to an application for an adjournment made before the ~~commencement of the~~ proceeding begins as if it were a hearing.

~~4-23~~ (~~11~~9) Rule ~~4-40~~5-5.2 *[Adjournment]* applies to an application for an adjournment made before the ~~commencement of the~~ proceeding begins as if it were a hearing.

(10) ~~Despite subrule (9), the Executive Director is not required to notify a complainant of a request made under subrule (8).~~[rescinded]

~~4-23 (12) Despite subrule (11), the Executive Director is not required to notify a complainant of a request made under subrule (10).~~

(11) After a proceeding has ~~commenced~~begun, the ~~Benchers present~~interim action board may adjourn the proceeding, with or without conditions, generally or to a specified date, time and place.

~~4-23~~ (~~13~~11) After a proceeding has begun, the ~~Benchers present~~interim action board may adjourn the proceeding, with or without conditions, generally or to a specified date, time and place.

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(12) On the application of ~~the lawyer or articled student or discipline counsel~~a party, the ~~Benchers who made the order, or a majority of them,~~interim action board may rescind or vary an order made or previously varied under this rule.

~~4-23 (15) An order made under subrule (2) may be varied by the Benchers who made it, or a majority of them, on~~ (12) On the application of ~~the respondent or discipline counsel~~a party, the interim action board may rescind or vary an order made or previously varied under this rule.

(13) On an application under subrule (12) to vary or rescind an order,

(a) ~~both the lawyer or articled student and discipline counsel~~ each party must be given a reasonable opportunity to make submissions in writing, and

(b) the ~~Benchers present~~interim action board may allow oral submissions if, in ~~their~~ the board's discretion, it is appropriate to do so.

~~4-23 (16~~13) On an application under subrule (12) to vary or rescind an order ~~under subrule (15),~~,

(a) ~~both the respondent and discipline counsel~~each party must be given a reasonable opportunity to make submissions in writing, and

(b) the ~~Benchers considering an application under subrule (15)~~interim action board may allow oral submissions if, in ~~their~~the board's discretion, it is appropriate to do so.

(14) If, for any reason, any ~~of the Benchers~~ member of the interim action board that~~who~~ made an order under this rule is unable to participate in the decision on an application under subrule (12), the President may ~~assign~~ appoint another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of ~~each Bencher~~the member of the board unable to participate.

~~(14) An order made under subrule (2) or varied under subrule (15) is effective until the first of~~

~~(a) final disposition of the citation,~~

~~(b) variation or further variation under subrule (15), or~~

~~(c) a contrary order under Rule 4-26 *[Review of interim suspension of practice conditions].*~~

~~4-23 (16) (c) if~~14) If, for any reason, ~~a Bencher who participated in making the order~~any member of the interim action board that made an order under this rule is unable to participate in the decision on an application under subrule (12), the President may ~~assign~~appoint another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of the ~~Bencher~~member of the board unable to participate.

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~~Notification of respondent~~Notice to lawyer or articled student

~~4-24~~3-12.1 When an order is made under Rule ~~4-23~~3-10 (2) *[Interim suspension or practice conditions]* without notice to the ~~respondent~~lawyer or articled student, the Executive Director must immediately notify the ~~respondent~~lawyer or articled student in writing, that

(a) the order has been made,

(b) the ~~respondent~~lawyer or articled student is entitled, on request, to a transcript of the proceeding under Rule ~~4-23~~3-12 ~~(4)~~*[Public protection proceeding]*, and

(c) the lawyer or articled student~~respondent~~ may apply under Rule ~~4-26~~3-12.3 *[Review of interim suspension or practice conditions]* to have the order rescinded or varied.

~~Disclosure~~ Non-disclosure

~~4-25~~3-12.2(1) Unless an order ~~has been~~is made under Rule ~~4-23 (2) *[Interim suspension or practice conditions*~~3-10 (2) *[Interim suspension or pratice conditions]*, no one is permitted to disclose ~~any of the following information~~that a proceeding was initiated, scheduled or took place under this division except for the purpose of complying with the objects of the Act or with these rules~~:~~

~~(a) the fact that a Committee or an individual has referred a matter for consideration by 3 or more Benchers under Rule 4-23;~~

~~(b) the scheduling of a proceeding under Rule 4-23;~~

~~(c) the fact that a proceeding has taken place.~~ .

(2) When an order has been made or refused under Rule ~~4-23 (2) *[Interim suspension or practice conditions*~~3-10 (2) *[Interim suspension or practice conditions]*, before publication of the decision is permitted under Rule 4-48 (2) *[Publication of discipline decisions]*, the Executive Director may, on request, disclose the fact of the order or refusal and the reasons for it.

Review of interim suspension or practice conditions

~~4-26~~3-12.3(1) If an order has been made under Rule ~~4-23~~3-10 (2) *[Interim suspension or practice conditions]*, the ~~respondent~~lawyer or articled student may apply in writing to the ~~President~~Tribunal at any time for rescission or variation of the order.

(2) An application under subrule (1) must be heard as soon as practicable and, if the ~~respondent~~lawyer or articled student has been suspended without notice, not later than 7 days after the date on which it is received by the ~~Society~~Tribunal, unless the ~~respondent~~lawyer or articled student consents to a longer time.

(3) When application is made under subrule (1), the ~~President~~Tribunal Chair must appoint a ~~new~~ panel under ~~Rule 4-39 *[Appointment of panel]*~~Part 5 *[Tribunal, Hearings and Appeals]*.

(4) ~~A~~The panel appointed under subrule (3) must not include a person who

(a) participated in the decision that authorized the issuance of ~~the~~a citation related to the application,

(b) was ~~one~~a member of the ~~Benchers who~~interim action board that made the order under review, or

(c) is ~~part~~a member of a panel assigned to hear ~~the~~a citation related to the application.

(5) A hearing under this rule is open to the public, but the panel may exclude some or all members of the public in any circumstances it considers appropriate.

(6) On application by anyone, the panel may make the following orders to protect the interests of any person:

(a) an order that specific information not be disclosed;

(b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).

(7) All proceedings at a hearing under this rule must be recorded by a court reporter or by other means, and any person may obtain, at the person's expense, a transcript of any part of the hearing that the person was entitled to attend.

(8) ~~The respondent and discipline counsel~~ Each party may call witnesses to testify who

(a) if competent to do so, must take an oath or make a solemn affirmation before testifying, and

(b) are subject to cross-examination.

(9) If the order under Rule ~~4-23~~3-10 (2) *[Interim suspension or practice conditions]* took effect without notice to the ~~respondent~~lawyer or articled student, witnesses called by ~~discipline~~ Law Society counsel must testify first, followed by witnesses called by the respondent.

(10) If subrule (9) does not apply, witnesses called by the ~~respondent~~lawyer or articled student must testify first, followed by witnesses called by Law Society~~discipline~~ counsel.

(11) The panel may

(a) accept an agreed statement of facts, and

(b) admit any other evidence it considers appropriate.

(12) Following completion of the evidence, the panel must

(a) invite ~~the respondent and discipline counsel~~each party to make submissions on the issues to be decided by the panel,

(b) decide by majority vote whether cause has been shown by the appropriate party under subrule (13) or (14), as the case may be, and

(c) make an order if required under subrule (13) or (14).

(13) If an order has been made under Rule ~~4-23~~ 3-10 (2) *[Interim suspension or practice conditions]* with notice to the respondent, the panel must rescind or vary the order if cause is shown on the balance of probabilities by or on behalf of the respondent.

(14) If an order has been made under Rule 3-10 ~~4-23~~ (2) *[Interim suspension or practice conditions]* without notice to the respondent, the panel must rescind or vary the order, unless ~~discipline~~ Law Society counsel shows cause, on the balance of probabilities, why the order should not be rescinded or varied.

Division 1.2 – Complainants' Review Committee

Appointment of Complainants' Review Committee

3-13 (1) For each calendar year, the President must appoint a Complainants' Review Committee.

PART 4 – DISCIPLINE

Direction to issue, expand or rescind citation

4-17 (1) The Discipline Committee or the chair of the Committee may order a hearing into the conduct or competence of a lawyer by directing that the Executive Director issue a citation against the lawyer.

(2) After a hearing has been ordered under subrule (1), the Discipline Committee may direct the Executive Director to add an allegation to a citation.

(3) At any time before a panel makes a determination under Rule ~~4-44~~5-6.4 *[Disciplinary action]*, the Discipline Committee may rescind a citation or an allegation in a citation and substitute another decision under Rule 4-4 (1) *[Action on complaints]*.

Contents of citation

4-18 (1) A citation may contain one or more allegations.

(2) Each allegation in a citation must

(a) be clear and specific enough to give the respondent notice of the misconduct alleged, and

(b) contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proven against the respondent and to identify the transaction referred to.

Notice of citation

4-19 The Executive Director must serve a citation on the respondent

(a) in accordance with Rule 10-1 *[Service and notice]*, and

(b) not more than 45 days after the direction that it be issued, unless the Discipline Committee or the chair of the Committee otherwise directs.

Publication of citation

4-20 (1) When there has been a direction to issue a citation, the Executive Director must publish on the Society's website the fact of the direction to issue the citation, the content of the citation and the status of the citation.

(1.1) Publication under subrule (1) must not occur earlier than 7 clear days after the respondent has been notified of the direction to issue the citation.

(2) The Executive Director may publish the outcome of a citation, including dismissal by a panel, rescission by the Discipline Committee or the acceptance of a conditional admission.

(3) Publication under this rule may be made by means of the Society's website and any other means.

(4) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.

(5) Except as allowed under Rule 4-20.1 *[Anonymous publication of citation]*, a publication under this rule must identify the respondent.

Anonymous publication of citation

4-20.1 (1) A party or an individual affected may apply to the ~~President~~ Tribunal for an order that publication under Rule 4-20 *[Publication of citation]* not identify the respondent.

(2) When an application is made under this rule before publication under Rule 4-20, the publication must not identify the respondent until a decision on the application is issued.

(3) On an application under this rule, where, in the judgment of ~~the President~~a motions adjudicator, there are extraordinary circumstances that outweigh the public interest in the publication of the citation, the ~~President~~ motions adjudicator may

(a) grant the order, or

(b) order limitations on the content, means or timing of the publication.

(4) ~~The President may designate another Bencher to make a determination on an application under this rule.~~[rescinded]

(5) The ~~President or other~~motions adjudicator ~~Bencher~~ making a determination on an application under this rule must state in writing the specific reasons for that decision.

Amending an allegation in a citation

4-21 [5-4.2]

Severance and joinder

4-22 [5-4.4]

Interim suspension or practice conditions

4-23 (1)~~-(3)~~ [rescinded]~~In Rules 4-23 to 4-25, "proceeding" means the proceeding required under subrule (4).~~

~~(2) If there has been a direction under Rule 4-17 (1) [Direction to issue, expand or rescind citation] to issue a citation, 3 or more Benchers may do any of the following:~~

~~(a) in any case not referred to in paragraph (b), impose conditions or limitations on the practice of a respondent who is a lawyer or on the enrolment of a respondent who is an articled student;~~

~~(b) suspend a respondent who is a lawyer, if, on the balance of probabilities, the Benchers present consider that the continued practice of the respondent will be dangerous to the public or the respondent's clients;~~

~~(c) suspend the enrolment of a respondent who is an articled student if the Benchers present consider, on the balance of probabilities, that the continuation of the student's articles will be dangerous to the public or a lawyer's clients.~~

(3)-(16) [3-12]

Notification of respondent

4-24 [3-12.1]

Disclosure

4-25 [3-12.2]

LAW SOCIETY TRIBUNAL RULES 2022

Review of interim suspension or practice conditions

4-26 [3-12.3]

Appointment of ~~discipline~~ Law Society counsel

4-27 The Executive Director must appoint a lawyer employed by the Society or retain another lawyer to represent the Society when

(a) a direction to issue a citation is made under Rule 4-17 *[Direction to issue, expand or rescind citation]*,

(b) a person initiates a review under section 47 *[Review on the record]*,

(c) a person appeals a decision to the Court of Appeal under section 48 *[Appeal]*, or

(d) the Society is a respondent in any other action involving the investigation of a complaint or the discipline of a lawyer.

Notice to admit

4-28 [5-4.8]

Conditional admission~~s~~

4-29 (1) A respondent may, at least 14 days before the date set for a hearing under this part, tender to the Discipline Committee a conditional admission of a discipline violation.

(2) The chair of the Discipline Committee may waive the 14-day time limit in subrule (1).

(3) The Discipline Committee may, in its discretion,

(a) accept the conditional admission,

(b) accept the conditional admission subject to any undertaking that the Committee requires the respondent to give in order to protect the public interest, or

(c) reject the conditional admission.

(4) If the Discipline Committee accepts a conditional admission tendered under this rule,

(a) those parts of the citation to which the conditional admission applies are resolved,

(b) the Executive Director must

(i) record the respondent's admission on the respondent's professional conduct record, and

(ii) notify the respondent and the complainant of the disposition, and

(c) subject to solicitor and client privilege and confidentiality, the Executive Director may disclose the reasons for the Committee's decision.

(5) A respondent who undertakes under this rule not to practise law is a person who has ceased to be a member of the Society as a result of disciplinary proceedings under section 15 (3) *[Authority to practise law]*.

Admission and consent to disciplinary action

4-30 [5-6.5]

Rejection of admissions

4-31 [5-6.6]

Notice of hearing

4-32 [5-4.1]

Summary hearing

4-33 [5-4.5]

Demand for disclosure of evidence

4-34 [5-4.6]

Application for details of the circumstances

4-35 [5-4.7]

Preliminary questions

4-36 [5-4.3]

Compelling witnesses and production of documents

4-37 [5-5(5)-(7)]

Pre-hearing conference

4-38 [5-5.1]

Appointment of panel

4-39 [5-2]

Adjournment

4-40 [5-5.2]

Preliminary matters

4-41 [5-6.1]

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Evidence of respondent

4-42 [5-5(2.1)]

Submissions and determination

4-43 [5-6.3]

Disciplinary action

4-44 [5-6.4]

Discipline proceedings involving members of other governing bodies

4-45 (1) The Executive Director must send written notice of the action to every governing body of which the person concerned is known to be a member when

(a) a citation is authorized under Rule 4-17 *[Direction to issue, expand or rescind citation]*,

(b) a disciplinary action is imposed under Rule ~~4-44~~5-6.4 *[Disciplinary action]*, or

(c) a conditional admission tendered under Rule 4-29 *[Conditional admission~~s~~]* is accepted by the Discipline Committee.

(2) When a citation is authorized against a lawyer who is a member of a governing body or when a governing body initiates disciplinary proceedings against a member of the Society, the Discipline Committee must consult with the governing body about the manner in which disciplinary proceedings are to be taken and the Society is bound by any agreement the Discipline Committee makes with the other governing body.

(3) The Discipline Committee may agree that the venue of disciplinary proceedings be changed to or from that of the Society, if it is in the public interest or if there is a substantial savings in cost or improvement in the convenience of any person without compromising the public interest.

(4) The Discipline Committee may take action under Rule 4-4 *[Action on complaints]* against a lawyer who

(a) has violated a prohibition against practice imposed by a governing body,

(b) is the subject of a declaration by a governing body under a provision similar to Rule ~~4-44~~5-6.4 (3) (d) *[Disciplinary action]*, or

(c) has made an admission that is accepted under a provision similar to Rule 4-29 *[Conditional admission]*.

(5) The fact that a lawyer ~~concerned~~ is or has been the subject of disciplinary proceedings by a governing body does not preclude any disciplinary action for the same or related conduct under this part.

(6) In a proceeding under this part, the filing of a duly certified copy of the disciplinary decision of a governing body against a lawyer found guilty of misconduct is proof of the lawyer's guilt.

Discipline involving lawyers practising in other jurisdictions

4-46 (1) If it is alleged that a member of the Society has committed misconduct while practising temporarily in another Canadian jurisdiction under provisions equivalent to Rules 2-15 to 2-27 *[Inter-jurisdictional practice]*, the Discipline Committee will

(a) provide information to the governing body under Rule 2-27.1 *[Sharing information with a governing body]*;

(b) subject to subrule (2), assume responsibility for the conduct of the disciplinary proceedings under this part.

(2) The Discipline Committee may agree to allow the governing body concerned to assume responsibility for the conduct of disciplinary proceedings under subrule (1), including the expenses of the proceeding.

(3) In deciding whether to agree under subrule (2), the primary considerations will be the public interest, convenience and cost.

(4) To the extent that is reasonable in the circumstances, the Executive Director must do the following at the request of a governing body that is investigating the conduct of a member or former member of the Society or a visiting lawyer who has provided legal services:

(a) provide information to the governing body under Rule 2-27.1 *[Sharing information with a governing body]*;

(b) co-operate fully in the investigation and any citation and hearing.

(5) Subrule (4) applies when the Discipline Committee agrees with a governing body under subrule (2).

(6) When the Executive Director provides information or documentation to a governing body under subrule (4) or (5), the Executive Director may inform any person whose personal, confidential or privileged information may be included of that fact and the reasons for it.

LAW SOCIETY TRIBUNAL RULES 2022

Public notice of suspension or disbarment

4-47 (1) When a person is suspended under this part or Part 5 *[Tribunal, Hearings and Appeals]*, is disbarred or, as a result of disciplinary proceedings, resigns from membership in the Society or otherwise ceases to be a member of the Society as a result of disciplinary proceedings, the Executive Director must immediately give effective public notice of the suspension, disbarment or resignation by means including but not limited to the following:

(a) publication of a notice in

(i) the British Columbia Gazette,

(ii) a newspaper of general circulation in each municipality and each district referred to in Rule 1-21 *[Regional election of Benchers]*, in which the person maintained a law office, and

(iii) the Society website, and

(b) notifying the following:

(i) the Registrar of the Supreme Court;

(ii) the Public Guardian and Trustee.

(2) When a person is suspended under Part 2 *[Membership and Authority to Practise Law]* or 3 *[Protection of the Public]*, the Executive Director may take any of the steps referred to in subrule (1).

(3) A lawyer who is suspended under this part or Part 5 *[Tribunal, Hearings and Appeals]* must inform all clients who reasonably expect the lawyer to attend to their affairs during the period of the suspension and clients or prospective clients who inquire about the availability of the lawyer's services during the suspension period of the following:

(a) the period during which the lawyer will not be practising;

(b) the arrangements the lawyer has put in place to protect the clients' interests while the lawyer will not be practising;

(c) the fact that the lawyer is not practising during the relevant period because of the suspension.

(4) A panel that suspends a lawyer may relieve the lawyer of any of the obligations set out in subrule (3) if the panel is satisfied that it is consistent with the public interest and that imposing the obligation would be unreasonable in the circumstances.

Publication of disciplin~~ary action~~e decisions

4-48 (1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of any decision, reasons and action taken by a hearing panel, a motions adjudicator or a review board.

~~(a) at the conclusion of the facts and determination portion of a hearing of a citation,~~

~~(b) at the conclusion of the disciplinary action portion of a hearing of a citation,~~

~~(c) at the conclusion of a hearing of a citation under Rule 4-33 *[Summary hearing]*,~~

~~(d) at the conclusion of a hearing before a review board under section 47 *[Review on the record]*,~~

~~(e) at the conclusion of an appeal to the Court of Appeal under section 48 *[Appeal]*,~~

~~(f) when an order is made or refused under Rule 4-26 (13) or (14) *[Review of interim suspension or practice conditions]*,~~

~~(g) when a lawyer or former lawyer is suspended or disbarred under Rule 4-52 *[Conviction]*,~~

~~(h) when an admission is accepted under Rule 4-29 *[Conditional admissions]*, or~~

~~(i) when an admission is accepted and disciplinary action is imposed under Rule 4-30 *[Admission and consent to disciplinary action]*.~~

(1.1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of an admission of a discipline violation accepted by the Discipline Committee under Rule 4-29 *[Conditional admission]*.

(2) Despite subrules (1) and (3), but subject to Rule 4-47 *[Public notice of suspension or disbarment]*, ~~The~~ the Executive Director ~~may~~ must not ~~publish and circulate to the profession a summary of~~ make public any decision, reasons ~~and~~ or action taken ~~not enumerated in subrule (1), other than~~ as follows:

(a) a decision not to accept an admission under Rule ~~4-29 *[Conditional admissions]* or 4-30~~5-6.5 *[Admission and consent to disciplinary action]*~~, or~~;

(b) any decision under Rule 3-10 *[Interim suspension or practice conditions]* or 3-11 *[Medical examination]*~~4-23 (2) *[Interim suspension or practice conditions]*~~.

before the matter is concluded and any prescribed period to initiate an appeal or review has expired.

(3) When a publication is required ~~under subrule (1)~~ or permitted under ~~subrule (2)~~ this rule, the Executive Director may also publish generally all or part of

(a) ~~a summary of the circumstances of the decision, reasons and action taken,~~ [rescinded]

(b) ~~all or part of~~ the written reasons for the decision, ~~or~~

(c) ~~in the case of a conditional admission that is accepted under Rule 4-29 *[Conditional admissions]*, all or part of~~ an agreed statement of facts, or

(d) admissions made in response to a Notice to Admit.

(4) This rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

Anonymous publication

4-49 (1) Except as allowed under this rule, a publication under Rule 4-48 *[Publication of ~~disciplinary action~~discipline decisions]* must identify the respondent.

(2) ~~If~~ The publication of a decision dismissing all allegations in the citation and any subsequent decision in the matter ~~are dismissed by a panel, the publication~~ must not identify the respondent unless

(a) the respondent consents in writing, or

(b) an allegation is held to be proven on a review or appeal.

(3) An individual affected, other than the respondent, may apply to the panel for an order under subrule (4) before the written report on findings of fact and determination is issued or oral reasons are delivered.

(4) On an application under subrule (3) or on its own motion, the panel may order that publication not identify the respondent if

(a) the panel has imposed a disciplinary action that does not include a suspension or disbarment, and

(b) publication of the identity of the respondent could reasonably be expected to identify an individual, other than the respondent, and that individual would suffer serious prejudice as a result.

(5) If a panel orders that a respondent's identity not be disclosed under subrule (4), the panel must state in writing the specific reasons for that decision.

Disclosure of practice restrictions

4-50 (1) When, under this part or Part 4 *[Discipline]* of the Act, a condition or limitation is imposed on the practice of a lawyer or a lawyer is suspended, the Executive Director may disclose the fact that the condition, limitation or suspension applies and the nature of the condition, limitation or suspension.

(2) If a lawyer gives an undertaking that restricts, limits or prohibits the lawyer's practice in one or more areas of law, the Executive Director may disclose the fact that the undertaking was given and its effect on the lawyer's practice.

(3) If the Executive Director discloses the existence of a condition, limitation or suspension under subrule (1) or an undertaking under subrule (2) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition, limitation or suspension ceases to be in force.

(4) Subrule (3) does not apply to a decision of Benchers, a hearing panel or a review board.

Disbarment

4-51 When a lawyer is disbarred, the Executive Director must strike the lawyer's name from the barristers and solicitors' roll.

Conviction

4-52 (1) In this rule, **"offence"** means

(a) an offence that was proceeded with by way of indictment, or

(b) an offence in another jurisdiction that, in the opinion of the Benchers, is equivalent to an offence that may be proceeded with by way of indictment.

(2) If the Discipline Committee is satisfied that a lawyer or former lawyer has been convicted of an offence, the Committee may refer the matter to the Benchers to consider taking action under subrule (3).

(3) Without following the procedure provided for in the Act or these rules, the Benchers may summarily suspend or disbar a lawyer or former lawyer on proof that the lawyer or former lawyer has been convicted of an offence.

Notice

4-53 (1) Before the Benchers proceed under Rule 4-52 *[Conviction]*, the Executive Director must notify the lawyer or former lawyer in writing that

(a) proceedings will be taken under that rule, and

(b) the lawyer or former lawyer may, by a specified date, make written submissions to the Benchers.

(2) The notice referred to in subrule (1) must be served in accordance with Rule 10-1 *[Service and notice]*.

(3) In extraordinary circumstances, the Benchers may proceed without notice to the lawyer or former lawyer under subrule (1).

Summary procedure

4-54 (1) This rule applies to summary proceedings before the Benchers under Rule 4-52 *[Conviction]*.

(2) The Benchers may, in their discretion, hear oral submissions from the lawyer or former lawyer.

(3) Subject to the Act and these rules, the Benchers may determine practice and procedure.

Failure to pay costs or fulfill practice condition

~~5-13~~4-56(1) An applicant or respondent must do the following by the date set by a hearing panel, review board or Committee or extended under Rule 5-12 *[Application to vary ~~certain~~ order~~s~~]*:

(a) pay in full a fine or the amount owing under Rule 5-11 *[Costs of hearings]*;

(b) fulfill a practice condition as imposed under section 21 *[Admission, reinstatement and requalification]*, 22 *[Credentials hearings]*, 27 *[Practice standards]*, 32 *[Financial responsibility*], 38 *[Discipline hearings*] or 47 *[Review on the record]*, as accepted under section 19 *[Applications for enrolment, call and admission, or reinstatement]*, or as varied under these Rules.

(2) If, on December 31, an applicant or respondent is in breach of subrule (1), the Executive Director must not issue to the applicant or respondent a practising certificate or a non-practising or retired membership certificate, and the applicant or respondent is not permitted to engage in the practice of law.

Recovery of money owed to the Society

~~5-14~~4-57(1) A lawyer or former lawyer who is liable to pay the costs of an audit or investigation must pay to the Society the full amount owing by the date set by the Discipline Committee.

(~~1.1~~2) A lawyer who is liable to pay an assessment under Rule 3-80 *[Late filing of trust report]* must pay to the Society the full amount owing by the date specified in that Rule or as set or extended by the Executive Director.

(~~2~~3) A lawyer who has not paid the full amount owing under subrule (1) or (~~1.1~~2) by the date set or extended is in breach of these Rules and, if any part of the amount owing remains unpaid by December 31 following the making of the order, the Executive Director must not issue a practising certificate to the lawyer unless the Benchers order otherwise.

PART 5 – TRIBUNAL, HEARINGS AND APPEALS

Application

5-1 (1) This part applies to

(a) a hearing ~~on~~ of an application for enrolment, call and admission or reinstatement,

(b) a hearing ~~on~~ of a citation, and

(c) unless the context indicates otherwise, a review by a review board of a hearing decision.

(2) In this part, a law firm may act through its designated representative or another lawyer engaged in the practice of law as a member of the law firm.

The Tribunal

Tribunal

5-1.1 (1) The Tribunal comprises

(a) the Tribunal Chair,

(b) hearing panels,

(c) review boards, and

(d) motions adjudicators.

~~5-6~~(~~1~~2) Subject to the Act and these Rules, the ~~panel~~ Tribunal may determine the practice and procedure to be followed at a hearing, review or other proceeding.

Service, filing and communication

5-1.2 (1) The provisions of Rule 10-1 *[Service and notice]* are subject to this rule.

(2) A document to be filed with the Tribunal must be delivered by

(a) leaving it at or sending it by ordinary or registered mail to the Tribunal Office,

(b) sending it by email to the Tribunal Office, subject to size limits set by practice direction, or

(c) sending it by other means permitted under a practice direction.

(3) The parties to a proceeding must inform the Tribunal and every other party of any change of address, regardless of any other notice to the Society.

(4) The Tribunal may use and rely on the address of a respondent or an applicant provided at the outset of proceeding or the most recently received change of address.

(5) All correspondence to the Tribunal or any of its constituent parts must be

(a) sent to the Tribunal Office, and

(b) copied to all parties.

(6) The fact that correspondence is received and accepted by the Tribunal Office does not, for that reason alone, indicate compliance with requests or demands contained in the correspondence.

(7) All correspondence between parties or counsel and with the Tribunal must be respectful and formal to an extent appropriate to the circumstances.

LAW SOCIETY TRIBUNAL RULES 2022

Tribunal Chair

5-1.3 (1) The Benchers must appoint a Bencher as Tribunal Chair.

(2) The Tribunal Chair must not be a member of the Discipline, Credentials or Practice Standards Committee.

(3) The term of office of the Tribunal Chair is two years, beginning and ending January 1 of each even-numbered year.

(4) If the office of Tribunal Chair becomes vacant for any reason, the Benchers must promptly appoint a Bencher to complete the term of office.

(5) The Tribunal Chair may designate another Bencher to fulfill the functions of the Tribunal Chair from time to time.

Practice directions

5-1.4 (1) The Tribunal Chair may issue practice directions that are consistent with the Act and these rules.

(2) A hearing panel or review board is not bound by a practice direction.

(3) Practice directions must be made accessible to the public.

Hearing panels

Appointment of ~~H~~hearing panel~~s~~

5-2 (1) When a hearing is ordered under this part, Part 2, Division 2 *[Admission and Reinstatement]* or Part 4 *[Discipline]*, the Tribunal Chair ~~A panel~~ must appoint a panel consisting of 3 ~~an odd number of~~ persons ~~but, subject to subrule (2), must not consist of one person~~.

~~**5-2 97** (1)~~ When a hearing is ordered under this ~~division,~~part, Part 2, Division 2 *[Admission and Reinstatement]* or Part 4 *[Discipline]*, the ~~President~~Tribunal Chair must appoint a panel ~~in accordance with Rule 5-2 [~~consisting of 3 persons. ~~Hearing panels].~~

Appointment of hearing panel

~~**4-39**~~**5-2** (1) When a ~~citation~~hearing is ~~issued~~ordered under ~~Rule 4-17 (1) *[Direction to issue, expand*~~this part, Part 2, Division 2 *[Admission and Reinstatement]* or ~~*rescind citation*~~Part 4 *[Discipline]*, the ~~President~~Tribunal Chair must ~~establish~~appoint a panel ~~to conduct a hearing, make a determination under Rule 4-43 *[Submissions and determination]* and take action, if appropriate, under Rule 4-44 *[Disciplinary action]*.~~consisting of 3 persons.

(2) ~~A~~ Despite subrules (1) and (3), a panel may consist of one Bencher who is a lawyer if

(a) no facts are in dispute,

(b) the hearing is to consider an admission under Rule ~~4-30~~5-6.5 *[Admission and consent to disciplinary action]*,

(c) the hearing proceeds under Rule ~~4-33~~5-4.5 *[Summary hearing]*,

(d) the hearing is to consider a preliminary question under Rule ~~4-36~~5-4.3 *[Preliminary questions]*, or

(e) it is not otherwise possible, in the opinion of the ~~President~~Tribunal Chair, to convene a panel in a reasonable period of time.

(3) A panel must

(a) be chaired by a lawyer, and

(b) include at least

(i) one Bencher or Life Bencher who is a lawyer, and

(ii) one person who is not a lawyer.

(4) Panel members must be permanent residents of British Columbia over the age of majority.

(5) The chair of a panel who ceases to be a lawyer may, with the consent of the ~~President~~Tribunal Chair, continue to chair the panel, and the panel may complete a hearing already scheduled or begun.

(5.1) If a member of a panel ceases to be a Bencher and does not become a Life Bencher, the panel may, with the consent of the ~~President~~Tribunal Chair, complete a hearing already scheduled or begun.

(6) Two or more panels may proceed with separate matters at the same time.

(7) The ~~President~~ Tribunal Chair may refer a matter that is before a panel to another panel, fill a vacancy on a panel or terminate an appointment to a panel.

(8) Unless otherwise provided in the Act and these Rules, a panel must decide any matter by a majority, and the decision of the majority is the decision of the panel.

Panel member unable to continue

5-3 (1) Despite Rule 5-2 *[Hearing panels]*, if a member of a hearing panel cannot, for any reason, complete a hearing that has begun, the ~~President~~ Tribunal Chair may order that the panel continue with the remaining members.

(2) If the chair of a hearing panel cannot, for any reason, complete a hearing that has begun, the ~~President~~ Tribunal Chair may appoint another member of the hearing panel who is a lawyer as chair of the hearing panel.

Disqualification

5-4 (1) The following persons must not participate in a panel hearing a citation:

(a) a person who participated in the decision that authorized issuing the citation;

(b) a ~~Bencher who~~member of an interim action board that made an order under Rule 3-10 *[~~Interim suspension or practice conditions~~Extraordinary action to protect public]*~~,~~ or 3-11 *[Medical examination]* ~~or 4-23 [Interim suspension or practice conditions]~~ regarding a matter forming the basis of the citation;

(c) a member of a panel that heard an application under Rule ~~4-26~~3-12.3 *[Review of interim suspension or practice conditions]* to rescind or vary an interim suspension or practice condition or limitation in respect of a matter forming the basis of the citation.

(2) A person who participated in the decision to order the hearing ~~on~~ of an application for enrolment as an articled student, for call and admission or for reinstatement must not participate in the panel on that hearing.

(3) A person must not appear as counsel for any party for three years after

(a) serving as a Bencher, or

(b) the completion of a hearing in which the person was a member of the panel.

Practice and procedure before a hearing panel

Hearing date and notice

5-4.1~~2-91~~ (1~~.1~~) The date, time and place for the hearing to begin must be set

(a) by agreement between ~~counsel for the Society and the applicant~~the parties, or

(b) on the application of a party, by the ~~President~~Tribunal Chair or by the motions adjudicator ~~Bencher~~ presiding at a pre-hearing conference.

(~~1.~~2) When a date is set under subrule (1~~.1~~) (b), the ~~President~~Tribunal must notify the parties in writing of the date, time and place of the hearing~~.~~ at least 30 days before the date set for the hearing to begin, unless the applicant or respondent consents to a shorter notice period.

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Hearing date and notice~~Notice of hearing~~

5~~-~~4~~ 32~~.1(1) The date, time and place for the hearing to begin must be set

(a) by agreement between ~~discipline counsel and~~ the ~~respondent~~parties, or

(b) on the application of a party, by the ~~President~~Tribunal Chair or by the motions adjudicator ~~Bencher~~ presiding at a pre-hearing conference.

(2) When a date is set under subrule (1~~)~~ (b), the ~~President~~Tribunal must notify the parties in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the applicant or respondent consents to a shorter notice period.

(3) Written ~~notification~~ notice under subrule (2) may be made at the same time that the citation is served under Rule 4-19 *[Notice of citation]*, or at a later time.

Amending an allegation in a citation

5~~-~~4.~~ 21~~2(1) ~~Discipline~~ Law Society counsel may amend an allegation contained in a citation

(a) before the hearing begins, by giving written notice to the respondent and the ~~President~~Tribunal, and

(b) after the hearing has begun, with the consent of the respondent.

(2) The panel may amend a citation after the hearing has begun

(a) on the application of a party, or

(b) on its own motion.

(3) The panel must not amend a citation under subrule (2) unless ~~the respondent and discipline counsel have~~ each party has been given the opportunity to make submissions respecting the proposed amendment.

Preliminary questions

~~2-94~~**5-4.3**(1) Before a hearing begins, ~~the applicant or counsel for the Society~~ any party may apply for the determination of a question relevant to the hearing by ~~delivering to~~filing with the ~~President~~Tribunal~~,~~ and delivering to the other party, written notice setting out the substance of the application and the grounds for it.

(2~~) [rescinded]~~

~~(~~3) When an application is made under subrule (1), the ~~President~~Tribunal Chair must do one of the following as appears to the ~~President~~Tribunal Chair to be appropriate:

(a) appoint a panel to determine the question;

(b) refer the question to a ~~pre-hearing conference~~motions adjudicator;

(c) refer the question to the panel at the hearing of the application.

~~(4) The President may designate another Bencher to exercise the discretion under subrule (3).~~

~~(5~~ (3)A panel appointed under subrule (~~3~~2) (a) is not seized of the application or any question pertaining to the application other than that referred under that provision.

Preliminary questions

5~~-4 36~~.3(1) Before a hearing begins, ~~the respondent or discipline counsel~~ any party may apply for the determination of a question relevant to the hearing by ~~delivering to~~filing with the ~~President~~Tribunal and delivering to the other party, written notice setting out the substance of the application and the grounds for it~~,~~.

(2~~) [rescinded]~~

~~(3~~) When an application is made under subrule (1), the ~~President~~Tribunal Chair must do one of the following as appears to the ~~President~~Tribunal Chair to be appropriate:

(a) appoint a panel to determine the question;

(b) refer the question to a ~~pre-hearing conference~~motions adjudicator;

(c) refer the question to the panel at the hearing of the ~~citation~~application.

~~(4) The President may designate another Bencher to exercise the discretion under subrule~~ (3~~).~~

~~(5~~) A panel appointed under subrule (3) (a) is not seized of the ~~citation~~application or any question pertaining to the ~~citation~~application other than that referred under that provision.

Severance and joinder

5~~-4 22~~.4(1) Before a hearing begins, ~~the respondent or discipline counsel~~any party may apply in writing to the ~~President~~Tribunal for an order that

(a) one or more allegations in a citation be determined in a separate hearing from other allegations in the same citation, or

(b) two or more citations be determined in one hearing.

(2) An application under subrule (1) must

(a) be copied to the party not making the application, and

(b) state the grounds for the order sought.

(3) When an application is made under this rule, the Tribunal Chair must designate a motions adjudicator to make a determination.

(4) The ~~President~~ motions adjudicator designated under subrule (3)

(a) must consider the submissions of the parties,

(b) may require a pre-hearing conference before making a determination, and

~~(a)~~ (c) must dismiss the application or allow the application, with or without conditions~~;~~.

~~(b) designate another Bencher to make a determination, or~~

~~(c) refer the application to a pre-hearing conference.~~

Summary hearing

5-4 ~~33~~.5(1) This rule may be applied in respect of the hearing of a citation comprising only allegations that the respondent has done one or more of the following:

(a) breached a rule;

(b) breached an undertaking given to the Society;

(c) failed to respond to a communication from the Society;

(d) breached an order made under the Act or these rules.

(2) Unless the panel orders otherwise, the ~~respondent and discipline counsel~~parties may adduce evidence by

(a) affidavit,

(b) an agreed statement of facts, or

(c) an admission made or deemed to be made under Rule ~~4-28~~5-4.8 *[Notice to admit]*.

(3) Despite Rules ~~4-43~~5-6.3 *[Submissions and determination]* and ~~4-44~~5-6.4 *[Disciplinary action]*, the panel may consider facts, determination, disciplinary action and costs and issue a decision respecting all aspects of the proceeding.

Demand for disclosure of evidence

5-4 ~~34~~.6(1) At any time after a citation has been issued and before the hearing begins, a respondent may demand in writing that ~~discipline~~ Law Society counsel disclose the evidence that the Society intends to introduce at the hearing.

(2) On receipt of a demand for disclosure under subrule (1), ~~discipline~~ Law Society counsel must provide the following to the respondent by a reasonable time before the beginning of the hearing:

(a) a copy of every document that the Society intends to tender in evidence;

(b) a copy of any statement made by a person whom the Society intends to call as a witness;

(c) if documents provided under paragraphs (a) and (b) do not provide enough information, a summary of the evidence that the Society intends to introduce;

(d) a summary of any other relevant evidence in ~~discipline~~ Law Society counsel's possession or in a Society file available to ~~discipline~~ counsel, whether or not counsel intends to introduce that evidence at the hearing.

(3) Despite subrule (2), ~~discipline~~ Law Society counsel must not provide any information or documents about any discussion or other communication with the Ombudsperson in that capacity.

Application for details of the circumstances

5-4-~~35~~.7(1) Before a hearing begins, the respondent may apply for disclosure of the details of the circumstances of misconduct alleged in a citation by ~~delivering to~~filing with the ~~President~~Tribunal and ~~discipline~~ delivering to Law Society counsel written notice setting out the substance of the application and the grounds for it.

(2) ~~[rescinded]~~

~~(3)~~ If ~~the President~~a motions adjudicator is satisfied that an allegation in the citation does not contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proven and to identify the transaction referred to, the ~~President~~motions adjudicator must order ~~discipline~~ Law Society counsel to disclose further details of the circumstances.

(~~4~~3) Details of the circumstances disclosed under subrule (~~3~~2) must be

(a) in writing, and

(b) delivered to the respondent or respondent's counsel.

~~(5) The President may~~

~~(a) designate another Bencher to make a determination under subrule (3), or~~

~~(b) refer the application to a pre-hearing conference.~~

Notice to admit

5-4-~~28~~.8(1) At any time, but not less than 45 days before a date set for the hearing of a citation, ~~the respondent or discipline counsel~~a party may request the other party to admit, for the purposes of the hearing only, the truth of a fact or the authenticity of a document.

(2) A request made under subrule (1) must

(a) be made in writing in a document clearly marked "Notice to Admit" and served in accordance with Rule 10-1 *[Service and notice]*, and

(b) include a complete description of the fact, the truth of which is to be admitted, or attach a copy of the document, the authenticity of which is to be admitted.

(3) A party may make more than one request under subrule (1).

(4) A ~~respondent or discipline counsel who~~party that receives a request made under subrule (1) must respond within 21 days by serving a response on the other party in accordance with Rule 10-1 *[Service and notice]*.

(5) The time for response under subrule (4) may be extended by agreement of the parties or by an order under Rule 5-~~4 36~~.3 *[Preliminary questions]* or ~~4 38~~5-5.1 *[Pre-hearing conference]*.

(6) A response under subrule (4) must contain one of the following in respect of each fact described in the request and each document attached to the request:

(a) an admission of the truth of the fact or the authenticity of the document attached to the request;

(b) a statement that the party making the response does not admit the truth of the fact or the authenticity of the document, along with the reasons for not doing so.

(7) If a party who has been served with a request does not respond in accordance with this rule, the party is deemed, for the purposes of the hearing only, to admit the truth of the fact described in the request or the authenticity of the document attached to the request.

(8) If a party does not admit the truth of a fact or the authenticity of a document under this rule, and the truth of the fact or authenticity of the document is proven in the hearing, the panel may consider the refusal when exercising its discretion respecting costs under Rule 5-11 *[Costs of hearings]*.

Compelling witnesses and production of documents

5-5 (1) In this rule **"respondent"** includes a shareholder, director, officer or representative of a respondent law firm.

(2) A panel may

(a) compel the applicant or respondent to give evidence under oath, and

(b) at any time before or during a hearing, order the applicant or respondent to produce all files and records that are in the applicant's or respondent's possession or control that may be relevant to the matters raised by the application or in the citation.

(2.1) A party applying for an order under subrule (2) (a) must give reasonable notice to the applicant or respondent.

~~Evidence of respondent~~

~~**4-42** Discipline counsel must notify the respondent of an application for an order that the respondent give evidence at the hearing.~~

(3) A person who is the subject of an order under subrule (2) (a) may be cross-examined by Law Society counsel ~~representing the Society~~.

(4) A party to a proceeding under the Act and these Rules may prepare and serve a summons requiring a person to attend an oral or electronic hearing to give evidence in the form prescribed in Schedule 5 *[Form of Summons]*.

~~2 95~~ (~~1~~) 5) Before a hearing begins, ~~the applicant or counsel for the Society~~any party may apply for an order under section 44 (4) *[Witnesses]* by ~~delivering~~ filing with the Tribunal and delivering to the other party written notice setting out the substance of the application and the grounds for it ~~to the President and to the other party~~.

~~4 37~~(~~1~~ (5)Before a hearing begins, ~~the~~ any party ~~respondent or discipline counsel~~ may apply for an order under section 44 (4) *[Witnesses]* by ~~delivering to the President and to the other party~~ filing with the Tribunal and delivering to the other party written notice setting out the substance of the application and the grounds for it.

~~(2) [rescinded]~~

(~~3) When an application is made under subrule (1), after~~6) After considering any submissions of ~~counsel~~the parties, ~~the President~~a motions adjudicator must

(a) make the order requested or another order consistent with section 44 (4) *[Witnesses]*, or

(b) refuse the application.

~~(4) The President may designate another Bencher to make a decision under subrule (3).~~

~~4 37~~(3) ~~When an application is made under subrule (1), after~~(6) After considering any submissions~~, the President~~ of the parties, a motions adjudicator must

(a) make the order requested or another order consistent with section 44 (4) *[Witnesses]*, or

(b) refuse the application.

(~~4) The President may designate another Bencher to make a decision under subrule (3).~~

(~~5~~7) On the motion of ~~the applicant or counsel for the Society~~any party, the ~~President or another~~motions adjudicator ~~Bencher designated by the President~~ may apply to the Supreme Court under section 44 (5) *[Witnesses]* to enforce an order made under subrule (~~3~~6).

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(4-37(57) On the motion of the respondent or discipline counsel, the President or another Bencher designated by the Presidentany party, the motions adjudicator may apply to the Supreme Court under section 44 (5) *[Witnesses]* to enforce an order made under subrule (36).

Pre-hearing conference

2-96(5-5.1) At the (1) With or without a request offrom the applicant or counsel for the Societyany party, or on the President's own initiative, the PresidentTribunal Chair may order a pre-hearing conference at any time before a hearing ordered under this division commences.begins.

4-38(5-5.1) The President (1) With or without a request from any party, the Tribunal Chair may order a pre-hearing conference at any time before thea hearing of a citation begins, at the request of the respondent or discipline counsel, or on the President's own initiative.,

2-96 (2) When a conference has been ordered under subrule (1), the PresidentTribunal Chair must

(a) set the date, time and place of the conference, and

(b) designate a motions adjudicator Bencher to preside at the conference.

4-38 (2) When the President orders a conference has been ordered under subrule (1), the PresidentTribunal Chair must

(a) set the date, time and place of the conference, and notify the parties, and

(b) designate a motions adjudicator Bencher to preside at the conference.

2-96 (3) Law Society Ccounsel for the Society, and the applicant or applicant's counsel or both, must be present at the conference.

4-38 (4) Discipline counsel (3) Law Society counsel and the applicant or applicant's counsel or both, must be present at the conference.

4-38 (5) The4) A respondent may attend the conference in person, through counsel or both.

2-96 (65) If the respondent fails to attend the conference, the motions adjudicator Bencher presiding may proceed with the conference in the absence of the respondent and may make any order under this rule, if the motions adjudicator Bencher is satisfied that the respondent had notice of the conference.

2-96 (6) Any person may 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 subrule (3).this rule.

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4-38 (7) The Bencher presiding at a pre-hearing conference may allow any person to (6) Any person may 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.

2-96 (57) The conference mustmay consider any matters that may aid in the fair and expeditious disposition of the matter, including but not limited to

(a) setting a date for the possibilityhearing,

(b) simplification of agreement onthe issues,

(c) admissions or an agreed statement of facts in,

(d) amendments to the citation,

(e) any matter for which the motions adjudicator may make an order to facilitate the hearing, under this rule,

(b) the discovery (f) conducting all or part of the hearing in written form or by video conference or teleconference,

(g) disclosure and production of documents,

(c (h) agreement for the hearing panel to receive and consider documents or evidence under Rule 5-6.1 (3) (e) *[Preliminary matters]*,

(i) the possibility that privilege or confidentiality might require thatclosure of all or part of the hearing be closed to the public, or thatexclusion of exhibits and other evidence be excluded from public access,

(d) setting a date for the hearing,

(ej) any application by counsel for the Society to withhold the identity or locating particulars of a witness, and

(fk) any other matters that may aid in the disposition of the applicationmatter.

4-38 (87) The conference may consider any matters that may aid in the fair and expeditious disposition of the citationmatter, including but not limited to

(a) setting a date for the hearing,

(b) simplification of the issues,

(b) amendments to the citation,

(b.1) any matter for which the Bencher may make an order under subrule (10),

(b.2) conducting all or part of the hearing in written form,

(c) admissions or an agreed statement of facts,

(d) amendments to the citation,

(e) any matter for which the motions adjudicator may make an order under this rule,

(f) conducting all or part of the hearing in written form or by video conference or teleconference,

(g) disclosure and production of documents,

(d.1h) agreement for the hearing panel to receive and consider documents or evidence under Rule 4-415-6.1 (3) (e) *[Preliminary matters]*, and

(ei) the possibility that privilege or confidentiality might require closure of all or part of the hearing to the public, or exclusion of exhibits and other evidence from public access., and

(f) and (g) [rescinded]

(9 (j) any application to withhold the identity or locating particulars of a witness, and

(k) any other matters that may aid in the disposition of the matter.

2-96 (6 (8)The motions adjudicator Bencher presiding at a pre-hearing conference may

(a) adjourn thea pre-hearing conference generally or to a specified date, time and place,

(b) order discovery and production of documents,

(c) set a date for the hearing, and

(d) allow or dismiss an application under subrule (5) (f).

4-38 (8) The respondent or discipline counsel may apply to the motions adjudicator Bencher presiding at the may

(a) adjourn a pre-hearing conference for an generally or to a specified date, time and place,

(b) order discovery and production of documents,

(a) [rescinded]

(b (c) set a date for the hearing, and

(d) allow or dismiss an application under subrule (5) (f).

4-38 (9) A party may apply to the motions adjudicator for an order

(a) to withhold the identity or contact information of a witness,

(eb) to adjourn the hearing of the citation,

(dc) for severance of allegations or joinder of citations under Rule 4-225-4.4 *[Severance and joinder]*,

(ed) for disclosure of the details of the circumstances of misconduct alleged in a citation under Rule 4-355-4.7 *[Application for details of the circumstances]*,

(e.1) that the motions adjudicator Bencher may make under subrule (10), or

(f) concerning any other matters that may aid in the fair and expeditious disposition of the citation.

~~4.38~~ (10) The motions adjudicator ~~Bencher presiding at a pre-hearing conference~~ may, on the application of a party or on the motions adjudicator's ~~Bencher's~~ own motion, make an order that, in the judgment of the motions adjudicator~~Bencher~~, will aid in the fair and expeditious disposition of the ~~citation~~matter, including but not limited to orders

(a) adjourning the conference generally or to a specified date, time and place,

(b) setting a date for the hearing to begin,

(c) allowing or dismissing an application made under subrule (9) or referred to the conference ~~under this part~~by the Tribunal Chair,

(d) specifying the number of days to be scheduled for the hearing,

(e) establishing a timeline for the proceeding including, but not limited to, setting deadlines for the completion of procedures and a plan for the conduct of the hearing,

(f) directing a party to provide a witness list and a summary of evidence that the party expects that any or all of the witnesses will give at the hearing,

(g) respecting expert witnesses, including but not limited to orders

(i) limiting the issues on which expert evidence may be admitted or the number of experts that may give evidence,

(ii) requiring the parties' experts to confer before service of their reports, or

(iii) setting a date by which an expert's report must be served on a party, or

(h) respecting the conduct of any application, including but not limited to allowing submissions in writing.

~~4.38~~ (11) If an order made under this rule affects the conduct of the hearing ~~on the citation~~, the hearing panel may rescind or vary the order on the application of a party or on the hearing panel's own motion.

Adjournment ~~of hearing~~

~~5-5.~~**2** ~~98~~(1) Before a hearing ~~commences, the applicant or counsel~~begins, a party may apply for ~~the Society may request~~an order that the hearing be adjourned by ~~delivering~~ filing with the Tribunal and delivering to the other party written notice setting out the reasons for the ~~request to the President and to the other party~~application.

(2) ~~[rescinded]~~

~~(3)~~ Before a hearing ~~commences, the President~~begins, a motions adjudicator must decide whether to grant the adjournment, with or without conditions, and advise the parties accordingly.

~~(4) The President may designate another Bencher to make a determination under subrule (3).~~

~~(5)~~ After a hearing has ~~commenced~~begun, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

(4) Rule 5-4.1 (2) *[Hearing date and notice]* does not apply when a hearing is adjourned and re-set for another date.

Adjournment

~~4-40~~**5-5.2**(1) Before a hearing begins, ~~the respondent or discipline counsel~~ a party may apply for an order that the hearing be adjourned by filing with the Tribunal and delivering to the ~~President and the~~ other party written notice setting out the ~~grounds~~reasons for the application.

(2~~) [rescinded]~~

~~(3)~~ Before ~~the~~a hearing begins, ~~the President~~ a motions adjudicator must decide whether to grant the adjournment, with or without conditions, and ~~must notify~~advise the parties accordingly.

~~(4) The President may~~

~~(a) designate another Bencher to make a determination under subrule (3), or~~

~~(b) refer the application to a pre-hearing conference.~~

~~(5)~~ After a hearing has begun, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

(~~7~~4) Rule ~~4-32 *[Notice of hearing*~~5-4.1 (2) *[Hearing date and notice]* does not apply when a hearing is adjourned and re-set for another date.

(5) When a hearing is adjourned under Rule 2-92 (5) *[Security for costs]*, Law Society Counsel must file a notice with the Tribunal and deliver a copy to the applicant.

~~2-101(2)~~**Application moot**

5-5.3 If the circumstances of the applicant have changed so as to make the outcome of the hearing moot, after hearing submissions on behalf of the ~~Society and the applicant~~parties, the panel may do one of the following:

(a) adjourn the hearing generally;

(b) reject the application;

(c) ~~commence~~begin or continue with the hearing.

Procedure

5-6 (1) [5-1.1(2)]

(2) If ~~Before~~ a court reporter ~~begins reporting~~ is employed to record the proceedings of a hearing, the chair of the panel must ensure that the reporter first takes an oath or makes a solemn affirmation to faithfully and accurately report and transcribe the proceedings.

(2~~-99~~.1) Unless the chair of the panel otherwise orders, ~~the~~an applicant must personally attend the entire hearing.

(2.2) If a respondent fails to attend or remain in attendance at a hearing, the panel may proceed under section 42 *[Failure to attend]*.

(3) The ~~applicant, respondent or counsel for the Society~~parties may call witnesses to testify.

(4) All witnesses, including an applicant or respondent ordered to give evidence under section 41 (2) (a) *[Panels]*,

(a) must take an oath or make a solemn affirmation, if competent to do so, before testifying, and

(b) are subject to cross-examination.

(5) The panel may make inquiries of a witness as it considers desirable.

(6) The hearing panel may accept any of the following as evidence:

(a) an agreed statement of facts;

(b) oral evidence;

(c) affidavit evidence;

(d) evidence tendered in a form agreed to by the respondent or applicant and Law Society counsel;

(e) an admission made or deemed to be made under Rule 5-4.8~~4-28~~ *[Notice to admit]*;

(f) any other evidence it considers appropriate.

Preliminary matters

~~4-41~~**5-6.1**(1) Before hearing any evidence on the allegations set out in ~~the~~ a citation, the panel must determine whether

(a) the citation was served in accordance with Rule 4-19 *[Notice of citation]*, or

(b) the respondent waives any of the requirements of Rule 4-19.

(2) If the requirements of Rule 4-19 *[Notice of citation]* have been met, or have been waived by the respondent, the citation or a copy of it must be filed as an exhibit at the hearing, and the hearing may proceed.

(3) Despite subrule (1), before the hearing begins, the panel may receive and consider

(a) the citation,

(b) an agreed statement of facts,

(c) an admission made or deemed to be made under Rule ~~4-28~~5-4.8 *[Notice to admit]*,

(d) the respondent's admission of a discipline violation and consent to a specified disciplinary action submitted jointly by ~~discipline counsel and the respondent~~the parties under Rule ~~4-30~~5-6.5 *[Admission and consent to disciplinary action]*, and

(e) any other document or evidence by agreement of the parties.

~~Onus and burden~~Burden of proof

5-6.2 ~~100~~ ~~(1)~~ At a hearing ordered under ~~this division,~~Part 2, Division 2 [Admission and Reinstatement], the onus is on the applicant to satisfy the panel on the balance of probabilities that the applicant has met the requirements of section 19 (1) *[Applications for enrolment, call and admission, or reinstatement]* and ~~this~~that division.

~~Procedure~~ Submissions and determination

~~2-101~~**5-6.3**(1) Following completion of the evidence, the panel must invite the ~~applicant and counsel for the Society~~ parties to make submissions on the issues to be decided by the panel.

~~4-43~~ (1) Following completion of the evidence, the panel must invite ~~submissions from discipline counsel and~~ the ~~respondent~~ parties to make submissions on ~~each allegation in the citation~~the issues to be decided by the panel.

(~~3~~2) After ~~hearing~~ submissions under subrule (1), the panel must ~~determine~~find the facts and

(a) make a determination on each allegation in a citation, or

(b) decide whether to

(~~a~~i) grant the application

(~~b~~ii) grant the application subject to conditions or limitations that the panel considers appropriate, or

(~~c~~iii) reject the application.

~~4-43~~ (2) After submissions under subrule (1), the panel must

~~(a)~~ find the facts and

(a) make a determination on each allegation~~, and~~ in a citation, or

(b) decide whether to

(i) grant the application

(ii) grant the application subject to conditions or limitations that the panel considers appropriate, or

(iii) reject the application.

~~2-100~~(3) A panel must reject an application for enrolment if it considers that the applicant's qualifications referred to in Rule 2-54 (2) *[Enrolment in the admission program]* are deficient.

~~2-101~~ (4) The panel must prepare written reasons for its findings.

(5) A copy of the panel's reasons prepared under subrule (~~4~~3) must be delivered promptly to ~~the applicant and counsel for the Society~~each party.

~~4-43~~ (4) The panel must prepare written reasons for its findings ~~on each allegation~~.

(~~3~~5) A copy of the panel's reasons prepared under subrule (~~2) (b~~3) must be delivered promptly to each party.

Disciplinary action

5-6.4 ~~4-44~~(1) Following a determination under Rule ~~4-43~~5-6.3 *[Submissions and determination]* adverse to the respondent, the panel must

(a) invite the ~~respondent and discipline counsel~~parties to make submissions as to disciplinary action,

(b) take one or more of the actions referred to in section 38 (5) to (7) *[Discipline hearings]*,

(c) include in its decision under this rule

(i) any order, declaration or imposition of conditions under section 38(7), and

(ii) any order under Rule 5-11 *[Costs of hearings]* on the costs of the hearing, including any order respecting time to pay,

(d) prepare a written record, with reasons, of its action taken under paragraph (b) and any action taken under paragraph (c),

(e) if it imposes a fine, set the date by which payment to the Society must be completed, and

(f) if it imposes conditions on the respondent's practice, set the date by which the conditions must be fulfilled.

(2) A panel may proceed under subrule (1) before written reasons are prepared under Rule ~~4-43~~5-6.3 (2) (b) *[Submissions and determination]*

(a) if the panel gives reasons orally for its decision under Rule ~~4-43~~5-6.3 (2) (a), or

(b) when the panel accepts an admission jointly submitted by ~~discipline counsel and~~ the ~~respondent~~ parties under Rule ~~4-30~~5-6.5 *[Admission and consent to disciplinary action]*.

(3) Despite subrule (1) (b), if the respondent is a member of another governing body and not a member of the Society, the panel may do one or more of the following:

(a) reprimand the respondent;

(b) fine the respondent an amount not exceeding $50,000;

(c) prohibit the respondent from practising law in British Columbia permanently or for a specified period of time;

(d) declare that, had the respondent been a member of the Society, the panel would have

(i) disbarred the respondent,

(ii) suspended the respondent, or

(iii) imposed conditions or limitations on the practice of the respondent.

(4) A copy of the panel's reasons prepared under subrule (1) (d) must be delivered promptly to each party.

(5) The panel may consider the professional conduct record of the respondent in determining a disciplinary action under this rule.

(6) Regardless of the nature of the allegation in the citation, the panel may take disciplinary action based on the ungovernability of the respondent by the Society.

(7) The panel must not take disciplinary action under subrule (6) unless the respondent has been given at least 30 ~~days~~days' notice that ungovernability may be raised as an issue at the hearing on disciplinary action.

(8) The panel may adjourn the hearing on disciplinary action to allow compliance with the notice period in subrule (7).

Admission and consent to disciplinary action

~~**4-30**~~**5-6.5**(1) ~~Discipline counsel and the respondent~~The parties may jointly submit to the hearing panel an agreed statement of facts and the respondent's admission of a discipline violation and consent to a specified disciplinary action.

(2~~) to (4) [rescinded]~~

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

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

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

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

(~~6~~3) The panel must not impose disciplinary action under subrule (~~5~~2) (b) that is different from the specified disciplinary action consented to by the respondent unless

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

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

(~~7~~4) An admission of conduct tendered in good faith by a lawyer during negotiation that does not result in a joint submission under subrule (1) is not admissible in a hearing of the citation.

Rejection of admission~~s~~

~~4-31~~**5-6.6**(1) A conditional admission tendered under Rule 4-29 *[Conditional admission~~s~~]* must not be used against the respondent in any proceeding ~~under this part or Part 5 *[Hearings and Appeals]* ~~unless the admission is accepted by the Discipline Committee.

(2) An admission tendered under Rule ~~4-30~~5-6.5 *[Admission and consent to disciplinary action]* must not be used against the respondent in any proceeding ~~under this part or Part 5 ~~unless the hearing panel accepts the admission and imposes disciplinary action.

Communication with Ombudsperson confidential

5-7 [10-2.1]

Public hearing

5-8 (1) Every hearing is open to the public, but the panel or review board may exclude some or all members of the public.

(1.1) The panel or review board must not make an order under subrule (1) unless, in the judgment of the panel or review board

(a) the public interest or the interest of an individual in the order outweighs the public interest in the principle of open hearings in the present case, or

(b) the order is required to protect the safety of an individual.

(2) On application by anyone, or on its own motion, the panel or review board may make the following orders to protect the interests of any person:

(a) an order that specific information not be disclosed despite Rule 5-9 (2) *[Transcript and exhibits]*;

(b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).

(3) Despite the exclusion of the public under subrule (1) in a hearing ~~on~~ of a citation, the complainant and one other person chosen by the complainant may remain in attendance during the hearing, unless the panel orders otherwise.

(4) Except as required under Rule 5-9 *[Transcript and exhibits]*, when a hearing is in progress, no one is permitted to possess or operate any device for photographing, recording or broadcasting in the hearing room without the permission of the panel or review board, which the panel or review board in its discretion may refuse or grant, with or without conditions or restrictions.

(5) When a panel or review board makes an order or declines to make an order under this rule, the panel or review board must give written reasons for its decision.

Transcript and exhibits

5-9 (1) All proceedings at a hearing must be recorded by a court reporter or by other means.

(2) Subject to the Act, these rules and the *Freedom of Information and Protection of Privacy Act*, any person may obtain, at the person's own expense, a copy of

(a) a transcript of any part of the hearing that is open to the public, or

(b) an exhibit entered in evidence when a hearing is open to the public.

(3) This rule must not be interpreted to permit the disclosure of any information, files or records that are confidential or subject to a solicitor client privilege.

Decision

5-10 (1) A decision of a hearing panel is made by majority vote.

(2) On request, the Executive Director must disclose a panel's written reasons for its decision, subject to the protection of solicitor and client privilege and confidentiality.

(3) When a hearing panel gives written reasons for its decision, it must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.

LAW SOCIETY TRIBUNAL RULES 2022

Costs of hearings

5-11 (1) A panel may order that an applicant or respondent pay the costs of a hearing referred to in Rule 5-1 *[Application]*, and may set a time for payment.

(2) A review board may order that an applicant or respondent pay the costs of a review under section 47 *[Review on the record]*, and may set a time for payment.

(3) Subject to subrule (4), the panel or review board must have regard to the tariff of costs in Schedule 4 *[Tariff for hearing and review costs]* to these Rules in calculating the costs payable by an applicant, a respondent or the Society.

(4) A panel or review board may order that the Society, an applicant or a respondent recover no costs or costs in an amount other than that permitted by the tariff in Schedule 4 *[Tariff for hearing and review costs]* if, in the judgment of the panel or review board, it is reasonable and appropriate to so order.

(5) The cost of disbursements that are reasonably incurred may be added to costs payable under this r~~R~~ule.

(6) In the tariff in Schedule 4 *[Tariff for hearing and review costs]*,

(a) one day of hearing includes a day in which the hearing or proceeding takes 2 and one-half hours or more, and

(b) for a day that includes less than 2 and one-half hours of hearing, one-half the number of units or amount payable applies.

(7) If no adverse finding is made against the applicant, the panel or review board has the discretion to direct that the applicant be awarded costs.

(8) If the citation is dismissed or rescinded after the hearing has begun, the panel or review board has the discretion to direct that the respondent be awarded costs in accordance with subrules (3) to (6).

(9) Costs deposited under Rule 2-92 *[Security for costs]* must be applied to costs ordered under this ~~Rule~~rule.

(10) An applicant must not be enrolled, called and admitted or reinstated until the costs ordered under this r~~R~~ule or the Act are paid in full.

(11) As an exception to subrule (10), the Credentials Committee may direct that an applicant be enrolled, called and admitted or reinstated even though costs ordered under this rule have not been paid in full and may make the direction subject to any conditions that the Committee finds appropriate.

LAW SOCIETY TRIBUNAL RULES 2022

Application to vary ~~certain~~ order~~s~~

5-12 (1) A party~~An applicant or respondent~~ may apply in writing to the ~~President~~ Tribunal for

(a) an extension of time

(i) to pay a fine or the amount owing under Rule 5-11 *[Costs of hearings]*, or

(ii) to fulfill a condition imposed under section 22 *[Credentials hearings]*, 38 *[Discipline hearings]*, or 47 *[Review on the record]*,

(b) a variation of a condition referred to in paragraph (a) (ii), ~~or~~

(c) a change in the start date for a suspension imposed under section 38 ~~*[Discipline hearings]*~~ or 47 ~~*[Review on the record]*~~, or

(d) a variation or rescission of another order that has not been fully executed or fulfilled.

(2) ~~-~~An application under subrule (1) (c) must be made at least 7 days before the start date set for the suspension.

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

(4) The ~~President~~ Tribunal Chair must refer an application under subrule (1) or (2.1) to one of the following, as may, in the ~~President's~~ discretion of the Tribunal Chair, appear appropriate:

(a) the same panel or review board that made the order;

(b) a new panel;

(c) ~~the Discipline Committee;~~a motions adjudicator

~~(d) the Credentials Committee~~.

(5) The panel, review board or ~~Committee~~ motions adjudicator that hears an application under subrule (1) must

(a) dismiss the application,

(b) extend to a specified date the time for payment,

(c) vary the conditions imposed, or extend to a specified date the fulfillment of the conditions, ~~or~~

(d) specify a new date for the start of a period of suspension imposed under section 38 *[Discipline hearings]* or 47 *[Review on the record]*, or

(e) grant the variation or rescission applied for or as otherwise appears appropriate to the panel, review board or motions adjudicator.

(5.1) The panel, review board or ~~Committee~~ motions adjudicator that decides an application under subrule (2.1) must

(a) dismiss the application,

(b) rescind the order, or

(c) vary the order to one that the original panel or review board was permitted to make under Rule 5-8 (2) (a) *[Public hearing]*.

(6) ~~If, in the view of the President and the chair of the Committee to which an application is referred under subrule (4) (c) or (d), there is a need to act on the application before a meeting of the Committee can be arranged, the chair of the Committee may hear the application and make the determination under subrule (5).~~[rescinded]

(7) An application under this rule does not stay the order that the applicant seeks to vary.

Failure to pay costs or fulfill practice condition

5-13 [4-56]

Recovery of money owed to the Society

5-14 [4-57]

~~Reviews and appeals~~

The review board

Review by review board

5-15 (1) In Rules 5-15 to 5-28, **"review"** means a review of a hearing panel decision by a review board under section 47 *[Review on the record]*.

(2) ~~Subject to the Act and these Rules, a review board may determine the practice and procedure to be followed at a review.~~[rescinded]

(2.1) Rule 5-4.3 *[Preliminary questions]* applies, with any necessary changes, to an application by a party to a review for the determination of a question relevant to the review.

(3) Delivery of documents to a respondent or applicant under Rules 5-15 to 5-28 may be effected by delivery to counsel representing the respondent or the applicant.

(4) If the review board finds that there are special circumstances and hears evidence under section 47 (4) *[Review on the record]*, the Rules that apply to the hearing of evidence before a hearing panel apply.

LAW SOCIETY TRIBUNAL RULES 2022

Review boards

5-16 (1) When a review is initiated under Rule 5-19 *[Initiating a review]*, the ~~President~~ Tribunal Chair must establish a review board consisting of

(a) an odd number of persons, and

(b) more persons than the hearing panel that made the decision under review.

(2) A review board must be chaired by a Bencher who is a lawyer.

(3) Review board members must be permanent residents of British Columbia over the age of majority.

(4) The chair of a review board who ceases to be a lawyer may, with the consent of the ~~President~~Tribunal Chair, continue to chair the review board, and the review board may complete any hearing or hearings already scheduled or begun.

(5) Two or more review boards may proceed with separate matters at the same time.

(6) The ~~President~~ Tribunal Chair may refer a matter that is before a review board to another review board, fill a vacancy on a review board or terminate an appointment to a review board.

(7) Unless otherwise provided in the Act and these Rules, a review board must decide any matter by a majority, and the decision of the majority is the decision of the review board.

Disqualification

5-17 The following must not participate in a review board reviewing the decision of a hearing panel:

(a) a member of the hearing panel;

(b) a person who was disqualified under Rule 5-4 *[Disqualification]* from participation in the hearing panel.

Review board member unable to continue

5-18 (1) Despite Rule 5-16 *[Review boards]*, if a member of a review board cannot, for any reason, complete a review that has begun, the ~~President~~ Tribunal Chair may order that the review board continue with the remaining members, whether or not the board consists of an odd number of persons.

(2) If the chair of a review board cannot, for any reason, complete a review that has begun, the ~~President~~ Tribunal Chair may appoint another member of the review board who is a lawyer as chair of the review board.

LAW SOCIETY TRIBUNAL RULES 2022

Practice and procedure before a review board

Initiating a review

5-19 (1) Within 30 days after being notified of the decision of the panel in a credentials hearing, the applicant may initiate a review by filing with the Tribunal and delivering ~~a notice of review to the President and~~ Law Society counsel ~~representing the Society~~ a notice of review.

(2) Within 30 days after being notified of the decision of a panel under Rule ~~4-44~~5-6.4 *[Disciplinary action]* or 5-11 *[Costs of hearings]*, the respondent may initiate a review by filing with the Tribunal and delivering ~~a notice of review to the President and discipline~~ Law Society counsel a notice of review.

(3) Within 30 days after a decision of the panel in a credentials hearing, the Credentials Committee may initiate a review by resolution.

(4) Within 30 days after a decision of the panel in a hearing ~~on~~ of a citation, the Discipline Committee may initiate a review by resolution.

(5) When a review is initiated under subrule (3) or (4), ~~counsel acting for the~~Law Society ~~or discipline~~ counsel must promptly file with the Tribunal and deliver ~~a notice of review to the President and the respondent~~other party a notice of review.

(6) Within 30 days after the order of the Practice Standards Committee under Rule 3-25 (1) *[Costs]*, the lawyer concerned may initiate a review by ~~delivering~~ filing a notice of review ~~to~~ with the ~~President~~Tribunal.

Extension of time to initiate a review

5-19.1 (1) A party may apply to the ~~President~~ Tribunal to extend the time within which a review may be initiated under Rule 5-19 *[Initiating a review]* by filing with the Tribunal and delivering to the other party a notice of the application.

(2) When a party makes an application ~~is made~~ under subrule (1), ~~the President~~ a motions adjudicator must

(a) refuse the extension of time, or

(b) grant the extension, with or without conditions or limitations.

(3) [rescinded]~~On an application under this rule, the President may designate another Bencher to make a determination under subrule (2).~~

Stay of order pending review

5-20 (1) When a review is initiated under Rule 5-19 *[Initiating a review]*, the order of the panel or the Practice Standards Committee with respect to costs is stayed.

(2) When the Credentials Committee initiates a review under Rule 5-19 (3) *[Initiating a review]*, an order of the hearing panel to call and admit or reinstate the applicant is stayed.

(3) When a review has been initiated under Rule 5-19 *[Initiating a review]*, any party to the review may apply to the ~~President~~ Tribunal for a stay of any order not referred to in subrule (1) or (2).

(4) ~~The President may designate another~~When an application is made under this rule, a motions adjudicator ~~Bencher to~~ must make a determination under subrule (3).

Notice of review

5-21 A notice of review must contain the following in summary form:

(a) a clear indication of the decision to be reviewed by the review board;

(b) the nature of the order sought;

(c) the issues to be considered on the review.

Record of credentials hearing

5-22 (1) Unless ~~counsel for the applicant and for the Society~~the parties agree otherwise, the record for a review of a credentials decision consists of the following:

(a) the application;

(b) a transcript of the proceedings before the panel;

(c) exhibits admitted in evidence by the panel;

(d) any written arguments or submissions received by the panel;

(e) the panel's written reasons for any decision;

(f) the notice of review.

(2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

Record of discipline hearing

5-23 (1) Unless ~~counsel for the respondent and for the Society~~the parties agree otherwise, the record for a review of a discipline decision consists of the following:

(a) the citation;

(b) a transcript of the proceedings before the panel;

(c) exhibits admitted in evidence by the panel;

(d) any written arguments or submissions received by the panel;

(e) the panel's written reasons for any decision;

(f) the notice of review.

(2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

Record of an order for costs by the Practice Standards Committee

5-24 (1) Unless ~~counsel for the lawyer and for the Society~~the parties agree otherwise, the record for a review of an order for costs under Rule 3-25 *[Costs]* consists of the following:

(a) the order;

(b) all correspondence between the Society and the lawyer relating to the assessment and ordering of costs;

(c) the Committee's written reasons for any decision on costs;

(d) the notice of review.

(2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

Preparation and delivery of record

5-24.1 (1) ~~Within 60 days of delivering a notice of review, the~~ The party initiating ~~the~~ a review must prepare the record for the review in accordance with the relevant rule ~~and~~ .

(1.1) Within 60 days of filing a notice of review, a party must file the record with the Tribunal in the form specified in the relevant practice direction and deliver a

~~(a) 8 copies to the President, and~~

~~(b) 1~~ copy to the other party.

(2) The time for producing the record may be extended by agreement of the parties.

(3) No date may be set for the hearing of a review unless the party initiating the review has delivered all copies of the record required under subrule (1.1).

(4) By ~~delivering to~~filing with the ~~President~~ Tribunal ~~and to the other party~~ written notice setting out the grounds for the application, and delivering a copy to the other party, the party initiating the review may apply for

(a) an extension of time to prepare and deliver the record, or

(b) an order that the Society bear all or part of the cost of obtaining and copying all or part of the record.

(5) When an application is made under subrule (4), ~~the President~~a motions adjudicator must decide whether to grant all or part of the relief sought, with or without conditions, and must notify the parties accordingly.

(6) ~~The President may~~[rescinded]

~~(a) designate another Bencher to make a determination under subrule (5), or~~

~~(b) refer the application to a pre-review conference.~~

(7) A determination under subrule (5) is without prejudice to an order of the review board under Rule 5-11 *[Costs of hearings]*.

Notice of review hearing

5-24.2 (1) The date, time and place for the hearing ~~on~~ of a review to begin must be set

(a) by agreement between the parties, or

(b) on the application of a party, by the ~~President~~ Tribunal Chair or by the motions adjudicator ~~Bencher~~ presiding at a pre-review conference.

(2) When a date is set under subrule (1), the ~~President~~ Tribunal must notify the parties in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the parties agree to a shorter notice period.

Pre-review conference

5-25 (1) The ~~President~~ Tribunal Chair may order a pre-review conference at any time before the hearing ~~on~~ of a review, at the request of ~~the applicant, respondent or counsel for the Law Society~~a party, or on the ~~President's~~ Tribunal Chair's own initiative.

(2) When a conference has been ordered under subrule (1), the ~~President~~ Tribunal Chair must

(a) set the date, time and place of the conference and notify the parties, and

(b) designate a motions adjudicator ~~Bencher~~ to preside at the conference.

(3) Law Society ~~Counsel~~ counsel ~~representing the Society~~ must be present at the conference.

(4) [rescinded]

(5) The applicant or the respondent, as the case may be, may attend the conference~~,~~ in person, through counsel or both.

(6) If the applicant or the respondent, as the case may be, fails to attend the conference, the motions adjudicator ~~Bencher~~ presiding may proceed with the conference in the absence of that party and may make any order under this ~~Rule~~rule, if the motions adjudicator ~~Bencher~~ is satisfied that the party had been notified of the conference.

(7) The motions adjudicator ~~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~~rule.

(8) The conference may consider

(a) the simplification of the issues,

(b) any issues concerning the record to be reviewed,

(c) the possibility of agreement on any issues in the review,

(d) the exchange of written arguments or outlines of argument and of authorities,

(e) the possibility that privilege or confidentiality might require that all or part of the hearing be closed to the public or that exhibits and other evidence be excluded from public access,

(f) setting a date for the review, and

(g) any other matters that may aid in the disposition of the review.

(9) The motions adjudicator ~~Bencher~~ presiding at a pre-review conference may

(a) adjourn the conference or the hearing of the review generally or to a specified date, time and place,

(b) order the exchange of written arguments or outlines of argument and of authorities, and set deadlines for that exchange,

(c) set a date for the review, subject to Rule 5-24.1 (3) *[Preparation and delivery of record]*, and

(d) make any order or allow or dismiss any application consistent with this part.

Adjournment

5-26 (1) Before a hearing ~~on~~ of a review ~~commences~~begins, ~~the applicant, respondent or counsel for the Society~~ a party may apply for an order that the hearing be adjourned by ~~delivering to the President~~ filing with the Tribunal and delivering to the other party written notice setting out the grounds for the application.

(3) Before the hearing begins, ~~the President~~a motions adjudicator must decide whether to grant the adjournment, with or without conditions, and must notify the parties accordingly.

(4) ~~The President may~~[rescinded]

~~(a) designate another Bencher to make a determination under subrule (3), or~~

~~(b) refer the application to a pre-review conference.~~

(5) After a hearing has ~~commenced~~begun, the chair of the review board may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

Decision on review

5-27 (1) The decision of the review board on a review is made by majority vote.

(2) The review board must prepare written reasons for its decision on a review.

(3) When the review board gives written reasons for its decision, it must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.

(4) A copy of the review board's written reasons prepared under subrule (2) must be delivered promptly to the ~~applicant or respondent and counsel for the Society~~each party.

(5) On request, the Executive Director must disclose the review board's written reasons for its decision.

Inactive reviews

5-28 (1) If no steps have been taken for 6 months or more, a party may apply for an order dismissing a review by ~~delivering to~~filing with the ~~President~~ Tribunal and delivering to the other party a notice in writing that sets out the basis for the application.

(3) If it is in the public interest and not unfair to the respondent or applicant, ~~the President~~a motions adjudicator may dismiss the review.

(4) ~~The President may designate another Bencher to make a determination under subrule (3)~~[rescinded].

Corrections

Slip rule

5-28.1 At any time, the Tribunal may

(a) correct an error in an order or decision that arose from a clerical mistake or from any other accidental slip or omission, or

(b) amend an order or decision to provide for any matter that should have been but was not adjudicated.

LAW SOCIETY TRIBUNAL RULES 2022

PART 10 – GENERAL

Service and notice

10-1 (0.1) In this rule, **"recipient"** means a lawyer, former lawyer, law firm, articled student or applicant.

(1) A recipient may be served with a notice or other document by

(a) leaving it at the place of business of the recipient,

(b) sending it by

(i) registered mail, ordinary mail or courier to the last known business or residential address of the recipient,

(ii) electronic facsimile to the last known electronic facsimile number of the recipient,

(iii) electronic mail to the last known electronic mail address of the recipient, or

(iv) any of the means referred to in paragraphs (a) to (c) to the place of business of the counsel or personal representative of the recipient or to an address given to ~~discipline~~ Law Society counsel by a respondent for delivery of documents relating to a citation, or

(c) posting it to an electronic portal operated by the Society to which the recipient has been given access and notifying the recipient of the posting by a method enumerated in paragraph (b) (ii) or (iii).

(2) If it is impractical for any reason to serve a notice or other document as set out in subrule (1), ~~the President~~a motions adjudicator may order substituted service, whether or not there is evidence that

(a) the notice or other document will probably

(i) reach the intended recipient, or

(ii) come to the intended recipient's attention, or

(b) the intended recipient is evading service.

(3) ~~The President may designate another Bencher to make a determination under subrule (2).~~[rescinded]

(4) A document may be served on the Society or on the Benchers by

(a) leaving it at or sending it by registered mail or courier to the principal offices of the Society, or

(b) personally serving it on an officer of the Society.

(4.1) A document required under the Act or these rules to be delivered to the President or the Executive Director must be left at or sent by registered mail or courier to the principal offices of the Society.

(5) A document sent by ordinary mail is deemed to be served 7 days after it is sent.

(6) A document that is left at a place of business or sent by registered mail or courier is deemed to be served on the next business day after it is left or delivered.

(7) A document sent by electronic facsimile or electronic mail is deemed to be served on the next business day after it is sent.

(7.1) A document that is posted to an electronic portal operated by the Society is deemed to be served the next business day after the document is posted and ~~notification~~ notice is sent to the recipient.

(8) Any person may be notified of any matter by ordinary mail, registered mail, courier, electronic facsimile or electronic mail to the person's last known address.

Duty not to disclose

10-2 A person performing any duty or fulfilling any function under the Act or these rules who receives or becomes privy to any confidential information, including privileged information,

(a) has the same duty that a lawyer has to a client not to disclose that information, and

(b) must not disclose and cannot be required to disclose that information except as authorized by the Act, these rules or an order of a court.

Communication with Ombudsperson confidential

~~5-7~~**10-2.1**(1) This rule ~~is to~~must be interpreted in a way that will facilitate the Ombudsperson assisting in the resolution of disputes through communication without prejudice to the rights of any person.

(2) Communication between the Ombudsperson acting in that capacity and any person receiving or seeking assistance from the Ombudsperson is confidential and must remain confidential in order to foster an effective relationship between the Ombudsperson and that individual.

(3) The Ombudsperson must hold in strict confidence all information acquired in that capacity from participants.

(4) [rescinded]~~In a proceeding~~

~~(a) no one is permitted to give evidence about any discussion or other communication with the Ombudsperson in that capacity, and~~

~~(b) no record can be admitted in evidence or disclosed under Rule 4-34 *[Demand for disclosure of evidence]* or 4-35 *[Application for details of the circumstances]* if it was produced~~

~~(i) by or under the direction of the Ombudsperson in that capacity, or~~

~~(ii) by another person while receiving or seeking assistance from the Ombudsperson, unless the record would otherwise be admissible or subject to disclosure under Rule 4-34 *[Demand for disclosure of evidence]* or 4-35 *[Application for details of the circumstances].*~~

LAW SOCIETY TRIBUNAL RULES 2022

SCHEDULE 4 – TARIFF FOR HEARING AND REVIEW COSTS

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

Item no.	Description	Number of units
Citation hearing		
1.	Preparation/amendment of citation, correspondence, conferences, instructions, investigations or negotiations after the authorization of the citation to the completion of the discipline hearing, for which provision is not made elsewhere	Minimum 1 Maximum 10
2.	Proceeding under s. 26.01 *[Suspension during investigation]*, 26.02 *[Medical examination]* or 39 *[Suspension]* and any application to rescind or vary an order under the Rules, for each day of hearing	30
3.	Disclosure under Rule 4-34 *[Demand for disclosure of evidence]*	Minimum 5 Maximum 20
4.	Application for particulars/preparation of particulars under Rule ~~4-35~~5-4.7 *[Application for details of the circumstances]*	Minimum 1 Maximum 5
5.	Application to adjourn under Rule 4-40 *[Adjournment]* • if made more than 14 days prior to the scheduled hearing date • if made less than 14 days prior to the scheduled hearing date	 1 3
6.	Pre-hearing conference	Minimum 1 Maximum 5
7.	Preparation of agreed statement of facts • if signed more than 21 days prior to hearing date • if signed less than 21 days prior to hearing date • delivered to Respondent and not signed	 Min. 5 to max. 15 Min. 10 to max. 20 Min. 10 to max. 20

LAW SOCIETY TRIBUNAL RULES 2022

Item no.	Description	Number of units
8.	Preparation of affidavits	Minimum 5 Maximum 20
9.	Preparation of Notice to Admit	Minimum 5 Maximum 20
10.	Preparation of response to Notice to Admit	Minimum 5 Maximum 20
11.	All process and correspondence associated with retaining and consulting an expert for the purpose of obtaining opinion(s) for use in the proceeding	Minimum 2 Maximum 10
12.	All process and communication associated with contacting, interviewing and issuing summons to all witnesses	Minimum 2 Maximum 10
13.	Interlocutory or preliminary motion for which provision is not made elsewhere, for each day of hearing	10
14.	Preparation for interlocutory or preliminary motion, per day of hearing	20
15.	Attendance at hearing, for each day of hearing, including preparation not otherwise provided for in tariff	30
16.	Written submissions, where no oral hearing held	Minimum 5 Maximum 15
S. 47 review		
17.	Giving or receiving notice under Rule 5-21 *[Notice of review]*, correspondence, conferences, instructions, investigations or negotiations after review initiated, for which provision is not made elsewhere	Minimum 1 Maximum 3
18.	Preparation and settlement of hearing record under Rule 5-23 *[Record of discipline hearing]*	Minimum 5 Maximum 10
19.	Pre-review conference	Minimum 1 Maximum 5

LAW SOCIETY TRIBUNAL RULES 2022

Item no.	Description	Number of units
20.	Application to adjourn under Rule 5-26 *[Adjournment]* • If made more than 14 days prior to the scheduled hearing date • If made less than 14 days prior to the scheduled hearing date	 1 3
21.	Procedural or preliminary issues, including an application to admit evidence under Rule 5-23 (2) *[Record of discipline hearing]*, per day of hearing	10
22.	Preparation and delivery of written submissions	Minimum 5 Maximum 15
23.	Attendance at hearing, per day of hearing, including preparation not otherwise provided for in the tariff	30
Summary hearings		
24.	Each day of hearing	$2,000
Hearings under Rule ~~4-30~~5-6.5 *[Admission and consent to disciplinary action]*		
25.	Complete hearing, based on the following factors: (a)complexity of matter; (b)number and nature of allegations; and (c)the time at which respondent agreed to make an admission relative to scheduled hearing and amount of pre-hearing preparation required.	$1,000 to $3,500
Credentials hearings		
26.	Each day of hearing	$2,000

Value of units:

Scale A, for matters of ordinary difficulty: $100 per unit

Scale B, for matters of more than ordinary difficulty: $150 per unit

LAW SOCIETY TRIBUNAL RULES 2022

SCHEDULE 5 – FORM OF SUMMONS

[Rule 5-5 (4) *[Compelling witnesses and production of documents]*

IN THE MATTER OF THE LEGAL PROFESSION ACT

AND

IN THE MATTER OF A HEARING CONCERNING

(As the case may be: a [former] member of the Law Society of British Columbia/ an articled student/an applicant for enrolment/call and admission/reinstatement)

SUMMONS

TO: _____

TAKE NOTICE that you are required to attend to testify as a witness at the time, date and place set out below.

Time: _____

Date: _____

Place: The Law Society of British Columbia
845 Cambie Street
Vancouver BC V6B 4Z9 (or other venue)

Dated at _____, _____ _____
Party/Counsel

this day of _____, 20___

TRIBUNAL RULES 2022

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules as follows effective January 1, 2022:

1. Rule 1 is amended as follows:

(a) the definition of "agreed statement of facts" is rescinded, and the following is substituted:

"agreed statement of facts" means a written statement of facts signed by Law Society counsel and by or on behalf of an applicant or respondent;

(b) the definition of "Ombudsperson" is rescinded, and the following is substituted:

"Ombudsperson" means a person appointed by the Executive Director to provide confidential dispute resolution and mediation assistance to lawyers, articled students, law students and support staff of legal employers, regarding allegations of harassment or discrimination by lawyers and includes anyone employed to assist the Ombudsperson in that capacity;

(c) the definition of "professional conduct record" is amended as follows:

(i) in paragraph (h), "under Rule 4-30***" is struck, and "***under Rule 5-6.5***" is substituted;***

(ii) in paragraph (o), "the time that it is to be paid.***" is struck, and "***the time that it is to be paid;***" is substituted;***

(d) the definition of "respondent" is rescinded, and the following is substituted:

"respondent" means a person whose conduct or competence is

(a) the subject of a citation directed to be issued under Rule 4-17 (1) *[Direction to issue, expand or rescind citation]*, or

(b) under review by a review board under section 47 [Review]

and includes a representative of a respondent law firm;

(e) the following definitions are added:

"interim action board" means a board appointed under Rule 3-10 *[Interim suspension or practice conditions]*;

"motions adjudicator" means a lawyer Bencher designated by the Tribunal Chair to decide a matter or conduct a pre-hearing or pre-review conference under these rules;

"Tribunal" means persons or bodies performing the adjudicative function of the Society or providing legal or administrative support to that function;

"Tribunal Chair" means the Bencher appointed under Rule 5-1.3 *[Tribunal Chair];*

"Tribunal Office" means the principal place of business of the Tribunal;

2. Rule 1-48 (1) is rescinded, and the following is substituted:

(1) Subject to Rule 1-51 (a) *[Powers and duties]*, the Executive Director may appoint a lawyer employed by the Society or retain another lawyer to advise or represent the Society in any legal matter.

3. The following rules are rescinded:

(a) Rule 2-91 (1.1) and (1.2);

(b) Rules 2-94 to 2-101;

(c) Rules 4-21 to 4-26;

(d) Rule 4-28;

(e) Rules 4-30 to 4-44;

(f) Rule 5-7;

(g) Rules 5-13 and 5-14.

4. In Rule 2-91 (2), "in subrule (1) or (1.2)***" is struck, and "***in subrule (1)***" is substituted.***

5. In Rule 2-92, subrules (3) and (4) are rescinded, and the following is substituted:

(3) The amount to be deposited as security for costs must not exceed an amount that approximates the amount that the panel may order to be paid under Rule 5-11 [Costs of hearings].

(4) On application by the applicant or Law Society counsel, the Credentials Committee may vary the amount to be deposited as security for costs under this rule.

6. ***In Rule 2-93, "***must appoint an employee of the Society***" is struck, and "***a lawyer employed by the Society***" is substituted.***

7. ***Rule 2-102 is rescinded, and the following is substituted:***

2-102 (1) When the Credentials Committee has ordered a hearing and the applicant has taken no steps for one year to bring the application to a hearing, the application is deemed abandoned.

(2) When an application is abandoned under this rule, Law Society counsel may apply for an order that some or all of the funds paid under Rule 2-92 *[Security for costs]* as security for costs be retained by the Society.

(3) An application under subrule (2) is made by filing with the Tribunal and delivering to the applicant written notice of the application.

(4) On an application under subrule (3), a motions adjudicator may order that some or all of the funds deposited as security for costs be retained by the Society, and the remainder, if any, be refunded to the applicant.

8. ***Rules 3-10 to 3-12 are rescinded, and the following Division is substituted in Part 3:***

Division 1.1 – Extraordinary action to protect public

Interim suspension or practice conditions

3-10 (1) Under this rule, an interim action board may make an order with respect to a lawyer or articled student who is the subject of

(a) an investigation or intended investigation under Rule 3-5 *[Investigation of complaints]*, or

(b) a citation under Part 4 *[Discipline]*.

(1.1) When a proceeding is initiated under Rule 3-12 (3) *[Public protection proceeding]*, the President must appoint an interim action board, consisting of 3 or more Benchers who are not members of the Discipline Committee.

(2) If satisfied, on reasonable grounds, that extraordinary action is necessary to protect the public, an interim action board may

(a) impose conditions or limitations on the practice of a lawyer or on the enrolment of an articled student, or

(b) suspend a lawyer or the enrolment of an articled student.

(3) An order made under subrule (2) or varied under Rule 3-12 *[Public protection proceeding]* is effective until the first of

(a) final disposition of the existing citation or any citation authorized under Part 4 *[Discipline]* arising from the investigation, or

(b) rescission, variation or further variation under Rule 3-12.

(4) Subject to an order under subrule (6), when a condition or limitation is imposed under this rule on the practice of a lawyer or the enrolment of an articled student, the Executive Director may disclose the fact that the condition or limitation applies and the nature of the condition or limitation.

(5) An interim action board that makes an order under subrule (2) (a) must consider the extent to which disclosure of the existence and content of the order should be made public.

(6) Where, in the judgment of the interim action board that made an order under subrule (2) (a), there are extraordinary circumstances that outweigh the public interest in the disclosure of the order, the board may make an order

(a) that the Executive Director not disclose all or part of the order, or

(b) placing limitations on the content, means or timing of disclosure.

(7) An order made under subrule (6) does not apply to disclosure of information for the purposes of

(a) enforcement of the order,

(b) investigation and consideration of a complaint under this part or Part 4 *[Discipline]* or a proceeding under Part 5 *[Tribunal, Hearings and Appeals]*, or

(c) obtaining and executing an order under Part 6 *[Custodianships]*.

(8) An interim action board must give written reasons for an order under subrule (6).

(9) An order under subrule (6) may be made by a majority of the interim action board.

(10) If the Executive Director discloses the existence of a condition or limitation under subrule (2) (a) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.

(11) Subrule (10) does not apply to a decision of a hearing panel or a review board.

(12) This rule is subject to the requirement to publish discipline decisions under Rule 4-48 (2) [Publication of discipline decisions].

Medical examination

3-11 (1) This rule applies to a lawyer or articled student who is the subject of

(a) an investigation or intended investigation under Rule 3-5 *[Investigation of complaints]*, or

(b) a citation under Part 4 *[Discipline]*.

(2) An interim action board that is of the opinion, on reasonable grounds, that the order is likely necessary to protect the public may make an order requiring a lawyer or articled student to

(a) submit to an examination by a medical practitioner specified by the interim action board, and

(b) instruct the medical practitioner to report to the Executive Director on the ability of the lawyer to practise law or, in the case of an articled student, the ability of the student to complete articles.

(3) The Executive Director may deliver a copy of the report of a medical practitioner under this rule to the Discipline Committee or the Practice Standards Committee.

(4) The report of a medical practitioner under this rule

(a) may be used for any purpose consistent with the Act and these rules, and

(b) is admissible in any hearing or proceeding under the Act and these rules.

Public protection proceeding

3-12 (2) Before an interim action board takes action under Rule 3-10 *[Interim suspension or practice conditions]* or 3-11 *[Medical examination]*, there must be a proceeding before the board at which Law Society counsel is present.

(3) The proceeding referred to in subrule (2)

(a) must be initiated on the application of one of the following:

(i) the Discipline Committee;

(ii) the Practice Standards Committee;

(iii) the Executive Director, and

(b) may take place without notice to the lawyer or articled student if the interim action board is satisfied, on reasonable grounds, that notice would not be in the public interest.

(4) The lawyer or articled student and counsel for the lawyer or articled student may be present at a proceeding under this rule.

(5) All proceedings under this rule must be recorded by a court reporter or by other means.

(6) Subject to the Act and these rules, the interim action board may determine the practice and procedure to be followed.

(7) Unless the interim action board orders otherwise, the proceeding is not open to the public.

(8) A party may request an adjournment of a proceeding conducted under this rule.

(9) Rule 5-5.2 *[Adjournment]* applies to an application for an adjournment made before the proceeding begins as if it were a hearing.

(11) After a proceeding has begun, the interim action board may adjourn the proceeding, with or without conditions, generally or to a specified date, time and place.

(12) On the application of a party, the interim action board may rescind or vary an order made or previously varied under this rule.

(13) On an application under subrule (12) to vary or rescind an order,

(a) each party must be given a reasonable opportunity to make submissions in writing, and

(b) the interim action board may allow oral submissions if, in the board's discretion, it is appropriate to do so.

(14) If, for any reason, any member of the interim action board that made an order under this rule is unable to participate in the decision on an application under subrule (12), the President may appoint another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of the member of the board unable to participate.

Notice to lawyer or articled student

3-12.1 When an order is made under Rule 3-10 (2) *[Interim suspension or practice conditions]* without notice to the lawyer or articled student, the Executive Director must immediately notify the lawyer or articled student in writing, that

(a) the order has been made,

(b) the lawyer or articled student is entitled, on request, to a transcript of the proceeding under Rule 3-12 *[Public protection proceeding]*, and

(c) the lawyer or articled student may apply under Rule 3-12.3 *[Review of interim suspension or practice conditions]* to have the order rescinded or varied.

Non-disclosure

3-12.2 (1) Unless an order is made under Rule 3-10 (2) *[Interim suspension or practice conditions]*, no one is permitted to disclose that a proceeding was initiated, scheduled or took place under this division except for the purpose of complying with the objects of the Act or with these rules.

(2) When an order has been made or refused under Rule 3-10 (2) *[Interim suspension or practice conditions]*, before publication of the decision is permitted under Rule 4-48 (2) *[Publication of discipline decisions]*, the Executive Director may, on request, disclose the fact of the order or refusal and the reasons for it.

Review of interim suspension or practice conditions

3-12.3 (1) If an order has been made under Rule 3-10 (2) *[Interim suspension or practice conditions]*, the lawyer or articled student may apply in writing to the Tribunal at any time for rescission or variation of the order.

(2) An application under subrule (1) must be heard as soon as practicable and, if the lawyer or articled student has been suspended without notice, not later than 7 days after the date on which it is received by the Tribunal, unless the lawyer or articled student consents to a longer time.

(3) When application is made under subrule (1), the Tribunal Chair must appoint a panel under Part 5 *[Tribunal, Hearings and Appeals]*.

(4) The panel appointed under subrule (3) must not include a person who

(a) participated in the decision that authorized the issuance of a citation related to the application,

(b) was a member of the interim action board that made the order under review, or

(c) is a member of a panel assigned to hear a citation related to the application.

(5) A hearing under this rule is open to the public, but the panel may exclude some or all members of the public in any circumstances it considers appropriate.

(6) On application by anyone, the panel may make the following orders to protect the interests of any person:

(a) an order that specific information not be disclosed;

(b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).

(7) All proceedings at a hearing under this rule must be recorded by a court reporter or by other means, and any person may obtain, at the person's expense, a transcript of any part of the hearing that the person was entitled to attend.

(8) Each party may call witnesses to testify who

(a) if competent to do so, must take an oath or make a solemn affirmation before testifying, and

(b) are subject to cross-examination.

(9) If the order under Rule 3-10 (2) [Interim suspension or practice conditions] took effect without notice to the lawyer or articled student, witnesses called by Law Society counsel must testify first, followed by witnesses called by the respondent.

(10) If subrule (9) does not apply, witnesses called by the lawyer or articled student must testify first, followed by witnesses called by Law Society counsel.

(11) The panel may

(a) accept an agreed statement of facts, and

(b) admit any other evidence it considers appropriate.

(12) Following completion of the evidence, the panel must

(a) invite each party to make submissions on the issues to be decided by the panel,

(b) decide by majority vote whether cause has been shown by the appropriate party under subrule (13) or (14), as the case may be, and

(c) make an order if required under subrule (13) or (14).

(13) If an order has been made under Rule 3-10 (2) *[Interim suspension or practice conditions]* with notice to the respondent, the panel must rescind or vary the order if cause is shown on the balance of probabilities by or on behalf of the respondent.

(14) If an order has been made under Rule 3-10 (2) *[Interim suspension or practice conditions]* without notice to the respondent, the panel must rescind or vary the order, unless Law Society counsel shows cause, on the balance of probabilities, why the order should not be rescinded or varied.

9. In Part 3, Division 1.2, Complainants' Review Committee, is added comprising Rules 3-13 and 3-14.

10. In the following rules, "Rule 4-44***" is struck, and "***Rule 5-6.4***" is substituted:***

(a) Rule 4-17 (3);

(b) Rule 4-45 (1) (b) and (4) (b).

11. In the following rules "the President***" is struck, and "***the Tribunal***" is substituted:***

(a) Rule 4-20.1 (1);

(b) Rule 5-12 (1) and (2.1);

(c) Rule 5-20 (3);

(d) Rule 5-24.2 (2).

12. Rule 4-20.1 (3) to (5) is rescinded, and the following is substituted:

(3) On an application under this rule, where, in the judgment of a motions adjudicator, there are extraordinary circumstances that outweigh the public interest in the publication of the citation, the motions adjudicator may

(a) grant the order, or

(b) order limitations on the content, means or timing of the publication.

(5) The motions adjudicator making a determination on an application under this rule must state in writing the specific reasons for that decision.

13. ***In Rule 4-45 (5), "***a lawyer concerned is or has been***" is struck, and "***a lawyer is or has been***" is substituted.***

14. ***Rule 4-48 (1) to (3) is rescinded, and the following is substituted:***

Publication of discipline decisions

4-48 (1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of any decision, reasons and action taken by a hearing panel, a motions adjudicator or a review board.

(1.1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of an admission of a discipline violation accepted by the Discipline Committee under Rule 4-29 [Conditional admission].

(2) Despite subrules (1) and (3), but subject to Rule 4-47 *[Public notice of suspension or disbarment]*, the Executive Director must not make public any decision, reasons or action taken as follows:

(a) a decision not to accept an admission under Rule 5-6.5 *[Admission and consent to disciplinary action]*;

(b) any decision under Rule 3-10 *[Interim suspension or practice conditions]* or 3-11 *[Medical examination]*

before the matter is concluded and any prescribed period to initiate an appeal or review has expired.

(3) When a publication is required or permitted under this rule, the Executive Director may also publish generally all or part of

(b) the written reasons for the decision,

(c) an agreed statement of facts, or

(d) admissions made in response to a Notice to Admit.

15. ***Rule 4-49 (2) is rescinded, and the following is substituted:***

(2) The publication of a decision dismissing all allegations in the citation and any subsequent decision in the matter must not identify the respondent unless

(a) the respondent consents in writing, or

(b) an allegation is held to be proven on a review or appeal.

16. The following rules are added:

Failure to pay costs or fulfill practice condition

4-56 (1) An applicant or respondent must do the following by the date set by a hearing panel, review board or Committee or extended under Rule 5-12 *[Application to vary order]*:

(a) pay in full a fine or the amount owing under Rule 5-11 *[Costs of hearings]*;

(b) fulfill a practice condition as imposed under section 21 *[Admission, reinstatement and requalification]*, 22 *[Credentials hearings]*, 27 *[Practice standards]*, 32 *[Financial responsibility]*, 38 *[Discipline hearings]* or 47 *[Review on the record]*, as accepted under section 19 *[Applications for enrolment, call and admission, or reinstatement]*, or as varied under these Rules.

(2) If, on December 31, an applicant or respondent is in breach of subrule (1), the Executive Director must not issue to the applicant or respondent a practising certificate or a non-practising or retired membership certificate, and the applicant or respondent is not permitted to engage in the practice of law.

Recovery of money owed to the Society

4-57 (1) A lawyer or former lawyer who is liable to pay the costs of an audit or investigation must pay to the Society the full amount owing by the date set by the Discipline Committee.

(2) A lawyer who is liable to pay an assessment under Rule 3-80 *[Late filing of trust report]* must pay to the Society the full amount owing by the date specified in that Rule or as set or extended by the Executive Director.

(3) A lawyer who has not paid the full amount owing under subrule (1) or (2) by the date set or extended is in breach of these Rules and, if any part of the amount owing remains unpaid by December 31 following the making of the order, the Executive Director must not issue a practising certificate to the lawyer unless the Benchers order otherwise.

17. In the following rules, "hearing on***" is struck, and "***hearing of***" is substituted:***

(a) Rule 5-1 (1) (a) and (b);

(b) Rule 5-4 (2);

(c) Rule 5-8 (3);

(d) Rule 5-19 (4);

(e) Rule 5-24.2 (1).

18. The following rules are added:

Tribunal

5-1.1 (1) The Tribunal comprises

(a) the Tribunal Chair,

(b) hearing panels,

(c) review boards, and

(d) motions adjudicators.

(2) Subject to the Act and these Rules, the Tribunal may determine the practice and procedure to be followed at a hearing, review or other proceeding.

Service, filing and communication

5-1.2 (1) The provisions of Rule 10-1 *[Service and notice]* are subject to this rule.

(2) A document to be filed with the Tribunal must be delivered by

(a) leaving it at or sending it by ordinary or registered mail to the Tribunal Office,

(b) sending it by email to the Tribunal Office, subject to size limits set by practice direction, or

(c) sending it by other means permitted under a practice direction.

(3) The parties to a proceeding must inform the Tribunal and every other party of any change of address, regardless of any other notice to the Society.

(4) The Tribunal may use and rely on the address of a respondent or an applicant provided at the outset of proceeding or the most recently received change of address.

(5) All correspondence to the Tribunal or any of its constituent parts must be

(a) sent to the Tribunal Office, and

(b) copied to all parties.

(6) The fact that correspondence is received and accepted by the Tribunal Office does not, for that reason alone, indicate compliance with requests or demands contained in the correspondence.

(7) All correspondence between parties or counsel and with the Tribunal must be respectful and formal to an extent appropriate to the circumstances.

Tribunal Chair

5-1.3 (1) The Benchers must appoint a Bencher as Tribunal Chair.

(2) The Tribunal Chair must not be a member of the Discipline, Credentials or Practice Standards Committee.

(3) The term of office of the Tribunal Chair is two years, beginning and ending January 1 of each even-numbered year.

(4) If the office of Tribunal Chair becomes vacant for any reason, the Benchers must promptly appoint a Bencher to complete the term of office.

(5) The Tribunal Chair may designate another Bencher to fulfill the functions of the Tribunal Chair from time to time.

Practice directions

5-1.4 (1) The Tribunal Chair may issue practice directions that are consistent with the Act and these rules.

(2) A hearing panel or review board is not bound by a practice direction.

(3) Practice directions must be made accessible to the public.

19. Rule 5-2 (1) to (3) is rescinded, and the following is substituted:

Appointment of hearing panel

5-2 (1) When a hearing is ordered under this part, Part 2, Division 2 *[Admission and Reinstatement]* or Part 4 *[Discipline]*, the Tribunal Chair must appoint a panel consisting of 3 persons.

(2) Despite subrules (1) and (3), a panel may consist of one Bencher who is a lawyer if

(a) no facts are in dispute,

(b) the hearing is to consider an admission under Rule 5-6.5 *[Admission and consent to disciplinary action]*,

(c) the hearing proceeds under Rule 5-4.5 *[Summary hearing]*,

(d) the hearing is to consider a preliminary question under Rule 5-4.3 *[Preliminary questions]*, or

(e) it is not otherwise possible, in the opinion of the Tribunal Chair, to convene a panel in a reasonable period of time.

(3) A panel must

(a) be chaired by a lawyer, and

(b) include at least

(i) one Bencher or Life Bencher who is a lawyer, and

(ii) one person who is not a lawyer.

20. In the following rules, "President***" is struck, and "***Tribunal Chair***" is substituted:***

(a) Rule 5-2 (5), (5.1) and (7);

(b) Rule 5-3 (1) and (2);

(c) Rule 5-16 (1), (4) and (6);

(d) Rule 5-18 (1) and (2);

(e) Rule 5-24.2 (1) (b);

(f) Rule 5-25 (2).

21. Rule 5-4 (1) is rescinded, and the following is substituted:

(1) The following persons must not participate in a panel hearing a citation:

(a) a person who participated in the decision that authorized issuing the citation;

(b) a member of an interim action board that made an order under Rule 3-10 *[Interim suspension or practice conditions]* or 3-11 *[Medical examination]* regarding a matter forming the basis of the citation;

(c) a member of a panel that heard an application under Rule 3-12.3 *[Review of interim suspension or practice conditions]* to rescind or vary an interim suspension or practice condition or limitation in respect of a matter forming the basis of the citation.

22. The following rules are added:

Practice and procedure before a hearing panel

Hearing date and notice

5-4.1 (1) The date, time and place for the hearing to begin must be set

(a) by agreement between the parties, or

(b) on the application of a party, by the Tribunal Chair or by the motions adjudicator presiding at a pre-hearing conference.

(2) When a date is set under subrule (1) (b), the Tribunal must notify the parties in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the applicant or respondent consents to a shorter notice period.

(3) Written notice under subrule (2) may be made at the same time that the citation is served under Rule 4-19 [Notice of citation], or at a later time.

Amending an allegation in a citation

5-4.2 (1) Law Society counsel may amend an allegation contained in a citation

(a) before the hearing begins, by giving written notice to the respondent and the Tribunal, and

(b) after the hearing has begun, with the consent of the respondent.

(2) The panel may amend a citation after the hearing has begun

(a) on the application of a party, or

(b) on its own motion.

(3) The panel must not amend a citation under subrule (2) unless each party has been given the opportunity to make submissions respecting the proposed amendment.

Preliminary questions

5-4.3 (1) Before a hearing begins, any party may apply for the determination of a question relevant to the hearing by filing with the Tribunal and delivering to the other party, written notice setting out the substance of the application and the grounds for it.

(2) When an application is made under subrule (1), the Tribunal Chair must do one of the following as appears to the Tribunal Chair to be appropriate:

(a) appoint a panel to determine the question;

(b) refer the question to a motions adjudicator;

(c) refer the question to the panel at the hearing of the application.

(3) A panel appointed under subrule (2) (a) is not seized of the application or any question pertaining to the application other than that referred under that provision.

Severance and joinder

5-4.4 (1) Before a hearing begins, any party may apply in writing to the Tribunal for an order that

(a) one or more allegations in a citation be determined in a separate hearing from other allegations in the same citation, or

(b) two or more citations be determined in one hearing.

(2) An application under subrule (1) must

(a) be copied to the party not making the application, and

(b) state the grounds for the order sought.

(3) When an application is made under this rule, the Tribunal Chair must designate a motions adjudicator to make a determination.

(4) The motions adjudicator designated under subrule (3)

(a) must consider the submissions of the parties,

(b) may require a pre-hearing conference before making a determination, and

(c) must dismiss the application or allow the application, with or without conditions.

Summary hearing

5-4.5 (1) This rule may be applied in respect of the hearing of a citation comprising only allegations that the respondent has done one or more of the following:

(a) breached a rule;

(b) breached an undertaking given to the Society;

(c) failed to respond to a communication from the Society;

(d) breached an order made under the Act or these rules.

(2) Unless the panel orders otherwise, the parties may adduce evidence by

(a) affidavit,

(b) an agreed statement of facts, or

(c) an admission made or deemed to be made under Rule 5-4.8 [Notice to admit].

(3) Despite Rules 5-6.3 *[Submissions and determination]* and 5-6.4 *[Disciplinary action]*, the panel may consider facts, determination, disciplinary action and costs and issue a decision respecting all aspects of the proceeding.

Demand for disclosure of evidence

5-4.6 (1) At any time after a citation has been issued and before the hearing begins, a respondent may demand in writing that Law Society counsel disclose the evidence that the Society intends to introduce at the hearing.

(2) On receipt of a demand for disclosure under subrule (1), Law Society counsel must provide the following to the respondent by a reasonable time before the beginning of the hearing:

(a) a copy of every document that the Society intends to tender in evidence;

(b) a copy of any statement made by a person whom the Society intends to call as a witness;

(c) if documents provided under paragraphs (a) and (b) do not provide enough information, a summary of the evidence that the Society intends to introduce;

(d) a summary of any other relevant evidence in Law Society counsel's possession or in a Society file available to counsel, whether or not counsel intends to introduce that evidence at the hearing.

(3) Despite subrule (2), Law Society counsel must not provide any information or documents about any discussion or other communication with the Ombudsperson in that capacity.

Application for details of the circumstances

5-4.7 (1) Before a hearing begins, the respondent may apply for disclosure of the details of the circumstances of misconduct alleged in a citation by filing with the Tribunal and delivering to Law Society counsel written notice setting out the substance of the application and the grounds for it.

(2) If a motions adjudicator is satisfied that an allegation in the citation does not contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proven and to identify the transaction referred to, the motions adjudicator must order Law Society counsel to disclose further details of the circumstances.

(3) Details of the circumstances disclosed under subrule (2) must be

(a) in writing, and

(b) delivered to the respondent or respondent's counsel.

Notice to admit

5-4.8 (1) At any time, but not less than 45 days before a date set for the hearing of a citation, a party may request the other party to admit, for the purposes of the hearing only, the truth of a fact or the authenticity of a document.

(2) A request made under subrule (1) must

(a) be made in writing in a document clearly marked "Notice to Admit" and served in accordance with Rule 10-1 [Service and notice], and

(b) include a complete description of the fact, the truth of which is to be admitted, or attach a copy of the document, the authenticity of which is to be admitted.

(3) A party may make more than one request under subrule (1).

(4) A party that receives a request made under subrule (1) must respond within 21 days by serving a response on the other party in accordance with Rule 10-1 *[Service and notice]*.

(5) The time for response under subrule (4) may be extended by agreement of the parties or by an order under Rule 5-4.*3 [Preliminary questions]* or 5-5.1 *[Pre-hearing conference]*.

(6) A response under subrule (4) must contain one of the following in respect of each fact described in the request and each document attached to the request:

(a) an admission of the truth of the fact or the authenticity of the document attached to the request;

(b) a statement that the party making the response does not admit the truth of the fact or the authenticity of the document, along with the reasons for not doing so.

(7) If a party who has been served with a request does not respond in accordance with this rule, the party is deemed, for the purposes of the hearing only, to admit the truth of the fact described in the request or the authenticity of the document attached to the request.

(8) If a party does not admit the truth of a fact or the authenticity of a document under this rule, and the truth of the fact or authenticity of the document is proven in the hearing, the panel may consider the refusal when exercising its discretion respecting costs under Rule 5-11 *[Costs of hearings]*.

23. Rule 5-5 is amended as follows:

(a) the following subrules are added:

(2.1) A party applying for an order under subrule (2) (a) must give reasonable notice to the applicant or respondent.

(5) Before a hearing begins, any party may apply for an order under section 44 (4) *[Witnesses]* by filing with the Tribunal and delivering to the other party written notice setting out the substance of the application and the grounds for it.

(6) After considering any submissions of the parties, a motions adjudicator must

(a) make the order requested or another order consistent with section 44 (4) *[Witnesses]*, or

(b) refuse the application.

(7) On the motion of any party, the motions adjudicator may apply to the Supreme Court under section 44 (5) *[Witnesses]* to enforce an order made under subrule (6).

(b) in subrule (3), "by counsel representing the Society***" is struck, and "***by Law Society counsel***" is substituted.***

24. The following rules are added:

Pre-hearing conference

5-5.1 (1) With or without a request from any party, the Tribunal Chair may order a pre-hearing conference at any time before a hearing begins.

(2) When a conference has been ordered under subrule (1), the Tribunal Chair must

(a) set the date, time and place of the conference, and

(b) designate a motions adjudicator to preside at the conference.

(3) Law Society counsel and the applicant or applicant's counsel or both, must be present at the conference.

(4) A respondent may attend the conference in person, through counsel or both.

(5) If the respondent fails to attend the conference, the motions adjudicator presiding may proceed with the conference in the absence of the respondent and may make any order under this rule, if the motions adjudicator is satisfied that the respondent had notice of the conference.

(6) Any person may 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.

(7) The conference may consider any matters that may aid in the fair and expeditious disposition of the matter, including but not limited to

(a) setting a date for the hearing,

(b) simplification of the issues,

(c) admissions or an agreed statement of facts,

(d) amendments to the citation,

(e) any matter for which the motions adjudicator may make an order under this rule,

(f) conducting all or part of the hearing in written form or by video conference or teleconference,

(g) disclosure and production of documents,

(h) agreement for the hearing panel to receive and consider documents or evidence under Rule 5-6.1 (3) (e) *[Preliminary matters]*,

(i) the possibility that privilege or confidentiality might require closure of all or part of the hearing to the public, or exclusion of exhibits and other evidence from public access,

(j) any application to withhold the identity or locating particulars of a witness, and

(k) any other matters that may aid in the disposition of the matter.

(8) The motions adjudicator may

(a) adjourn a pre-hearing conference generally or to a specified date, time and place,

(b) order discovery and production of documents,

(c) set a date for the hearing, and

(d) allow or dismiss an application under subrule (5) (f).

(9) A party may apply to the motions adjudicator for an order

(a) to withhold the identity or contact information of a witness,

(b) to adjourn the hearing of the citation,

(c) for severance of allegations or joinder of citations under Rule 5-4.4 [Severance and joinder],

(d) for disclosure of the details of the circumstances of misconduct alleged in a citation under Rule 5-4.7 *[Application for details of the circumstances]*,

(e) that the motions adjudicator may make under subrule (10), or

(f) concerning any other matters that may aid in the fair and expeditious disposition of the citation.

(10) The motions adjudicator may, on the application of a party or on the motions adjudicator's own motion, make an order that, in the judgment of the motions adjudicator, will aid in the fair and expeditious disposition of the matter, including but not limited to orders

(a) adjourning the conference generally or to a specified date, time and place,

(b) setting a date for the hearing to begin,

(c) allowing or dismissing an application made under subrule (9) or referred to the conference by the Tribunal Chair,

(d) specifying the number of days to be scheduled for the hearing,

(e) establishing a timeline for the proceeding including, but not limited to, setting deadlines for the completion of procedures and a plan for the conduct of the hearing,

(f) directing a party to provide a witness list and a summary of evidence that the party expects that any or all of the witnesses will give at the hearing,

(g) respecting expert witnesses, including but not limited to orders

(i) limiting the issues on which expert evidence may be admitted or the number of experts that may give evidence,

(ii) requiring the parties' experts to confer before service of their reports, or

(iii) setting a date by which an expert's report must be served on a party, or

(h) respecting the conduct of any application, including but not limited to allowing submissions in writing.

(11) If an order made under this rule affects the conduct of the hearing, the hearing panel may rescind or vary the order on the application of a party or on the hearing panel's own motion.

Adjournment

5-5.2 (1) Before a hearing begins, a party may apply for an order that the hearing be adjourned by filing with the Tribunal and delivering to the other party written notice setting out the reasons for the application.

(2) Before a hearing begins, a motions adjudicator must decide whether to grant the adjournment, with or without conditions, and advise the parties accordingly.

(3) After a hearing has begun, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

(4) Rule 5-4.1 (2) *[Hearing date and notice]* does not apply when a hearing is adjourned and re-set for another date.

(5) When a hearing is adjourned under Rule 2-92 (5) *[Security for costs]*, Law Society Counsel must file a notice with the Tribunal and deliver a copy to the applicant.

Application moot

5-5.3 If the circumstances of the applicant have changed so as to make the outcome of the hearing moot, after hearing submissions on behalf of the parties, the panel may do one of the following:

(a) adjourn the hearing generally;

(b) reject the application;

(c) begin or continue with the hearing.

25. Rule 5-6 is rescinded, and the following is substituted:

Procedure

5-6 (2) If a court reporter is employed to record the proceedings of a hearing, the chair of the panel must ensure that the reporter first takes an oath or makes a solemn affirmation to faithfully and accurately report and transcribe the proceedings.

(2.1) Unless the chair of the panel otherwise orders, an applicant must personally attend the entire hearing.

(2.2) If a respondent fails to attend or remain in attendance at a hearing, the panel may proceed under section 42 *[Failure to attend]*.

(3) The parties may call witnesses to testify.

(4) All witnesses, including an applicant or respondent ordered to give evidence under section 41 (2) (a) *[Panels]*,

(a) must take an oath or make a solemn affirmation, if competent to do so, before testifying, and

(b) are subject to cross-examination.

(5) The panel may make inquiries of a witness as it considers desirable.

(6) The hearing panel may accept any of the following as evidence:

(a) an agreed statement of facts;

(b) oral evidence;

(c) affidavit evidence;

(d) evidence tendered in a form agreed to by the respondent or applicant and Law Society counsel;

(e) an admission made or deemed to be made under Rule 5-4.*8 [Notice to admit]*;

(f) any other evidence it considers appropriate.

26. The following rules are added:

Preliminary matters

5-6.1 (1) Before hearing any evidence on the allegations set out in a citation, the panel must determine whether

(a) the citation was served in accordance with Rule 4-19 [Notice of citation], or

(b) the respondent waives any of the requirements of Rule 4-19.

(2) If the requirements of Rule 4-19 [Notice of citation] have been met, or have been waived by the respondent, the citation or a copy of it must be filed as an exhibit at the hearing, and the hearing may proceed.

(3) Despite subrule (1), before the hearing begins, the panel may receive and consider

(a) the citation,

(b) an agreed statement of facts,

(c) an admission made or deemed to be made under Rule 5-4.8 [Notice to admit],

(d) the respondent's admission of a discipline violation and consent to a specified disciplinary action submitted jointly by the parties under Rule 5-6.5 [Admission and consent to disciplinary action], and

(e) any other document or evidence by agreement of the parties.

Burden of proof

5-6.2 At a hearing ordered under Part 2, Division 2 [Admission and Reinstatement], the onus is on the applicant to satisfy the panel on the balance of probabilities that the applicant has met the requirements of section 19 (1) [Applications for enrolment, call and admission, or reinstatement] and that division.

Submissions and determination

5-6.3 (1) Following completion of the evidence, the panel must invite the parties to make submissions on the issues to be decided by the panel.

(2) After submissions under subrule (1), the panel must find the facts and

(a) make a determination on each allegation in a citation, or

(b) decide whether to

(i) grant the application

(ii) grant the application subject to conditions or limitations that the panel considers appropriate, or

(iii) reject the application.

(3) A panel must reject an application for enrolment if it considers that the applicant's qualifications referred to in Rule 2-54 (2) [Enrolment in the admission program] are deficient.

(4) The panel must prepare written reasons for its findings.

(5) A copy of the panel's reasons prepared under subrule (3) must be delivered promptly to each party.

Disciplinary action

5-6.4 (1) Following a determination under Rule 5-6.3 *[Submissions and determination]* adverse to the respondent, the panel must

(a) invite the parties to make submissions as to disciplinary action,

(b) take one or more of the actions referred to in section 38 (5) to (7) *[Discipline hearings]*,

(c) include in its decision under this rule

(i) any order, declaration or imposition of conditions under section 38(7), and

(ii) any order under Rule 5-11 *[Costs of hearings]* on the costs of the hearing, including any order respecting time to pay,

(d) prepare a written record, with reasons, of its action taken under paragraph (b) and any action taken under paragraph (c),

(e) if it imposes a fine, set the date by which payment to the Society must be completed, and

(f) if it imposes conditions on the respondent's practice, set the date by which the conditions must be fulfilled.

(2) A panel may proceed under subrule (1) before written reasons are prepared under Rule 5-6.3 (2) (b) *[Submissions and determination]*

(a) if the panel gives reasons orally for its decision under Rule 5-6.3 (2) (a), or

(b) when the panel accepts an admission jointly submitted by the parties under Rule 5-6.5 *[Admission and consent to disciplinary action]*.

(3) Despite subrule (1) (b), if the respondent is a member of another governing body and not a member of the Society, the panel may do one or more of the following:

(a) reprimand the respondent;

(b) fine the respondent an amount not exceeding $50,000;

(c) prohibit the respondent from practising law in British Columbia permanently or for a specified period of time;

(d) declare that, had the respondent been a member of the Society, the panel would have

(i) disbarred the respondent,

(ii) suspended the respondent, or

(iii) imposed conditions or limitations on the practice of the respondent.

(4) A copy of the panel's reasons prepared under subrule (1) (d) must be delivered promptly to each party.

(5) The panel may consider the professional conduct record of the respondent in determining a disciplinary action under this rule.

(6) Regardless of the nature of the allegation in the citation, the panel may take disciplinary action based on the ungovernability of the respondent by the Society.

(7) The panel must not take disciplinary action under subrule (6) unless the respondent has been given at least 30 days' notice that ungovernability may be raised as an issue at the hearing on disciplinary action.

(8) The panel may adjourn the hearing on disciplinary action to allow compliance with the notice period in subrule (7).

Admission and consent to disciplinary action

5-6.5 (1) The parties may jointly submit to the hearing panel an agreed statement of facts and the respondent's admission of a discipline violation and consent to a specified disciplinary action.

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

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

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

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

(3) The panel must not impose disciplinary action under subrule (2) (b) that is different from the specified disciplinary action consented to by the respondent unless

(a) each party has been given the opportunity to make submissions respecting the disciplinary action to be substituted, and

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

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

Rejection of admission

5-6.6 (1) A conditional admission tendered under Rule 4-29 *[Conditional admission]* must not be used against the respondent in any proceeding unless the admission is accepted by the Discipline Committee.

(2) An admission tendered under Rule 5-6.5 *[Admission and consent to disciplinary action]* must not be used against the respondent in any proceeding unless the hearing panel accepts the admission and imposes disciplinary action.

27. In Rule 5-11 (5), (9) and (10), "under this Rule***" is struck, and "***under this rule***" is substituted.***

28. Rule 5-12 is amended as follows:

(a) subrules (1), (4)and (5) are rescinded, and the following is substituted:

(1) A party may apply in writing to the Tribunal for

(a) an extension of time

(i) to pay a fine or the amount owing under Rule 5-11 [Costs of hearings], or

(ii) to fulfill a condition imposed under section 22 *[Credentials hearings]*, 38 *[Discipline hearings]*, or 47 *[Review on the record]*,

(b) a variation of a condition referred to in paragraph (a) (ii),

(c) a change in the start date for a suspension imposed under section 38 or 47, or

(d) a variation or rescission of another order that has not been fully executed or fulfilled.

(4) The Tribunal Chair must refer an application under subrule (1) or (2.1) to one of the following, as may, in the discretion of the Tribunal Chair, appear appropriate:

(a) the same panel or review board that made the order;

(b) a new panel;

(c) a motions adjudicator.

(5) The panel, review board or motions adjudicator that hears an application under subrule (1) must

(a) dismiss the application,

(b) extend to a specified date the time for payment,

(c) vary the conditions imposed, or extend to a specified date the fulfillment of the conditions,

(d) specify a new date for the start of a period of suspension imposed under section 38 *[Discipline hearings]* or 47 *[Review on the record]*, or

(e) grant the variation or rescission applied for or as otherwise appears appropriate to the panel, review board or motions adjudicator.

(b) in subrule (5.1), "review board or Committee***" is struck, and "***review board or motions adjudicator***" is substituted;***

(c) subrule (6) is rescinded.

29. Rule 5-15 (2) is rescinded, and the following subrule added:

(2.1) Rule 5-4.3 *[Preliminary questions]* applies, with any necessary changes, to an application by a party to a review for the determination of a question relevant to the review.

30. Rules 5-19 and 5-19.1 are rescinded, and the following is substituted:

Practice and procedure before a review board

Initiating a review

5-19 (1) Within 30 days after being notified of the decision of the panel in a credentials hearing, the applicant may initiate a review by filing with the Tribunal and delivering to Law Society counsel a notice of review.

(2) Within 30 days after being notified of the decision of a panel under Rule 5-6.4 *[Disciplinary action]* or 5-11 *[Costs of hearings]*, the respondent may initiate a review by filing with the Tribunal and delivering to Law Society counsel a notice of review.

(3) Within 30 days after a decision of the panel in a credentials hearing, the Credentials Committee may initiate a review by resolution.

(4) Within 30 days after a decision of the panel in a hearing of a citation, the Discipline Committee may initiate a review by resolution.

(5) When a review is initiated under subrule (3) or (4), Law Society counsel must promptly file with the Tribunal and deliver to the other party a notice of review.

(6) Within 30 days after the order of the Practice Standards Committee under Rule 3-25 (1) *[Costs]*, the lawyer concerned may initiate a review by filing a notice of review with the Tribunal.

Extension of time to initiate a review

5-19.1 (1) A party may apply to the Tribunal to extend the time within which a review may be initiated under Rule 5-19 *[Initiating a review]* by filing with the Tribunal and delivering to the other party a notice of the application.

(2) When a party makes an application under subrule (1), a motions adjudicator must

(a) refuse the extension of time, or

(b) grant the extension, with or without conditions or limitations.

31. Rule 5-20 (4) is rescinded, and the following is substituted:

(4) When an application is made under this rule, a motions adjudicator must make a determination under subrule (3).

32. In Rule 5-22 (1) "Unless counsel for the applicant and for the Society agree***" is struck, and "***Unless the parties agree***" is substituted.***

33. In Rule 5-23 (1) "Unless counsel for the respondent and for the Society agree***" is struck, and "***Unless the parties agree***" is substituted.***

34. In Rule 5-24 (1) "Unless counsel for the lawyer and for the Society agree***" is struck, and "***Unless the parties agree***" is substituted.***

35. Rule 5-24.1 is rescinded and the following is substituted:

Preparation and delivery of record

5-24.1 (1) The party initiating a review must prepare the record for the review in accordance with the relevant rule.

(1.1) Within 60 days of filing a notice of review, a party must file the record with the Tribunal in the form specified in the relevant practice direction and deliver a copy to the other party.

(2) The time for producing the record may be extended by agreement of the parties.

(3) No date may be set for the hearing of a review unless the party initiating the review has delivered all copies of the record required under subrule (1.1).

(4) By filing with the Tribunal written notice setting out the grounds for the application, and delivering a copy to the other party, the party initiating the review may apply for

(a) an extension of time to prepare and deliver the record, or

(b) an order that the Society bear all or part of the cost of obtaining and copying all or part of the record.

(5) When an application is made under subrule (4), a motions adjudicator must decide whether to grant all or part of the relief sought, with or without conditions, and must notify the parties accordingly.

(7) A determination under subrule (5) is without prejudice to an order of the review board under Rule 5-11 *[Costs of hearings]*.

36. In the following rules, "Bencher***" is struck, and "***motions adjudicator***" is substituted:***

(a) Rule 5-24.2 (1) (b);

(b) Rule 5-25 (2) (b), (6) (7) (9).

37. Rule 5-25 is amended as follows:

(a) subrule (1) is rescinded, and the following is substituted:

(1) The Tribunal Chair may order a pre-review conference at any time before the hearing of a review, at the request of a party, or on the Tribunal Chair's own initiative.

(b) in subrule (3), "Counsel representing the Society***" is struck, and "***Law Society counsel***" is substituted;***

(c) in subrules (6) and (7), "this Rule***" is struck, and "***this rule***" is substituted.***

38. Rule 5-26 is rescinded and the following is substituted:

Adjournment

5-26 (1) Before a hearing of a review begins, a party may apply for an order that the hearing be adjourned by filing with the Tribunal and delivering to the other party written notice setting out the grounds for the application.

(3) Before the hearing begins, a motions adjudicator must decide whether to grant the adjournment, with or without conditions, and must notify the parties accordingly.

(5) After a hearing has begun, the chair of the review board may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

39. ***In Rule 5-27 (4),*** **"**to the applicant or respondent and counsel for the Society***" is struck, and*** **"**to each party***" is substituted.***

40. ***Rule 5-28 is rescinded, and the following is substituted:***

Inactive reviews

5-28 (1) If no steps have been taken for 6 months or more, a party may apply for an order dismissing a review by filing with the Tribunal and delivering to the other party a notice in writing that sets out the basis for the application.

(3) If it is in the public interest and not unfair to the respondent or applicant, a motions adjudicator may dismiss the review.

41. ***The following rule is added:***

Corrections

Slip rule

5-28.1 At any time, the Tribunal may

(a) correct an error in an order or decision that arose from a clerical mistake or from any other accidental slip or omission, or

(b) amend an order or decision to provide for any matter that should have been but was not adjudicated.

42. ***Rule 10-1 is amended as follows:***

(a) ***in subrule (1) (b) (iv),*** **"**given to discipline counsel***" is struck, and*** **"**given to Law Society counsel***" is substituted;***

(b) ***in subrule (2)*** **"**the President may order***" is struck and*** **"**a motions adjudicator may order***" is substituted;***

(c) ***subrule (3) is rescinded;***

(d) ***in subrule (7.1),*** **"**notification is sent***" is struck, and*** **"**notice is sent***" is substituted.***

43. ***The following rule is added:***

Communication with Ombudsperson confidential

10-2.1 (1) This rule must be interpreted in a way that will facilitate the Ombudsperson assisting in the resolution of disputes through communication without prejudice to the rights of any person.

(2) Communication between the Ombudsperson acting in that capacity and any person receiving or seeking assistance from the Ombudsperson is confidential and must remain confidential in order to foster an effective relationship between the Ombudsperson and that individual.

(3) The Ombudsperson must hold in strict confidence all information acquired in that capacity from participants.

44. ***In Schedule 4, item 4, "***under Rule 4-35***" is struck, and "***under Rule 5-4.7***" is substituted.***

45. ***In Schedule 5, "***a member of the Law Society of British Columbia***" is struck, and "***a [former] member of the Law Society of British Columbia***" is substituted.***

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Memo

To: Benchers
From: Executive Committee
Date: December 3, 2021
Subject: Law Society appointments to outside bodies

Purpose

The Executive Committee recommends the Benchers agree that Law Society staff should contact all outside bodies to which the Law Society makes appointments, requesting that they review and consider whether it makes sense for the Law Society, in its role as the regulator of the legal profession in British Columbia, to continue to make such appointments in the future.

Background

The Law Society appoints lawyers, judges and members of the public to boards, councils and committees of outside bodies. The appointments are made by the Benchers, Executive Committee or president, under authority conferred by the *Legal Profession Act*, the Law Society Rules, Bencher resolutions, and the governing statutes, constitutions and by-laws of those outside bodies. The appointments carry various statutory and common law responsibilities, powers and duties. Eligibility requirements vary from body to body. **Appendix A** lists all outside bodies to which the Law Society makes appointments.

Discussion

The Executive Committee has observed that, while the Law Society is often asked to appoint people to the boards of outside bodies, the Law Society's role in the appointments process can be varied, time-consuming, often unclear, and does not appear to have any connection to its role as the regulator of the legal profession in British Columbia. At its recent meeting on November 18, 2021, the Committee discussed whether it was appropriate for the Law Society to continue making such appointments when many of the boards of the outside bodies are mature enough to develop and make decisions about the membership of their own boards. The Committee wanted to explore change in this area, and the first step would be to reach out to all of the boards the Law Society makes appointments to for an initial discussion. It is proposed that all outside

bodies would be asked to review and consider the involvement of the Law Society in its appointments process, and respond indicating whether or not they think the Law Society should remain involved, or if the outside bodies' by-laws or regulations could be changed to remove the Law Society as an appointing authority.

Recommendation

The Executive Committee recommends the Benchers approve the following resolution:

BE IT RESOLVED that the Benchers agree the Law Society should contact all outside bodies to which the Law Society makes appointments to discuss the Law Society's continued involvement in the appointments process.

Appendix A

1. British Columbia Law Institute Board of Directors
2. Canadian Bar Association of BC Benevolent Society Board of Directors
3. Continuing Legal Education Society of BC Board of Directors
4. Federation of Law Societies of Canada Council
5. Law Foundation of British Columbia
6. Legal Aid BC Board of Directors
7. Land Title and Survey Authority Board of Directors
8. Canadian Bar Association of British Columbia Branch Provincial Council
9. Provincial Judicial Council
10. Committee on Relations with the Judiciary
11. Federal Judicial Advisory Committee for British Columbia
12. Provincial Court Family Rules Project Working Group
13. Land Title and Survey Authority Stakeholder Advisory Committee
14. Building Board of Appeal, City of Vancouver
15. Hamber Foundation Board of Governors
16. Vancouver Airport Authority Board of Directors
17. Vancouver Foundation Board of Directors
18. British Columbia Supreme Court Civil and Family Rules Committee

The Law Society of British Columbia

Memo

To: Benchers
From: Executive Committee
Date: December 3, 2021
Subject: Retired Member Fee Waiver Request

Purpose

In 2020, the Law Society received a request from a retired lawyer asking that the Benchers exercise their authority under Rule 2-4(4)[1] to waive the retired member fee on the basis of financial hardship. This request was the only such request under this Rule the Law Society had received in a number of years. At the December 4, 2020 Bencher meeting, the Benchers approved the retired lawyer's request for waiver of the retired member fee for 2021. The retired lawyer has again requested a waiver of the retired member fees for 2022. The letters from the lawyer are not included in the agenda materials in order to protect the retired lawyer's privacy.

Retired member category of membership

In accordance with section 14(1) of the *Legal Profession Act* and Law Society Rule 2-1 one category of membership established by the Benchers is retired members. A member of the Society in good standing who has done one of the following may qualify to become a retired member: (a) reached the age of 55 years; (b) been a member of the Society in good standing for 20 of the previous 25 years; or (c) engaged in the full-time active practice of law for 20 of the previous 25 years.[2]

The Society charges a fee for retired lawyers based on Schedule 3 of the Law Society Rules. The fee is $125 for the whole year and reduces on a prorated basis each month. The fee contributes to the operating costs of the Society, including providing retired lawyers with a subscription to The Advocate. Retired lawyers have almost all the rights of membership in the Law Society, including voting at the Annual General Meeting, and may run as a candidate in and vote during

[1] Law Society Rule 2-4(4) was rescinded in December 2020 and replaced with Rule 2-105.1, which provides an avenue for Benchers to, by resolution, waive payment of the annual fee by a retired member or group of retired members.
[2] Law Society Rule 2-4(1)

the Bencher elections. However, they must undertake to refrain from practising law generally, although they may provide pro bono legal services.

Request

The retired lawyer who made the request provided limited information beyond indicating he has been retired for 20 years and has been paying the fee, but stated that he finds himself in increasingly strained financial circumstances with no realistic prospect of things improving. The retired lawyer has not provided any further details regarding his financial circumstances beyond that which was originally provided in support of his earlier request for a waiver of the 2021 fee.

At its November 18, 2021 meeting, the Executive Committee discussed the request and resolved to recommend to Benchers that the retired lawyer's fee for 2022 be waived. The Committee also asked staff to give the policy considerations further contemplation and bring the matter back to the Committee for consideration so it could make recommendations to the Benchers.

The Benchers must decide whether to accept the Executive Committee's recommendation to waive the retired member's fee for 2022.

Recommendation

The Benchers are asked to approve the following resolution:

BE IT RESOLVED that the retired member's request for waiver of his retired member fee be approved for 2022.

The Law Society of British Columbia

CEO's Report to the Benchers

December 3, 2021

Prepared for: Benchers

Prepared by: Don Avison, QC

1. New Bencher Orientation

I begin with both congratulations and a warm welcome to the newly elected Benchers who will join the Bencher table in January of 2022. We are hopeful that Bencher-elects will be able to join the December 3, 2021 meeting either in-person or virtually.

Given the level of turnover that will take place in January, we are contemplating a more comprehensive induction process than what we have generally done over the last several years. In addition to background on Law Society operations, committees, meeting protocols and the fundamentals of governance, we plan to hold sessions on the regulatory environment, on the work associated with Law Society priorities including the recommendations of the Mental Health Task Force, the Lawyer Development Task Force and a number of others. We will also cover Anti-Money Laundering initiatives and the work associated with the Cullen Commission. The orientation sessions will also provide an opportunity for newly elected Benchers to be briefed on – and to ask questions about – the Cayton Report on Law Society governance.

The orientation sessions will also cover the development, implementation and current status of the Law Society's 2021-2025 Strategic Plan.

We are also working on arrangements for new and recently elected Benchers to be informed about the mandate, function and key initiatives of the Federation of Law Societies of Canada. That session will be conducted by the Federation's CEO, Jonathan Herman.

2. CIAJ Conference on Indigenous Peoples and the Law

The Canadian Institute for the Administration of Justice recently held their 45th Annual Conference in Vancouver. President Lawton, 2nd Vice-President-Elect Jeevyn Dhaliwal, QC, Chief Legal Officer Natasha Dookie, Policy counsel Andrea Hilland, Truth and Reconciliation Advisory Committee Co-Chair Nicole Bresser and I attended on behalf of the Law Society.

Over the course of the three day program participants heard from panels on the Legacy and Impact of the Truth and Reconciliation Commission, Indigenous Laws and the Justice System, the Indigenous Student Experience in Navigating Law School, the Treatment of Indigenous Offenders, Self-Governance and the impact of Systemic Racism.

We understand that some of the presentation materials will be made available on the CIAJ website in the coming weeks and we will advise when that happens.

3. The Law Society of Saskatchewan v. Abrametz – Proceedings Before the Supreme Court of Canada

This is likely the most significant case the Supreme Court of Canada will consider in relation to professional regulation for the next several years.

The Abrametz matter involves a citation against a lawyer in relation to a number of serious allegations. He was ultimately determined to have engaged in professional misconduct and was disbarred.

The case was before the Law Society of Saskatchewan for an extended period of time. That province's Court of Appeal would subsequently decide that the delay in dealing with the discipline matter was unreasonable and, therefore, that the disbarment should be set aside.

The Supreme Court of Canada heard submissions from the parties, and from a significant number of intervenors, on November 8, 2021.

Intervenors included the Federation of Law Societies of Canada, a number of provincial law societies, several Attorneys General, a number of regulatory bodies from other professions and several other interested parties.

During the oral arguments the Court apparently had many questions for the Appellant, for the Respondent, and, to some extent, for the intervenors.

The matter is now on reserve and you can expect I will provide an update when the decision is released.

4. Appearing Before the B.C. Court of Appeal or the Supreme Court – Form of Address

In practice directives issue on November 18, 2021 (which you will find here and here) both Courts directed that, effective immediately, justices are to be referred to as "Chief Justice", "Associate Chief Justice", "Justice", "Mr. Justice" or "Madam Justice" as the context requires.

5. Various Other Updates

At the December 3rd meeting I plan to provide Benchers with updates on a number of recent or current matters including these:

i) LSBC's engagement with the Counter-Illicit Financing Authority of British Columbia (CIFA-BC) and that organization's recent annual symposium;

ii) A summary of the proceedings at the International Institute of Law Association Chief Executives where together with my colleague Helen Hierschbiel, CEO of the Oregon State Bar, we had responsibility for the Day One program on the "Rule of Law at Risk" – that included sessions with former Supreme Court of Canada Chief Justice Beverly McLachlin, with IBA President Sternford Moyo and with Portland lawyer Steven Wax, author of "Kafka Comes to America" which details his experience representing a number of Guantanamo Bay detainees;

iii) Justice-related elements of the recent report of the Standing Committee on Finance;

iv) On November 25, 2021 the parties involved in the Cullen Commission - the inquiry into money-laundering in British Columbia - were advised that the Commissioner has received an extension for the provision of his Final Report to Government until May 20, 2022;

v) The 2022 Bencher Retreat has now been confirmed for Kelowna for May 26 – 28, 2022.

Don Avison, QC
Chief Executive Officer

The Law Society of British Columbia

Responding to COVID-19 and adjusting regulation to improve access to legal services and justice

Access to Justice Advisory Committee:
Lisa J. Hamilton, QC (Chair)
Paul Barnett
Jennifer Chow, QC
The Honourable Thomas Cromwell
Lisa H. Dumbrell
Mark K. Gervin
Jamie Maclaren, QC
Kevin B. Westell

December 3, 2021

Prepared for:	The Benchers
Prepared by:	Policy and Planning Department
Purpose:	Discussion and Decision

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Committee Process

1. At the beginning of the year, the President asked the Committee to advise the Benchers 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.* The Committee expanded on this request by also considering how access to legal services and the justice system have been compromised as a result of COVID and require further work. In addition, the Committee explored the Strategic Plan initiative relating to how to reduce regulatory barriers in order to improve access to legal services.

2. The Committee discussed these topics at several meetings, and engaged in consultation with the profession.

3. The consultation consisted of seeking written input from lawyers about the topics, as well as conducting four virtual town-hall meetings with lawyers from the following regions by way of Zoom videoconferencing: Vancouver Island, Northern Mainland, Southern Mainland, and the Lower Mainland. In total, over 40 lawyers participated in the consultation process. The Committee is very grateful to all who participated.

4. While the feedback the Committee received and the participation in Zoom sessions was consistently thoughtful, the sample size is too small to rely on for statistical purposes. That said, the Committee is of the view that the perspectives are important, they pass the threshold of "reasonableness," and it is appropriate to consider these ideas as part of the ongoing work that remains. The concepts raised in this report should be considered as starting points for further inquiry, and not conclusions regarding solutions. There will continue to be opportunities to consult and collaborate and to test the ideas in this report against other perspectives.

5. The Committee was supported in its work by Michael Lucas, QC, Jason Kuzminski, Doug Munro, Amanda Kerr, Cary Ann Moore, Anna Lin, Vinnie Yuen and Valence Li. Mr. Kuzminski played a pivotal role in bringing together the Zoom video consultations, and participating as an emcee at three of the events.

Executive Summary

6. COVID-19 has disrupted the manner by which legal services are delivered and accessed. Government, the courts, lawyers, and the Law Society responded to the pandemic by accelerating the adoption of virtual services and modifying rules and policy to permit a range of remote services to occur.

7. The Committee engaged in consultation with lawyers across British Columbia, during four regional video sessions and by inviting written submissions, in order to obtain a better understanding how access to legal services and justice was affected by COVID-19 and how the various responses to the pandemic have operated in practice.

8. During these consultations, the Committee also sought feedback on what regulatory barriers exist that limit or preclude lawyers providing their services to more people, including extending services to help those who might not otherwise be able to afford the services or readily access them.

9. This report provides an overview of what is working as well as areas where change may still be needed. The process the Committee engaged in was designed to be the start of conversations and not lead to conclusions at this stage. Instead, the present purpose was to collect evidence based on the experience of people in the field, and test that information against existing information. After that is completed, a path forward can be identified through which the Law Society can explore what justice system responses to COVID-19 should be continued and how the delivery of legal services, and its regulation, might be improved going forward to promote greater access to legal services and justice.

Resolution

10. The Committee recommends that the Benchers adopt the following resolution:

THAT the Law Society adopt the following recommendation made by the Access to Justice Advisory Committee:

Recommendation 1:

The Law Society adopt the principles for regulatory review set out at paragraph 19 of this report for the purpose of guiding policy development on reducing regulatory barriers to accessing legal services and justice.

Recommendation 2:

The Law Society will work with government, the courts and other justice system stakeholders to maintain justice system responses enacted to address COVID-19, and

explore ways to expand and improve upon those system changes, including exploring how to simplify and modernize the requirements for remote execution of affidavits.

Recommendation 3:

Staff will evaluate what changes can be made to Law Society regulatory requirements, including: in the following areas,

1. Simplifying and modernizing the client identification and verification process;

2. Simplifying and modernizing the trust accounting rules, as well as considering modernizing the rules to address law firm regulation;

3. How to make the payment of practice fees more equitable, including exploring whether to permit alternate payment schedules and means of payment;

4. Evaluate existing resources related to how lawyers can use technology and attempt to simplify the resources where possible. This review may include considering whether the Law Society should change its practice of not endorsing particular technology.

And, where policy changes are needed, will report to the Benchers with suggestions or options.

Background

11. In late 2019, reports began to appear of a novel coronavirus (COVID-19) having been detected in China. In early January 2020 the first recorded case was noted outside China. On March 11, 2020 the World Health Organization characterized the disease as a "pandemic". On March 17, 2020 British Columbia declared a state of emergency in response to COVID-19. As of early November 2021, when this report was written, there have been more than 248 million reported cases of COVID-19 globally, with over five million deaths. British Columbia has seen over 200,000 cases and over 2,100 deaths caused by the disease. The virus has been devastating.

The Issue

12. This report makes recommendations to the Benchers regarding two types of "issues" relating to access to legal services and access to justice.

13. The first issue is how COVID-19 impacted the delivery of legal services and people's ability to access justice. There are two levels to this. At one level there are the barriers created by

COVID-19 to accessing legal services and justice due to services being shut down, and rules relating to social distance, gatherings, and quarantine being imposed. The second level relates to institutional responses to COVID-19, including changes made by the Law Society, government and the courts, and the legal profession. These responses improved access to legal services and justice for some, but created greater barriers for others.

14. The second issue involves identifying ways in which Law Society regulation might impede the ability of lawyers to provide services to clients, or expand the reach of legal services. This topic was not limited to a COVID-19 impact analysis. For this part of its work the Committee considered the need to balance the object of improving access with the public interest purpose of rules or policies that might create barriers to accessing legal services.

15. Any effort to succinctly capture the scope of COVID-19's impact on access to justice and legal services is apt to fail. COVID-19 has profound impacts on all aspects of society, from health, work, housing, travel, human rights, immigration, entertainment, to name a few. Because COVID-19 affects everyone, and often in ways where legal rights or obligations are implicated, its impact is considerable. In order to simplify matters the Committee focused on whether people faced more or fewer barriers to accessing legal services (or delivering such services) and accessing our justice system as a result of COVID-19 and society's responses to the disease. The Committee recognizes that this process of simplification means some important matters will be missed, and that this report cannot be exhaustive of the issues or potential solutions.

16. As noted in the CBA BC Branch report, "Who's Getting Left Behind: The Impact of the Ongoing Digital Transformation of the Court System on Access to Justice in British Columbia" (July 2021) ("CBA Report"), COVID-19 accelerated the digitization process that was already underway in BC.[1] Most of the responses to COVID-19 can be categorized as "digitization" of existing services and systems, rather than transformation of how we deliver services. In other words, justice system stakeholders attempted to replicate paper and in-person processes with digital solutions. This approach made sense as society needed to act quickly to address the shutdown caused by COVID-19. Moving forward, there is time to reflect on the extent to which our legal systems and services can also be transformed to better improve access.

Evaluation Criteria

17. The Committee applied several evaluation criteria in analyzing the issues. The Committee considered the nature of the barriers and the responses of justice system stakeholders,

[1] At p. 4.

assessing ways in which access has been improved or diminished, and what might be done to improve matters.

18. The Committee divided its analysis of feedback and options into matters that fall within the Law Society's ability to control and matters that the Law Society can influence but not control. This approach is consistent with the Law Society's Access to Justice Vision.

19. With respect to the topic of regulatory barriers, the Committee considered additional factors based on evaluation criteria the Committee presented in its 2018 year-end report to the Benchers:[2]

    a. *Reforms and innovation must balance theoretical benefits with actual safeguards* – This principle includes the idea that a certain benefit should trump a theoretical one, unless the magnitude of realizing the theoretical benefit greatly outweighs the actual impact of the benefit that is certain;

    b. *Reforms must target real problems and offer practical solutions* – Most policy analysis should include identifying and understanding the problem the Law Society seeks to address, and from that determine the causal relation between regulation or innovation and the problem or its potential solution. In order for lawyers to embrace changes and promote access, the changes need to be practical and alive to the realities of practising law;

    c. *Reforms should not sacrifice professionalism or standards of competence in order to maximize access* – The goal is not simply to improve access to justice and legal services, but access to meaningful justice and to competently delivered legal services;

    d. *The Law Society must not try to bring about change by regulating outside its jurisdiction; but should be prepared to make constructive suggestions beyond its jurisdiction when the public interest requires it* – In order to withstand judicial scrutiny and to achieve acceptance by the profession and other justice system stakeholders, it is important to ensure regulatory reform and innovation is consistent with s. 3 of the *Legal Profession Act.* However, because some matters within the Law Society's mandate affect (and are impacted by) broad, societal conditions that lie outside its mandate, the Law Society might in some circumstances lend its voice to issues the Benchers determine it is in the public interest to do so; and

[2] In July 2019 the Benchers adopted new governance policies that include a process that is to be applied when "enacting, rescinding or amending proposed rules". The principles recommended in this report are not intended to supplant the governance policy and are intended rather as a complementary process that would apply to policy development at initial stages, often before it is clear that creating or modifying rules is necessary.

e. *The Law Society should explore what opportunities exist through regulation and innovation to promote access to justice and legal services, subject to the overriding object of protecting the public interest in the administration of justice* - The Committee recognizes the importance of a pro-active, positive statement of purpose to support the objects of advancing access to justice and legal services as being consistent with the Law Society's broad, public interest mandate.

The Committee recommends that any work undertaken to change regulatory processes to improve access to legal services should include, as part of its development, consideration of these evaluation criteria by the group assigned the work.

Consultation Feedback

In this section, the Committee sets out some feedback it received during its consultations and possible options for the Law Society to pursue. The Committee deals with these in two branches. First is the feedback related to matters in the control of the courts and the government. The second relates to matters that are within the Law Society's ability to control.

Matters that lie outside the Law Society's control:

20. Several matters that were raised in the consultation relate to matters over which the Law Society has no direct authority, but over which it may exercise so moral suasion and could be an effective advocate or collaborator with others to achieve outcomes.

21. The Committee recognizes that policy decisions of governments operate independent of the Law Society, and the courts are independent bodies as well. The concepts for outreach, therefore are framed as part of the general policy directive the Society adopted in its Access to Justice Vision of outreach and collaboration, rather than prescriptive statements of what the government and the courts must do.

Remote witnessing and execution of documents:

22. The most common and consistent responses the Committee received related to the changes that allow for remote witnessing and execution of documents. Everyone who identified these changes indicated that the system would be improved by allowing for a continuation of remote witnessing and execution of documents going forward, even after the pandemic ends. In addition, most people observed that these processes need to be reviewed and simplified where possible. For example, several participants spoke about how much longer it takes to finalize an affidavit in the virtual model than one created / reviewed in person. The responses included observations that it is difficult to walk some clients through an affidavit page by page over a video service like Zoom, and queried whether there was a way to have a secure third party service that allowed for the client to work through the document (similar to DocuSign)

and then the lawyer would verify by video afterward. The Committee understands that staff has identified this issue, and it is already under consideration with the intent of following up the discussions with the courts on this subject that gave rise to the current practice that was put into place.

Courts & virtual proceedings:

23. The Committee received responses encouraging the Law Society to maintain its own virtual hearing processes, but also to advocate for continued use of virtual court and tribunal processes. It was recognized that virtual processes will not work in all circumstances, but the general feedback is that they expand access to justice and legal services by allowing greater flexibility for accessing the system. Also, several lawyers spoke about how virtual services were less intimidating to participants, and because of this people are more likely to embrace such services.[3]

24. Because virtual services are not location dependent, they permit access without people having to travel and incur the costs and time associated with travel. These savings can be profound, particularly for those of marginal means. For people who have to arrange for care for their children it can be easier to have the children at home while accessing a service remotely, than paying for care and travelling to access a service.

25. The Triple Aim of Access to Justice BC, which the Law Society endorsed, includes making legal services more user focused. Maintaining and improving upon virtual services will be an essential part of achieving this objective.

Courts' systems:

26. The Committee heard several examples of how the courts might improve access going forward, including having judges write orders rather than counsel, and improved process service systems, such as adopting models similar to those used by the US Federal District Court in which, the Committee is advised, users upload documents to a system that time stamps them and automatically emails all parties. The responses indicated the courts need to modernize and simplify how parties communicate with the court.

Prisoners and people involuntarily detained:

27. People who are detained in correctional facilities have experienced greater barriers to accessing legal services and justice than most. In normal circumstances, counsel can meet with a detained individual in person prior to court appearances. This allows for conversations with privileged information to occur. COVID-19 changed this, with the result that lawyers

[3] Recent Small Claims Rules amendments reflect some of the progressive reform that is already underway, see: Small Claims Rules amendments effective August 16, 2021 include new form | Provincial Court of British Columbia.

can't meet with their clients in the facility or in advance of court appearances, and Corrections has not made it a priority to provide an alternative. The result is that during a video appearance, the judge has to "clear" the virtual court to give defence counsel an opportunity to talk with the client. This is inefficient and some clients will not feel comfortable to speak freely in this circumstance. In addition, it was observed that technological solutions do not guarantee that the level of confidentiality and privilege expected of the solicitor-client relationship is preserved for people detained by the State. The Committee is of the view technological solutions and practical policies can be put in place to allow defence counsel to speak with a client, if not in person, by way of video, in advance of the appearance taking place.

28. A related issue that arises for people who are detained involves lack of access to Native Court Workers, Mental Health Workers and other third-party service providers. Historically, these service providers were available in the courthouse to lend needed assistance. With matters pushed to a video model the court system needs to develop a model by which these essential services are accessible when needed. Helping guide people through the process, making them aware of the next appearance to avoid bench warrants and unnecessary delay is a critical part of making courts operate smoothly. Virtual or even hybrid models need to accommodate these services.

Issues of etiquette and professionalism:

29. The Committee heard that as we move forward into an increasingly digital and virtual world, it is important to educate lawyers, litigants and judges about professionalism and etiquette while using virtual platforms. Some of the solemnity of court is lost by a transition to virtual hearings, and the Law Society can work with the courts and the profession to correct this. Examples the Committee heard were of a judge turning off the judges' video during a matter, and of lawyers and litigants not always acting as if the virtual matter was a courtroom. Quite apart from viral examples of "cat people" making appearances in court, simple matters like having dogs barking, or checking one's phone for messages, or having family members walking in the background can all detract from the focus and decorum expected of formal legal matters.

30. The Committee observes that we have all been living with virtual justice long enough now to recognize we can and should do better, and stop bad habits before they become ingrained. There is opportunity for the Law Society to work with the profession, the courts other dispute resolution bodies to establish acceptable norms of behavior for virtual proceedings.

Courthouse libraries:

The Committee heard about the critical role courthouse libraries provide. The Committee acknowledges the excellent job Courthouse Libraries has done in keeping resources available during a challenging time, including making available a considerable amount of high quality,

free CPD content. Some of the feedback the Committee heard is not a criticism of Courthouse Libraries *per se,* as much as a recognition that for some people when libraries are shuttered it locks out the public from accessing important resources or speaking with librarians. Participants encouraged finding ways to make library content more widely available and free for the public. Because we live in a society where many people cannot afford professional legal services, we need to find ways to make essential legal information and resources available to the public for free. The feedback reveals that even useful resources like CanLII probably need to be supplemented with access to librarians or, eventually, improved A.I. to assist people in using the resources.

Safety concerns:

31. Some participants provided feedback related to improved safety as a result of adopting digital service delivery platforms. At the obvious level, technology allowed lawyers and clients and courts to connect without risk of spreading COVID-19. But, some lawyers pointed to additional benefits of allowing people to speak to a matter without having to be physically present with the other disputant. This was particularly beneficial where violence was part of the relation between disputants.

The Committee also heard about a preference amongst some judges for people to not have a mask on, ostensibly so the judge could better hear what people were saying. This raised concerns for health risks and created a pressure to balance health concerns with the object of being responsive to judges' wishes.

<u>Process improvements the Law Society can make</u>:

32. Participants identified a variety of ways the Law Society can improve its processes and practices.

Gender:

33. The Committee heard how the Law Society's forms and communications can be improved by removing gender markers or designations. The Committee understands that work is already underway within the Law Society to address gender self-identification in forms, at hearings, and in official Law Society communications.

Client Identification and Verification:

34. In a similar vein, the Committee heard how the client identification and verification process can create access barriers for transgender people. The Committee heard that transgender people's government identification will not necessarily match the individual's gender identity or chosen name, and this can lead to barriers by requiring the lawyer to collect the government

identity. This can "out" the person as transgender and can have negative consequences for the person's acceptance of the system or process.

35. In addition, people who are economically vulnerable and/or homeless may lack the necessary identification. This makes the client identification process difficult. To the extent a main purpose of the client identification and verification rules are to check against money laundering, it was observed that these marginalized individuals are not realistic conduits for money laundering.

36. The Committee recognizes that the Law Society already has considerable resources directed to the issue of client identification and verification and anti-money laundering, but encourages the Society as part of its ongoing work to consider how to minimize the unintended impact of our rules on marginalized members of society and equity-seeking groups. These issues exist at the intersection of matters of concern to the Law Society, namely, anti-money laundering, access to justice, and equity, diversity and inclusion. These issues are really beyond the remit of this Committee, but the Committee wanted to ensure they were recorded for consideration by other groups in the Law Society who are tasked with examining these matters.

37. The Committee also heard that the Law Society should explore technological solutions to client identification and verification to allow for it to take place remotely. During the course of conversations it was observed that the Land Title Survey Authority has better technology for verifying identity than that which lawyers are permitted by the Law Society to use. It was suggested that software can better detect the markers of fraudulent ID than a lawyer looking at a document in person. Participants encouraged the Law Society to modernize its approach to client identification and verification.

38. The conversation about client identification and verification tracked along themes that were explored during talks about remote witnessing of documents, holding hearings or Chambers applications by video, and virtual services in general. The digitization and liberalization of rules and systems expands the ability of lawyers to connect with clients who otherwise face geographic or other barriers to accessing services in person. The Law Society was encouraged to advocate for the continued use of technology and its normalization.

39. During these conversations it was made clear (as also noted in the CBA Report) that virtual solutions do not work for everyone. So a complete transformation of bricks and mortar to digital would leave many people without access to legal services or justice. Hybrid models are also required, as well as the government and courts committing to the infrastructure necessary to bring technology to remote communities. While the Law Society cannot bring about such change, it can act as a champion for change and work with government, the courts, the CBA and the Law Foundation of BC and others to ensure modernization of legal services and systems are accessible to all who need them.

Simplification of Law Society rules and processes:

40. The Committee heard on a number of occasions that trying to comply with Law Society rules during the pandemic was onerous. Trust accounting rules were identified most often as being complex and time consuming. To be clear, the feedback was not that the Law Society should not regulate trust accounting; it was that the way the Law Society goes about that regulation is complex and very demanding, particularly on sole practitioners and small firms.

41. During the conversations and consultations several examples were provided. A common issue was that the public uses technology and communicates using technology that lawyers are not permitted to use or the use of which is unclear regarding professional obligations. Technology changes, and new applications and services are being used at a rate faster than Law Society rules and processes develop. Some clients expect to be able to communicate with their lawyers using technology that might not meet the standards the Law Society expects of lawyers. Lawyers were not suggesting that professional responsibilities regarding confidentiality and privilege are not important. They did suggest that the profession could do more to "meet" clients and communicate with clients in ways the clients are comfortable with.

42. At one consultation session concerns were raised about the Law Society's process for lawyers unable to practise, or return to practice, during COVID-19 and the issue of how much time a lawyer can be absent from the practice of law before needing to pass examinations or obtain the permission of the Credentials Committee. The Committee understands from staff that Credentials as well as Member Services have dealt with a high volume of COVID-19 related inquiries. Although the Committee is of the view that access to justice issues related to credentialing and membership might have been compounded by COVID-19, the Credentials Committee is the appropriate body to balance those issues against existing processes and the evidence learned during the pandemic. Therefore, the Committee has referred the relevant feedback it received to staff for consideration by the Credentials Committee as part of its work.

Practice fees:

43. The Committee heard from several lawyers that greater flexibility with how and when to pay practice fees would be helpful, as would the possibility of reduced practice fees in order to support the continued viability of necessary but economically marginal practices. Examples included being able to pay by credit card, additional installment options, and potentially offering reduced rates based on meeting objective threshold criteria that merited a reduction. The Committee recognizes that the issue of differential practice fees and practice fee flexibility has been considered a number of times and recognizes that the Executive Committee has referred to the Finance and Audit Committee the issue of considering a differential fee model.

Interac e-Transfers:

44. The Committee heard that the Law Society should differentiate between Interac e-Transfers and electronic transfers, and simplify rules relating to the former as they often involve small sums. In addition, in order to send an Interac e-Transfer there is no need to collect the client's bank account number so the feedback was that the Law Society forms should be changed to reflect how Interact e-Transfers work.

Customized software for trust accounting compliance:

45. During its review of the issues, the Committee considered whether it was possible to have specific software created to help lawyers comply with trust accounting requirements; a sort of "TurboTax" for trust accounting. Not everyone can afford a bookkeeper and highly skilled bookkeepers are a precious commodity. It occurred to the Committee that one area for technological innovation, therefore, is on the law firm accounting and administration end. While the Law Society would not be expected to create or code such software, it might explore what is possible in order to provide the profession an easy to use program that aids in compliance. Such software, if uniform in nature, might also assist with audits on the back end.

46. Several participants noted how difficult it is for sole practitioners and small firms to navigate the rules for trust accounting compliance. Good bookkeepers can be "poached" by larger firms, and it is hard to get quality help, and even more difficult to navigate the system alone. Participants expressed the hope that not only might processes be simplified, but the Law Society might create tools and educational materials to help lawyers operate trust accounts and provide training for book-keepers to understand the requirements of trust accounting (perhaps including the Law Society Trust Accounting Department providing training sessions).

Compliance with professional obligations while using technology:

47. Some lawyers spoke about the difficulty of complying with Law Society requirements for cloud computing technologies. Some lawyers lack the technical understanding of the services they are using, and do not have dedicated IT support. Some lawyers are choosing to avoid embracing cloud computing in order to avoid the difficulty of assessing whether they can comply with the rules. Some participants asked whether there is anything the Law Society can do to identify approved types of services and service providers.

Demographic impacts:

48. As part of its consultations, the Committee sought input on which groups face the greatest barriers to justice and access to legal service, and how COVID-19 has affected these groups.

The feedback received tracks the findings in the CBA Report and speaks to the need for thoughtful design of our systems and services moving forward.[4]

General comments

General observations about Law Society outreach:

49. The feedback the Committee received about the Law Society's efforts at outreach during COVID-19, including the various forums and consultations, was positive. The lawyers the Committee consulted with were grateful for the Law Society's efforts to keep the profession informed and engaged, and encouraged the Society to continue in this vein.

Discussion

50. As noted earlier, the feedback discussed in this report does not constitute recommendations for specific courses of action or solutions. The concepts fit within several categories that merit further consideration and action:

    a. Working with government and the courts to ensure virtual justice solutions form part of the normal system, and simplifying these systems and ensuring they are accessible to all people;

    b. Reviewing the Law Society's rules and processes related to trust accounts, fees, and practice advice related to the use of technology, and simplify the requirements where possible in order to make it less time consuming, costly and onerous for lawyers to comply;

    c. Continuing to engage in outreach, consultation and collaboration with justice system stakeholders while working to modernize how legal services and justice are delivered.

51. The Committee believes the Law Society should reach out to government and the courts to discuss how to modernize the delivery of justice in British Columbia, so that we leverage the lessons of justice delivery learned during the pandemic, and move forward towards a modern and more inclusive system of justice. The forces of human nature that will compel us to revert back to the old way of doing things once infection rates drop below a certain level will be powerful, but it is essential to resist that impulse. We have an opportunity to take the invention brought about by the necessity of responding to COVID-19 and craft something positive out of a human tragedy. These opportunities for alignment of thinking and reform do not come around often, and the Committee is of the view it is essential for the Law Society to

[4] People without access or reliable access to broadband, people with language or technological competency barriers, are examples of some of the demographic groups at risk of being left behind.

commit to advocating for much needed changes to how legal services are delivery and justice is accessed in British Columbia.

52. The Committee is well aware that while statements of intention are easy to make, change is hard. It is important, therefore, to enter consultations and collaborations with open minds and realistic expectations. The Committee is of the view the Law Society can contribute to change by ensuring the public interest is at the forefront of discussions, and that the process of change is principled.

Recommendations

53. The Committee believes that there are several projects the Law Society should undertake as part of a review of how regulation might be modified to be less onerous, and hopefully make it easier for lawyers to provide access to their services or maintain viable practices.

54. As noted above, the Committee recommends that as the Law Society works to reduce regulatory barriers to accessing legal services, the principles and criteria identified at paragraph 19 be utilised to guide policy development.

Recommendation 1:

The Law Society adopt the principles for regulatory review set out at paragraph 19 of this report for the purpose of guiding policy development on reducing regulatory barriers to accessing legal services and justice

55. Next, the Committee encourages and recommends that the Law Society continue working and consulting with government, the courts, and other justice system stakeholders to maintain changes to processes implemented in response to COVID-19 that have worked and to discuss how successes in this regard can be expanded and improved.

Recommendation 2:

The Law Society will work with government, the courts and other justice system stakeholders to maintain justice system responses enacted to address COVID-19, and explore ways to expand and improve upon those system changes including exploring how to simplify and modernize the requirements for remote execution of affidavits.

56. Next, the Committee recommends a range of topics that the Law Society should to consider how to modernize them to better reflect current uses of technology, and to simplify rules and processes where possible. As many of the possible changes will be operational, it is preferable for staff to identify and resolve these matters without conflating them with policy development. Where policy changes are needed, staff should conduct a review, with a goal to recommend to the Benchers options for moving forward.

Recommendation 3:

Staff will evaluate what changes can be made to Law Society regulatory requirements, including: in the following areas,

1. Simplifying and modernizing the client identification and verification process;

2. Simplifying and modernizing the trust accounting rules, as well as considering modernizing the rules to address law firm regulation;

3. How to make the payment of practice fees more equitable, including exploring whether to permit alternate payment schedules and means of payment (e.g. credit cards);

4. Evaluate existing resources related to how lawyers can use technology and attempt to simplify the resources where possible. This review may include considering whether the Law Society should change its practice of not endorsing particular technology. [5]

And, where policy changes are needed, will report to the Benchers with suggestions or options.

Some Concluding Comments

57. The Committee also considers it important to note three points arising from consultation that likely do not fall directly within its mandate, but which it believes are important to note for future consideration by the Law Society.

58. The first is in regard to fees. The Committee understands that the follow up to prior work on fees is in the hands of staff, to report back to the Executive Committee. The Committee passes along this report for consideration by staff to that end with the suggestion that the idea of differential fees be considered as part of that review. In addition, assuming the Benchers adopt the principles noted earlier, the group would also be expected to consider the issue with reference to the principles outlined in Recommendation 1.

[5] This review might include whether it is appropriate reconsider the general policy decision that the Law Society not "endorse" particular products. The Committee recognizes that the concept has significant challenges and is not, therefore, recommending it as a solution. It is simply something that, at this point, the Committee considers that the Law Society should review, as it appears some lawyers are struggling to keep pace with technological change and regulatory compliance. The Committee anticipates these issues will only grow as virtual legal services and cloud-based legal services become normalized

59. The second point relates to the client identification and other anti-money laundering rules. Given the feedback received from the consultations, the Committee urges the Law Society, as part of its ongoing work on anti-money laundering, to minimize as much as it can any unintended, adverse impacts of those rules on marginalized communities and equity-seeking groups.

60. The third point is that the Committee notes the positive feedback received relating to outreach as a result of the consultations the Committee engaged in. The Law Society should build upon its outreach and collaboration efforts regarding access to justice, and other, policy initiatives. As noted, while the sample size was small, the quality of the feedback was high and the initiative was well received.

/DM

The Law Society of British Columbia

Memo

To: Benchers
From: Executive Committee
Date: December 3, 2021
Subject: Indigenous Intercultural Course – Rule requirements

Purpose

1. The purpose of this memorandum is to recommend that Benchers approve rules requiring all practising lawyers to complete the Indigenous Intercultural Course, and to make a policy decision and approve rules regarding an enforcement mechanism to deal with non-compliance.

Background

2. In December 2019, the Benchers approved the recommendation of the Truth and Reconciliation Advisory Committee and the Lawyer Education Advisory Committee that the Law Society develop a course covering specific topics and themes referred to in the Truth and Reconciliation Commission's report and calls to action (the "IIC"). The IIC was also to include information and knowledge that prepares lawyers to participate in, and respond to, changes to provincial laws as contemplated by the recently enacted *Declaration on the Rights of Indigenous Peoples Act*.

3. The Benchers also approved the recommendation that once developed, the IIC would be mandatory for all practising lawyers and that lawyers would have up to two years to complete all of the modules. The Benchers are now asked to approve the proposed rule to make completion of the course mandatory, as well as make a policy decision regarding the preferred enforcement mechanism – or consequences – to deal with non-compliance.

Discussion

4. Over the last few months, the Law Society has been piloting the IIC with specific stakeholders and the profession at large. While we will continue to receive feedback and make changes to the IIC as necessary, the current intention is to roll out the IIC to all practising lawyers on January 1, 2022. Lawyers are given two years to complete the IIC, at which point rules relating

to enforcement or non-compliance will be required. A proposed new Rule 2-38.1(1) was - drafted by the Act and Rules Committee. It was subsequently considered by the Executive Committee at its November 18 meeting, who agreed to recommend to Benchers approval of the rule as drafted subject to the removal of "successfully" from subrule (2) below:

Indigenous intercultural course

3-28.1 (1) A practising lawyer must comply with subrule (2) before

(a) the lawyer has engaged in the practice of law for two years in total, whether or not continuous, or

(b) January 1, 2024

whichever is later.

(2) Every practising lawyer must

(a) [successfully] complete the Indigenous intercultural course, and

(b) certify to the Executive Director in the prescribed form that the lawyer has [successfully] completed the Indigenous intercultural course.

5. The Executive Committee then discussed policy options for enforcement provisions to include in the Rules. The options considered by the Committee are discussed in more detail below.

Options for enforcement or non-compliance

6. There are two current provisions in the rules that are similar to this situation: the mandatory practice management course provisions and the mandatory professional development provisions.

7. Rule 3-28 *[Practice management course]* contains this provision indicating that a failure to comply with the rule is a breach that may have disciplinary consequences:

> *(2) A lawyer who is in breach of subrule (1) has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the chair of the Discipline Committee.*

8. However, Rule 3-29 [Professional development], which includes provisions that are virtually identical to Rule 3-28, is accompanied by Rule 3-31 *[Late completion of professional development]*, which provides for a late completion fee as well as Rule 3-32 *[Failure to complete professional development]*, which provides for administrative suspension of a lawyer in default.

9. The policy question before the Executive Committee for consideration was to recommend which of those approaches to apply in the case of the IIC.

10. Reconciliation efforts are underway across the country and the legal profession needs to be well informed and equipped to understand and contribute to the process. Addressing the challenges arising from the Truth and Reconciliation Commission's findings is one of the most critical obligations facing the country and the legal system.

Failure to meet a minimum standard of practice

11. A breach of the Rules is always something that can be considered by the Discipline Committee. Rule 3-28 makes explicit, however, that a failure to take the course is a failure to meet a minimum standard of practice as well, which is done in part to remind lawyers in particular that should the practice management course not be taken, there may be a disciplinary consequence. The Act and Rules Committee considered this, and proposed the following Rule for consideration, providing a policy decision was made that this approach would be taken with the IIC:

> **3-28.1** (3) A practising lawyer who is in breach of subrule (2) has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the chair of the Discipline Committee.

Failure to complete professional development

12. However, the importance of the initiative, and the connection that the IIC has to advancing reconciliation with Indigenous peoples, justifies a more significant consequence (a suspension) that would arise by operation solely of the Rules, akin to that in Rule 3-29. The Act and Rules Committee also considered that possibility, with the following Rule suggestion:

> **Failure to complete Indigenous intercultural course**
>
> **3-28.2** (1) Subject to subrules (2) and (3), a practising lawyer who fails to comply with Rule 3-28.1 *[Indigenous intercultural course]* by the date on which it is required is suspended until the lawyer has completed the course and certified the completion to the Executive Director as required by Rule 3-28.1.
>
> (2) When there are special circumstances, the Credentials Committee may, in its discretion, order that:
>
> (a) the lawyer not be suspended under subrule (1), or
>
> (b) a suspension under subrule (1) be delayed for a specified period of time.
>
> (3) At least 60 days before a suspension under subrule (1) can take effect, the Executive Director must deliver to the lawyer notice of the following:
>
> (a) the date on which the suspension will take effect;

(b) the reasons for the suspension;

(c) the means by which the lawyer may apply to the Credentials Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

13. As the Act and Rules Committee is not a policy-making Committee, the policy question regarding which of the above enforcement mechanisms or approaches, or combination of those approaches, to apply in the case of the IIC was brought to the Executive Committee for consideration.

Recommendation

14. In light of the societal importance that reconciliation with Indigenous people has taken on, combined with the importance that those who provide legal services understand the consequences of their services in a culturally appropriate manner, there is a public interest served by creating effective and efficient means to enforce the IIC requirement.

15. Given the importance of this initiative, the Executive Committee recommends that the Benchers approve the option discussed above that provides for the "failure to meet a minimum standard of practice" as well as the imposition of an administrative suspension where the course is not completed as required.

16. This would result in a clear direction to lawyers that there are serious consequences to not taking the course, and would create similar enforcement provisions for the IIC and the CPD requirements, both of which the Law Society has concluded are necessary to protect the public interest in the delivery of legal services.

17. The question of a late payment fee warrants some further thought. It would be consistent with the rules that enforce CPD requirements to impose a fee on the lawyer, on the understanding that this is meant to be interpreted as an administrative sanction for not completing the course in a timely manner. This matter will be further considered by the Executive Committee early in 2022.

18. The Executive Committee therefore recommends that Benchers approve the proposed new Rule 3-28.1 and 3-28.2 as provided in the materials:

BE IT RESOLVED that the Benchers approve the proposed Rule 3-28.1 requiring all practising lawyers to complete the Indigenous Intercultural Course within the specified timeframe and new Rule 3-28.2, which contains an enforcement mechanism to deal with non-compliance.

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

"practice management course" means a course of study designated as such and administered by the Society or its agents and includes any assignment, examination or remedial work taken during or after the course of study;

PART 3 – PROTECTION OF THE PUBLIC

Division 3 – Education

Definitions

3-26 In this division

"Indigenous intercultural course" means a course of study designated as such and administered by the Society or its agents and includes any assignment, examination or remedial work taken during or after the course of study;

Practice management course

3-28 (1) Within 6 months after and not more than 12 months before the date on which this Rule applies to a lawyer, the lawyer must

(a) successfully complete the practice management course, and

(b) certify to the Executive Director in the prescribed form that the lawyer has successfully completed the practice management course.

(2) A lawyer who is in breach of subrule (1) has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the chair of the Discipline Committee.

Indigenous intercultural course

3-28.1 (1) A practising lawyer must comply with subrule (2) before

(a) the lawyer has engaged in the practice of law for two years in total, whether or not continuous, or

(b) January 1, 2024

whichever is later.

LAW SOCIETY RULES

(2) Every practising lawyer must

(a) complete the Indigenous intercultural course, and

(b) certify to the Executive Director in the prescribed form that the lawyer has completed the Indigenous intercultural course.

(3) A practising lawyer who is in breach of subrule (2) has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the chair of the Discipline Committee.

Failure to complete Indigenous intercultural course

3-28.2 (1) Subject to subrules (2) and (3), a practising lawyer who fails to comply with Rule 3-28.1 *[Indigenous intercultural course]* by the date on which it is required is suspended until the lawyer has completed the course and certified the completion to the Executive Director as required by Rule 3-28.1.

(2) When there are special circumstances, the Credentials Committee may, in its discretion, order that

(a) the lawyer not be suspended under subrule (1), or

(b) a suspension under subrule (1) be delayed for a specified period of time.

(3) At least 60 days before a suspension under subrule (1) can take effect, the Executive Director must deliver to the lawyer notice of the following:

(a) the date on which the suspension will take effect;

(b) the reasons for the suspension;

(c) the means by which the lawyer may apply to the Credentials Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

Professional development

3-29 (8) A practising lawyer who is in breach of this Rule has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the chair of the Discipline Committee.

Failure to complete professional development

3-32 (1) Subject to subrules (2) and (3), a practising lawyer who fails to comply with Rule 3-29 *[Professional development]* by April 1 of the following year is suspended until all required professional development is completed and completion is certified to the Executive Director as required by Rule 3-29.

LAW SOCIETY RULES

(2) When there are special circumstances, the Practice Standards Committee may, in its discretion, order that

(a) the lawyer not be suspended under subrule (1), or

(b) a suspension under subrule (1) be delayed for a specified period of time.

(3) At least 60 days before a suspension under subrule (1) can take effect, the Executive Director must deliver to the lawyer notice of the following:

(a) the date on which the suspension will take effect;

(b) the reasons for the suspension;

(c) the means by which the lawyer may apply to the Practice Standards Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

"practice management course" means a course of study designated as such and administered by the Society or its agents and includes any assignment, examination or remedial work taken during or after the course of study;

PART 3 – PROTECTION OF THE PUBLIC

Division 3 – Education

Definitions

3-26 In this division

"Indigenous intercultural course" means a course of study designated as such and administered by the Society or its agents and includes any assignment, examination or remedial work taken during or after the course of study;

Practice management course

3-28 (1) Within 6 months after and not more than 12 months before the date on which this Rule applies to a lawyer, the lawyer must

(a) complete the practice management course, and

(b) certify to the Executive Director in the prescribed form that the lawyer has completed the practice management course.

(2) A lawyer who is in breach of subrule (1) has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the chair of the Discipline Committee.

Indigenous intercultural course

3-28.1 (1) A practising lawyer must comply with subrule (2) before

(a) the lawyer has engaged in the practice of law for two years in total, whether or not continuous, or

(b) January 1, 2024

whichever is later.

LAW SOCIETY RULES

(2) Every practising lawyer must

(a) complete the Indigenous intercultural course, and

(b) certify to the Executive Director in the prescribed form that the lawyer has completed the Indigenous intercultural course.

(3) A practising lawyer who is in breach of subrule (2) has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the chair of the Discipline Committee.

Failure to complete Indigenous intercultural course

3-28.2 (1) Subject to subrules (2) and (3), a practising lawyer who fails to comply with Rule 3-28.1 *[Indigenous intercultural course]* by the date on which it is required is suspended until the lawyer has completed the course and certified the completion to the Executive Director as required by Rule 3-28.1.

(2) When there are special circumstances, the Credentials Committee may, in its discretion, order that

(a) the lawyer not be suspended under subrule (1), or

(b) a suspension under subrule (1) be delayed for a specified period of time.

(3) At least 60 days before a suspension under subrule (1) can take effect, the Executive Director must deliver to the lawyer notice of the following:

(a) the date on which the suspension will take effect;

(b) the reasons for the suspension;

(c) the means by which the lawyer may apply to the Credentials Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

Professional development

3-29 (8) A practising lawyer who is in breach of this Rule has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the chair of the Discipline Committee.

Failure to complete professional development

3-32 (1) Subject to subrules (2) and (3), a practising lawyer who fails to comply with Rule 3-29 *[Professional development]* by April 1 of the following year is suspended until all required professional development is completed and completion is certified to the Executive Director as required by Rule 3-29.

LAW SOCIETY RULES

(2) When there are special circumstances, the Practice Standards Committee may, in its discretion, order that

(a) the lawyer not be suspended under subrule (1), or

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(3) At least 60 days before a suspension under subrule (1) can take effect, the Executive Director must deliver to the lawyer notice of the following:

(a) the date on which the suspension will take effect;

(b) the reasons for the suspension;

(c) the means by which the lawyer may apply to the Practice Standards Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

INDIGENOUS INTERCULTURAL COURSE

SUGGESTED RESOLUTION:

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

1. Rule 3-26 is amended by adding the following definition:

"Indigenous intercultural course" means a course of study designated as such and administered by the Society or its agents and includes any assignment, examination or remedial work taken during or after the course of study;

2. The following rule is added:

Indigenous intercultural course

3-28.1 (1) A practising lawyer must comply with subrule (2) before

(a) the lawyer has engaged in the practice of law for two years in total, whether or not continuous, or

(b) January 1, 2024

whichever is later.

(2) Every practising lawyer must

(a) complete the Indigenous intercultural course, and

(b) certify to the Executive Director in the prescribed form that the lawyer has completed the Indigenous intercultural course.

(3) A practising lawyer who is in breach of subrule (2) has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the chair of the Discipline Committee.

3. The following rule is added:

Failure to complete Indigenous intercultural course

3-28.2 (1) Subject to subrules (2) and (3), a practising lawyer who fails to comply with Rule 3-28.1 *[Indigenous intercultural course]* by the date on which it is required is suspended until the lawyer has completed the course and certified the completion to the Executive Director as required by Rule 3-28.1.

(2) When there are special circumstances, the Credentials Committee may, in its discretion, order that

(a) the lawyer not be suspended under subrule (1), or

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(a) the date on which the suspension will take effect;

(b) the reasons for the suspension;

(c) the means by which the lawyer may apply to the Credentials Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

The Law Society of British Columbia

Quarterly Financial Report

Year to Date September 2021

Prepared for: Finance & Audit Committee Meeting – October 27, 2021
Bencher Meeting – December 3, 2021

Prepared by: The Finance Department

Quarterly Financial Report - Year to Date - September 2021

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

General Fund

General Fund (excluding capital and TAF)

For the period ended September 2021, the General Fund operations resulted in a positive variance to budget. This was due to both timing differences and permanent variances for both revenues and operating expenses. Further details can be found on the attached Summary of Financial Highlights.

Revenue

The total revenue to the end of September was $22.9 million, $1.6 million (7%) ahead of budget. This was primarily due to higher than expected practice fees and electronic filing revenue for the period. Additionally fines, penalties and recoveries are ahead of budget, along with credentials and member services revenue.

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 increased and we are forecasting 13,215 practicing lawyers for the 2021 year. With the increase in lawyers, practice fee revenue is projected to be over budget for the year, as noted in the 2021 forecast report.

Electronic filing revenue is ahead of budget to date and this trend is expected to continue for the remainder of the year with this revenue directly related to the real estate market. The BC Real Estate Association is currently forecasting 2021 real estate unit sales to increase 26% over 2020.

Fines, penalties and recoveries are ahead of budget due to additional late reporting penalties related to trust reports and continuing professional development.

Additional revenue in member services and credentials revenue is related to a higher number of transfer applications and call and admissions fees.

Operating Expenses

Operating expenses for the period was $19.5 million, $2.0 million (9%) below budget. This positive variance for the year is due to both permanent variances and timing differences.

The permanent positive expense variance to date is $1.2 million, mainly due to higher than expected staff vacancies and lower meeting and travel costs with virtual meetings. In addition, there were lower recruiting fees and general office cost savings.

The remainder of the savings relate to timing differences at the end of September for external counsel fees, Bencher retreat costs and building maintenance costs, which should be incurred in the last quarter.

TAF-related Revenue and Expenses

For the first two quarters of the year, TAF revenue was $2.8 million, compared to a budget of $1.7 million, with higher than expected real estate unit sales. Of this variance, $143,000 relates to amounts collected from the prior year after the 2020 year-end cut-off.

As the BC Real Estate Association is forecasting 2021 real estate unit sales to increase 26% over 2020 unit sales, TAF revenue is expected to be over budget for the year.

Trust assurance program costs are below budget primarily due to lower travel costs with most trust audits being performed remotely.

Lawyers Indemnity Fund

LIF assessment revenues for the period were $12.8 million, compared to a budget of $11.7 million, with higher than expected practicing indemnified lawyers.

LIF operating expenses were $5.8 million compared to a budget of $6.3 million, with savings primarily related to lower compensation costs, external fees and savings of general office expenses. These savings are partially offset by increased costs related to the new cyber insurance policy and an increase in investment management fees due to reallocating funds between investment managers, the addition of infrastructure investments and a larger overall portfolio.

Investment income (realized and unrealized) was $15.7 million to date, significantly ahead of the budget due to higher investment returns than budgeted and a larger overall portfolio. The investment returns to the end of September were 6.7% compared to a benchmark of 5.7%.

The LIF portfolio asset mix now includes infrastructure funds. To date, $20.1 million has been called by one of the infrastructure investment managers, with the remainder of the funds to be called over the next 12 - 18 months. Infrastructure investments will eventually comprise 30% of the investment portfolio with $62 million committed to date.

The Law Society of British Columbia

Summary of Financial Highlights ($000's)

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

	Actual	Budget	$ Var	% Var
Revenue (excluding capital)				
Practice fees	18,049	17,392	657	4%
PLTC and enrolment fees	1,321	1,245	76	6%
Electronic filing revenue	1,022	525	497	95%
Interest income	247	191	56	29%
Credentials & membership services	688	476	212	45%
Fines, penalties & recoveries	394	206	188	91%
Insurance recoveries	25	-	25	0%
Other revenue	87	158	(71)	-45%
Other cost recoveries	39	92	(53)	-58%
Building revenue & tenant cost recoveries	1,023	1,052	(29)	-3%
	22,895	21,337	1,558	7%
Expenses (excluding depreciation)	19,535	21,577	2,042	9%
	3,360	(240)	3,600	

Summary of Variances to Date - September 2021

Revenue Variances:	
Permanent Variances	
Practice fees	657
Electronic filing revenue	497
Fines Penalties and recoveries	142
Credentials and Membership services	82
	1,378
Timing Differences	
Other miscellaneous timing differences	180
	1,558
Expense Variances:	
Permanent Variances	
Compensation savings	341
Meetings and travel savings	435
HR savings- recruiting & events	102
General office and admin savings (supplies, photocopier supplies & cleaning)	119
Governance review costs unbudgeted	(43)
Other miscellaneous timing differences	201
	1,155
Timing Differences	
External counsel fees	319
Meetings and travel costs - including Bencher retreat	162
Building costs	200
Other miscellaneous timing differences	206
	887
	2,042

Trust Assurance Program Actual

	2021 Actual	2021 Budget	Variance	% Var
TAF Revenue	2,792	1,650	1,142	69.2%
Trust Assurance Department	2,365	2,539	174	6.9%
Net Trust Assurance Program	427	(889)	1,316	

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

Performance	6.7%
Benchmark Performance	5.7%

The Law Society of British Columbia
General Fund
Results for the 9 Months ended September 30, 2021
($000's)

	2021 Actual	2021 Budget	$ Variance	%
REVENUE				
Practice fees (1)	19,724	18,976	748	4%
PLTC and enrolment fees	1,321	1,245	76	6%
Electronic filing revenue	1,022	525	497	95%
Interest income	247	191	56	29%
Credentials and membership services	688	476	212	45%
Fines, penalties and recoveries	394	206	188	91%
Program Cost Recoveries	36	92	(56)	-61%
Insurance Recoveries	25	-	25	0%
Other revenue	87	158	(71)	-45%
Other Cost Recoveries	3	-	3	0%
Building Revenue & Recoveries	1,023	1,052	(29)	-3%
Total Revenues	24,570	22,921	1,649	7.2%
EXPENSES				
Benchers Governance and Events				
Bencher Governance	286	509	223	44%
Board Relations and Events	214	218	4	2%
	500	727	227	31%
Corporate Services				
General Office	382	576	194	34%
CEO Department	523	564	41	7%
Finance	821	826	5	1%
Human Resources	372	497	125	25%
Records Management	177	200	23	12%
	2,275	2,663	388	15%
Education and Practice				
Licensing and Admissions	1,188	1,357	169	12%
PLTC and Education	2,004	2,153	149	7%
Practice Standards	311	341	30	9%
Practice Support	-	41	41	100%
	3,503	3,892	389	10%
Communications and Information Services				
Communications	362	405	43	11%
Information Services	1,272	1,309	37	3%
	1,634	1,714	80	5%
Policy and Legal Services				
Policy and Legal Services	1,155	1,077	(78)	-7%
Tribunal and Legislatvie Counsel	394	468	74	16%
External Litigation & Interventions	8	38	30	79%
Unauthorized Practice	224	245	21	9%
	1,781	1,828	47	3%
Regulation				
CLO Department	679	630	(49)	-8%
Intake & Early Assessment	1,539	1,573	34	2%
Discipline	1,976	2,090	114	5%
Forensic Accounting	532	873	341	39%
Investigations, Monitoring & Enforcement	2,527	2,711	184	7%
Custodianships	1,296	1,391	95	7%
	8,549	9,268	719	8%
Building Occupancy Costs	1,293	1,484	191	13%
Depreciation	789	870	81	9%
Total Expenses	20,324	22,446	2,122	9.5%
General Fund Results before Trust Assurance Program	**4,246**	**475**	**3,771**	
Trust Assurance Program (TAP)				
TAF revenues	2,792	1,650	1,142	69.2%
TAP expenses	2,365	2,539	174	6.9%
TAP Results	**427**	**(889)**	**1,316**	148.0%
General Fund Results including Trust Assurance Program	**4,673**	**(414)**	**5,087**	

(1) Membership fees include capital allocation of 1675k (Capital allocation budget = 1584k)

The Law Society of British Columbia
General Fund - Balance Sheet
As at September 30, 2021
($000's)

	Sep 30 2021	Sep 30 2020
Assets		
Current assets		
Cash and cash equivalents	16,905	8,929
Unclaimed trust funds	2,119	1,997
Accounts receivable and prepaid expenses	928	517
Due from Lawyers Insurance Fund	13,480	16,899
	33,432	28,342
Property, plant and equipment		
Cambie Street property	11,466	11,835
Other - net	1,733	1,844
	13,199	13,681
Long Term Loan	535	446
	47,166	**42,469**
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	3,035	2,561
Liability for unclaimed trust funds	2,119	1,997
Current portion of building loan payable	100	500
Deferred revenue	7,154	6,077
Deposits	87	86
	12,495	11,222
Building loan payable	-	100
	12,495	11,322
Net assets		
Capital Allocation	4,509	3,693
Unrestricted Net Assets	30,162	27,453
	34,671	31,147
	47,166	**42,469**

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
Results for the 9 Months ended September 30, 2021
($000's)

	Invested in Capital	*Working Capital*	Unrestricted Net Assets	Trust Assurance	Capital Allocation	2021 Total	Year ended 2020 Total
	$	$	$	$	$	$	$
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	(1,112)	3,683	2,571	427	1,676	4,673	3,750
Contribution to LIF				-		-	
Repayment of building loan	100	-	100	-	(100)	-	-
Purchase of capital assets:						-	
LSBC Operations	278	-	278	-	(278)	-	-
845 Cambie	483	-	483	-	(483)	-	-
Net assets - At End of Period	**12,700**	**14,965**	**27,665**	**2,498**	**4,508**	**34,671**	**29,998**

The Law Society of British Columbia
Lawyers Indemnity Fund
Results for the 9 Months ended September 30, 2021
($000's)

	2021 Actual	2021 Budget	$ Variance	% Variance
Revenue				
Annual assessment	12,809	11,762	1,047	9%
Investment income	15,713	6,396	9,317	146%
Other income	127	49	78	159%
Total Revenues	28,649	18,207	10,442	57.4%
Expenses				
Insurance Expense				
Provision for settlement of claims	13,464	13,464	-	0%
Salaries and benefits	2,330	2,699	369	14%
Contribution to program and administrative costs of General Fund	968	1,036	68	7%
Provision for ULAE	-	-	-	0%
Insurance	621	333	(288)	-86%
Office	400	818	418	51%
Actuaries, consultants and investment brokers' fees	784	667	(117)	-18%
Special fund - external counsel fees	33		(33)	0%
Premium taxes	-	8	8	100%
Income taxes	-	5	5	100%
	18,599	19,030	431	2%
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	705	759	54	7%
Total Expenses	19,304	19,789	485	2.5%
Lawyers Insurance Fund Results	**9,345**	**(1,582)**	**10,927**	

The Law Society of British Columbia
Lawyers Indemnity Fund - Balance Sheet
As at September 30, 2021
($000's)

	Sep 30 2021	Sep 30 2020
Assets		
Cash and cash equivalents	1,878	6,296
Accounts receivable and prepaid expenses	1,164	375
Current portion General Fund building loan	100	500
LT Portion of Building Loan	-	100
Investments	227,925	205,359
	231,067	**212,649**
Liabilities		
Accounts payable and accrued liabilities	318	524
Deferred revenue	4,151	3,889
Due to General Fund	13,480	16,899
Provision for claims	80,416	80,496
Provision for ULAE	12,222	11,860
	110,588	113,668
Net assets		
Internally restricted net assets	17,500	17,500
Unrestricted net assets	102,979	81,481
	120,479	98,981
	231,067	**212,649**

The Law Society of British Columbia
Lawyers Indemnity Fund - Statement of Changes in Net Assets
Results for the 9 Months ended September 30, 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	9,345	-	9,345	13,213
Net assets - At End of Period	**102,979**	**17,500**	**120,479**	**111,134**

The Law Society of British Columbia

2021 Forecast - General Fund

September 2021

Prepared for: Finance & Audit Committee Meeting – October 27, 2021

Bencher Meeting – December 3, 2021

Prepared by: The Finance Department

2021 Forecast - as at September 2021

Attached is the General Fund forecast for the 2021 fiscal year.

Overview

Total revenue is projected to be over budget by $1.8 million, and expenses under budget by $1.2 million. In addition, $490,000 in one-time COVID practice fee relief was provided, funded though net assets. The relief was provided to 369 firms, for a total of 388 lawyers. With the 2021 deficit budget of $650,000, this will result in a positive contribution for the year of $1.8 million.

Revenue Forecast

At this time, total revenue is projected at $30.3 million, $1.8 million (6%) 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 continued to be an increase 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, resulting in $1.0 million in additional practice fee revenue for the year.

PLTC revenue is projected at $1.8 million, ahead of budget $76,000, with 612 students compared to a budget of 594 and an increase revenue for enrollment and exam re-write fees.

Additionally, with a very strong real estate market, electronic filing revenue is projected to be ahead of budget for the year by $547,000. The BC Real Estate Association has forecasted that 2021 real estate unit sales will increase 26% over 2020.

Operating Expenses Forecast

Operating expenses are projected to be $27.9 million, $1.2 million (4%) under budget. We are projecting savings primarily in compensation costs and meetings and travel expenses. Additional savings are projected in general office and human resources costs. These savings will be partially offset by higher external counsel fees, governance review costs and cybersecurity measures.

Compensation savings: Compensation costs are projected to be below budget by $440,000, primarily due to staff vacancy savings.

Meetings and Travel Cost Savings: The 2021 budget assumed Bencher and staff meetings would be conducted 50% fully virtually. As all meetings continue to be conducted virtually, we are projecting another $580,000 in savings for Bencher and staff travel and meeting costs.

Office and HR Savings: General office costs are projected to be below budget $120,000 with lower use of supplies, postage and printing. Cost savings of $110,000 are projected in recruitment and other staff-related event costs.

External Counsel Fees: External counsel fees are projected to be over budget by $133,000. 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 will be $100,000.

Information Services: Our cyber security program has been enhanced, with new programs and training in place to detect and protect against cyber threats, and costs estimated at $60,000 per year.

Net Asset Reserve Forecast

The net asset projection for 2021 is:

2021	
Opening Balance - per 2020 audited financial statements	$ 11,282,000
Forecasted 2021 Surplus	$ 2,300,000
Estimated reserve used for one-time fee reductions	$ (490,000)
Projected 2021 Reserve Closing Balance	**$13,092,000**

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

	Q3		Forecast vs Budget $	Forecast vs Budget %
	Forecast	Budget	Variance	
REVENUE				
Practice fees	24,175	23,188	987	4%
PLTC and enrolment fees	1,829	1,753	76	4%
Electronic filing revenue	1,247	700	547	78%
Interest income	285	255	30	12%
Credentials and membership services	660	634	26	4%
Fines, penalties and recoveries	378	285	93	33%
Program Cost Recoveries	102	122	(20)	-16%
Other revenue	216	187	29	16%
Building Revenue & Recoveries	1,352	1,382	(30)	-2%
Total Revenues	30,258	28,506	1,752	6%
EXPENSES				
Benchers Governance and Events				
Bencher Governance	546	635	89	14%
Board Relations and Events	295	298	3	1%
	841	933	92	10%
Corporate Services				
General Office	628	778	150	19%
CEO Department	782	808	26	3%
Finance	1,122	1,133	11	1%
Human Resources	612	695	83	12%
Records Management	268	271	3	1%
	3,412	3,685	273	7%
Education and Practice				
Licensing and Admissions	1,756	1,904	148	8%
PLTC and Education	2,734	2,864	130	5%
Practice Standards	454	466	12	2%
Practice Support	42	70	28	*40%*
	4,986	5,304	318	6%
Communications and Information Services				
Communications	522	541	19	4%
Information Services	1,711	1,725	14	1%
	2,233	2,266	33	1%
Policy and Legal Services				
Policy and Legal Services	1,413	1,459	46	3%
Tribunal and Legislative Counsel	597	630	33	5%
External Litigation & Interventions	336	50	(286)	-572%
Unauthorized Practice	297	332	35	10%
	2,643	2,471	(172)	-7%

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

	Q3 Forecast	Budget	Forecast vs Budget $ Variance	Forecast vs Budget % Variance
Regulation				
CLO Department	893	875	(18)	-2%
Intake & Early Assessment	2,143	2,136	(7)	0%
Discipline	2,767	2,822	55	2%
Forensic Accounting	709	1,182	473	40%
Investigations, Monitoring & Enforcement	3,525	3,664	139	4%
Custodianships	1,822	1,846	24	1%
	11,859	12,525	666	5%
Building Occupancy Costs	1,948	1,972	24	1%
Total Expenses	27,922	29,156	1,234	4%
General Fund Results	**2,336**	**(650)**	**2,986**	
Reduction in Net Assets- Fee Relief	**(490)**			
Surplus after Fee Relief Reduction	**1,846**			

The Law Society of British Columbia

Memo

To:	Benchers
From:	Staff
Date:	December 3, 2021
Subject:	Revision to Schedule of 2022 Bencher & Executive Committee Meeting Dates and Meeting Format

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At its meeting of November 18, 2021, the Executive Committee approved revisions to the schedule of 2022 Bencher and Executive Committee meeting dates to bring forward the Friday, October 7 Bencher meeting by two weeks to Friday, September 23, so as to avoid the occurrence of a Bencher meeting on the Friday before Thanksgiving weekend. The September 22 Executive Committee was also moved to September 8. These dates avoid conflict with Truth and Reconciliation Day on September 30, and also do not create any issues in terms of proximity to the October 20 Executive Committee and November 4 Bencher meeting dates.

The revised schedule of the 2022 Bencher and Executive Committee meeting dates is attached for Benchers' information. The schedule also indicates which 2022 Bencher and Executive Committee meetings will be hybrid and which meetings will be held entirely virtually.

The Law Society of British Columbia

2022 Bencher & Executive Committee Meetings

Executive Committee	Bencher	Other Dates
Thursday, January 13 **Hybrid**	Friday, January 28 **Hybrid**	Jan 1: New Year's Day Jan 3: Public Holiday (in lieu of New Years' Day) Jan 26: New Bencher Orientation Jan 28: Welcome/Farewell Dinner
Thursday, February 17 **Virtual**	Friday, March 4 **Virtual**	Feb 1: Lunar New Year Feb 5: CBABC Provincial Council Meeting Feb 7: CBA Annual General Meeting Feb 21: Family Day March 10: Bench and Bar Dinner March 14 - 25: Spring Break
Thursday, April 7 **Hybrid**	Friday, April 22 **Virtual**	April 2 (sundown)-May 1 (sundown): Ramadan April 14: Vaisakhi Apr 15-18: Easter
Thursday, May 12 **Virtual**	Saturday, May 28 **Hybrid**	May 2 (sundown) – 3 (sundown) Eid May 23: Victoria Day May 26-28: LSBC Bencher Retreat June 6: Federation Council Meeting
Thursday, June 23 **Hybrid**	Friday, July 8 **Virtual**	June 21: National Indigenous Peoples Day June 22: AGM July 1: Canada Day Aug 1: BC Day Aug 25-29: IILACE Conference Sept 5: Labour Day
Thursday, September 8 **Virtual**	Friday, September 23 **Hybrid**	Sept 25(sundown) - 27(sundown): Rosh Hashanah Sept 30: Truth and Reconciliation Day Oct 4 (sundown) - 5 (sundown): Yom Kippur Oct 10: Thanksgiving Day
Thursday, October 20 **Virtual**	Friday, November 4 **Virtual**	Oct 24: Diwali Oct 30-Nov 4: IBA Annual Conference Nov 11: Remembrance Day Nov 15: Bencher By-Election TBD: Federation Fall Meetings
Thursday, November 17 **Hybrid**	Friday, December 2 **Hybrid**	Dec 2: Recognition Dinner Dec 18 (sundown) - 26 (sundown): Hanukkah Dec 25: Christmas Day Dec 26: Boxing Day Dec 26 – Jan 1: Kwanzaa

The Law Society of British Columbia

2021 Year-End Reports

Access to Justice Advisory Committee
Equity, Diversity and Inclusion Advisory Committee
Indigenous Engagement in Regulatory Matters Task Force
Mental Health Task Force
Rule of Law and Lawyer Independence Advisory Committee
Truth and Reconciliation Advisory Committee

December 3, 2021

Prepared for: Benchers

Prepared by: Policy and Planning Staff

Purpose: For information

Introduction

1. This report is a compilation of the year-end reports of the four Advisory Committees as well as of the Indigenous Engagement in Regulatory Matters Task Force and Mental Health Task Force.

I. Access to Justice Advisory Committee

2. The Committee monitors and advises the Benchers about key access to justice issues, with particular emphasis on access to legal services, and on legal aid issues and recommend to the Benchers as necessary actions or initiatives to address issues as they arise

3. At the beginning of the year, the President 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*. In July the Committee reported on the status of its research and consultations. From September to December the Committee finalized this work.

Family Law

4. In September the Committee presented its report on family law to the Benchers for discussion. The Benchers revisited the report at the October Bencher retreat and approved all but one of the recommendations in the report.

Impacts of COVID-19

5. At the Committee's meeting in September it continued to analyze the topic of how COVID-19 has impacted access to legal services and access to justice, as well as the topic of regulatory barriers to accessing legal services. The Committee developed a draft of its report, and finalized the report at its October meeting. That report forms part of the December Bencher agenda for discussion and decision.

Data – Annual Practice Declaration

6. At its October meeting, the Committee considered preliminary data from the optional access to justice questions on the Annual Practice Declaration ("APD"). The Committee reviews this data each year to assist it in advising the Benchers about policy development related to pro bono, legal aid and access to justice more generally.

7. Due to reporting cycles for the APD, no full set of data yet exists for how COVID-19 might have impacted lawyers providing pro bono or lower cost legal services, legal aid and other access to justice work. However, while COVID has likely had some impact, the data to date suggests that lawyers continue to provide these services at a high rate. This is heartening, as we know from our consultations that COVID-19 has had a significant effect on lawyers' practice and, of course, in their personal lives. That the profession has maintained a high level of commitment to support access to justice in these difficult times is something to be proud of.

Pro Bono

8. In December the Committee will discuss pro bono legal services and what, if anything, the Law Society can do to encourage those lawyers who do not provide them to make it part of their practice, with a particular emphasis on how to engage more government lawyers in their provision.

II. Equity, Diversity and Inclusion Advisory Committee

9. The Equity Diversity and Inclusion Advisory Committee monitors and advises the Benchers on developments and issues affecting equity, diversity, and inclusion in the legal profession and the justice system, and promotes equity, diversity, and inclusion in the legal profession.

10. A summary of Work Undertaken by the Committee in the latter half of 2021 follows:

Women in Law Subcommittee

11. A subcommittee was struck to develop a survey for women lawyers to share their experiences of the Covid-19 pandemic. The subcommittee met four times and determined that developing and implementing a survey before the end of 2021 would not be feasible, and has proposed developing a "town hall" instead. Options with respect to the proposed town hall will be considered by the broader Committee in 2022.

12. A representative from the subcommittee attended a "retention of women in law roundtable" discussion hosted by the Canadian Chapter of the International Association of Women Judges in another province, to explore the possibility of collaborating on the development of a similar roundtable event in British Columbia.

Diversity Action Plan

13. The Committee's Diversity Action Plan that contains 30 action items intended to increase diversity in the Law Society and the legal profession was approved by the Benchers in September 2020. The Committee is working through a number identified action items, including demographic data collection, outreach, and fostering diversity in the Law Society and legal profession.

Outreach

14. One of the Committee's priority areas in 2021 is to conduct outreach, and to that end, the Committee intends to assist the Rule of Law and Lawyer Independence Advisory Committee in the development of a podcast regarding racism and the rule of law.

15. 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 October 18, 2021.

16. Two representatives from the Law Society, President Dean Lawton, QC and EDI Advisory Committee Chair Jennifer Chow, QC, participated in the launch of the documentary "But I Look Like a Lawyer." The documentary was produced by the Federation of Asian Canadian Lawyers to share stories of the discrimination, stereotyping and bias experienced by members of the Pan-Asian legal community.

Diversity within the Law Society

17. The Diversity Action Plan includes an action to facilitate diverse representation within Law Society governance. 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. In the 2021 Bencher election, an unprecedented number of Indigenous Benchers and several Benchers from diverse communities were elected.

Justicia

18. 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 organized a presentation resiliency and workplace wellness by Dr. Robyne Hanley-Dafoe that occurred on November 4, 2021.

III. Indigenous Engagement in Regulatory Matters Task Force

19. The Indigenous Engagement in Regulatory Matters Task Force was appointed in July 2021 to examine the Law Society's regulatory processes, specifically its complaints, investigation, prosecution and adjudication processes, as they relate to complainants and witnesses, particularly Indigenous persons, who may be experiencing vulnerability or marginalization and to make recommendations to the Benchers to ensure that the Law Society's regulatory processes accommodate the full participation of such complainants and witnesses..

Review and Consultation

20. The Task Force's first order of business was to review its draft Terms of Reference, to consider input from the Truth and Reconciliation Advisory Committee on the Terms of Reference, and to provide feedback to Benchers with proposed revisions. This review and consultation took place in early September, allowing the Task Force's Terms of Reference to be finalized and approved by Benchers on September 24, 2021.

Work Plan

21. The Task Force has prepared a preliminary high-level work plan, which was approved by Benchers on September 24, 2021. As the Task Force's work progresses, we anticipate that the work plan may continue to be refined.

22. The Work Plan consists of three phases, as follows:

    a. Phase One: Research and Analysis (September 2021 - December 2021)

    b. Phase Two: Outreach and Consultation (January 2022 – May 2022)

    c. Phase Three: Draft Report and Recommendations (June 2022 – September 2022)

Analysis of Law Society Processes and Research

23. Pursuant to Phase One of its Work Plan, the Task Force is undertaking a review of existing Law Society processes relevant to its mandate. This included receiving a presentation from Natasha Dookie (Chief Legal Officer), Gurprit Bains (Deputy Chief

Legal Officer) and Tara McPhail (Director of Discipline and External Litigation) regarding the Law Society's complaints investigation and discipline processes.

24. The Task Force also reviewed a list of prior reports and written resources identified by staff, which provides information on various policies, practices and recommendations of other entities relevant to the mandate of the Task Force. The list of reports and resources will be shared with the Law Society's Truth and Reconciliation Advisory Committee to seek input on additional reports for the Task Force to consider.

Outreach and Consultation

25. Pursuant to Phase Two of its Work Plan, the Task Force will commence outreach and consultation activities in early 2022. This work is anticipated to include: identifying individuals and organizations to consult with and scheduling consultations, identifying key issues to discuss during consultations, and meeting with representatives from external organizations.

IV. Mental Health Task Force

26. The Mental Health Task Force was created to make recommendations and to take steps to assist the Law Society in (a) identifying ways to reduce the stigma surrounding mental health issues; and (b) developing an integrated mental health review concerning regulatory approaches to discipline and admissions. This report focuses on elements of the Task Force's work that have advanced since its mid-year report was issued in July.

Alternative Discipline Processes

27. In September, the Task Force finalized its proposal for the creation of an Alternative Discipline Process ("ADP"), a voluntary, confidential program designed to customize the regulatory response in circumstances where a lawyer's conduct issue is linked to a health issue. The ADP recommendation report, which included considerable detail regarding how the process will operate, was unanimously approved by the Benchers in October. It is anticipated that by supporting eligible lawyers in addressing their underlying health issues, the ADP will place practitioners in a stronger position to meet their professional responsibilities. In this regard, the ADP has the potential to realize significant public interest benefits by reducing the likelihood that problematic behaviour will escalate or reoccur.

Mental Health Forum and Outreach

28. In September, the Task Force co-hosted the Mental Health Forum for Legal Professionals with the Continuing Legal Education Society of BC. The event, which had approximately 950 registrants for the live session, and an additional 150 registrants for the re-broadcast, comprised three parts: the first panel was devoted to hearing about lawyers' lived experiences with mental health and substance use issues; the second set of panels provided an opportunity for legal employers of various sizes to discuss the opportunities and challenges that arise in addressing these issues in the workplace; and the final panel highlighted some of the mental health resources and supports available to the profession.

29. The Chair of the Task Force also provided presentations to ethics classes at both the Peter A. Allard School of Law and the University of Victoria Faculty of Law, engaging students in discussions about mental health within the profession.

National Well-being Study

30. The Task Force continues to monitor the status of the National Well-Being Study, a project undertaken by the Federation of Law Societies in collaboration with Canadian law societies and the Canadian Bar Association. With the assistance of the Law Society's Communications department, BC achieved high participation rates, with over one thousand respondents completing the survey. The results of the study, which seeks to improve the profession's understanding of the psychological health and well-being risk factors specific to the practice of law in Canada, are expected to be released by mid-2022.

Respectful Language

31. The Task Force also endorsed the work of the Practice Support department in revising the Law Society's respectful language practice resource, an initiative that arose from a previous Task Force recommendation. The updated Inclusive Language Guidelines are expected to be posted to the Law Society's website by the end of the year.

32. Looking forward, the Task Force anticipates developing additional recommendations for the Benchers in 2022, including proposals that aim to improve the manner in which the Law Society addresses "failure to respond" matters that arise in the course of its investigatory and disciplinary processes and to enhance access to mental health resources, referrals and support.

33. The Task Force has also begun to consider how the Law Society can ensure it maintains the momentum generated by the Task Force's existing 22 recommendations and meet its current strategic goals in relation to supporting and promoting mental and physical

health, particularly once the work of the Task Force – which is not a standing Law Society committee – has concluded.

V. Rule of Law and Lawyer Independence Advisory Committee

34. The Rule of Law and Lawyer Independence Advisory Committee
35. advises the Benchers to ensure that the Law Society's processes and activities preserve and promote the preservation of the rule of law and the independence and effective self-governance of lawyers and that both the public and the legal profession and the public are properly informed about the meaning and importance of the rule of law of a self-governing profession of independent.

36. The focus of the Committee this year has been on the following matters:

Essay Contest

37. The secondary school essay contest continues to be a generally successful endeavour that connects high school students with the principles of the rule of law.

38. The 2020-2021 high school essay contest contained two topics: (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? Forty submissions were received. The winner, announced in July, was Tianna Lawton (Mulgrave School) for an essay entitled "The Role of Disorder in Order: Civil Disobedience and the Rule of Law." "The runner-up was Ireland Waal (Sardis Secondary School) for an essay entitled "Civil Disobedience and the Rule of Law: How "Valuable" Lawbreaking Can Progress Society." Thanks are extended to Elizabeth Rowbotham, Jacqueline McQueen, QC and Jon Festinger, QC for judging the contest.

39. The 2021-2022 contest has been announced. Submissions are due by April 23, 2022.There will be a single topic this year:

> The right to freedom of expression is used to justify demonstrations for or against various causes in our society. How does freedom of expression intersect with the rule of law? In what circumstances can courts prohibit or limit a protest or demonstration? Discuss whether your answer is affected by the popularity or unpopularity of the cause.

40. Benchers are encouraged to reach out to local secondary schools regarding the contest, and to share particulars with any high school-aged students they may know.

Rule of Law Lecture

41. The Rule of Law Lecture, normally held in May or June, was postponed again this year due to continuing public health orders in response to the pandemic. The Committee did however settle on holding an in-person lecture, currently tentatively scheduled for February 22, 2022. A speaker has been identified. More information will be available shortly.

Articles

42. At the beginning of the year, the Committee was asked to consider issues that posed a risk, or threat of erosion, to the rule of law, and to prepare articles for consideration by the Executive Committee for publication.

43. The Committee wrote an opinion article earlier in the year 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.

44. One of the basic principles of the role of lawyers as set out by the United Nations Office of the Commissioner on Human Rights is that lawyers are not to be identified with their clients or their clients' causes as a result of discharging their functions. The Committee is currently finalising a further article on this topic. Unfortunately, there have been relatively recent instances of lawyers or law firm staff being harmed (or killed) for acting for clients whose opinions may not be popular, and in other countries lawyers continue to be jailed or worse for acting for clients whose views may be contrary to state policies or the interests of those in power.

Podcast

45. The Committee and the Communications department are continuing to produce and publish episodes of the Rule of Law Matters podcast. The first season of the podcast comprised 13 episodes over 2020-2021, and wrapped up in August. A second season is set to begin soon. Special thanks to Vinnie Yuen who has been remarkable in producing the episodes, and to Jon Festinger, QC who is excellent as the podcast host.

Monitoring

46. The Committee has paid close attention to events relating to the rule of law around the world. Sadly, it is clear that the rule of law is under pressure in a number of places, and is pretty much non-existent in others. Despite its importance to a healthy democracy, Hungary, Poland and Belarus are providing examples that even in Europe, the rule of law is not something that can be taken for granted. The rule of law as we would recognize it is close to being extinguished in Hong Kong, and Russia and particularly China do not

seem to make much of even a pretense toward advancing it as a governing principle. Even in England, the United States and Canada politics seems at times to play havoc with the rule of law and presents dangers to its robustness.

47. The Committee urges the Benchers to ensure that the Law Society remains vigilant about defending the rule of law. It is not well understood outside of the legal profession (and even within the profession it is often misunderstood). It faces danger because the law creates hurdles to policies that people may like to see advance. But the rule of law also provides crucial protections to ensure that the law is applied fairly and that it preserves the liberty of individuals that is so important within Canada. It provides protections so that no one interest can manipulate the law to its own ends. While recognizing that the justice system is sometimes perceived as cumbersome and unfair, the rule of law allows change to be made in a measured, lawful way. Without it, as is clearly demonstrated in some other countries, individuals and groups have no protection against arbitrariness and injustice. The rule of law is very much in the "public interest in the administration of justice" and, more than perhaps anything else, works to "protect and uphold the rights and freedoms of all persons." The Law Society cannot lose sight of that.

VI. Truth and Reconciliation Advisory Committee

48. The Truth and Reconciliation Advisory Committee advises the Law Society n legal issues affecting Indigenous people in the province. The Committee has met four times since providing its mid-year report of July 2021, and has discussed the following matters.

Indigenous Course

49. The Indigenous intercultural course and pilot, launched in September of 2021, was the primary focus of the Committee. The Committee provided substantial feedback for staff to incorporate into the course. Some Committee members also provided video content for the course.

50. Over 600 lawyers have enrolled in the pilot. A survey of pilot participants has provided predominantly positive feedback, as well as suggestions for continuing educational sessions to build on the baseline course in future years. The course content will be finalized before it is launched to all lawyers in BC in January of 2022.

Supporting Indigenous Law Students and Lawyers

51. The Committee has discussed concerns that were brought forward by applicants to the Law Society's Admission Program regarding the cultural safety of the application process. The Committee has also discussed questions from law and articled students relating to the Professional Legal Training Course (PLTC). In response to the PLTC questions, staff has

written an article for the CBA BC Aboriginal Lawyers Forum newsletter, and an information session for all law students in BC is being organized for February of 2022. The Committee also explored ideas of connecting virtually during the pandemic.

Indigenous Scholarship

52. The Indigenous law scholarship was awarded to two students this year. The proof of Indigenous ancestry criteria has been updated on the Law Society's website.

Indigenous Engagement in Regulatory Matters Task Force

53. The Committee provided feedback on the terms of reference and work plan of the Indigenous Engagement in Regulatory Matters Task Force that was struck to consider the unique needs of Indigenous complainants and witnesses within the Law Society's regulatory processes.

National Day of Truth and Reconciliation

54. The Law Society closed its offices on September 30, 2021 in recognition of the National Day of Truth and Reconciliation. All lawyers in BC, as well as Law Society representatives and employees, were encouraged to take the Law Society's Indigenous intercultural course as one method for reflecting on the significance of the day.

Fostering Indigenous Representation in Law Society Governance

55. Individual Committee members have been interviewed as part of the Law Society's Governance Review.

56. Efforts to encourage Indigenous representation in Law Society governance and tribunals have included targeted statements that encourage Indigenous candidates to seek appointment. Five Indigenous candidates were elected in the 2021 Bencher election, and two Indigenous community members have been appointed to the Tribunals hearing pool.

Inclusive Language Guide

57. The Committee provided feedback on the Indigenous components of the Inclusive Language Guide that will be posted on the Law Society's "Practice Resources" webpage.

Canadian Council of Law Deans and Federation of Law Societies Working Group

58. The Law Society of BC continues to be involved in the working group established between the Council of Canadian Law Deans (CCLD) and the Federation of Law Societies of Canada (FLSC) having the joint objective among the law faculties, Law Societies, and

the Barreau in promoting and supporting the objectives in the Truth and Reconciliation Commission's Calls to Action 27 and 28, including addressing cultural awareness and anti-racism. Dean Lawton, QC is a member of the working group.

Moving Forward

59. The Committee will continue to identify and implement priorities as set out in the President’s mandate letter and in the Truth and Reconciliation Action Plan. Staff will create a detailed work plan to address imminent priorities.

The Law Society of British Columbia

Memo

To: Benchers
From: Jacqui McQueen, Chair of the Practice Standards Committee
Date: November 16, 2021
Subject: Committee Consideration of President's Mandate Letter

Background

In 2020 the Law Society President Craig Ferris issued a letter to the Practice Standards Committee (the "Committee") asking that it consider whether the current Practice Standards model is achieving the expected results based on the available data and evidence and if not to consider whether there is a better model. In 2021, President Lawton issued a similar letter to the Committee asking that:

> With the assistance of the CLO and staff, continue the work started last year in considering whether the current PS model is achieving the expected results based on the available data and evidence and if not consider whether there is a better model.

This memo is intended to provide a brief summary of the Committee's discussions and consideration of Presidents Ferris' and Lawton's letters to the Committee.

Summary

In 2020 Practice Standards Committee held two special meetings to discuss the President's letter. They also obtained statistical data from staff regarding timelines and outcomes for practice standards matters and determined that more refined data was required to measure success of program and determine whether program changes were required. Due to time constraints the 2020 Committee was unable to conclude its consideration of the issue, so they developed an action plan to assist the 2021 Committee. That action plan included the following:

- gather additional data showing correlation between competency issues addressed by Practice Standards and those arising in new complaints post-Practice Standards;
- consider the timeliness and efficiency of the program and options to have ad hoc meetings and delegation of some decisions to staff;
- look into early intervention and proactive remediation;
- consider ways to address recidivism, e.g. excluding lawyers who cannot be remediated (inability to modify behaviour); and,
- consider committee composition to include a medical professional.

In 2021, the Committee held three special meetings in order to continue the work started by the Practice Standards Committee in 2020. In those meetings the Committee considered some of the items in the 2020 action plan. In particular, the 2021 Committee reviewed additional data and considered:

- whether there were committee functions that could be changed to improve efficiencies and effectiveness;
- whether new programs should be developed to enhance overall program effectiveness;
- the role of data collection; and,
- the value of additional educational resources for the profession.

Committee functions

Continuing on from the Committee's considerations in 2020, in 2021 the Committee piloted some process changes to how it functioned, such as:

- the introduction of an email voting process for urgent and time-sensitive matters; and,

- delegating file closure decisions to staff on some files.

The Committee determined that there were efficiencies to be gained by using these process changes and decided to continue using these new processes.

Another option the Committee considered to enhance the effectiveness of the Practice Standards program was to introduce Bencher "chats' with lawyers in the Practice Standards program but with the recognition that there were a lot of issues to be addressed before this could be implemented including: the potential conflicts the could arise for Benchers who sit on other committees or hearing panels, the additional workload for Benchers, and the complexity of some competency issues requiring expertise in specific practice areas e.g. estates. Given all of these considerations, the Committee concluded that this was not an option that they saw value in pursuing further.

New Programs

In reviewing the data provided by staff, the Committee was unable to conclude that the Practice Standards program, as it currently stands, is ineffective. For instance, the data indicates that 61% of lawyers who have gone through the practice standards process did not have further issues requiring intervention by the program, during the time the data was collected. However, the Committee recognized that the current Practice Standards model is reactive and were of the view that exploring a more proactive practice standards model was of value. In the three special meetings held this year, the Committee discussed and considered a number of options relevant to the President's letter.

At the Committee's final special meeting on October 28, 2021, the Committee considered and reached some decisions regarding the options that they had discussed in the previous special meetings, as follows:

- **A Mentorship program (involving both formal mentorship agreements and a registry for mentors and mentees) –** Staff updated the Committee with information they had gained from the Law Society of Alberta about their two mentorship programs. Staff determined that for a model similar to Alberta's no rule changes would be required unless it is determined that the Law Society should introduce mandatory participation in the program for some members. For example, the Law Society of Alberta has automatic enrollment for a period of one year for newly called lawyers into its Mentor Express program, with the option of opting out. Based on this information the Committee was satisfied to leave further consideration of developing a mentorship program with staff.

- **A Mentorship program using Life Benchers as mentors -** The Committee noted that lawyers might perceive the life benchers as being part of the Law Society which might be a deterrent to some members of the profession to using the program. Also of concern would be quality control for such a program. Consideration should be given to only using mentors with no history with practice standards or discipline. Not knowing if there would be any interest in participating in such a program on the part of life benchers, the Committee decided that the Chair of Practice Standards would discuss with staff the possibility of doing a survey of life benchers to determine the extent of their interest in participating in a mentorship program.

- **Proactive approach to Practice Reviews –** Staff advised the Committee that they have conducted extensive research of existing Proactive Practice Review models to determine the most appropriate model for the Law Society. The Committee was satisfied to leave further consideration of developing a Proactive Practice Review program with staff. The Committee was supportive of a more proactive model.

- **Promote program for Practice Reviews on a voluntary self-referral basis to those lawyers seeking assistance with no criteria or restrictions for entry -** Staff sought and received funding in the 2022 budget to pilot a self-referral practice review program. The Committee was satisfied to leave program development with staff.

Data Collection

The Committee was of the view that it is essential to be data informed when considering changes to or the introduction of new programs. One area of data that the Committee considered to be of potential value is exit survey data from lawyers as they complete the practice standards process. However, the Committee did express some concern about whether lawyers would be comfortable participating in a survey and recognized that there are challenges with doing surveys anonymously. As such, the Committee did not have a specific recommendation regarding this option.

Education

The Committee also discussed the possibility of building upon Practice Standard's mandate to provide educational resources to lawyers. The Committee recognized that data collection would be necessary to determine what gaps existed in education and that ultimately providing educational opportunities would require collaboration with other Law Society departments. The Committee was of the view that further consideration by staff, with updates to the Committee, should be given to this option.

The Law Society of British Columbia

Report on the Benchers' Retreat Conference – October 15, 2021

December 3, 2021

Prepared for: Benchers

Purpose: For Information

Prepared by: Staff

I. Preamble

The theme of the Benchers' Retreat Conference for 2021 was the timely, effective and accountable resolution of professional discipline matters.

During the first session, Don Avison, QC moderated a panel consisting of Malcolm Mercer, the Chair of the Law Society of Ontario Tribunal, Paul Craven, the Acting Assistant Deputy Minister at the Ministry of the Attorney General and Superintendent of Professional Regulation, and Dr. Chris Hacker, the registrar and CEO of the College of Dental Surgeons. Each spoke on a number of matters relating to professional regulation, structure and governance of professional regulatory bodies, and the conduct of investigations and discipline.

During the second session, Benchers heard from Mr. Avison and Natasha Dookie about the operational perspective, and Lisa Hamilton, QC provided a presentation relating to conversations she had had with counsel who have acted before Hearing Panels for both the Law Society and for lawyers.

Following these presentations, the Benchers broke into groups and discussed what they had heard with a view to identifying ideas for both short-term and long-term improvement in the Law Society's processes. Staff assigned to each group took notes of the discussion with a view to presenting a summary Report for consideration at a future Bencher meeting.

II. Discussion and Analysis

A wide range of topics was discussed at the several tables of Benchers. There was some overlap in the ideas that were discussed, although there was not always a consensus about how to deal with an issue. Nevertheless, the discussion has provided a number of possible initiatives for discussion and recommendation. For convenience in reviewing the report, we have grouped the topics of discussion from the various tables under common headings.

1. Preliminary Comments

As a preliminary matter, at least two groups recognized that every new initiative that is to be implemented carries a cost. Understanding the extent of that cost is important, as well as where the cost will be borne, and this ought to be done before making a final determination to implement any initiative in order to determine whether its anticipated outcome justifies the cost of pursuing it.

2. Pre-Admission, Articles, Training and Related Matters

(a) Do Law Schools Provide the Necessary Training to Be a Lawyer?

Currently, in order to enroll in the Law Society Admission Program, a candidate needs proof of academic qualification, which can be met with a degree from a Canadian law faculty. Do these institutions provide the necessary academic and practical skills necessary to become a lawyer? Groups recognized that law faculties have been changing their pedagogical efforts over the past decade, with a greater focus in some faculties on "experiential learning." Despite that, discussion at the tables highlighted that there remains a gap between skills learned in law school and the skills required to practice law.

Several groups identified the need to ensure that this question is included as part of the current examination being undertaken as the Law Society reconsiders pathways to qualification.

(b) Principals

There are currently few limitations on who can be a principal. Some groups asked whether principal training was an initiative whose time might finally have arrived. It was noted that another Canadian jurisdiction –Alberta – had recently introduced principal training and some groups thought this was an issue worthy of immediate consideration. As the Law Society now has jurisdiction to regulate law firms as well as individual lawyers, consideration as to how law firms fit into the articling model could generate new considerations that are worth addressing.

Some groups questioned whether a lawyer should be allowed to be a principal if the lawyer had an open complaint, or if the lawyer had ever had a valid complaint. The public interest is served by ensuring that applicants for admission article to lawyers who understand their professional and ethical obligations, although a complaint that might be categorized as less serious from a number of years ago may not require a continuous ban on the lawyer being a principal. Introducing stricter criteria for principals may also affect the number of principals available in a given year, which may result in a reduction in available articling positions; a consequence that would need to be managed.

Moreover, the extent of training, or what it should be aimed at, would also benefit from some further consideration. For example, would it be better to train principals on mentoring, or on subjects related to Law Society admission expectations, or both? Should employment law subjects be included?

(c) Bencher interviews

The utility of Bencher interviews of articled students was questioned by several groups, as there is no set structure to these interviews and they take up considerable resources. Are there other options that could be considered, or is it time to terminate this requirement of the admission

program? It was recognized that interviews may provide value to students – particularly students articling in small firms or to sole practitioners – to establish relationships with other senior lawyers in the profession, but it was questioned whether Bencher interviews really advanced that outcome. An alternative may be to introduce a mentorship program to assist students through their articles where needed, and to assist lawyers in their first five years of practice. Senior lawyers in the profession may be willing to volunteer and commit to being part of a mentorship program, and this may serve as a suitable alternative to Bencher interviews that more effectively advances the outcome Bencher interviews are intended to achieve.

(d) New Pathways to Admission

All groups noted the wisdom of examining new pathways to admission that may be different from the current law school/admission program pathway. This issue is, of course, already identified on the Law Society's current Strategic Plan and has been assigned to the Lawyer Development Task Force to make recommendations and a report is expected later in 2022.

3. Education

(a) "The First Five Years"

All groups noted the statistics with respect to lawyers who received a complaint within the first five years being likely to generate a statistically relevant higher number of subsequent complaints over their careers than lawyers who did not receive a complaint within that time frame.

While some groups noted that it was still a minority of such lawyers who generated subsequent complaints, it was recognized that education of newly called lawyers to this statistical fact was warranted. Immediately including these statistics in PLTC materials was suggested in order to bring remind articling students that how their conduct was addressed in the first five years had significant effects on their success at the bar.

(b) New Lawyer Training

Following on from the "first five year " discussion, some groups suggested the Law Society could provide newly called lawyers with more resources after call to the bar. This was particularly identified as a recommended course for newly called lawyers in small firms or who were commencing practice as a sole practitioner. New firm visits or practice reviews were identified as possible solutions. Business training for newly called lawyers was also identified as a possibility. Some groups suggested that the Law Society create start-up business plan templates (somewhat like practice checklists) for newly called lawyers who are considering opening their own firm.

(c) Graduated Licensing

Some groups noted that other jurisdictions have graduated licensing programs, where a newly called lawyer must achieve certain milestones before being permitted a full license. This would be an educative function that ensures, or aims to ensure, that before a lawyer is given a full license to practice on their own that they have met certain educational requirements. The initiative is not one for immediate implementation, as this would be a considerable departure from the current qualification model, and is anticipated is one that could be an option to be considered by the Lawyer Development Task Force.

4. Categorizing Conduct

(a) How conduct is identified

Many groups commented that "misappropriation" was the term used to describe all conduct related to a taking by a lawyer of funds from trust, regardless of whether it was intentional. This led to a broader discussion by many groups relating to how conduct is identified, and whether it accurately reflects the degree of seriousness of what happened. A lawyer who was a first time offender and made a mistake is quite different from a lawyer who intentionally did something, knowing it was wrong. It was noted that the BC definition of "misappropriation" had been rejected in Ontario in *Law Society of Ontario v. Wilkins,* 2021 ONLSTA 15 (CanLII).

Suggestions were made that conduct - particularly a taking from trust - be described under three categories: (i) "mistake"; (ii) "negligence"; and (iii) intentional misconduct (which would include willful blindness).

How the public interest was affected by this nomenclature was questioned. Concerns were noted that to a client whose money had disappeared, how the conduct was named may be quite irrelevant, and revising the classification in a way that may seem to euphemize it might be viewed as more in the interest of lawyers than in the public interest.

5. Complaints and Discipline Processes

The focus of discussion under this heading was primarily targeted at finding ways to be more efficient and cost-effective in investigations and in reaching discipline outcomes. There was a common theme that the speed of investigations could improve, that more effective (and perhaps earlier) use of discipline outcomes could be considered (and new outcomes could perhaps be developed as well), and that a broader use of administrative penalties (particularly for first-time offences) could be created. Other themes were that outcomes may be imposed more quickly if lawyers other than benchers could be used for conduct reviews or meetings, that too much of the Law Society's regulatory energy is taken up with a small portion of lawyers in the province, and

that recidivism amongst this group was a problem that warranted considering new ways of dealing with complaints.

There was a recognition that the role of the Law Society is to protect the public interest in the administration of justice by regulating the legal profession, and that reducing bencher and staff resources used on investigations and discipline cannot be an end in itself. Being resource effective at the expense of regulating effectively is not an option. However, if ways of creating better outcomes using fewer resources can be found, the Law Society must investigate those options.

In particular, the following initiatives or concepts were raised in discussion by a number of the tables.

(a) Risk Assessments/Triage

Does the Law Society focus too much on whether the conduct meets a definition of "misconduct" or "breach of a rule" rather than focusing on the resulting harm arising from the conduct at issue? If a rules breach is clerical or administrative and has a minimal impact can it be treated differently from a serious breach and/or one that has a serious impact? If less serious breaches continue to occur, then, using a performance management approach, they can begin to be treated more seriously.

Improved or, perhaps, more robust risk assessment or triage of complaints at an early stage was therefore encouraged. This would allow resources to be focused on complaints that need quicker attention (such as those with a greater harm to the public), while allowing complaints where less risk is presented to await attention without increasing negative regulatory outcomes.

Staff has begun work on developing a framework for risk assessment that can be used by professional regulation staff when assessing complaints. Staff will continue developing, and implement, a framework for risk assessments that will aim to improve the speed of investigations for complaints that potentially pose more risk as identified by the framework.

(b) Administrative penalties

Administrative penalties are used by some regulatory bodies, particularly for first time offences. Staff has been giving consideration to administrative penalties, and a policy report recommending the introduction of Administrative Assessments or Penalties is expected to be ready shortly for Bencher consideration.

(c) Early(ier) Intervention

A number of groups discussed the prospect of some earlier form of intervention during the course of an investigation.

The use of consent agreements to refer a lawyer to a conduct meeting-like process is one possibility where a conduct issue is identified by staff that is relatively minor but nevertheless warrants attention. If the lawyer consented, the matter could be referred to a meeting with a bencher or other senior lawyer to review the conduct concerns and discuss ways to avoid the concern in the future. Like a conduct meeting, this would not form part of a professional conduct record, but could be implemented at the staff level rather than taking up time at the Discipline Committee level.

(d) Developing educational resources to pair with early intervention

Working on the premise that early intervention could be aimed at education for a lawyer who had recognized that they made a mistake, the development of education resources to which lawyers could be referred pursuant to a consent arrangement was also encouraged. More research would be required to determine the costs of this initiative, and examination of how it might be implemented (including whether and how it is used in other jurisdictions) would be advised.

(e) Proactive education instead of reactive discipline

The current regulatory model is focused on reactive discipline. Lawyers are expected to know the rules and their professional obligations, and where they transgress they may expect to receive a disciplinary outcome. How much effort, however, is put in by the Law Society to educate lawyers about professional obligations? Some groups asked whether the Law Society might invest more resources in creating education, or conferences, on practice information or professional obligations that could qualify for CPD and could have the added benefit of building relationships amongst the bar. Having created educational opportunities, transgressions of obligations might become easier to address because lawyers could be presumed to have availed themselves of how to avoid conduct issues.

(f) Improved Conduct Review Processes

This initiative was discussed in the context of finding ways to reach outcomes more quickly. It starts from the conviction, identified by several groups, that Conduct Reviews are very valuable if they are done with education in mind, rather than as a "severe remonstration" of a lawyer for the lawyer's conduct error. Most lawyers want to do well. Most lawyers are open to learning from their mistakes. Appealing to a lawyer's sense of professionalism, a conduct review subcommittee can encourage better performance in future by educating the lawyer on why the error is of such importance to maintaining confidence in the legal profession.

Where a consent resolution process involving a conduct meeting-like outcome (as described above) is not available, but a citation is not warranted, a conduct review still retains considerable value. However, almost all the groups discussed that the time it takes to set a conduct review is problematic, and that the longer it takes to hold the review, the less value the review has as the immediacy of the conduct has passed.

(g) Recidivism

Concerns were expressed that some lawyers keep generating complaints despite having already been disciplined for the same or similar conduct. Several groups discussed whether there could be ways to create consequences on recidivist lawyers that may have more effect than simply piling up further discipline outcomes.

i. Ungovernability and Irremediability

All groups were intrigued by the possibility of implementing (or better utilizing existing) processes that would result in more use of "progressive discipline" by which penalties would increase on subsequent citation hearings against the same respondent.

Equally, interest was expressed in the concepts of "ungovernability" and "irremediability." Both these findings are currently available through the jurisprudence of law society hearing decisions from across the country. However, it could be viewed as creating bias if the benchers were to direct, or even encourage, hearing panels to consider using these remedies more frequently. Instead, it would be better to urge Discipline Counsel to include in their submissions on penalty the option of either of these concepts as appropriate, which is likely already happening.

ii. Other Recidivism Possibilities

Lawyers who have had an insurance claim paid on their behalf by the Lawyers Indemnity Fund face a premium in their insurance payments over a set number of years. Could lawyers who have been the subject of a set number of complaints that have resulted in a discipline outcome be subject to increased practice fees? It doesn't seem that there are other examples from other Canadian law societies, and determining what would trigger such a requirement is open to several different possibilities, so an immediate implementation of this initiative would be unwise. However, there seemed to be some consensus that it is something that warrants further policy work.

Expanding on the concept of "ungovernability" and "irremediability," discussions amongst some groups wondered about creating rules that would, where certain criteria were met, require the respondent to "show cause" as to why the respondent should not be disbarred. A reference was made by one group to the "habitual offender" provisions in s. 660 of the Criminal Code.

(h) Imposition of additional consequences as a result of a valid complaint

An idea was proposed that practice restrictions be imposed on lawyers where a complaint has been founded, and that such lawyers be required to show cause as to why the restriction should be removed.

(i) Permit respondent lawyers to make submissions to the Discipline Committee

This issue was discussed by a number of groups, with comments both for and against such an initiative.

Reasons in favour of allowing it were to improve the information before the Committee when making a decision about what to do with a complaint. The ability of the lawyer to address the Committee directly was thought to be beneficial and may allow earlier imposition of a discipline outcome.

Other groups, however, were concerned that this initiative would create the appearance of a hearing, bringing with it a higher level of the required degree of natural justice and administrative fairness. At present, the Committee is only making a decision about whether to authorize the issuance of a citation or, failing that, whether another, lesser disciplinary outcome is warranted. Having given the respondent an opportunity to reply to the complaint, administrative fairness does not require an oral hearing of the respondent. Regularizing a process that allowed such a hearing could make Discipline Committee meetings more hearing-like, and this could actually slow down the resolution process.

6. Citations, Hearings and Tribunals

(a) Complexity/Length of Citations

Some benchers commented on a sense that citations were overly complicated, and contained too many "counts." While deferring to discipline counsel about the required adequacy of the citation to ensure that the description of the misconduct alleged was sufficient for the purposes of the hearing, some benchers wondered if citations that contained many counts were necessary as frequently as they appeared to be used.

Every count requires evidence to be led, and increases the time for the hearing. Could there be a focus on one or two matters that are particularly egregious, especially where, if proved, the discipline outcome is likely to be serious, such as a fine, suspension or disbarment? Questions were asked as to whether more discretion could be used in determining what to include in a citation, without creating the sense that staff are including absolutely everything that might be included.

That said, some groups also recognized that if multiple allegations of misconduct were necessary to prove in order to argue for an increased penalty, citations would necessarily need to include all the allegations gathered.

(b) Disclosure

Many groups agreed that disclosure was a serious issue that created a great deal of complexity in hearings, and especially contributed to the delay in scheduling hearings.

Some thought was given to moving disclosure requirements up to the investigative phase, but some participants expressed caution that by doing so, what was already a process that was adversarial by nature could become even more adversarial by procedure, and thus cause further delay rather than alleviating it. However, the idea is worth giving some further consideration to, as it could also result in earlier resolution of matters if done appropriately.

(c) Reformulating hearing panel composition

Currently, Rule 5-3(b) requires each hearing panel to include a bencher or life bencher, but the Act creates no such requirement. The Benchers could create rules to remove the requirement that benchers or life benchers sit on hearing panels. This could theoretically reduce the time in setting hearings, as the limited number of benchers (and life benchers) means that their schedules, and any conflicts that may arise as a result of their other Law Society activities, may impose limits on the hearing administrator being able to set up panels.

More broadly, discussion occurred about the advisability of benchers being adjudicators as well as rule-makers and, through the Discipline or Credentials Committee, making decisions about what should go to hearing.

(d) Reconsidering the Tribunal Pools

Currently, the Tribunal comprises three pools of people who are available to sit on hearing panels. One is of Benchers, one is of lawyers who are not benchers, and one is of public members. One suggestion from benchers was that the bencher and lawyer pools could be combined, so that there are more people available to sit on hearings, which would lead to hearings being able to set more quickly and overall timelines would be reduced

(e) Decision-writing

Generally, the chair of a Hearing or Review Panel is responsible for writing decisions, and the rules provide that a panel must be chaired by a lawyer. Moreover, current bencher policy requires that panel members must have taken training in decision-writing before they may author decisions. Some attendees suggested that public members be trained as well, and that they be available to write decisions.

Further, authorship of a decision is currently not attributed (unless by inference where a panel member dissents). Suggestions were made that the panel member who authored the decision be named, as is the case in Court decisions, with other panel members agreeing with the decision as is the case in the Court of Appeal.

7. Trust Accounting and Rules

(a) Complexity of trust rules

Several groups identified that the complexity and number of trust accounting rules may be a contributing cause to trust accounting rules breaches, and that if some effort were directed toward a re-examination of these rules, it is at least possible that the number of investigations and misconduct identified through audits may be reduced.

(b) Trust Rules and Law Firms

As the Law Society has authority to regulate law firms, consideration needs to be given to how to revise the trust rules to put the onus on *law firms* rather than on *individual lawyers* to address trust accounting issues. As law firm regulation considerations have to date focused on "proactive regulation" that resulted in the Law Firm Self-Assessment pilot project as recommended by the Law Firm Regulation Task Force, now is the time to go back to first principles to consider how to utilize the powers of law firm regulation to amend the trust rules.

(c) Do lawyers need to hold trust funds?

Some discussion amongst the groups questioned whether lawyers really ever needed to hold trust funds, apart perhaps from retainers. These groups asked whether the Law Society should investigate the possibility of precluding lawyers holding trust funds in connection with transactions or proceedings, and instead utilize the services of escrow holders. It was recognized that this would be a significant change to the current practice model, and that further consideration would be necessary.

(d) Bookkeeper considerations and training

Some groups identified the lack of qualified bookkeepers, and the difficulties some firms, especially small firms and sole practitioners, have in identifying qualified bookkeepers. Suggestions were made that the Law Society consider providing training to accountants or other people who may qualify to be bookkeepers and possibly provide certification in this regard. Caution was expressed, noting that the Law Society had no real jurisdiction in this area, but it was also noted that perhaps law firm accounting considerations could be added to Innovation Sandbox considerations.

(e) Law Society automation

Some groups wondered if the Law Society might be able to provide assistance in respect to trust accounting by automating certain processes or even by creating a broader Law Society financial entity that assisted some firms – particularly small firms and sole practitioners – to do their trust accounting.

A "Law Society Financial Institution" was rejected as a concept in the mid '00s, but a re-exploration of the idea is worth further policy consideration, either alone or in tandem with exploring how to automate standard accounting requirements.

8. Communications and Information Disclosure

(a) Transparency and Openness

Acting in the public interest requires the Law Society to be transparent about its regulatory and policy-setting processes. The Law Society is subject to the *Freedom of Information and Protection of Privacy Act* and must comply with its requirements regarding information disclosure. Some attendees noted that pro-active communication is important, however, and consideration should be given to where the Law Society can proactively disclose information, even where it may have a discretion to withhold it.

(b) Use of Communications

Communications at the Law Society rightly focus on providing information externally about Law Society operations and regulatory processes. Some comments were noted that care needs to be taken to ensure that lawyers are not inundated with communications from the Society. Consolidation of direct communications through the Benchers Bulletin and through E-Brief is welcome, and providing information on the Law Society website about matters of interest to the public or to lawyers was thought to work best.

(c) More communication relating to discipline outcomes and complaints

Several comments were recorded to the effect that the Law Society should consider publishing more information about complaints and outcomes. Currently, the only communications or publications where individuals are named is where an applicant for admission is rejected after a hearing, or where a respondent on a citation is found to have engaged in professional misconduct, conduct unbecoming, or a breach of the rules. Conduct review outcomes are published anonymously, but some benchers thought that the time may have come to name the lawyers who are subject to a conduct review, as this may be information that existing or prospective clients ought to know about. Some wondered if a lawyer's entire complaint record should be public information.