



# Second Interim Report of the Mental Health Task Force

For Presentation at the January 31, 2020 Bencher Meeting

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## Mental Health Task Force

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Prepared for: The Benchers

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Purpose: Decision

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# Executive Summary

Over the last several years, research has revealed problematic levels of substance use, depression, anxiety and various other forms of psychological distress among lawyers, with both Canadian and American studies confirming that these issues manifest across the full spectrum of the profession at levels much greater than the general population and the majority of other professions.

A number of commentators have regarded the conclusions drawn from the research as a call to action, demanding that all sectors of the profession commit to improving lawyer wellness. In responding to this call, the Law Society has elevated addressing mental health and substance use issues within the profession to an organizational priority. In so doing, the Law Society recognizes not only the scale of the problem, but also, the critical connection to its public interest mandate and the important role regulators can play in building a healthier professional and regulatory culture.

The goal of the Second Interim Report is to build on the foundational work of the Task Force's 2018 recommendations by proposing a series of new initiatives that maintain the Law Society's forward trajectory with respect to improving BC lawyers' mental health, for the benefit of both Law Society members and the public interest that the Society is statutorily mandated to uphold and protect.

Underpinning each of these recommendations is an acknowledgement of, and effort to respond to, the concerning rates of mental health and substance use issues within the profession, as well as the harmful effects of stigma. The recommendations are also reflective of the important relationship between lawyer wellness and the protection of the public, and the Law Society's unique position to show leadership in this regard.

If approved by the Benchers, the recommendations contained in the Second Interim Report will continue to advance the important work of changing how the profession talks about, and takes action in relation to, mental health and substance use issues, to the benefit of both lawyers and the public they serve.

## Introduction

1. It is well documented that those in the legal profession experience mental health and substance use disorders at rates much greater than that of the general population and the majority of other professions. These issues manifest across the full spectrum of the profession, affecting law students, young lawyers and seasoned practitioners.
2. Over the last several years, social science research has confirmed alarming levels of problematic alcohol use, depression, anxiety and various other forms of psychological distress among lawyers. In a groundbreaking study of American lawyers in 2017, researchers found that more than 36% of respondents provided answers consistent with problematic drinking or dependence. Further, more than 60% of lawyers reported experiencing anxiety issues over the course of their careers, while 45% had experienced depression. Rates of

panic disorder, bipolar disorder and self-injurious behaviour were also notable. Disturbingly, more than 11% of lawyers reported having suicidal thoughts at some point during their career, and 0.7% — more than 90 lawyers in the study cohort — reported at least one prior suicide attempt.<sup>1</sup>

3. In 2019, a comparable Canadian study found that 40% of respondent lawyers were experiencing some form of psychological distress, and “burnout” rates approached 30% in some practice areas.<sup>2</sup>
4. The culture and stressors unique to the practice of law appear to contribute to these problems and create barriers to open dialogue about, and action in relation to, mental health and substance use. Lawyers frequently work in an organizational milieu where expectations and demands are high and time is short. Billable hour targets, competition among colleagues and the inherent stressors associated with work that is largely problem-driven, adversarial in nature and based on uncertain outcomes that often have serious consequences for clients all contribute to cultural norms fostered within firms and other legal employers that can be unhealthy. Stigma can compound the challenges of lawyers living with, talking about and obtaining assistance for these issues, with concerns about privacy and confidentiality and others “finding out” cited as the most common barriers to seeking help.<sup>3</sup>
5. A number of commentators have characterized these emerging trends as a “mental health crisis” or a “wellness epidemic” within the profession.<sup>4</sup> Others, including the US National Task Force on Lawyer Well-Being, have regarded this research as a call to action, demanding that all sectors of the profession commit to addressing substance use and mental health issues among lawyers.<sup>5</sup>

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<sup>1</sup> Krill P.R., Johnson R. & Albert L., “The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys” (2016) 10 J. Addiction Med. 46, online at: [http://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The\\_Prevalence\\_of\\_Substance\\_Use\\_and\\_Other\\_Mental.8.aspx](http://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx). (“ABA Study”).

<sup>2</sup> The study, which was commissioned by the Barreau du Québec, was based on more than 2,500 lawyers answering a 150-question survey that focused on psychological distress, burnout and well-being. For an English summary of the findings, see Luis Millan, *Lawyer’s Daily* (August 2017), online at: <http://secure.campaigner.com/CSB/public/ReadmoreContent.aspx?id=28522621&campaignid=36930416&ac=580325>. The full report is available online at: <https://www.barreau.qc.ca/media/1886/rapport-sante-psychologique-travail-avocats.pdf>. (French only) (“Barreau du Québec Study”).

<sup>3</sup> ABA Study *supra* note 1.

<sup>4</sup> See, for example: Jim Middlemiss, “Mental Health’s Toll” *Canadian Lawyer* (May 20, 2019), online at: <https://www.canadianlawyermag.com/news/opinion/mental-healths-toll/276099>; Daniel Fish, “The Mental Health Crisis in Law” *Precedent* (March 6, 2018), online at: <https://lawandstyle.ca/law/cover-story-the-mental-health-crisis-in-law/>; Edward Fennel, “Stopping a Mental Health Crisis Before it Begins” *The Times* (May 16, 2019), online at: [www.thetimes.co.uk/article/stopping-a-mental-health-crisis-before-it-begins-zz7t77x6k](http://www.thetimes.co.uk/article/stopping-a-mental-health-crisis-before-it-begins-zz7t77x6k); Legalspeak, “Confronting the Mental Health Crisis in the Legal Profession”, online at: <https://legalspeak.libsyn.com/confronting-the-mental-health-crisis-in-the-legal-profession>; Dina Port, “Lawyers Weigh In: Why Is There a Depression Epidemic In the Profession?” *ABA Journal* ( May 11, 2018), online at: [www.abajournal.com/voice/article/lawyers\\_weigh\\_in\\_why\\_is\\_there\\_a\\_depression\\_epidemic\\_in\\_the\\_profession](http://www.abajournal.com/voice/article/lawyers_weigh_in_why_is_there_a_depression_epidemic_in_the_profession)

<sup>5</sup> The National Task Force of Lawyer Well-Being, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (2017), online at:

6. In responding to this call, the Law Society acknowledges the scale of the problem, its connection to its public interest mandate, and the important role the regulator can play in building a healthier professional and regulatory culture.
7. Over the last two years, the Law Society has devoted significant resources to implementing the suite of mental health initiatives contained in the Task Force’s First Interim Report.<sup>6</sup> The goal of the Second Interim Report is to build on the foundational work of the Task Force’s earlier recommendations and propose a series of new initiatives that maintain the Law Society’s forward trajectory with respect to improving lawyers’ mental health.

## Background

8. The Law Society has elevated addressing mental health and substance use issues within the profession to an organizational priority. This commitment is reflected in the 2018-2020 Strategic Plan, which directs the Law Society to take steps to improve lawyers’ mental health by identifying ways to reduce stigma and developing an integrated mental health review concerning regulatory approaches to discipline and admissions.<sup>7</sup>
9. In January 2018, the Mental Health Task Force (the “Task Force”) was established and provided a clear mandate to assist the Law Society achieve these strategic goals in order to further promote and protect the public interest.<sup>8</sup>
10. In November 2018, the Task Force issued its First Interim Report, which outlined the scale of mental health and substance use issues within the legal profession and the effects of stigma, as well as proposing a set of 13 initial policy recommendations to the Benchers.<sup>9</sup> These recommendations, which were approved in December 2018, fall into two broad categories: educational strategies that increase awareness and understanding of mental health and substance use issues with the profession, and regulatory strategies that focus on how these issues are appropriately addressed in the regulatory context in order to protect the public interest.
11. These early recommendations were well-received by the profession, and propelled the Law Society to the forefront of action on these issues among Canadian law societies. Over the last year, the Task Force has maintained this strong forward momentum, focusing on three

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[www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf](http://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf)

<sup>6</sup> Mental Health Task Force First Interim Report (December 7, 2018), online at:

<https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/MentalHealthTaskForceInterimReport2018.pdf> (“First Interim Report”).

<sup>7</sup> Law Society of BC, 2018-2020 Strategic Plan, online at:

[https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/StrategicPlan\\_2018-2020.pdf](https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/StrategicPlan_2018-2020.pdf).

<sup>8</sup> Mental Health Task Force Terms of Reference, online at:

[https://www.lawsociety.bc.ca/Website/media/Shared/images/initiatives/MentalHealthTaskForce\\_termsofreference.pdf](https://www.lawsociety.bc.ca/Website/media/Shared/images/initiatives/MentalHealthTaskForce_termsofreference.pdf) (“Terms of Reference”).

<sup>9</sup> First Interim Report *supra* note 6.

distinct streams of work: implementing the recommendations contained in the First Interim Report,<sup>10</sup> engaging in informal consultations and educational outreach activities, and developing additional recommendations that address the Law Society's strategic priorities in relation to mental health.

12. The Second Interim Report focuses on the latter aspect of the Task Force's work, namely, the development of a second set of recommendations for the Benchers that will continue to advance the important work of changing how the profession thinks about, and responds to, mental health and substance use issues.

## Task Force Recommendations

13. Over the course of 2019, the Task Force engaged in consultations, outreach, research, and policy discussions focusing on how to build and expand on the regulatory and educational strategies presented in the First Interim Report. Flowing from this work, the Task Force has developed seven new recommendations, which are presented to the Benchers for discussion and decision. These recommendations fall into two broad categories:

*Information-sharing strategies* that enhance the exchange of ideas and information between the Law Society and other stakeholders in the legal profession in relation to mental health, substance use and stigma-reduction.

*Regulatory strategies* that focus on how mental health and substance use issues affecting lawyers are most appropriately addressed in the regulatory context.

## Information sharing strategies

14. The Task Force has developed a series of five recommendations that aim to enhance the manner in which the Law Society shares information about mental health and substance use issues and related supports within the legal community.
15. A focus on information sharing is important for two inter-related reasons. First, improving the ways that lawyers and firms talk about mental health and substance use, and expanding the forums in which these conversations occur can improve the profession's collective awareness and understanding of the nature, prevalence and impact of these issues on lawyers. Second, improved communication creates opportunities to reduce stigma and to encourage practitioners that are functioning below their ability or otherwise struggling with health concerns to seek support.

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<sup>10</sup> For details on the Law Society's progress in implementing the 13 recommendations made in 2018, see the Mental Health Task Force 2019 Mid-Year Report, online at:  
<https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/2019MentalHealthTaskForceMidYearReport.pdf>

16. Although high rates of psychological distress and problematic substance use are observed across all levels of the profession, research suggests that the process of transitioning into, and the early years of, legal practice are a time in which students and young lawyers are particularly susceptible to experiencing mental health and substance use issues.
17. Detrimental changes in mental health occurring at this foundational stage of professional development are concerning not only for affected lawyers or students, but also, for the profession and the public more generally. Although many individuals do seek support and recover from, or learn to successfully manage, health conditions, failure to recognize a problem or the harmful effects of stigma may prevent many young lawyers from seeking assistance for these issues.
18. In 2016, a landmark study involving 3,000 students across 15 US law schools (the “Student Well-Being Study”) revealed concerning levels of mental health and substance use issues among law student populations.<sup>11</sup> Researchers found that 17% of respondents indicated they experienced depression, 14% reported experiencing extreme anxiety and six percent reported having serious suicidal thoughts within the past year.
19. Additionally, between one-quarter and one-third of participants reported frequent binge drinking, with increasing rates of problematic drinking observed as students approached the end of law school and neared the beginning of their professional careers.<sup>12</sup>
20. Similarly, the most current and comprehensive study on the prevalence of mental health and substance use issues among practising lawyers, conducted by the Hazelden Betty Ford Foundation and the American Bar Association in 2017 (the “ABA Study”), found that young lawyers are at increased risk of developing a mental health or substance use issue.<sup>13</sup>
21. Based on these findings, the ABA Study concluded that “being in the early stages of one’s legal career is strongly correlated with a high risk of developing an alcohol use disorder,” reversing trends observed in earlier studies in which there was a positive association

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<sup>11</sup> Organ J.M., Jaffe D.B. & Bender K.M., “Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns” (2016) 66 J. Legal Educ. 116), online at: <https://jle.aals.org/home/vol66/iss1/13/>. (“Student Well-Being Study”). This was first multi-school study in over twenty years to address law student use of alcohol and street drugs, and the first ever multi-school study to explore prescription drug use and the mental health concerns and help-seeking attitudes of law students.

<sup>12</sup>Age was another factor that contributed to problematic substance use, with respondents aged 21-30 being roughly twice as likely to report engaging in binge-drinking behavior as those over age 30 (*ibid.* at 129).

<sup>13</sup> ABA Study *supra* note 1. Specifically, the ABA Study found that newly called lawyers had a significantly higher proportion of positive screens for problematic substance use as compared with those that had worked in the profession for longer. Lawyers in their first ten years of practice demonstrated the highest rates of problematic drinking, at rates approximating 30%, with declining rates reported with the advancement in position and increasing age. Of those that stated that they believed their alcohol use has been a problem, the majority (44%) indicated that the problem began within the first 15 years of practice.

between a higher prevalence of problematic drinking and a greater number of years in the profession. The ABA Study also revealed that new lawyers experienced the highest rates of anxiety, depression and stress, all of which decreased with an increase in age or duration in the profession.<sup>14</sup>

22. From the limited available data, these trends appear to be similar in the Canadian context. In a 2019 study commissioned by the Barreau du Québec, researchers found that approximately half of the surveyed lawyers with less than 10 years of practice experience reported psychological distress and 22% experienced burnout, as compared to 37% and 16% of those with more practice experience, respectively.<sup>15</sup>
23. Collectively, these three studies suggest that students and young lawyers face an elevated risk of experiencing mental health and substance use issues. Based on this evidence, the Task Force has developed two recommendations that specifically address the wellness challenges facing many of the newest members of the profession.

### **Recommendation 1: Improve information sharing with BC law schools about mental health supports within the profession**

24. During the Task Force’s consultations with BC law schools regarding the LSAP Application Form in 2018, law school administrators and staff outlined the processes they have put in place to actively promote wellness and the robust set of resources they have developed for students seeking assistance.<sup>16</sup> These initiatives include establishing dedicated positions to provide support and referrals for students experiencing academic and personal challenges, including embedded counsellors within the law school, developing programs and course content that focus on well-being and linking with bodies on campus that oversee accommodations for those with physical and mental health challenges. Students therefore appear to have significant supports available to them for addressing health issues as they advance through law school.
25. However, some students are reluctant to utilize these supports as the result of concerns that doing so may threaten or delay their call to the bar.<sup>17</sup> Moreover, once students leave the academic setting and begin the process of being called to the bar, law school resources and supports tend to fall away. This transition period can be a difficult one, with students leaving behind a tight-knit and supportive law school community and experiencing, for the

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<sup>14</sup> Notably, a recent Canadian study found that lawyers at large firms in the private sector, widely considered to be the most prestigious roles, were most likely to experience depressive symptoms, reversing trends found in the general population where career success is typically equated with fewer mental health risks. See Koltai J., Schieman S. & Dinovitzer R., “The Status-Health Paradox: Organizational Context, Stress Exposure, and Well-Being in the Legal Profession” (2018) 59:1 J Health Soc. Behav. 20, online at: <https://www.ncbi.nlm.nih.gov/pubmed/29373053>

<sup>15</sup> Barreau du Québec study *supra* note 2.

<sup>16</sup> All three of BC’s law schools were consulted, however, only UBC and UVic provided the Law Society with information about their wellness initiatives.

<sup>17</sup> Student Well-Being Study *supra* note 11 at 141.



first time, concerns about job security, exposure to firm culture and the many and varied pressures associated with the practice of law.

26. Anecdotally, some Benchers have received feedback that as students begin their articles, they are not familiar with the resources provided by the profession in relation to mental health and substance use issues. This includes the services provided by both LifeWorks and the Lawyers Assistance Program (the “LAP”), as well as the expanded role of the Law Society’s Practice Advisors, which now includes availability for confidential consultation about mental health and substance use concerns.
27. Some students have reported that they only become aware of these resources once they attend PLTC<sup>18</sup> or, in other cases, are informed about support services during a Bencher interview. This feedback suggests that information about the availability of, and confidentiality associated with, resources and support is not being effectively conveyed to students by the law schools and the Law Society during the transition to practice.
28. In light of the prevalence of mental health and substance use issues among students and young lawyers, the Task Force recommends that the Law Society consult and collaborate with BC law schools to improve the exchange of information about the support resources available within the profession and to assist students in transitioning to these supports from those provided by the law schools.
29. As a first step, the Task Force proposes that Law Society representatives should meet with those individuals that coordinate and direct students to law school wellness resources to discuss how to improve communications about, and access to, the resources that are available to students and new lawyers as they enter articling and practice.

**Recommendation 1:** The Law Society will consult and collaborate with BC law schools to improve the exchange of information about the availability of support resources for mental health and substance use issues within the profession and to assist students in transitioning to these supports from those provided during law school.

## **Recommendation 2: Improve Bencher orientation materials and expand mental health-related training for articled student interviews**

30. The Task Force also proposes improving the exchange of information about mental health and substance use issues and supports between the Law Society and articled students in the course of the Bencher interview process.

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<sup>18</sup> The PLTC program provides students enrolled in the Law Society’s Admission Program with both resources and instruction related to mental health and substance use issues.

31. During the articling term, each articulated student in BC receives instructions respecting a personal interview with a Bencher (the “Bencher interview”), which they must attend prior to their call to the bar. The interview is intended to welcome students to the profession, provide a contact if students require assistance during the articling term, introduce students to the role of the Law Society, and emphasize the importance of adhering to the highest standards of ethical practice, integrity and professionalism.
32. The Bencher interview also plays a unique role in a student’s entry into the profession, as it creates an opportunity for every prospective lawyer to engage in a one-on-one dialogue with a Bencher. Limited guidance on how to conduct a Bencher interview is included in a section of the orientation manual (the “Orientation Manual”) provided to Benchers at the beginning of their term. Although most Benchers develop their own format for conducting interviews, the Orientation Manual includes a brief primer on the interview process and a list of possible discussion points.
33. Notwithstanding the references to mental health in the current version of the Orientation Manual, some Benchers have provided feedback that they do not feel well prepared to address these issues in interviews, particularly given the high rates of mental health and substance use disorders observed within the student population and among young lawyers. More can and should be done to ensure the interview provides articulated students with an opportunity to hear, directly from Benchers, that these issues are not uncommon in the profession and are acknowledged and understood by the Law Society, and that resources and support are available if such issues arise at any point in the student’s legal career.
34. Providing lawyers and students with resources to assist them in meeting their professional responsibilities can result in better and healthier lawyers and reduce the likelihood of incidents that will lead to a regulatory outcome. Accordingly, the following improvements to the training Benchers receive in relation to these interviews are proposed:
  - written materials should not talk about “work-life balance,” which is an outdated term that does not adequately address the realities of those with mental health and substance use issues;
  - materials contained in the Orientation Manual should be supplemented with in-person training addressing how to talk about these issues to articulated students, which could be included as part of overall Bencher training on mental health and substance use issues,<sup>19</sup> or as an element of specific training on how to conduct a Bencher interview; and

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<sup>19</sup> See Recommendation 7 of the First Interim Report *supra* note 6, which advocates for enhanced general training for Benchers on issues of mental health and substance use.

- training should occur more frequently than just at the commencement of the Bencher’s term.
35. Importantly, the goal is not to make Benchers “mental health experts,” or to turn the interview into an exercise in probing students’ mental health status. Rather, the aim is to ensure that Benchers feel sufficiently informed and prepared to discuss the prevalence of these issues within the profession and provide students with information about the support and resources available to articulated students and lawyers.
36. Creating space within the Bencher interview to discuss these issues also plays another important function: reducing the stigma that can make it difficult for those living with mental health challenges to share their experiences or seek assistance.<sup>20</sup> Demonstrating that concerns about mental health and substance use issues are a priority for the Law Society may help counteract prospective lawyers’ fears associated with talking about these issues with others in the profession and normalize the process of seeking support.

**Recommendation 2:** Revise the material in the Bencher Orientation Manual and expand in-person training to improve the manner in which mental health and substance use issues are addressed during the Bencher interview process.

### **Recommendation 3: Host a town hall event to discuss mental health within the profession**

37. In an effort to reduce the stigma surrounding mental health and substance use disorders and to demonstrate the Law Society’s engagement with these issues with the broader legal community, several members of the Task Force have participated in a variety of educational outreach activities, including making presentations as part of CPD programs, local bar events, conferences and PLTC sessions. To date, this outreach work has primarily involved ad-hoc information-sharing between the Law Society and lawyers. The next step, from the Task Force’s perspective, is to find ways to bring more lawyers, as well as legal employers in both the public and private sectors, into these discussions.
38. It is recognized that law firms and other legal employers develop distinct organizational cultures and structures that can influence the conduct and values of their lawyers.<sup>21</sup> This cultural influence can, and does impact on understandings, attitudes and behaviours surrounding lawyer wellness. What firms and other legal employers prioritize and value, and how those values are communicated have the potential to support, or alternatively,

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<sup>20</sup> The Student Well-Being Study *supra* note 11 found that stigma remains one of the greatest barriers to students seeking assistance for mental health issues.

<sup>21</sup> See, for example Dodek A., “Regulating Law Firms in Canada” (2012) 90:2 Canadian Bar Review, online at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1984635](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1984635).

erode lawyer well-being. As a result, all legal employers have a critical role to play in developing strategies in relation to the high rates of psychological distress and problematic substance use affecting lawyers.

39. The Task Force recommends that the Law Society host a town hall to facilitate an information-sharing and solutions-oriented discussion between lawyers, firms, other legal employers, support service providers and the Law Society about mental health in the profession.
40. The proposed town hall event would aim to achieve three objectives. First, to provide a platform for the Law Society to share information with legal employers about the prevalence of these issues within the profession, their impact on lawyers and related public interest concerns. Second, to create an opportunity to generate ideas and mobilize support among firms and other legal employers to take action to address these issues, including initiatives that target unhealthy firm cultures and practices. Third, holding these discussions in a public forum may reduce stigma and demonstrate the Law Society's leadership role in this regard.
41. The precise structure of the event and the scope of participation would be established following the approval of the recommendation to host a town hall, in principle. However, the Task Force envisages that firms of various sizes and other large legal employers would be invited to attend the forum to discuss initiatives they have undertaken to address mental health and substance use issues and the results of those initiatives. To encourage participation, the Task Force envisages that the event would be free to all members.

**Recommendation 3:** Host a town hall to encourage lawyers and firms and other legal employers to engage in a discussion about mental health and substance use within the profession, including the role that legal employers can play in improving lawyer wellness.

#### **Recommendation 4: Develop guidance on the use of non-stigmatizing and non-discriminatory language in all future Law Society publications and communications**

42. As outlined in the 2018-2020 Strategic Plan, one of the Law Society's current priorities is to identify ways to reduce the stigma within the profession in relation to mental health concerns. The Task Force's Terms of Reference direct that the Task Force make recommendations to assist the Benchers in achieving this goal.<sup>22</sup>

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<sup>22</sup> Terms of Reference *supra* note 8.  
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43. Although the academic literature reflects a variety of conceptualizations of the stigma associated with mental health,<sup>23</sup> it is generally recognized that stigma exists when four components interact. First, people distinguish and label a particular difference. For example, a person with a cocaine dependency is called a drug addict, or a person with a mental health disorder is referred to as “disturbed.”<sup>24</sup> Second, labelled differences are linked to a set of undesirable characteristics which form a negative stereotype that is applied to every member of the group. Third, those who are labelled and stereotyped are regarded as being fundamentally different, or “other.”
44. In the last component of the stigma process, the labelled person experiences status loss and discrimination,<sup>25</sup> Self-stigma is an additional issue, and can manifest when affected individuals accept and internalize prejudice against them, resulting in feelings of shame, blame and distress that have been shown to create barriers to seeking treatment.<sup>27</sup>
45. Language is one of the most powerful means through which discrimination and stereotyping are reproduced and perpetuated. Insensitive word choice can negatively impact the way that people that are affected by mental health and substance use issues are perceived, as well as how these individuals feel about themselves. Language can also propagate stigma, whether intentionally or unintentionally.
46. More than a decade ago, the Law Society recognized that values and attitudes are reflected in word choice, and created a resource for the profession entitled “Guidelines for respectful language” (the “Guidelines”) to raise lawyers’ awareness of commonplace assumptions and prejudice in everyday language and to offer alternative terminologies.<sup>28</sup>

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<sup>23</sup> See for example, Link B.G. & Phelan J.C., “Conceptualizing Stigma” (2001) 27 Annual Review of Sociology 36 at 367 (“Link et al.”), online at: [www.jstor.org/stable/2678626](http://www.jstor.org/stable/2678626) ; Rüsich N., Angermeyer M.C. & Corrigan P.W., “Mental Illness Stigma: Concepts, Consequences, and Initiatives to Reduce Stigma” (2005) 20 European Psychiatry 52 at 535, online at: [https://www.europsy-journal.com/article/S0924-9338\(05\)00090-8/pdf](https://www.europsy-journal.com/article/S0924-9338(05)00090-8/pdf) ; Corrigan P.W., “Mental Health Stigma as Social Attribution: Implications for Research Methods and Attitude Change” (2006) 7 Clin. Psychol. Sci. Pract. 48, online at: <http://www1.und.edu/health-wellness/healthy-und/mental-health-stigmafawn.pdf>.

<sup>24</sup> For additional examples of stigmatizing language, see Rose D. et al., “250 Labels Used to Stigmatize People with Mental Illness” (2007) 7 BMC Health Services Research 97, online at: [www.ncbi.nlm.nih.gov/pmc/articles/PMC1925070/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1925070/)

<sup>25</sup> See Link et al., *ibid.*

<sup>26</sup> Ritsher J.B., Otilingam P.G. & Grajales M., “Internalized Stigma of Mental Illness: Psychometric Properties of a New Measure” (2003) 121:1 Psychiatry Res. 31, online at: <https://www.ncbi.nlm.nih.gov/pubmed/14572622> ; Stuart H., “Reducing the Stigma of Mental Illness” (2016) 3 Global Mental Health, online at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5314742/>

<sup>27</sup> Jennings K.S., Cheung J.H. & Britt T.W. et al., “How Are Perceived Stigma, Self-Stigma, and Self-Reliance Related to Treatment-Seeking? A Three-Path Model” (2015) 38 Psychiatric Rehabilitation J. 109, online at: <https://www.ncbi.nlm.nih.gov/pubmed/25844914> (the study revealed that higher perceived stigma, self-stigma, and self-reliance were all related to a more negative attitude toward treatment-seeking for mental health issues). See also Ey S., Henning K.R. & Shaw D.L., “Attitudes and Factors Related to Seeking Mental Health Treatment among Medical and Dental Students” (2000) 14 Journal of College Student Psychotherapy 23.

<sup>28</sup> Law Society of BC Practice Resource, “Guidelines for respectful language”, online at: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/Policy-Language1.pdf>

47. As this practice resource has not been revised in more than a decade, it is now outdated. Some of the language that was previously considered appropriate or optimal no longer is, reflecting a shift in social and scientific understandings over time. The Guidelines also contain little guidance with respect to the language surrounding mental health and related matters. In light of the growing focus on these issues, guidance on respectful language should provide examples and techniques of how to avoid the use of stigmatizing language in this context.
48. Additionally, the target audience of the Guidelines is currently lawyers and firms, not Law Society staff and Benchers that author Law Society materials. While many of the general principles and examples contained in the Guidelines may be transferable, the Law Society may have additional considerations with respect to language usage, given its public interest mandate and leadership role.
49. The Task Force consulted with the Equity, Diversity and Inclusion Advisory Committee about this initiative. That Committee agrees with the overall proposal to update the current Guidelines to include a style guide for staff and Benchers to provide general guidance on the use of non-stigmatizing, non-discriminatory and non-exclusionary language for future Law Society publications and communications.
50. In developing this resource, the Law Society should rely on scholarship by subject-matter experts, including that which specifically addresses language usage in relation to mental health and substance use issues. The guidance must also be continually updated over time.
51. At a minimum, and in consultation with the Equity, Diversity and Inclusion Advisory Committee and other bodies, such as the Truth and Reconciliation Advisory Committee, the guidance should address language use in relation to mental health and substance use issues; physical disabilities; sex and sexual orientation; gender expression and gender identity; race, colour, ancestry and place of origin; and Indigeneity.

**Recommendation 4:** Staff will develop a style guide that provides guidance on the use of non-stigmatizing and non-discriminatory language in all future Law Society publications and communications and update the current practice resource on respectful language and ensure that this material is prominently displayed on the Law Society's website.

52. The proposed guidance is not intended to serve as a formal dictum on language use for authors, and will not be constraining or prescriptive in nature. The style guide would espouse general principles and identify problematic terms and their possible alternatives, but would not require specific usages. There would be no imposition on freedom of speech or thought, only the presentation of guidance and suggestions.

## **Recommendation 5: Conduct a voluntary, confidential member survey exploring mental health and substance use among BC lawyers**

53. Pursuant to item 3(c)(viii) of its Terms of Reference, the Task Force has spent a considerable amount of time exploring the advisability, viability and scope of a potential voluntary, confidential member survey to establish a body of BC-specific data in relation to mental health within the profession.
54. In a number of other jurisdictions, survey methodology has been used as a research tool to explore the prevalence of substance use and mental health concerns among current and future lawyers, awareness and utilization of support services, and the factors that discourage lawyers from seeking assistance for these issues.
55. Both the ABA Study and the Student Well-Being Study<sup>29</sup> utilized surveys to explore mental health and substance use concerns within their target populations,<sup>30</sup> providing the profession with critical data that has been influential in raising the profile of these issues.<sup>31</sup>
56. Until recently, there has been no comparable data on the health of Canadian lawyers. This changed in June 2019, with the publication of a study commissioned by the Barreau du Québec, which was based on more than 2,500 lawyers responding to a detailed survey that focused on psychological distress, burnout and well-being.<sup>32</sup> The results of the survey, which paint a similar picture of an unwell profession, provided the regulator with key information about members' health that has led to the organizational prioritization of these issues.
57. By way of contrast, there is virtually no data on the state of the mental health of the BC bar. Although there are likely to be some similarities across jurisdictions, without empirical data it is not possible to accurately assess the extent to which these issues impact on BC lawyers. Accordingly, collecting information directly from members through an anonymous survey that explores issues surrounding mental health and substance use is of critical importance. In considering the scope of the survey, the Task Force has identified four objectives, namely:
  - (a) assess the state of mental health among BC lawyers by exploring a range of issues along the mental health continuum, including the prevalence of mental health and

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<sup>29</sup> The ABA Study *supra* note 1 recruited lawyers from 19 states to complete the survey, resulting in a final sample of 12,825 individuals. The Student Well-Being Study *supra* note 11 was sent to 11,000 students across 15 law schools, with an overall response rate just under 30% (3,300 respondents).

<sup>30</sup> For an overview of a number of surveys on lawyers' satisfaction with their legal careers more generally see Organ J.M., "What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being" (2011) 8 U. St. Thomas L.J. 225.

<sup>31</sup> See, for example, the influence of these studies on the work of the US National Task Force on Lawyer Well-Being *supra* note 5.

<sup>32</sup> Barreau du Québec Study *supra* note 2.

substance use disorders, the state of lawyers' mental health, more broadly defined, and barriers to support-seeking behaviours;<sup>33</sup>

- (b) create a body of data that will assist the Law Society in developing a series of targeted, tailored policies and initiatives to improve mental health outcomes for lawyers;
  - (c) raise awareness about wellness issues within the profession and the Law Society's commitment to addressing these concerns; and
  - (d) establish a set of baseline data with respect to the mental health of BC lawyers that can be monitored over time to evaluate progress and change.
58. The scope of the study will be further defined with the assistance of a lead researcher following the Benchers' approval of the survey's development. However, in considering the type of information that could be collected, the Task Force highlights the importance of situating inquiries about mental health within the broader context of lawyer wellness.
59. Although historically, research into mental health and substance use issues focused on assessing the presence of a level of impairment or dysfunction, recent academic scholarship, major health organizations and other key bodies now consistently recognize that a state of mental health is more than simply the absence of illness; it also includes a positive state of physical, psychological, social and emotional well-being.<sup>34</sup> Additionally, the majority of lawyers are not diagnosed with a mental health or substance use disorder, this does not necessarily mean that they feel, or are functioning, well. Capturing this information is important to gaining a complete understanding of the overall well-being of the profession.
60. In this vein, the Task Force supports a survey that avoids a narrow focus on rates of diagnosable disorders and instead, undertakes a broader exploration of psychological health.
61. In assessing the viability of a voluntary, confidential member survey, the Task Force recognizes that the Law Society does not have the necessary expertise, either in relation to the specific subject matter or with respect to survey methodology, to develop a

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<sup>33</sup> Identifying barriers to help-seeking behaviours has been a theme of a number of major studies on lawyer and physician wellness. See Student Well-Being Study *supra* note 11, ABA Study *supra* note 1 and the Canadian Medical Association National Physician Health Survey (October 2018), online at: <https://www.cma.ca/sites/default/files/2018-11/nph-survey-e.pdf> ("CMA Physician Health Study").

<sup>34</sup> See, for example the National Task Force on Lawyer Well-Being *supra* note 5. (The National Task Force defines lawyer well-being as "a continuous process whereby lawyers seek to thrive in each of the following areas: emotional health, occupational pursuits, creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections with others."). See also, the Canadian Mental Health Association, "Mental health promotion a framework for action," online at: <https://cmha.ca/documents/mental-health-promotion-a-framework-for-action> and Keyes C., "Mental Illness and/or Mental Health? Investigating Axioms of the Complete State Model of Health" (2005) *Journal of Consulting and Clinical Psychology* 73(3) at 539.



questionnaire in-house. It will therefore be necessary to partner with, or otherwise engage an individual or organization that will take on the role of a principal researcher.

62. Ideally, the survey would be done using a methodology that would permit comparative analysis of the data obtained in BC with that from the Quebec study referred to above.
63. Additionally, apprehensions about privacy and confidentiality and the stigma surrounding disclosure will influence the survey response rate. The Task Force observes, however, that similar studies have not experienced markedly low response rates, notwithstanding the personal nature of the subject matter.<sup>35</sup> Partnering with an external body to administer the survey should allay some of these confidentiality and privacy concerns.

**Recommendation 5:** Conduct a voluntary, confidential member survey exploring mental health and substance use among BC lawyers.

## Regulatory strategies

64. Building on the regulatory recommendations contained in the First Interim Report, and the subsequent consultations with the Ethics Committee and the Credentials Committee that occurred in early 2019, the Task Force has developed two new regulatory recommendations, namely: proposing a series of specific amendments to the duty to report provisions in the *Code of Professional Conduct for British Columbia* (“BC Code”) and removing or replacing the medical fitness questions in the LSAP Application Form.

### **Recommendation 6: Amend BC Code Rule 7.1-3 (“duty to report”) and the associated Commentary**

65. Over the course of 2019, the Task Force and the Ethics Committee engaged in a period of consultation which resulted in consensus between the two bodies on a series of amendments designed to eliminate stigmatizing language and approaches to reporting requirements in Rule 7.1-3 of the *BC Code*. These proposed changes were approved at the December 2019 Benchers meeting.
66. Prior to these changes, Rule 7.1-3(d) of the *BC Code* imposed a duty on lawyers to self-report, or report another practitioner to the Law Society if there was evidence of “mental instability of such a nature that the lawyer’s clients are likely to be materially prejudiced.”<sup>36</sup>

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<sup>35</sup> For example, the overall response rate for the Student Well-Being Study was slightly under 30%. The CMA Physician Health Study had a response rate of 8.5% which was noted as being typical for an online survey. Notably, the ABA Study found that three quarters of respondents did not to answer questions on the consumption of licit and illicit drugs, highlighting lawyers’ extreme reluctance to divulge information regarding drug use, specifically.

<sup>36</sup> *BC Code* Rule 7.1-3, online at: <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/actrules-and-code/code-of-professional-conduct-for-british-columbia/chapter-7-%E2%80%93-relationship-to-the-society-and-other/>

This language, which reinforces the stereotype that those living with a mental health condition are more likely than others to harm their clients, had previously been removed from the Federation’s Model Code<sup>37</sup> as well of the codes of conduct of most Canadian law societies. Accordingly, both the Committee and Task Force recommended that Rule 7.1-3(d) be eliminated from the *BC Code*.

67. The Task Force also supported modifications to Commentary [3] to address stigmatizing language. These amendments included the removal of language that reminds lawyers acting as counsellors for professional support groups of their duty to report, and replacing this Commentary with a new exemption from the duty to report under Rule 7.1-3 for lawyer-counsellors participating in a Law Society approved peer counselling program.
68. The Task Force was of the view that the Commentary, as previously worded, did not sufficiently allay confidentiality concerns for lawyers considering receiving assistance from a professional peer support group, and proposed exempting lawyer-counsellors from the duty to report under Rule 7.1-3 on the basis that the costs of perpetuating a potential disincentive for lawyers to utilize the LAP far outweigh any benefits to the Law Society with respect to the information lawyer-counsellors are expected to report. Given that confidentiality is critical to an effective counselling relationship, the public interest is better served by encouraging lawyers to seek support through the LAP and to remove any barriers that may prevent them from doing so.<sup>38</sup>
69. As part of its recommendation, however, both the Ethics Committee and the Task Force proposed additional Commentary that permits lawyer-counsellors to report otherwise confidential information in circumstances where there is an imminent risk of death or serious harm, and disclosure is necessary to prevent the death or harm.<sup>39</sup>
70. The Task Force notes that the recommendation made by the Ethics Committee was approved by the Benchers on December 6, 2019, and that the Task Force recommendation to support it has therefore already been implemented.

**Recommendation 6:** Amend *BC Code* Rule 7.1-3 (“duty to report”) and the associated Commentary. (Approved by the Benchers, December 6, 2019).

<sup>37</sup> See the Federation’s Model Code Rule 7.1-3, online at: <https://flsc.ca/wp-content/uploads/2018/03/ModelCode-as-amended-March-2017-Final.pdf>

<sup>38</sup> Manitoba and Alberta also both exclude lawyer-counsellors from the “duty to report” rule in their codes of professional conduct. See Law Society of Alberta Code of Conduct, online at: <https://dvbat5idxxh7ib.cloudfront.net/wp-content/uploads/2017/01/14211909/Code.pdf> and Law Society of Manitoba Code of Professional Conduct at 7.1-3, online at: [http://www.lawsociety.mb.ca/lawyer-regulation/code-of-professional-conduct/documents/english-version/code\\_of\\_conduct.pdf](http://www.lawsociety.mb.ca/lawyer-regulation/code-of-professional-conduct/documents/english-version/code_of_conduct.pdf).

<sup>39</sup> Before the recommendation was proposed for adoption, the Law Society communicated with a representative of the Provincial Government regarding the changes to Rule 7.1-3 and associated Commentary and no concerns were raised. DM2600245

## **Recommendation 7: The medical fitness questions in Schedule A of the LSAP Application Form be removed**

71. The Task Force has previously referenced substantial, recent social science evidence and academic discourse that casts significant doubt on the utility of including medical fitness questions in the LSAP Application Form. Based on that research, the Task Force agrees with the following characterization by the President of the New York State Bar Association:

The hard truth is that stigma around mental illness remains a significant barrier to treatment within the legal profession, and society at large. There is compelling evidence that mental health questions on bar applications are ineffective and unnecessary, and several states have already done away with them.

72. The Task Force is of the view that, no matter how well-intentioned Law Society processes have been in the past, there is a better way to address the question of fitness in 2020 and beyond.
73. As a result, the Task Force recommends the removal of the medical fitness questions as they appear in Schedule A of the LSAP Application Form.
74. If, in reconfiguring the LSAP Application Form, the Credentials Committee is of the view that additional questions should be added in order to fulfill the Law Society's statutory mandate, the Task Force recommends that such questions
- (a) be based on conduct, not condition;
  - (b) avoid stigma and non-evidence based assumptions; and
  - (c) be created in collaboration with the Task Force.

**Recommendation 7:** The medical fitness questions in Schedule A of the LSAP Application Form be removed.

## **Budgetary implications**

75. Collectively, the seven recommendations contained in the Second Interim Report are expected to cost in the range of \$40,000 over the next 18 months, based on the following assumptions:
- a. Approximately \$5,000 will be required to secure subject-matter expertise to develop the style guide outlined in Recommendation 4;
  - b. Approximately \$20,000 will be required to commission a third party to create, distribute and analyse a voluntary, confidential member survey as outlined in

Recommendation 5. This amount was anticipated and provisionally allocated as part of the 2020 budget process;

- c. Approximately \$10,000 will be required to develop and deliver a town hall meeting, as proposed in Recommendation 3;
- d. Approximately \$5,000 will be required for developing and implementing additional training in relation to Bencher interviews, pursuant to Recommendation 2; and
- e. No additional costs are associated with implementing recommendations 1, 6 and 7.

## Summary of Recommendations

76. The following recommendations are presented to the Benchers for discussion and decision:

**Recommendation 1:** The Law Society will consult and collaborate with BC law schools to improve the exchange of information about the availability of support resources for mental health and substance use issues within the profession and to assist students in transitioning to these supports from those provided during law school.

**Recommendation 2:** Revise the material in the Bencher Orientation Manual and expand in-person training to improve the manner in which mental health and substance use issues are addressed during the Bencher interview process.

**Recommendation 3:** Host a town hall to encourage lawyers and firms and other legal employers to engage in a discussion about mental health and substance use within the profession, including the role that legal employers can play in improving lawyer wellness.

**Recommendation 4:** Staff will develop a style guide that provides guidance on the use of non-stigmatizing and non-discriminatory language in all future Law Society publications and communications and update the current practice resource on respectful language and ensure that this material is prominently displayed on the Law Society's website.

**Recommendation 5:** Conduct a voluntary, confidential member survey exploring mental health and substance use among BC lawyers.

**Recommendation 6:** Amend *BC Code* Rule 7.1-3 (“duty to report”) and the associated Commentary.

**Recommendation 7:** The medical fitness questions in Schedule A of the LSAP Application Form be removed.

## Resolution

77. The following resolution is presented to the Benchers for discussion and decision:

*The Benchers adopt recommendations 1,2,3,4,5,6 and 7, as described in the Mental Health Task Force's Second Interim Report.*