



First Interim Report of the Mental Health Task Force

Mental Health Task Force

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Table of Contents

Executive Summary.....	3
Introduction	4
Part 1: Mental Health and the Legal Profession	5
Prevalence of mental health and substance use issues.....	5
Stigma	8
Role of the regulator	11
The Mental Health Task Force	14
Part 2: Task Force Recommendations	16
Educational strategies.....	16
Regulatory strategies	30
Budgetary Considerations.....	44
Summary of Recommendations.....	44
Next Steps and Conclusion.....	46

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Executive Summary

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.

The culture and stressors unique to the legal profession appear to contribute to these problems and create barriers to open dialogue about, and action in relation to mental health and substance use disorders among lawyers. Stigma often compounds the challenges of living with, talking about and seeking help for these issues.

Given the Law Society's duty to protect the public interest by ensuring lawyers meet high ethical and competency standards, the Law Society is well positioned to respond to mental health and substance use issues in a manner that both safeguards the public and supports practitioners.

The 2018-2020 Strategic Plan sets the course for the Law Society's proactive approach to mental health, which focuses on two key goals: reducing stigma around mental health issues and developing an integrated mental health review concerning the current regulatory approach to discipline and admissions.

The Mental Health Task Force is responsible for coordinating and assisting the Benchers in implementing this strategic vision. Following a period of extensive research and consultation, the Task Force has formulated a set of 13 initial policy recommendations that include both educational and regulatory strategies which represent the first steps in the Law Society's ongoing efforts to improve responses to mental health and substance use issues. These initial recommendations are intended to be measured, incremental and relatively uncontroversial.

There has never been a better or more important time for all sectors of the profession to focus on substance use and mental health. The Law Society is committed to making a difference, within the scope of both its regulatory and support functions, to changing the way lawyers think about, and respond to mental health and substance use issues, and to encourage cultural changes within the profession that promote lawyer well-being.

The Mental Health Task Force believes that healthier lawyers have the potential to be better lawyers, and that supporting wellness within the profession will improve lawyers' practices, benefiting both practitioners and the public they serve.

Introduction

1. In recent years, a growing body of research has indicated an elevated risk in the legal community for mental health and substance use disorders, with greater rates of anxiety, depression and problem drinking than are found in the general population and other professions. This trend is both complex and troubling, resulting in increased inquiry into, and attention on lawyer well-being.
2. While mental health and substance use problems can have profound implications for affected lawyers and their families, the impacts can extend much further, to colleagues, firms, other members of the legal community and the public that lawyers serve.
3. The culture and stressors unique to the legal profession contribute to these problems and create barriers to open dialogue about, and action in relation to mental health and substance use disorders among lawyers. Stigma often compounds the challenges of living with, talking about, and seeking help for these issues.
4. Given the Law Society's duty to protect the public interest by ensuring lawyers meet high ethical and competency standards, it is uniquely positioned to respond to mental health and substance use issues in a manner that both safeguards the public and supports practitioners.
5. Tasked with regulating over 13,000 lawyers and 3,000 firms, the Law Society is in a strong position to take a leadership role in cultivating broad-scale change in the profession's approach to lawyer wellness. Such a culture change will take time, but is necessary to achieve improved outcomes over the long term.
6. Recognizing this responsibility, the Law Society's 2018-2020 Strategic Plan includes a commitment to addressing mental health within the legal profession. This work is spearheaded by the Mental Health Task Force (the "Task Force"), which was created to make recommendations and take steps to achieve the Law Society's strategic goals related to mental health and substance use in a manner that protects the public interest.¹
7. This Interim Report, which is divided into two parts, represents the culmination of the Task Force's early work to address both the regulatory and educational aspects of its mandate.

¹ Mental Health Task Force Terms of Reference, online at: https://www.lawsociety.bc.ca/Website/media/Shared/images/initiatives/MentalHealthTaskForce_termsofreference.pdf

8. Part 1 outlines the scope and scale of mental health and substance use issues within the legal profession and the important role legal regulators, such as the Law Society, can play in addressing the issues.
9. Part 2 outlines the Task Force’s first set of recommendations to the Benchers, which aim to improve the Law Society’s understanding of, and responses to mental health and substance use issues affecting BC lawyers. These initial recommendations are intended to be measured, incremental and relatively uncontroversial.

Part 1: Mental Health and the Legal Profession

Prevalence of mental health and substance use issues

10. It is well documented that those in the legal profession struggle with a variety of mental health disorders — particularly depression and anxiety — and problematic alcohol use, more so than the general population² and the majority of other professionals.³
11. The most current and comprehensive study on the prevalence of mental health and substance use issues among lawyers was conducted in 2017 by the Hazelden Betty Ford Foundation and the American Bar Association (the “ABA Study”), which revealed substantial levels of problem drinking and other behavioral health problems in the nearly

² See, for example Benjamin G.A., Darling E. & Sales B., “The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers”(1990) 13 Int. J. Law Psychiatry 233 (“Benjamin *et al.*”)(Estimating rates of problematic drinking among lawyers to be 18%, almost twice the estimated prevalence of alcohol abuse and dependence among American adults. Further, 19% of lawyers studied experienced statistically significant elevated levels of depression, as contrasted with rates of depression of 3% to 9% in the general population); Beck C., Sales B. & Benjamin G.A., “Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers” (1996) 10:1 J.L. Health 1; Schiltz P.J., “On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession” (1999) 52 Vand . L. Rev 871; Ontario Lawyers’ Assistance Program, “2010 Annual Report” (Rates of addiction and depression for lawyers were three times that of the general population, while anxiety disorders were estimated to affect 20% to 30% of lawyers as compared to only 4% of the general population).

³ See Eaton W. *et al.*, “Occupations and the Prevalence of Major Depressive Disorder” (1990) 32:11 J. Occup. Med. 1079 (“Eaton *et al.*”) (Lawyers topped the list of 104 professions for having the highest rates of depression, at rates 3.6 that of other employed persons); ABA Study, *infra* note 4 (Reporting positive Alcohol Use Disorders Identification Test screens for 20.6% of lawyers in the sample, as compared to 11.8% of a broad, highly educated workforce); Flores R. & Arce R.M., “Why Are Lawyers Killing Themselves?” (Jan 20, 2014) CNN, online at: www.cnn.com/2014/01/19/us/lawyer-suicides/index.html (Lawyers rank fourth when the proportion of suicides in that profession is compared to suicides in all other occupations, following dentists, pharmacists and physicians).

13,000 lawyers surveyed.⁴ Notably, this cohort is similar in size to the number of lawyers in British Columbia.

12. The ABA Study observed significant mental health concerns among its participants. 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.⁵
13. The ABA Study also explored substance use among lawyers, including alcohol and various classes of legal and illegal drugs. Researchers found that more than 36% of respondents provided answers consistent with problematic drinking or dependence. Of those that felt their use of alcohol or other substances was problematic, the vast majority reported this problematic use began either in law school or within the first 15 years of practice.⁶ 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.⁷ Notably, three quarters of respondents did not choose to answer questions regarding consumption of licit and illicit drugs, highlighting lawyers’ extreme reluctance to divulge information regarding drug use and addiction.⁸
14. The ABA Study concluded the following:

Attorneys experience problematic drinking that is hazardous, harmful, or otherwise generally consistent with alcohol use disorders at a rate much higher than other populations. These levels of problematic drinking have a strong association with both personal and professional characteristics, most notably sex, age, years in practice, position within firm, and work environment. Depression,

⁴ 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 (“ABA Study”) online at: http://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx

⁵ *Ibid.* at 50.

⁶ *Ibid.* at 48.

⁷ *Ibid.* at 51.

⁸ *Ibid.* at 49. As result of low response rates, no inferences could be made from this data. However, the ABA Commission on Lawyer Assistance Programs’ national report identified abuse of prescription drugs as second only to alcohol as the leading substance-use problem for lawyers. See Commission on Lawyer Assistance Programs, “2014 Comprehensive Survey of Lawyer Assistance Programs” at 20 (“Lawyer Assistance Program Survey”), online at: www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_2014_comprehensive_survey_of_laps.authcheckdam.pdf.

anxiety, and stress are also significant problems for this population and most notably associated with the same personal and professional characteristics.⁹

15. A recent US study of law students' well-being ("the Student Well-Being Study"), involving over 3,000 students across 15 law schools also revealed that significant numbers of those on the cusp of entering the profession are experiencing high rates of mental health and substance use disorders.¹⁰
16. Roughly one-quarter to one-third of the Student Well-Being Study participants reported frequent binge drinking, misuse of drugs or mental health challenges. Specifically, 17% of respondents indicated they experienced depression, 14% experienced extreme anxiety and a further 23% reported mild or moderate anxiety. Six percent of the students reported serious suicidal thoughts within the past year. One quarter of the study cohort were identified by researchers as being at risk for alcoholism.
17. The results of the Student Well-Being Study are particularly troubling given that law students start out little different from students in other professional fields, but soon after law school commences, they report large increases in psychiatric symptomology, such as depression, anxiety, hostility and paranoia.¹¹ Moreover, research shows that the psychological factors that seem to erode during law school are the very factors most important to the well-being of lawyers.¹² Detrimental changes occurring at this

⁹ ABA Study, *supra* note 4 at 52.

¹⁰ 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 ("Student Well-Being Study"), online at: <https://jle.aals.org/home/vol66/iss1/13/>. The survey was the 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.

¹¹ Krieger L.S. & Sheldon K.M., "Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values and Well-Being" (2004) 22(2) Behav. Sci. Law 261, online at: <https://pdfs.semanticscholar.org/7a44/193ddb81613e4457767c585744100083d5a3.pdf>. For other literature on the negative impacts of law school on law student well-being, see for example, Krieger L.S., "Institutional Denial About the Dark Side of Law School and Fresh Empirical Guidance for Constructively Breaking the Silence" (2002) 52 J. Legal. Educ. 112, online at: <https://lawyerswithdepression.files.wordpress.com/2010/11/institutional-denial-about-the-dark-side-of-law-school.pdf>; Danmeyer M.M. & Nunuez N. "Anxiety and Depression Among Law Students: Current Knowledge and Future Directions" (1999) 23(1) Law & Hum. Behav. 55, online at: <http://www.jstor.org/stable/1394480>; Sheldon M. & Krieger L.S., "Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory" (2007) 22 Personality & Soc. Psychol. Bull. 883, online at: <http://www.legaleducationsociety.org/documents/LegalAwareness/Negative%20Effects%20of%20Legal%20Education.pdf>

¹² Krieger L.S., "What Makes Lawyers Happy? A Data-Driven Prescription to Redefine Professional Success" (2015) 83 Geo. Wash. L. Rev. 554 at 560 ("Krieger"), online at: <https://ir.law.fsu.edu/articles/94/>

foundational stage of professional development may predispose law students to emotional and behavioural problems in later law practice.¹³

18. While these studies suggest that those who are newer to the profession are particularly at risk of experiencing mental health and substance use issues, 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.¹⁴

Stigma

19. Stigma has a powerful, pervasive influence on how individuals, and the profession as a whole understands and addresses mental health and substance use issues. Although the academic literature reflects a variety of different conceptualizations of the stigma associated with mental health,¹⁵ it is generally understood as being composed of several elements: a lack of knowledge (ignorance), negative attitudes (stereotypes and prejudice) and excluding or avoiding behaviours (discrimination).¹⁶
20. Stigma exists when four components interact. First, people distinguish and label a particular difference – for example, identifying someone as “an addict,” “a substance abuser” or “mentally ill”. Second, labelled differences must be 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 seen as fundamentally different, creating an ‘us-them’ dynamic. In the last component of the stigma process, the labelled person experiences status loss and discrimination.¹⁷

¹³ *Ibid.*

¹⁴ 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> . For American research in this area, see Krieger *supra* note 12.

¹⁵ 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 ; Rüsçh 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-stigma-fawn.pdf>; Thornicroft G., *Shunned. Discrimination Against People with Mental Illness* (Oxford: Oxford University Press: 2016).

¹⁶ Rose D. *et al.*, “250 Labels Used to Stigmatize People with Mental Illness” (2007) 7 BMC Health Services Research 97, online at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1925070/>.

¹⁷ See Link *et al. supra* note 15.

21. This discrimination may be experienced in the context of individual interactions or it can be structural, when accumulated institutional practices create inequities; for example, when an organization creates policies, procedures or practices that disadvantage those with a mental health disorder.¹⁸ Self-stigma is an additional problem, arising when people with mental health issues accept and internalize prejudice against them, resulting in diminished self-esteem and self-efficacy.¹⁹
22. While some level of stigma surrounds mental health and substance use disorders in nearly all populations, legal professionals face some unique factors that can amplify its effect and deter help-seeking behaviours.
23. The ABA Study, for example, revealed that the majority of lawyers in need of help were reluctant to seek it based on fears of others finding out about their mental health or substance use issue and related concerns regarding privacy and confidentiality.²⁰ This reluctance has been variously attributed to lawyers' awareness of negative socio-cultural attitudes about such conditions, fear of adverse reactions of others in the workplace and attitudes that help-seeking is sign of weakness, particularly in a profession that rewards self-reliance and perfectionism. As a result, many legal professionals do not share their mental health concerns with others, fearing the loss of their jobs, their professional reputations and even their licences.
24. The findings of these studies are consistent with the anecdotal information provided to the Mental Health Task Force. In particular, lawyers with mental health or substance use issues seem to experience a number of barriers deterring them from taking first steps towards seeking assistance. Such obstacles include embarrassment and shame, uncertainty as to who can help and how, doubt about the efficacy of the assistance available and practice and personal obligations.
25. Consequently, measures that make taking the initial steps towards seeking assistance easier, more appealing and less stigmatizing for lawyers carry significant potential benefits to the profession and the public.

¹⁸ 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 ("Stuart"), online at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5314742/>

¹⁹ Hanish *et al.*, "The Effectiveness of Interventions Targeting Stigma of Mental Illness at the Workplace: A Systematic Review" (2016) 16:1 BMC Psychiatry 2, online at: <https://bmcp psychiatry.biomedcentral.com/articles/10.1186/s12888-015-0706-4>

²⁰ ABA Study *supra* note 4 at 51.

26. Given the considerable number of lawyers and law school students who experience mental health or substance use issues and the potential consequences of such conditions going untreated, the studies referenced above suggest that these matters demand not only the attention of the profession, but concerted, coordinated and sustained action.
27. In recent years, the legal community appears to be acknowledging the impact of mental health and substance use disorders on the profession, with mainstream media,²¹ surveys,²² academic studies and articles,²³ policy papers²⁴ and continuing professional development programs²⁵ all raising the profile of mental health and substance use issues affecting lawyers.
28. One of the most significant and authoritative voices in this burgeoning conversation is that of the National Task Force on Lawyer Well-Being, which authored the ground-breaking US report *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (“National Task Force Report”) in mid-2017.²⁶
29. The National Task Force Report strongly advocates for action to address mental health and substance use in the legal profession, and sets out a principled basis for the legal community to prioritize engagement with these issues:

This report makes a compelling case that our profession is at a crossroads. Our current course, one involving widespread disregard for lawyer well-being and its effects, is not sustainable... Our members suffer at alarming rates from conditions that impair our ability to function at levels compatible with high ethical

²¹ Zimmerman E., “The Lawyer, the Addict” *The New York Times* (July 15, 2017), online at: www.nytimes.com/2017/07/15/business/lawyers-addictionmental-health.html; Singer D., “A Lawyer’s Secret: Addiction, Anxiety and Depression” *The Globe and Mail* (April 14, 2017), online at: www.theglobeandmail.com/opinion/a-lawyers-secret-addiction-anxiety-and-depression/article34067482/

²² See for example, CBA Survey of Lawyers on Wellness Issues (2012), online at: www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Wellness%20PDFs/FINAL-Report-on-Survey-of-Lawyers-on-Wellness-Issues.pdf (“CBA Survey”); Survey of CBA Members in Rural, Remote and Isolated Communities (2012), online at: www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Wellness%20PDFs/lpac-communitysurvey2013-e.pdf; Lawyer Assistance Program Survey, *supra* note 8.

²³ *Supra* note 2-4, 10,14.

²⁴ National Task Force Report *infra* note 26; Law Society of Ontario, “Mental Health Strategy Task Force Final Report to Convocation”(“LSO Mental Health Strategy”), online at: lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2016/convocation-april2016-mental-health.pdf

²⁵ For example, the Canadian Bar Association’s “Mental Health and Wellness in the Legal Profession” CPD module and the Ontario Bar Association’s “Mindful Lawyer CPD Series.”

²⁶ The National Task Force was conceptualized and initiated by the American Bar Association Commission on Lawyer Assistance Programs (CoLAP), the National Organization of Bar Counsel (NOBC), and the Association of Professional Responsibility Lawyers (APRL). See the report online at: www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf

standards and public expectations. Depression, anxiety, chronic stress, burnout, and substance use disorders exceed those of many other professions. We have ignored this state of affairs long enough... As a profession, we have the capacity to face these challenges and create a better future for our lawyers that is sustainable. We can do so – not in spite of – but in pursuit of the highest professional standards, business practices and ethical ideals.²⁷

30. The Mental Health Task Force endorses the National Task Force’s view that educating and supporting lawyers to reduce the stigma associated with mental health and substance use issues is likely to be beneficial both for the members of the profession as well as the public they serve.
31. The National Task Force encourages specific actions for improving the well-being of the profession, as outlined in more than three dozen recommendations in its report. Many of these recommendations are general in their application, while others target specific stakeholders, including legal regulators.²⁸
32. Given that the National Task Force Report has been characterized as the “the most ambitious roadmap yet related to the well-being of lawyers,”²⁹ the Mental Health Task Force has examined these recommendations and considered, in detail, how several of the proposed actions could be adopted or adapted by the Law Society of BC.

Role of the regulator

33. Historically, legal regulators have taken a hands-off approach to mental health and substance use issues affecting lawyers. Responses have primarily been “reactive,” dealing with issues on an individual basis and only when impairment cannot be ignored; for example, through the filing of a complaint or a lawyer’s failure to respond to communications from the Law Society.
34. With increased recognition of the prevalence of mental health and substance use disorders within the profession, many regulators are developing new approaches to these issues.³⁰

²⁷ *Ibid.* at 47.

²⁸ The National Task Force Report also contains specific recommendations for lawyers, firms, lawyer assistance programs, law schools, the judiciary and legal insurers.

²⁹ American Bar Association, “Growing Concern Over Well-Being of Lawyers Leads to Comprehensive New Recommendations” (August 2017), online at: https://www.americanbar.org/news/abanews/aba-news-archives/2017/08/growing_concern_over.html

³⁰ For a summary of US states that have established Task Forces or Commissions addressing lawyer wellness, see: <http://lawyerwellbeing.net>

Within Canada, both the Law Society of Ontario³¹ and the Law Society of BC have established Task Forces specifically to address mental health and substance use among their members.

35. There are a number of compelling reasons for the Law Society to take action on these issues, including protecting the public interest, influencing professional culture and providing support to lawyers, as described below. Together, these three rationales have helped shape the recommendations presented in the second half of the Task Force's report.

Protecting the public interest

36. In order to fulfill its legislated mandate to uphold and protect the public interest in the administration of justice, the Law Society must ensure that lawyers meet high ethical and competency standards.³² Implicit in this objective is the duty to address issues that have the potential to impact on the ability of lawyers to meet their professional responsibilities. Accordingly, within the scope of its regulatory and support functions, the Law Society must be aware of, and responsive to the ways in which mental health and substance use issues may impact on a lawyer's professional conduct and competence.
37. The majority of lawyers living with a mental health condition are not at risk of acting unethically or unprofessionally, and it is critically important that diagnosis is not incorrectly correlated with impairment.
38. Decreased mental capacity is, however, a concern with some disorders and may affect a lawyer or applicant's fitness to practice.³³ Other conditions may influence a lawyer's professional conduct, such that a practitioner is unable to perform all of their duties, despite having the capacity to do so. For example, a lawyer experiencing severe anxiety, depression or withdrawal associated with an addiction may find themselves temporarily unable to execute normally routine tasks, such as returning a client's call or meeting a court deadline.

³¹ LSO Mental Health Strategy *supra* note 24.

³² *Legal Profession Act*, s. 3.

³³ For example, major depressive disorder is associated with impaired executive functioning, including diminished memory, attention and problem-solving abilities. Similarly, the majority of those that abuse alcohol experience mild to severe cognitive impairment, with particularly severe deficits in executive functions that are critical features of competent lawyering, including problem-solving, abstraction, planning, organizing and memory. See National Task Force Report *supra* note 26 at 8-9. See also Seto M., "Killing Ourselves: Depression as an Institutional, Workplace and Professionalism Problem" (2012) 2:2 UWO J. Leg. Stud. 5 ("Seto"), online at: <https://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1053&context=uwojls>

39. Anecdotally, it appears that impairment of this type is often limited temporally, and may only interfere with a specific matter or task, not the lawyer's entire practice. Responding to the Law Society seems to be a particular issue for some lawyers experiencing anxiety or other mental health issues.
40. There is also some evidence that impairment stemming from untreated mental health or substance use issues may contribute to some lawyers experiencing a higher incidence of disciplinary matters.³⁴ Again, however, it is important not to conflate correlation with causation. A mental health or substance use condition may be a contributing factor to a lawyer's conduct, or merely symptomatic of other underlying issues that do not affect the lawyer's practice.
41. Recognizing that the public interest is served when the Law Society assists lawyers in meeting their professional responsibilities, employing proactive measures to address wellness issues clearly falls within the Law Society's mandate. This proactive model is premised on the theory that the public is best served by a regulatory scheme that prevents problems in the first place, rather than one that focuses on taking punitive action once problems have occurred.
42. One of the primary goals of this approach is to reduce the likelihood of incidences that will lead to a "reactive" regulatory response. For example, an educational initiative that links lawyers with mental health resources may avert a situation where an untreated mental health issue affects a lawyer's performance and results in a complaint.

Influence over professional culture

43. As the authors of the National Task Force Report observe, broad-scale change in the profession's approach to lawyer wellness cannot occur without buy-in and role modelling from top leadership.³⁵ Providing regulatory oversight to 13,000 lawyers and over 3,000 firms, the Law Society is in a strong position to be such a leader.

³⁴ Seto *supra* note 33 at 19 (Citing an Ontario study that revealed that drugs, alcohol or psychiatric illnesses were present in nearly 50% of the 172 cases categorized as serious disciplinary proceedings); Cormack C., "Lawyers Turn to Meditation to Fight Stress and Improve Performance" *Canadian Lawyer Magazine* (March 2009) (Statistics suggest that 40% to 75% of disciplinary actions are against lawyers who are chemically dependent or mentally ill); McCarthy N., "Statistics Tell Story of Stress, Addiction in Lives of Lawyers" (November 2000) California Bar Journal, as cited in the Butler Centre for Research, "Substance Use Disorders Among Legal Professionals" (March 16, 2017), online at: <https://www.hazeldenbettyford.org/education/bcr/addiction-research/substance-abuse-legal-professionals-ru-317> (A review of the California bar's disciplinary system estimated that substance use was involved in 25% to 35% of all situations requiring formal charges against lawyers).

³⁵ National Task Force Report *supra* note 26 at 12-13.

44. Through its various programs and processes, including those related to admissions, credentials, professional regulation, professional responsibility, professional development, practice advice and policy development, there are many ways that the Law Society can create this type of positive change within the regulatory sphere.
45. For example, through its policy work, the Law Society is well placed to explore systemic issues that may contribute to the poor mental health of some legal practitioners, including consideration of organizational norms and embedded expectations within the legal profession and how these might be influenced to support a healthier working environment for lawyers.³⁶
46. Communication with the profession is another key way that the Law Society can promote dialogue around mental health and substance use within the profession and help reduce stigma. It is for this reason that the Mental Health Task Force has worked to develop a communication plan in parallel with its policy recommendations.

Supporting lawyers

47. While its primary mandate is to protect the public interest, the Law Society also plays an important role in supporting lawyers through all stages of their legal careers. This includes periods in which a lawyer may confront professional challenges. Examples of these types of support functions include access to free, confidential practice advice offered by Practice Advisors and the one-on-one remedial work done by Practice Standards lawyers and lawyers in the Professional Regulation Department's Intake and Early Resolution group.
48. Professional challenges can take many forms, including those influenced by mental health and substance use disorders. Although the Law Society is not an expert in these areas, through both its regulatory processes and support functions, there are many opportunities to advance an agenda of lawyer well-being.

The Mental Health Task Force

49. The 2018-2020 Strategic Plan sets the course for the Law Society's proactive approach to mental health, which focuses on two key goals: (1) reducing stigma around mental health issues and (2) developing an integrated mental health review concerning the current regulatory approach to discipline and admissions.³⁷ These goals are broad and ambitious,

³⁶ Seto *supra* note 33 at 15.

³⁷ See the Law Society of British Columbia's 2018-2020 Strategic Plan, online at: www.lawsociety.bc.ca/Website/media/Shared/docs/about/StrategicPlan_2018-2020.pdf

but equally, are critical to ensuring that lawyer well-being garners the attention it deserves and requires.

50. The Mental Health Task Force is responsible for coordinating and implementing the Law Society's strategic vision. Composed of both Bencher and non-Bencher members, the Task Force is guided by Terms of Reference which define the scope of its duties and responsibilities in relation to the two aforementioned goals.³⁸
51. Specifically, the Terms of Reference require the Task Force to advise the Benchers on the following matters, as they pertain to mental health and substance use disorders:
- the development of a “diversion” or other alternative discipline process, and other aspects of the discipline process;
 - the consideration of potential modifications to the Law Society admissions process;
 - the development of additional support resources for current, former and prospective Law Society members;
 - the development and promotion of education materials for Law Society members that increase awareness of mental health issues and reduce stigma;
 - the development of an education program and materials for Law Society staff, hearing panel members, and Benchers that increase awareness of mental health issues and reduce stigma;
 - the consideration of the role of other Law Society Committees in advancing the Task Force's goals;
 - the advisability, viability and scope of a potential voluntary, confidential member survey.
52. Over the last ten months, the Task Force has made considerable progress in addressing this mandate, increasing its understanding of mental health and substance use issues and associated stigma through a comprehensive review of academic literature and other educational materials.
53. The Task Force has also greatly benefited from the insights and experiences of key stakeholders and experts on mental health and substance use. This work has included consultations with other legal regulators, academics, advocates, law school administrators, physicians specializing in occupational addiction medicine and other subject matter

³⁸ *Supra* note 1.

experts, including professionals at the BC Chapter of the Canadian Mental Health Association (“CMHA”) and the BC Centre on Substance Use (“BCCSU”).³⁹

54. The Mental Health Task Force expects its engagement with, and reliance on subject-matter experts will be ongoing as it works to implement its recommendations and develop additional proposals.

Part 2: Task Force Recommendations

55. Informed by the research and consultations described above and outlined in more detail in its Mid-Year Report,⁴⁰ the Task Force has formulated a set of 13 initial policy recommendations for Bencher consideration and approval. These recommendations are regarded by the Task Force as interim recommendations, with an additional suite of proposals to follow in 2019.

56. The recommendations fall into two broad streams of activity, namely:

Educational strategies that increase awareness and understanding of mental health and substance use within the legal profession and reduce the stigma that can prevent lawyers from seeking help.

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

Educational strategies

57. A central component of the Task Force’s work is to employ educational strategies that bring attention to, and improve knowledge and understanding of mental health and substance use issues affecting lawyers. These efforts must start with the Law Society itself, beginning with a focus on enhancing education and training for Law Society staff,

³⁹ The BC Centre on Substance Use is a provincially networked organization with a mandate to develop, implement and evaluate evidence-based approaches to substance use and addiction. Within this framework, BCCSU is also involved in the collaborative development of policies, guidelines and standards. The Canadian Mental Health Association is a national charity that helps maintain and improve mental health for all Canadians, including those experiencing mental illness. In BC, mental health, substance use and addictive behaviour all fall within the scope of the organization’s mandate.

⁴⁰ Mental Health Task Force Mid-Year Report (July 2018), online at: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/2018MentalHealthTaskForceMidYearReport.pdf>

Benchers and Committee members who encounter lawyers experiencing mental health or substance use challenges in the course of their work.

58. A focus on educational initiatives is important for two inter-related reasons. First, mental health training will enhance awareness of mental health and substance use disorders throughout the Law Society's various processes, providing staff with resources, tools and skills that improve their ability to assist lawyers in a manner that both supports practitioners and protects the public interest.
59. The ability for educational programs to improve responses to mental health issues is well documented. For example, studies on the effect of the widely acclaimed Mental Health First Aid course, which extends the concept of first aid to helping individuals to respond to someone having a mental health crisis, have found that training results in statistically significant improvements in participants' knowledge about treatments, improved helping behaviours and greater confidence in providing assistance to others.⁴¹
60. Second, educational initiatives create critical opportunities to reduce the harmful stigma surrounding mental health and substance use disorders. Studies have shown that various educational approaches, including mental health literacy courses (e.g. programming focusing on identifying mental health problems and treatments), speakers (e.g. presenters sharing personal experiences with mental health struggles)⁴² and skills-based courses (e.g. crisis intervention and suicide prevention training) are effective in changing knowledge, attitudes and behaviours towards people with mental health disorders.⁴³ Combining these approaches can be particularly powerful in combatting stigma.⁴⁴
61. Not surprisingly, the National Task Force Report advocates that all stakeholders — including legal regulators — provide high quality educational programs about lawyer distress and well-being, including training in identifying, addressing and supporting fellow professionals with mental health and substance use disorders.

⁴¹ Stuart *supra* note 18; Mental Health First Aid Canada, online at:

www.mentalhealthcommission.ca/English/resources/mental-health-first-aid

⁴² Studies demonstrate that contact-based education, in which target audiences hear personal stories from, and interact with individuals who have recovered or are successfully managing their mental health disorder, are one of the most powerful ways to reduce stigma. This approach is based on the idea that positive interpersonal contact with members of a stigmatized group can demystify issues, replace faulty perceptions and generalizations and reduce prejudice and discrimination. This research has guided the approaches of bodies such as the Mental Health Commission of Canada, which has made contact-based education a central element of its *Opening Minds* anti-stigma initiative

⁴³ Hanish *et al. supra* note 19; Stuart *supra* note 18.

⁴⁴ Hanish *et al. supra* note 19 at 536 (“To sum up our overview of our different methods to reduce stigma, contact combined with education seems to be the most promising avenue”).

62. To ascertain what educational programs are already in place at the Law Society to address these issues and assess where improvements may be necessary, the Task Force undertook consultations with a wide range of Law Society departments over the course of several months. These discussions examined which staff groups encounter lawyers dealing with mental health and substance issues, what training these staff currently receive and the extent to which further training might better equip them to address wellness issues. Several recurring themes emerged during these consultations which have informed the series of education-related recommendations presented below.

Practice Advisors

63. Practice Advisors are a free resource provided by the Law Society to assist lawyers and articling students with practice and ethical advice on a range of issues, including compliance with the Law Society Rules and the *Code of Professional Conduct for British Columbia*, practice management, practice ethics, client identification and verification, scams and fraud alerts and relationships with clients and other lawyers.⁴⁵ All communications between Practice Advisors and lawyers are strictly confidential and are not shared with any other branch of the Law Society, with the exception of a matter involving a shortage of trust funds.

64. Responding to over 5,000 enquiries a year, Practice Advisors provide an important service for lawyers in need of professional guidance. Although the practice advice program is not currently designed to provide lawyers with support for wellness issues, during consultations with the Task Force, Practice Advisors indicated that not infrequently lawyers reveal that their practice management concerns are related to mental health issues, including anxiety, depression and obsessive compulsive disorders.

65. Recognizing that Practice Advisors are instrumental in encouraging lawyers to take proactive steps to address practice concerns, and that these concerns can be influenced by mental health and substance use issues, the Task Force recommends formally expanding the role of Practice Advisors to include advice for practice concerns that are linked to mental health and substance use problems.

66. It is important to note that Practice Advisors are already addressing these issues to some degree in the course of their work. As such, the proposal seeks only to formalize the work

⁴⁵ Practice Advisors do not provide formal opinions or substantive legal advice, provide mediation services or assist lawyers in dealing with complaints. See Law Society of BC, “About Practice Advice”, online at: www.lawsociety.bc.ca/support-and-resources-for-lawyers/about-practice-advice/

that Practice Advisors are currently doing and provide additional training and resources to further assist them in this regard. It is also important for the Law Society to communicate that the role of Practice Advisors is only to assist members in identifying appropriate support resources, and not to provide diagnoses or treatment advice to lawyers.

Recommendation 1: Promote, through a targeted communication campaign, an expanded role for Practice Advisors to include availability for confidential consultations about mental health and substance use issues and referrals to appropriate support resources.

67. To ensure that Practice Advisors are prepared to take on these responsibilities, the Task Force also recommends that Practice Advisors undertake specialized training to enhance their mental health literacy, develop skills to enable them to recognize signs of mental health and substance use problems and improve their awareness of, and access to support resources that may assist lawyers struggling with these issues.
68. Providing lawyers with another confidential gateway to support and treatment resources is important given the substantial barriers that frequently prevent lawyers from taking the first step of seeking assistance.
69. In addition to benefiting practitioners that seek this type of support, broadening the role of Practice Advisors also serves the public interest by providing additional mechanisms for lawyers to proactively address issues that are affecting, or may affect their ability to serve their clients. Formally recognizing mental health and substance use problems as legitimate practice concerns also raises awareness of these issues within the profession, and in so doing, reduces stigma.
70. Following consultations with the CMHA and the BCCSU, the Task Force has identified a series of possible educational programs for Practice Advisors and other Law Society staff. If the educational recommendations outlined in this report are approved by the Benchers, this training portfolio will be further refined following input from staff and subject-matter experts. This training must be frequent and ongoing.
71. As necessary, training could extend to paralegals, coordinators and assistants supporting the practice advice program who also deal directly with members.

Recommendation 2: Provide Practice Advisors with specialized education and training to enhance their knowledge, skills and access to resources related to mental health and substance use issues.

72. The goal of training is not to turn Practice Advisors into mental health practitioners. Importantly, Practice Advisors would not assess, diagnose or suggest any form of specific treatment for a mental health condition or substance use disorder.
73. Rather, the recommendation is intended to ensure Practice Advisors develop a comprehensive understanding of an array of wellness issues and build skills that will enable them to better help lawyers navigate practice concerns related to these issues. As with all existing practice advice, discussions with Practice Advisors that engage mental health or substance use issues would be strictly confidential.
74. This recommendation is supported by a comprehensive communications effort that aims to explain the intended role of the Practice Advisors, including emphasizing the confidentiality of consultations and the limited scope of the information Practice Advisors will provide.

Practice Standards

75. The Law Society requires continual high standards in the practice of law so that clients and the public at large have full confidence in the professional competence of lawyers. Although the vast majority of lawyers achieve and maintain these standards, when competency concerns do arise, the Practice Standards Committee may require the lawyer to undergo a practice review — a non-punitive, remedial exercise that lies outside the Professional Regulation Department’s regulatory processes.
76. Practice reviews are conducted by staff lawyers in the Practice Standards Department who are tasked with making inquiries and requesting documentation related to the lawyer’s practice.⁴⁶ Following a review, the lawyer is given recommendations and must implement any recommendations to improve their practice.
77. Periodically, practice reviews reveal competency concerns that are exacerbated by underlying personal problems – including mental health and substance use disorders. In some cases, in the course of the review a lawyer may disclose experiencing mental health or substance use challenges. In such cases, Practice Standards lawyers report providing personal support for a range of issues, including depression, anxiety, suicidal thoughts and addiction, despite having limited training in these areas. In other cases, these issues

⁴⁶ See Law Society Rules 3-17(3)(d) and 3-18. In most cases, lawyers come to the attention of the Practice Standards Committee when they have been investigated for potential professional misconduct and are referred by Law Society staff, the Complainant’s Review Committee or the Discipline Committee. In other instances, a lawyer may be referred to the Practice Standards Committee by the Credentials Committee or voluntarily self-refer for assistance.

emerge later; for example, in the course of monitoring the extent to which a lawyer is addressing recommendations or fulfilling conditions following a practice review.

78. As such, the Task Force recommends that Practice Standards lawyers are provided with the same comprehensive training as Practice Advisors in an effort to improve their knowledge and skills in relation to mental health and substance use issues. This training should be provided by subject-matter experts and occur at regular intervals throughout the department's professional development calendar. Training should be integrated into the orientation of new staff and extended to Practice Standards' support staff dealing directly with members, as appropriate. Refresher courses should also be made available to existing staff to ensure that knowledge and skills are maintained over time.

Recommendation 3: Provide Practice Standards lawyers and support staff with specialized education and training to enhance their knowledge, skills and access to resources related to mental health and substance use issues.

Professional Regulation

79. If a complaint is made against a lawyer, the Law Society has the authority to investigate the conduct and competence of the lawyer.⁴⁷ This, and related work, is undertaken by the Professional Regulation Department, which includes four groups: Intake and Early Resolution, which is responsible for the initial review and early resolution of complaints; Investigations, Monitoring and Enforcement, which investigates complaints that raise serious conduct concerns; Discipline, which involves citation hearings, reviews and appeals, as well as administering conduct meetings and conduct reviews; and Custodianships, which is engaged when it is necessary for the Law Society to step in to manage or close a lawyer's practice.
80. Although there is no causal link between a mental health or substance use disorder diagnosis and competency concerns, anecdotally the Professional Regulation Department reports that their processes frequently involve "distressed" lawyers, including those that have disclosed that they are experiencing mental health or substance use issues.
81. Despite lawyers typically associating the Professional Regulation Department with disciplinary action, the Intake and Early Resolution group plays a very significant role in assisting lawyers dealing with practice management issues, engaging in remediation with hundreds of lawyers each year. These remedial measures can and do include providing

⁴⁷ For details on the disposition of complaints, see the Law Society of BC's Annual Report, online at: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/ar/2017-AnnualReport.pdf> at p. 13.

advice and guidance to lawyers regarding mental health and substance use issues affecting their practices. Discussions in relation to these issues are kept confidential from the complainant.

82. Although staff in the Profession Regulation Department already address a range of wellness issues in the course of their work, the consultation revealed a strong desire for additional, specialized education in relation to mental health and substance use disorders to ensure that staff remain aware of, and responsive to these issues. This training is viewed as essential given the large volume of work overseen by this department, the majority of which involves complaints against lawyers and related remedial and disciplinary measures.
83. Accordingly, the Task Force recommends that staff lawyers and paralegals in the Professional Regulation Department receive training similar to that recommended for Practice Advisors and Practice Standards staff.

Recommendation 4: Provide lawyers and paralegals in the Professional Regulation Department with specialized education and training to enhance their knowledge, skills and access to resources related to mental health and substance use issues.

Credentials, Trust Assurance and Lawyers Insurance Fund

84. In addition to Practice Advisors, Practice Standards lawyers and lawyers in the Professional Regulation Department, several other staff groups regularly encounter lawyers with mental health and substance use issues and, as a result, may benefit from additional training in these areas.
85. These groups include auditors in the Trust Assurance Program who attend lawyers' offices to undertake compliance audits, Credentials Officers that deal with lawyers or applicants who have raised mental health or substance use problems in the course of the application process and staff in the Lawyers Insurance Fund program involved in handling negligence claims and potential claims that lawyers report under the program's professional liability insurance.
86. Improving the mental health literacy of staff in these groups supports the Task Force's view that the full spectrum of the Law Society's regulatory work should be alive and responsive to wellness issues. However, given the nature of their interactions with lawyers, training for these groups could be less intensive than that provided to Practice Advisors, Practice Standards lawyers and staff in the Professional Regulation Department.

Recommendation 5: Provide Credentials Officers, auditors in the Trust Assurance Program and staff lawyers in the Lawyers Insurance Fund with basic education and training to improve their awareness of mental health and substance use issues.

Qualified Mental Health Professionals

87. Although the educational initiatives proposed in the recommendations above will provide staff with a strong foundation of knowledge and skills in relation to mental health and substance use issues, there may be circumstances where additional input and expertise from a mental health professional is required to support staffs' efforts to assist members who are in distress. The Task Force is of the view that access to such expertise will enhance staffs' confidence and ability to respond to mental health and substance use issues in a manner that recognizes the personal circumstances of the particular lawyer while continuing to protect the public interest.
88. Accordingly, the Task Force recommends that Practice Advisors, Practice Standards lawyers, Credentials Officers and staff in the Professional Regulation Department working directly with lawyers or applicants living with mental health or substance use disorders have access to a roster of registered psychologists that are available to provide advice and support to staff needing additional, professional guidance on how to understand or respond to these issues.⁴⁸

Recommendation 6: Establish a roster of qualified mental health professionals that Practice Advisors, Practice Standards lawyers, Credentials Officers and staff in the Professional Regulation Department may consult to assist them in addressing mental health and substance use issues that arise in the course of Law Society processes involving lawyers or applicants.

89. The registered psychologist's role would be restricted to supporting Law Society staff, sourcing and disseminating information on how to recognize mental health problems and providing guidance on communicating with an affected lawyer in a manner that is respectful of the individual and effective in protecting the public interest. For example, a psychologist could provide staff with advice on how to recognize a practitioner that may be at risk of suicide and provide expert guidance on how to connect the lawyer with community supports and resources. Similarly, a psychologist could coach staff on how to deal with difficult communication styles that may stem from an underlying substance use or mental health issue.

⁴⁸ This approach can be compared with that of the Law Society of Ontario, which has a dedicated "capacity advisor" that helps guide and support staff through several hundred files each year in which capacity is an issue.

90. Importantly, the role of the psychologist would be strictly limited to supporting Law Society staff in their efforts to address mental health and substance use issues that arise in the course their work. Mental health professionals will not provide the Law Society with medical assessments; design, propose or provide treatment plans; enter into a therapist-client relationship with the lawyer or the staff member; or provide opinions that will influence or determine any regulatory outcome.
91. It will be important to effectively communicate the circumscribed support role of these mental health professionals, both among Law Society staff and with the membership. In particular, it is critical to guard against the perception that the Law Society is seeking to diagnose or “out” those with mental health or substance use issues, or to impose unwanted treatment on lawyers.

Committees and Hearing Panels

92. The Law Society has over a dozen specialized Committees that carry out the organization’s core regulatory functions. Three of these Committees are frequently involved in reviewing information about lawyers and applicants with professional conduct or competency related concerns: the Credentials Committee, the Discipline Committee and the Practice Standards Committee. Some of the matters that come before these Committees involve lawyers with mental health or substance use issues.
93. For example, the Credentials Committee is required to review applications in which the applicant has affirmed in the Law Society Admission Program Enrollment Application that they have a substance use disorder or an existing mental health condition that may impact their ability to function as an articling student. The Committee may also be asked to review an articulated student’s failed standing in the Professional Legal Training Course (“PLTC”) based on compassionate grounds supported by medical evidence.⁴⁹ These processes may require the Committee to consider mental health or substance use issues.
94. Similarly, there are numerous points at which mental health or substance use issues can arise in the course of the work of the Practice Standards Committee, which is tasked with identifying lawyers with competency concerns and recommending remedial measures to assist them in improving their practices.⁵⁰ For example, the Practice Standards Committee may be required to consider a report following a practice review in which mental health or

⁴⁹ Law Society Rule 2-74(4).

⁵⁰ Law Society Rules 3-16 to 3-25.

substance use issues influence findings and recommendations,⁵¹ or to take action following the review of such a report, action which can include a recommendation that a lawyer obtain a psychiatric, psychological or medical assessment or receive medical assistance or counselling.⁵²

95. Likewise, the Discipline Committee encounters lawyers experiencing mental health and substance use issues in the context of conduct meetings and conduct reviews, as well as in determining what discipline process is appropriate for a particular matter.

96. Currently, these Committee members do not receive dedicated training on mental health or substance use issues. Given the key role these bodies play in making decisions that affect individual lawyers and Law Society processes, the Task Force recommends that both Benchers and non-Benchers members of the Credentials, Practice Standards and Discipline Committees and their associated hearing panels are provided with basic training on mental health and substance use issues, including the effect of stigma. Given regular changes in the composition of these Committees and hearing panels, this training should be provided annually.

Recommendation 7: Provide members of the Credentials Committee, the Practice Standards Committee and the Discipline Committee and their associated hearing panels, as well as individuals who are responsible for practice reviews, conduct meetings and conduct reviews, with basic education and training to improve awareness and knowledge of mental health and substance use issues.

Communications Strategies

97. Starting a public conversation about mental health and substance use within the legal profession is an essential component of raising awareness about these issues and reducing the stigma that prevents many lawyers from seeking help.

98. In the early stages of its work, the Task Force began such a conversation by working closely with the Communications Department to promote its mandate. These efforts included establishing a dedicated mental health page on the Law Society website, creating an email box that enables members of the profession to contact the Task Force, the

⁵¹ Law Society Rule 3-18.

⁵² Law Society Rule 3-19(1)(b).

publication of an article in the *Benchers' Bulletin*⁵³ and participating in the Canadian Mental Health Association's Mental Health Week through a social media campaign.

99. The next step is to broaden these efforts by developing a comprehensive, proactive communication strategy designed to achieve two inter-related objectives: raising awareness of mental health and substance use issues in the legal profession and reducing stigma. The strategy should be developed by the Communications Department in consultation with subject matter-experts to ensure the approach is appropriate and effective in advancing these goals.

Recommendation 8: Develop a comprehensive, profession-wide communication strategy for increasing awareness about mental health and substance use issues within the legal profession.

100. At a minimum, the strategy should aim to improve the means by which the Law Society facilitates access to information about, and support for mental health and substance use issues facing lawyers. This could be achieved by ensuring that there are regular articles in the *Benchers' Bulletin* on wellness issues, sharing mental health resources with the profession through the Law Society website, emphasizing the availability of confidential support services such as the Lawyers Assistance Program (“LAP”) and Lifeworks and finding ways to highlight professional development opportunities related to mental health and substance use.
101. Other approaches may be necessary to specifically address stigma, both at the level of the individual, and systemic stigma that is created and perpetuated by the culture and structure of the legal profession itself. Promoting anti-stigma initiatives is essential to changing the way lawyers engage with mental health and substance use disorders.

Removing Barriers to Accessing Support Services

102. One mechanism for improving lawyer well-being is to connect those needing help with support services both within and beyond the legal community. The Law Society currently promotes two such programs: LAP and LifeWorks.
103. LAP provides support for lawyers dealing with a broad range of health, work and relationship issues, with a focus on problematic alcohol and drug use and mental health issues. LAP provides education, outreach, support and referrals to lawyers, their families and other members of the legal community who are experiencing these and other wellness

⁵³ Greenberg B., “Mental Health Issues in the Legal Profession” (Spring 2018) *Benchers' Bulletin*, online at: www.lawsociety.bc.ca/Website/media/Shared/docs/bulletin/BB_2018-01-Spring.pdf#feature

issues. Lawyers' inquiries and interactions with LAP are strictly confidential and no information is shared with the Law Society or other parties, including the lawyer's firm.

104. The Law Society recognizes the key role LAP plays in supporting lawyers experiencing mental health and substance use issues. Each year, many BC lawyers access the services provided by LAP. Notably, a survey conducted by the Canadian Bar Association revealed that BC lawyers were more likely to have heard of the lawyer assistance program than those in any other province in Canada, with 90% of BC respondents reporting familiarity with the program.⁵⁴ Lawyers residing in BC were also the most likely to have used LAP themselves as compared to lawyers in other Canadian jurisdictions.⁵⁵
105. The Law Society also funds personal counselling and referral services to lawyers and articulated students dealing with wellness issues through LifeWorks Canada. Currently, there are two ways to contact LifeWorks for assistance: logging in through the Law Society's member portal or calling LifeWorks directly. Under the former approach, lawyers are required to provide their Law Society membership number and password in order to be redirected to LifeWorks online service.
106. On the basis that the ABA Study found that the most significant barriers to lawyers seeking help for mental health and substance use issues were "not wanting others to find out they needed help" and related apprehensions regarding privacy and confidentiality, requiring lawyers to access LifeWorks through the Law Society's website may deter help-seeking behaviours, regardless of the fact that the Law Society does not track, report or receive information about lawyers accessing LifeWorks.
107. Additionally, uncertainty about what services LifeWorks provides, what one should expect when contacting LifeWorks and whether LifeWorks is likely to be able to assist a particular lawyer also appear to operate as a barrier to lawyers utilizing these support services.
108. Accordingly, the Task Force recommends exploring alternative ways of accessing LifeWorks services without lawyers having to utilize the Law Society's member portal and their Law Society password, as well as expanding lawyers' understanding of the services available through LifeWorks.

Recommendation 9: Seek assistance from LifeWorks to help the Law Society better explain to the profession what services are available and who may benefit from them, and to explore

⁵⁴ CBA Survey *supra* note 22 at 35.

⁵⁵ *Ibid.* at 3.

alternate means for lawyers to connect with LifeWorks support services that do not require access through the Law Society’s member portal.

Continuing Professional Development Programming

109. In 2017, the Benchers adopted the Lawyer Education Advisory Committee’s recommendation that “professional wellness” be recognized as a new, non-mandatory subject matter within BC’s continuing professional development program (“CPD”):

Professional Wellness: Approved educational programs designed to help lawyers detect, prevent or respond to substance use problems, mental health or stress-related issues that can affect professional competence and the ability to fulfill a lawyer’s ethical and professional duties. Such educational programs must focus on these issues in the context of the practice of law and the impact these issues can have on the quality of legal services provided to the public.

110. While this change represented a step forward, the practical effect was to bring the Law Society into alignment with other Canadian CPD programs, virtually all of which already recognize this type of training as eligible for credit. The next step is to consider whether BC will become a leader by making some form of professional wellness training mandatory.

111. Mandatory training on mental health and substance use disorders is not a novel concept. In 2017, the ABA amended its Model Rule for Minimum Continuing Legal Education (“ABA Model Rule”) to *require* all lawyers to take at least one credit of training on mental health and substance use disorders every three years.⁵⁶

Section 1. Definitions

(J) “Mental Health and Substance Use Disorders Programming” means CLE Programming that addresses the prevention, detection, and/or treatment of mental health disorders and/or substance use disorders, which can affect a lawyer’s ability to perform competent legal services.

⁵⁶ See the ABA Model Rule for Minimum Continuing Legal Education, as amended by Resolution 106 (February 2017) (“ABA Resolution 106”), online at: <https://www.americanbar.org/content/dam/aba/images/abanews/2017%20Midyear%20Meeting%20Resolutions/106.pdf>). The Model Rule serves as a measure for comparison and for consideration by jurisdictions that have adopted a CLE requirement in an effort to support uniform standards and means of accreditation of CLE programs and providers.

Section 3. MCLE Requirements and Exemptions

(A) Requirements

(1) All lawyers with an active license to practice law in this Jurisdiction shall be required to earn an average of fifteen MCLE credit hours per year during the reporting period established in this Jurisdiction.

(2) As part of the required Credit Hours referenced in Section 3(A)(1), lawyers must earn Credit Hours in each of the following areas:

(a) Ethics and Professionalism Programming (an average of at least one Credit Hour per year);

(b) Mental Health and Substance Use Disorders Programming (at least one Credit Hour every three years); and

(c) Diversity and Inclusion Programming (at least one Credit Hour every three years).

[*emphasis added*]

112. The ABA Model Rule recommends a stand-alone requirement for mental health and substance use disorder programming for two reasons.⁵⁷ First, establishing a mandatory requirement will ensure that all lawyers receive basic training in these areas. Second, research indicates that lawyers may hesitate to attend such programs due to potential stigma, and requiring all lawyers to participate may greatly reduce the likelihood of poor attendance.⁵⁸

113. The ABA Model Rule is supported by the authors of the National Task Force Report, who specifically recommend that regulators mandate credit for mental health and substance use disorder programming as part of their continuing professional development schemes.⁵⁹ Several states have adopted a mandatory requirement including California, Illinois, Nevada, North and South Carolina and West Virginia.⁶⁰

114. Accordingly, the Task Force recommends collaboration between the Mental Health Task Force and the Lawyer Education Advisory Committee to explore the merits of adopting

⁵⁷ The report accompanying the amendment notes that the Model Rule may be expanded in the future to include additional programming that falls within a broader definition of “Attorney Well-Being Programming” (currently undefined) rather than being restricted to mental health and substance use disorders.

⁵⁸ ABA Resolution 106 *supra* note 56. See especially Comment 4 at 6.

⁵⁹ National Task Force Report *supra* note 26 at 26.

⁶⁰ For examples, see Rules of the State Bar of California, Title 2, Div. 4, R. 2.72 (2017); Illinois Supreme Court Rules, 794(d)(1) (2017).

some form of mandatory CPD in this area. This recommendation focuses on cross-Committee consultation, and does not advocate for any particular approach or outcome.

Recommendation 10: Collaborate with the Lawyer Education Advisory Committee to explore the merits of the Law Society introducing a mandatory continuing professional development requirement for mental health and substance use disorder programming.

115. The Task Force is mindful of the potential for controversy within the profession with respect to imposing new mandatory CPD topics. Consequently, any recommendations that may result from these discussions may require broader consultation.

Regulatory strategies

116. The Task Force’s second set of recommendations consider how mental health and substance use issues affecting lawyers are most appropriately addressed in the regulatory context. Three recommendations are proposed in this regard:

- a. incorporating mental health and substance use issues into the Law Society’s Law Firm Regulation initiative;
- b. re-evaluating the Law Society’s current approach to inquiring into mental health and substance use in the Law Society Admission Program Enrollment Application (“LSAP Application”); and
- c. amending the “duty to report” provisions in the *Code of Professional Conduct for British Columbia* (the “BC Code”).

Law Firm Regulation

117. Over the last several years, the Law Society has developed a framework for the regulation of law firms. This work, which is guided by the Law Firm Regulation Task Force, has been the subject of two major reports,⁶¹ a profession-wide firm registration process and a pilot project involving more than 350 firms from across the province.

118. The impetus for law firm regulation is the recognition that law firms wield considerable power over, and influence on professional values and conduct, and on the delivery of legal

⁶¹ For a summary of the Law Firm Regulation Task Force’s work, including its key reports, see www.lawsociety.bc.ca/our-initiatives/law-firm-regulation-initiatives/

services to the public. Yet despite occupying this powerful position in the legal landscape, these entities have largely escaped regulation. Law firm regulation is designed to fill this regulatory gap.

119. The self-assessment tool is a central feature of the Law Society’s proactive approach to regulating firms. The tool is designed to encourage firms to examine their practice management systems and to evaluate the extent to which their policies and processes address core areas of professional, ethical firm practice called “Professional Infrastructure Elements.”
120. As part of this exercise, firms are asked to reflect on where they are doing well and where more robust policies and processes may be necessary. This is done by reference to a broad set of Indicators and a more detailed list of Considerations found in the self-assessment tool. Collectively, the Indicators and Considerations provide guidance and suggestions on the types of policies, procedures, processes, methods, steps and systems that a prudent law firm might employ in order to achieve high standards of professional, ethical practice. The self-assessment tool also contains a set of educational resources that firms are encouraged to review.
121. One area in which the influence of firm culture is profound is lawyer wellness. Practices that rob lawyers of a sense of autonomy and control over their schedules and their lives are especially harmful, with research demonstrating that high job demands paired with a lack of a sense of control breeds depression and other psychological disorders.⁶² Similarly, organizational cultures that primarily focus on materialistic, extrinsic rewards can damage well-being.⁶³ Unreasonable expectations of work schedules, work product and deadlines, 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

⁶² Woo J.M. & Postolache T.T., “The Impact of Work Environment on Mood Disorders and Suicide: Evidence and Implications” 7 (2008) *Int’l J. Disability & Human Dev.* 185, online at:

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2559945/>; Griffin J.M. *et al.*, “The Importance of Low Control at Work and Home on Depression and Anxiety: Do These Effects Vary by Gender and Social Class?” (2002) 54 *Soc. Sci. & Med.* 783, online at: <https://www.ncbi.nlm.nih.gov/pubmed/11999493>; Seto *supra* note 33; Seligman E.P., Verkuil P.R. & Kang T.H., “Why Lawyers are Unhappy” (2005) 10 *Deakin L. Rev.* 49, online at: <http://www5.austlii.edu.au/au/journals/DeakinLawRw/2005/4.html>

⁶³ Joudrey A.D. & Wallace J.E., “Leisure as a Coping Resource: A Test of the Job Demand-Control-Support Model” (2014) 62 *Human Relations* 195, online at:

<https://soci.ucalgary.ca/manageprofile/sites/soci.ucalgary.ca/manageprofile/files/unitis/publications/233-32859/leisure%2Bas%2Ba%2Bcoping%2Bresource.pdf> (Lawyers who reported that the practice of law was primarily about generating profits were more likely to be depressed); Krieger *supra* note 12 at 615 (Study showing that required billable hours undermine lawyers’ sense of well-being by focusing on external rewards. As billable hours go up, income goes up and happiness goes down).

outcomes that often have serious consequences for clients all contribute to cultural norms within firms that can be unhealthy.⁶⁴

122. Recognizing the powerful influence firms have over lawyer well-being, the National Task Force Report dedicates a discrete set of recommendations to legal employers.⁶⁵ These recommendations suggest that, among other proactive measures, firms establish policies and practices to support lawyer well-being, conduct in-depth evaluations of current wellness policies and practices and make adjustments as necessary.⁶⁶

123. Given the role law firm regulation plays in encouraging firms to develop and evaluate policies and practices in relation to all aspects of practice management, the self-assessment tool provides an excellent opportunity for the Law Society to promote firms' engagement with mental health and substance use issues that may be affecting their lawyers.⁶⁷

124. In this regard, the Task Force recommends collaboration between the Mental Health Task Force and the Law Firm Regulation Task Force to consider the merits of developing additional well-being specific Indicators, Considerations and resources in the next iteration of the self-assessment tool, including those that address mental health and substance use issues.

Recommendation 11: Collaborate with the Law Firm Regulation Task Force to consider developing additional guidance for the self-assessment tool that encourages firms to put in place policies, processes and resources designed to support lawyers experiencing mental health and substance use issues, and to promote the use of these policies, processes and resources within firms.

125. This collaborative work should include consideration of the National Task Force Report, which provides a comprehensive compilation of topics that law firms should address when

⁶⁴ Michalak R.T., "Causes and Consequences of Work-Related Psychosocial Risk Exposure: A Comparative Investigation of Organisational Context, Employee Attitudes, Job Performance and Wellbeing in Lawyers and Non-Lawyer Professionals" (2015), online at: https://docs.wixstatic.com/ugd/a8d830_08ea2117408c4b3a9ae1b628f8d0d9ee.pdf; Krieger *supra* note 12.

⁶⁵ See National Task Force Report *supra* note 26 at 31-34.

⁶⁶ Examples of some of the specific firm practices that should be reviewed are found in the National Task Force Report *supra* note 26 at 17.

⁶⁷ The National Task Force suggests that policies and procedures should cover a broad range of issues, including: lawyer training and education; assessing the state of well-being among lawyers and staff and whether the workplace supports well-being; the role of confidential reporting procedures for lawyers and staff to convey concerns about colleagues mental health or substance use; reducing the emphasis of alcohol within the firm; procedures for lawyers to seek help without being penalized or stigmatized; and developing firm policies for handling lawyer impairment (National Task Force Report *supra* note 26 at 31-34).

auditing their policies and practices.⁶⁸ For example, the self- assessment tool could be modified to ask firms to consider whether they:

- have internal resources, appropriate to the particular firm, to increase awareness of mental health and substance use issues and provide support for those who may be experiencing these issues
- are familiar with external resources, including LAP and LifeWorks
- advertise the availability of internal and external resource and encourage members of the firm to take advantage of these resources
- designate someone at the firm to oversee resources designed to assist those experiencing mental health and substance use issues

126. Importantly, adding wellness content to the self-assessment tool would not require firms to provide any particular programs, resources or supports, or to develop specific policies or processes. Rather, expanding the self-assessment's focus on well-being generally, and mental health and substance use disorders specifically, will promote engagement with these topics and provide firms with a robust body of guidance on the variety of ways to address these issues in the workplace.

Admissions Process: The LSAP Application

127. As outlined in Part 1, the Student Well-Being Study revealed that those on the cusp of entering the legal profession are experiencing troublesome rates of alcohol and drug use, anxiety and depression. The research also shows that the majority of law students are reluctant to seek help, largely due to concerns that revealing a problem would affect their admission to the bar.⁶⁹

128. Noting that law schools are key stakeholders in catalyzing the shift toward a healthier profession, the Task Force met with representatives of BC's law schools to learn about how mental health and substance use issues manifest in the student population, what approaches law schools are currently taking to address these issues and what role the Law Society could potentially play in improving the well-being of the next generation of lawyers.

⁶⁸ National Task Force Report, Appendix D *supra* note 26 at 59.

⁶⁹ Student Well-Being Study *supra* note 10 at 140. For example, while 42% of the respondents thought they needed help for mental health problems in the prior year, only about half of that group ever sought help from a health professional. Help-seeking behaviours were even worse for substance use issues. Although more than 25% of respondents were considered at risk for problem drinking, only 4% said they ever received counselling for alcohol or drug issues.

129. Through these consultations, administrators demonstrated strong commitment to improving student well-being and decreasing the stigma around mental health and substance use issues.⁷⁰ In discussing how the mandate of the Mental Health Task Force might support this work, the law schools highlighted their concerns regarding the manner in which mental health and substance use disorders are dealt with in the application process for the Law Society Admission Program (“LSAP”).⁷¹ In particular, the law schools critiqued Schedule A of the LSAP Application, which must be completed by all students before they commence articles.⁷²
130. The LSAP Application is intended, among other things, to enable the Benchers to fulfill their statutory obligation under s. 19 of the *Legal Profession Act* to be satisfied that each applicant for articles, call or admission or transfer is of good character and repute and fit to become a lawyer. The onus is placed on the applicant to satisfy the Benchers in this regard.
131. In addition to seeking details about a student’s education and employment history, the LSAP Application includes a series of “good character” questions that inquire into the applicant’s record of conduct – for example, whether the applicant has any criminal offences, has filed for bankruptcy, has failed to obey a court order, has been subject to disciplinary action or suspension by another professional organization or has an outstanding civil action or judgment against them. These questions are intended to help the Law Society identify applicants that may be unfit to practice law.
132. In a separate section of the LSAP Application entitled Schedule A, there are an additional set of questions which are used to evaluate an applicant’s “medical fitness.” These questions are not related to past conduct. Rather they are inquiries about the applicant’s medical history. Specifically, Schedule A requires applicants to answer the following questions:

⁷⁰ The Law Society of BC invited all BC law schools to participate in a consultation session with the Task Force and was grateful for the contributions of Dr. Catherine Dauvergne, Dean, UBC Faculty of Law, lawdean@allard.ubc.ca; Kaila Mikkelsen, Assistant Dean - Students, UBC Faculty of Law; Chira Perla, Assistant Dean - Career Services, UBC Faculty of Law; and Professor Gillian Calder, Associate Dean - Academic and Student Relations, UVic Faculty of Law).

⁷¹ In order to be called to the British Columbia bar, applicants are required to complete a 12-month training program. The program, called the Law Society Admission Program (LSAP), consists of three components: nine months of articles, 10 weeks of full-time attendance at the Professional Legal Training Course (PLTC) and two qualification examinations.

⁷² Law Society Admission Program Enrolment Application, online at: www.lawsociety.bc.ca/Website/media/Shared/docs/forms/MS-admissions/admission-app.pdf

2. a) Based on your personal history, your current circumstances or any professional opinion or advice you have received, do you have a substance use disorder?
b) Have you been counseled or received treatment for a substance use disorder?
3. *If you answered yes to questions 2 (a) or (b), please provide a general description on a separate sheet.*
4. Based on your personal history, your current circumstances or any professional opinion or advice you have received, do you have any existing condition that is reasonably likely to impair your ability to function as an articulated student?
5. *If the answer to question 4 is “yes”, please provide a general description of the impairment on a separate sheet.*

133. Applicants that answer yes to these questions may be asked to provide further information from a source that the Law Society deems appropriate. Applicants that fail to provide answers may have their applications delayed or rejected.

134. The law schools identified a number of concerns with the Schedule A of the LSAP Application. First, administrators observe that many students fail to disclose mental health or substance use issues on the form based on fears that such disclosure poses a threat to their admission to the bar or their legal careers.

135. Relatedly, the law schools raised concerns about a lack of transparency regarding how the medical fitness information is used by the Law Society, which again reportedly deters students from being candid about their health status. Additionally, the law schools noted that it was difficult to provide advice and support to students with respect to the Law Society’s process as a result of this lack of transparency.

136. The law schools also reported that many students do not seek help for mental health or substance use issues, such as counselling or a medical evaluation, due to fears that if they seek a diagnosis or treatment, they must disclose this information on the LSAP Application, and this will delay or prevent their call to the bar.

137. Similar themes emerge from recent social science research which indicates that a leading factor discouraging students from seeking help for substance use issues and mental health

concerns is perceived threats to bar admission.⁷³ The Student Well-Being Study found that 49% of respondents felt that their chances of being admitted to the bar were better if they were to hide a drug or alcohol problem; 43% felt similarly about hiding a mental health condition.⁷⁴

138. Although most legal regulators still inquire, to some extent, about substance use and mental health conditions as part of their processes for evaluating an applicant's fitness to practice, there is growing debate as to whether these types of questions — particularly those seeking disclosure of diagnosis or treatment history — should be asked at all.

139. Recently, both the ABA and the US Department of Justice (“US DoJ”) have encouraged states to eliminate questions relating to mental health as part of their application process:

It has become clear that questions about mental health history, diagnoses, or treatment are inherently discriminatory, invade privacy, stigmatize and needlessly exclude applicants with disabilities, are ineffective in identifying applicants who are unfit, and discourage some applicants from seeking necessary treatment. By calling for the elimination of such questions, the proposed Resolution will help ensure that bar applicants with disabilities are assessed—like other applicants—solely on the basis of their fitness to practice law.⁷⁵

140. Instead, these bodies argue that the focus should be on conduct or behaviour that impairs an applicant's ability to practice law in a competent, ethical, and professional manner.⁷⁶ As the ABA observes, regulators already ask a wide range of questions that focus on *conduct* relevant to applicants' fitness, which are not only sufficient to evaluate fitness, but moreover, are the most effective means for doing so.⁷⁷ This view is supported by a breadth of social science research indicating that a history of mental health diagnosis or treatment is not a useful predictor of future lawyer misconduct or malpractice.⁷⁸

⁷³ Student Well-Being Study *supra* note 10 at 141. Approximately 63% of respondents felt that substance use posed a potential threat to bar admission, while 45% felt that mental health concerns were a threat to bar admission. Perceived threats to job or academic status and social stigma were also strong factors discouraging students from seeking help.

⁷⁴ *Ibid.* at 142.

⁷⁵ American Bar Association, Resolution 102 and supporting report (August 2015) (“ABA Resolution 102”), online at: http://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/resolutions/2015_hod_annual_meeting_102.docx

⁷⁶ *Ibid.* See also Department of Justice Letter to the Louisiana State Bar (February 5, 2013) (“DoJ Letter to Louisiana State Bar”), online at: <https://lalegaethics.org/u-s-department-justice-issues-scathing-letter-regarding-louisiana-bar-admissions-process/>.

⁷⁷ ABA Resolution 102 *supra* note 75 at 6.

⁷⁸ American Bar Association Commission on Mental and Physical Disability Law, “Recommendation to the House of Delegates” (February 1998) 22 Mental & Physical Disability L. Rep. 266 as quoted in ABA Letter *infra* note 81 (“Research in the health field and clinical experience demonstrate that neither diagnosis nor the fact of having undergone treatment support any inferences about a person's ability to carry out professional responsibilities or to

141. Furthermore, studies demonstrate that questions concerning mental health diagnoses and treatment may deter individuals from seeking treatment, based on concerns that such disclosure may create a barrier to admission, a result that is counterproductive to the goal of ensuring lawyers' fitness to practise.⁷⁹ These questions may also prevent applicants who are actively seeking help from being candid about their conditions with their health care provider, due to fears that this information will find its way back to the regulator.⁸⁰

142. Numerous states have eliminated questions related to mental health history from their character and fitness reviews of bar applicants.⁸¹ The ABA recently strongly supported such changes in Washington, observing that:

The ABA adopted policy in 2015 urging state and territorial bar licensing entities to eliminate requests for mental health history and instead limit bar admission questions to issues involving “conduct or behavior that impairs an applicant’s ability to practice law in a competent, ethical, and professional manner.” A growing number of states, including Arizona, Illinois, Massachusetts, Pennsylvania, and Tennessee, have eliminated discriminatory mental health questions from their bar admissions practices, and the ABA urges Washington to follow suit.

Requiring bar applicants to provide their mental health histories, diagnoses, or past treatment details unfairly discriminates against individuals with disabilities and is likely to deter individuals from seeking mental health counseling and treatment. Additionally, these questions have proven to be ineffective for the

act with integrity, competence, or honor”); Bauer J., “The Character of the Questions and the Fitness of the Process: Mental Health, Bar Admissions and the Americans with Disabilities Act” (2001) 49 UCLA Law Rev. 93 at 141 (“Bauer”), online at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=293613 (“There is simply no empirical evidence that applicants’ mental health histories are significantly predictive of future misconduct or malpractice as an attorney”).

⁷⁹ Bauer *ibid.* at 150 (Describing how disability-related questions can discourage applicants from obtaining treatment and undermining its effectiveness); Student Well-Being Study *supra* note 10; Association of American Law Schools, “Report of the AALS Special Committee on Problems of Substance Abuse in the Law Schools” (1994) 44 J. Legal Educ. 35 at 54 (Finding that a much higher percentage of law students would seek treatment for substance abuse problems or refer others to treatment if they were assured that bar officials would not have access to that information), online at: https://www.jstor.org/stable/42893309?seq=1#page_scan_tab_contents

⁸⁰ ABA Resolution 102 *supra* note 75 at 7.

⁸¹ American Bar Association, “Letter to Washington State Supreme Court Re: Revisions to Admissions Practice Rules 20-25 and the Bar Application”(April 21, 2016) (“ABA Letter”), online at: https://www.americanbar.org/content/dam/aba/unclassified/GAO/20160421_wabaradmission_final.authcheckdam.pdf. See Washington’s revised rules, online at: www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=apr&ruleid=gaapr21

presumed purpose of identifying unfit applicants. The ABA does, however, make clear that:

licensing entities are not precluded from making reasonable and narrowly-tailored follow-up inquiries concerning an applicant's mental health history if the applicant has engaged in conduct or behavior that may otherwise warrant a denial of admission, and a mental health condition either has been raised by the applicant as, or is shown by other information to be, an explanation for such conduct or behavior.

We believe this approach strikes the right balance and allows licensing entities to carry on in their vital role of protecting the profession and the public.⁸²

143. Similarly, the US DoJ advocates for an approach in which applicants are not asked to disclose diagnosis of, or treatment for a disability unless that information is being used to explain the applicant's conduct.⁸³

144. The Task Force strongly supports the approach recommended by the ABA and the US DoJ, and now adopted in some states. This is particularly the case given the low number of students who come to the attention of the Credentials Committee each year as a result of the medical fitness questions in Schedule A of the LSAP Application and concern that the inclusion of such questions discourages students from seeking counselling, support and medical treatment for mental health and substance use disorders.

145. The Task Force considers that the public interest is better served by creating an atmosphere of support and transparency for lawyers and law students, where treatment for those that may benefit from it is encouraged rather than discouraged.

146. Although substantial changes were made to the medical fitness questions in the LSAP Application in 2010, new understandings of the consequences and effectiveness of these types of questions suggest that a reconsideration of the current application form is required.⁸⁴ In this regard, the Task Force recommends a review of the LSAP Application in collaboration with the Credentials Committee and appropriate subject-matter experts.

⁸² ABA Letter *supra* note 81.

⁸³ DOJ Letter to Louisiana State Bar *supra* note 76 at 31 ("To remedy the deficiencies discussed above and protect the civil rights of individuals with mental health diagnoses or treatment who seek to practice law in the State of Louisiana, the Court should promptly implement the minimum remedial measures set forth below. a) Refrain from utilizing [...] any other question that requires applicants to disclose diagnosis of, or treatment for, a disability when that information is not being disclosed to explain the applicant's conduct").

⁸⁴ Note that Question 2(a) was not the focus of the 2010 revisions to the LSAP Application. As a result, Question 2 currently singles out diagnosis and treatment for a substance use disorder as a condition that students must disclose,

Recommendation 12: Collaborate with the Credentials Committee in re-evaluating the Law Society’s current approach to inquiries into mental health and substance use in the Law Society Admission Program Enrolment Application.

BC Code: Duty to Report

147. A central feature of the Law Society’s duty to protect the public interest is to ensure that lawyers can identify and maintain high standards of ethical conduct. The *BC Code*, which serves as the governing document concerning professional responsibility for BC lawyers, attempts to help lawyers achieve this goal.
148. Although the *BC Code* is not a formal part of the Law Society Rules, it reflects the views of the Benchers about standards that lawyers in BC must meet in fulfilling their professional obligations. The *BC Code* is divided into three components: rules, commentary and appendices. Each of these components contain some statements that are mandatory, some that are advisory and others with both mandatory and advisory elements. A breach of a provision of the *BC Code* by a lawyer may or may not be the basis of disciplinary action against that lawyer.⁸⁵
149. The *BC Code* is significantly related to the Federation of Law Societies’ Model Code of Professional Conduct (the “Model Code”). There are, however, points of variance. These differences may be the result of the Benchers determining that a different approach is necessary to guide practice in BC or because the Model Code has been amended in advance of the Benchers considering, or making changes to corresponding provisions.
150. Currently, the *BC Code* contains stigmatizing language with respect to a lawyer’s duty to report to the Law Society under rule 7.1-3, text that was removed from the Model Code in 2016.⁸⁶ The *BC Code* presently states:

Duty to report

7.1-3 Unless to do so would involve a breach of solicitor-client confidentiality or privilege, a lawyer must report to the Society:

without asking whether the student is of the view that their disorder will impact on their ability to function as an articling student, as is asked in relation to other “existing conditions” in Question 4.

⁸⁵ *Code of Professional Conduct for British Columbia*, online at: <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/code-of-professional-conduct-for-british-columbia/>

⁸⁶ The changes to the text of Model Code provision 7.1-3 were motivated by concerns that the language might have a stigmatizing effect on some lawyers, resulting in the Standing Committee on the Model Code recommending, and the Federation Council adopting, revised wording to 7.1-3 and its associated commentary.

- (a) a shortage of trust monies;
- (a.1) a breach of undertaking or trust condition that has not been consented to or waived;
- (b) the abandonment of a law practice;
- (c) participation in criminal activity related to a lawyer's practice;
- (d) the mental instability of a lawyer of such a nature that the lawyer's clients are likely to be materially prejudiced;
- (e) conduct that raises a substantial question as to another lawyer's honesty, trustworthiness, or competency as a lawyer; and
- (f) any other situation in which a lawyer's clients are likely to be materially prejudiced.

Commentary:

[1] Unless a lawyer who departs from proper professional conduct is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is, therefore, proper (unless it is privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these rules. If a lawyer is in any doubt whether a report should be made, the lawyer should consider seeking the advice of the Society directly or indirectly (e.g., through another lawyer).

[2] Nothing in this paragraph is meant to interfere with the lawyer-client relationship. In all cases, the report must be made without malice or ulterior motive.

[3] Often, instances of improper conduct arise from emotional, mental or family disturbances or substance abuse.” Lawyers who suffer from such problems should be encouraged to seek assistance as early as possible. The Society supports professional support groups in their commitment to the provision of confidential counselling. Therefore, lawyers acting in the capacity of counsellors for professional support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity or competence hearing without the consent of the lawyer from whom the information was received. Notwithstanding the above, a lawyer counselling another lawyer has an ethical obligation to report to the Society upon learning that the lawyer being assisted is engaging in or may in the future engage in serious misconduct or in criminal activity related to the lawyer's practice. The Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.

[emphasis added]

151. The current version of rule 7.1-3 and the associated Commentary is stigmatizing in a variety of ways. With respect to the rule itself, the phrase “mental instability” in 7.1-3(d) is an emotionally charged term that connotes negative attitudes toward mental health conditions and the people affected by them. Additionally, mental health is the only condition, or “state of being” enumerated in 7.1-3, in contrast to the other items in the rule, which focus on conduct. As such, 7.1-3(d) makes the unfounded and stigmatizing assumption that lawyers living with mental health challenges present an elevated risk to the public.
152. Rule 7.1-3(d) also requires lawyers and the Law Society to engage in speculation as to whether or not a mental health issue is of “such a nature” that it might materially prejudice a client. This adds nothing to the catchall provision in 7.1-3(f) requiring a lawyer to report any other situation that is “likely” to cause prejudice to clients.
153. In contrast, specific references to mental health have been removed from the corresponding provision in the Model Code, which instead focuses on lawyer conduct. The Model Code specifically directs the inquiry toward “conduct that raises a substantial question about the lawyer’s capacity to provide professional services” at 7.1-3(e):
- 7.1-3** Unless to do so would be unlawful or would involve a breach of solicitor-client privilege, a lawyer must report to the Society:
- (a) the misappropriation or misapplication of trust monies;
 - (b) the abandonment of a law practice;
 - (c) participation in criminal activity related to a lawyer’s practice;
 - (d) conduct that raises a substantial question as to another lawyer’s honesty, trustworthiness, or competency as a lawyer;
 - (e) conduct that raises a substantial question about the lawyer’s capacity to provide professional services; and
 - (f) any situation in which a lawyer’s clients are likely to be materially prejudiced.
- [emphasis added]*
154. To address the stigmatizing effect of BC’s current rule, the Task Force recommends that 7.1-3(d) is removed from the *BC Code* and is replaced by provision 7.1-3(e) of the Model Code. This change will ensure that the focus is exclusively on lawyers’ conduct rather than the presence of a mental health condition.
155. The Task Force is aware that the Law Society’s Ethics Committee has similarly proposed an amendment to eliminate rule 7.1-3(d) as part of its ongoing work to bring the *BC Code* into alignment with the Model Code. The Task Force applauds the Ethics Committee’s recommendation and supports the proposed amendment to the rule itself.

156. However, the Task Force believes that additional changes to the associated Commentary are also required.

157. Specifically, the Task Force is concerned with the language used in note 3 of the Commentary of the *BC Code*. This includes the unsupported and stigmatizing statement that “often” instances of improper conduct arise from “mental disturbances” or “substance abuse.” In an effort to correct this language, the Task Force suggests the first two sentences of note 3 of the Commentary are amended to read the following:

A variety of stressors, physical, mental or emotional conditions, disorders or addictions may contribute to instances of conduct described in this rule. Lawyers who face such challenges should be encouraged by other lawyers to seek assistance as early as possible.

158. The Task Force is also concerned about the last two sentences of note 3 of the Commentary, which state:

Therefore, lawyers acting in the capacity of counsellors for professional support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity or competence hearing without the consent of the lawyer from whom the information was received. Notwithstanding the above, a lawyer counselling another lawyer has an ethical obligation to report to the Society upon learning that the lawyer being assisted is engaging in or may in the future engage in serious misconduct or in criminal activity related to the lawyer’s practice. The Society cannot countenance such conduct regardless of a lawyer’s attempts at rehabilitation. [emphasis added]

159. This language is problematic on several fronts. First, it is not reasonable or necessary to require lawyer-counsellors to report a substantial risk relating to another lawyer’s *future* behaviour. In addition to the fact that no lawyer can make an accurate assessment as to how current behaviours relate to potential future action, this Commentary also results in lawyer-counsellors being the only lawyers that are required to speculate about, and report on the possible future conduct of another lawyer. For example, the rule itself requires lawyers to report another lawyer’s *participation* in a criminal activity, not their possible *future participation* in such activity.

160. Even if lawyer-counsellors were to report potential, future misconduct it is unclear to the Task Force what real value such a report would have to the Law Society and how this information could be used.

161. This portion of the Commentary also suggests that lawyers seeking help for substance use or mental health issues are more likely than other lawyers to engage in criminal

activity or other serious misconduct. Absent this assumption, there would be no need to “remind” lawyer-counsellors of the reporting obligations that apply to all lawyers under rule 7.1-3, or to add to these requirements by also including references to present and future “serious misconduct,” neither of which are referenced in the main body of the rule. Given that there is no empirical evidence that applicants’ mental health histories are significantly predictive of future misconduct, this approach is misguided and stigmatizing.⁸⁷

162. In addition to seeing little benefit to requiring lawyer-counsellors to report the risk of future misconduct, the Task Force believes that imposing this additional, onerous obligation may dissuade lawyers from seeking, or volunteering to provide assistance through programs such as LAP. The risk of a *mandatory* requirement to report potential future conduct may have a chilling effect on use of peer support programs and sends yet another stigmatizing message to the profession.

163. Finally, it is unnecessary to remind lawyers that “the Society cannot countenance such conduct regardless of a lawyer’s attempts at rehabilitation.” This phrasing suggests that those involved in rehabilitative efforts require a specific and additional reminder that their circumstances are not a justification for criminal activities or other serious misconduct. Presumably this is based on the faulty assumption that those dealing with mental health and substance use issues are at a higher risk of misconduct, or are more likely to use their condition as an excuse for such conduct.

164. The Task Force understands that the Ethics Committee may have additional views or recommendations with respect to the Commentary, and that the provisions of the Model Code may be changed in the future. The Task Force welcomes further consultation with the Ethics Committee in respect of these changes, as necessary. However, to combat the stigmatizing approach described above, the Task Force recommends amending note 3 of the Commentary, as well as eliminating 7.1-3(d) of the *BC Code*.

Recommendation 13: To eliminate stigmatizing language and approaches to the reporting requirements in *BC Code* provision 7.1-3(d) [Duty to report] and the associated Commentary.

⁸⁷ Bauer *supra* note 78. Notably, in the context of applications for admission there has been a strong movement away from speculating as to how a current mental health condition might affect future conduct. See DoJ Letter to Louisiana State Bar *supra* note 76.

Budgetary Considerations

165. Although the majority of the Task Force’s recommendations can be implemented with existing program funding, several of the education-based strategies have additional budgetary implications. This includes the comprehensive specialized training for Practice Advisors, Practice Standards lawyers and staff in the Professional Responsibility Department.
166. In considering these budgetary implications earlier this year, the Task Force worked with the CMHA to identify a series of potential educational programs and to estimate associated costs. Approximately \$12,000 of funding was subsequently included in the Law Society's 2019 budget for initial staff training to ensure that the Task Force’s educational recommendations could be implemented once approved by the Benchers.
167. If the full set of education-related recommendations are adopted by the Benchers, additional funding will be sought in 2019 to broaden training to include other Law Society staff, Bencher and non-Bencher Committee and hearing panel members and those responsible for practice reviews, conduct meetings and conduct reviews.
168. As ad-hoc educational programming is not an effective way to create sustained organizational change, training must be frequent and ongoing, and will require continual funding from the Law Society. Accordingly, it is expected that there will be future requests for mental health training budgets across various Law Society departments and Committees.
169. Additionally, \$10,000 of funding was allocated to the implementation of Recommendation 6, which will enable some staff groups to have access to up to 50 hours of consultation time with a mental health professional. The use of this resource will be monitored to determine if similar or increased funding is required in the future.

Summary of Recommendations

170. The following summarizes the Task Force’s 13 recommendations, which include both educational and regulatory strategies:

Recommendation 1: Promote, through a targeted communication campaign, an expanded role for Practice Advisors to include availability for confidential consultations about mental health and substance use issues and referrals to appropriate support resources.

Recommendation 2: Provide Practice Advisors with specialized education and training to enhance their knowledge, skills and access to resources related to mental health and substance use issues.

Recommendation 3: Provide Practice Standards lawyers and support staff with specialized education and training to enhance their knowledge, skills and access to resources related to mental health and substance use issues.

Recommendation 4: Provide lawyers and paralegals in the Professional Regulation Department with specialized education and training to enhance their knowledge, skills and access to resources related to mental health and substance use issues.

Recommendation 5: Provide Credentials Officers, auditors in the Trust Assurance Program and staff lawyers in the Lawyers Insurance Fund with basic education and training to improve their awareness of mental health and substance use issues.

Recommendation 6: Establish a roster of qualified mental health professionals that Practice Advisors, Practice Standards lawyers, Credentials Officers and staff in the Professional Regulation Department may consult to assist them in addressing mental health and substance use issues that arise in the course of Law Society processes involving lawyers or applicants.

Recommendation 7: Provide members of the Credentials Committee, the Practice Standards Committee and the Discipline Committee and their associated hearing panels, as well as individuals who are responsible for practice reviews, conduct meetings and conduct reviews, with basic education and training to improve awareness and knowledge of mental health and substance use issues.

Recommendation 8: Develop a comprehensive, profession-wide communication strategy for increasing awareness about mental health and substance use issues within the legal profession.

Recommendation 9: Seek assistance from LifeWorks to help the Law Society better explain to the profession what services are available and who may benefit from them, and to explore alternate means for lawyers to connect with LifeWorks support services that do not require access through the Law Society's member portal.

Recommendation 10: Collaborate with the Lawyer Education Advisory Committee to explore the merits of the Law Society introducing a mandatory continuing professional development requirement for mental health and substance use disorder programming.

Recommendation 11: Collaborate with the Law Firm Regulation Task Force to consider developing additional guidance for the self-assessment tool that encourages firms to put in place policies, processes and resources designed to support lawyers experiencing mental health

and substance use issues, and to promote the use of these policies, processes and resources within firms.

Recommendation 12: Collaborate with the Credentials Committee in re-evaluating the Law Society’s current approach to inquiries into mental health and substance use in the Law Society Admission Program Enrolment Application.

Recommendation 13: To eliminate stigmatizing language and approaches to the reporting requirements in *BC Code* provision 7.1-3(d) [Duty to report] and the associated Commentary.

Next Steps and Conclusion

171. Evidence is mounting that mental health and substance use disorders are serious and pervasive problems within the legal profession, with research revealing that lawyers and law students are affected by these issues at rates that far exceed those found in the general population and other professions.
172. The benefits of increased lawyer well-being are compelling and the costs of lawyer impairment are too great to ignore. Given its mandate to promote and protect the public interest, the Law Society is committed to ensuring lawyers can access the supports and resources they need to stay well, so that they can continue to meet high competency and ethical standards demanded by the practice of law. Aware that stigma can prevent lawyers from accessing help, stigma-reduction is also a high priority for the Law Society.
173. As such, the Task Force proposes a series of educational and regulatory strategies, detailed in the 13 recommendations summarized above, that promote concerted, coordinated and sustained action across the Law Society’s various processes and departments and improve the way that the regulator responds to mental health and substance use issues affecting lawyers.
174. While these recommendations represent progress, they are only first steps in the Task Force’s ongoing efforts to fulfill the many and varied aspects of its mandate.
175. In the coming months, additional work will be done to implement the approved recommendations and to commence the next phase of the Task Force’s work, which will expand its mental health review of the Law Society’s regulatory approaches. This will include examining the development of a “diversion” or other alternative discipline process for lawyers affected by mental health or substance use disorders, or modifying other aspects of the discipline process. Potential changes to the Law Society’s admissions process vis-à-vis mental health will also continue to be explored. Consultation and

collaboration with key stakeholders, experts and other professional organizations will remain a central element of the Task Force's activities.

176. The Task Force is also considering preparing, in consultation with subject-matter experts, a statement of best regulatory practices for dealing with mental health and substance use issues across the organization. Additionally, the Task Force is discussing whether a voluntary member survey designed to elicit more information about mental health and substance use issues affecting BC lawyers is feasible, timely and advisable.

177. As the National Task Force Report observes, there has never been a better or more important time for all sectors of the profession to focus on substance use and mental health within the profession:

We are at a crossroads. To maintain public confidence in the profession, to meet the need for innovation in how we deliver legal services, to increase access to justice, and to reduce the level of toxicity that has allowed mental health and substance use disorders to fester among our colleagues, we have to act now. Change will require a wide-eyed and candid assessment of our members' state of being, accompanied by courageous commitment to re-envisioning what it means to live the life of a lawyer.⁸⁸

178. In both its current and future work, the Task Force is committed to making a difference, within the scope of both its regulatory and support functions, to changing the way lawyers think about, and respond to mental health and substance use issues, and to encourage cultural changes within the profession that support and promote lawyer well-being.

⁸⁸ National Task Force Report *supra* note 26 at 1.