



# Fourth Recommendation Report of the Mental Health Task Force

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Prepared for: Benchers

Prepared by: Policy and Planning Department and the Mental Health Task Force

Purpose: For Decision

## I. Purpose

1. The purpose of this report is to present the Benchers with three recommendations proposed by the Mental Health Task Force.

## II. Proposed Resolution

2. The Mental Health Task Force recommends the following resolution:

BE IT RESOLVED that the Benchers approve the three recommendations contained in the Mental Health Task Force’s Fourth Recommendation Report:

**Recommendation 1:** The Law Society should enhance the support available to lawyers who, for reasons that may be related to health issues, do not respond to Law Society communications by creating a roster of pro bono support counsel to assist with the resolution of “failure to respond” matters and should evaluate the effectiveness of the roster over a two year pilot project.

**Recommendation 2:** The Law Society should develop or adopt expert systems tools to broaden the means by which licensees and applicants are aware of, and have access to, appropriate support, resources and referrals for mental health and substance use issues.

**Recommendation 3:** The Law Society should host a mental health forum to facilitate discussions within the legal community regarding the findings and recommendations of the *National Study on the Psychological Health Determinants of Legal Professionals in Canada* (the “National Study”).<sup>1</sup>

## III. Background

3. The primary objective of the Mental Health Task Force (the “Task Force”), created in 2018, is to identify ways to reduce stigma and to undertake an integrated review of the Law Society’s regulatory approaches to mental health issues in order to better support

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<sup>1</sup> Cadieux, N. et. al, (2022). Research report: [\*Towards a Healthy and Sustainable Practice of Law in Canada. National Study on the Psychological Health Determinants of Legal Professionals in Canada\*](#), Phase I. Université de Sherbrooke (October 2022) A [supplemental recommendations report](#) was issued in December 2022. Data was collected from 7,300 legal professionals through a survey developed by researchers at the Université de Sherbrooke, in collaboration with the CBA and the Federation of Law Societies. This research, the first of its kind to explore the psychological health of Canadian legal professionals, reveals concerning levels of mental health and substance use issues within the profession and identifies the need for more support and resources, as well as key strategies for improving legal professionals’ health outcomes.

lawyers in fulfilling their professional responsibilities, including duties to their clients. Through the development, approval and implementation of the Task Force’s 21 past recommendations, the Law Society has introduced a variety of initiatives that have positioned BC as a leader among legal regulators in this evolving area of policy development.<sup>2</sup>

4. Over the course of 2022, the Task Force discussed and debated three further recommendations that are aimed at addressing the primary issues assigned to the Task Force to study. The Task Force had planned to combine these proposals with recommendations relating to its review of the National Study in a final report to the Benchers. However, due to the delay in the release of the National Study and the overall breadth of those findings, such a review is not anticipated to be completed in the immediate future. The Task Force therefore determined it should not delay presenting the Benchers with the three recommendations contained in this report.

## IV. Discussion

5. The description and evaluation of each of the recommended initiatives presented in this report represents a summary of the more detailed policy analysis undertaken by the Task Force in developing its recommendations.<sup>3</sup> As the public interest must be foremost among any evaluation criteria when the Law Society considers a policy option, this aspect of the analysis is emphasized. Consideration is also given to the proposals’ implications for licensees, equity, diversity and inclusion and organizational costs, as appropriate.

### **Recommendation 1: Support counsel roster for failure to respond matters**

The Law Society should enhance the support available to lawyers who, for reasons that may be related to health issues, do not respond to Law Society communications by creating a roster of pro bono support counsel to assist with the resolution of “failure to respond” matters and should evaluate the effectiveness of the roster over a two year pilot project.

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<sup>2</sup> See the [First Interim Report](#) of the Mental Health Task Force (October 2018), Second Interim Report of the Mental Health Task Force (January 2020) and [Recommendation on the Development of an Alternative Discipline Process](#) (September 2021). The status of these recommendations is summarized in an [implementation report](#).

<sup>3</sup> The Law Society’s recent governance review recommended Benchers receive concise policy papers. See Harry Cayton, [Report of a Governance Review of the Law Society of British Columbia](#) (2021) at 7.7.2.

## Issue being addressed

6. A lawyer's duty to reply to communications from the Law Society is a fundamental component of the effective regulation of the profession. The absence of prompt, candid, and complete replies from licensees impedes the Law Society's ability to fulfill its public interest mandate by compromising the efficiency and effectiveness of investigations into complaints and subsequent disciplinary steps, and has the potential to erode public confidence in self-regulation. The responsibility to provide timely, substantive replies to communications from the regulator is thus emphasized in both the Law Society Rules and the *BC Code*. Repeated failures to respond to the Law Society can, and do, lead to disciplinary action against the lawyer, including administrative suspension.
7. Reasons as to why lawyers do not respond to the Law Society include procrastination, broader practice management issues or an unwillingness to abide by the authority of the regulator. A review of recent data indicates that in some circumstances, health issues, including depression and anxiety, contribute to communication lapses and that very few of these licensees retain counsel to represent them during the investigation and disciplinary stages of their matter.<sup>4</sup>
8. Fear, misapprehensions about the regulatory process, perceived stigma or concerns about confidentiality likely prevent some lawyers that are experiencing mental health or substance use issues from taking the necessary steps to contact the Law Society, even in circumstances where they recognize the benefits of resolving their matter. Anecdotal information suggests that communications from the Law Society can cause some lawyers, who despite meeting their duties to their clients, to "freeze" or otherwise find themselves unable to respond to the regulator when they are party to a complaint, particularly if they lack the assistance of counsel.
9. For these reasons, the Task Force recommends developing a pilot program through which a roster of independent, pro bono "support counsel" is created, who would be available to offer additional assistance in responding to Law Society communications to licensees experiencing health issues. Support counsel would ideally be experienced lawyers who could assist licensees with initiating contact with the Law Society and taking steps to address their obligation to respond. The Task Force believes that, for some lawyers, this support-based approach may be a more effective means of achieving the public interest

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<sup>4</sup> In the past decade, between seven and 12 percent of lawyers facing disciplinary action for their failure to respond to the Law Society expressly indicated that health issues were a reason for their lack of communication. Due to stigma and confidentiality concerns, this data may underrepresent the actual number of failure to respond matters arising from a health issue. Some lawyers may also be unaware that a health issue creates barriers to effective communication.

goal of obtaining engagement and cooperation with the Law Society's processes than traditional disciplinary responses.<sup>5</sup>

### **Purpose and operation of recommendation**

10. Under the proposed model, support counsel would be included on the roster on the basis of their experience with both the Law Society's processes and mental health issues. Counsel's role would be restricted to assisting a licensee with resolving the failure to respond matter, and would not include advice on the substantive aspects of an underlying complaint investigation, unless the lawyer and counsel made such arrangements separately. In an effort to bolster both the appearance and actual independence of the roster, support counsel would provide these services on a pro bono basis. To avoid creating barriers to accessing support, it is proposed that providing medical evidence of a mental health issue is not required to utilize the roster.
11. Lawyers involved in a complaints investigation would be provided with information about access to the roster, including assurances that their discussions with support counsel are not shared with the Law Society without the lawyer's consent. In some cases, it may be appropriate for support counsel to proactively reach out to the subject lawyer and offer assistance rather than waiting for the licensee to initiate contact with the roster.<sup>6</sup> This approach ensures that individuals who find themselves unable to take the preliminary step of contacting counsel nevertheless have an opportunity to benefit from this new resource. If, however, a lawyer does not wish to accept the offer of pro bono support, there is no obligation to do so.
12. Staff would oversee the creation of the roster, the training of its members and the development of appropriate policies. The effectiveness of the roster would be evaluated over the course of a two year pilot project and include an assessment of the impact of support counsel on the timely resolution of failure to respond matters. This data would be incorporated in a report to the Benchers regarding the outcomes of the pilot project and recommendations pertaining to the future of the roster.

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<sup>5</sup> Although the prospect of an administrative suspension or other regulatory consequences may encourage cooperation, threats of sanction can also be unproductive or even counterproductive in instances where licensees are experiencing significant anxiety that has contributed to their lack of responsiveness.

<sup>6</sup> A rule change is required to enable Law Society staff to disclose information to support counsel providing services through the roster. To protect the confidentiality of complaints, it is proposed that information sharing is restricted to the failure to respond matter to ensure that details about the underlying complaint and the lawyer's professional conduct record are not disclosed. A full privacy analysis of this initiative has not yet been conducted.

## Policy and operational considerations

13. Section 3 of the *Legal Profession Act* (“LPA”) establishes that the protection of the public interest can be achieved in a variety of ways, including assisting lawyers in fulfilling their professional responsibilities. The proposed support counsel roster fulfills this aspect of the Law Society’s mandate.
14. The ability to communicate effectively with licensees is essential to the integrity of the Law Society’s processes. Protracted efforts to contact unresponsive licensees shifts the focus away from the underlying complaint and alleged misconduct and impedes the Law Society’s ability to progress with an investigation. In contrast, the creation of additional support options for lawyers experiencing health issues is intended to assist the Law Society in achieving its public interest objectives through the more effective resolution of complaints. The recommended approach also has the potential to break a cycle in which a licensee who feels unable to respond to the Law Society is faced with intensified efforts from staff to engage them, which may exacerbate barriers to communication and, in turn, create additional regulatory consequences for the licensee that need not be incurred.
15. Data and studies reviewed by the Task Force indicate that perceived stigma and apprehensions about confidentiality can prevent licensees from providing personal health information directly to a regulatory body. The proposed program addresses these barriers by creating an intermediary — a support counsel — to whom the licensee can provide the necessary information and obtain privileged advice about responding to the Law Society. The Task Force anticipates this type of assistance to be more effective in resolving failures to respond than will additional outreach from staff. Enabling support counsel to contact lawyers proactively also increases the likelihood of engaging individuals that find themselves unable to take the initial step of reaching out to counsel on their own. Assumptions about support counsel contributing to the more effective resolution of failure to respond matters will be tested and evaluated utilizing data collected during the pilot project.
16. To address potential concerns regarding the roster’s impact on the confidentiality of the investigation process, and the public’s perception of the Law Society creating a program designed to assist lawyers in responding to complaints, key features of the pilot project would include limiting information sharing with counsel to the narrow issue of failure to respond and circumscribing the type of assistance support counsel may provide. It is not proposed, for example, that the Law Society develop a more expansive program whereby a respondent lawyer may access pro bono counsel for a broader range of disciplinary matters.
17. To ensure the profession and the public have an understanding of how the recommended approach aligns with the Law Society’s mandate, a communications strategy may be

required to emphasize the public interest benefits of the roster, including the more timely resolution of failure to respond issues that currently impede the progress of investigations.

18. Based on the proposed pro bono model the budgetary implications of the pilot project are anticipated to be approximately \$5,000. These costs are largely attributed to expenses associated with administrative oversight of the roster and providing support counsel with appropriate training.

## Recommendation 2: Expert systems

The Law Society should develop or adopt expert systems tools to broaden the means by which licensees and applicants are aware of, and have access to, appropriate support, resources and referrals for mental health and substance use issues.

### Issue being addressed

19. Lack of awareness of, and access to, mental health resources has been identified as a barrier to improving the mental health of legal professionals. The Task Force examined how “expert systems” could be utilized to improve licensees’ awareness of, and access to, such resources and has consulted with experts in this area about how such systems might be adapted to achieve these objectives.

### Purpose and operation of recommendation

20. As technology-based tools, expert systems help solve complex problems by emulating the decision-making ability of human experts.<sup>7</sup> Because they use reasoning rather than relying on procedural code, a number of platforms have been developed that enable those without specialized technical skills to create expert systems tools that can be applied in a variety of contexts, including the legal sector.<sup>8</sup>
21. There are numerous advantages associated with the convenience, availability, expediency and anonymity of using this type of technology. Expert systems tools can be utilized at any time and from almost any location, built relatively quickly and inexpensively and made available to a broad user base. Expert systems are therefore a cost-effective way for the

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<sup>7</sup> An expert system comprises three components: a knowledge base, an inference engine and a user interface. The knowledge base, which is developed through the collection of information from human experts, is linked to an inference engine that operates on the basis of conditional logic by applying a series of “if-then” type rules that assess what course of action a human expert might take when provided with a particular set of facts or data. This information is linked to the user interface, typically a desktop or mobile app.

<sup>8</sup>The BC Civil Resolution Tribunal’s [Solutions Explorer](#) is an expert system that assists in resolving legal disputes.  
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Law Society to expand the accessibility of health-related supports by providing additional means for connecting legal professionals with resources. Because their use does not require human interaction, expert systems may also be helpful in overcoming stigma and confidentiality concerns that may otherwise prevent some lawyers and articulated students from inquiring about support and referral services directly from Law Society staff, health professionals or others.

22. To further the Law Society's efforts to remove barriers to the use of existing health and wellness resources, the Task Force recommends developing or adopting expert systems tools to supplement the important work of Practice Advisors and those that offer clinical and peer support. This work should be commenced in an expedient fashion, in collaboration with health and technology experts and staff in the Practice Advice department. Once implemented, staff would monitor the level of engagement with the expert systems tools, develop criteria against which to measure their success and make continuous improvements, as necessary.
23. Although the Task Force is still in the early phases of its review and analysis of the results of the National Study, it is noted that the data indicates that almost half of legal professionals who have felt the need to seek professional help for psychological health problems have not done so, and identifies numerous barriers that limit the ability of legal professionals to access support. To address these challenges, the National Study highlights the importance of improving the capacity of legal professionals to seek help when they need it and recommends that law societies, in particular, take steps to facilitate the promotion of, and better access to, resources and support.<sup>9</sup> Expert systems have the capability to assist the Law Society in achieving these objectives.

### **Policy and operational considerations**

24. Greater access to, and use of, appropriate supports places licensees in a stronger position to maintain required standards of client service and reduces the likelihood that these issues could be a contributing factor to conduct issues and other negative outcomes. To achieve these benefits, practitioners must be aware of the available services in order to take steps to seek help when they need it. Employing new technologies to combine and distribute information about mental health and substance use resources falls within the scope of the Law Society's public interest mandate and aligns with the work of the Practice Advice department by assisting licensees and applicants to navigate health issues affecting their practice.

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<sup>9</sup> National Study Research Report at p. 55 and Recommendation Report at 6.1 and 6.2 (*supra* note 1).



25. In addition to increasing the number of licensees who access support, the Task Force posits that the free, anonymous and highly accessible nature of expert systems tools will also encourage individuals to take early action to address psychological health concerns and, in doing so, reduce the duration and severity of issues that may contribute to negative outcomes for lawyers, articled students and the public.
26. The costs associated with introducing expert systems will depend on several factors, including the complexity of the tools and whether the desired functionality can be achieved through the modification of an existing platform. If a policy decision is made, in principle, to utilize expert systems tools, staff will commence a review of options that includes an assessment of implementation costs. This preliminary work is not anticipated to generate new costs for the Law Society.

### **Recommendation 3: Mental health forum**

The Law Society should host a mental health forum to facilitate discussions within the legal community regarding the findings and recommendations of the *National Study on the Psychological Health Determinants of Legal Professionals in Canada*.

#### **Issue being addressed**

27. In the course of its work, the Task Force has witnessed a considerable degree of interest from the legal community in learning more about the issues underlying its mandate, as evidenced by the high level of engagement when opportunities are provided to discuss mental health and substance use issues. The recent publication of the National Study, which has been widely reported, creates an opportunity for legal regulators to enhance the profession's understanding of, and encourage dialogue about, the Study's findings and recommendations. An online forum, which has proved a successful approach in disseminating information and facilitating discussion in the past, is an opportune mechanism to increase awareness, reduce stigma and promote positive change in relation to the issues identified in the National Study.

#### **Purpose and operation of recommendation**

28. Until very recently, there has been limited data with respect to the psychological health of Canadian lawyers, leading to considerable reliance on US studies and reports. However, with the release of the findings of Phase 1 of the National Study, a large body of evidence regarding the prevalence of, and risk factors contributing to, mental health and substance use issues among Canadian legal professionals is now available.

29. The publication of the National Study creates an opportunity for the legal community to discuss this new data and some of the recommended approaches to addressing the issues identified. Building on the success of its first mental health forum in 2021 that brought together more than one thousand participants to discuss strategies for improving mental health within the legal profession, the Task Force concluded that it should recommend that the Law Society organize a second forum, in partnership with the Continuing Legal Education Society of BC, to facilitate an information-sharing and solutions-oriented discussion regarding the National Study's findings and recommendations. To encourage participation, it is proposed that the event is conducted virtually and is open to all licensees, legal organizations and the public.
30. The forum would aim to achieve four objectives, namely: (1) to provide a platform to share information about the findings of the National Study regarding the prevalence of mental health and substance use issues among Canadian legal professionals, including the differential impact on various populations within the profession; (2) to highlight the key recommendations emerging from the Study; (3) to generate ideas and mobilize support among a range of stakeholders to target unhealthy professional cultures and practices, and; (4) to reduce stigma by facilitating open dialogue about these issues.
31. The National Study data (the review of which will be the primary focus of the next phase of the Task Force's work) confirms high levels of psychological distress, burnout, depression, anxiety, suicidal ideation and substance use among Canadian lawyers and establishes a strong linkage between these health issues and the rigours of, and culture and practices associated with, the practice of law. The findings also reveal concerning statistics with respect to the intersection between mental health issues and certain demographic profiles, particularly lawyers in the early years of practice and those from equity-seeking groups, and highlight the barriers that prevent a significant proportion of those legal professionals experiencing health issues from seeking support.
32. The National Study also presents a number of recommendations that are variously directed at legal regulators, professional associations, employee assistance programs, legal employers, law schools and individual lawyers. Bringing these groups together through a forum to encourage dialogue about this new data would be a helpful first step in addressing the issues and themes highlighted in the National Study. As the regulator of the profession, the Law Society is well-positioned to lead this type of discussion.

### **Policy and operational considerations**

33. The relationship between lawyer wellness and the protection of the public was a key impetus for the National Study, as law societies increasingly recognize the relevance of significant levels of mental health and substance use within the profession to their public

interest mandates. Actions that support the health of licensees assist lawyers in being better able to meet their professional responsibilities, achieve positive results for their clients and contribute to the justice system. The findings of the National Study also indicate that mental health issues and psychological distress impact lawyers' commitment to, and intention to leave, the profession, which has implications for the diversity of the profession, access to justice and the effective functioning of the legal system.

34. Although there have been significant improvements in the understanding of how and why health issues affect so many legal professionals, measuring the prevalence of poor mental health and identifying contributing factors is not the end point. Providing an opportunity to share information and encourage dialogue about the National Study's findings is a critical next step in the iterative process of addressing these issues. The proposed event would also provide a platform for raising awareness of the intersectionality between mental health issues and equity, diversity and inclusion and to advance the Law Society's strategic objectives in this regard.
35. Informed by the experience of the Law Society's previous mental health forum, it is anticipated that the development and delivery of the proposed online event can be achieved utilizing existing staff and financial resources.

## V. Recap: Task Force Recommendations

36. Based on the materials presented in its Fourth Recommendation Report, the Task Force advances three recommendations for the Benchers' consideration:

**Recommendation 1:** The Law Society should enhance the support available to lawyers that, for reasons that may be related to health issues, do not respond to Law Society communications by creating a roster of pro bono support counsel to assist with the resolution of failure to respond matters and evaluating the effectiveness of the roster over a two year pilot project.

**Recommendation 2:** The Law Society should develop or adopt expert systems tools to broaden the means by which lawyers and articulated students are aware of, and have access to, appropriate support, resources and referrals for mental health and substance use issues.

**Recommendation 3:** The Law Society should host a mental health forum to facilitate discussions within the legal community regarding the findings and recommendations of the *National Study on the Psychological Health Determinants of Legal Professionals in Canada*.

## **VI. Conclusion**

37. With the issuance of its Fourth Recommendation Report, the Task Force advances three additional strategies for enhancing the protection of the public and improving health outcomes for lawyers in BC. If approved by the Benchers, these initiatives will be operationalized over the course of the coming year by the respective program areas and subject to ongoing monitoring and evaluation, as described in this report.