Law Society of British Columbia

Agenda

Bencher Meeting

Date:	Friday, July 5, 2024
Time:	**9:00 am – Call to Order**
Location:	The Bencher Meeting is taking place as a virtual meeting. If you would like to attend the meeting as a virtual attendee, please email BencherRelations@lsbc.org
Recording:	***The public portion of the meeting will be recorded.***

RECOGNITION

1	2024 Rule of Law Essay Contest: Presentation of Winner and Runner-Up

CONSENT AGENDA

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

2	Minutes of June 1, 2024 meeting (regular session)
3	Minutes of June 1, 2024 meeting (*in camera* session)
4	2024 Law Society Indigenous Scholarship Recipient/Co-Recipient
5	2024 Law Society Scholarship for Graduate Legal Studies Recipient/Co-Recipient
6	Rule Amendments: Bencher Election Rule Revisions
7	Remote Execution of Affidavits – Proposed Amendments to Appendix A of the *BC Code*

REPORTS

8	President's Report • Results of Election for Benchers' Nominee for 2025 Second Vice-President	15 min	Jeevyn Dhaliwal, KC

Law Society of British Columbia

Agenda

9	CEO's Report • Indigenous Engagement in Regulatory Matters Task Force Report – One Year Later	15 min	Don Avison, KC
10	Briefing by the Law Society's Member of the Federation Council	15 min	Brook Greenberg, KC
UPDATE			
11	2024 May Financial Report	10 min	Jeanette McPhee
DISCUSSION/DECISION			
12	Law Foundation Access to Justice Fund 2024 Allocation and Future Process	10 min	Claire Marchant Joshua S. Paterson, KC
IN CAMERA			
13	Other Business		

Law Society of British Columbia

Rule of Law Essay Contest Winners

To: Benchers

Purpose: Recognition

From: Staff

Date: July 5, 2024

The Rule of Law Essay Contest for BC secondary students has been judged, with a winner and runner-up selected from 27 submissions. Many thanks to the volunteers, Thomas Spraggs, Jon Festinger, KC, and Andrea Hilland, KC, and with the support of Michael Lucas, KC and Anna Lin.

Students were asked to write an essay between 1000-1500 words on the question:

> ***What do you think is the greatest threat to the rule of law in Canada, and what steps can you take to defend it?***

Pui Chi Lau, from Prince of Wales Secondary School in Vancouver won with the essay "What do you think is the greatest threat to the rule of law in Canada, and what steps can you take to defend it?" (**Appendix A**), and Anita Pan from York House School in Vancouver was selected as runner-up, with the essay "Politicization and Legitimacy: Exploring Threats to the Canadian Rule of Law" (**Appendix B**). The winner and runner-up are awarded $1000 and $500 respectively, and will be invited to attend the July 5th Benchers' meeting virtually to be recognized for their achievements. Their essays will also be profiled on the Law Society's website.

Submissions were received from at least 8 different schools located across the province. The contest was open to both grades 11 and 12.

APPENDIX A

Name: Lau, Pui Chi

School: Prince of Wales Secondary School

Grade: 11

Email:

Phone:

Student #:

Teacher's Email:

Class: Law Studies 12

What do you think is the greatest threat to the rule of law in Canada, and what steps can you take to defend it?

As one of the countries which plays a vital role in advocating democracy, Canada has established a fair judicial system for all citizens, and the rule of law is a major key contributing to its success. The ultimate purpose of the rule of law is to ensure that everyone has an equal treatment regardless of their race, gender, occupation, and level of wealth. The rule of law vividly demonstrates the democratic value of the Canadian society, as everyone is entitled to enjoy personal autonomy while being responsible for their own conducts. Under the presence of the rule of law, human rights in Canada have been secured and protected over decades. Elite impunity, seizure of one's property, and arbitrary imprisonment are some examples of prohibited actions guaranteed by the rule of law. Without the rule of law, some individuals may have more privileges over those with lower socio-economic status, causing them to be above the nation's law. This will essentially pose a threat to Canada's legal system, as well as the primary rights of all citizens.

According to the National Justice Survey 2022 Infographic, the percentage of respondents who lack confidence that the Criminal Justice System would be fair to everyone has risen to 49%, while 39% of the respondents lack confidence in the system's accessibility to all people. In addition, the survey reveals a trend of which the confidence of respondents generally increases with age and income. Therefore, we could notice the urge to restoring citizens' confidence in the country's legal system by enhancing public access to and understanding of the law.

There are numerous threats that may endanger the rule of law in Canada. In my point of view, the potential bias that exists in our society would be one of the greatest hazards that

interfere with the justice system of our country. From my perspective, bias related to individual characteristics such as race, gender, and wealth might cause some people to mistakenly believe that they would be able to elude their legal obligations through various means, resulting in the exploitation of one's power and the commitment of felonious actions. This misconception may eventually lead to the hinder of Canada's justice system, and even become a significant drawback to our democratic society.

To begin with, wrongful prejudice could culminate in the arise of social disparities and unfair treatments. When the public perceives favoritism in our society, individuals in higher socioeconomic statuses would be able to enjoy more privileges or even exploit those who have less power, ending up with a breach of the rule of law. This implies that the country's legal system may become biased in favour of specific individuals or parties as they could execute their prerogative in certain circumstances, while turning unfavourable for other citizens. This behaviour may fully demonstrate the detrimental effects that could possibly arise in the absence of the rule of law. Not only would such bias create disparities among individuals that reside in our country, but it might as well render the justice system vulnerable and insecure.

The Hunter v. Southam Inc. case is an example of which the violation of the rule of law took place. In April 1982, some government investigators searched the office of the Edmonton Journal without warrants, while claiming that they wanted to search every file in the building except files in the newsroom. The officers declined to provide the name of the complainant or any information about the initiation of the inquiry, or to specify under which

section of the Combines Investigation Act authorized the inquiry. In the end, the Supreme Court ruled that the act had violated the Charter since no appropriate process for issuing warrants was followed. Additionally, the Court emphasized that there must usually be "reasonable and probable grounds" to believe that an offence has been committed and evidence could be found at the place of search to obtain a warrant. From this example, we can observe that government investigators or those in higher positions might abuse their authority, and bias might exist in some situations. Apparently, Canada has worked diligently to establish a more transparent government system throughout the past decades, aiming to prevent situations like that from happening in the future. However, the risk of corruption or wrongful prejudice might persist. This case built a foundation to protect citizens' rights against unreasonable search and seizure, ensuring that no one would be above law to intrude on others' privacy through the infringement of the rule of law.

Another example illustrating the violation of the rule of law due to bias is R.v. Marshall case (1999). In 1993, Donald Marshall jr., a member of the Membertou First Nation, was stopped for fishing in Pomquet Harbour. Marshall was found catching and selling eels without a licence during closed-season times, his equipment was seized, and he was arrested, facing charges under the federal Fisheries Act and the Maritime Provinces Fishery Regulations. However, Marshall argued that his actions were legally protected by the Peace and Friendship Treaties, so he pleaded for an appeal. Although the Nova Scotia Court of Appeal maintained Marshall's conviction, the Supreme Court heard the Marshall case and affirmed his wrongful conviction in 1999. The Supreme Court of Canada acknowledged that the scope of Donald Marshall Jr.'s fishing activities fell within treaty rights, while stating that courts

must “choose from among the various possible interpretations…the one which best reconciles” Indigenous interests and those of the Crown. This case exemplifies the systemic discrimination and the unjust treatment of Indigenous individuals within the legal system, as the authorities failed to recognize and respect the Indigenous people's rights as outlined in the treaties.

One of the most effective strategies to defend the nation’s rule of law is to establish educational lectures for the public. It is indispensable to cultivate citizens’ understanding of the country’s justice system, empowering them to recognize their legal rights and responsibilities to treat others equally as Canadian citizens. Despite government-launched programs, there are only a few non-profit organizations and groups that play a crucial role in supporting individuals’ access to the legal education in Canada. Notably, while resources are allocated to resolving various social issues, the peremptory to strengthen the country’s democratic values remain unmatched. By providing initiatives for people to engage in legal education, they can be more committed in upholding the rule of law, thereby fostering a just and transparent relationship between the government and the community.

As a high school student, I feel a strong connection to the future development of Canada’s legal system. In order to contribute to defending the rule of law, I aim to always stay informed about the current legal and political issues, and participate in legal education programs to deepen my understanding of the complexities within Canada’s justice system and my lawful obligations. On top of that, I could also join or establish students-led groups dedicated in raising public awareness of legal matters and advocating fairness for everyone.

Engaging in events, discussions, and initiatives will allow me to further explore the principles of the rule of law and activate my interest in law. By performing these actions, I could be able to share my knowledge with my family, friends, and peers. Not only could this broaden my understanding about legal matters, but also enhance the promotion of the importance of the rule of law.

To sum up, I believe that the biased nature of citizens poses the greatest threat to the rule of law. Barriers emerged due to the presence of prejudice and favoritism towards a certain individuals or groups, thereby compromising the fair application of the rule of law. Based on the findings from various research, I can conclude that more resources should be spent on cultivating public about the country's law and its inseparable relationship with our society. While my individual actions might not immediately create a massive impact, it is crucial for us to acknowledge that the rule of law stands as a fundamental principle in our democratic country. In this framework, everyone is entitled to enjoy equal treatment and basic human rights, and the responsibility of defending it lies squarely on our shoulders. Although there is still a long path ahead to encourage all Canadian citizens to fully embrace the principle of rule of law, even the small steps could lead us to great achievements.

(Word count: 1,385)

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APPENDIX B

Name: Anita Pan

Grade: 11

School: York House School

Email:

Phone:

Student Number:

Teacher's Email:

Word Count: 1499

Politicization and Legitimacy: Exploring Threats to the Canadian Rule of Law

Fundamental to our perception of democratic justice is the rule of law. It underpins the structure of Canadian governance and has even influenced how Supreme Court justices decide verdicts.[1] But the rule of law is not invulnerable. In his seminal *Law of the Constitution,* A. V. Dicey warns against believing the rule of law should have exceptions, even when breaking the law seems necessary for a "just and desirable" cause.[2] He claims that citizens often conflate unjust laws with unpopular laws because they believe "deference to public opinion is in all cases the sole or the necessary basis of a democracy."[3] But Dicey argues that law does not exist to bend here and there for popular morality and that legal institutions should remain completely separate from politics.[4]

This essay follows Dicey in arguing that the rule of law requires institutional legitimacy, an inherent and enduring cultural valuation distinct from the popularity of particular laws, legislators, or judges.[5] It contends the greatest threat to the rule of law is the politicization of legal institutions: high-level unsubstantiated accusations of subjectivity or bias that erode the law's placement "above" politics by legitimizing the consideration of popular morality in the application of justice. This paper therefore argues that defending the rule of law requires preserving the normative legitimacy of the current structure of the Constitution. It analyzes criticism of the notwithstanding clause as an example of when criticism intending to serve the rule of law actually weakens its legitimacy and therefore resilience.

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[1] Peter W. Hogg and Cara F. Zwibel, "The Rule of Law in the Supreme Court of Canada," *The University of Toronto Law Journal* 55, no. 3 (2005): 720, http://www.jstor.org/stable/4491663.

[2] A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, 8th ed. (Indianapolis: Liberty Fund, 1982), 60.

[3] Ibid.

[4] Ibid.

[5] Thomas Henry Bingham, *The Rule of Law*, (London: Penguin Books, 2011), 20.

Dicey describes two facets of the rule of law. First, it requires the "absolute supremacy or predominance of regular law,"[6] where governments can only punish citizens for violations of established laws that apply to everyone, as opposed to vaguely worded laws that governments can exploit to give punishments differing severity based on "arbitrary power"[7] or bias. Second, the rule of law entails "equal subjection of all [social] classes to the ordinary law of the land administered by the ordinary Law Courts," with "ordinary" carrying the sense of universal: citizens should be tried by the same or identically constituted courts to prevent unequal treatment. Taken together, Dicey establishes the rule of law as the unbiased, universal enforcement of publicly established laws to all citizens of the state.[8]

Yet the rule of law requires continuous social confidence and legitimacy to exert its influence. In a counterfactual where the rule of law lacks public legitimacy, it becomes far easier for citizens to justify breaking the law in one particular case on the basis that the law is constantly being misused in other, apparently less morally worthy cases. Thus the absence of public faith in the equal application of the law produces self-justifying lawlessness. Later legal philosophers, such as Lon Fuller, have echoed Dicey's definition by conceptualizing the rule of law as a "morality of aspiration,"[9] functioning at best as an honour system supporting mature democracies.

Contemporary Canadian thinkers, notably the Albertan Court of Appeal Justice Jack Watson, have furthered Dicey and Fuller's view of the rule of law requiring public faith to

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[6] Dicey, *Introduction to the Study,* 120.

[7] Ibid.

[8] Bingham, *The Rule of Law,* 47.

[9] Jack Watson, "You Don't Know What You've Got 'Til It's Gone: The Rule of Law in Canada - Pt. I," *Alberta Law Review* 52, no. 3 (June 12, 2015): 701, https://albertalawreview.com/index.php/ALR/issue/view/3.

function. Watson contends the rule of law's rooting in popular legitimacy makes it vulnerable to cultural flux. He suggests much undermining of the rule of law occurs with the intention to preserve it: the "infectious self-delusions that can arise in the course of planning and governance."[10] Governments or the public may justify infringing the law (such as pressuring judges into certain verdicts) as a means towards some more "just" ends. However, this sets a precedent for the large-scale "substitution of partiality for equality"[11] in numerous cases beyond the one being heard. Watson thus argues the rule of law cannot rely on majoritarian inclinations. As an unselfish entity providing "stable neutrality and continuity,"[12] the rule of law entails more "enduring and foundational aspects"[13] of justice and therefore should not change its basic principles for specific moments of intense political polarization.

Politicization primarily occurs when political leaders or movements question the independence of legal institutions, suggesting they are politically influenced. In Canada in particular, the tension between federation on the one hand and provincial autonomy on the other has politized the Supreme Court, which mediates between these two values. The 1982 Charter, for example, placed statutory limits, in the form of human rights, on what legislation provinces could pass, and the Supreme Court ultimately adjudicates when a province has violated the Charter. Kelly claims the institution of the Charter turned the Court into a "significant

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[10] Ibid, 698.

[11] Ibid, 700.

[12] Ibid, 697.

[13] Jack Watson, "You Don't Know What You've Got 'Til It's Gone: The Rule of Law in Canada - Pt. II," *Alberta Law Review* 52, no. 4 (September 25, 2015): 22, https://albertalawreview.com/index.php/ALR/issue/view/33.

constitutional power broker,"[14] which usurps "policy functions that belong to political actors."[15] In truth, these accusations contain little evidence. The power of appointing Supreme Court judges lies within the executive, not the judiciary; before judicial appointments, the executive must consult many other actors: the Chief Justice, Cabinet ministers, provincial and territorial attorneys, opposition Justice Critics, committees from both legislative houses, etc.[16] Thus the judiciary cannot skew the appointment process towards its own politicized ideological trends. Further, according to David Weiden, SCC judges are statistically less likely to vote based on ideology or attitude compared to their Australian and American counterparts.[17]

However invalid, suggesting the Court is partial can still weaken public faith in the institution, thereby creating an insecurity within Supreme Court judges which itself may produce a partiality towards public opinion. Vuk Radmilovic emphasizes that courts rely on other government branches to enforce their orders, and high court judges cannot garner legitimacy through regular elections like legislators or executives; thus the judiciary is uniquely dependent on public goodwill to function.[18] Radmilovic uses empirical methods to test the validity of court behaviour theories and finds courts do consider strategically cultivating their legitimacy within

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[14] James B. Kelly and Michael Murphy, "Shaping the Constitutional Dialogue on Federalism: Canada's Supreme Court as Meta-Political Actor," *Publius* 35, no. 2 (2005): 218, http://www.jstor.org/stable/4624710.

[15] Ibid, 217-18.

[16] "Supreme Court Act, RSC 1985, c S-26," Canadian Legal Information Institute, December 18, 2019, https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-s-26/latest/rsc-1985-c-s-26.html; "Frequently Asked Questions," Office of the Commissioner for Federal Judicial Affairs Canada, July 11, 2016, https://www.fja-cmf.gc.ca/scc-csc/2023/questions-eng.html#:~:text=The%20Prime%20Minister%20will%20review,branch%20of%20the%20federal%20government.

[17] David L. Weiden, "Judicial Politicization, Ideology, and Activism at the High Courts of the United States, Canada, and Australia," *Political Research Quarterly* 64, no. 2 (2011): 345, http://www.jstor.org/stable/23056395.

[18] Vuk Radmilovic, "Strategic Legitimacy Cultivation at the Supreme Court of Canada: Quebec Secession Reference and Beyond," *Canadian Journal of Political Science / Revue Canadienne de Science Politique* 43, no. 4 (2010): 845, http://www.jstor.org/stable/40983557.

verdicts to protect their impartial image.[19] He claims an unpopular verdict could prompt backlash endangering the Court's independence, should the unsatisfied public call for changing the judiciary itself.[20] Here, Dicey's argument—that legal institutions require institutional legitimacy separate from the legitimacy of their particular rulings—becomes integral. If an unpopular ruling can immediately reduce public support for the Supreme Court, then a court with weak inherent legitimacy will feel pressured to at least consider popular morality. Radmilovic posits that the SCC justices particularly exhibited "legitimacy-attentive behaviour"[21] in the landmark *Secession Reference* case by considering political discourse over Quebecois secessionism.

Irrespective of whether the Court already exhibits some partiality within verdicts, the Court will likely exhibit more partiality precisely the more it is accused of partiality. The Court's only protection from public pressure is cultivating their normative legitimacy which Dicey emphasizes that democracies must preserve, and the Court may lose this legitimacy if it is undermined. Political parties can justify intervention in the Court using tit-for-tat logic, where influencing legal institutions becomes acceptable because one fears opposing parties already influence them. Politicization thereby becomes a self-fulfilling prophecy: because citizens do not believe their legal institutions are independent, they tamper with them. To defend the rule of law, responsible political actors—leaders, educators, and the media—should be careful how and to what extent they question the legitimacy of our legal institutions.

Section 33 of the Charter, the notwithstanding clause, is an example of criticism that ostensibly serves the rule of law while possibly undermining it. The clause lets legislatures pass

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[19] Ibid, 846.

[20] Ibid.

[21] Ibid, 865.

laws potentially violating certain Charter rights, though they would have to re-invoke the clause after five years.[22] It was introduced to placate a brewing Quebecian succession in 1982.[23] However, since the clause's legal language does not specify it is intended for Quebecois use only, other provinces such as Ontario and Saskatchewan have recently invoked it too. Section 33 remains controversial because it is often accused of diluting the rule of law when certain provinces violate certain constitutional rights while others do not. Yet the notwithstanding clause's allowance of suspending Charter rights is a necessary evil which preserves the rule of law in the long run because it prevents further politicization of the Supreme Court. Compared to the heavily politicized and unpopular US Supreme Court, Radmilovic argues removing the notwithstanding clause forces the SCC to decide on provincial violations of the Charter, thereby opening up the Court to accusations of bias as it tries to settle such matters of extreme political consequence.[24] Thus the notwithstanding clause is a "necessary evil" for preserving the rule of law: it may translate into certain Charter rights not being universally applied by all provinces, but in the long term it preserves the Supreme Court's legitimacy.

Despite Section 33 preserving our rule of law, criticisms of it have questioned the legitimacy of the Canadian judiciary. From premiers Allan Blakeney and Sterling Lyon in the 1981 First Ministers conference to recent political commentators Conrad Black and Asher Honickman, the judiciary has been accused of bias and illegitimacy.[25] This paper has warned

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[22] Tsvi Kahana, "Understanding the Notwithstanding Mechanism," *The University of Toronto Law Journal* 52, no. 2 (2002): 222, https://doi.org/10.2307/825966; McIntosh, Andrew, and Stephen Azzi, "Constitution Act, 1982," The Canadian Encyclopedia, February 6, 2012, https://www.thecanadianencyclopedia.ca/en/article/constitution-act-1982.

[23] Hogg and Zwibel, "The Rule of Law," 724.

[24] Radmilovic, "Strategic Legitimacy Cultivation," 843.

[25] Black, Conrad, "Supreme Court on the Loose," National Post, February 14, 2015, https://nationalpost.com/opinion/conrad-black-supreme-court-on-the-loose; Honickman, Asher, "A Troubling Decision on the 'Right to Strike,'" National Post, February 5, 2015, https://nationalpost.com/opinion/asher-honickman-a-troubling-decision-on-the-right-to-strike; Siddiqui, Haroon,

exactly against such hasty accusations: the judiciary is not perfect, but it is less partial than many of its cousins abroad, and calling its independence into question is perhaps the single greatest threat to the rule of law in Canada, producing a political fight for control over the judiciary analogous to that observed in the United States.

"Canada's Cherished Charter Could Not Have Happened without 'Kitchen Accord,'" Toronto Star, April 15, 2012, https://www.thestar.com/opinion/canada-s-cherished-charter-could-not-have-happened-without-kitchen-accord/article_b109ac5e-6c80-575f-ba03-32db5108c5a0.html.

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Law Society of British Columbia

Bencher Meeting: Minutes (Draft)

To: Benchers

Purpose: Approval (Consent Agenda)

Date: Saturday, June 1, 2024

Present:

Jeevyn Dhaliwal, KC, President
Brook Greenberg, KC, 1st Vice-President
Lindsay R. LeBlanc, KC, 2nd Vice-President
Simran Bains
Paul Barnett
Aleem Bharmal, KC
Tanya Chamberlain
Nikki L. Charlton
Jennifer Chow, KC
Christina J. Cook
Cheryl D'Sa, KC
Tim Delaney
Brian Dybwad
Ravi R. Hira, KC
Sasha Hobbs
James A. S. Legh
Benjamin D. Levine
Dr. Jan Lindsay
Jaspreet Singh Malik
Jay Michi
Georges Rivard
Michèle Ross
Gurminder Sandhu, KC
Thomas L. Spraggs
Barbara Stanley, KC
James Struthers
Natasha Tony
Michael F. Welsh, KC
Kevin B. Westell
Gaynor C. Yeung
Jonathan Yuen

Staff present:

Don Avison, KC
Avalon Bourne
Barbara Buchanan, KC
Natasha Dookie
Su Forbes, KC
Vicki George
Kerryn Holt
Jeffrey Hoskins, KC
Michael Lucas, KC
Claire Marchant
Jeanette McPhee
Cary Ann Moore
Doug Munro
Rashmi Nair
Lesley Small
Christine Tam
Adam Whitcombe, KC

Guests:

Ryan Anderson, KC	President-elect, Law Society of Alberta
Dom Bautista	Executive Director, Courts Center & Executive Director, Amici Curiae Friendship Society
Tim Brown, KC	Executive Director, Law Society of Saskatchewan
Barbara Carmichael, KC	Deputy Attorney General of British Columbia
Ian Donaldson, KC	Life Bencher
Cori Ghitter, KC	Deputy Executive Director and Director of Policy and Education, Law Society of Alberta
Jonathan G. Herman	Chief Executive Officer, Federation of Law Societies of Canada
Erin M.S. Kleisinger, KC	President, Federation of Law Societies of Canada
Freya Kodar	Dean of Law, University of Victoria
Leah Kosokowsky	Chief Executive Officer, Law Society of Manitoba
Suzanne LaLonde, KC	President, Law Society of Saskatchewan
Mark Meredith	Treasurer and Board Member, Mediate BC
Lee Nevens	First Vice-President, Canadian Bar Association, BC Branch
Elizabeth Osler, KC	Chief Executive Officer & Executive Director, Law Society of Alberta
Nicholas Peterson	Secretary/Treasurer, Trial Lawyers Association of BC
Ngai Pindell	Dean of Law, Peter A. Allard School of Law
Linda Russell	CEO, Continuing Legal Education Society of BC
Deanna Steblyk KC	President, Law Society of Alberta
Gerri Wiebe, KC	Incoming President, Law Society of Manitoba

Consent Agenda

1. Minutes of April 26, 2024, meeting (regular session)

The minutes of the meeting held on April 26, 2024 were approved unanimously and by consent as circulated.

2. Minutes of April 26, 2024, meeting (*in camera* session)

The minutes of the *in camera* meeting held on April 26, 2024 were approved unanimously and by consent as circulated.

3. Rule Amendments: Family Law Arbitrators / Parenting Coordinators

The following resolution was passed unanimously and by consent:

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

1. ***Rule 2-87 is amended by deleting the word*** **"master"** ***wherever it appears and by substituting*** **"associate judge"** ***in its place, and by deleting the word*** **"a"** ***where it appears before the words*** **"associate judge"** ***and replacing it with*** **"an"*;***

2. ***Rule 3-36 (1) (b) is amended by deleting*** **"or sat as a judge or master,"** ***and replacing it with*** **"or sat as a judge, associate judge or the equivalent officer of a superior court in Canada, or member of an administrative tribunal,"*;***

3. ***Rule 3-37 (1) (b) is amended by deleting*** **"or sat as a judge or master,"** ***and replacing it with*** **"or sat as a judge, associate judge or the equivalent officer of a superior court in Canada, or member of an administrative tribunal,".**

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

4. Rule Amendments: Bencher Election Rule Revisions

This item was removed from the consent agenda for discussion.

Some Benchers were of the view that the proposed amendments to Rule 1-27 (0.3) did not provide enough clarity as to the length of the voting period, and that specifying that voting would close no earlier, as opposed to no later, than the close of business on November 14 would provide better clarity. Other Benchers were of the view that the language in the proposed amendments was appropriate.

Mr. Avison advised that the intent of the proposed amendments was to provide a one-week voting period, as was approved in principle at the March 8 Bencher meeting, but to also have flexibility built into the Rules, in cases where election dates occurred on a weekend or a statutory holiday. He further

indicated that a significant amount of communication is provided in advance and during each Bencher election to ensure that the profession is aware of key dates and information.

Following some further discussion, Mr. Avison recommended that this item be deferred to the July 5 Bencher meeting in order to address the concerns that had been raised. Benchers were in agreement with this approach. Ms. Dhaliwal reminded Benchers to provide advance notice to the Chair regarding any requests to remove items from the Consent Agenda.

5. External Appointment: Vancouver Airport Authority

The following resolution was passed unanimously and by consent:

> **BE IT RESOLVED** the Benchers appoint Suromitra Sanatani as the Law Society nominee, as recommended by Watson Board Advisors, to the VAA Board of Directors for three-year term commencing June 3, 2024.

6. Changes to the Code re: Single Party Communications Rule

The following resolution was passed unanimously and by consent:

> **BE IT RESOLVED THAT the commentary to *BC Code* rule 5.1-2.3 be amended to add the language in red underlined text as follows:**
>
> **Single-party communications with a tribunal**
>
> **5.1-2.3 Except where authorized by law, and subject to rule 5.1-2.2, a lawyer must not communicate with a tribunal in the absence of the opposing party or their lawyer (when they are represented) concerning any matter of substance, unless the opposing party or their lawyer has been made aware of the content of the communication or has appropriate notice of the communication.**
>
> **Commentary**
>
> **[1] It is improper for a lawyer to attempt to influence, discuss a matter with, or make submissions to, a tribunal without the knowledge of the other party or the lawyer for the other party (when they are represented). A lawyer should be particularly diligent to avoid improper single-party communications when engaging with a tribunal by electronic means, such as email correspondence.**
>
> **[2] When a tribunal invites or requests a communication from a lawyer, the lawyer should inform the other party or their lawyer. As a general rule, the other party or their lawyer should be copied on communications to the tribunal or given advance notice of the communication.**

[3] This rule does not apply in the context of mediation or prohibit single-party communication with a tribunal on routine administrative or procedural matters, such as scheduling hearing dates or appearances. A lawyer should consider notifying the other party or their lawyer of administrative communications with the tribunal. Routine administrative communications should not include any submissions dealing with the substance of the matter or its merits.

[4] When considering whether single-party communication with a tribunal is authorized by law, a lawyer should review local rules, practice directives, and other relevant authorities that may regulate such a communication.

Reports

7. President's Report

President Jeevyn Dhaliwal, KC acknowledged Christina J. Cook's standing conflict and confirmed that no other conflicts of interest had been declared.

Ms. Dhaliwal began her report by providing an overview of her recent events and activities, including attending Chief Justice Christopher Hinkson's retirement celebration, attending the Vancouver Bar Association's annual judges' luncheon, attending the CBABC Provincial Council meeting, hosting the Federation of Asian Canadian Lawyers at the Law Society for a screening of "But I Look Like a Lawyer", as part of Asian Heritage Month, attending the Northern BC Law Talks, presenting the UBC Gold Medal Award, and attending call ceremonies. She thanked Benchers for their assistance with the May call ceremonies and encouraged everyone to attend future ceremonies.

Ms. Dhaliwal spoke about Bill 21 and the significant media interest the Bill has received. She also spoke about the work the Law Society has done thus far to engage with media, the profession, and the public on the potential implications of Bill 21.

Ms. Dhaliwal then invited Brian Dybwad to speak about the initiatives being put forward to address access to justice challenges in the County of Nanaimo. Mr. Dybwad spoke about the challenges faced within the County of Nanaimo, including a lack of family law lawyers and lawyers taking on legal aid files, as well as challenges in finding court time to address the backlog of cases and senior lawyers retiring without replacements. He indicated that there had been some improvement, but waitlists in general for treatment and counselling continued to be an issue. Mr. Dybwad spoke about the limited space within care homes for children in care, and that often children have been removed from their homes in one community and placed into a care home in a different community, which creates a number of issues for families trying to stay connected. He then spoke about some of the initiatives being done to improve access to justice in the County of Nanaimo, including the opening of a safe house for mothers at risk of having their children taken into care, the opening of a BC First Nations

Justice Council Indigenous Justice Centre in Nanaimo, the opening of additional space within the Transition Home Society for women and children leaving domestic violence situations, and increased diversity in the appointment of judges. Ms. Dhaliwal thanked Mr. Dybwad for his comments.

8. CEO's Report

Don Avison, KC began his report by recognizing the significant support of staff over the last several months in organizing the Bencher Retreat. He also thanked the representatives from the Federation and from the Western law societies for attending the retreat and for their support.

Mr. Avison provided an overview of the regional sessions regarding Bill 21 that were being organized over the course of the coming months, and encouraged Benchers to reach out if they would like to have a session organized in their region. He spoke about the recent session held in Victoria and the robust discussions that had taken place.

Mr. Avison then spoke about the engagement sessions that Vicki George, Senior Advisor of Indigenous Engagement and Jillian Currie, Indigenous Navigator had held in Northern BC regarding the role of the Law Society and the work being done regarding the implementation of the report and recommendations of the Indigenous Engagement in Regulatory Matters (IERM) Task Force. He also spoke about the work Ms. George has been doing to provide opportunities for staff to learn more about the Law Society's truth and reconciliation work.

Mr. Avison then invited Ms. George to provide some additional remarks regarding the regional sessions and the work that Ms. Currie and her have been doing. Ms. George spoke about the regional sessions that had taken place across northern BC in Terrace, Prince Rupert, Smithers, Prince George, and Williams Lake, and the importance of this in-person engagement as referenced in the report of the IERM Task Force. She then provided an overview of the sessions and the focus of discussions, which included the implementation of the recommendations of the report of the IERM Task Force and what led to the creation of the Task Force, as well as the roles of Ms. George and Ms. Currie and Law Society processes regarding complaints. Ms. George spoke about the importance of building these relationships with Indigenous people and communities across the province, and that along with Ms. Currie, she would be holding similar sessions across Vancouver Island.

Discussion/Decision

9. Articling Placement Pilot Program

Ms. Dhaliwal provided an overview of the item and some background regarding the proposal to develop an articling placement pilot program in BC.

Mr. Avison spoke about the proposal and referenced the Law Society of Alberta's program, which was piloted in February 2022 and made permanent in February 2023. He indicated that that Cori Ghitter, KC, Deputy Executive Director and Director, Policy and Education at the Law Society of Alberta, would be providing a presentation regarding the Law Society of Alberta's experiences with this type of program. He spoke about the importance of learning from others and having a degree of consistency across the law societies in how these types of matters were addressed, referencing the Western Competency Profile, which has been developed by the four western law societies.

Mr. Avison introduced Ms. Ghitter, and she provided an overview of the Law Society of Alberta's articling placement pilot program, including the beginnings of the program, the consultation process with firms, the program criteria and framework, and program usage, including the number of inquiries and a breakdown of demographics. Ms. Ghitter also provided an overview of some of the challenges encountered by the program, including firms declining to take a student, capacity issues with firms, and how to address the behaviour of principals who have had their students removed, as well as the successes, including placing a number of students, providing a much better articling environment for some students, and providing good opportunities for firms with the students. She also spoke about the next steps and iterations for the pilot program, indicating that the Law Society of Alberta Benchers are committed to funding and continuing the program.

Benchers discussed the articling placement pilot program, with focus on the mechanics of the program, the resources available to students, and the demographics of those participating. Benchers also discussed ways to incentivize law firms to participate in the program. Ms. Ghitter advised that some of the incentives that the Law Society of Alberta had put in place included a list of participating firms on the Law Society of Alberta's website and subsidizing the cost of tuition for bar admission programs, and that more time would be spent considering other ways that firms are able to participate, so that financial constraints are not a barrier to participation.

Benchers discussed the regulator's duty of care. Ms. Ghitter provided an overview of some of the Law Society of Alberta's other initiatives, including an Indigenous summer school program and supports for internationally trained lawyers.

Benchers discussed steps taken once a student has requested a change in articles, as well as what would happen should a principal who had a student removed apply to be a principal again. Ms. Ghitter advised that the Law Society of Alberta centres the student in the process, and that generally students do not wish to take formal action against their principals. She further advised that any principals who have had students removed through this program would be denied the opportunity to be principals again, though this has not yet occurred. Ms. Ghitter indicated that the response to the principal would depend on the current status of the student.

Mr. Avison advised that this program would be one component of a larger approach to addressing challenges with articling and the current path to licensure. He indicated that he was of the view that since the Law Society required articles in order to become a lawyer in BC, then the Law Society had

an obligation to ensure a safe experience for students. He further indicated that the Law Society already denied some former principals the opportunity to be principals again, and that it would be better to have a permanent program to help the Law Society more proactively address these issues. Mr. Avison spoke about the importance of considering the articling experience as a whole, and thinking about whether the current lawyer development programs and processes are working well, and if new lawyers have the skills and education to help them succeed, or if new ways of doing things need to be considered. He indicated that staff would bring forward some ideas regarding lawyer development for discussion at a future Bencher meeting.

The following resolution was passed unanimously:

> **BE IT RESOLVED** that the Benchers approve the development of an Articling Placement Pilot Program in British Columbia.

10. Bencher Oath of Office

This item was deferred to a future meeting.

12. Updates from Federation of Law Societies of Canada and Western Law Societies

Ms. Dhaliwal introduced Erin M. S. Kleisinger, KC, President of the Federation of Law Societies of Canada and Jonathan Herman, CEO of the Federation of Law Societies of Canada.

Ms. Kleisinger provided some remarks on the role and function of the Federation. She spoke about the constitutional challenge launched by the Federation in the BC Supreme Court in regard to provisions of the *Income Tax Act* that expanded mandatory reporting obligations for lawyers, which threatened solicitor client privilege. Ms. Kleisinger then provided an overview of some of the Federation's current priorities and initiatives, including CanLII, recent amendments to the Model Code sections on harassment and discrimination, anti-money laundering initiatives, the National Study on the Wellbeing of the Legal Profession, revising the national requirement for entry to the profession, and truth and reconciliation. She then spoke about Bill 21 and expressed some concerns regarding the implications of legislative intrusion upon the independence of the legal profession. She referenced the communication sent by the Federation to the Attorney General regarding Bill 21, which urged the Attorney General to engage in meaningful consultation, and to ensure that there was an opportunity for robust debate on the provisions of the legislation. Ms. Kleisinger indicated that the communication went unanswered. Ms. Kleisinger concluded her remarks by recognizing all of the Law Society staff and Benchers who participate in the work of the Federation.

11. Bill 21 – Legal Professions Act

Ms. Dhaliwal introduced the item and indicated that Mr. Avison would provide a public update.

Mr. Avison provided a brief summary of the current status of Bill 21, which had been introduced in the Legislative Assembly on April 10. Mr. Avison spoke about the Law Society's position, which continues to be that due to the nature of the significant changes contemplated by Bill 21, there should be full, open, and transparent public debate about the implications of the legislation, which did not happen before the matter was brought forward to the Legislative Assembly for consideration. He expressed his concerns regarding the implications of the Bill, not only in respect to the Law Society, but for regulation generally.

Mr. Avison then spoke about the committee debate of the Bill, which was truncated with only 30 sections of the Bill receiving debate before closure was invoked and the Bill received Royal Assent on May 16. He expressed the view that it would have been far more beneficial for the public interest and for the profession to have had the opportunity for a fulsome public discussion.

Mr. Avison then indicated that the Law Society was supportive of a number of aspects of Bill 21, but that there were some fundamental components of the Bill with which the Law Society was not in agreement. As a result, the Law Society had filed a Notice of Civil Claim in the Supreme Court of BC on May 17, and a week later, an injunction application was also filed with the Supreme Court of BC with a hearing date set to commence on June 17. He indicated that there were a number of parties that would likely seek intervener status or otherwise participate in the litigation. Likewise, the situation in BC will be a topic of discussion at the International Conference of Legal Regulators later this year. Mr. Avison concluded his remarks by noting that this matter would continue to occupy a great deal of the Law Society's attention over the course of the year, and that Benchers would be kept apprised of any new developments.

For Information

13. External Appointment: British Columbia Law Institute

There was no discussion on this item.

14. Briefing by the Law Society's Member of the CBA Provincial Council

There was no discussion on this item.

The Benchers then commenced the *in camera* portion of the meeting.

AB
2024-06-24

Law Society of British Columbia

Bencher Election Rule Revisions

To: Benchers

Purpose: Approval (Consent Agenda)

From: Executive Committee

Date: July 5, 2024

Introduction

1. At the March 8, 2024 Bencher meeting, the Benchers approved, in principle, amendments to Rules relating to Bencher elections. The following are the general amendments:

   (a) Making electronic voting processes the "default" process instead of paper-based voting;

   (b) Decreasing the voting period from two weeks to one week; and

   (c) Allowing the Executive Director to approve an application by a lawyer to change voting districts (with a right of review of the Executive Director's decision by the Executive Committee).

2. When the Benchers considered the proposed Rule amendments at the June 1, 2024 Bencher meeting, Bencher James Legh raised a question about the proposed wording change to Rule 1-27(0.3) and whether the wording allowed for an election of less than one week to be conducted. The proposed wording that was at issue is as follows:

   (0.3) The voting period for a Bencher election must commence no later than November 8, and must close no later than the close of business November 14 of the year the election is held.

3. Benchers expressed differing views on the language and ultimately decided that the item would be brought back for Bencher consideration at the July 5, 2024 Bencher meeting.

4. The proposed wording was given further consideration in light of the discussion that took place at the Bencher meeting on June 1, including confirmation with Mr. Legh that the revised language addressed his concerns. At its June 19, 2024 meeting, the Executive Committee agreed to recommend to the Benchers the Rule amendments attached.

Drafting Notes

5. Attached are the proposed amendments to the Law Society Rules that would implement the approvals in principle made at the March 8 Bencher meeting, and that also reflect the discussion that took place at the June 1 Bencher meeting. A few comments on the drafting choices follow:

   a) Provision is made for Bencher elections in Rule 1-20, but the dates (which were previously in this Rule) will be moved to Rule 1-27, which will allow for all matters related to timing and process to be included in one Rule;

b) Rule 1-25 (5) is proposed to be amended to allow the Executive Director (instead of the Executive Committee), on application by a member, to permit the member to change election districts, provided the Executive Director is satisfied that the member has a significantly greater connection to the district the member wishes to vote in. However, if the member consents to a change, then an application would not be needed so this possibility is included;

c) Rule 1-25 (6) is added to permit the member to request the Executive Committee to review the Executive Director's decision (presumably in cases where the Executive Director denies the application). Where the Executive Committee makes a decision, the Rule proposes that such decision is final;

d) Rule 1-27 (1) puts into one Rule all process and timing related matters related to Bencher elections. It is proposed to be amended to make electronic voting the default, with the proviso that the Executive Committee can determine otherwise. Existing provisions from the current Rules regarding retaining the ability to retain a contractor to assist, plus requirements that electronic processes maintain the secrecy of the ballot and retain protections that limit voting only to members of the Law Society, have been retained. Provisions that are anachronistic with regard to an electronic vote (such as voting envelopes) have been deleted;

e) Regarding the "voting period" issue with Rule 1-27(0.3) that was raised at the June 1 Bencher meeting, we have revised the proposed wording to require that the Executive Director must establish a "voting period" of no less than one week closing no later than the close of business on November 14 of the year the election is held. As the Executive Director must oversee the election process and procedure in (0.5), and s. 25.2(1) of the *Interpretation Act* defines "week" as a period of 7 consecutive days, the revised wording ensures the voting period must be no less than one week, while still allowing for some flexibility. In the lead-up to any election, there will also be many communications with eligible voters confirming the exact start and end dates for the voting period so that voters are well informed. It is also worth noting that Rule 1-44, which is not being amended and which we have had for some time, also permits the Executive Committee to extend the election dates, if needed;

f) It is proposed that Rule 1-27.1 be removed. If a "non-electronic" voting process is approved by the Executive Committee under Rule 1-27 (0.2), then s. 1-27 (0.3) still sets out the requirements that the Executive Director must ensure occur;

g) A voting period may need to be more than a week if a paper-based system were to be used for the election. However, there is flexibility in setting the date on which materials must be circulated to members in Rule 1-27 (0.3);

h) Rule 1-29 is proposed to be removed and the relevant required provisions have been worked into Rule 1-27; and

i) Rules 1-31 to 1-33 are proposed to be removed, as the electronic voting process does not accommodate scrutineers or attendance by candidates. Counting of votes is done electronically. The security of the vote is maintained through the process itself.

Decision

6. Red-lined and clean versions of the Rules are attached, together with a proposed resolution for the Benchers, which the Benchers are asked to approve.

LAW SOCIETY RULES

Elections

Bencher elections

1-20 (1) Elections for the office of Bencher in all districts must be held ~~on November 15 of~~ each odd-numbered year.

(2) An election in the district represented by the President must be held ~~on November 15 of~~ each even-numbered year.

(3) The Bencher elected under subrule (2) holds office for one year starting on the following January 1.

Eligibility and entitlement to vote

1-25 (1) A member of the Society in good standing is eligible to vote in a Bencher election.

(1.1) A member of the Society must not cast a vote or attempt to cast a vote that the member is not entitled to cast.

(1.2) A member of the Society must not enable or assist a person

(a) to vote in the place of the member, or

(b) to cast a vote that the person is not entitled to cast.

(2) [rescinded]

(3) A non-resident member may vote

(a) in the district in which the member was last eligible to vote as a resident member, or

(b) if paragraph (a) does not apply, in District No. 1.

(4) A resident member of the Society may vote only in the district in which the member maintains

(a) the chief place of the member's practice or employment, in the case of a practising lawyer, or

(b) the member's residence, in the case of a retired or non-practising member.

(5) ~~A member of the Society may apply to t~~The Executive ~~Committee~~ Director may, on an application by or with the consent of a member, place the member ~~to be placed~~ on the voter list for a District other than the one required by this rule where~~, and the Executive Committee may direct the Executive Director to make the change if it is~~ satisfied that the member has a significantly greater connection to the District in which the member wishes to vote ~~in~~.

(6) A member whose application is rejected under subrule (5) may seek a review of the decision by the Executive Committee, whose decision is final.

LAW SOCIETY RULES

Voting period and procedure

1-27 (0.1) Bencher elections are held by electronic means.

(0.2) Despite subrule (0.1), the Executive Committee may, where circumstances require, authorize the Executive Director to conduct a Bencher election by means other than electronic means.

(0.3) For each election, the Executive Director must establish a voting period of no less than one week closing no later than the close of business on November 14 of the year the election is held.

(0.4) Votes received for a Bencher election held must be counted and results published on November 15 of the year the election is held.

(0.5) The Executive Director

(a) must oversee the election process and procedure,

(b) may retain a contractor to assist in any part of an election,

(c) must ensure that votes cast remain secret,

(d) must ensure that the voting process enables the voter to clearly and unambiguously record the names of the candidate or candidates voted for, and

(e) must take reasonable security measures to ensure that only members entitled to vote can do so.

(1) On or before the commencement of the voting period~~at least November 1 of each year~~, the Executive Director must make available to each member of the Society entitled to vote in an election

(a) a ballot containing, in the order determined under Rule 1-28 *[Order of names on ballot]*, the names of all candidates in the district in which the member is entitled to vote and stating the number of Benchers to be elected in that district,

(b) instructions on ~~marking of~~submitting the ballot and returning it to the Society in a way that will preserve the secrecy of the member's vote, and

(c) ~~a ballot envelope~~[rescinded]~~,~~

(d) ~~a declaration,~~[rescinded]

(e) ~~a mailing envelope, and~~[rescinded]

(f) biographical information received from the candidates.

(2) An election is not invalidated by

(a) t~~T~~he accidental omission to make the material referred to in subrule (1) available to any member of the Society or the non-receipt of the material, or ~~does not invalidate an election.~~

LAW SOCIETY RULES

(b) an error in the delivery of a ballot that results in a member voting in an incorrect district.

(3) For a ballot to be valid, the voter must

(a) vote in accordance with the instructions provided with the ballot,

(b) not vote for more candidates than the number of Benchers to be elected in the district, and

(c) ~~place the ballot in the ballot envelope and seal the envelope~~[rescinded],

(d) ~~complete the declaration and sign it,~~ [rescinded]

(e) ~~place the ballot envelope in the mailing envelope and seal the envelope, and~~[rescinded]

(f) ~~deliver, or mail postage prepaid, the mailing envelope~~ submit the ballot before the close of the voting period and by the means provided to the Executive Director.

(4) ~~The Executive Director may issue a replacement ballot to a voter who informs the Executive Director in writing that the original ballot has been misplaced or spoiled or was not received.~~[rescinded]

(5) The Executive Director may issue a new ~~set of~~ ballot ~~materials~~ to a member entitled to vote who informs the Executive Director in writing that the original ballot ~~material~~ sent to the member relates to a district other than the one in which the member is entitled to vote, provided the member has not already submitted the ballot initially received.

Electronic voting

1-27.1 ~~(1) The Executive Committee may authorize the Executive Director to conduct a Bencher election partly or entirely by electronic means.~~

~~(2) The Executive Director~~

~~(a) may retain a contractor to assist in any part of an election conducted electronically ,~~

~~(b) must ensure that votes cast electronically remain secret, and~~

~~(c) must take reasonable security measures to ensure that only members entitled to vote can do so.~~

~~(3) A ballot may be produced electronically and, to cast a valid vote, a member must indicate a vote in accordance with instructions accompanying the ballot.~~

~~(4) Rules 1-20 to 1-44 apply, with the necessary changes and so far as they are applicable, to an election conducted partly or entirely by electronic means.~~ [rescinded]

Order of names on ballot

1-28 (1) The order of names on a ballot under this division must be determined by lot in accordance with this rule.

LAW SOCIETY RULES

(2) The Executive Director must notify all candidates as to the date, time and place when the determination is to be made.

(3) The procedure for the determination is as follows:

(a) the name of each candidate is written on a separate piece of paper, as similar as possible to all other pieces prepared for the determination;

(b) the pieces of paper are folded in a uniform manner in such a way that the names of the candidates are not visible;

(c) the pieces of paper are placed in a container that is sufficiently large to allow them to be shaken for the purpose of making their distribution random, and the container is shaken for this purpose;

(d) the Executive Director withdraws the papers one at a time;

(e) the name on the first paper drawn is the first name on the ballot, the name on the second paper is the second, and so on until the placing of all candidates' names on the ballot has been determined.]

Rejection of ballots

1-29 ~~(1) A ballot must be rejected if it~~

~~(a) contains, or is enclosed in an envelope that contains, a marking that could identify the voter,~~

~~(b) contains votes for more candidates than the number to be elected in the district concerned,~~

~~(c) is dissimilar to those issued by the Executive Director, or~~

~~(d) is received by the Executive Director on or after the election date.~~

~~(2) A vote is void if it is~~

~~(a) not cast for a candidate whose name appears on the ballot provided by the Society, or~~

~~(b) ambiguous or unclear as to the candidate voted for.~~[rescinded]

Alternative vote ballot

1-30 (1) In a district in which only one Bencher is to be elected and there are more than 2 candidates, voting must be by an alternative vote ballot on which voters may indicate their preference for candidates.

(2) When an alternative vote ballot is conducted under subrule (1), the ballots in that election must be counted according to the following procedure:

(a) on the first count, each voter's first preference is recorded in favour of the candidate preferred;

LAW SOCIETY RULES

(b) on the second count, the candidate who received the least votes on the first count is eliminated and that candidate's first count ballots are distributed among the remaining candidates according to the second preferences indicated;

(c) on each subsequent count, the candidate who received the least votes in the preceding count is eliminated, and that candidate's ballots are distributed among the remaining candidates according to the next preferences indicated;

(d) the first candidate to receive a majority of votes on any count is elected.

Scrutineers

1-31 ~~(1) The Executive Director is a scrutineer for each Bencher election.~~

~~(2) The Executive Committee must appoint 2 members of the Society in good standing who are not Benchers or employees of the Society, to be scrutineers of the election.~~

~~(3) The failure of one scrutineer to attend at the time and place set for the vote counting does not prevent the votes from being counted at that time and place.~~

~~(4)The scrutineers must~~

~~(a) ensure that all votes are counted in accordance with the Act and these rules, and~~

~~(b) decide whether a vote is void or a ballot is rejected, in which case their decision is final~~[rescinded]~~.~~

Counting of votes

1-32 ~~The Executive Director must supervise the counting of votes according to the following procedure.:~~

~~(a) the name of each voter who votes is crossed off the voter list, and all the ballots of a voter who submits more than one ballot must be rejected;~~

~~(b) each voter declaration is read, and the ballot of a voter who has not completed and signed the declaration correctly is rejected;~~

~~(c) the ballot envelopes containing ballots are separated by district, and mixed to prevent identification of voters;~~

~~(d) for each district, the ballot envelopes are opened and the ballots removed;~~

~~(e) ballots that are rejected according to the Act or these rules are kept separate;~~

~~(f) all votes are counted and recorded unless void or contained in a rejected ballot.~~[rescinded]

Attendance of candidate

1-33 ~~A candidate may attend personally or by agent during proceedings under Rules 1-28 *[Order of names on ballot]*, 1-32 *[Counting of votes]* and 1-34 *[Declaration of candidates elected]*.~~[rescinded]

LAW SOCIETY RULES

Declaration of candidates elected

1-34 (1) The Executive Director must declare elected the candidates who receive the greatest number of votes, up to the number of Benchers to be elected in each district.

(2) If, as a result of a tie vote, the Executive Director cannot determine all of the candidates elected in a district, the Executive Director must report to the Executive Committee that the positions affected have not been filled by the election, and Rule 1-38 *[Bencher by-election]* or 1-39 *[Appointment of Bencher to represent a district]* applies.

Election record and disclosure of votes received

1-35 (1) The Executive Director must ensure that a permanent record is kept of the number of votes received by each candidate, and the candidates who are declared elected.

(2) The information referred to in subrule (1) is public information.

Review by Executive Committee

1-36 (1) A candidate who is not elected in a Bencher election may apply to the Executive Committee for a review of the election.

(2) An application under subrule (1) can only be made

(a) in writing, and

(b) not more than 10 days after the election date.

(3) On an application under subrule (1), the Executive Committee must promptly review the election in that district, and must

(a) confirm the declaration made by the Executive Director under Rule 1-34 *[Declaration of candidates elected]*,

(b) rescind the declaration made by the Executive Director under Rule 1-34 and declare that the candidate who applied under subrule (1) or another candidate is elected, or

(c) order a new election in the district concerned, and give directions for it.

(4) The decision of the Executive Committee under subrule (3) is final.

Retention of documents

1-37 The Executive Director must retain the ballots and other documents of a Bencher election for at least 14 days after the election or, if a review is taken under Rule 1-36 *[Review by Executive Committee]*, until that review has been completed.

LAW SOCIETY RULES

Bencher by-election

1-38 (1) If an elected Bencher ceases to hold office in an even numbered year or before July 1 of an odd numbered year, a by-election must be held to fill the vacancy for the remainder of the term of office.

(2) When a Bencher by-election is required under subrule (1), the Executive Committee must set a date for the prompt holding of the by-election.

(3) Rules 1-21 to 1-37 apply to a by-election under subrule (1), except that the Executive Director may change the dates referred to in Rules 1-23 (c) *[Nomination]* and 1-27 (1) *[Voting procedure]*.

LAW SOCIETY RULES

Elections

Bencher elections

1-20 (1) Elections for the office of Bencher in all districts must be held each odd-numbered year.

(2) An election in the district represented by the President must be held each even-numbered year.

(3) The Bencher elected under subrule (2) holds office for one year starting on the following January 1.

Eligibility and entitlement to vote

1-25 (1) A member of the Society in good standing is eligible to vote in a Bencher election.

(1.1) A member of the Society must not cast a vote or attempt to cast a vote that the member is not entitled to cast.

(1.2) A member of the Society must not enable or assist a person

(a) to vote in the place of the member, or

(b) to cast a vote that the person is not entitled to cast.

(2) [rescinded]

(3) A non-resident member may vote

(a) in the district in which the member was last eligible to vote as a resident member, or

(b) if paragraph (a) does not apply, in District No. 1.

(4) A resident member of the Society may vote only in the district in which the member maintains

(a) the chief place of the member's practice or employment, in the case of a practising lawyer, or

(b) the member's residence, in the case of a retired or non-practising member.

(5) The Executive Director may, on an application by or with the consent of a member, place the member on the voter list for a District other than the one required by this rule where satisfied that the member has a significantly greater connection to the District in which the member wishes to vote.

(6) A member whose application is rejected under subrule (5) may seek a review of the decision by the Executive Committee, whose decision is final.

LAW SOCIETY RULES

Voting period and procedure

1-27 (0.1) Bencher elections are held by electronic means.

(0.2) Despite subrule (0.1), the Executive Committee may, where circumstances require, authorize the Executive Director to conduct a Bencher election by means other than electronic means.

(0.3) For each election, the Executive Director must establish a voting period of no less than one week closing no later than the close of business on November 14 of the year the election is held.

(0.4) Votes received for a Bencher election held must be counted and results published on November 15 of the year the election is held.

(0.5) The Executive Director

(a) must oversee the election process and procedure,

(b) may retain a contractor to assist in any part of an election,

(c) must ensure that votes cast remain secret,

(d) must ensure that the voting process enables the voter to clearly and unambiguously record the names of the candidate or candidates voted for, and

(e) must take reasonable security measures to ensure that only members entitled to vote can do so.

(1) On or before the commencement of the voting period, the Executive Director must make available to each member of the Society entitled to vote in an election

(a) a ballot containing, in the order determined under Rule 1-28 *[Order of names on ballot]*, the names of all candidates in the district in which the member is entitled to vote and stating the number of Benchers to be elected in that district,

(b) instructions on submitting the ballot and returning it to the Society in a way that will preserve the secrecy of the member's vote, and

(c) [rescinded]

(d) [rescinded]

(e) [rescinded]

(f) biographical information received from the candidates.

(2) An election is not invalidated by

(a) the accidental omission to make the material referred to in subrule (1) available to any member of the Society or the non-receipt of the material, or

(b) an error in the delivery of a ballot that results in a member voting in an incorrect district.

(3) For a ballot to be valid, the voter must

(a) vote in accordance with the instructions provided with the ballot,

LAW SOCIETY RULES

(b) not vote for more candidates than the number of Benchers to be elected in the district, and

(c) [rescinded],

(d) [rescinded]

(e) [rescinded]

(f) submit the ballot before the close of the voting period and by the means provided to the Executive Director.

(4) [rescinded]

(5) The Executive Director may issue a new ballot to a member entitled to vote who informs the Executive Director in writing that the original ballot sent to the member relates to a district other than the one in which the member is entitled to vote, provided the member has not already submitted the ballot initially received.

Electronic voting

1-27.1 [rescinded]

Order of names on ballot

1-28 (1) The order of names on a ballot under this division must be determined by lot in accordance with this rule.

(2) The Executive Director must notify all candidates as to the date, time and place when the determination is to be made.

(3) The procedure for the determination is as follows:

(a) the name of each candidate is written on a separate piece of paper, as similar as possible to all other pieces prepared for the determination;

(b) the pieces of paper are folded in a uniform manner in such a way that the names of the candidates are not visible;

(c) the pieces of paper are placed in a container that is sufficiently large to allow them to be shaken for the purpose of making their distribution random, and the container is shaken for this purpose;

(d) the Executive Director withdraws the papers one at a time;

(e) the name on the first paper drawn is the first name on the ballot, the name on the second paper is the second, and so on until the placing of all candidates' names on the ballot has been determined.]

Rejection of ballots

1-29 [rescinded]

LAW SOCIETY RULES

Alternative vote ballot

1-30 (1) In a district in which only one Bencher is to be elected and there are more than 2 candidates, voting must be by an alternative vote ballot on which voters may indicate their preference for candidates.

(2) When an alternative vote ballot is conducted under subrule (1), the ballots in that election must be counted according to the following procedure:

(a) on the first count, each voter's first preference is recorded in favour of the candidate preferred;

(b) on the second count, the candidate who received the least votes on the first count is eliminated and that candidate's first count ballots are distributed among the remaining candidates according to the second preferences indicated;

(c) on each subsequent count, the candidate who received the least votes in the preceding count is eliminated, and that candidate's ballots are distributed among the remaining candidates according to the next preferences indicated;

(d) the first candidate to receive a majority of votes on any count is elected.

Scrutineers

1-31 [rescinded]

Counting of votes

1-32 [rescinded]

Attendance of candidate

1-33 [rescinded]

Declaration of candidates elected

1-34 (1) The Executive Director must declare elected the candidates who receive the greatest number of votes, up to the number of Benchers to be elected in each district.

(2) If, as a result of a tie vote, the Executive Director cannot determine all of the candidates elected in a district, the Executive Director must report to the Executive Committee that the positions affected have not been filled by the election, and Rule 1-38 *[Bencher by-election]* or 1-39 *[Appointment of Bencher to represent a district]* applies.

Election record and disclosure of votes received

1-35 (1) The Executive Director must ensure that a permanent record is kept of the number of votes received by each candidate, and the candidates who are declared elected.

(2) The information referred to in subrule (1) is public information.

LAW SOCIETY RULES

Review by Executive Committee

1-36 (1) A candidate who is not elected in a Bencher election may apply to the Executive Committee for a review of the election.

(2) An application under subrule (1) can only be made

(a) in writing, and

(b) not more than 10 days after the election date.

(3) On an application under subrule (1), the Executive Committee must promptly review the election in that district, and must

(a) confirm the declaration made by the Executive Director under Rule 1-34 *[Declaration of candidates elected]*,

(b) rescind the declaration made by the Executive Director under Rule 1-34 and declare that the candidate who applied under subrule (1) or another candidate is elected, or

(c) order a new election in the district concerned, and give directions for it.

(4) The decision of the Executive Committee under subrule (3) is final.

Retention of documents

1-37 The Executive Director must retain the ballots and other documents of a Bencher election for at least 14 days after the election or, if a review is taken under Rule 1-36 *[Review by Executive Committee]*, until that review has been completed.

Bencher by-election

1-38 (1) If an elected Bencher ceases to hold office in an even numbered year or before July 1 of an odd numbered year, a by-election must be held to fill the vacancy for the remainder of the term of office.

(2) When a Bencher by-election is required under subrule (1), the Executive Committee must set a date for the prompt holding of the by-election.

(3) Rules 1-21 to 1-37 apply to a by-election under subrule (1), except that the Executive Director may change the dates referred to in Rules 1-23 (c) *[Nomination]* and 1-27 (1) *[Voting procedure]*.

BENCHER ELECTIONS RULES

RESOLUTION:

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

1. In Rule 1-20, by deleting the words* "on November 15 of each" *in each of subrules (2) and (3):

2. In Rule 1-25, by

(a) deleting subrule (5) and replacing it with

"(5) The Executive Director may, on an application by or with the consent of a member, place the member on the voter list for a District other than the one required by this rule where satisfied that the member has a significantly greater connection to the District in which the member wishes to vote."

(b) adding subrule (6) as follows:

"(6) A member whose application is rejected under subrule (5) may seek a review of the decision by the Executive Committee, whose decision is final."

3. By deleting Rule 1-27 and replacing it with

Voting period and procedure

"1-27 (0.1) Bencher elections are held by electronic means.

(0.2) Despite subrule (0.1), the Executive Committee may, where circumstances require, authorize the Executive Director to conduct a Bencher election by means other than electronic means.

(0.3) For each election, the Executive Director must establish a voting period of no less than one week closing no later than the close of business on November 14 of the year the election is held.

(0.4) Votes received for a Bencher election held must be counted and results published on November 15 of the year the election is held.

(0.5) The Executive Director

(a) must oversee the election process and procedure,

(b) may retain a contractor to assist in any part of an election,

(c) must ensure that votes cast remain secret,

(d) must ensure that the voting process enables the voter to clearly and unambiguously record the names of the candidate or candidates voted for, and

(e) must take reasonable security measures to ensure that only members entitled to vote can do so.

(1) On or before the commencement of the voting period, the Executive Director must make available to each member of the Society entitled to vote in an election

(a) a ballot containing, in the order determined under Rule 1-28 *[Order of names on ballot]*, the names of all candidates in the district in which the member is entitled to vote and stating the number of Benchers to be elected in that district,

(b) instructions on submitting the ballot and returning it to the Society in a way that will preserve the secrecy of the member's vote, and

(c) [rescinded]

(d) [rescinded]

(e) [rescinded]

(f) biographical information received from the candidates.

(2) An election is not invalidated by

(a) the accidental omission to make the material referred to in subrule (1) available to any member of the Society or the non-receipt of the material, or

(b) an error in the delivery of a ballot that results in a member voting in an incorrect district.

(3) For a ballot to be valid, the voter must

(a) vote in accordance with the instructions provided with the ballot,

(b) not vote for more candidates than the number of Benchers to be elected in the district, and

(c) [rescinded],

(d) [rescinded]

(e) [rescinded]

(f) submit the ballot before the close of the voting period and by the means provided to the Executive Director.

(4) [rescinded]

(5) The Executive Director may issue a new ballot to a member entitled to vote who informs the Executive Director in writing that the original ballot sent to the member relates to a district

other than the one in which the member is entitled to vote, provided the member has not already submitted the ballot initially received."

4. by deleting Rule 1-27.1;

5. by deleting Rule 1-31;

6. by deleting Rule 1-32;

7. by deleting Rule 1-33.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

Law Society
of British Columbia

Remote Execution of Affidavits – Proposed Amendments to Appendix A of the *BC Code*

To: Benchers

Purpose: Approval (Consent Agenda)

From: Staff

Date: July 5, 2024

Issue

1. The Benchers are asked to approve amendments to Appendix A to the *Code of Conduct for British Columbia* ("the *BC Code*") in order to accommodate the remote execution of affidavits and solemn declarations.

Background

2. In 1996 and 2000, the then-Ethics Committee issued opinions that in order for a lawyer to commission an affidavit or solemn declaration, the deponent must appear physically before the lawyer. The necessity for physical proximity was affirmed in *First Canadian Title Co. v. Law Society of BC* 2004 BCSC 197. Appendix A of the *BC Code* concerning professional obligations when dealing with affidavits and solemn declarations also noted the requirement.

3. In March, 2020 at the outset of the COVID-19 pandemic, steps needed to be taken fairly immediately in order to agree on a process that would allow for the remote or virtual execution of documents such as affidavits. A process was agreed to and a Notice of Direction was issued by all three levels of Court. The process was permitted only in cases where it was not possible or medically unsafe, due to the health orders, for a deponent to attend personally before a commissioner. The process was somewhat cumbersome, but worked and allowed matters relating to affidavits to proceed.

4. Lawyers have advised that remote execution of affidavits was helpful, and that modernization of the commissioning process would improve access to justice, particularly in rural areas, including by decreasing the need for travel. In December 2021, as part of a larger report examining how COVID-19 responses might be retained coming out of the pandemic, the Benchers adopted a recommendation by the Access to Justice Advisory Committee that:

> The Law Society … work with government, the courts and other justice system stakeholders to maintain justice system responses enacted to address COVID-19, and explore ways to expand and improve upon those system changes, including exploring how to simplify and modernize the requirements for remote execution of affidavits.

5. Internal work, together with follow up work with the courts and government on the remote or virtual execution of affidavits has ensued.

Discussion

Role of Benchers in setting professional standards for commissioning affidavits and solemn declarations

6. In *Prescott v. Law Soc. of BC* [1971] 4 W.W.R. 443 (C.A.) Branca J.A. held the "the Benchers are the guardians of the proper standards of professional and ethical conduct."

7. This was expanded on at paragraph 21 of *First Canadian Title Co. v. Law Society of BC* 2004 BCSC 197:

> In this province, the legal profession is self-governed. In s. 3 of the *Legal Profession Act* the Legislature entrusted to the Law Society, not to the courts, the responsibility of regulating and supervising the professional conduct of its members. The Law Society fulfills that mandate by establishing standards and by regulating the practice of law, and it contends that, as the profession's governing body, it must insist upon the adherence of its members to a common denominator of good conduct that satisfies its own standards as well as the demands of the clients and the community which the profession serves.

8. With this direction in law in mind, the then-Ethics and Lawyer Independence Advisory Committee reconsidered the 1996 and 2000 opinions to address appropriate ethical and professional standards requirements for modernizing the process for commissioning affidavits that recognized advances in communications technology. Prior to the end of 2023, that Committee settled on proposed draft revisions to Appendix A of the *BC Code.*

The Courts

9. While the Benchers may be responsible for setting the ethical and professional standards relating to the commissioning of affidavits, the Courts nevertheless are in control of whether evidence would be acceptable. In recognition of this, the proposed revisions to the *BC Code* were forwarded to the Supreme Court for comment.

10. Subsequently, the Law Society was advised that the Supreme Court Rules Committee had also received a proposal enquiring about remote execution of affidavits.

11. Ministry staff who assist the Rules Committee then reached out to discuss the Appendix A revisions in relation to rule changes. There was a tentative recognition on all sides that revisions to permit the filing of an original electronic version of the affidavit, which did not appear to be contemplated in the current rules, may be needed. Some other, relatively minor, updates to the rules and forms were also discussed.

12. The Rules Committee continued its deliberations over the next months.

June 2024

13. Because of Non-Disclosure Agreement requirements, discussion with and information received from the Rules Committee cannot be disclosed, but slight changes to the draft amendments to Appendix A as originally settled on by the Ethics and Lawyer Independence Advisory Committee have been addressed in light of information received from Ministry staff. Recent advice suggests it likely that amendments to the Supreme Court Civil Rules and Family Rules relating to this topic may be imminent. It would advantageous to have Appendix A amended to clarify process and guidance for executing affidavits remotely.

Amendments to Appendix A

14. Proposed amendments to Appendix A that revise processes for the commissioning of affidavits to include possibilities regarding remote execution are attached. To accommodate this, the requirement that a deponent "is physically present before the lawyer" is replaced with a requirement that the deponent "appears personally before the lawyer."

15. The Commentary to the Appendix is then proposed to be amended by adding in a new Commentary 12 titled "Remote commissioning of affidavits or solemn declarations" that sets out ethical and professional responsibility considerations for remote execution in circumstances where remote execution of such statements is permitted. In particular:

- The deponent must identify themselves to the lawyer-commissioner while connected via the video technology. This aims to replicate as closely as possible the requirement that they must be in each other's physical presence, albeit via video technology.

- The affidavit or solemn declaration must be before both the deponent and the commissioner in order to ensure the commissioner knows what is being attested to and commissioned. To replicate the physical process as much as possible, the requirement is for each of the deponent and commissioner to have a copy of the affidavit or solemn declaration before them, and to review it together to ensure each copy is identical. It is acknowledged that this may be time-consuming for long affidavits, but it is important that the process is able to ensure each of the lawyer and deponent have the same document.

- Immediately after having compared the copies, then, as would happen where the lawyer-commissioner and deponent are together in the same room, the lawyer will administer the oath and the deponent will swear or affirm the truth of the affidavit or solemn declaration and the deponent will affix their signature.

- The signing process has been developed so as to match as closely as possible what happens when the deponent and commissioner are in the same room. Requirements for the deponent to sign, save and immediately send to the commissioner are meant to reduce the opportunity for mischief. The commissioner's responsibility to compare the signed document received by the commissioner to ensure it is the same as the copy reviewed will further reduce the opportunity for mischief. The process in Appendix A contemplates a possibility that electronic signatures will be permitted, but also provides for a process where electronic signatures are not permitted.

16. Red-lined and clean versions of Appendix A are attached.

Decision

17. The Benchers are asked to approve the resolution attached to this memorandum.

Appendix A - Affidavits and solemn declarations and Officer Certifications

1. A lawyer must not swear an affidavit or take a solemn declaration unless the deponent:

(a) appears personally ~~is physically present~~ before the lawyer,

(b) acknowledges that he or she is the deponent,

(c) understands or appears to understand the statement contained in the document,

(d) in the case of an affidavit, swears, declares or affirms that the contents of the document are true,

(e) in the case of a solemn declaration, orally states that the deponent makes the solemn declaration conscientiously believing it to be true and knowing that it is of the same legal force and effect as if made under oath, and

(f) signs the document, or if permitted by statute, swears that the signature on the document is that of the deponent.

Commentary

Non-practising and retired members

[1] Non-practising and retired members are not permitted to act as notaries public or commissioners for the purpose of taking affidavits or solemn declarations. See Law Society Rules 2-3 and 2-4 for the definitions of non-practising and retired members.

Interjurisdictional practice

[2] A British Columbia lawyer, as a notary public, may administer oaths and take affidavits, declarations and affirmations only within British Columbia: See section 14 of the Legal Profession Act for a lawyer's right to act as a notary public, and section 18 of the Notaries Act, RSBC 1996, c. 334 for rights and powers of a notary public, including the right to draw affidavits, affirmations or statutory declarations for other jurisdictions.

[3] A British Columbia lawyer, as a commissioner for taking affidavits for British Columbia, has authority to administer oaths and take affidavits, declarations and affirmations outside of BC

for use in BC: See sections 59 and 63, as well as sections 56 and 64 of the *Evidence Act*, RSBC 1996, c.124.

[4] Notwithstanding Law Society mobility provisions across Canada, a British Columbia lawyer cannot swear an affidavit in another province or territory for use in that jurisdiction unless the lawyer is a member of the bar in that jurisdiction or the jurisdiction's own legislation allows it. For example, because of Alberta legislation, a member of the Law Society of British Columbia, while in Alberta acting under the mobility provisions on an Alberta matter, cannot swear an affidavit for use in Alberta.

[5] British Columbia lawyers should contact the law society of the other province or territory if they need to check whether they are entitled to swear an affidavit in that jurisdiction.

[6] Likewise, lawyers from other jurisdictions visiting British Columbia may not swear affidavits in BC for use in BC: See section 60 of the *Evidence Act* and the definition of "practising lawyer" in section 1(1) of the *Legal Profession Act*.

Deponent present before commissioner

[7] See *R. v. Schultz*, [1922] 2 WWR 582 (Sask. CA) in which the accused filled in and signed a declaration and left it on the desk of a commissioner for taking oaths, later meeting the commissioner outside and asking him to complete it. The court held that it was not a solemn declaration within the meaning of the *Canada Evidence Act*, stating that: "The mere fact that it was signed by the accused does not make it a solemn declaration. The written statement by the commissioner that it was 'declared before him' is not true. The essential requirement of the Act is not the signature of the declarant but his solemn declaration made before the commissioner" (p. 584). Likewise, it has been held in the U.S. that the taking of an affidavit over the telephone is grounds for a charge of negligence and professional misconduct: *Bar Association of New York City v. Napolis* (1915), 155 N.Y. Sup. 416 (N.Y. Sup. Ct. App. Div.). In B.C., the conduct of a lawyer who affixed the lawyer's name to the jurat of the signed affidavit without ever having seen the deponent constituted professional misconduct: Law Society Discipline Case Digest 83/14.

Identification

[8] The commissioner should be satisfied of the deponent's identity. Where the commissioner does not know the deponent personally, identification should be inspected and/or appropriate introductions should be obtained.

Appearing to understand

[9] To be satisfied of this, the commissioner may read the document aloud to the deponent, have the deponent read it aloud or accept the deponent's statement that its contents are understood: *R. v. Whynot* (1954), 110 CCC 35 at 42 (NSCA).

[10] It is also important that the deponent understands the significance of the oath or declaration to be taken. See *King v. Phillips* (1908), 14 CCC 239 (B.C. Co. Ct.); *R. v. Nichols*, [1975] 5 WWR 600 (Alta SC); and *Owen v. Yorke*, (6 December, 1984), Vancouver A843177 (BCSC).

[11] If it appears that a deponent is unable to read the document, the commissioner must certify in the jurat that the document was read in his or her presence and the commissioner was satisfied that the deponent understood it: B.C., Rules of Court, Rule 22-2(6). If it appears that the deponent does not understand English, the lawyer must arrange for a competent interpreter to interpret the document to the deponent and certify by endorsement in Form 60 [now Form 109] that he or she has done so: Rules of Court, Rule 22-2(7).

Remote commissioning of affidavits or solemn declarations

[12] While it is preferable for the deponent to appear physically before a lawyer for the purposes of commissioning an affidavit or solemn declaration, a lawyer may discharge the lawyer's ethical and professional obligations regarding commissioning an affidavit or solemn declaration where the lawyer and deponent are not physically together through the use of electronic and video technology in the manner set out below.

Lawyers should keep in mind however that what is accepted as evidence is ultimately for a trier of fact to determine, and that complying with the process set out in this commentary is not a guarantee that an affidavit or solemn declaration commissioned using electronic and video technology will be accepted as evidence by the trier of fact. Moreover, if concerns are identified about the particular manner in which an affidavit or solemn declaration is commissioned remotely or if a remote process raises any issues, in particular the serious concerns that would arise from issues regarding the identity or capacity of the deponent, or whether coercion of the deponent is a concern, those issues may result in the affidavit or solemn declaration not being accepted, or being given less weight. Lawyers are also reminded to be cautious regarding the heightened risks of fraud and undue influence presented by engaging in virtual processes, and of their obligations under Code rule 3.2-7.

Lawyers are also reminded to ensure that there are no prohibitions to the commissioning of an oath or solemn declaration through electronic or video technology for the purposes of any particular document for which such a process is contemplated.

Where the deponent is not physically present in British Columbia, the process for remote commissioning of an affidavit or solemn declaration should not be used unless the lawyer is satisfied there is no other practical way to undertake the commissioning of the document in accordance with the procedures of the jurisdiction in which the deponent is situated.

Process

The process for remote commissioning of an affidavit or solemn declaration by a lawyer must include the following elements.

1. Any affidavit or solemn declaration to be commissioned using electronic and video technology must contain a paragraph at the end of the body of the affidavit or solemn declaration describing that the deponent was not physically present before the lawyer as commissioner, but was in the lawyer's electronic presence linked with the lawyer utilizing video technology and that the process described below for remote commissioning of affidavits or solemn declarations was utilized.

2. The affidavit or solemn declaration must contain a paragraph acknowledging the solemnity of making the affidavit or solemn declaration and acknowledging the consequences of making an untrue statement.

3. While the lawyer and the deponent are in each other's electronic and video presence, the deponent must show the lawyer the front and back of the deponent's valid and current government-issued photo identification. The lawyer must compare the video image of the deponent and information in the deponent's government-issued photo identity document to be reasonably satisfied that the name and the photo are of the same person and that the document is authentic, valid and current. The lawyer must record that these steps have been taken. The lawyer should also consider recording the session through which the affidavit or solemn declaration is made.

4. The lawyer and the deponent must both have the text of the affidavit or solemn declaration, including all exhibits, before each of them while in each other's electronic presence.

5. The lawyer and the deponent must review the affidavit or solemn declaration and exhibits together to verify that the language is identical.

6. At the conclusion of the steps outlined above, while still in each other's electronic presence, the lawyer, as commissioner, must administer the oath, the deponent will swear or affirm the truth of the facts contained in the affidavit or solemn declaration, and the deponent will affix the deponent's signature to the affidavit or solemn declaration.

7. Where it is not permissible to commission an affidavit or solemn declaration using an electronic signature, the deponent's signature must be affixed in ink to the physical (paper) copy of the affidavit or solemn declaration above, and the deponent must immediately scan the document, save a copy immediately after scanning it, and immediately forward it electronically to the lawyer.

8. Where it is permissible to commission an affidavit or solemn declaration using an electronic signature, the deponent must immediately save the document and immediately forward it, together with the exhibits, electronically to the lawyer.

9. Upon receipt by the lawyer of the sworn affidavit or of a solemn declaration that has been attested to bearing the deponent's signature and all exhibits, the lawyer should, after having taken steps to ensure that the document received is the same as the document reviewed under the steps set out above, affix the lawyer's name and signature, as commissioner, to the jurat and exhibits.

10. If an electronic process is used that allows the lawyer, as commissioner, access to the document being signed by the deponent while in video contact with the deponent, the lawyer will then affix the lawyer's signature to the document, provided such process is permitted by the tribunal or court in which the affidavit or solemn declaration is to be used.

The version of the affidavit or solemn declaration that has been duly sworn or affirmed and contains the signatures of the deponent and the lawyer must then be saved by the lawyer, and may be filed with the Court or tribunal as may be required.

Affirmation

[~~12~~13] In cases where a deponent does not want to swear an affidavit by oath, an affidavit can be created by solemn affirmation. See section 20 of the *Evidence Act*, R.S.B.C. 1996, c. 124.

Swear or affirm that the contents are true

[~~13~~14] This can be accomplished by the commissioner asking the deponent: "Do you swear that the contents of this affidavit are true, so help you God?" or, if the affidavit is being affirmed, "Do you solemnly affirm [or words with the same effect] that the evidence given by you is the truth, the whole truth and nothing but the truth?," to which the deponent must answer in the affirmative. In taking an affirmation the lawyer should comply with section 20 of the *Evidence Act*, RSBC 1996, c. 124 and the Affirmation Regulation, B.C. Reg. 396/89.

[~~14~~15] Section 29 of the *Interpretation Act,* RSBC 1996, c. 238, defines an affidavit or oath as follows:

> "affidavit" or "oath" includes an affirmation, a statutory declaration, or a solemn declaration made under the Evidence Act, or under the Canada Evidence Act; and the word "swear" includes solemnly declare or affirm.

[~~15~~16] If an affidavit is altered after it has been sworn, it cannot be used unless it is resworn. Reswearing can be done by the commissioner initialling the alterations, taking the oath again from the deponent and then signing the altered affidavit. A second jurat should be added, commencing with the word "resworn."

[~~16~~17] Generally, an affidavit is sworn and filed in a proceeding that is already commenced. An affidavit may also be sworn before the proceeding is commenced: Rules of Court, Rule 22-2(15). However, an affidavit may not be postdated: *Law Society of BC v. Foo*, [1997] LSDD No. 197.

[~~17~~18] Swearing to an affidavit exhibits that are not in existence can amount to professional misconduct: *LSBC v. Foo*, supra.

Solemn declaration

[~~18~~19] A solemn declaration should be made in the words of the statute: *King v. Phillips*, supra; *R. v. Whynot*, supra.

[~~19~~20] The proper form for a solemn declaration is set out in section 41 of the *Canada Evidence Act*, RSC 1985, c. C-5:

> **Solemn declaration**
>
> 41. Any judge, notary public, justice of the peace, provincial court judge, recorder, mayor or commissioner authorized to take affidavits to be used either in the provincial or federal courts, or any other functionary authorized by law to administer an oath in any matter, may receive the solemn declaration of any person voluntarily making the declaration before him, in the following form, in attestation of the execution of any writing, deed or instrument, or of the truth of any fact, or of any account rendered in writing:
>
> > I, , solemnly declare that (*state the fact or facts declared to*), and I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.
> >
> > Declared before me at this . day of , 20

and in section 69 of the *Evidence Act*, RSBC 1996, c. 124:

> **Statutory declarations**
>
> 69. A gold commissioner, mayor or commissioner authorized to take affidavits, or any other person authorized by law to administer an oath in any matter, may receive the solemn declaration of any person voluntarily making it before him or her in attestation of the execution of any writing, deed or instrument, or of the truth of any fact, or of any account rendered in writing, in the following words:
>
> > I, A.B., solemnly declare that [state the facts declared to], and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same legal force and effect as if made under oath.

Execution

[~~20~~21] A deponent unable to sign an affidavit may place the deponent's mark on it: Rules of Court, Rule 22-2(4)(b)(ii). An affidavit by a person who could not make any mark at all was accepted by the court in *R. v. Holloway* (1901), 65 JP 712 (Magistrates Ct.).

Appendix A - Affidavits and solemn declarations and Officer Certifications

1. A lawyer must not swear an affidavit or take a solemn declaration unless the deponent:

(a) appears personally before the lawyer,

(b) acknowledges that he or she is the deponent,

(c) understands or appears to understand the statement contained in the document,

(d) in the case of an affidavit, swears, declares or affirms that the contents of the document are true,

(e) in the case of a solemn declaration, orally states that the deponent makes the solemn declaration conscientiously believing it to be true and knowing that it is of the same legal force and effect as if made under oath, and

(f) signs the document, or if permitted by statute, swears that the signature on the document is that of the deponent.

Commentary

Non-practising and retired members

[1] Non-practising and retired members are not permitted to act as notaries public or commissioners for the purpose of taking affidavits or solemn declarations. See Law Society Rules 2-3 and 2-4 for the definitions of non-practising and retired members.

Interjurisdictional practice

[2] A British Columbia lawyer, as a notary public, may administer oaths and take affidavits, declarations and affirmations only within British Columbia: See section 14 of the Legal Profession Act for a lawyer's right to act as a notary public, and section 18 of the Notaries Act, RSBC 1996, c. 334 for rights and powers of a notary public, including the right to draw affidavits, affirmations or statutory declarations for other jurisdictions.

[3] A British Columbia lawyer, as a commissioner for taking affidavits for British Columbia, has authority to administer oaths and take affidavits, declarations and affirmations outside of BC

for use in BC: See sections 59 and 63, as well as sections 56 and 64 of the *Evidence Act*, RSBC 1996, c.124.

[4] Notwithstanding Law Society mobility provisions across Canada, a British Columbia lawyer cannot swear an affidavit in another province or territory for use in that jurisdiction unless the lawyer is a member of the bar in that jurisdiction or the jurisdiction's own legislation allows it. For example, because of Alberta legislation, a member of the Law Society of British Columbia, while in Alberta acting under the mobility provisions on an Alberta matter, cannot swear an affidavit for use in Alberta.

[5] British Columbia lawyers should contact the law society of the other province or territory if they need to check whether they are entitled to swear an affidavit in that jurisdiction.

[6] Likewise, lawyers from other jurisdictions visiting British Columbia may not swear affidavits in BC for use in BC: See section 60 of the *Evidence Act* and the definition of "practising lawyer" in section 1(1) of the *Legal Profession Act*.

Deponent present before commissioner

[7] See *R. v. Schultz*, [1922] 2 WWR 582 (Sask. CA) in which the accused filled in and signed a declaration and left it on the desk of a commissioner for taking oaths, later meeting the commissioner outside and asking him to complete it. The court held that it was not a solemn declaration within the meaning of the *Canada Evidence Act*, stating that: "The mere fact that it was signed by the accused does not make it a solemn declaration. The written statement by the commissioner that it was 'declared before him' is not true. The essential requirement of the Act is not the signature of the declarant but his solemn declaration made before the commissioner" (p. 584). Likewise, it has been held in the U.S. that the taking of an affidavit over the telephone is grounds for a charge of negligence and professional misconduct: *Bar Association of New York City v. Napolis* (1915), 155 N.Y. Sup. 416 (N.Y. Sup. Ct. App. Div.). In B.C., the conduct of a lawyer who affixed the lawyer's name to the jurat of the signed affidavit without ever having seen the deponent constituted professional misconduct: Law Society Discipline Case Digest 83/14.

Identification

[8] The commissioner should be satisfied of the deponent's identity. Where the commissioner does not know the deponent personally, identification should be inspected and/or appropriate introductions should be obtained.

Appearing to understand

[9] To be satisfied of this, the commissioner may read the document aloud to the deponent, have the deponent read it aloud or accept the deponent's statement that its contents are understood: *R. v. Whynot* (1954), 110 CCC 35 at 42 (NSCA).

[10] It is also important that the deponent understands the significance of the oath or declaration to be taken. See *King v. Phillips* (1908), 14 CCC 239 (B.C. Co. Ct.); *R. v. Nichols*, [1975] 5 WWR 600 (Alta SC); and *Owen v. Yorke*, (6 December, 1984), Vancouver A843177 (BCSC).

[11] If it appears that a deponent is unable to read the document, the commissioner must certify in the jurat that the document was read in his or her presence and the commissioner was satisfied that the deponent understood it: B.C., Rules of Court, Rule 22-2(6). If it appears that the deponent does not understand English, the lawyer must arrange for a competent interpreter to interpret the document to the deponent and certify by endorsement in Form 60 [now Form 109] that he or she has done so: Rules of Court, Rule 22-2(7).

Remote commissioning of affidavits or solemn declarations

[12] While it is preferable for the deponent to appear physically before a lawyer for the purposes of commissioning an affidavit or solemn declaration, a lawyer may discharge the lawyer's ethical and professional obligations regarding commissioning an affidavit or solemn declaration where the lawyer and deponent are not physically together through the use of electronic and video technology in the manner set out below.

Lawyers should keep in mind however that what is accepted as evidence is ultimately for a trier of fact to determine, and that complying with the process set out in this commentary is not a guarantee that an affidavit or solemn declaration commissioned using electronic and video technology will be accepted as evidence by the trier of fact. Moreover, if concerns are identified about the particular manner in which an affidavit or solemn declaration is commissioned remotely or if a remote process raises any issues, in particular the serious concerns that would arise from issues regarding the identity or capacity of the deponent, or whether coercion of the deponent is a concern, those issues may result in the affidavit or solemn declaration not being accepted, or being given less weight. Lawyers are also reminded to be cautious regarding the heightened risks of fraud and undue influence presented by engaging in virtual processes, and of their obligations under Code rule 3.2-7.

Lawyers are also reminded to ensure that there are no prohibitions to the commissioning of an oath or solemn declaration through electronic or video technology for the purposes of any particular document for which such a process is contemplated.

Where the deponent is not physically present in British Columbia, the process for remote commissioning of an affidavit or solemn declaration should not be used unless the lawyer is satisfied there is no other practical way to undertake the commissioning of the document in accordance with the procedures of the jurisdiction in which the deponent is situated.

Process

The process for remote commissioning of an affidavit or solemn declaration by a lawyer must include the following elements.

1. Any affidavit or solemn declaration to be commissioned using electronic and video technology must contain a paragraph at the end of the body of the affidavit or solemn declaration describing that the deponent was not physically present before the lawyer as commissioner, but was in the lawyer's electronic presence linked with the lawyer utilizing video technology and that the process described below for remote commissioning of affidavits or solemn declarations was utilized.

2. The affidavit or solemn declaration must contain a paragraph acknowledging the solemnity of making the affidavit or solemn declaration and acknowledging the consequences of making an untrue statement.

3. While the lawyer and the deponent are in each other's electronic and video presence, the deponent must show the lawyer the front and back of the deponent's valid and current government-issued photo identification. The lawyer must compare the video image of the deponent and information in the deponent's government-issued photo identity document to be reasonably satisfied that the name and the photo are of the same person and that the document is authentic, valid and current. The lawyer must record that these steps have been taken. The lawyer should also consider recording the session through which the affidavit or solemn declaration is made.
4. The lawyer and the deponent must both have the text of the affidavit or solemn declaration, including all exhibits, before each of them while in each other's electronic presence.

5. The lawyer and the deponent must review the affidavit or solemn declaration and exhibits together to verify that the language is identical.

6. At the conclusion of the steps outlined above, while still in each other's electronic presence, the lawyer, as commissioner, must administer the oath, the deponent will swear or affirm the truth of the facts contained in the affidavit or solemn declaration, and the deponent will affix the deponent's signature to the affidavit or solemn declaration.

7. Where it is not permissible to commission an affidavit or solemn declaration using an electronic signature, the deponent's signature must be affixed in ink to the physical (paper) copy of the affidavit or solemn declaration above, and the deponent must immediately scan the document, save a copy immediately after scanning it, and immediately forward it electronically to the lawyer.

8. Where it is permissible to commission an affidavit or solemn declaration using an electronic signature, the deponent must immediately save the document and immediately forward it, together with the exhibits, electronically to the lawyer.

9. Upon receipt by the lawyer of the sworn affidavit or of a solemn declaration that has been attested to bearing the deponent's signature and all exhibits, the lawyer should, after having taken steps to ensure that the document received is the same as the document reviewed under the steps set out above, affix the lawyer's name and signature, as commissioner, to the jurat and exhibits.

10. If an electronic process is used that allows the lawyer, as commissioner, access to the document being signed by the deponent while in video contact with the deponent, the lawyer will then affix the lawyer's signature to the document, provided such process is permitted by the tribunal or court in which the affidavit or solemn declaration is to be used.

The version of the affidavit or solemn declaration that has been duly sworn or affirmed and contains the signatures of the deponent and the lawyer must then be saved by the lawyer, and may be filed with the Court or tribunal as may be required.

Affirmation

[13] In cases where a deponent does not want to swear an affidavit by oath, an affidavit can be created by solemn affirmation. See section 20 of the *Evidence Act*, R.S.B.C. 1996, c. 124.

Swear or affirm that the contents are true

[14] This can be accomplished by the commissioner asking the deponent: "Do you swear that the contents of this affidavit are true, so help you God?" or, if the affidavit is being affirmed, "Do you solemnly affirm [or words with the same effect] that the evidence given by you is the truth, the whole truth and nothing but the truth?," to which the deponent must answer in the affirmative. In taking an affirmation the lawyer should comply with section 20 of the *Evidence Act*, RSBC 1996, c. 124 and the Affirmation Regulation, B.C. Reg. 396/89.

[15] Section 29 of the *Interpretation Act,* RSBC 1996, c. 238, defines an affidavit or oath as follows:

> "affidavit" or "oath" includes an affirmation, a statutory declaration, or a solemn declaration made under the Evidence Act, or under the Canada Evidence Act; and the word "swear" includes solemnly declare or affirm.

[16] If an affidavit is altered after it has been sworn, it cannot be used unless it is resworn. Reswearing can be done by the commissioner initialling the alterations, taking the oath again from the deponent and then signing the altered affidavit. A second jurat should be added, commencing with the word "resworn."

[17] Generally, an affidavit is sworn and filed in a proceeding that is already commenced. An affidavit may also be sworn before the proceeding is commenced: Rules of Court, Rule 22-2(15). However, an affidavit may not be postdated: *Law Society of BC v. Foo*, [1997] LSDD No. 197.

[18] Swearing to an affidavit exhibits that are not in existence can amount to professional misconduct: *LSBC v. Foo*, supra.

Solemn declaration

[19] A solemn declaration should be made in the words of the statute: *King v. Phillips*, supra; *R. v. Whynot*, supra.

[20] The proper form for a solemn declaration is set out in section 41 of the *Canada Evidence Act*, RSC 1985, c. C-5:

> **Solemn declaration**
>
> 41. Any judge, notary public, justice of the peace, provincial court judge, recorder, mayor or commissioner authorized to take affidavits to be used either in the provincial or federal courts, or any other functionary authorized by law to administer an oath in any matter, may receive the solemn declaration of any person voluntarily making the declaration before him, in the following form, in attestation of the execution of any writing, deed or instrument, or of the truth of any fact, or of any account rendered in writing:
>
> > I, , solemnly declare that (*state the fact or facts declared to*), and I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.
> >
> > Declared before me at this . day of , 20

and in section 69 of the *Evidence Act*, RSBC 1996, c. 124:

> **Statutory declarations**
>
> 69. A gold commissioner, mayor or commissioner authorized to take affidavits, or any other person authorized by law to administer an oath in any matter, may receive the solemn declaration of any person voluntarily making it before him or her in attestation of the execution of any writing, deed or instrument, or of the truth of any fact, or of any account rendered in writing, in the following words:
>
> > I, A.B., solemnly declare that [state the facts declared to], and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same legal force and effect as if made under oath.

Execution

[21] A deponent unable to sign an affidavit may place the deponent's mark on it: Rules of Court, Rule 22-2(4)(b)(ii). An affidavit by a person who could not make any mark at all was accepted by the court in *R. v. Holloway* (1901), 65 JP 712 (Magistrates Ct.).

REMOTE EXECUTION OF AFFIDAVITS AND SOLEMN DECLARATIONS

RESOLUTION:

BE IT RESOLVED to amend Appendix A of the* Code of Conduct for British Columbia *as follows:

***1. In clause 1 (a), by deleting* "is physically present" *and replacing it with* "appears personally";**

2. In the Commentary to Appendix A, by replacing paragraph [12] and its heading with:

"Remote commissioning of affidavits or solemn declarations

[12] While it is preferable for the deponent to appear physically before a lawyer for the purposes of commissioning an affidavit or solemn declaration, a lawyer may discharge the lawyer's ethical and professional obligations regarding commissioning an affidavit or solemn declaration where the lawyer and deponent are not physically together through the use of electronic and video technology in the manner set out below.

Lawyers should keep in mind however that what is accepted as evidence is ultimately for a trier of fact to determine, and that complying with the process set out in this commentary is not a guarantee that an affidavit or solemn declaration commissioned using electronic and video technology will be accepted as evidence by the trier of fact. Moreover, if concerns are identified about the particular manner in which an affidavit or solemn declaration is commissioned remotely or if a remote process raises any issues, in particular the serious concerns that would arise from issues regarding the identity or capacity of the deponent, or whether coercion of the deponent is a concern, those issues may result in the affidavit or solemn declaration not being accepted, or being given less weight. Lawyers are also reminded to be cautious regarding the heightened risks of fraud and undue influence presented by engaging in virtual processes, and of their obligations under Code rule 3.2-7.

Lawyers are also reminded to ensure that there are no prohibitions to the commissioning of an oath or solemn declaration through electronic or video technology for the purposes of any particular document for which such a process is contemplated.

Where the deponent is not physically present in British Columbia, the process for remote commissioning of an affidavit or solemn declaration should not be used unless the lawyer is satisfied there is no other practical way to undertake the commissioning of the document in accordance with the procedures of the jurisdiction in which the deponent is situated.

Process

The process for remote commissioning of an affidavit or solemn declaration by a lawyer must include the following elements.

1. Any affidavit or solemn declaration to be commissioned using electronic and video technology must contain a paragraph at the end of the body of the affidavit or solemn declaration describing that the deponent was not physically present before the lawyer as commissioner, but was in the lawyer's electronic presence linked with the lawyer utilizing video technology and that the process described below for remote commissioning of affidavits or solemn declarations was utilized.

2. The affidavit or solemn declaration must contain a paragraph acknowledging the solemnity of making the affidavit or solemn declaration and acknowledging the consequences of making an untrue statement.

3. While the lawyer and the deponent are in each other's electronic and video presence, the deponent must show the lawyer the front and back of the deponent's valid and current government-issued photo identification. The lawyer must compare the video image of the deponent and information in the deponent's government-issued photo identity document to be reasonably satisfied that the name and the photo are of the same person and that the document is authentic, valid and current. The lawyer must record that these steps have been taken. The lawyer should also consider recording the session through which the affidavit or solemn declaration is made.
4. The lawyer and the deponent must both have the text of the affidavit or solemn declaration, including all exhibits, before each of them while in each other's electronic presence.

5. The lawyer and the deponent must review the affidavit or solemn declaration and exhibits together to verify that the language is identical.

6. At the conclusion of the steps outlined above, while still in each other's electronic presence, the lawyer, as commissioner, must administer the oath, the deponent will swear or affirm the truth of the facts contained in the affidavit or solemn declaration, and the deponent will affix the deponent's signature to the affidavit or solemn declaration.

7. Where it is not permissible to commission an affidavit or solemn declaration using an electronic signature, the deponent's signature must be affixed in ink to the physical (paper) copy of the affidavit or solemn declaration above, and the deponent must immediately scan the document,

save a copy immediately after scanning it, and immediately forward it electronically to the lawyer.

8. Where it is permissible to commission an affidavit or solemn declaration using an electronic signature, the deponent must immediately save the document and immediately forward it, together with the exhibits, electronically to the lawyer.

9. Upon receipt by the lawyer of the sworn affidavit or of a solemn declaration that has been attested to bearing the deponent's signature and all exhibits, the lawyer should, after having taken steps to ensure that the document received is the same as the document reviewed under the steps set out above, affix the lawyer's name and signature, as commissioner, to the jurat and exhibits.

10. If an electronic process is used that allows the lawyer, as commissioner, access to the document being signed by the deponent while in video contact with the deponent, the lawyer will then affix the lawyer's signature to the document, provided such process is permitted by the tribunal or court in which the affidavit or solemn declaration is to be used.

11. The version of the affidavit or solemn declaration that has been duly sworn or affirmed and contains the signatures of the deponent and the lawyer must then be saved by the lawyer, and may be filed with the Court or tribunal as may be required.**"**

3. In the Commentary to Appendix A, by renumbering clauses [12] to [20], together with their relevant associated headings, as [13] to [21]

Law Society
of British Columbia

CEO Report

July 5, 2024

Prepared for: **Benchers**

Prepared by: **Don Avison, KC**

1. Single Legal Regulator – Litigation Update

The Law Society's injunction application was heard by Justice Gropper in proceedings over a three day period during the week of June 17th.

In my view, Craig Ferris, KC and Laura Bevan of Lawson Lundell LLP did an excellent job of addressing the material issues, as did Gavin Cameron of Fasken Martineau DuMoulin LLP on behalf of the Trial Lawyers Association of BC.

Justice Gropper has reserved decision and it may be some time yet before we have a decision.

2. Anti-Money Laundering Initiatives and Related Media Reports

There have been a number of recent articles regarding the role of lawyers as "gate keepers" in money-laundering schemes, including the June 27, 2024 report by CTV and the Investigative Journalism Foundation (a copy of which you will find attached). I note that the recent Pelletier disbarment case figured prominently in the report.

The report indicates that the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) has provided information to policing agencies regarding as many as 229 cases, 92 of which apparently involved lawyers.

Over the time I have been CEO we have never heard from FINTRAC, and this remains the case despite recommendations from the Cullen Commission that this should be addressed.

Given these latest developments, I will be working with our Federation colleague, Frederica Wilson, Deputy Chief Executive Officer, to set a meeting with FINTRAC officials to see if we can come to an information sharing agreement.

Frederica Wilson has made a number of statements recently recognizing the leadership role that the Law Society of British Columbia has played on this front. I believe the significance of this will become quite apparent at the annual fall conference of the Federation of Law Societies of Canada. The conference will focus on "Anti-Money Laundering and Terrorism Financing Regulation – Challenges and Opportunities for Legal Regulators". There will be substantial BC content, including sessions with Tara McPhail, Director of Discipline and External Litigation, and Kurt Wedel, Staff Lawyer – Investigations, Monitoring & Enforcement, of the Law Society of BC.

At the July 5 Bencher meeting I will also update Benchers on the current status of work with the Counter Illicit Finance Alliance of British Columbia (CIFA-BC).

3. Law Society of BC Budget Development Process for 2025

Work on our 2025 budget is well underway. The Finance and Audit Committee will consider the proposed budget at their July 3, 2024 meeting, with the matter then coming before Benchers at the September 20, 2024 meeting.

As with recent years, we will provide a full *in camera* briefing for all Benchers prior to the September 20, 2024 meeting.

4. Innovation Sandbox and Moving Forward on Regularizing Status

With the passage of and Royal Assent to the *Legal Professions Act*, our current *Act* has been amended to allow the Law Society to exempt a person from the prohibition against the unauthorized practice of law if satisfied that the provision of legal services by the person will facilitate access to legal services without posing a significant risk to the public.

While we are disappointed that amendments to the current Act do not allow for immediately moving forward on formally licensing paralegals as previously requested, we believe the intention for the exemption process contemplated by these amendments was to provide an exit strategy for many of the participants in our Innovation Sandbox and to regularize their status.

Since these amendments are not included in the relief sought in the Law Society's injunction application, the Law Society is free to implement the exemption process. Staff are working on the potential impact on Innovation Sandbox participants, and what rules, if any, as permitted under s. 318 of the *Legal Professions Act*, might be appropriate. Further details will be brought forward at the September meeting for consideration.

5. Model Code Consultations on Truth and Reconciliation Commission Recommendations

I believe all Benchers are aware of the consultation process the Federation is currently conducting in respect of this matter.

We have recently received correspondence (attached) from the Assembly of First Nations (AFN) which I can confirm has gone to all 14 Canadian Law Societies.

I will be recommending that a collective response to the AFN should be coordinated through the Federation.

Don Avison, KC
Chief Executive Officer

CANADA | Investigative

Canadian lawyers play key role in money laundering, says financial intelligence report

Zak Vescera, Investigative Journalism Foundation
Special to CTVNews.ca

Updated June 27, 2024 3:14 a.m. PDT
Published June 27, 2024 3:10 a.m. PDT

Editor's note: *This story is a collaboration between the Investigative Journalism Foundation (IJF) and CTV News.*

VANCOUVER — For years, Vancouver lawyer Ronald Pelletier helped fraudsters hide dirty money, according to the B.C. Law Society.

Between 2014 and 2018, the Vancouver lawyer moved more than $31 million through his trust account from clients he knew were being investigated by American authorities for stock manipulation, the law society tribunal determined.

He bought 20 "burner" cell phones over 18 months, worried police might be listening in. He used pseudonyms in email addresses. And he raked in nearly $900,000 in 'legal fees' for moving the dirty cash, as set out in the tribunal's decision.

RELATED LINKS

- 2022 Fintrac presentation to Federation of Law Societies and Government of Canada

- **5 Canadian lawyers accused of money laundering or suspicious financial transations**
- **Who's watching lawyers? Expert weighs in on money laundering**

In November 2023, Pelletier became the first lawyer in B.C. to be disbarred for money laundering. A Law Society tribunal described his actions as a "complete abdication of the ethical standards to which lawyers are expected to adhere."

But a report from Canada's financial crimes watchdog suggests Pelletier isn't the only lawyer complicit in money laundering.

The Investigative Journalism Foundation and CTV News have obtained a never-released report suggesting Canadian lawyers are playing a key role in helping criminals launder their ill-gotten gains.

The 2022 report from the Financial Transactions and Reports Analysis Centre of Canada, or Fintrac, found legal professionals and law firms "implicated in a wide range of suspicious activity," including deals with organized criminal groups, drug traffickers and fraudsters.

Breakdown of reports captured in FINTRAC analysis

2017-2020

Category	Count of Reports	Count of Transactions	Total $ Value of Transactions
Suspicious Transaction Reports (STR)	4,300	56,200	$7.99 billion
Large Cash Transaction Reports	9,800	17,000	$154 million
Electronic Funds Transfer Reports	67,500	67,500	$13.8 billion

In an analysis that examined nearly $22 billion worth of transactions from 2017 to 2020, Fintrac found Canadian lawyers facilitating transactions involving organized crime groups with connections to foreign banks and individuals "suspected of money laundering through the purchase of high-value commodities including real estate, automobiles and luxury goods."

In 229 cases between 2017 and 2021, Fintrac sent that information to police and national security agencies, meaning the agency suspected money laundering or terrorist financing.

In 92 disclosures, the report said, Fintrac found connections between the legal profession and what it describes as "professional money laundering schemes." The report said such networks conduct "large-scale money laundering on behalf of large transnational organized crime groups, such as drug cartels and biker gangs."

The report, which the Investigative Journalism Foundation obtained through Access to Information legislation, suggests criminals rely on Canadian lawyers to launder money through real estate, setting up shell corporations and trust accounts that are shielded by solicitor-client privilege.

Many of those are legitimate financial activities regularly used by practising lawyers. But the report says they can also be used to move dirty money and obscure who owns what. Available data suggest lawyers are rarely criminally charged or disbarred for involvement in money laundering.

A 2024 Fintrac report claims some “key enablers” are even connected to law firms that “openly advertise” services used to launder money.

“The role of legal professionals in financial transactions is significant and they can have outsized perspective on more complex or sophisticated laundering schemes,” says that document.

Fintrac’s report is based on an analysis of more than 140,000 reports sent to the agency from third-party reporting entities, including banks and credit unions, between the start of 2017 and the end of 2020.

Reported transactions are not necessarily evidence of any crime, and Fintrac’s report does not say whether lawyers involved in those transactions are believed to have acted improperly.

But Michelle Gallant, a University of Manitoba law professor whose areas of expertise include money laundering, says the fact Fintrac sent disclosures based on those reports is significant.

“When they disclose, it means they’ve looked at something and they have enough reason to believe that maybe there’s some hints of wrongdoing or tainted finance,” Gallant said.

Lawyers breaking laws?

The report, which contains redactions throughout, appears to be the

most detailed analysis Fintrac has done on the role lawyers play in laundering money.

The 2022 Cullen Commission on money laundering in British Columbia described lawyers as a "gatekeeper" profession who "possess the knowledge, skill, and scope of practice that would be of interest to criminals."

Lawyers can create companies, wire money, transfer real estate and deposit money into a trust account, all under the cover of solicitor-client privilege, according to the 2022 Fintrac report.

The report does not name those lawyers. But it does include anonymized and undated case studies.

In one, Fintrac claims a Montreal businessman gave US$3 million to a Quebec attorney, cash that eventually found its way to a reputed Colombian drug trafficker via intermediaries in the United States, Panama and Switzerland.

The IJF contacted Montreal police about the example, who said the information was too vague to connect to any case. Quebec RCMP said the same.

More than 80 per cent of the transactions Fintrac studied involved less than $10,000. But the agency found that electronic fund transfers sent to lawyers accounted for 44 per cent of the nearly $22 billion value of all the studied transactions.

Many of the suspicious transfers involved jurisdictions outside of Canada.

"The use of international electronic funds transfers by legal professionals to move funds for clients, particularly in and out of high-risk jurisdictions, is a well-documented money laundering/terrorist financing typology," the report said.

The report said Fintrac also found examples of lawyers and accountants being used to "help criminals conceal wealth and illicit assets."

One 2024 document, which is presented as a "backgrounder" on money laundering and the legal profession, said Fintrac had found lawyers play a "central role" in creating corporate structures like shell companies that help hide dirty cash and conceal the identity of an asset's owners.

"Open source research shows that key enablers in this space are often linked to law firms that openly advertise their company formation and management services," the 2024 document said.

Fintrac also claimed its Strategic Intelligence, Research and Analytics unit had "observed Canadian shell companies linked to legal professionals engaging in likely evasion of Russian sanctions" related to that country's invasion of Ukraine.

Michael Levi, a Cardiff University professor who has studied money laundering for decades and is referenced in the Fintrac report, said

laundering for decades and is referenced in the Fintrac report, said lawyers involved in suspicious transactions are not always acting improperly.

Lawyers who facilitate such transactions may have little reason to suspect wrongdoing.

But Levi said examples cited in the document highlight “pretty dodgy” behaviour on the part of the attorneys.

“I would regard it as dodgy, at best reckless,” Levi said.

Who watches the watchers?

Unlike real estate brokers or banks, for example, lawyers are not subject to Canada’s anti-money laundering laws, which would require them to report suspicious transactions to Fintrac.

That means Fintrac’s ability to study lawyers is also limited, since it must rely on reports from third-party financial institutions.

Canada has tried twice to cover lawyers under the Proceeds of Crime and Terrorist Financing Act. But lawyers resisted, arguing such laws would violate solicitor-client privilege and undermine their independence.

“Law societies said ‘You’re asking lawyers to snitch on their clients, and that’s nuts,’” Gallant said.

In 2015, Canada’s law societies won a Supreme Court case that affirmed the federal government’s proposed legislation at the time “constituted state interference with the lawyer’s duty of loyalty to the client.”

Those self-regulating law societies have introduced rules intended to prevent money laundering in the profession, including limits on accepting large cash payments and requirements that lawyers ascertain the source of a client’s wealth. Provincial and territorial laws give those societies the power to investigate and discipline lawyers who don’t comply.

The Law Society of British Columbia and the Federation of Law Societies of Canada, a national umbrella organization, both declined to be interviewed for this story.

But in prepared statements, they said their organizations took money laundering seriously.

Law Society of B.C. spokesperson Christine Tam said her organization conducts audits on law firms every four to six years, at a minimum, and that it has taken a number of steps to educate members about money laundering.

The society also established a task force in 2022 to consider recommendations made by the Cullen Commission on the handling and management of lawyers’ trust funds and client identification rules. The law society’s statement said that work continues.

The Federation of Law Societies of Canada says it participates in a working group with RCMP, Fintrac and the federal government to

discuss money laundering risk in the legal profession.

A statement sent by spokesperson Alex Bolt argued law societies can address those risks in a “constitutionally compliant way.” The statement also argued law societies were better positioned than government agencies to regulate money laundering risk among their members.

“The powers and tools available to law societies to investigate breaches of anti-money laundering rules, including the power to compel production of information protected by solicitor-client privilege, far outstrip those available to Fintrac and law enforcement agencies,” said that statement.

Lawyer and former Fintrac officer Jean-François Lefebvre disagrees. Lefebvre, who now works as an anti-money laundering consultant, said he believes law societies have gotten considerably better at addressing money laundering in recent years. But he argues they lack the expertise of an agency like Fintrac, which deals exclusively with financial crime and terrorist financing.

“It’s not because they were not good. But we had to teach them what to look for,” Lefebvre said.

“To me, you shouldn’t be able to hide criminal stuff or terrorist stuff in the name of solicitor-client privilege,” Lefebvre said. “Because there’s a bigger interest attached to our country and the security of people.

Open data suggest serious penalties for lawyers implicated in money laundering are rare.

The IJF surveyed law society hearing results from Ontario, Alberta, British Columbia, Saskatchewan, Manitoba and Quebec since 2019. It found only four cases where lawyers were disbarred for their involvement in such schemes.

Proposed reform

The B.C. government recently passed legislation that would create a new, single regulator for legal professionals like lawyers, notaries and paralegals. A government spokesperson, in a prepared statement, said the new body could issue fines of up to $200,000 for violating rules. In comparison, the maximum fine the Law Society of B.C. can issue a respondent or law firm is $50,000.

The new legislation is controversial and the Law Society of B.C. has challenged it in court, arguing it violates the profession’s independence.

“We are confident that new rules enacted by the future single regulator will maintain, even strengthen, the protections in place to prevent the role that lawyers might have in money laundering, either knowingly or unknowingly,” the B.C. government spokesperson said.

Levi, though, said Canada’s response to money laundering and the legal profession is ultimately constrained by the fact lawyers are not subject to federal anti-money laundering laws.

Levi said Canada – along with the United States and Australia – are “outliers” among other developed countries in that regard.

“Canada is a kind of super-secrecy jurisdiction, in many senses, and that is the culture,” Levi said.

A 2018 Finance Canada report describes the current system as a “deficiency that negatively affects Canada’s global reputation.”

But the Cullen Commission did not recommend imposing such rules on lawyers, citing the “constitutional difficulties” in doing so and noting the improvement made by the Law Society of B.C. in addressing it.

The Financial Action Task Force, a coalition of countries combating money laundering, has previously determined Canada’s regulation of lawyers does not meet its standards.

FATF is set to next review Canada’s performance next year, something Lefebvre believes could spur the federal government to once again try to regulate lawyers.

Finance Minister Chrystia Freeland’s office declined to provide an interview for this story. And the Ministry of Finance would not share the government’s position on the matter.

“Everyone must follow the law, including when it comes to anti-terrorism and anti-money laundering laws,” said a spokesperson for the Ministry of Finance.

Gallant said lawyers should be regulated at a higher standard than other professionals, like accountants, because of the power they hold.

“If lawyers fail to adequately govern themselves and adequately do what they need to do to resist money laundering, the right to self-governance is not constitutionally guaranteed,” Gallant said.

Zak Vescera is a Vancouver-based journalist who focuses on white-collar crime

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A statue of Themis, Goddess of Justice, in the B.C. Supreme Court building i
on June 26, 2024 (Zak Vescera / Investigative Journalism Foundation and C

Assembly of First Nations

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June 17, 2024

Law Society of British Columbia
845 Cambie Street,
Vancouver, BC V6B 4Z9
By email: communications@lsbc.org

Dear Sir/Madame:

I write to you today on behalf of the Assembly of First Nations (AFN) in support of the development of distinctions-based rules of professional conduct that will ensure that First Nations clients are charged fair and reasonable legal fees.

As you are no doubt aware, First Nations -including the AFN- are increasingly involved in sizeable and complex legal claims which may take years or even decades to settle. I would point you to the recent First Nations Child and Family Services, Jordan's Principle, and Trout Class Settlement Agreement, which was recently reached and provided $23.34 billion in compensation for the victims of Canada's discrimination in the delivery of child and family services, as well as in the provision of services under Jordan's Principle. The AFN was a principal party to said agreement, which was the product of over 16 years of advocacy. As a sophisticated national organization advocating on behalf of First Nations in Canada, the AFN was able to ensure that appropriate legal representation was obtained and that fair and reasonable fees for class action counsel were appropriately addressed.

However, not all First Nations in Canada have comparable capacity when it comes to engaging with legal professionals in relation to their potentially significant claims, which are grounded in a history of colonization and intergenerational trauma. This is equally true when dealing with First Nations individuals whose claims are grounded in historical victimization by the state or others, as in the case of those who made claims under the Indian Residential Schools Settlement Agreement or the beneficiaries of the aforementioned Final Settlement Agreement secured by the AFN.

It is with this legacy of colonization and intergenerational trauma in mind, and in the interest of reconciliation, that the AFN calls on the Law Society of British Columbia to develop and implement, in coordination and collaboration with First Nations, distinctions-based rules of professional conduct to ensure that First Nations clients are charged fair and reasonable legal fees by the legal profession, including caps on percentages that can be charged for contingency fees and an outright ban on exorbitant fees.

…/2

In support of such efforts, we would also note the Truth and Reconciliation Calls to Action which generally call on governments, institutions and organizations across the country, including law societies, law schools and the justice sector, broadly speaking, to build relationships with, and improve access to justice for First Nations peoples.

The AFN would be happy to discuss how it might contribute to the development of the necessary refinements to the rules of professional conduct aimed at improving access to justice for First Nations in Canada, or any efforts currently being undertaken by the Law Society of British Columbia in this regard.

Sincerely,

Craig Gideon
Acting Chief Executive Officer

Law Society
of British Columbia

IERM Task Force Recommendations: Year One Implementation Update

To: Benchers

Purpose: For Information

From: Staff

Date: July 5, 2024

IERM Task Force Recommendations: Year One Implementation Update

Law Society of British Columbia

RECOMMENDATION	ACTIONS UNDERTAKEN TO JULY 2024
Recommendation 1.0: The Law Society should decolonize its institution, policies, procedures, and practices.	
Recommendation 1.1: The Law Society should encourage individuals at all levels of the organization to self-reflect on and remove their colonial biases, attitudes, and behaviours that are based on perceptions of Indigenous people and laws as deficient.	Staff completion of the Indigenous Intercultural Course (IIC) is ongoing. 89% of staff reported having completed the IIC, with 5% having started and 6% not yet started. Senior Advisor, Indigenous Engagement has completed meet and greets with staff and departments to explain about the importance of Indigenous Engagement, the IERM Report, and implementation of its recommendations. Senior Advisor, Indigenous Engagement continues meet and greets with new staff and stays connected with Law Society of BC departments. Senior Advisor, Indigenous Engagement developed Indigenous History Month resources, which were communicated out to staff and the public, June 2023. Senior Advisor, Indigenous Engagement collaborated and developed resources for communications, staff interaction and participation for Indigenous History Month, June 2024. In 2023, staff wide events have been held to celebrate National Day for Truth & Reconciliation aka Orange Shirt Day Event (September 21) and National Indigenous Veterans Day (November 8). Senior Advisor, Indigenous Engagement has booked an event for staff with a very special guest to commemorate Orange Shirt Day/National Day for Truth & Reconciliation Day, fall 2024. Senior Advisor, Indigenous Engagement was featured on the LawCast podcast in February 2024 on Indigenous reconciliation and cultural safety. Staff training events, entitled “Lunch and Learn: The Road to the IERM Task Force Report”, to teach why the Law Society is committed to implementing the IERM Task Force Report, about the Indigenous Framework, lawyer treatment of Indigenous people, and building trust in

IERM Task Force Recommendations: Year One Implementation Update

Law Society of British Columbia

	regulatory practices. Senior Advisor, Indigenous Engagement and Director, Policy & Practice completed seven, 75-minute, Lunch and Learn sessions about the Road to the IERM Task Force Report.
Recommendation 1.2: The Law Society should retain an Indigenous expert to identify and remove unnecessary colonial principles from the Rules, *Code*, policies, procedures, and practices, and should support the provincial government's efforts to remove unnecessary colonial principles from the *Act*.	A staff working group has been established to consider decreasing reliance on adversarial processes. Ongoing efforts with the staff working group.
Recommendation 1.3: The Law Society should identify and remove unnecessary adversarial aspects of its processes.	
The Law Society should make it as easy as possible for lawyers to apologize without fear of further sanctions, including by increasing opportunities for consent agreements and alternative discipline processes.	Law Society of BC Apology Guidelines are in the final draft stage and will be shared on our website and with the profession.
The Law Society should support the use of victim impact statements more often in appropriate circumstances.	The LSBC Tribunal has updated their guide on "Information for Witnesses including Witness Accommodation". It sets out the Tribunal's commitment to ensure an equal opportunity to participate in the hearing processes at the Tribunal.
The Law Society should adopt alternative options for giving evidence, such as the use of video-conferencing, privacy screens, victim impact statements, and an inquisitive model of questioning (e.g. where a panel member instead of an opposing lawyer poses questions to witnesses).	The LSBC Tribunal has updated their guide on "Information for Witnesses including Witness Accommodation". It sets out the Tribunal's commitment to ensure an equal opportunity to participate in the hearing processes at the Tribunal.

IERM Task Force Recommendations: Year One Implementation Update

Law Society of British Columbia

Recommendation 1.4: The Law Society should review its processes and practices with a view to increasing efficiencies in the resolution of complaints.	Several new processes have been implemented to more efficiently address complaints: • Consent agreements, which allow complaints to be resolved prior to the issuance of a citation with a resolution that would be in the range expected if the matter went through the hearing process. This process allows for complaints to be concluded far quicker and more cost effectively than a hearing and in a less adversarial process. • Administrative penalties have been introduced to address certain breaches of the Law Society Rules. This allows matters to be concluded more quickly than the former process of investigation and referral to the Discipline Committee. • The Alternative Discipline Process ("ADP") has been implemented to divert complaints about lawyers from the usual professional conduct and discipline processes. ADP is an option where the lawyers have a health issue that may have contributed to their conduct issue. There are eligibility criteria for entrance into ADP and those admitted who continue to meet the eligibility criteria are able to focus on their health and wellbeing without fear that the Law Society's usual investigation and discipline processes will apply to them. Senior Advisor, Indigenous Engagement and Indigenous Navigator continue working with staff to provide a trauma-informed lens, to determine any gaps in processes and to continue to improve upon efficiencies. Senior Advisor, Indigenous Engagement supports, works, and collaborates with the Indigenous Navigator and provides advice to the applicable departments.
Recommendation 1.5: The Law Society should minimize unnecessary formalities within its processes and practices, such as specialized language, hierarchical	Where possible, the seal has been removed from the Law Society Building at 845 Cambie Street in Vancouver, BC. Latin motto and seal removed from Law Society communication materials.

seating arrangements, formal dress codes, and colonial symbols.	Barrister and Solicitor Oath amended to recognize and affirm the Aboriginal and treaty rights of First Nations, Inuit and Métis peoples. Indigenous art expansion at Law Society Building. Senior Advisor, Indigenous Engagement has met with Communications team to discuss and review website. Senior Advisor, Indigenous Engagement and CEO will attend a July call ceremony on the traditional territory of Indigenous lawyer at Gitlax̲t'aamiks, formerly New Aiyansh.
Recommendation 2.0: The Law Society should Indigenize its institution, policies, procedures, and practices.	
Recommendation 2.1: The Law Society should apply the Indigenous Framework in its application of the *Act*, Rules, *Code*, policies, procedures, and practices.	
The Law Society should ensure that all Law Society representatives receive training on the Indigenous Framework and its application in relation to the *Act*, Rules, *Code*, policies, procedures, and practices.	Staff training events, entitled "Lunch and Learn: The Road to the IERM Task Force Report", to teach why the Law Society is committed to implementing the IERM Task Force Report, about the Indigenous Framework, lawyer treatment of Indigenous people, and building trust in regulatory practices. Senior Advisor, Indigenous Engagement and Director, Policy & Practice completed seven, 75-minute, Lunch and Learn sessions about the Road to the IERM Task Force Report. Senior Advisor, Indigenous Engagement provided an overview of her role including work on the IERM recommendations at the Bencher orientation in January 2024. In progress: Tribunal Chair, counsel and staff are taking an Indigenous-led course about Indigenous colonial trauma and equity informed practice. This same course is made available to Tribunal adjudicators.

IERM Task Force Recommendations: Year One Implementation Update

Law Society of British Columbia

	In progress: Chief Legal Officer and all Professional Regulation staff are taking an Indigenous-led course about Indigenous colonial trauma and equity informed practice. Practice Advice team will take Indigenous-led course about Indigenous colonial trauma and equity informed practice in summer 2024. Policy team will take Indigenous-led course about Indigenous colonial trauma and equity informed practice in summer 2024.
Recommendation 2.2: The Law Society should uphold its prior commitments to increase Indigenous representation throughout the organization, including at the governance, leadership, and staff levels.	
Given the current perceived underrepresentation of Indigenous individuals at the staff level, the Law Society should develop an Indigenous recruitment strategy to hire, promote, and support the retention of more Indigenous staff throughout the Law Society, including in executive leadership roles.	In May 2023, the Law Society hired a Senior Advisor, Indigenous Engagement. Job description for Indigenous Navigator role reviewed with a view to inclusivity as a key metric. Hired Indigenous Navigator in January 2024. Senior Advisor, Indigenous Engagement worked with the Communications team to develop messaging to share publicly about hiring an Indigenous Navigator. Two Indigenous summer law students were hired in summer 2023. Hired one Indigenous summer law student in summer 2024. Hired one Indigenous articled student in summer 2024.
The Law Society should create an organizational culture that supports the inclusion and success of Indigenous representatives at all levels of the organization.	Job description for Indigenous Navigator role reviewed with a view to inclusivity as a key metric. Ongoing work with respect to human resources and organizational culture.

IERM Task Force Recommendations: Year One Implementation Update

Law Society of British Columbia

Recommendation 2.3: The Law Society should engage with Indigenous individuals, including Indigenous lawyers and legal academics, to incorporate Indigenous legal principles into the Law Society's processes and practices.	Engaged with Truth and Reconciliation Advisory Committee (TRAC), CBABC – Aboriginal Lawyers Forum. Ongoing relationship-building continues with Indigenous organizations and groups including organizations connected to Indigenous justice support services. Ongoing relationship-building commenced with Indigenous organizations and groups.
Recommendation 2.4: The Law Society should continue adapting its processes to incorporate flexible, culturally relevant, and trauma informed options and resources for Indigenous complainants and witnesses.	Staff completion of the Indigenous intercultural course is ongoing. 89% of staff reported having completed the IIC, with 5% having started and 6% not yet started. Hired Indigenous Navigator in January 2024. The LSBC Tribunal has developed a new guide, "Indigenous Engagement with the LSBC Tribunal." It outlines their inclusive policies, protocols, and hearing processes which can be tailored to different Indigenous cultures, laws and needs. In progress: Tribunal Chair, counsel and staff are taking an Indigenous-led course about Indigenous colonial trauma and equity informed practice. This same course is made available to adjudicators. In progress: Chief Legal Officer and all Professional Regulation staff are taking an Indigenous-led course about Indigenous colonial trauma and equity informed practice. Practice Advice team will take Indigenous-led course about Indigenous colonial trauma and equity informed practice in summer 2024. Policy team will take Indigenous-led course about Indigenous colonial trauma and equity informed practice in summer 2024.
Recommendation 2.5: The Law Society should develop a process for investigating and addressing systemic issues that may be affecting Indigenous legal clients on a broad scale, rather than relying	Hired Indigenous Navigator. Developing a professional conduct solution explorer.

on individuals to bring forward complaints.	
Recommendation 3.0: The Law Society should build trust and relationships with Indigenous individuals, organizations, and communities.	
Recommendation 3.1: The Law Society should raise awareness throughout the province about the Law Society's role and the services it provides, including supports and options available to Indigenous complainants and witnesses.	Ongoing meetings between Executive Director and Senior Advisor, Indigenous Engagement and external actors. In May 2024, Senior Advisor, Indigenous Engagement and Indigenous Navigator travel to Northern BC to meet with various organizations and share our respective roles and discuss complaints process. BC Northern cities visited: Terrace, Prince Rupert, Smithers, Prince George, Williams Lake. Presentations at CBABC Northern Law Talks, CBABC Truth & Reconciliation Committee, and UBC Business of Law class in regard to the Law Society's reconciliation initiatives and the roles of the Senior Advisor, Indigenous Engagement and Indigenous Navigator.
The Law Society should ensure that a variety of communications tools are used, such as pamphlets, social media, in-person conversations, and videos.	Professionally printed IERM Task Force reports for external outreach. Infographic for Complaints Process on website (printable). In progress: Postcards with contact and complaints information to share with the public. Indigenous Framework and Principles Quick Guide created for Bencher orientation. Ongoing: Senior Advisor, Indigenous Engagement and/or Indigenous Navigator making connections in BC. Senior Advisor, Indigenous Engagement and Indigenous Navigator travel to Northern BC to meet with various organizations and share our respective roles and discuss complaints process. BC Northern cities visited: Terrace, Prince Rupert, Smithers, Prince George, Williams Lake. Presentations at CBABC Northern Law Talks, CBABC Truth & Reconciliation Committee, and UBC Business of Law class in regard to the Law Society's reconciliation initiatives and the roles of the Senior Advisor, Indigenous Engagement and Indigenous Navigator.

IERM Task Force Recommendations: Year One Implementation Update

Law Society of British Columbia

The Law Society should provide clear, plain language information about:	
the standards of conduct that clients should expect from their lawyers, including specific examples of the types of conduct and circumstances that may warrant a complaint against a lawyer;	Ongoing work to develop strategy for public awareness campaign. Developing a professional conduct solution explorer.
how to make a complaint, steps involved, anticipated timelines, and possible outcomes; and	Professional Conduct working with Communications to do a video about the complaints process. Ongoing work to develop strategy for public awareness campaign. Developing a professional conduct solution explorer.
all supports that are available for Indigenous complainants and witnesses in the Law Society's processes.	The LSBC Tribunal has updated their guide on "Information for Witnesses including Witness Accommodation". It sets out the Tribunal's commitment to ensure an equal opportunity to participate in the hearing processes at the Tribunal.
Recommendation 3.2: The Law Society should prioritize hiring an Indigenous "navigator" to guide Indigenous complainants and witnesses through the Law Society's processes.	Role has been posted, circulated and hired. The LSBC Tribunal has developed a new guide called "Indigenous Engagement with the LSBC Tribunal".
Recommendation 3.3: The Law Society should create a safe atmosphere for Indigenous individuals, including in the institution's organizational, physical, and digital spaces.	Where possible the seal has been removed from the Law Society Building at 845 Cambie Street in Vancouver, BC. Latin motto and seal removed from Law Society communication materials. Indigenous art expansion at the Law Society Building at 845 Cambie Street in Vancouver, BC. Indigenous Library for staff launched with a collection of books and learning materials by Indigenous authors and experts.

	Ongoing. Senior Advisor, Indigenous Engagement works closely with communications team generally and in regard to website and public materials.
Recommendation 3.4: The Law Society should develop connections with support agencies to identify potential resources and opportunities to assist Indigenous complainants and witnesses.	Key connections have been identified and outreach started. Meetings have taken place with • BC Treaty Commission; • First Nations Summit; • Métis Nation of BC; and • Native Courtworker and Counselling Association of British Columbia. In May 2024, Senior Advisor, Indigenous Engagement and Indigenous Navigator travel to Northern BC to meet with various organizations and share our respective roles and discuss complaints process. BC Northern cities visited: Terrace, Prince Rupert, Smithers, Prince George, Williams Lake. Ongoing communications strategy. Connection development is ongoing.
Recommendation 3.5: Subject to guidance from the Leadership of the Tsilhqot'in Nation, the Law Society should continue its efforts to make amends with the Tsilhqot'in Survivors for the outcome of the *Bronstein* decision having caused disappointment, grief, and anguish amongst the Tsilhqot'in people, and to engage with the Tsilhqot'in Survivors on how the Law Society's processes could be improved.	Considering next steps to approach according to protocol and proper engagement.

IERM Task Force Recommendations: Year One Implementation Update

Law Society of British Columbia

Recommendation 4.0: The Law Society should be more proactive in the prevention of harm to the public, particularly Indigenous individuals.	
Recommendation 4.1: The Law Society should clarify competency requirements in the Law Society's *Code of Professional Conduct* to specifically include intercultural competence.	Rule 3-28.1 requires all practising lawyers to complete the Indigenous intercultural course and certify completion before: • the lawyer has engaged in the practice of law for two years in total, whether or not continuous, or • January 1, 2024, whichever is later. Model Code cultural competency provisions are being reviewed by staff, Truth & Reconciliation Advisory Committee, and Equity, Diversity & Inclusion Advisory Committee. Consultation with profession ongoing, including session on June 26, 2024.
Recommendation 4.2: The Law Society should ensure Practice Advisors are equipped to provide practice support materials, resources, and guidance on intercultural competency and trauma-informed legal services.	100% completion of Indigenous Intercultural Course amongst team members. Ongoing training of Equity Advisor.
Recommendation 4.3: The Law Society should ensure that lawyers have access to resources, leading practice guides, and educational opportunities with respect to the provision of inter-culturally competent and trauma informed legal services to Indigenous clients.	Ongoing discussions with external Indigenous lawyers, academics and leaders, who have noted the importance of having information to explain the similarities and distinctions between Equity, Diversity and Inclusion (EDI) work and Indigenous people. Website is updated with messaging in regard to distinctions between EDI work and Indigenous people.
Recommendation 4.4: The Law Society should consult with Indigenous legal organizations to consider ways to identify lawyers who can demonstrate high levels of intercultural competence and positive professional engagement with Indigenous clients.	Ongoing relationship building with Indigenous organizations. Meetings have taken place with: • BC Treaty Commission; • First Nations Summit; • Métis Nation of BC; and • Native Courtworker and Counselling Association of British Columbia.

IERM Task Force Recommendations: Year One Implementation Update

Law Society of British Columbia

Recommendation 5.0: The Law Society should implement the recommendations.	
Recommendation 5.1: Once the Task Force completes its mandate, the Law Society must ensure that there is effective oversight of the implementation of its recommendations.	Monthly meetings with CEO. Periodic updates at Truth and Reconciliation Advisory Committee (TRAC) meetings. First Report to Benchers in December 2023. Update to Benchers one year after Bencher approval on July 14, 2024.
Recommendation 5.2: To optimize implementation, an implementation plan that identifies immediate steps to be taken in the first six months following the approval of the recommendations should be developed.	Implementation plan created. First Report to Benchers provided within 5 months of Bencher approval.
The Law Society should update the implementation plan annually, and track progress in its annual report.	First Report to Benchers in December 2023.
Recommendation 5.4: The Law Society should annually assess whether revised processes and policies are working well, and make appropriate adjustments as necessary.	Report to Benchers in December 2023.

Law Society
of British Columbia

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

To: Benchers

Purpose: Report

From: Brook Greenberg, KC
Law Society Representative on the Federation Council

Date: July 5, 2024

Purpose

1. This memorandum is intended to provide a summary of the Federation Council's June 2024 meeting.

The Federation Council Meeting

2. The Federation Council met in-person in Ottawa on June 10, 2024.

3. The meeting commenced with a discussion with the Minister of Justice and Attorney General of Canada, the Honourable Arif Virani.

4. Minister Virani reported that federal Budget 2024 had been tabled in mid-April and included projections for five years of legal aid funding, including up to $400 million for criminal legal aid programs, and $200 million for immigration and refugee legal aid programs.

5. Minister Virani also advised that the Budget contains funding for the federal Indigenous Justice Strategy.

6. There are also provisions in the budget for funding with respect to *Criminal Code of Canada* amendments relating to auto theft and money laundering prevention.

7. The Minister reported that 17 judicial appointments had previously been allocated to fill positions in the unified family courts of Alberta, but that the province had advised it did not intend to fill those positions. As a result, those 17 positions are being added to the general pool of superior court positions, nationally.

8. Minister Virani confirmed he was aware of the Federation's position in respect of the *Income Tax Act* litigation, but that since the matter was before the courts, he would not comment on it further.

9. He said that Bill C-63, the *Online Harms Act*, had been tabled in order to, among other things, strengthen the duty to report in respect of and address concerns relating to child pornography.

10. Likely knowing that the pace of judicial appointments was a frequent topic of inquiry and discussion by the Federation, the Minister reported that judicial appointments were being made in record numbers: 113 appointments in the last ten months.

11. The Minister then took questions from members of the Council, including follow-ups about judicial appointments, as well as questions about how the Ministry was responding to the results published in the National Study on the Health of Legal Professionals.

12. Following the dialogue with Minister Virani, the Rt. Honourable Richard Wagner, Chief Justice of Canada, joined the meeting for a discussion with the Council.

13. Chief Justice Wagner began by emphasizing that while there is certainly a place for legitimate criticism of courts and their decisions, it is important to draw a line between such legitimate critiques on the one hand, and commentary that undermines the court and the rule of law on the other.

14. The Chief Justice observed that in Canada, the rule of law remains strong, but there are concerns about the dissemination of misinformation and disinformation, and we must remain vigilant.

15. Chief Justice Wagner provided an example of criticism of a recent Supreme Court decision made by a politician who had not read the decision and based their criticism on a complete misunderstanding of the actual reasons for judgment.

16. According to the Chief Justice, the justice system is still being starved of resources, particularly infrastructure resources. He called upon provincial governments to do more to support the justice system, and to provide the resources required to keep it operating and operating at an ever-improving level.

17. The Chief Justice took questions from members of the Council, including with respect to fostering more diversity among counsel appearing at the Supreme Court of Canada. In particular, questions were posed about an Ontario Court of Appeal initiative to provide more time for submissions specifically to incentivize and allow more junior lawyers to actively participate in making submissions. The Chief Justice was interested in the initiative and welcomed receiving more information about it.

18. After discussions with our guests, the Council addressed its regular business.

19. Included among those items, the Federation's current strategic plan is in its fourth of five years. As a result, there was discussion about engaging in a strategic planning process to replace the current plan.

20. The Council then received updates from its various committees. Some of the more significant updates are summarized below.

The Indigenous Advisory Council (the "IAC")

21. The Council meeting was attended by Ashley Wehrhahn, a newly appointed student member of the IAC.

22. The IAC is working along with the Council of Canadian Law Deans – Federation working group to plan a proposed joint Indigenous Symposium to be held in 2025.

23. The IAC has been asked to engage and consult with the:

    a. Standing Committee on the Model Code;

    b. NCA-Assessment Modernization Committee; and

    c. Standing Committee on Discipline Standards.

Money Laundering Prevention

24. As previously reported, the Standing Committee on Anti-Money Laundering and Terrorist Financing remains focused on preparing for the parliamentary review of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, as well as the peer review to be conducted by the Financial Action Task Force.

25. Standing Committee Co-Chair Frederica Wilson is retiring from the Federation, and a new Co-Chair will be appointed following her retirement.

26. The focus of the Federation's annual conference in October will be on money laundering prevention.

Standing Committee on the Model Code of Professional Conduct

27. The Standing Committee on the Model Code of Professional Conduct (the "Model Code Committee") has been busy.

28. It is currently seeking and receiving feedback with respect to draft amendments to the Model Code in response to the Truth and Reconciliation Commission's Call to Action 27.

29. The deadline for providing feedback with respect to these draft amendments has been extended to November 29, 2024.

30. The Standing Committee has begun its review of the duty to report provisions of the Model Code. That review includes consideration of a potential duty to report discrimination and harassment, as well as a more general review of rule 7.1-3.

31. In April, the Model Code Committee invited me, as chair of the Standing Committee on Mental Health and Wellness, to consult in respect of the duty to report and the stigmatizing language and assumptions contained within the current draft of rule 7.1-3.

32. It is somewhat ironic that at the same time the work the LSBC has done to reduce stigma and stigmatizing assumptions about mental health and substance use issues in the regulation of legal professionals is being extended and accepted nationally, that the BC provincial government is actively and unabashedly seeking to reinstitute those same discriminatory assumptions, including in its legal submissions made in the recent injunction application.

National Wellness Study

33. The National Wellness Study Steering Committee (the "Steering Committee") reported that more draft Phase II reports had been received from Dr. Cadieux.

34. The draft reports are being reviewed by the Steering Committee in order to provide feedback.

35. The Steering Committee will hold a final meeting with Dr. Cadieux on August 21, 2024.

36. The completion and release of all Phase II reports is anticipated for the fall of 2024.

37. The Steering Committee is preparing a communications plan for the release of the Phase II reports.

Constitutional Challenge to Mandatory Reporting Provisions in the *Income Tax Act*

38. The Council received an update on this litigation, including that the Attorney General still has not filed a response to the Federation's petition.

39. In the federal Budget 2024, the government announced plans to amend the *Income Tax Act* to exempt the failure to file an information return in respect of a reportable or notifiable transaction from the scope of the legislation's general penalty provisions. The amendment would eliminate the possibility of imprisonment for failing to file the required returns.

40. The effect of the planned amendment on the Federation's constitutional challenge is being considered by counsel.

NCA Assessment Modernization Committee

41. The NCA Assessment Modernization Committee received survey feedback on its proposed competency profile, as well as from the IAC.

42. The Committee revised the competency profile in respect of the feedback, and then finalized the profile.

43. The next step for the Committee is to identify and develop appropriate tools to assess these competencies. In furtherance of that goal, the Federation has issued a request for proposals to invite proposals for consultation services to identify and describe potential assessment tools.

44. The RFP closed on June 14, 2024, following the June Council meeting.

Standing Committee on Mental Health and Wellness

45. The Standing Committee on Mental Health and Wellness met twice prior to the June 10 Council meeting, and then immediately afterwards on June 11, 2024.

46. The focus of the meetings to date have been to create a work plan. The work plan is now being finalized and is to be delivered to Council by the end of June 2024.

47. The Council approved a request made by the Committee to change its name from the Standing Committee on Wellness to the Standing Committee on Mental Health and Wellness.

CanLII and Lexum Reports

48. CanLII provided its audited financial statements for the year ending December 31, 2023, accompanied by a clean audit opinion.

49. CanLII continues to work on the strategic initiatives previously reported on and is working on a budget for next year.

Next Meeting

50. The next meeting of the Federation Council will be held following the Annual Conference, in Halifax on October 18, 2024.

Law Society
of British Columbia

Quarterly Financial Report: May 2024

To:	Finance & Audit Committee Meeting (July 3, 2024) Bencher Meeting (July 5, 2024)
Purpose:	Update
From:	Finance Department
Date:	July 5, 2024

Quarterly Financial Report - End of May

Attached are the financial results and highlights to the end of May 2024.

General Fund (excluding capital and TAF)

To the end of May 2024, the General Fund operations resulted in a positive variance to budget, with revenues close to budget, and operating expenses much lower than budget, mainly due to timing differences.

Revenue

Total revenue for the period was $14.4 million, $126,000 (1%) more than budget. Revenues were under budget in practice fees, electronic filing revenues, CPD penalties, and administrative penalties, offset by higher PLTC revenues, interest income and recognition of excess external organization funding from prior years.

Operating Expenses

Operating expenses for the period were $13.5 million, $1.6 million (11%) below budget, mainly due to timing differences. There were savings in compensation, external counsel fees, software maintenance costs and other miscellaneous program costs. For permanent differences, Discipline and Custodianship external counsel fees were lower, offsetting higher costs in a few program areas.

TAF and Trust Assurance Expenses

First quarter TAF revenue was $742,000, $477,000 below budget. The real estate market unit sales are projected to be up slightly from 2024 (7.8%), but the 2023 base unit sales were behind forecast significantly, so we are starting at a lower base for the year.

Trust assurance program costs are slightly under budget, with savings of $112,000 to date.

Lawyers Indemnity Fund

LIF assessment revenues were $7.7 million, very close to budget.

LIF operating expenses were $4.3 million, $720,000 under budget, with savings in compensation and insurance costs, and professional fees.

The market value of the LIF long term investment portfolio has increased by $10.0 million since December 2023. The portfolio returns for the period were 3.9%, below the benchmark of 4.7%.

Law Society of British Columbia

Summary of Financial Highlights ($000's)

2024 General Fund Results - YTD May 2024 (Excluding Capital Allocation & Depreciation)

	Actual	Budget	$ Var	% Var
Revenue (excluding capital)				
Practice Fees	11,558	11,233	325	3%
PLTC and Enrolment Fees	578	481	97	20%
Electronic Filing Revenue	321	572	(251)	-44%
Interest Income	782	695	87	13%
Registration and Licensing Revenue	344	369	(25)	-7%
Fines, Penalties & Recoveries	185	345	(160)	-46%
Insurance Recoveries	2	11	(9)	0%
Other Revenue	143	56	87	155%
Other Cost Recoveries	22	60	(38)	-63%
Building Revenue & Tenant Cost Recoveries	503	490	13	3%
	14,438	14,312	126	1%
Expenses (excluding depreciation)	13,519	15,136	1,617	11%
	919	(824)	1,743	

Summary of Variances - YTD May 2024

Revenue Variances:	
Permanent Variances	
Practice Fees - 14,807B vs 14,770F FTE, plus prior years excess funding ext orgs to net assets	325
PLTC - 650 students forecasted vs 605 budgeted	97
Grant revenue - Law Foundation PLTC increased funding	91
Electronic Filing Revenue - lower real estate transactions, and less LOTA	(251)
Discipline & citation fines - lower APP revenue	(50)
Miscellaneous	31
Interest - higher cash balances and higher interest rate	87
	330
Timing Variances: includes CPD reporting penalties ($79k)	(204)
	126
Expense Variances:	
Permanent Variances	
Governance retreat - higher costs for hotel	(45)
Finance - system consultants & contractors	(49)
Information Services - computer software - Arctic Wolf cyber security active monitoring	(33)
Tribunal - Lawyer adjudicator per diems and Tribunal chair fee - policy set after 2024 budget set	(40)
Custodianship and Discipline external counsel fees savings	204
	37
Timing Variances	
Staffing Costs - compensation and vacancies	298
External Counsel Fees - timing of files	321
Information Services - Software costs not yet spent - renewal later in the year: Adobe, iPro, VDI	363
HR - system consulting and recruiting	161
Lawyer Education Advisory committee and Online courses - consulting	125
Miscellaneous - including PD $27k and non bencher travel $66k	312
	1,580
	1,617

Trust Assurance Program - YTD May 2024

	Actual	Budget	Variance	% Var
TAF Revenue	742	1,133	(391)	-35%
TAP Expenses	1,431	1,543	112	7%
Net Trust Assurance Program	(689)	(410)	(279)	

Lawyers Indemnity Fund Long Term Investments - YTD May 2024

Performance - Before investment fees	3.89%
Benchmark Performance	4.70%

The Law Society of British Columbia
General Fund
Results for the 5 Months ended May 31, 2024
($000's)

	2024 Actual	2024 Budget	$ Variance	%
REVENUE				
Practice fees **(1)**	13,376	13,061	315	2%
PLTC and enrolment fees	579	481	98	20%
Electronic filing revenue	321	572	(251)	-44%
Interest income	783	695	88	13%
Registration and Licensing services	344	369	(25)	-7%
Fines, penalties and recoveries	163	345	(182)	-53%
Program Cost Recoveries	46	59	(13)	-22%
Insurance Recoveries	-	10	(10)	0%
Other revenue	142	56	86	154%
Other Cost Recoveries	-	1	(1)	0%
Building Revenue & Recoveries	503	490	13	3%
Total Revenues	16,257	16,139	118	0.7%
EXPENSES				
Governance and Events				
Governance	517	456	(61)	-13%
Board Relations and Events	116	119	3	3%
	633	575	(58)	-10%
Corporate Services				
General Office	331	344	13	4%
CEO Department	487	440	(47)	-11%
Finance	579	578	(1)	0%
Human Resources	285	418	133	32%
Records Management	117	124	7	6%
	1,799	1,904	105	6%
Education and Practice				
Licensing and Admissions	835	936	101	11%
PLTC and Education	1,413	1,632	219	13%
Practice Standards	213	348	135	39%
Practice Support	-	43	43	100%
	2,461	2,959	498	17%
Communications and Information Services				
Communications	256	274	18	7%
Information Services	1,125	1,543	418	27%
	1,381	1,816	435	24%
Policy and Legal Services				
Policy and Legal Services	651	706	55	8%
Tribunal and Legislative Counsel	420	366	(54)	-15%
External Litigation & Interventions	-	10	10	100%
Unauthorized Practice	114	123	9	7%
	1,185	1,205	20	2%
Regulation				
CLO Department	434	417	(17)	-4%

The Law Society of British Columbia
General Fund
Results for the 5 Months ended May 31, 2024
($000's)

	2024 Actual	2024 Budget	$ Variance	%
Intake & Early Assessment	1,155	1,131	(24)	-2%
Discipline	873	1,249	376	30%
Forensic Accounting	320	334	14	4%
Investigations, Monitoring & Enforcement	1,638	1,804	166	9%
Custodianships	801	893	92	10%
	5,221	5,828	607	10%
Building Occupancy Costs	839	848	9	1%
Depreciation	505	542	37	7%
Total Expenses	14,024	15,677	1,653	10.5%
General Fund Results before Trust Assurance Program	2,233	462	1,771	
Trust Assurance Program (TAP)				
TAF revenues	742	1,133	(391)	-34.5%
TAP expenses	1,431	1,543	112	7.3%
TAP Results	**(689)**	**(410)**	**(279)**	-68.0%
General Fund Results including Trust Assurance Program	**1,544**	**52**	**1,492**	

(1) Membership fees include capital allocation of 1820k (Capital allocation budget = 1828k)

The Law Society of British Columbia
General Fund - Balance Sheet
As at May 31, 2024
($000's)

	May 31 2024	May 31 2023
Assets		
Current assets		
Cash and cash equivalents	27,928	31,630
Unclaimed trust funds	2,097	2,224
Accounts receivable and prepaid expenses	2,119	3,470
Due from Lawyers Indemnity Fund	17,084	10,518
	49,228	47,842
Property, plant and equipment		
Cambie Street property	10,544	10,366
Other - net	2,484	2,126
	13,028	12,492
	62,256	**60,334**
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	2,940	3,188
Liability for unclaimed trust funds	2,097	2,224
Deferred revenue	16,755	16,382
Deposits	58	59
	21,850	21,853
Net assets		
Capital Allocation	5,324	3,886
Unrestricted Net Assets	35,082	34,595
	40,406	38,481
	62,256	**60,334**

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
Results for the 5 Months ended May 31, 2024
($000's)

	Invested in Capital	*Working Capital*	Unrestricted Net Assets	Trust Assurance	Capital Allocation	2024 Total	Year ended 2023 Total
	$	$	$	$	$	$	$
Net assets - At Beginning of Year	13,268	19,828	33,096	1,880	3,886	38,862	36,660
Net (deficiency) excess of revenue over expense for the period	(581)	994	413	(689)	1,820	1,544	2,203
Contribution from (to) LIF				-		-	
Purchase of capital assets:						-	
LSBC Operations	234	-	234	-	(234)	-	-
845 Cambie	148	-	148	-	(148)	-	-
Net assets - At End of Period	**13,069**	**20,822**	**33,891**	**1,191**	**5,324**	**40,406**	**38,862**

The Law Society of British Columbia
Lawyers Indemnity Fund
Results for the 5 Months ended May 31, 2024
($000's)

	2024 Actual	2024 Budget	$ Variance	% Variance
Revenue				
Annual assessment	7,742	7,774	(32)	0%
Investment income	10,443	5,724	4,719	82%
Other income	48	28	20	71%
Total Revenues	18,233	13,526	4,707	34.8%
Expenses				
Insurance Expense				
Provision for settlement of claims	6,635	6,635	-	0%
Salaries and benefits	1,459	1,613	154	10%
Contribution to program and administrative costs of General Fund	722	678	(44)	-6%
Insurance	710	946	236	25%
Office	287	406	119	29%
Actuaries, consultants and investment brokers' fees	686	852	166	19%
	10,499	11,130	631	6%
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	431	520	89	17%
Total Expenses	10,930	11,650	720	6.2%
Lawyers Indemnity Fund Results	**7,303**	**1,876**	**5,427**	

The Law Society of British Columbia
Lawyers Indemnity Fund - Balance Sheet
As at May 31, 2024
($000's)

	May 31 2024	May 31 2023
Assets		
Cash and cash equivalents	900	1,660
Accounts receivable and prepaid expenses	2,036	1,004
Investments	266,115	243,535
	269,051	**246,199**
Liabilities		
Accounts payable and accrued liabilities	483	700
Deferred revenue	10,338	10,416
Due to General Fund	17,084	10,518
Provision for claims	72,200	78,615
Provision for ULAE	12,742	13,899
	112,847	**114,148**
Net assets		
Internally restricted net assets	17,500	17,500
Unrestricted net assets	138,704	114,551
	156,204	132,051
	269,051	**246,199**

The Law Society of British Columbia
Lawyers Indemnity Fund - Statement of Changes in Net Assets
Results for the 5 Months ended May 31, 2024
($000's)

	Unrestricted $	Internally Restricted $	2024 Total $	2023 Total $
Net assets - At Beginning of Year	131,402	17,500	148,902	126,857
Net excess of revenue over expense for the period	7,303	-	7,303	22,044
Net assets - At End of Period	**138,704**	**17,500**	**156,204**	**148,902**

Law Society
of British Columbia

2024 General Fund Forecast
May 2024

To: Finance & Audit Committee Meeting (July 3, 2024)
Bencher Meeting (July 5, 2024)

Purpose: Update

From: Finance Department

Date: July 5, 2024

Forecast - as at May 2024

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

Overview

Based on the results to end of May 2024, we are projecting to finish the year with a positive variance to budget of $402,000, resulting in a net deficit of $238,000, compared to a budgeted deficit of $640,000.

Costs associated with the Single Legal Regulator litigation and transition, if any, have not been included in this forecast and will be funded from net asset reserves.

Revenue Forecast

Total revenue is projected slightly under budget, $35.0 million, with higher interest income, PLTC fees, Law Foundation grant revenues, offset by lower electronic filing revenue and practice fees.

Practice Fees: Practice fees are projected at $27.1 million, slightly under budget with a forecast of 14,770 practicing lawyers compared to a budget of 14,807 practicing lawyers. This would result in a 3.4% increase over 2023 actuals. Excess funding from prior years for external organizations has also been recognized into income, in the amount of $380,000.

PLTC Revenue: PLTC revenues are projected at $1.9 million, $122,000 ahead of budget. PLTC students are projected at 650, similar to 2023 levels. The 2024 budget was set at 603 students, based on a lower number of students registered for the fall 2023 session.

Electronic Filing Revenue: Electronic filing revenue is projected at $927,000, $445,000 below budget. When the budget was set, BCREA had forecast an increase of 19% in real estate unit sales for 2024, compared to current forecasts of 7.8%. In addition, lower LOTA transactions are expected.

Interest Revenue: With interest rates at 5.45%, higher than the budget of 4.75%, interest income is projected $200,000 over budget.

Other Revenues: Grant revenue will be ahead of budget as the Law Foundation increased PLTC funding $150,000.

Operating Expenses Forecast

Operating expenses are projected to be close to budget, $35.6 million, with unbudgeted costs offset by other expense savings.

The Tribunal will incur additional costs for the year due to the new lawyer adjudicator per diem policy, costs estimated at $250,000 per year, and the Tribunal Chair workload and contract amount has increased $60,000.

Information Services is undertaking a review of the current technology infrastructure and formulating a IT strategic plan for the next 2 – 5 years. This review is projected to cost $150,000.

These costs will be offset by savings as follows:

- Property taxes are projected lower by 30%, $170,000, due to a lower cap rate and rental rate being negotiated for the 845 Cambie building.
- External organization funding for 2024 was approved at a higher level for CLBC and the Federation to fund higher operating expenses, but the allocation of the practice fee remained the same with a deficit of $263,000 budgeted. As there is surplus funding from previous years collections that has been recognized, this will help offset $263,000 deficit.
- External counsel fees are expected to be $215,000 lower than budget for Discipline hearings and additional savings of $40,000 are projected in Custodianships.

Trust Assurance Program

For 2024, Trust Administration Fees (TAF) are forecast at $3.5 million, $1.1 million below budget. The 2023 real estate market was down over 2022, leading to a lower base, and the forecast for 2024 is 7.8%, lower than the previous forecast of 19%.

The Trust Assurance program budget is $3.7 million, so there may be a shortfall in funding for 2024.

The Law Society of British Columbia
General Fund
For the 12 Months ending December 31, 2024
($000's)

			Forecast vs Budget	
	Forecast	**Budget**	**Variance**	
REVENUE				
Practice fees	27,423	27,109	314	1%
PLTC and enrolment fees	1,896	1,774	122	7%
Electronic filing revenue	927	1,372	(445)	-32%
Interest income	1,868	1,668	200	12%
Registration and Licensing	886	886	-	0%
Fines, penalties and recoveries	619	638	(19)	-3%
Program Cost Recoveries	141	141	-	0%
Insurance Recoveries	20	20	-	0%
Other revenue	362	212	150	71%
Other Cost Recoveries	9	9	-	0%
Building Revenue & Recoveries	1,168	1,168	-	0%
Total Revenues	35,319	34,997	322	1%
EXPENSES				
Benchers Governance and Events				
Governance	734	738	4	1%
Board Relations and Events	305	298	(7)	-2%
	1,039	1,036	(3)	0%
Corporate Services				
General Office	845	833	(12)	-1%
CEO Department	1,206	1,119	(87)	-8%
Finance	1,364	1,335	(29)	-2%
Human Resources	978	964	(14)	-1%
Records Management	351	351	-	0%
	4,744	4,602	(142)	-3%
Education and Practice				
Licensing and Admissions	2,352	2,336	(16)	-1%
PLTC and Education	3,911	3,988	77	2%
Practice Standards	791	844	53	6%
	7,054	7,168	114	2%
Communications and Information Services				
Communications	643	643	-	0%
Information Services	2,640	2,480	(160)	-6%
	3,283	3,123	(160)	-5%
Policy and Legal Services				
Policy and Legal Services	1,712	1,731	19	1%
Tribunal and Legislative Counsel	1,211	889	(322)	-36%
External Litigation & Interventions	25	25	-	0%
Unauthorized Practice	317	302	(15)	-5%
	3,265	2,947	(318)	-11%
Regulation				
CLO Department	1,042	1,013	(29)	-3%
Intake & Early Assessment	2,867	2,784	(83)	-3%
Discipline	2,878	3,045	167	6%
Forensic Accounting	820	820	-	0%
Investigations, Monitoring & Enforcement	4,306	4,400	94	2%
Custodianships	2,171	2,171	(0)	0%
	14,084	14,233	149	1%
Building Occupancy Costs	2,088	2,265	177	8%
External Organization Funding Deficit (Surplus)	-	263	263	0%
Total Expenses	35,557	35,637	80	0%
General Fund Results	**(238)**	**(640)**	**402**	
Trust Assurance Program (TAP)				
TAF revenues	3,453	4,531	(1,078)	-24%
TAP expenses	3,753	3,753		0%
TAP Results	**(300)**	**778**	**(1,078)**	
General Fund Results including TAP	**(538)**	**138**	**(676)**	