

# Agenda

## Bencher Meeting

Date:	Saturday, June 1, 2024
Time:	<b>9:00 am – Call to Order *</b> <b>* The <i>in camera</i> portion of the meeting will commence at 9:00 am, with the regular agenda to follow commencing at 10:30 am.</b>
Location:	The Bencher Meeting is taking place as a hybrid meeting. If you would like to attend the meeting as a virtual attendee, please email <a href="mailto:BencherRelations@lsbc.org">BencherRelations@lsbc.org</a>
Recording:	<i>The public portion of the meeting will be recorded.</i>

### CONSENT AGENDA

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

1	Minutes of April 26, 2024 meeting (regular session)
2	Minutes of April 26, 2024 meeting ( <i>in camera</i> session)
3	Rule Amendments: Family Law Arbitrators / Parenting Coordinators
4	Rule Amendments: Bencher Election Rule Revisions
5	External Appointment: Vancouver Airport Authority
6	Changes to the Code re: Single Party Communications Rule

### REPORTS

7	President's Report	10 min	Jeevyn Dhaliwal, KC
8	CEO's Report	10 min	Don Avison, KC

# Agenda

DISCUSSION/DECISION			
9	Articling Placement Pilot Program	30 min	Don Avison, KC Lesley Small Cori Ghitter, KC
10	Bencher Oath of Office	10 min	Jeevyn Dhaliwal, KC
11	Bill 21 – Legal Professions Act	10 min	Jeevyn Dhaliwal, KC Don Avison, KC
12	Updates from Federation of Law Societies of Canada and Western Law Societies	40 min	
FOR INFORMATION			
13	External Appointment: British Columbia Law Institute		
14	Briefing by the Law Society’s Member of the CBA Provincial Council		
IN CAMERA			
15	Other Business		

# Law Society *of British Columbia*

## Bencher Meeting: Minutes (Draft)

**To:** Benchers

**Purpose:** Approval (Consent Agenda)

**Date:** Friday, April 26, 2024

**Present:**

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

**Absent:** Gurminder Sandhu, KC

<b>Staff present:</b>	Jessica Abells Don Avison, KC Gurprit Bains Avalon Bourne Barbara Buchanan, KC Natasha Dookie Jackie Drozdowski Su Forbes, KC Vicki George Katrina Harry, KC Kerryn Holt Jeffrey Hoskins, KC Deb Jamison Alison Kirby Glen Krueger Julie Lee Michael Lucas, KC Alison Luke David MacLean	Meghan Maddigan Claire Marchant Tara McPhail Jeanette McPhee Cary Ann Moore Michael Mulhern Doug Munro Rashmi Nair Herman Van Ommen, KC Maryanne Prohl Michelle Robertson Gregory Sexton Lesley Small Arrie Sturdivart Christine Tam Adam Whitcombe, KC Leanne Wood Vinnie Yen
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<b>Guests:</b>	Karen St. Aubin  Dom Bautista  Ian Burns Craig Ferris Elizabeth Kollias Kyla Lee Jamie Maclaren, KC Desmond MacMillan Mark Meredith Lee Nevens Andrew Newcombe Josh Paterson Ngai Pindell	Acting CEO & Director of Membership & Education, Trial Lawyers Association of BC Executive Director, Courts Center & Executive Director, Amici Curiae Friendship Society Digital Reporter, The Lawyer's Daily Law Society Council, Lawson Lundel LLP President, BC Paralegal Association Board Member, Trial Lawyers Association of BC Executive Director, Access Pro Bono Society of BC Incoming Assistant Dean of Law, TRU Treasurer and Board Member, Mediate BC First Vice-President, CBABC Associate Dean of Law, UVic Executive Director, Law Foundation of BC Dean of Law, Peter A. Allard School of Law
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Graham Reynolds	Associate Dean, Research and International, Peter A. Allard School of Law
Rob Seto	Director of Programs, CLEBC
Kerry Simmons, KC	Executive Director, Canadian Bar Association, BC Branch
Lana Walker	Assistant Dean of Law, Thompson Rivers University
Fiona Wong	President, Federation of Asian Canadian Lawyers, BC

## Consent Agenda

### 1. Minutes of March 8, 2024, meeting (regular session)

The minutes of the meeting held on March 8, 2024 were approved unanimously and by consent as circulated.

### 2. Minutes of March 8, 2024, meeting (*in camera* session)

The minutes of the *in camera* meeting held on March 8, 2024 were approved unanimously and by consent as circulated.

### 3. 2024 Annual General Meeting: Advance Voting.

The following resolution was passed unanimously and by consent:

**BE IT RESOLVED** the Benchers authorize the Executive Director to permit members of the Society in good standing to vote by electronic means on general meeting resolutions in advance of the 2024 AGM.

## Reports

### 4. President's Report

President Jeevyn Dhaliwal, KC confirmed that no conflicts of interest had been declared.

Ms. Dhaliwal began her report by inviting Georges Rivard to speak about the initiatives being put forward to address access to justice challenges in the Cariboo region. Mr. Rivard spoke about a lack of access to treatment facilities; a lack of youth facilities; and a lack of lawyers specializing in labour, immigration, and tax law. Ms. Dhaliwal spoke about the importance of recognizing and understanding the different types of access to justice challenges encountered by lawyers throughout the province.

Ms. Dhaliwal provided an overview of her recent meetings and activities, including attending the Federation meetings in Banff, attending the Advocate Society Gala, making remarks at the New Westminster and North Shore Bar Associations' President Dinners, attending a Law Society of Saskatchewan Bencher meeting in Regina, attending a call ceremony in Kamloops, presenting at the Through the Looking-Glass: Independence and Regulation in BC Today session organized by the CBABC, attending the KC Ceremony and Reception, and speaking at the South Asian Bar's annual women's event. She thanked Benchers for their help with the regional call ceremonies and congratulated Lindsay LeBlanc, KC, Cheryl D'Sa, KC, and Gurminder Sandhu, KC for their recent KC appointments.

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Ms. Dhaliwal concluded her remarks by speaking about Sikh Heritage Month, which celebrates the many contributions that Sikh communities have made to Canada. She indicated that the theme this year is “Chardi Kala”, a concept that refers to a positive and uplifted state of mind, where adversity becomes a catalyst for growth.

## 5. CEO’s Report

Don Avison, KC began his report by speaking about Bill 21 and the discussions to take place at the meeting. He indicated that Benchers would hold an *in camera* session at some point in the proceedings, and if any decisions were to be made, Benchers would return to a public session to report out on those decisions. He spoke about the need to organize regional sessions across the province to discuss the implications of Bill 21, which should involve both the profession and the public. Mr. Avison indicated that discussions continued with other law societies and with the Federation regarding the changes to the Law Society’s governance model contemplated by Bill 21, as well as discussions and town halls with staff to address and respond to questions and concerns. He also shared with Benchers a statement from the Official Opposition regarding Bill 21.

Mr. Avison indicated that plans were being finalized for the Law Society Bencher Retreat, and that he hoped that Katie Rusbatch, Chief Executive Officer of the Law Society of New Zealand, would be able to attend.

Mr. Avison then spoke about the recent changes to the Law Society website, and thanked the communications team for their work on this project.

Mr. Avison provided some staffing updates, and informed Benchers that Jess Abells would be moving on from the Law Society and Alison Luke would be stepping in to take over responsibilities regarding the Alternative Discipline Program.

Mr. Avison concluded his remarks by speaking about Chief Justice Christopher Hinkson’s upcoming retirement and the Chief Justice’s extraordinary legal career and contributions.

Benchers discussed plans for the regional sessions to discuss Bill 21 and ensuring the engagement of the profession. Mr. Avison advised that the Law Society would be focusing on demonstrating the importance of the implications of Bill 21 and ensuring that the profession understands this importance.

## **6. Briefing by the Law Society's Member of the Federation Council**

Brook Greenberg, KC provided a brief overview of the written report he provided for Benchers' information, which included an overview of the recent Federation meetings. He spoke about the lack of response received from the Attorney General in response to correspondence that had been sent by the Federation urging the Ministry to conduct further consultation prior to tabling Bill 21.

## **7. 2023 Tribunal Annual Report and 2024 Planning**

Herman Van Ommen, KC, Tribunal Chair, provided a presentation on the Tribunal's Annual Report for 2023, which included a breakdown of the types of hearings held by the Tribunal and an overview of completed files. He indicated that to improve timelines for the completion of files, the Tribunal has instituted a case management program, which requires parties to appear before the Tribunal within three months of citations being issued to discuss the status of the file and explain why the matter has not been set for hearing.

Benchers discussed issues with the timeliness of completing files. Mr. Van Ommen advised that this was a priority for the Tribunal to work with respondents to keep the process expedient. Mr. Avison advised that there have been noticeable improvements to the process and timeliness of completing files, due to the implementation of consent agreements and other process changes. He spoke about the consent agreement process and how the Federation data on completion time of files does not take into consideration the effects of consent agreements, and that he was of the view that the Law Society should develop its own data on that matter.

## **8. Lawyers Indemnity Fund: Program Report for 2023**

Su Forbes, KC, Chief Operating Officer of the Lawyers Indemnity Fund (LIF), presented on the Program Report for 2023. She provided an overview of LIF's operation, the indemnity program, types of coverage, the causes of claims, the cyber insurance program, and managing claims.

Benchers engaged in discussions regarding Ms. Forbes' presentation including the process for lawyers experiencing a cyber-attack, the types of educational resources available for the profession, and the type and frequency of claims. Ms. Forbes advised that if a lawyer has been subject to a cyber-attack, then Coalition should be alerted, and further details could be found on LIF's website.

Mr. Avison spoke about the value of LIF and ensuring that the profession understands how to avoid insurance related issues. He also spoke about the implications of Bill 21 on LIF and expressed concerns with the possibility of a third party determining scope of practice for the professions and the inherent associated risks.

Benchers discussed whether or not there should be any contemplation of reducing the fees for LIF. Mr. Avison advised that the fee has only increased by \$50 over 14 years, even with the level of coverage

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increasing. Ms. Forbes added that the Indemnity Subcommittee considers this matter, and that even with greater revenue and lower expenses, it is important to have enough funds in reserves to take care of future years' claims.

## Discussion/Decision

### 9. Financial Matters

Brook Greenberg, KC, Chair of the Finance and Audit Committee introduced the item, thanking committee members and staff for all their efforts, which led to a clean audit.

Jeanette McPhee, Chief Financial Officer & Senior Director of Trust Regulation provided an overview of the audited financial statements and highlights for 2023. She noted that the general fund operations resulted in a positive variance to budget, mainly due to the receipt of interest income. Ms. McPhee indicated that revenue was ahead of budget due to a higher number of practice fees received than planned. She indicated that the number of practising lawyers usually increased about 2.5 to 3%, but this has increased over the last few years to 3.5 to 4%. Ms. McPhee reviewed operating expenses for the year, which were under budget by 3%, mainly due to savings in external counsel fees. She then reviewed TAF-related revenue, which was down quite a bit due to market fluctuations. Ms. McPhee then reviewed the general fund net assets and reserves. She indicated that the Law Society aimed to have about six months of operating expenses within the reserves, and that currently the reserves are on the higher side of that scale; however, there are a number of projects that will need to be funded from reserves, including costs associated with the implementation of the single legal regulator. Ms. McPhee then reviewed the Lawyers Indemnity Fund, which resulted in a positive variance to budget.

Ms. McPhee reviewed the general fund forecast, which is forecasted to be at budget. She indicated that there will be some additional costs related to the Tribunal, which would be offset by higher interest income.

Benchers discussed funding of the single legal regulator initiative and the impact of Bill 21 on the Law Society's assets. Ms. McPhee advised that there will be a number of activities associated with implementation, which would be funded by reserves. Mr. Avison added that with the smaller board contemplated by Bill 21, there would be a compensation requirement that would need to be taken into consideration. He indicated that consideration would also need to be given to the financial implications of Bill 21 on the operating expenses of the Law Society and on the annual practice fee. Benchers discussed whether or not the Law Society would contemplate an increase to the practice fee as a result of Bill 21. Mr. Avison advised that this was a significant concern, particularly, as the Law Society has worked hard to keep the practice fees static year to year.

The following resolution was passed unanimously:

**BE IT RESOLVED** to approve the Law Society’s 2023 Financial Statements for the General Fund, and the 2023 Consolidated Financial Statements for the Lawyers Indemnity Fund.

## 10. Competency Framework

Cheryl D’Sa, KC, Chair of the Lawyers Development Task Force introduced the item and provided some background on the Western Canada Competency Profile (WCCP), which would establish the competencies to be demonstrated at entry to legal practice in BC. Ms. D’Sa spoke about the process by which the WCCP was developed in collaboration with the law societies of Alberta, Saskatchewan, and Manitoba. She spoke about the development of the Task Force and Advisory Committee established by the four law societies, as well as the assumptions that were determined to guide the work. Ms. D’Sa indicated that should all four law societies approve the WCCP, the next steps would be to develop guidance for bar admissions programs and principles/supervisors, using the WCCP as a roadmap.

Benchers discussed the important work of the project, as well as the need to modernize the approach to training and education for lawyers. Benchers also discussed the importance of the public understanding what is required to become a lawyer.

The following resolution was passed unanimously:

**BE IT RESOLVED** that the Benchers adopt the Western Canada Competency Profile as the competencies to be demonstrated at entry to legal practice in British Columbia.

## 11. Bill 21 – Legal Professions Act

Ms. Dhaliwal introduced the item and noted that part of these discussions would be *in camera*, but that any decisions made by Benchers would be reported publicly later in the meeting.

Mr. Avison indicated that there would be brief discussion in the public portion of the meeting regarding Bill 21 and the Law Society’s response, followed by discussions *in camera*. He indicated that Benchers were joined by Craig Ferris, KC, who has been retained by the Law Society to provide advice and to pursue litigation on the Law Society’s behalf, should that be the decision of Benchers. Mr. Avison spoke about the status of Bill 21. He indicated that he was of the view that the profession and the public had not had the opportunity to understand the full public policy implications of the Bill, including the governance model that is contemplated by the Bill, and whether or not this model is intended to apply more broadly to other regulatory bodies, or if it will be specific only to the Law Society, and if so why that is.

Mr. Avison indicated that correspondence had been prepared to send to the Attorney General, urging the Ministry to take more time to provide for an open and thorough discussion about the implications of Bill 21, and he would be asking Benchers to sign the correspondence. He indicated that the meeting would resume publicly to report back on any decisions made by Benchers following the *in camera* portion of the meeting.

## For Information

### 12.2024 Bencher and Executive Committee Meetings Dates

There was no discussion on this item.

### 13.ADMA Turns Two

There was no discussion on this item.

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

## Public Session

- **Decision Bill 21 – Legal Professions Act**

Ms. Dhaliwal confirmed that Benches have written to the Attorney General to urge that Bill 21 be subject to further consultation with the public and with the legal professions and that further debate on the Bill be suspended until a transparent consultation process can be appropriately conducted. She further confirmed that should Bill 21 be passed in its current form, pursuant to the Law Society's public interest mandate, Benchers have instructed counsel retained by the Law Society to initiate proceedings challenging several elements of the proposed legislation.

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

## **Rule Amendments: Family Law Arbitrators & Parenting Coordinators**

**To:** Benchers

**Purpose:** Approval (Consent Agenda)

**From:** Executive Committee

**Date:** June 1, 2024

## Analysis & Recommendation

1. The Executive Committee recommends amendments to the Law Society Rules (the “Rules”) 3-36 (1) (b) and 3-37 (1) (b) to add serving as a tribunal member to the acceptable qualifications for family law arbitrators and parenting coordinators. Attached to this report as **Appendix “A”** is an analysis of the range of factors that should be considered when making policy changes such as through the proposed Rule amendments.
2. The current requirements were generated from the September 2012 Report of the Family Law Task Force,<sup>1</sup> which emphasized the importance of experience and judgment when acting as an arbitrator and parenting co-ordinator. The experience of tribunal members, particularly those who preside over hearings and write legal decisions that are subject to review in courts and other bodies, is likely to be similar to that of a judge. Indeed, it is arguable that tribunal members could be more qualified to arbitrate, which is something both family law arbitrators and parenting coordinators<sup>2</sup> can be called on to do, than a lawyer with practice experience alone.
3. Moreover, as with all lawyers seeking to be accredited as family law arbitrators or parenting coordinators, it is still required of both roles that the lawyer possess sufficient knowledge, skills and experience relevant to family law to carry out their function in a fair and competent manner. Any applicant for either role would need to meet the accreditation standards of the Law Society, which include requirements for completing mediation, arbitration, parenting coordination, and family violence training.<sup>3</sup>
4. As the *Miscellaneous Statutes Amendment Act (No. 3) 2023* SBC 2023 c. 47 amended the *Supreme Court Act* (with consequential amendments to other statutes), effective January 15, 2024, by changing “master” to “associate judge,” the opportunity has been taken to update the references to “master” in Rules 3-36 (1) (b) and 3-37 (1) (b) and where otherwise referenced in the Rules.
5. Attached at **Appendices “B”** and **“C,”** respectively, are red-lined and clean versions of the proposed recommended Rule amendments. A proposed resolution to amend the Rules is attached as **Appendix “D.”**

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<sup>1</sup> [Report: Qualifications for Lawyers Acting as Arbitrators, Mediators, and/or Parenting Coordinators in Family Law Matters \(lawsociety.bc.ca\)](https://lawsociety.bc.ca/reports/qualifications-for-lawyers-acting-as-arbitrators-mediators-and-or-parenting-coordinators-in-family-law-matters)

<sup>2</sup> “Parenting coordination is a child-focused dispute resolution process for separated families. Parenting coordinators are experienced family law lawyers, counsellors, social workers and psychologists who have special training in mediating and arbitrating parenting disputes, and in helping separated parents recognize the needs of their children.”

Source: [BC Parenting Coordination Roster Society, Vancouver, B.C. \(bcparentingcoordinators.com\)](https://bcparentingcoordinators.com/)

<sup>3</sup> [Family law alternate dispute resolution accreditation | The Law Society of British Columbia](https://www.lawsocietybc.ca/family-law-alternate-dispute-resolution-accreditation)

## Drafting Notes

6. To ensure that neither retired masters who retired before the change to “associate judge” was made, nor people who held equivalent judicial positions elsewhere in Canada, are prejudiced by the proposed rule changes we have added, in Rule 3-36 and 3-37, the phrase “or the equivalent officer of a superior court in Canada” following the words “associate judge.”
7. The proposed resolution does not address the replacement of “master” with “associate judge” in the heading reference in Rule 2-87, nor in the bracketed heading reference in Rule 2-53. This is because heading references are not part of the Rules, so a resolution is not needed for those changes. They have been included in the redlined and clean versions attached for reference, and will be made by staff when the rules are updated following approval of the proposed resolution.

## Resolution

8. The Executive Committee presents the following resolution for Benchers consideration and decision:

**BE IT RESOLVED THAT the Law Society of British Columbia adopt amendments to the Law Society Rules as set out in Appendix “D” to this document.**

## APPENDIX “A”: Factor Analysis for Family Law Arbitrator/Parenting Coordinator Rule Amendments

<b>POLICY IMPACT</b>	<b>Public Interest<sup>4</sup></b>	<b>Legality<sup>5</sup></b>	<b>Organizational Impact<sup>6</sup></b>	<b>Reconciliation with Indigenous Peoples<sup>7</sup></b>	<b>Equity, Diversity, &amp; Inclusion<sup>8</sup></b>	<b>Transparency &amp; Disclosure<sup>9</sup></b>
<i>No Action</i>	Risk of preventing qualified individuals.	Within jurisdiction to leave or amend.	No impact.	Risk of preventing qualified individuals with a wider variety of lived experiences.	Risk of preventing qualified individuals with a wider variety of lived experiences.	N/A: Subject matter credential qualification.
<i>Amendment</i>	Potential for more qualified individuals providing services.	Within jurisdiction to leave or amend.	Materials will need to be updated, but not extensive effort.	Potential for more qualified individuals providing services with a wider variety of lived experiences.	Potential for more qualified individuals providing services with a wider variety of lived experiences.	N/A: Subject matter credential qualification.

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<sup>4</sup> **Public Interest:** How does the option address the provision of legal services and the administration of justice; what harm or risk to the public this intends to ameliorate or prevent, or how it intends to improve, innovate and/or modernize a specific process or situation?

<sup>5</sup> **Legality:** How will the option raise or affect any legal requirements placed on the Law Society, statutory or otherwise, or affect outstanding legal issues or litigation? Would the approval of the policy initiative or principle be expected to require rule changes? Will it require changes to the governing, or other, legislation?

<sup>6</sup> **Organizational Impact:** What are the implications on staff, resources, cost, etc.

<sup>7</sup> **Reconciliation with Indigenous Peoples:** Does this option to addressing reconciliation? If so, how?

<sup>8</sup> **Equity, Diversity & Inclusion:** How will the option affect the Law Society’s equitable treatment of diverse individuals? How will it advance the Law Society’s objectives in relation to equity, diversity and inclusion?

<sup>9</sup> **Transparency & Disclosure:** Is the option expected to enhance or detract from current levels of transparency and disclosure?

## APPENDIX “A”: Factor Analysis for Family Law Arbitrator/Parenting Coordinator Rule Amendments (continued)

<b>STAKEHOLDER IMPACT</b>	<b>Public Relations<sup>10</sup></b>	<b>Government Relations<sup>11</sup></b>	<b>Licensee Impact<sup>12</sup></b>	<b>Privacy Impact<sup>13</sup></b>
<i>No Action</i>	Risk of impression of preventing qualified individuals from providing services.	Risk of impression of preventing qualified individuals from providing services.	Risk of impression of preventing qualified individuals from providing services.	N/A - No collection, use, storage, or disclosure by Law Society.
<i>Amendment</i>	Potential for increased access to justice if more individuals become qualified.	Potential for increased access to justice if more individuals become qualified.	Recognition of broader qualification decreases barriers to becoming family law arbitrator or parenting coordinator.	N/A - No collection, use, storage, or disclosure by Law Society.

<sup>10</sup> **Public Relations:** How will the option enhance or detract from the public perception of the Law Society or the legal profession generally?

<sup>11</sup> **Government Relations:** How will the option impact the government perception of the legal profession?

<sup>12</sup> **Licensee Impact:** How will the option enhance or detract from the perception of those who are licensed by the Law Society? How will it weaken or strengthen confidence in the regulator? Does it place an undue burden on licensees or on particular groups of licensees?

<sup>13</sup> **Privacy Impact:** Does the option contemplate the collection, use, storage, or disclosure of personal information?



## APPENDIX "B"

### LAW SOCIETY RULES

#### Admission Program

#### Application for enrolment, admission or reinstatement

##### Disclosure of information

- 2-53** (1) When a person makes an application under this division, the Executive Director may
- (a) disclose the fact that the application has been made and the status of the application, and
  - (b) provide information to a governing body under Rule 2-27.1 *[Sharing information with a governing body]*.
- (5) The Executive Director may disclose the existence and nature of a condition or limitation imposed or agreed to under this division if the condition or limitation
- (a) is ordered as a result of a hearing under this division,
  - (b) restricts or prohibits a lawyer's practice in one or more areas of law, or
  - (c) is imposed by Rule 2-78 *[Law school faculty]*, 2-80 *[In-house counsel]* or 2-87 *[Reinstatement of former judge or ~~master~~associate judge]*.

#### Former judge or ~~master~~associate judge

##### Former judge or ~~master~~associate judge

- 2-87** (1) Subject to subrules (2) and (3), the practice of law by a lawyer who was a judge or an ~~an~~ ~~master~~ associate judge is restricted as follows:
- (a) a former judge of a federally-appointed court must not appear as counsel in any court in British Columbia without first obtaining the approval of the Credentials Committee;
  - (b) a former judge of a provincial or territorial court in Canada must not appear as counsel in the Provincial Court of British Columbia for 3 years after ceasing to be a judge;
  - (c) a former ~~master~~ associate judge of the Supreme Court of British Columbia must not appear as counsel before an ~~an~~ ~~master~~ associate judge, a registrar, a district registrar or a deputy district registrar of the Supreme Court of British Columbia for 3 years after ceasing to be an ~~an~~ ~~master~~ associate judge.
- (2) The Credentials Committee may impose conditions or limitations respecting the practice of a former judge when giving approval for that lawyer to appear as counsel under subrule (1)
- (a).

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## LAW SOCIETY RULES

- (3) The Credentials Committee may at any time relieve a lawyer of a practice restriction referred to in subrule (1) and may impose conditions or limitations respecting the practice of the lawyer concerned.
- (4) A lawyer who has served as a judge or ~~master-associate judge~~ in any court must not use any judicial title or otherwise allude to the lawyer's former status in any marketing activity.
- (5) Subrule (4) does not preclude a lawyer who has served as a judge or ~~master-associate judge~~ from referring to the lawyer's former status in
  - (a) a public announcement that the lawyer has resumed the practice of law or joined a law firm,
  - (b) a public speaking engagement or publication that does not promote the lawyer's practice or firm,
  - (c) seeking employment, partnership or appointment other than the promotion of the lawyer's practice or firm, or
  - (d) informal conversation or correspondence.
- (6) For the purpose of this rule, it is not the promotion of a lawyer's practice or firm to provide, on request, a curriculum vitae or other statement of experience that refers to the lawyer's former status as a judge or ~~master-associate judge~~.
- (7) This rule applies to a lawyer who has served as ~~an associate judge~~, master or the equivalent officer of a superior court in Canada as it does to a former ~~master-associate judge~~ of the Supreme Court of British Columbia.

### Family law mediators

- 3-35** (1) A lawyer may act as a family law mediator only if the lawyer
- (a) possesses sufficient knowledge, skills and experience relevant to family law to carry out the function of a mediator in a fair and competent manner,
  - (b) has completed a course of study in family law mediation approved by the Credentials Committee, and
  - (c) is in compliance with Rule 3-38 (3) [*Professional development for family law neutrals*].
- (2) A lawyer who has been accredited by the Society as a family law mediator may so state in any marketing activity.
- (3) The Credentials Committee may allow a lawyer previously accredited by the Society as a family law mediator time in which to comply with any changes to the requirements under subrule (1) (b).

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## LAW SOCIETY RULES

### Family law arbitrators

- 3-36** (1) A lawyer may act as a family law arbitrator only if the lawyer
- (a) possesses sufficient knowledge, skills and experience relevant to family law to carry out the function of an arbitrator in a fair and competent manner,
  - (b) has, for a total of at least 10 years, engaged in the full-time practice of law or the equivalent in part-time practice or sat as a judge, ~~or master~~associate judge or the equivalent officer of a superior court in Canada, or member of an administrative tribunal,
  - (c) has completed a course of study in family law arbitration approved by the Credentials Committee, and
  - (d) is in compliance with Rule 3-38 (3) [*Professional development for family law neutrals*].
- (2) A lawyer who has been accredited by the Society as a family law arbitrator may so state in any marketing activity.
- (3) The Credentials Committee may allow a lawyer who has previously acted as a family law arbitrator time in which to comply with any changes to the requirements under subrule (1) (c).

### Parenting coordinators

- 3-37** (1) A lawyer may act as a parenting coordinator only if the lawyer
- (a) possesses sufficient knowledge, skills and experience relevant to family law to carry out the function of a parenting coordinator in a fair and competent manner,
  - (b) has, for a total of at least 10 years, engaged in the full-time practice of law or the equivalent in part-time practice or sat as a judge, ~~or master~~associate judge or the equivalent officer of a superior court in Canada, or member of an administrative tribunal, including considerable family law experience dealing with high conflict families with children,
  - (c) has completed a course of study in parenting coordination approved by the Credentials Committee, and
  - (d) is in compliance with Rule 3-38 (3) [*Professional development for family law neutrals*].
- (2) A lawyer who has been accredited by the Society as a parenting coordinator may so state in any marketing activity.
- (3) The Credentials Committee may allow a lawyer who has previously acted as a parenting coordinator time in which to comply with any changes to the requirements under subrule (1) (c).

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## LAW SOCIETY RULES

### Professional development for family law neutrals

- 3-38** (1) The Credentials Committee may determine the minimum number of hours of professional development that is required of a family law mediator, arbitrator or parenting coordinator in each calendar year.
- (2) The requirements under subrule (1) may be different for each of family law mediators, arbitrators or parenting coordinators.
- (3) In each calendar year, a family law mediator, arbitrator or parenting coordinator must
- (a) complete the required professional development, and
  - (b) certify to the Executive Director in the prescribed form that the lawyer has completed the professional development required under this rule.
- (4) Professional development completed under this rule may also be reported under Rule 3-29 [*Professional development*] if it meets the requirements of that rule.
- (5) Despite subrule (3), a family law mediator, arbitrator or parenting coordinator need not complete the required professional development in a calendar year in which the lawyer has successfully completed the course of study required under Rules 3-35 to 3-37.

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## APPENDIX "C"

### LAW SOCIETY RULES

#### Admission Program

#### Application for enrolment, admission or reinstatement

##### Disclosure of information

- 2-53** (1) When a person makes an application under this division, the Executive Director may
- (a) disclose the fact that the application has been made and the status of the application, and
  - (b) provide information to a governing body under Rule 2-27.1 [*Sharing information with a governing body*].
- (5) The Executive Director may disclose the existence and nature of a condition or limitation imposed or agreed to under this division if the condition or limitation
- (a) is ordered as a result of a hearing under this division,
  - (b) restricts or prohibits a lawyer's practice in one or more areas of law, or
  - (c) is imposed by Rule 2-78 [*Law school faculty*], 2-80 [*In-house counsel*] or 2-87 [*Reinstatement of former judge or associate judge*].

#### Former judge or associate judge

##### Former judge or associate judge

- 2-87** (1) Subject to subrules (2) and (3), the practice of law by a lawyer who was a judge or an associate judge is restricted as follows:
- (a) a former judge of a federally-appointed court must not appear as counsel in any court in British Columbia without first obtaining the approval of the Credentials Committee;
  - (b) a former judge of a provincial or territorial court in Canada must not appear as counsel in the Provincial Court of British Columbia for 3 years after ceasing to be a judge;
  - (c) a former associate judge of the Supreme Court of British Columbia must not appear as counsel before an associate judge, a registrar, a district registrar or a deputy district registrar of the Supreme Court of British Columbia for 3 years after ceasing to be an associate judge.
- (2) The Credentials Committee may impose conditions or limitations respecting the practice of a former judge when giving approval for that lawyer to appear as counsel under subrule (1)
- (a).

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- (3) The Credentials Committee may at any time relieve a lawyer of a practice restriction referred to in subrule (1) and may impose conditions or limitations respecting the practice of the lawyer concerned.
- (4) A lawyer who has served as a judge or associate judge in any court must not use any judicial title or otherwise allude to the lawyer's former status in any marketing activity.
- (5) Subrule (4) does not preclude a lawyer who has served as a judge or associate judge from referring to the lawyer's former status in
  - (a) a public announcement that the lawyer has resumed the practice of law or joined a law firm,
  - (b) a public speaking engagement or publication that does not promote the lawyer's practice or firm,
  - (c) seeking employment, partnership or appointment other than the promotion of the lawyer's practice or firm, or
  - (d) informal conversation or correspondence.
- (6) For the purpose of this rule, it is not the promotion of a lawyer's practice or firm to provide, on request, a curriculum vitae or other statement of experience that refers to the lawyer's former status as a judge or associate judge.
- (7) This rule applies to a lawyer who has served as an associate judge, master or the equivalent officer of a superior court in Canada as it does to a former associate judge of the Supreme Court of British Columbia.

### Family law mediators

- 3-35** (1) A lawyer may act as a family law mediator only if the lawyer
- (a) possesses sufficient knowledge, skills and experience relevant to family law to carry out the function of a mediator in a fair and competent manner,
  - (b) has completed a course of study in family law mediation approved by the Credentials Committee, and
  - (c) is in compliance with Rule 3-38 (3) [*Professional development for family law neutrals*].
- (2) A lawyer who has been accredited by the Society as a family law mediator may so state in any marketing activity.
- (3) The Credentials Committee may allow a lawyer previously accredited by the Society as a family law mediator time in which to comply with any changes to the requirements under subrule (1) (b).

### Family law arbitrators

- 3-36** (1) A lawyer may act as a family law arbitrator only if the lawyer

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## LAW SOCIETY RULES

- (a) possesses sufficient knowledge, skills and experience relevant to family law to carry out the function of an arbitrator in a fair and competent manner,
  - (b) has, for a total of at least 10 years, engaged in the full-time practice of law or the equivalent in part-time practice or sat as a judge, associate judge or the equivalent officer of a superior court in Canada, or member of an administrative tribunal,
  - (c) has completed a course of study in family law arbitration approved by the Credentials Committee, and
  - (d) is in compliance with Rule 3-38 (3) [*Professional development for family law neutrals*].
- (2) A lawyer who has been accredited by the Society as a family law arbitrator may so state in any marketing activity.
- (3) The Credentials Committee may allow a lawyer who has previously acted as a family law arbitrator time in which to comply with any changes to the requirements under subrule (1) (c).

### Parenting coordinators

- 3-37** (1) A lawyer may act as a parenting coordinator only if the lawyer
- (a) possesses sufficient knowledge, skills and experience relevant to family law to carry out the function of a parenting coordinator in a fair and competent manner,
  - (b) has, for a total of at least 10 years, engaged in the full-time practice of law or the equivalent in part-time practice or sat as a judge, associate judge or the equivalent officer of a superior court in Canada, or member of an administrative tribunal, including considerable family law experience dealing with high conflict families with children,
  - (c) has completed a course of study in parenting coordination approved by the Credentials Committee, and
  - (d) is in compliance with Rule 3-38 (3) [*Professional development for family law neutrals*].
- (2) A lawyer who has been accredited by the Society as a parenting coordinator may so state in any marketing activity.
- (3) The Credentials Committee may allow a lawyer who has previously acted as a parenting coordinator time in which to comply with any changes to the requirements under subrule (1) (c).

### Professional development for family law neutrals

- 3-38** (1) The Credentials Committee may determine the minimum number of hours of professional development that is required of a family law mediator, arbitrator or parenting coordinator in each calendar year.

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- (2) The requirements under subrule (1) may be different for each of family law mediators, arbitrators or parenting coordinators.
- (3) In each calendar year, a family law mediator, arbitrator or parenting coordinator must
  - (a) complete the required professional development, and
  - (b) certify to the Executive Director in the prescribed form that the lawyer has completed the professional development required under this rule.
- (4) Professional development completed under this rule may also be reported under Rule 3-29 [*Professional development*] if it meets the requirements of that rule.
- (5) Despite subrule (3), a family law mediator, arbitrator or parenting coordinator need not complete the required professional development in a calendar year in which the lawyer has successfully completed the course of study required under Rules 3-35 to 3-37.



## APPENDIX "D"

### Family Law Arbitrators, Parenting Co-ordinators and Masters

#### RESOLUTION:

*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



## **Bencher Election Rule Revisions**

**To:** Benchers

**Purpose:** Approval (Consent Agenda)

**From:** Executive Committee

**Date:** June 1, 2024

## Introduction

1. At the March 8, 2024 Bencher Meeting, the Benchers approved, in principle, amendments to Rules relating to Bencher elections. The approvals concerned:
  - (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 a review of the Executive Director’s decision to the Executive Committee).
2. The materials outlining the governance and policy rationales for the changes is attached for reference.
3. Draft rules were circulated to and considered by the Executive Committee in their regulatory policy role on May 15, 2024. The Committee approved the draft and resolved to send the proposed amendments to the Benchers for approval.

## Drafting Notes

4. Attached are proposed amendments to the Law Society Rules that would implement the approvals in principle made at the March 8 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 benchers elections. It is proposed to be amended to make electronic voting the default, with the proviso that the Executive Committee can determine otherwise. A “voting period” is established, and a counting and publication date is set. 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) 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;
- (f) 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);
- (g) Rule 1-29 is proposed to be removed and the relevant required provisions have been worked into Rule 1-27; and
- (h) 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.

## Resolution

5. 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 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) 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.

(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~~ 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 does not invalidate an election.~~

(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) ~~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.
- (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;

## LAW SOCIETY RULES

- (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;
  - (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.



# LAW SOCIETY RULES

## Scrutineers

**1-31** ~~(1) The Executive Director is a scrutineer for each Benchers 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]~~

## 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 [*Benchers by-election*] or 1-39 [*Appointment of Benchers to represent a district*] applies.

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### 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.

### 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.

### Voting period and procedure

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

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- (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) 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.
- (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]

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- (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]

### 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:

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- (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.

### 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

## LAW SOCIETY RULES

- (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) 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.**
  - (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."

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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**

**Amendment to the *Code of Professional Conduct for British Columbia* regarding single-party communications with a tribunal**

**To:** Benchers

**Purpose:** Approval (Consent Agenda)

**From:** Staff

**Date:** June 1, 2024

## Issue

1. The Federation of Law Societies of Canada (“Federation”) recently amended rule 5.1-2C of the Model Code of Professional Conduct (“Model Code”) on single-party communications with a tribunal to clarify that the rule does not apply in the mediation context. Where possible and appropriate, the Law Society of BC endeavours to mirror the language used in the Model Code in its *Code of Professional Conduct for British Columbia* (“BC Code”) to provide consistency and uniformity of lawyers’ professional responsibilities across Canada.

## Background

2. The rule on single-party communications with a tribunal was incorporated into the Model Code in October 2022. The *BC Code* was amended in April 2023 to include the new rule and mirrored the Model Code rule, word-for-word.
3. In April 2024, the Federation amended commentary [3] of Model Code rule 5.1-2C by adding language to clarify that the rule does not apply in the mediation context. The amendment addresses a possible interpretation that the rule applies to mediation. That interpretation was unintentional, and additional words were added to clarify the application of the rule.
4. The Federation has asked the provincial and territorial law societies to update their respective professional codes of conduct to reflect the recent amendment.

## Analysis and Recommendation

5. **Appendix A** to this report provides an analysis of the factors to consider when amending the *BC Code*.
6. Staff recommend incorporating the amendment to commentary [3] of rule 5.1-2.3 of the *BC Code*. The amendment is straightforward, clarifies the application of the rule, and will keep the rule in alignment with the Model Code version.
7. The possible yet unintended interpretation arose due to the definition of “tribunal” in the Model Code. “Tribunal” includes “a court, board, arbitrator, mediator, administrative agency or other body that resolves disputes, regardless of its function or the informality of its procedures.” Some practice areas involving mediation discussions have long standing conventions including the use of single-party communications in an effort to assist with resolving disputes. The use of the word “tribunal” in Model Code rule 5.1-2C incorporated mediation into the application of that provision, which was an unintended application of the rule to that practice area.

8. The Federation is considering whether further amendments are required to Model Code rule 5.1-2C to address other issues that were raised as potential unintended consequences of the current drafting.

## Decision

9. Staff presents the following resolution for Benchers approval:

**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.**

## APPENDIX A: Factor Analysis for the proposed *BC Code* amendments (Single-Party Communications with a Tribunal)

<i>POLICY IMPACT</i>	<b>Public Interest<sup>1</sup></b>	<b>Legality<sup>2</sup></b>	<b>Organizational Impact<sup>3</sup></b>	<b>Reconciliation with Indigenous Peoples<sup>4</sup></b>	<b>Equity, Diversity, &amp; Inclusion<sup>5</sup></b>	<b>Transparency &amp; Disclosure<sup>6</sup></b>
<i>No Action</i>	Lawyers interpret application of rule as needed.	Within the jurisdiction of the Law Society to determine contents of the <i>BC Code</i> .	Practice advisors receiving questions on proper application of the <i>BC Code</i> rule.	N/A: The proposed amendment is a minor change to clarify rule.	N/A: The proposed amendment is a minor change to clarify rule.	N/A: The proposed amendment is a minor change to clarify rule.
<i>Recommendation</i>	Clarifies application of <i>BC Code</i> rule.	Within the jurisdiction of the Law Society to determine contents of the <i>BC Code</i> .	Amendments to the <i>BC Code</i> require minimal efforts by staff to implement.	N/A: The proposed amendment is a minor change to clarify rule.	N/A: The proposed amendment is a minor change to clarify rule.	N/A: The proposed amendment is a minor change to clarify rule.

Continued on next page →

<sup>1</sup> **Public Interest:** How does the option address the provision of legal services and the administration of justice; what harm or risk to the public this intends to ameliorate or prevent, or how it intends to improve, innovate and/or modernize a specific process or situation?

<sup>2</sup> **Legality:** How will the option raise or affect any legal requirements placed on the Law Society, statutory or otherwise, or affect outstanding legal issues or litigation? Would the approval of the policy initiative or principle be expected to require rule changes? Will it require changes to the governing, or other, legislation?

<sup>3</sup> **Organizational Impact:** What are the implications on staff, resources, cost, etc.

<sup>4</sup> **Reconciliation with Indigenous Peoples:** Does this option address reconciliation? If so, how?

<sup>5</sup> **Equity, Diversity & Inclusion:** How will the option affect the Law Society's equitable treatment of diverse individuals? How will it advance the Law Society's objectives in relation to equity, diversity and inclusion?

<sup>6</sup> **Transparency & Disclosure:** Is the option expected to enhance or detract from current levels of transparency and disclosure?

## APPENDIX A: Factor Analysis for the proposed *BC Code* amendments (Single-Party Communications with a Tribunal) (continued)

<b>STAKEHOLDER IMPACT</b>	<b>Public Relations<sup>7</sup></b>	<b>Government Relations<sup>8</sup></b>	<b>Licensee Impact<sup>9</sup></b>	<b>Privacy Impact<sup>10</sup></b>
<i>No Action</i>	Lawyers interpret application of rule as needed.	N/A: The subject matter is professional responsibility, which is within the Law Society's mandate.	Lack of clarity of how <i>BC Code</i> rule should operate properly in practice.	N/A: No collection, use, disclosure or storage of information by Law Society.
<i>Recommendation</i>	Clarifies application of <i>BC Code</i> rule.	N/A: The subject matter is professional responsibility, which is within the Law Society's mandate.	Clarifies application of <i>BC Code</i> rule.	N/A: No collection, use, disclosure or storage of information by Law Society.

<sup>7</sup> **Public Relations:** How will the option enhance or detract from the public perception of the Law Society or the legal profession generally?

<sup>8</sup> **Government Relations:** How will the option impact the government perception of the legal profession?

<sup>9</sup> **Licensee Impact:** How will the option enhance or detract from the perception of those who are licensed by the Law Society? How will it weaken or strengthen confidence in the regulator? Does it place an undue burden on licensees or on particular groups of licensees?

<sup>10</sup> **Privacy Impact:** Does the option contemplate the collection, use, storage, or disclosure of personal information?

# CEO Report

**June 1, 2024**

**Prepared for:    Benchers**

**Prepared by:    Don Avison, KC**



## **1. Bill 21 – Legal Profession Act**

As Benchers know, Bill 21 went to Third Reading and received Royal Assent on May 16, 2024.

The Law Society initiated a Notice of Civil Claim challenging the constitutionality of the legislation, the following day on May 17, 2024. Our materials in support of our injunction application are completed and they will be filed once we have heard back from the Court confirming a hearing date.

As predicted, Bill 21 was not introduced until quite late in the Spring sitting of the Legislative Assembly resulting in an abbreviated debate on less than ten percent of the Bill before government invoked closure. Given the seismic nature of the changes contemplated by this legislation, it is regrettable that government failed both to permit an appropriate opportunity for full consultation with the public and with the legal professions and, at minimum, a full debate on all elements of the legislation that, in our view, undermines the importance of the independence of the profession, which we see as inextricably linked to the regulation of the profession.

While debate on the specific provisions of Bill 21 was truncated, at the June 1 Bencher meeting I will provide a brief summary of some of the central exchanges that took place between Attorney General Sharma and Opposition Justice Critic, Michael Lee.

I will have quite a lot more to say about Bill 21 at the June 1 Bencher meeting and there will be an opportunity to hear more about how we intend to proceed with the litigation. I should also note that, as of May 21, 2024 the Trial Lawyers Association of BC filed a separate action.

## **2. Regional Sessions**

We will be doing a number of regional sessions over the course of the coming months. President Dhaliwal and CBABC President Scott Morishita participated in the recent virtual Northern BC Law Talks.

President Dhaliwal and I also spoke at the May 4 Provincial Council meetings of the CBABC and we will be meeting with the Victoria Bar Association, along with Bencher James Legh and Second Vice-President Lindsay LeBlanc, KC. We hope to have a similar session(s) for Nanaimo and likely one other location on Northern Vancouver Island. We met with the Kootenay Bar Association in February (before the actual content of Bill 21 was made available on April 10, 2024). Plans are in development for sessions at other locations in BC.

On the regional front, I also wanted to let Benchers know that Vicki George, Senior Advisor of Indigenous Engagement and Jillian Currie, Indigenous Navigator of the Law Society had a successful road trip in northern BC meeting with people in several communities (Prince Rupert,

Smithers, Terrace, Prince George and Williams Lake) to tell them about their respective roles and the work being done on implementation of the recommendations of the Indigenous Engagement in Regulatory Matters Task Force.

### **3. 2024 Bencher Retreat**

We are now less than a week away from this year's event, which will focus on bullying, harassment and discrimination within the legal profession and what the Law Society can do in its role as regulator.

I'm pleased to advise that we will be joined by the Presidents and the CEOs from the Law Societies of Alberta, Saskatchewan and Manitoba who will provide updates on issues and initiatives in their respective jurisdictions. I expect there will also be discussion about our work on the Western Canada Competency Profile, and we will also be joined by Cori Ghitter, KC, Deputy Executive Director of Law Society of Alberta, who has been the lead on much of this work.

### **4. National Indigenous History Month**

June is National Indigenous History Month in Canada, a time to recognize the rich history, heritage, culture, and diversity of First Nations, Inuit, and Métis. The Law Society is committed to advancing meaningful reconciliation and we look forward to acknowledging this month. As we did last year through Vicki George's guidance, we are planning internal and external communications for the entire month of June. We will be sharing information about Indigenous people including within the profession, history, the arts, movies and books.

There will also be staff activities planned throughout the month orchestrated by Vicki George. We will share any local events for the public happening in recognition of National Indigenous Peoples Day on June 21. The Law Society Library and Resource Centre will be relaunched in June, which will include books by Indigenous authors on: Indigenous law, art, fiction and non-fiction.

Don Avison, KC  
Chief Executive Officer



## Articling Placement Pilot Program

**To:** Benchers

**Purpose:** Discussion and Decision

**From:** Staff

**Date:** June 1, 2024

## Request

1. The Benchers are asked to approve a resolution that the Law Society develop an Articling Placement Pilot Program in British Columbia.

## Background

2. From time to time, articled students contact the Law Society seeking assistance in either terminating their articles or assigning articles to another principal due to experiencing harassment and/or discrimination during the course of their articles. Informally, Benchers and staff assist these students with finding other articling positions, but there is no formal process for this.
3. Anecdotally, we hear of other students who do not contact the Law Society and instead continue in their articling positions because of concerns about the potential loss of the articling position and future call to the bar or a perceived lack of support from the Law Society.
4. Those students who do contact a Bencher or the Law Society, for the most part, refuse to make a formal report or complaint. This is often due to the power imbalance between lawyers and articling students and for fear that doing so may negatively impact their reputation.
5. The purpose of an Articling Placement Program is to assist articling students who are in untenable or unsafe articles due to harassment or discrimination with exiting their current position and finding replacement articles.

## Discussion

6. Currently, the only pathway to become licensed in British Columbia involves the successful completion of nine months of articles. In addition to recognizing that finding an articling position can be a barrier to licensure, surveys have demonstrated that not all articling experiences are positive experiences for articled students.
7. Although the Law Society is in the process of considering alternatives to articles for licensing, the Law Society still has the responsibility to address the problems within its control within the current licensing pathway.
8. Law societies across Canada have consistently reported that when surveyed about their articling experience, up to a third of articled students have shared incidences of harassment, abuse, poor supervision or discrimination in their workplaces.

9. The Law Society's Equity Advisor provides confidential advice and assistance to articulated students to help them navigate their concerns during their articles if they are experiencing discrimination or harassment. In addition, articulated students are encouraged to report their concerns to the Professional Conduct Department, but more than often refuse to do so.
10. In some situations, the only viable option is for an articulated student to terminate their articling agreement without having another position to go to thereby delaying their call to the bar.
11. In order to address these concerns, the Law Society of Alberta (the "LSA") piloted an Articling Placement Program ("APP") in February 2022 and made the program permanent in February 2023.
12. Cori Ghitter, KC, Deputy Executive Director and Director, Policy and Education at the LSA will be in attendance at the June 1 Benchers meeting to provide the Benchers with an overview of the LSA's program, including the program criteria and steps, along with lessons learned.
13. To provide a brief overview of the LSA's APP, if the LSA concludes that the articling student's experience has met the set criteria, the LSA works with the student to end their current articles. The program's default position is that articling students' experiences are believed. The program is not an avenue for students who are unhappy in their articling positions due to other reasons or who are unable to find an articling position.
14. In order to assist articling students finding replacement articles, the LSA created a roster of firms/organizations who meet the eligibility requirements of a roster firm/organization and are willing to offer replacement articles to articling students on short notice.
15. The LSA provides check-ins for the articling student and the roster firm to offer support and remains available as a resource for students and principals participating in the program.
16. While the LSA has reported experiencing some challenges with its APP with respect to recruiting roster firms, almost every articling student who met the criteria was placed at a new firm/organization.
17. Despite its challenges, which Cori Ghitter, KC will provide further details about during her presentation, in 2023 the LSA decided to make its APP a permanent program.
18. It is essential that the Law Society support articulated students throughout the articling period and an articling placement program is one step that can be taken to help reassure articulated students that reporting their issues will not lead to the loss of articles.

## Next Steps

19. If the recommendation to develop and pilot an articling placement program is approved by the Benchers, Law Society staff will develop the new program as a one-year pilot program with ongoing evaluation of the effectiveness of the program, including both interest from articulated students and ongoing support from roster firms/organizations. During the one-year pilot, Benchers will be updated regularly on successes and challenges. The one-year pilot should be sufficient to determine whether the program ought to be made permanent.

## Decision

20. The Benchers are asked to approve the following resolution:

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

## Bencher Oath of Office

**To:** Benchers

**Purpose:** Discussion and Decision

**From:** Executive Committee

**Date:** June 1, 2024

## Issue

1. Updates to the Law Society's oath of office are required to provide greater clarity and transparency about the standards Benchers are expected to abide by, and to better reflect the Law Society's commitment to uphold and protect the public interest as set out in section 3 of the *Legal Profession Act*.
2. This issue is being raised at this juncture to allow it to be considered well in advance of the next by-election, expected to take place in the fall of 2024, following which any newly elected Benchers would be required to take the oath.

## Background

3. Law Society Rule 1-3(1) requires that at the next regular meeting of the Benchers attended by a Bencher after being elected or appointed as a Bencher or taking office as President or a Vice-President, the Bencher must take an oath of office in the following form:

I, [name] do swear or solemnly affirm that:

I will abide by the *Legal Profession Act*, the Law Society Rules and the *Code of Professional Conduct*, and I will faithfully discharge the duties of [a Bencher/President/First or Second Vice-President], according to the best of my ability; and

I will uphold the objects of the Law Society and ensure that I am guided by the public interest in the performance of my duties.

4. An oath must be taken before a judge of the Provincial Court or a superior court in British Columbia, the President or a Life Bencher.
5. This form of oath has been in effect since 2009, when the Benchers approved a recommendation of the Act and Rules Subcommittee that newly elected/appointed or re-elected/re-appointed Benchers be required to take an oath of office. The Act and Rules Subcommittee was of the view that the implementation of an oath was of value in marking the beginning of each Bencher term, that an oath provides a public declaration of the standards to which Benchers already hold themselves, and that an oath demonstrates the commitment of Benchers to the Law Society's mandate.
6. Oaths of office are common for directors and governors of regulatory bodies. An oath represents a public commitment to the duties, responsibilities, and obligations associated with serving as a governor of a regulatory body, sets out the expectations of how a governor will



conduct themselves throughout their term, and sets a standard to which governors should hold themselves.

## Discussion

7. A review of a sample of oaths of office and/or affirmations from other regulatory bodies, including the College of Physicians and Surgeons of BC, the BC Institute of Agrologists, and the Association of BC Forest Professionals is attached as **Appendix A**. This review identified some key differences, specifically:
  - a. **Duties and responsibilities of a governor:** Many of the concepts and requirements found in the oaths of other regulatory bodies, such as “avoiding situations and circumstances in which there is a real or perceived conflict of interest”, and “conducting themselves honestly and ethically” are addressed in the Law Society’s Bencher Code of Conduct, which resides within the Bencher Governance Policies. While the Bencher Code of Conduct and Bencher Governance Policies are applicable to all Benchers, and are central to the duties and responsibilities of a Bencher, these key documents are not referenced in the Law Society’s oath.
  - b. **Law Society policies:** As the oath focuses on abiding by the *Legal Profession Act*, the Law Society Rules and the *Code of Professional Conduct*, other Law Society policies that are applicable to Benchers, such as the Respectful Workplace Policy and Privacy Policy, are therefore also not reflected in the oath.
  - c. **The public interest:** Each of the oaths of office from the other regulatory bodies reviewed makes specific mention of the public trust placed in board members, and putting the interests of the public above personal interests or those of another organization. While the Law Society’s oath does reference ensuring that Benchers are “guided by the public interest” in the performance of their duties, the Law Society’s commitment to the public interest in the oath could be strengthened.

## Recommendation

8. Staff has identified two main updates to the Law Society’s oath to make the role and duties of Benchers clearer to the profession and to the public, which could increase public confidence in the Benchers as governors of the Law Society, and demonstrate Benchers’ commitment to act in the public interest in the performance of their duties:
  - a. Add a reference in the oath to abiding by the “policies of the Law Society” to provide greater clarity and transparency about, and more accurately reflect, the standards Benchers are expected to abide by. The proposed wording addition is broad and flexible

enough to cover the Benchers Governance Policies and Benchers Code of Conduct, as well as any other policies applicable to Benchers without having to list each specific policy in the oath itself; and

- b. Change the reference to Benchers ensuring they are “guided by” the public interest in the performance of their duties, to align better with the language used in section 3 of the *Legal Profession Act* to “uphold and protect the public interest in the administration of justice”.
9. The Executive Committee considered the proposed revisions to the Law Society’s oath at its May 15, 2024 meeting. This Committee was of the view that the language in the oath should mirror the language found in section 3 of the *Legal Profession Act* regarding upholding and protecting the public interest, and that the oath should be revised to remove “swear or” and provide only for an affirmation. Following these discussions, the Committee resolved to recommend that the Benchers approve revisions to Rule 1-3(1) to reflect these amendments to the oath.

## Decision

10. Red-lined and clean versions of the Rules are attached, along with a proposed resolution that Benchers are asked to approve.

## **Appendix A: Forms of Oaths and Affirmations**

### **BC Institute of Agrologists**

I do solemnly affirm that, in the exercise of my powers and the performance of my duties as a member of the Board or as a BCIA Committee member:

- I will abide by the Professional Governance Act and respective regulations, Bylaws, standards, and policies of BCIA, in accordance with the law and the public trust placed in me.
- I will act impartially and with integrity, putting the interests of the public above my own personal interest and the interests of any organization with which I am affiliated.
- I will avoid situations and circumstances in which there is a real or perceived conflict of interest by ensuring such conflicts of interest, are properly disclosed, and necessary measures are taken so a conflict of interest does not bias decisions or recommendations
- I will conduct myself honestly and ethically, in a matter that maintains and enhances the public's trust and confidence in the governance of the Agrology profession and does not bring the profession into disrepute.
- I will safeguard confidential information, not divulging it unless I am either authorized to do so or required to do so by law.
- I will base my decisions on the objective evidence that is available to me.
- I will ensure that other memberships, directorships, voluntary or paid positions or affiliations remain distinct from work undertaken in the course of exercising my powers or performing my duties as a Board or committee member.

### **Association of BC Forest Professionals**

I do solemnly affirm that, in the exercise of my powers and the performance of my duties as a member of the ABCFP Council:

- I will abide by the PGA and its regulations, and the bylaws, standards, and policies of the ABCFP, and act in accordance with the law and the public trust placed in me;
- I will act impartially and with integrity, putting the interests of the public above my own personal interests and those of any organization with which I am affiliated;

- I will avoid situations and circumstances in which there is a real or perceived conflict of interest by ensuring any such conflicts are properly disclosed and necessary measures are taken so as not to bias decisions or recommendations;
- I will conduct myself honestly and ethically in a manner that maintains and enhances the public's trust and confidence in the governance of the forestry profession and does not bring it into disrepute;
- I will safeguard confidential information, not divulging it unless I am either authorized or required to do so by law;
- I will base my decisions on the objective evidence that is available to me; and,
- I will ensure that other memberships, directorships, voluntary or paid positions, or affiliations remain distinct from work undertaken in the course of exercising my powers or performing my duties as a council member

**College of Physicians and Surgeons of British Columbia:**

I do solemnly affirm that:

- I will abide by the Health Professions Act and I will faithfully discharge the duties of the position, according to the best of my ability;
- I will act in accordance with the law and the public trust placed in me;
- I will act in the interests of the College as a whole;
- I will uphold the objects of the College and ensure that I am guided by the public interest in the performance of my duties;
- I have a duty to act honestly;
- I will declare any private interests relating to my public duties and take steps to resolve any conflicts arising in a way that protects the public interest;
- I will ensure that other memberships, directorships, voluntary or paid positions or affiliations remain distinct from work undertaken in the course of performing my duty as a board member.

## Appendix B

### LAW SOCIETY RULES

#### Oath of office

- 1-3 (1) At the next regular meeting of the Benchers attended by a Benchers after being elected or appointed as a Benchers or taking office as President or a Vice-President, the Benchers must take an oath of office in the following form:

I, [name] do ~~swear or~~ solemnly affirm that:

I will abide by the *Legal Profession Act*, the Law Society Rules, ~~and~~ the *Code of Professional Conduct* for British Columbia, and policies of the Society;

I will faithfully discharge the duties of [a Benchers/ President/First or Second Vice-President], according to the best of my ability; and

I will uphold the objects of the Law Society and ~~ensure that I am guided by will~~ uphold and protect the public interest in the performance of my duties.

- (2) An oath under this rule must be taken before a judge of the Provincial Court or a superior court in British Columbia, the President or a Life Benchers.

## Appendix C

### LAW SOCIETY RULES

#### Oath of office

- 1-3** (1) At the next regular meeting of the Benchers attended by a Bencher after being elected or appointed as a Bencher or taking office as President or a Vice-President, the Bencher must take an oath of office in the following form:

I, [name] do solemnly affirm that:

I will abide by the *Legal Profession Act*, the Law Society Rules, the *Code of Professional Conduct for British Columbia*, and policies of the Society;

I will faithfully discharge the duties of [a Bencher/ President/First or Second Vice-President], according to the best of my ability; and

I will uphold the objects of the Law Society and will uphold and protect the public interest in the performance of my duties.

- (2) An oath under this rule must be taken before a judge of the Provincial Court or a superior court in British Columbia, the President or a Life Bencher.

## Appendix D

### BENCHER OATH RULE

#### RESOLUTION:

*BE IT RESOLVED to amend Rule 1-3 (1) (a) of the Law Society Rules as follows by deleting:*

**“I, [name] do swear or solemnly affirm that:**

**I will abide by the *Legal Profession Act*, the Law Society Rules and the *Code of Professional Conduct*, and I will faithfully discharge the duties of [a Bencher/ President/First or Second Vice-President], according to the best of my ability; and**

**I will uphold the objects of the Law Society and ensure that I am guided by the public interest in the performance of my duties.”**

*and replacing it with*

**“I, [name] do solemnly affirm that:**

**I will abide by the *Legal Profession Act*, the Law Society Rules, the *Code of Professional Conduct for British Columbia*, and policies of the Society;**

**I will faithfully discharge the duties of [a Bencher/ President/First or Second Vice-President], according to the best of my ability; and**

**I will uphold the objects of the Law Society and will uphold and protect the public interest in the performance of my duties.”**

**REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT**

May 16, 2024

**Sent via email**

Karen Campbell  
Executive Director  
British Columbia Law Institute  
1822 East Mall, University of British Columbia  
Vancouver, BC V6T 1Z1

**Jeevyn Dhaliwal, KC**  
President

Office Telephone  
604.605.5394

Office Email  
president@lsbc.org

Dear Karen Campbell:

**Re: Appointment to the British Columbia Law Institute Board of Directors**

I am pleased to confirm that the Law Society of BC's Executive Committee has appointed Emilie Eva-Ann LeDuc to the British Columbia Law Institute Board of Directors for a three-year term, effective June 1, 2024.

I am confident that the British Columbia Law Institute and its important work will be well served by the contributions of Emilie LeDuc.

Yours truly,



Jeevyn Dhaliwal, KC  
President, Law Society of BC

c. Don Avison, KC  
Chief Executive Officer, Law Society of BC