



Agenda

Benchers

Date: Friday, January 28, 2022

Time: **9:00 am - Call to order**

Please join the meeting anytime from 8:30 am to allow enough time to resolve any video/audio issues before the meeting commences.

Location: Virtual Meeting: Zoom

Recording: *Benchers, staff and guests should be aware that a digital audio and video recording will be made at this Benchers meeting to ensure an accurate record of the proceedings. Any private chat messages sent will be visible in the transcript that is produced following the meeting.*

VIRTUAL MEETING DETAILS

The Bencher Meeting is taking place in a virtual format. If you would like to attend the meeting, please email BencherRelations@lsbc.org.

OATH OF OFFICE:

The Honourable Chief Justice Christopher E. Hinkson will administer an oath of office (in the form set out in Rule 1-3) to President Lisa Hamilton, QC, First Vice-President Christopher McPherson, QC and Second Vice-President Jeevyn Dhaliwal, QC (individually) and to all appointed and elected Benchers (en masse).

1	Administer Oaths of Office
2	Indigenous Welcome

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.

3	Minutes of December 3, 2021 meeting (regular session)
4	Minutes of December 3, 2021 meeting (<i>in camera</i> session)
5	Law Society Representatives on the 2022 QC Appointments Advisory Committee
6	Recommendation for Amendments to Law Society Rules: Rule 3-6, 3-81, and 3-86



Agenda

7	Terms of Reference for Committees and Related Rule Amendments		
8	Indigenous Intercultural Course – Late Fee		
9	Administrative Penalties		
10	Bencher Compensation		
REPORTS			
11	President’s Welcome and Report	15 min	Lisa Hamilton, QC
12	CEO’s Report	15 min	Don Avison, QC
13	Briefing by the Law Society’s Member of the Federation Council	10 min	Pinder K. Cheema, QC
DISCUSSION/DECISION			
14	Governance Reform: Further Discussion	45 min	Lisa Hamilton, QC Don Avison, QC
UPDATES			
15	Report on Outstanding Hearing & Review Decisions <i>(Materials to be circulated at the meeting)</i>	1 min	Lisa Hamilton, QC
FOR INFORMATION			
16	2023 Bencher and Executive Committee Meeting Schedule		
17	Appointment of the Tribunal Chair: Minute of Approval by Email		
18	Law Society Appointment: Continuing Legal Education of BC		
19	Minutes of January 13, 2022 Executive Committee Meeting		
20	Three Month Bencher Calendar – February to April 2022		
IN CAMERA			
21	Other Business		



Minutes

Benchers

Date: Friday, December 03, 2021

Present:

Dean P.J. Lawton, QC, President	Jamie Maclaren, QC
Lisa Hamilton, QC, 1 st Vice-President	Geoffrey McDonald
Christopher McPherson, QC, 2 nd Vice-President	Steven McKoen, QC
Jeevyn Dhaliwal, QC, 2 nd Vice-President-Elect	Jacqueline McQueen, QC
Paul Barnett	Elizabeth J. Rowbotham, QC
Kim Carter	Mark Rushton
Pinder K. Cheema, QC	Karen Snowshoe
Jennifer Chow, QC	Thomas L. Spraggs
Cheryl S. D'Sa	Michael Welsh, QC
Lisa Dumbrell	Kevin B. Westell
Lisa Feinberg	Chelsea D. Wilson
Martin Finch, QC	Guangbin Yan
Brook Greenberg, QC	Gaynor C. Yeung
Sasha Hobbs	Heidi Zetzsche
Dr. Jan Lindsay	

Unable to Attend: Barbara Stanley, QC

Staff:

Don Avison, QC	Michael Lucas, QC
Avalon Bourne	Alison Luke
Barbara Buchanan, QC	Claire Marchant
Jennifer Chan	Jeanette McPhee
Lance Cooke	Cary Ann Moore
Natasha Dookie	Doug Munro
Su Forbes, QC	Michelle Robertson
Andrea Hilland, QC	Lainie Shore
Kerryn Holt	Lesley Small
Jeffrey Hoskins, QC	Adam Whitcombe, QC
Alison Kirby	Vinnie Yuen
Jason Kuzminski	

Guests:	Dom Bautista	Executive Director & Managing Editor, Law Courts Center
	Mark Benton, QC	Executive Director, Legal Aid BC
	Aleem Bharmal	New President, Canadian Bar Association, BC Branch
	Greg Cavouras	Member, Law Society of BC
	Harry Cayton	Advisor, Professional Regulation and Governance
	Tanya Chamberlain	2022 Bencher-Elect
	Christina Cook	Member, Aboriginal Lawyers Forum
	Paul Craven	Superintendent, Professional Governance
	Brian Dybwad	2022 Bencher-Elect
	Dr. Cristie Ford	Professor, Allard School of Law
	Richard Fyfe, QC	Deputy Attorney General of BC,
	Clare Jennings	President, Canadian Bar Association, BC Branch
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program of BC
	Lindsay LeBlanc	2022 Bencher-Elect
	Mark Meredith	Treasurer and Board Member, Mediate BC Society
	Caroline Nevin	CEO, Courthouse Libraries BC
	Linda I. Parsons, QC	Member, Governance Committee
	Josh Paterson	Executive Director, Law Foundation of BC
	Paul Pearson	2022 Bencher-Elect
	Ngai Pindell	Dean of Law, Peter A. Allard School of Law
	Georges Rivard	2022 Bencher-Elect
	Michèle Ross	President, BC Paralegal Association
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Gurminder Sandhu	2022 Bencher-Elect
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
	Sarah Westwood	2022 Bencher-Elect

CONSENT AGENDA

1. Minutes of October 16, 2021, meeting (regular session)

The minutes of the meeting held on October 16, 2021 were approved unanimously and by consent as circulated.

2. Minutes of October 16, 2021, meeting (*in camera* session)

The minutes of the *In Camera* meeting held on October 16, 2021 were approved unanimously and by consent as circulated.

3. Rules Governing Tribunal Procedures

The proposed rule changes as recommended by the Act and Rules Committee were approved unanimously and by consent as circulated.

4. Law Society Appointments to Outside Bodies

The following resolution was passed unanimously and by consent:

BE IT RESOLVED that the Benchers agree the Law Society should contact all outside bodies to which the Law Society makes appointments to discuss the Law Society's continued involvement in the appointments process.

5. Retired Member Fee Waiver Request

The following resolution was passed unanimously and by consent:

BE IT RESOLVED that the retired member's request for waiver of his retired member fee be approved for 2022.

6. 2022 Committees, Task Forces and Working Groups

This item was removed from the Consent Agenda and discussed after the For Information items.

Benchers discussed Ms. Hamilton's recommendations to wind up and dissolve the Governance Committee, the Act and Rules Committee, and the Unauthorized Practice Committee with some Benchers expressing concerns regarding the wind up and dissolution of the Act and Rules Committee. Ms. Hamilton provided additional clarification regarding her recommendations for the 2022 committees, noting that the mandate of the Act and Rules Committee is to implement decisions by the Benchers that require amendments to the Act and Rules and to recommend non-substantive improvements to the Act and Rules. Given the Committee's mandate and

recognizing that the majority of the drafting and presentation of amendments lies with staff, Ms. Hamilton noted that much of the work of this Committee could be done at an operational level with the Executive Committee brought in as needed.

Benchers also discussed the importance of reviewing the mandate and terms of reference of each of the Task Forces to ensure the relevance and purpose of each.

The following motion was moved and seconded:

BE IT RESOLVED that effective December 31, 2021, the Governance Committee, the Act and Rules Committee, and the Unauthorized Practice Committee are wound up and dissolved and the Ethics and Rule of Law and Lawyer Independence Advisory Committee are consolidated with a general mandate to consider issues of professional responsibility, interpret existing rules and provide advice to individual members and to the members at large and to consider and advise the Benchers on matters relating to the ethics and the rule of law and lawyer independence.

The resolution was passed unanimously.

REPORTS

7. President's Report

Mr. Lawton congratulated the Benchers that were elected to the 2022 Executive Committee and thanked them for putting forward their names.

Mr. Lawton also congratulated the 2021 recipients of the Queen's Counsel designation for their contributions to BC's provincial justice system through their work as lawyers.

Mr. Lawton informed Benchers of the passing of former Bencher Don Silversides, QC.

Mr. Lawton noted that this would be the first and last meeting he would be chairing in person in the Bencher Room. He also noted that it was the first in-person Bencher meeting to take place in the Bencher Room at the Law Society offices since March 2020.

Mr. Lawton updated Benchers on his recent events and activities, including attending a public gathering at which remarks were made about how human geography shapes cultural geography. Mr. Lawton noted that the comments made at this gathering related to the lessons learned over the course of the COVID-19 pandemic, in particular the importance of collaboration and in ensuring that our public institutions make change for the collective good, even when there is a history of causing harm. Mr. Lawton noted that he also attended the Canadian Institute for the Administration of Justice's (CIAJ) annual conference, which focused on Indigenous Peoples and the law. Mr. Lawton noted that the opening remarks provided by Chief Justice Bauman were

quite impactful and emphasized the issues of decolonization of legal institutions and reconciliation with Indigenous Peoples. Mr. Lawton emphasized the important work that would need to continue to help affect change within the legal system and within the Law Society for the benefit of the public.

Mr. Lawton concluded his report by acknowledging those Benchers who would be finishing their terms at the end of 2021.

8. CEO's Report

Mr. Avison began his report with an overview of plans for the new Bencher orientation, which would take place in advance of the January Bencher meeting. Mr. Avison indicated that the orientation would be revised to be more comprehensive in recognition of the number of new Benchers starting their terms in 2022. He noted that the orientation would likely cover Mr. Cayton's report on the Law Society's governance, the Law Society's anti-money laundering initiatives, and a number of other matters.

Mr. Avison then updated Benchers on the appeal from the Court of Appeal for Saskatchewan's decision in *Abrametz v Law Society of Saskatchewan*, 2020 SKCA 81, which was recently heard at the Supreme Court of Canada. Mr. Avison noted the numerous intervenors, including the Attorney General of British Columbia.

Mr. Avison provided an overview of the Counter Illicit Finance Alliance of British Columbia (CIFA-BC)'s annual symposium.

Mr. Avison informed Benchers that the Select Standing Committee on Finance had recently reported on priorities for the 2022 provincial budget. Mr. Avison indicated that the report included focus on additional support for legal aid, as well as technical improvements to the infrastructure of the courts.

The Cullen Commission has received an extension for submission of its final report, and Mr. Avison noted that the report was expected to be delivered in May 2022.

Mr. Avison provided an overview of the recent International Institute of Law Association Chief Executives (ILACE) conference, which took place in Copenhagen. Day one of the conference focused on real and potential threats to the rule of law and the importance of preserving an independent legal profession as a fundamental component of the rule of law, and Mr. Avison noted that he had been responsible, along with Helen Hierschbiel, CEO of the Oregon State Bar, for the development of the Day one program. Mr. Avison reviewed each of the sessions with Benchers, noting that they had been well received. Mr. Avison spoke about the presentation given by Steven Wax, a former Public Defender for the District of Oregon in Portland, Oregon. Mr. Wax had defended several of the detainees of the Guantanamo Bay detention camp, and Mr.

Avison noted that he intended to invite Mr. Wax to attend a future Bencher meeting to speak about his experiences.

Mr. Avison concluded his report by updating Benchers on Law Society operations, noting that this Bencher meeting was the first hybrid Bencher meeting held at the Law Society offices. He noted that the hybrid features would continue to be tested with thought given to whether or not it was necessary for additional virtual technology to be added to the Bencher Room. Mr. Avison also noted that the Law Society's hybrid work policy would be fully in effect as of December 6.

DISCUSSION/DECISION

9. Report of a Governance Review of The Law Society of BC

Mr. Lawton welcomed Mr. Cayton to the meeting.

Mr. Cayton presented his report on the Law Society's governance, starting with an overview of the standards of good governance, against which the Law Society had been assessed, noting that the standards had been developed by the Professional Standards Authority, as part of its overall performance review process for regulators. He then provided an overview of the work he undertook in performing his review and preparing his report. Mr. Cayton spoke about his assessment of the Law Society's governance framework against the standards of good governance, noting that there were only two of the nine standards that the Law Society did not meet, with the Law Society meeting or partially meeting the remaining seven standards. Mr. Cayton indicated that key areas for improvement included better engagement with the public's interests, addressing challenges with the Law Society's governance structure as a result of requirements provided for in the *Legal Profession Act* and the Law Society Rules, the nature of some roles that Benchers are expected to take on resulting in real or perceived conflicts of interest, and taking a more robust approach to identification and management of risks of harm to the public.

Mr. Cayton concluded his presentation by noting that good governance should flow from clarity of purpose, not the other way around, and that good governance should be a support for the delivery of the Law Society's strategic objectives. Mr. Cayton also noted that the standards of good governance are meant to be challenging and are meant to encourage regulators to think about their governance structure. He indicated that rarely would an organization meet all of the standards on a first assessment.

Benchers then engaged in discussions with Mr. Cayton regarding the findings in his report, including the importance of articulating the link to the protection and service of the public when considering policy decisions, increasing separation between the Law Society's board and the

Tribunal, making the complaints process more accessible, and making the best use of board meetings and the Benchers' time, so that the board is able to concentrate more on what matters.

Benchers discussed possible approaches to considering the recommendations made within the report. While Bencher support was expressed for many of the recommendations, some Benchers expressed concerns about possible unintended consequences of implementing some of the recommendations. Mr. Cayton suggested reviewing recommendations incrementally with a realistic sense of how long it would take to affect change on certain matters. He also suggested focusing on practical changes that could have a larger effect on processes overall.

Benchers discussed how to approach those recommendations that would require legislative changes and/or approval of the profession. Mr. Cayton spoke about the importance of having a concerted, consistent, and prolonged communication plan to help prepare for discussions with government regarding the value of the proposed changes, and how they would affect access to justice and access to legal services.

Benchers discussed the comments in the report regarding the Law Society's Annual General Meeting (AGM). Mr. Cayton noted that the Law Society's current governance model was more in line with that of an association, not a regulator, and that there were other ways to engage with the profession outside of an AGM.

Benchers discussed board composition, size, and possible board composition alternatives, including having more appointed Benchers. Mr. Cayton spoke about the importance of having regulation that is shared between the profession and the public to protect the interests of the public that is being served. He noted that he would recommend a blend of elected board members, government appointed board members, and those appointed by the board through a formal appointment process based on a set of competencies. He also suggested the forming of a Nominations Committee to encourage certain groups to stand for election.

Mr. Lawton thanked Mr. Cayton for his presentation and comments.

Mr. Avison noted that discussions regarding Mr. Cayton's report would continue at subsequent meetings. He also noted that the report would be made public and available on the Law Society's website.

A motion to receive the report was approved.

10. Responding to COVID-19 and Adjusting Regulation to Improve Access to Legal Services and Justice

Ms. Hamilton reviewed with Benchers the recommendations from the Access to Justice Advisory Committee regarding responding to the impacts of COVID-19 on the delivery of legal services and access to justice and adjusting regulation to improve access to legal services and justice, which were presented for discussion.

Benchers discussed possible regulatory barriers and where rule amendments or changes could be made in order to make compliance to the Law Society's rules less challenging.

Benchers agreed that the recommendations should be put forth to staff for consideration with a report to follow at a future meeting.

11. Indigenous Intercultural Course – Rule Requirements

Mr. Lawton reviewed with Benchers the proposed rule changes, which would require all practising lawyers to complete the Indigenous Intercultural Course (the Course) within two years, and which would also provide for an enforcement mechanism to address non-compliance. Mr. Lawton noted that the enforcement mechanism for non-compliance would be similar as to that for non-completion of annual CPD requirements. Mr. Lawton also noted that the proposed rule changes had been shared with the Truth and Reconciliation Advisory Committee, and the Advisory Committee had been supportive of treating a failure to complete the Course in the same fashion as a failure to complete CPD requirements.

Benchers discussed how best to deal with special circumstances in which an individual may be encountering difficulties in completing the Course. Some Benchers suggested referring decisions regarding special circumstances to the Chair of Credentials, as opposed to the Credentials Committee as a whole in order to keep the process timely and responsive, and that allowing exceptions for special circumstances should be approached carefully so as to not undercut the importance of the Course. Mr. Avison noted that there would be a great deal of communication regarding the importance of completing the Course, and the timeframe in which to complete it. He also noted that there could be circumstances where individuals may encounter difficulties completing the Course, so it would be prudent to have the flexibility to treat these requests on a discretionary basis with authority given to the Chair of the Credentials Committee.

Benchers discussed making the Course available to the public. Mr. Avison indicated that the Course would not be made available for the public at this time, due to the associated costs; however, it could be useful for non-lawyer members of the Tribunal and Law Society committees to take the Course, so this will be considered.

Benchers discussed what could constitute circumstances for delay or non-completion of the Course, and whether or not more detail should be provided. Mr. Lawton noted that the intent was for all lawyers to take the Course, and that additional time to complete the Course may be offered to individuals on a case by case basis.

The following motion was moved and seconded:

BE IT RESOLVED that the Benchers approve the proposed Rule 3-28.1 requiring all practising lawyers to complete the Indigenous Intercultural Course within the specified timeframe and new Rule 3-28.2, which contains an enforcement mechanism to deal with non-compliance, subject to changing the authority in Rule 3-28.2 to Chair of the Credentials Committee, as opposed to the Credentials Committee.

The motion was passed unanimously.

12. Data on Law School Graduates Seeking Articles

Mr. Avison reminded the Committee that a motion had been made at the October 16, 2021 Bencher meeting resolving that the Law Society shall pursue means to collect information that would assist it to: i) determine the supply and demand gap for articling positions in British Columbia; and ii) obtain race-based data, and other demographic information concerning the population of law graduates seeking articling positions in British Columbia. The motion had been deferred to the December Bencher meeting to allow time for additional information to be provided, and Mr. Avison indicated that further work would need to be done regarding the collection and use of data. He also indicated that there was a need for consultation with a number of groups prior to moving forward with this initiative, and that the matter had been raised with CBABC to engage with them and other groups. Mr. Avison noted that discussions had taken place with the Truth and Reconciliation Advisory Committee (TRAC) and concerns had been raised regarding the type of data that would be collected and how it would be used.

Mr. McPherson provided further information regarding the discussions with TRAC. He indicated that while there is a need to collect the data being proposed, some members of TRAC expressed concerns regarding the collection and use of the data, as well as placing individuals in a position where they would be asked to provide information about their identity, which could be viewed as intrusive.

Benchers discussed the importance of consultation with other groups regarding the collection of data from equity-seeking groups to ensure any data collection would be carried out sensitively, anonymously, and in accordance with data governance principles. Some Benchers indicated that not every equity-seeking group has a formal representative organization, so thought will need to be given as to making participation in the consultation process inclusive.

Mr. Maclaren noted that he had been in communication with the BC Human Rights Commissioner regarding how to go about collecting data in a respectful and appropriate way, and that the Commissioner had offered to come speak to Benchers on this matter.

Benchers agreed to refer the motion to staff for the purpose of consultation and further discussion.

UPDATES

13. Financial Report – 2021 – Q3 and Forecast

Ms. McPhee provided an overview of the financial results and highlights to the end of September 2021. Ms. McPhee noted that the general fund operations resulted in a positive variance to budget, which was mainly due to timing differences and permanent variances for both revenues and operating expenses. Ms. McPhee also provided an overview of forecasted 2021 year-end results, and noted that revenue was projected to be ahead of budget due primarily to an increase in projected practising lawyers and electronic filing revenues. Ms. McPhee also noted that operating expenses are projected to be under budget due to savings in meeting and travel expenses and general office savings.

14. Report on Outstanding Hearing & Review Decisions

President Lawton provided an update on outstanding hearing and review decisions and thanked Benchers for their efforts to get decisions in on time, as timeliness is important to the public and those involved in proceedings.

FOR INFORMATION

15. Bencher and Committee Evaluation Surveys

There was no discussion on this item.

16. Revision to Schedule of 2022 Bencher & Executive Committee Meeting Dates and Meeting Format

There was no discussion on this item.

17. Year-End Advisory Committee Reports

There was no discussion on this item.

18. Practice Standards Committee Consideration of President’s Mandate Letter

There was no discussion on this item.

19. Continuing Professional Development for Pro Bono Work

There was no discussion on this item.

20. Report on the Benchers’ Retreat Conference – October 15, 2021

There was no discussion on this item.

21. Minutes of November 18, 2021 Executive Committee Meeting

There was no discussion on this item.

22. Three Month Bencher Calendar – December 2021 to February 2022

There was no discussion on this item.

23. External Appointments

There was no discussion on this item.

Final Remarks

Mr. Avison and Ms. Hamilton paid tribute to outgoing President Lawton and thanked him for his dedication, commitment, and significant contributions to the Law Society over the past year.

Mr. Lawton thanked Mr. Avison and Ms. Hamilton for their kind words, and then welcomed Ms. Hamilton as President for 2022 and presented her with the President’s pin.

The Benchers then commenced the *In Camera* portion of the meeting.

AB
2021-12-03



Memo

To: Benchers
From: Executive Committee
Date: January 28, 2022
Subject: **Law Society Representatives on the 2022 QC Appointments Advisory Committee (For Consent)**

In accordance with the *Queen's Counsel Act*, the Attorney General must consult, inter alia, with two members of the Law Society appointed by the Benchers. The Benchers' past practice, on the recommendation of the Executive Committee, has been to appoint the current President and First Vice-President for that purpose.

The other members of the QC Appointments Advisory Committee are the Chief Justices, the Chief Judge, the Deputy Attorney General, and the CBABC President.

The Executive Committee recommends that Benchers approve the following resolution:

BE IT RESOLVED that the Benchers appoint President Lisa Hamilton, QC and First Vice-President Christopher McPherson, QC as the Law Society's representatives on the 2022 QC Appointments Advisory Committee.



Recommendation for Amendments to Law Society Rules 3-6, 3-81 and 3-86

January 28, 2022

Prepared for: Benchers

Prepared on Executive Committee
behalf of:

Purpose: For Consent

Purpose of Report

Amendments to Law Society Rules 3-6, 3-81 and 3-86 are recommended to improve the process for determining whether special circumstances exist to either order that a lawyer not be suspended or to delay the start of an administrative suspension.

The problem

Each of Rules 3-6, 3-81 and 3-86 provides for administrative suspensions resulting from a lawyer's failure to respond substantively to the Law Society's request for information and records in an audit or investigation.

The problem the recommended amendments aim to address relates to the process for determining a lawyer's application made under each of the Rules identified. When there are special circumstances the Discipline Committee may, at its discretion, order that a lawyer not be suspended or delay the suspension to a later date (Rule 3-6(2), Rule 3-81(3) and Rule 3-86(2)). As a practical matter, when a lawyer makes such an application the suspension is stayed until the Discipline Committee next meets. There are a number of problems in the current process:

- by making an application a lawyer obtains a *de facto* extension of the time to respond, in some cases by weeks. Therefore, the simple act of making the application grants the lawyer a stay of the suspension, which is one of the potential outcomes of an application; and
- there are issues with the Discipline Committee (as opposed to a single individual or panel) having to draft reasons that could be subject to judicial review, including the impracticality of a group the size of the Discipline Committee drafting or reaching consensus, all of which can lead to further delay.

Discipline Committee meetings are usually set to coincide with Benchers meetings, meaning that there can be a number of weeks between meetings. A number of factors go into setting the dates for the meetings. While meetings are set frequently in order to better protect the public, and ad hoc meetings are possible, the schedule is not set in relation to particular applications under these particular rules. Because of the number of Committee members, setting ad hoc special meetings to deal with specific matters can be difficult to schedule. Staff recommend that the application process should not be tied to pre-determined meeting dates but, rather, should allow for a flexible, prompt response.

The proposed changes

Staff recommend that the function of the Discipline Committee under Rules 3-6(2), 3-81(3) and 3-86(2) be assigned to the Committee Chair or designate. This change will allow for timely

responses on a case-by-case basis to ensure matters move along quickly and to ensure that the public interest is better protected by removing the ability of a lawyer to in effect gain a delay of a suspension that may not actually be warranted simply by asking for one. The change also supports more efficient decision making, as it will speed up the process of decision-writing because the decision will be made by a single person.

Regulatory Impact Assessment

There are a number of factors in a regulatory impact assessment of proposed rule changes.

(1) Public Interest Assessment

The proposed change advances the public interest as it will allow for a prompt determination of an application under Rules 3-6, 3-81 or 3-86. With the amendment, an application can be heard in short order and, if denied, the suspension will take effect right away. The lawyer does not gain a tactical advantage by simply making an application. The prompt imposition of the suspension reinforces the importance of the duty to cooperate fully with the Law Society's requests, and ensures a timely application of the Society's Rules.

At present, as a result of the delay in applications being considered by the Discipline Committee, a lawyer receives a de facto extension of time, which can be for several weeks. The delays arising from the current process have the potential to weaken the confidence the public has in the Law Society as regulator.

(2) Lawyer Impact Assessment

The shift to the new model is not unfair to registrants because the commencement of a suspension would still be stayed from the time of the application until the Chair or designate decide the matter. If the Chair's or designate's decision is that there are special circumstances justifying that the suspension not take effect or be delayed, it is better to find this information out sooner than later. If the suspension is upheld, then no unfairness exists as "special circumstances" were not found.

(3) Operational Impact Assessment

There is no significant anticipated operational impact arising from the proposed amendment. Staff resources will still be spent to prepare the Law Society's materials in response to the lawyer's application.

(4) Equity, Diversity and Inclusion ("EDI")

Staff do not anticipate the change would trigger an issue relating to EDI any more than how EDI issues may already need to be addressed under the current process. It would be, in fact, easier to ensure that the Chair, or designate, who are addressing the request for a delay of the suspension is

appropriately aware of EDI issues that may arise than it is to ensure that a full Committee is appropriately trained.

(5) Reconciliation with Indigenous Peoples

For the same reasons identified regarding EDI, staff do not anticipate the rule change raises specific concerns regarding Truth and Reconciliation because as between the role of Chair or designate, the role can be assigned in an appropriate manner. Cultural awareness as to what “special circumstances” may mean in an Indigenous context will be important, but that would be so whether the decision maker is the Committee or an individual. Consequently, there would be wisdom in requiring the Chair or anyone the Chair designates to have at least completed the Indigenous Intercultural Course before hearing a matter which may raise issues relating an Indigenous registrant.

Some thought might need to be given as to what factors identified in the Law Society’s Indigenous Intercultural Course and Truth and Reconciliation efforts might constitute “special circumstances” as contemplated by the Rules, in order that the Chair or the designate have objective principles to apply, such as, for example, where the lawyer who is the subject of the administrative suspension claims that the non-compliance with the rules is rooted in historical trauma, rather than a specific practice issue. How does the Chair or designate balance such a claim against the over-riding objective of protecting the public interest?¹

(6) Government relations

Staff anticipate that if the change affects government relations at all, it would do so in a positive manner because the proposal is intended to make an important regulatory process more efficient. The proposal balances protection of the public with fairness to registrants, and does not place the latter above the former.

Recommendation and Proposed Resolution

Staff recommend the following resolution:

BE IT RESOLVED THAT that Rules 3-6, 3-81 and 3-86 be amended by replacing “the Discipline Committee” where it appears in each rule with “the Chair of the Discipline Committee or designate” and that “its,” where it appears in Rule 3-6(2), 3-81(3) and 3-86(2) be replaced with “the Chair’s or designate’s.”

/DM

¹ This issue is not exclusive to Truth and Reconciliation, as matters relating to EDI and mental health can trigger similar challenges.



Memo

To: Benchers
From: Staff
Date: January 28, 2022
Subject: Terms of Reference for Committees and Related Rule Amendments (For Consent)

Purpose

This memo provides draft terms of reference for the new Ethics and Lawyer Independence Advisory Committee and related rule amendments, and proposed revised terms of reference for the Executive Committee and the Truth and Reconciliation Advisory Committee, to the Benchers for approval.

Background

1. Ethics and Lawyer Independence Advisory Committee

On December 3, 2021, the Benchers approved the consolidation of the Ethics Committee and the Rule of Law and Lawyer Independence Advisory Committee, to form a new Committee called the Ethics and Lawyer Independence Advisory Committee. The Benchers agreed the Committee would have a general mandate to consider issues of professional responsibility, interpret existing rules and provide advice to individual members and to the members at large and to consider and advise the Bencher on matters relating to ethics and the rule of law and lawyer independence.

New terms of reference for the Ethics and Lawyer Independence Advisory Committee are attached as **Appendix A** for Bencher approval, as well as redlined and clean versions of proposed rule amendments and a resolution for Bencher approval as **Appendix B**, to address that Law Society Rules 9-3 and 9-16 specifically give certain responsibilities to the Ethics Committee.

2. Executive Committee

The Benchers also resolved to wind up and dissolve the Governance Committee, the Act and Rules Committee, and the Unauthorized Practice Committee, with the understanding that the

Executive Committee could coordinate the preparation and presentation of any matters to the Benchers that would otherwise have gone to these Committees.

Redlined and clean draft revised terms of reference for the Executive Committee are attached as **Appendix C** for Bencher approval.

The Executive Committee has reviewed each of the above terms and recommends the Benchers approve the attached terms of reference for the Ethics and Lawyer Independence Advisory Committee and related rule amendments, and the revised terms of reference for the Executive Committee. One further amendment to the revised terms of reference for the Executive Committee has been made since the Executive Committee meeting on January 13, 2022, which is to remove a reference to Rule 1-51(d) that has been rescinded.

3. Truth and Reconciliation Advisory Committee

Given the mandate that was provided to the Truth and Reconciliation Advisory Committee when it was created, it was understandably very important to ensure that Indigenous individuals were part of the Committee. At the time the Committee was created, however, there were very few Indigenous benchers. As a result, the original Terms of Reference described the composition of the Committee as “an equal number of Benchers and non-Benchers” to allow appointments of Indigenous individuals who were not benchers. Over the subsequent years, the Committee has been comprised of an equal number of benchers and Indigenous individuals.

In the 2021 elections, an increased number of Indigenous benchers were elected, which gives more opportunities when appointing the committee to appoint from within the bencher table while maintaining an equal number of Indigenous and non-Indigenous individuals. To reflect that fact, it is proposed that the composition of the Committee as set out in the Terms of Reference reflect that at least one-half the Committee be comprised of Indigenous individuals, rather than that it be made up of an equal number of benchers and non-benchers. Redlined and clean draft revised terms of reference for the Truth and Reconciliation Advisory Committee are attached as **Appendix D** for Bencher approval.

Resolutions

The Benchers are asked to approve the following resolutions:

BE IT RESOLVED that the Benchers approve the attached terms of reference for the Ethics and Lawyer Independence Advisory Committee and the revised terms of reference for the Executive Committee and the Truth and Reconciliation Advisory Committee; and

BE IT RESOLVED to amend Rules 9-3 and 9-16 by striking “Ethics Committee” where it appears and substituting “Ethics and Lawyer Independence Advisory Committee”.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Ethics and Lawyer Independence Advisory Committee

Terms of Reference

January 2022

Mandate

The Ethics and Lawyer Independence Advisory Committee identifies and considers issues of professional responsibility and develops recommendations for consideration by the Benchers, interprets existing rules and provides advice to individual members and to the members at large on matters of professional responsibility. The Committee also monitors, considers and advises the Benchers on matters relating to ethics and the rule of law and lawyer independence so that the Law Society can ensure its processes and activities preserve and promote the preservation of the rule of law and the independence and effective self-governance of lawyers.

Composition

The Committee is appointed each year by the incoming President and generally consists of nine to twelve members, with a Bencher as Chair. The majority of the committee is generally comprised of Benchers and Life Benchers, and should, if possible, include an appointed bencher. Usually there are at least two lawyers who are not benchers on the Committee. Composition of the Committee should reflect best practices for diversity.

Meeting Practices

1. The Committee operates in a manner that is consistent with the Benchers' Governance Policies.
2. The Committee meets as required in order to fulfill its responsibilities and carry out its mandate, and meetings may take place in-person or virtually.
3. At least half the members of the Committee constitutes a quorum.
4. Decisions of the Committee are usually reached by consensus, but in circumstances where consensus cannot be achieved, the Committee will vote on issues. Any disputes in process are resolved in accordance with the Law Society Rules with reference to the latest edition of Roberts Rules of Order (Newly Revised).

5. The Committee may, from time to time, invite guests.

Accountability

The Committee is accountable to the Benchers. The Committee makes proposals for change to the Code of Professional Conduct for British Columbia (“the Code”) to the Benchers, who have final responsibility for changes to the Code. The Committee also monitors, identifies, considers and advises the Benchers on issues relating to the rule of law and lawyer independence. The Benchers are responsible for any decision-making, unless the Benchers have delegated, where permissible, specific tasks to the Committee that are to be discharged by the Committee. If a matter relating to the Committee’s mandate arises that the Committee believes requires immediate attention by the Law Society, the Committee will advise the Executive Committee.

Reporting Requirements

The Committee will bring matters to the Benchers for approval or for their attention as needed or in accordance with the terms of a specific task that the Benchers have assigned to the Committee.

Duties and Responsibilities

1. The Committee’s duties and responsibilities are advisory in nature.
2. The Committee maintains communications with the Federation of Law Societies of Canada’s Standing Committee on the Model Code of Professional Conduct, observes developments in the Model Code, and makes recommendations to the Benchers concerning contemplated amendments to the Code of Professional Conduct for British Columbia.
3. The Committee considers ethical issues referred for its review by the Benchers or by the Executive Committee. In some cases the Committee considers issues raised by individuals and it may, where appropriate, issue ethics opinions for the purpose of providing guidance to lawyers.
4. The Committee is also responsible for some of the annotations to the Code of Professional Conduct, either by issuing opinions to stand as annotations or by reviewing case summary annotations at the request of staff.

5. The Committee monitors, considers and advises on matters relating to the rule of law and lawyer independence so that the Law Society can ensure:
 - its processes and activities preserve and promote the preservation of the rule of law and the independence and effective self-governance of lawyers,
 - the legal profession and the public are properly informed about the meaning and importance of the rule of law and how a self-governing profession of independent lawyers supports and is a necessary component of the rule of law. The Committee may develop the means by which the Law Society can effectively respond to those issues. This can either be to keep the Benchers informed of key matters, to assist in setting policy, or to recommend that specific action be taken by the Benchers.
 - it develops means to be able to respond to issues that might affect the public interest in the independence of lawyers and rule of law.
6. Discharge any specific tasks that the Benchers delegate to the Committee.
7. Discharge all work in a manner consistent with the Law Society's public interest mandate.

Staff Support

Director, Policy and Planning
Staff Lawyer, Policy and Planning

Appendix B

ETHICS AND LAWYER INDEPENDENCE ADVISORY COMMITTEE

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend Rules 9-3 and 9-16 by striking “Ethics Committee” where it appears and substituting “Ethics and Lawyer Independence Advisory Committee”.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

LAW SOCIETY RULES

PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

Division 1 – Law Corporations

Review of Executive Director's decision

- 9-3** (1) A lawyer whose application is rejected under Rule 9-2 [*Corporate name certificate*] may apply in writing to the Ethics [and Lawyer Independence Advisory](#) Committee for a review.
- (2) After considering any submissions received from the lawyer and from the Executive Director, the Ethics [and Lawyer Independence Advisory](#) Committee must
- (a) direct the Executive Director to issue a certificate to the lawyer if it is satisfied that the intended name complies with Rule 9-1 [*Corporate name*], or
 - (b) reject the application.
- (3) The Ethics [and Lawyer Independence Advisory](#) Committee must notify the lawyer and the Executive Director in writing of its decision under this Rule.

Division 2 – Limited Liability Partnerships

Review of Executive Director's decision

- 9-16** (1) If the Executive Director declines to issue a statement of approval under Rule 9-15 [*Notice of application for registration*], the person applying may apply in writing to the Ethics [and Lawyer Independence Advisory](#) Committee for a review.
- (2) After considering any submissions received from the partners and from the Executive Director, the Ethics [and Lawyer Independence Advisory](#) Committee must
- (a) direct the Executive Director to issue a statement of approval if it is satisfied that
 - (i) the intended name complies with Rule 9-14 [*LLP name*], and
 - (ii) Rule 9-15 (3) [*Notice of application for registration*] has been satisfied, or
 - (b) reject the application.
- (3) The Ethics [and Lawyer Independence Advisory](#) Committee must notify the person applying and the Executive Director in writing of its decision under this rule.

LAW SOCIETY RULES

PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

Division 1 – Law Corporations

Review of Executive Director’s decision

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- (a) direct the Executive Director to issue a certificate to the lawyer if it is satisfied that the intended name complies with Rule 9-1 [*Corporate name*], or
 - (b) reject the application.
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Division 2 – Limited Liability Partnerships

Review of Executive Director’s decision

- 9-16** (1) If the Executive Director declines to issue a statement of approval under Rule 9-15 [*Notice of application for registration*], the person applying may apply in writing to the Ethics and Lawyer Independence Advisory Committee for a review.
- (2) After considering any submissions received from the partners and from the Executive Director, the Ethics and Lawyer Independence Advisory Committee must
- (a) direct the Executive Director to issue a statement of approval if it is satisfied that
 - (i) the intended name complies with Rule 9-14 [*LLP name*], and
 - (ii) Rule 9-15 (3) [*Notice of application for registration*] has been satisfied, or
 - (b) reject the application.
- (3) The Ethics and Lawyer Independence Advisory Committee must notify the person applying and the Executive Director in writing of its decision under this rule.



Executive Committee

Terms of Reference¹

Updated: ~~April 2020~~ January 2022

Mandate

The Executive Committee provides direction and oversight for the strategic ~~and operational~~ planning of the Law Society and ~~assists in develops developing~~ agendas for Benchers meetings to ensure that the Benchers exercise their oversight, regulatory and policy development responsibilities. The Executive Committee also works with the ~~CEO-Executive Director~~ and senior management on the operational priorities for the organization and provides support and advice to the ~~CEO-Executive Director~~ and senior management on the overall operations of the Law Society. The Executive Committee authorizes significant agreements and the appointment of counsel for the Law Society. The Executive Committee also recommends appointments to outside bodies and exercises such other authority as is delegated to it by the Benchers or as is provided for in the Rules.

Composition

1. The Executive Committee consists of the following Benchers:²
 - a) the President;
 - b) the First and Second Vice-Presidents;
 - c) the Second Vice-President-elect, if not already a member of the Executive Committee;
 - d) 3 other elected Benchers; and
 - e) one appointed Bencher.
2. The President is the Chair and the First Vice-President is the Vice-Chair.³

¹ Nothing in this document amends, replaces or supersedes the relevant provisions in the *Legal Profession Act* or the Law Society Rules.

² Rule 1-50(1)

³ Rule 1-50(2)

Meeting Practices

1. The Committee operates in a manner that is consistent with the Benchers' governance policies.
2. The Committee meets as required.
3. Quorum is 4 members of the Committee.⁴

Accountability

The Committee is accountable to the Benchers as a whole.⁵

Reporting Requirements

The Chair reports regularly to the Benchers on the work of the Committee and the minutes of the Committee meetings are provided at each subsequent Bencher meeting.

Duties and Responsibilities

1. Assist the President and Executive Director in establishing the agenda for Bencher meetings and the annual general meeting; assist the Benchers and the Executive Director in establishing relative priorities for the assignment of Society financial, staff and volunteer resources; plan Bencher meetings or retreats held to consider a policy development schedule for the Benchers and provide constructive performance feedback to President.⁶
- 2.—Authorize the execution of documents relating to the business of the Society and appoint one or more persons to affix the seal of the Society to a document as required⁷ and specifically as provided in the Schedule of the Authorizations approved by the Benchers.
- ~~3.2. Approve forms in relation to the annual practice declaration, the trust administration report, the part-time insurance application, the mortgage discharge form, corporate name approval, corporate name change and law corporations and the unclaimed trust fund form.⁸~~

⁴ Rule 1-17(2)

⁵ [Rule 1-50\(3\)](#)

⁶ Rule 1-51(f) - (i)

⁷ Rule 1-51(b), Rule 1-45(1)(b)

⁸ ~~Rule 1-51(d)~~

~~4.3.~~ Authorize the appointment of counsel to advise or represent the Law Society when the Law Society is the plaintiff, petitioner or intervenor in an action or proceeding.⁹

~~5.4.~~ Recommend appointments to the appointing bodies on appointments to outside bodies and make, as required, appointments to the Board of Governors of the Law Foundation.¹⁰

~~6.5.~~ Determine the date, time and places for the Annual General Meeting, and set the agenda.¹¹

~~7.6.~~ Oversee the process in connection with the Benchers elections.¹²

~~8.7.~~ Determine what constitutes a client matter in individual cases and extend or vary the time for remitting the trust administration fee and report.¹³

~~9.8.~~ Designate savings institution under section 33(3)(b) of the Act.¹⁴

~~10.9.~~ Consider claims for unclaimed trust funds and hold hearings if required.¹⁵

~~11.10.~~ Provide oversight and direction on Law Society policy for considerations and development approval by the Benchers, and, in particular, coordination of the preparation and presentation of any regulatory policy development, the drafting and presentation of amendments to the Law Society Rules, governance matters and unauthorized practice policy decisions, and any other matters delegated to the Committee elsewhere in the Rules or by the Benchers.¹⁶

Staff Support

Director, Governance, Privacy and Information Management
 Manager, Governance and Board Relations

⁹ Rule 1-51(a)

¹⁰ Rule 1-51(j) & (m)

¹¹ Rule 1-51(k)

¹² Rule 1-51(l)

¹³ ~~Rule 2-1131-51(n)~~

¹⁴ Rule 1-51(o)

¹⁵ Rule 1-51(p)

¹⁶ Further to the Benchers' decision at the December 3, 2021 meeting to wind up certain committees.



Executive Committee

Terms of Reference¹

Updated: January 2022

Mandate

The Executive Committee provides direction and oversight for the strategic planning of the Law Society and assists in developing agendas for Benchers meetings to ensure that the Benchers exercise their oversight, regulatory and policy development responsibilities. The Executive Committee also works with the Executive Director and senior management on the operational priorities for the organization and provides support and advice to the Executive Director and senior management on the overall operations of the Law Society. The Executive Committee authorizes significant agreements and the appointment of counsel for the Law Society. The Executive Committee also recommends appointments to outside bodies and exercises such other authority as is delegated to it by the Benchers or as is provided for in the Rules.

Composition

1. The Executive Committee consists of the following Benchers:²
 - a) the President;
 - b) the First and Second Vice-Presidents;
 - c) the Second Vice-President-elect, if not already a member of the Executive Committee;
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¹ Nothing in this document amends, replaces or supersedes the relevant provisions in the *Legal Profession Act* or the Law Society Rules.

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³ Rule 1-50(2)

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1. The Committee operates in a manner that is consistent with the Benchers' governance policies.
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3. Quorum is 4 members of the Committee.⁴

Accountability

The Committee is accountable to the Benchers as a whole.⁵

Reporting Requirements

The Chair reports regularly to the Benchers on the work of the Committee and the minutes of the Committee meetings are provided at each subsequent Bencher meeting.

Duties and Responsibilities

1. Assist the President and Executive Director in establishing the agenda for Bencher meetings and the annual general meeting; assist the Benchers and the Executive Director in establishing relative priorities for the assignment of Society financial, staff and volunteer resources; plan Bencher meetings or retreats held to consider a policy development schedule for the Benchers and provide constructive performance feedback to President.⁶
2. Authorize the execution of documents relating to the business of the Society and appoint one or more persons to affix the seal of the Society to a document as required⁷ and specifically as provided in the Schedule of the Authorizations approved by the Benchers.
3. Authorize the appointment of counsel to advise or represent the Law Society when the Law Society is the plaintiff, petitioner or intervenor in an action or proceeding.⁸
4. Recommend appointments to the appointing bodies on appointments to outside bodies and make, as required, appointments to the Board of Governors of the Law Foundation.⁹

⁴ Rule 1-17(2)

⁵ Rule 1-50(3)

⁶ Rule 1-51(f) - (i)

⁷ Rule 1-51(b), Rule 1-45(1)(b)

⁸ Rule 1-51(a)

⁹ Rule 1-51(j) & (m)

5. Determine the date, time and places for the Annual General Meeting, and set the agenda.¹⁰
6. Oversee the process in connection with the Benchers elections.¹¹
7. Determine what constitutes a client matter in individual cases and extend or vary the time for remitting the trust administration fee and report.¹²
8. Designate savings institution under section 33(3)(b) of the Act.¹³
9. Consider claims for unclaimed trust funds and hold hearings if required.¹⁴
10. Provide oversight and direction on Law Society policy for consideration and approval by the Benchers, and, in particular, coordination of the preparation and presentation of any regulatory policy development, the drafting and presentation of amendments to the Law Society Rules, governance matters and unauthorized practice policy decisions, and any other matters delegated to the Committee elsewhere in the Rules or by the Benchers.¹⁵

Staff Support

Director, Governance, Privacy and Information Management
Manager, Governance and Board Relations

¹⁰ Rule 1-51(k)

¹¹ Rule 1-51(l)

¹² Rule 1-51(n)

¹³ Rule 1-51(o)

¹⁴ Rule 1-51(p)

¹⁵ Further to the Benchers' decision at the December 3, 2021 meeting to wind up certain committees.



Truth and Reconciliation Advisory Committee

Terms of Reference

Updated: January ~~2018~~2022

Background

On June 2, 2015, the Truth and Reconciliation Commission (TRC) released its Executive Summary Report (Report),¹ including 94 recommendations (Recommendations)² to redress the legacy of residential schools and to offer guidance for reconciliation.

At the October 30, 2015 Benchers meeting, the Benchers unanimously agreed that addressing the challenges arising from the TRC Recommendations is one of the most important and critical issues facing the country and the legal system today. Therefore, they decided to take immediate action to demonstrate their commitment to respond meaningfully to the Recommendations.

The Benchers acknowledged that Recommendations 27 and 28 speak specifically to the legal profession, but recognized that the role of lawyers in reconciliation goes beyond these two Recommendations. A number of the other Recommendations are also intended to alleviate legal issues currently impacting Indigenous communities and, although not directly aimed at lawyers, their implementation largely depends on the engagement of lawyers.

The Law Society's regulatory authority over lawyers in British Columbia provides a significant opportunity to facilitate the implementation of the TRC Recommendations that relate to the Law Society's mandate to uphold and protect the public interest in the administration of justice, by:

- (a) preserving and protecting the rights and freedoms of all persons;
- (b) ensuring the independence, integrity, honour and competence of lawyers;
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission;
- (d) regulating the practice of law; and

¹ http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec_Summary_2015_05_31_web_o.pdf .

² http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf .

- (e) supporting and assisting lawyers, articulated students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.³

The Law Society intends to support the realization of TRC's Recommendations that intersect with its mandate.

The TRC's Recommendations were the focus of the Benchers' Retreat and Conference on June 3, 2016. At the Benchers meeting on June 4, 2016, the Benchers supported the idea of a permanent advisory committee. A resolution was passed to create the Truth and Reconciliation Commission Advisory Committee at the July 8, 2016 Benchers meeting.

Preamble

The Law Society of British Columbia:

1. Acknowledges the Truth and Reconciliation Commission's finding that, for over a century, the central goal of Canada's Aboriginal policy can best be described as "cultural genocide";
2. Recognizes that lawyers have played, and continue to play an active role in past and present injustices that affect Indigenous people; and
3. Understands that the matters identified in the TRC's report and recommendations are some of the most critical issues facing the legal system today.

Therefore, the Law Society of British Columbia has constituted a Truth and Reconciliation Commission Advisory Committee to guide the Law Society's immediate and meaningful response to the TRC's calls to action.

Mandate

The mandate of the Truth and Reconciliation Advisory Committee is to provide guidance and advice to the Law Society of British Columbia on legal issues affecting Indigenous people in the province, including those highlighted in the Truth and Reconciliation Commission's Report and Recommendations, such as: Indigenous laws, the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*, Aboriginal rights and title (including treaty rights), issues concerning jurisdictional responsibility for Indigenous people, child welfare, overrepresentation of Indigenous people in custody and the need for enhanced restorative justice programs, and the disproportionate victimization of Indigenous women and girls.

³ Section 3 of the *Legal Profession Act*.

Goals

The goals of the Truth and Reconciliation Advisory Committee are to support the Law Society in its efforts to:

1. Understand access to justice issues from the perspective of Indigenous people in British Columbia;
2. Address the unique needs of Indigenous people within the legal system in BC;
3. Improve cultural competence training for lawyers in British Columbia to:
 - a. Recognize and respond to diverse legal service needs; and
 - b. Understand the relevance and applicability of Indigenous laws within the Canadian legal system;
4. Address the unique needs of Indigenous people within the Law Society's regulatory processes; and
5. Support Indigenous lawyers to help ensure the legal profession reflects the public it serves.

Responsibilities

1. Monitor legal issues affecting Indigenous communities in British Columbia;
2. Recommend ways for the Law Society to develop and maintain positive relationships with Indigenous communities;
3. Ensure that Indigenous communities are effectively engaged in the efforts of the Committee to fulfill its mandate;
4. Promote collaboration and coordination across Law Society committees and departments on Indigenous policies, programs, and initiatives;
5. At the request of the Benchers or Executive Committee on matters regarding Indigenous issues pertaining to the legal system in British Columbia:
 - Develop recommendations, policy options, and initiatives;
 - Advise the Benchers on priority planning;
 - Analyze policy implications of Law Society initiatives;
 - Identify strategic collaborative opportunities; and

- Attend to other matters referred to the Committee.

Principles

The guiding principles for the Committee are as follows:

1. Reconciliation requires a willingness to promote structural and systemic change in the relationship between Indigenous and non-Indigenous peoples;
2. Inclusive engagement with Indigenous communities and the legal profession is required for the Committee to fulfill its mandate;
3. Relationships built upon respect are essential to the Committee's operation;
4. Flexibility is necessary for the Committee to address a broad range of issues, adapt to changing circumstances, and maintain relevance; and
5. Transparent communication is necessary to build and maintain trust in the Committee's endeavors.

Composition

1. At least half the members of the Committee will be comprised of an equal number of Benchers and non-Benchers Indigenous individuals.
2. Selection of Committee members will be in accordance with the Law Society's appointments practices, and will reflect:
 - a broad range of Indigenous representatives;
 - different regions of the province, including urban and rural locations;
 - a variety of practice areas; and
 - gender balance.
3. Committee members who are well respected by Indigenous communities will be selected, with the understanding that Committee members will be trusted to identify and convey the perspectives and concerns of Indigenous communities to inform the work of the Committee.
4. The Indigenous representatives on the Committee will be survivors or intergenerational survivors of the residential school experience.

5. The Committee will have two co-chairs: a member of the Executive Ladder (i.e. the President, First Vice-President or Second Vice President) of the Law Society of British Columbia and an Indigenous representative.

Meeting Practices

1. The Committee shall operate in a manner consistent with the Law Society's governance policies.
2. The Committee shall meet as required.
3. At least half of the members of the Committee will constitute a quorum.
4. The Committee will strive to reach consensus in decision-making. If consensus cannot be attained, then decisions will be made by a majority vote.

Reporting Requirements

1. The Committee will provide written reports to the Benchers two times annually by providing one mid-year report and one year-end report each year.
2. The Committee may provide additional updates at regularly scheduled Bencher meetings.

Review

These Terms of Reference are subject to review from time to time as deemed appropriate by the Benchers.

Staff Support

Staff Lawyer, Policy and ~~Legal Services~~Planning



Truth and Reconciliation Advisory Committee

Terms of Reference

Updated: January 2022

Background

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- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission;
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 - a variety of practice areas; and
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2. The Committee may provide additional updates at regularly scheduled Bencher meetings.

Review

These Terms of Reference are subject to review from time to time as deemed appropriate by the Benchers.

Staff Support

Staff Lawyer, Policy and Planning

The Law Society
of British Columbia



Indigenous Intercultural Course – Late Fee

January 28, 2022

Prepared for: Benchers

Prepared by: Executive Committee

Purpose: For Consent

Purpose

1. The purpose of this report is to recommend that the Benchers approve, in principle, the inclusion of a late fee as an enforcement mechanism to the rule requiring all practising lawyers to complete the Indigenous Intercultural Course (“IIC”).

Background and Issue Being Addressed

2. In December 2021, the Benchers approved a rule requiring all practising lawyers to complete the Indigenous Intercultural Course within a specified timeframe and an enforcement mechanism to deal with non-compliance which provided for the “failure to meet a minimum standard of practice” as well as the imposition of an administrative suspension where the course is not completed as required.
3. In making these recommendations, it had been noted that the question of a late fee warranted some further thoughts. The Benchers were advised that the Executive Committee would further consider this matter early in 2022. This memorandum addresses that further consideration.

Discussion

4. The policy question the Benchers are being asked to consider is whether to impose a fee on a lawyer in instances where the lawyer either does not report completion by the deadline and/or does not complete the IIC by the deadline.
5. Imposing a fee payment requirement on a lawyer who fails to take, or report taking, the IIC in a timely manner, is consistent with the rules that enforce continuing professional development (CPD) requirements.
6. The Truth and Reconciliation Advisory Committee discussed this issue at its meeting on December 7, 2021 and the Committee was strongly of the view that, given the importance of this initiative, the enforcement provisions for the IIC and the CPD requirements should be the same.
7. Rule 3-31 [*Late completion of professional development*], provides for a late fee in two instances. The first, is when a lawyer completes the required professional development by the December 31st deadline but fails to report completion by the deadline. The second instance is when a lawyer does not complete the required professional development by the December 31st deadline.
8. The professional development late reporting fee is \$200 and the professional development late completion fee is \$500.

9. Charging lawyers who have not completed, or recorded completion of the IIC as required will offset administrative costs that may be necessary for staff to follow up with tardy lawyers.

Recommendation

10. In light of the societal importance placed on reconciliation with Indigenous people, combined with the importance that those who provide legal services understand the consequences of providing their services in a culturally appropriate manner, there is a strong public interest served by creating effective and efficient means to enforce the IIC requirement.
11. The effect on lawyers will be no different than that which already exists relating to CPD requirements, and the imposition of the requirement will assist in offsetting operational costs that the Society will face in enforcing the rules. The recommendation is expected to advance efforts at reconciliation by working to ensure completion of the IIC.
12. Given the importance of this initiative, the Executive Committee recommends to the Benchers that there be late fees associated with late reporting and late completion of the IIC.
13. This would result in a clear direction to lawyers that serious consequences will result by not taking the course, and would create similar enforcement provisions for the IIC and the CPD requirements, both of which the Law Society has concluded are necessary to protect the public interest in the delivery of legal services.

Resolution

14. The Executive Committee recommends that the Benchers adopt the following resolution:

BE IT RESOLVED that the Benchers approve, in principle, that the Law Society Rules be amended to require a late fee associated with the late reporting and late completion by a practising lawyer of the Indigenous Intercultural Course in the amount of \$200 and \$500 respectively, and that the matter be referred to staff to prepare draft Rules to present to the Benchers for approval.

The Law Society
of British Columbia



Administrative Penalties

Date: January 28, 2022

Prepared for: Benchers

Prepared on behalf of: Executive Committee

Purpose: For Consent

Purpose

1. This report recommends the creation of a process to address standard contraventions of certain Law Society Rules – and in particular, the client identification and verification (“CIV”) and cash transactions rule breaches that are typically referred to Professional Conduct by the Trust Assurance Department following a compliance audit. These Rules play a key role in establishing standards of financial responsibility to assist in anti-money laundering efforts by requiring lawyers to know their clients, identify red flags, and manage potential risks involved with suspicious transactions.

Preamble

2. The current mode of dealing with technical rule breaches presents certain challenges, in large part due to the length of time inherent in the investigations processes, followed by mandated Discipline Committee review and approval of a proposed disciplinary action.
3. In most cases, most such rule violations – including breaches of the CIV and cash transactions rules - result in a Conduct Review. While Conduct Reviews may be an effective disciplinary outcome for many conduct matters, it is less clear that they are as effective in addressing CIV and cash transactions rules.
4. The process analysed below addresses the inefficiencies built into the present procedure while considering an alternative means of dealing with specific rule breaches in a more expedient and effective manner.

Proposed Resolution

5. The following resolution is proposed arising from the recommendations set out at the end of this Report.

BE IT RESOLVED:

THAT the general introduction of administrative penalties for breaches of Law Society Rules in amounts aimed at deterring recidivism be approved;

THAT rules necessary to accomplish administrative assessments set out a process that takes into account issues of procedural fairness and due process, including providing sufficient notice to lawyers, a right of response, and a potential avenue for review;

THAT at the outset, such assessments apply to standard contraventions of the CIV Rules (Rules 3-98 to 3-110) and cash transactions (Rule 3-59);

THAT the Law Society investigate the possibility of obtaining a legislative amendment to ensure the availability of administrative assessments for other matters not related to standards of financial responsibility; and

THAT the Benchers approve these changes in principle, and refer the matter to staff to draft rules to effect the policy direction, with the Rules as drafted being returned to the Benchers at a later date for consideration and approval.

The Problem

6. In the last several years, the Trust Assurance Department has been conducting a greater number of compliance audits which has increased the number of referrals to Professional Conduct, particularly for breaches of the CIV Rules (Rules 3-98 to 3-110) and cash transactions (Rule 3-59).
7. In 2020, 83 Conduct Reviews were ordered by the Discipline Committee - 21 of which were for CIV breaches and 16 of which were for cash rule breaches - making up 44.6% of the total Conduct Reviews for the year. Statistics show an upward trend in the number of such Conduct Reviews being ordered over the past three years.
8. In 2018, the average time from start of investigation to Conduct Review was 252 days for a cash transactions file and 410.5 days for a CIV file. In 2019, the average time from start of investigation to Conduct Review was 353 days for a cash transactions file and 416 days for a CIV file. Statistics are not yet available for 2020 as, at present, there is still a backlog of Conduct Reviews issued in 2020 that have not yet been booked.
9. The process for imposing a Conduct Review can be a protracted one. A staff investigation of conduct is required, with a referral then being made to the Discipline Committee. The Committee must meet to consider a referral. Once ordered, a different Conduct Review Subcommittee must be constituted for each file, a written report must be generated at the end, and that report must be returned to and reviewed by the Discipline Committee. This is a time-consuming process.
10. While the Conduct Review itself forms part of the lawyer's Professional Conduct Record, Conduct Reviews or Conduct Review Reports do not appear anywhere in publicized disciplinary history records regarding the lawyer. A summary of the written report is published in an anonymous form.
11. In spite of many efforts undertaken by the Law Society, CIV and cash transactions rules violations persist.

Administrative Penalties as a Policy Option

12. Given the issues outlined in the section above, it is evident that the current processes may not be the best way of dealing with files relating to CIV and cash transaction violations. In particular, there may be some additional benefit by addressing conduct at an earlier stage since the lack of immediacy in disciplinary action may affect the overall outcome and ability to remediate – in other words, the sooner the Law Society is able to bring a CIV or cash transactions rule breach to a lawyer’s attention, the more likely the lawyer is to take it seriously.
13. Other regulatory bodies utilize forms of discipline that permit the imposition of a sanction based solely on the violation of a rule – what might be called “strict liability” types of violations. If the respondent registrant believes the rule was not violated, a process exists to permit the argument to be made. Otherwise a monetary penalty is imposed, which the registrant pays and the matter is concluded. Indeed, in a few cases, the Law Society does use this process, such as where a trust report is not filed on time. This permits an effective way of controlling increased investigation file volume, acts as a deterrent to members of the profession, and ensures that valuable resources may be diverted to other more complex disciplinary matters.

Key Comparisons

14. Although administrative penalties as a disciplinary process do not seem to be widely used by Canadian legal regulators, they are commonly used by a number of other provincial regulatory bodies including the BC Financial Services Authority (BCFSA) in relation to its regulation of real estate services and the BC Securities Commission (BCSC), among others.

BC Financial Services Authority

15. The BCFSA has a well-established and comprehensive legislative regime under which it has the ability to issue administrative penalties for minor rule contraventions such as improper advertising and inadequate record-keeping.¹
16. Division 5 of Part 4 (Discipline Proceedings and Other Regulatory Enforcement) of the *Real Estate Services Act* provides authority for the superintendent to designate contraventions of specified rules as being subject to administrative penalties. The general process is outlined in section 57 and allows the BCFSA to issue notices to licensees for rule contraventions.

¹ Rule 26 of the Real Estate Services Rules sets out the full list of applicable rule contraventions subject to administrative penalties

Licensees have 14 days to request to be heard if they contest the administrative penalty. Otherwise they are deemed to have acknowledged contravening the rule and the penalty becomes immediately due and payable. In accordance with section 56(1)(b)(ii) of the *Real Estate Services Act*, the dollar amount of an administrative penalty levied may also vary depending on whether it is the first or a subsequent contravention.

17. If an administrative penalty has been imposed, no further proceedings can be taken against the licensee relating to that particular rule.
18. Rule contraventions of a more serious nature, even if they fall within the scope of rules to which an administrative penalty might apply, are still dealt with through the normal discipline process.

British Columbia Securities Commission

19. The BCSC has recently introduced administrative penalties into the scope of its powers. Called “administrative penalties imposed by notice”, the process is outlined in ss. 162.01 to 162.06 of the *Securities Act* and allows the BCSC to levy penalties up to \$100,000 for each contravention in the case of an individual and up to \$500,000 for each contravention in the case of non-individuals.
20. In accordance with these legislative provisions, it is the executive director of the BCSC who gives written notice to a person requiring the payment of an administrative penalty (section 162.01). A person may dispute the notice within 30 days, upon which the executive director must give the person the opportunity to be heard. The process also allows a further right to seek a review of the executive director’s final decision before the commission.
21. The BCSC is currently developing internal procedures for the implementation of administrative penalties as an enforcement tool, but reports that it has already gained significant positive traction from its Board. Under the proposed process, investigations staff will produce a briefing memo to the executive director to act as a decision document to the member and the basis for which the penalty that has been assessed. The briefing memo will include any relevant background information, such as the person’s past conduct, mitigating factors, and the need for deterrence (section 162.02(1) of the *Securities Act*). The executive director will then use the briefing memo to inform his or her reasons for issuing the notice of administrative penalty.

Other Bodies

22. In addition to the BCFSAs regulation of real estate and the BCSC, administrative penalties or penalties can be found in a number of other provincial regulatory bodies, including: the regulators that are governed by the *Professional Governance Act*, other entities regulated by the BCFSAs (including mortgage brokers) and the *Environmental Management Act*.

Assessment Criteria

23. In order to properly assess administrative penalties as a discipline option, relevant evaluation criteria must be established. Set out below is a brief analysis of criteria relevant to this decision process.

Public Interest

24. The public interest must be foremost among any evaluation criteria when the Law Society considers a policy option.

25. The public interest in the regulation of the legal profession is best served by a timely resolution to a conduct violation. Where the violation is a straightforward question of (for example) whether a certain event happened, or whether a certain document required by a rule was created, the conduct issue should not require a full investigation, report, and consideration. The public interest is served by having the conduct addressed quickly, having a sanction imposed expediently and transparently, and (hopefully) thereby bringing to bear on the lawyer involved the error of the lawyer's conduct in a timely fashion. Delay serves no-one, and if the error is not understood in the intervening time before a sanction can be considered and imposed, the public is at risk by having it happen again. Consistency and predictability of outcome is also important to the transparency of the organization.

26. Administrative penalties, for the certain types of violations, present an option that would improve the public interest in ensuring the Law Society is regulating the legal profession in a timely, effective way.

Cost and Benefit

27. As discussed above, the benefits of utilising administrative penalties as a discipline option include costs considerations. Currently, the processes used take up considerable staff and bench resources to reach an outcome that is in most cases a foregone conclusion. Streamlining a process that creates an outcome (by way of a monetary penalty or assessment) for a violation of an "either-or" type of rule saves the cost of those resources.

28. The imposition of an administrative assessment regime is anticipated to create some new costs to the organisation by requiring the delivery of notices to the lawyer, and collecting the penalty imposed or dealing with a challenge brought by the lawyer to its imposition. These costs are not currently anticipated to be high, and could be added to existing enforcement mechanisms relating to trust reports and CPD requirements.

29. The savings in resources ought to outweigh the cost of any additional resources needed to implement the option, although the necessity of providing a review process of a decision to

assess an administrative penalty will affect the savings if it is resorted to frequently. The expectation is that most lawyers will accept the imposition of an administrative penalty if it is reasonably calibrated to the transgression.

Government Relations

30. Government looks to the Law Society to discharge its mandate of regulating the legal profession in the public interest in an effective and timely way. It is not anticipated that the utilisation of administrative penalties as an option would adversely affect government relations. Given that legislation sets out these powers for other regulatory bodies, it might be presumed that government policy favours their use.

Program Impacts

31. As noted in Costs and Benefits above, the utilisation of this option would be expected to have favourable impacts in the area of professional regulation. It is not anticipated that the option would create negative impacts in any real sense on other Law Society operations.

Authority

32. There is nothing unlawful or illegal, per se, about implementing a policy of effecting administrative assessments or penalties for certain rules breaches. It is evident that other regulatory bodies use the process.
33. However, other regulatory bodies have specific legislative authority to implement administrative sanctions for breaches of certain rules. There is no *specific* power in the *Legal Profession Act* to that end, except to a limited degree regarding financial responsibility in s. 32. That section has been relied on to impose suspensions or assessments on lawyers for failing to meet prescribed standards for financial responsibility where a trust report has not been filed.
34. With that in mind, it would be wise to consider seeking a legislative amendment to ensure that the power to issue administrative suspensions generally for matters going beyond financial responsibility is clearly set out. That said, it is logical to conclude that the CIV and cash transaction rules, which have been put in place to combat money-laundering, can be included in minimum standards of financial responsibility, and thus, at least, imposing sanctions on the basis of s. 32 could be safely done if limited to those rules.
35. Section 11, which provides for general rule-making power for the governing of lawyers and for carrying out the Act, is also worth considering for authority to implement a policy of administrative penalties. It provides that the Benchers have authority to make rules governing lawyers, law firms, and articulated students and for the carrying out of the Act, and that that rule-making authority is not limited by any specific power or requirement to make rules given to the benchers elsewhere in the Act. The application of effective and timely sanctions for violation

of the rules, where in the public interest, ought to be viewed as part of the Law Society’s “carrying out of the Act.”

36. So long as the initiative is a reasonable policy to better regulate the legal profession and thereby protect the public interest in the administration of justice and thereby allowing the Law Society to carry out its obligations to regulate the legal profession in the public interest as required by the Act, a specific authority to do so may not be needed. That argument is not without risk, of course, and specific authority would be clearer and less open to challenge.

Equity and Diversity

37. It is unlikely that administrative penalties, if instituted as a policy, would interfere with Law Society efforts to improve equity, diversity and inclusion of marginalized groups within the profession

Reconciliation

38. Equally, the imposition of administrative penalties is not a policy that would be aimed at, or interfere with, Law Society efforts to work toward reconciliation with Indigenous people and lawyers. The policy is aimed at improving regulatory processes.

Transparency and Disclosure/Privacy

39. Transparency of Law Society processes should be improved by setting out, in the Rules, the consequences for certain rules violations.
40. Consideration will need to be given to whether the resulting penalty would be disclosed to the public. This may need to be part of a larger policy discussion on public disclosure of outcomes of conduct violations, as currently the only public outcome naming a lawyer is where a finding is made against a lawyer arising from a citation.

Considerations for Structuring a New Rule

41. A new rule that allows for imposing a financial sanction on lawyers who or law firms that breach certain standards of financial responsibility—in this case, standard contraventions of the CIV and cash transactions rules—must be comprehensive in terms of process while ensuring procedural fairness for lawyers who find themselves being subject to the new regime, especially where it is intended to be categorized as a “penalty.”
42. Several provisions used by the BCFSA and the BCSC provide a useful template in this regard. Notably, the provisions:

- Outline the rules that administrative penalties may apply to;
 - Require that reasons for the issuance of the administrative penalty are provided to the lawyer;
 - Allow for a period of notice within which a lawyer may respond and a process for dealing with challenges to the imposition of the penalty that the lawyer may desire to bring;
 - Set out a maximum dollar amount for the administrative penalty, including increasing amounts for instances of recidivism, that is sufficient to act as a deterrent for future behaviour; and
 - Allow for rule breaches to be dealt with through the regular disciplinary process if the facts indicate that as being a more appropriate route.
43. In addition to the general guidelines above, the BCFSa has also released a number of Policy Statements on administrative penalties, available on their website. The BCFSa's Policy Statements clarify specific matters and outline the appropriate procedures to follow. These documents may be of assistance when it comes to preparing internal Law Society policies on how the new regime should work.
44. Since the process will be new to lawyers, it would be important to build procedural fairness measures in at the outset. This means maintaining an appropriate division between decision maker (likely the Executive Director) and investigative staff providing the briefing memo, as well as creating an appropriate notice period for lawyers to respond.
45. Should a lawyer request review of the Executive Director's decision to impose an administrative assessment, following the BCSC's process in this regard seems appropriate; i.e. the lawyer would be required to provide additional evidence to prove that they did not breach the rule(s). The Executive Director could then make a final determination on the matter, although other processes could be considered.
46. As the BCSC's administrative penalties are intended for more serious rule breaches than the contraventions being contemplated by the Law Society, and indeed can be levied in amounts up to \$500,000 for an individual, their extensive judicial appeal process likely does not make sense for the proposed administrative assessments.
47. An added benefit can be achieved through addressing possible recidivism that may arise in relation to rules that are chosen to be enforced through administrative penalties by increasing assessment amounts for subsequent contraventions, similar to the BCFSa process. A citation through the regular discipline process might be an option for multiple assessments for the same type of rule breach.

48. Should a lawyer fail to pay the amount of the administrative penalty assessed, it can be collected through Rule 2-117, which allows the Law Society to apply any money received from the lawyer to the amount assessed prior to outstanding fees.
49. One other issue to consider is whether an administrative penalty should form a part of the lawyer's professional conduct record. As the assessment is intended to address technical rule breaches only, a decision that it does not go on a lawyer's professional conduct record may be a "selling point" for lawyers and allow the Law Society to deal with these types of breaches in a much more efficient manner. On the other hand, properly addressing breaches of the CIV and cash transactions rules is an important part of the Law Society's anti-money laundering efforts. As well, Conduct Reviews, which the administrative assessment would replace in relation to specific rules, already form a part of a lawyer's professional conduct record. As discussed above, this may need to be part of a larger policy discussion on public disclosure of outcomes of conduct violations, as currently the only public outcome naming a lawyer is where a finding is made against a lawyer arising from a citation. Work on that analysis is about to start.

Recommendation

50. The approval in principle of administrative penalties is recommended, applying in the first instance to CIV and cash transaction rules, based on the authority of sections 11 and 32 of the *Legal Profession Act*. While there will still be the option to deal with contraventions through the regular discipline process, this alternative will allow the Law Society to deal more effectively and efficiently with certain types of investigation files. Over time, the rule could be expanded to include other breaches of the Law Society Rules with an eventual *Legal Profession Act* amendment.
51. The Executive Committee recommends that the new rule:
- a. At this time, apply specifically to standard contraventions of the CIV Rules (Rules 3-98 to 3-110) and cash transactions (Rule 3-59);
 - b. Introduce administrative assessments in amounts aimed at deterring recidivism;
 - c. Set out a process that takes into account issues of procedural fairness and due process, including providing sufficient notice to lawyers, a right of response, and a potential avenue for appeal; and
 - d. Staff will make recommendations as to the amount of the penalty when rules are being drafted.
52. While sections 11 and 32 provide broad authority to implement the policy option, particularly relating to the CIV and cash transactions rules, staff recognises that other regulatory bodies

have specific legislative authority to issue administrative penalties, and that ultimately it would be prudent to seek a legislative amendment for a specific power at an appropriate time in order to overcome any possible arguments that the current wording of the *Act* does not support the powers recommended and to enable administrative penalties to apply, where appropriate, beyond rules relating to financial responsibility.

Analyzing the Effect of Administrative Penalties

53. In order to determine the effectiveness of the proposed administrative penalty process, staff will monitor the results of the proposed process against the previous process to ensure that the expectations regarding efficiency and effectiveness are met. Doing so will allow the Law Society to improve upon the process and guide the addition of new administrative penalties for other breaches of the Rules. This information would also inform future *Legal Profession Act* amendments in this regard.

Bencher Compensation

Governance Committee

Jeevyn Dhaliwal, QC (Chair)
Christopher A. McPherson, QC (Vice-Chair)
Pinder K. Cheema, QC
Dr. Jan Lindsay
Linda I. Parsons, QC
Michael F. Welsh, QC
Guangbin Yan

Date: December 8, 2021

Prepared for: Benchers

Prepared by: Staff

Purpose: For Consent

Background

1. In 2020, President Craig Ferris, QC's mandate letter to the Governance Committee suggested the Committee look at Bencher compensation. At the May 2020 meeting, the Committee agreed that, in light of the COVID pandemic and the impact it was having on the legal profession, reviewing compensation for the President, Vice-Presidents and Benchers should be deferred until a later date.
2. This year, President Dean Lawton, QC's mandate letter to the Governance Committee reiterated that the Committee give some consideration to Bencher compensation.
3. Over the course of 2021, the Governance Committee reviewed the principled approaches taken by the past committees in determining the honorariums for the President and Vice-Presidents, and the per diems for the Appointed Benchers.
4. The Committee reviewed the report prepared by the Task Force on the President and Vice-President's Honoraria Committee convened in 2004. The report outlined the Task Force's recommendations, which were provided to Benchers at the June 2004 Bencher meeting. The Task Force noted that when the Benchers first considered paying an honorarium to the Treasurer (President) in 1984, no specific rationale was given for the amount. The Task Force also noted that when the President's honorarium was again considered in 1999, the committee struck to do so considered information from other Law Societies and professional governing bodies with respect to their practices, inflation, the amount of time the President devotes to Law Society business and the financial impact that has, and the income of BC lawyers. In making recommendations to the Benchers, the Task Force noted that the honoraria are intended to ensure that financial sacrifice does not preclude any Bencher from seeking the office of the President and should not be viewed as full income replacement.
5. The Committee also reviewed the report prepared by the Blue Ribbon Panel convened in 2009 to review remuneration of the Appointed Benchers. In determining its recommendations, the Panel considered whether the Law Society should continue to provide remuneration to its appointed Benchers, and if so, why; what amount of remuneration would be appropriate, and what form of remuneration would be appropriate. The Panel recommended to the Benchers that a per diem policy be approved for Appointed Benchers, noting that while a per diem policy would entail increased financial commitment to public representation in the governance of the Law Society, the commitment would be in the best interest of an independent law society that is dedicated to upholding and protecting the public interest in the administration of justice.

Discussion

6. Upon review of the Task Force reports, the Committee agreed upon the following principled approaches to guide the decisions regarding both who is compensated and the amount of any compensation.
 - a. The President, First-Vice President, and Second-Vice President should be compensated for their time in office. The honoraria should not be viewed as an income replacement, but as a recognition of the significant amount of time and effort required of the President and Vice-Presidents. The honoraria are intended to ensure that the financial sacrifice does not preclude any Benchers from seeking the office of the President.
 - b. Appointed Benchers should be compensated to support their participation in the work of Law Society hearing panels, committees and task forces, and to support the diversity of their demographic and geographic representation.
 - c. The amount of remuneration for Appointed Benchers is not intended to be an income replacement; however, it should mitigate the financial impact of their service and allow for a wide range of people to accept appointments as Appointed Benchers.
 - d. Elected Benchers should not be compensated as candidates put their name forward with the knowledge that it is a volunteer position. Elected Benchers serve for many reasons but a common thread is an appreciation of the importance of contribution to the profession. They recognize that the privileges associated with practising law carry an obligation to ensure the profession is governed well.
 - e. There should be regular, periodic compensation reviews of the President's honoraria and Appointed Benchers' remuneration every five years that should be triggered by established practice and policy.
 - f. An independent consultant should be engaged for these periodic compensation reviews.
7. The Committee agreed that a review of compensation for the President and Vice-Presidents and for Appointed Benchers should be referred to an independent consultant to review and to make recommendations for consideration by the Benchers. It should be noted that any recommendations to change the current compensation should go to the members for approval at an annual general meeting.

Proposed Resolution

8. The Governance Committee recommends that the Law Society retain an independent consultant to review and make recommendations on the appropriate compensation for the President, Vice-Presidents, and Appointed Benchers, and puts forward the following resolution for the Benchers review and approval:

BE IT RESOLVED THAT the Benchers approve the recommendation made by the Governance Committee that the Law Society retain an independent consultant to review and make recommendations on the appropriate compensation for the President, Vice-Presidents and Appointed Benchers.



CEO's Report to the Benchers

January 28, 2022

Prepared for: Benchers

Prepared by: Don Avison, QC

1. New Bencher Orientation

Among the Benchers being sworn in by Chief Justice Hinkson at the year's first meeting will be eight new Benchers and we expect that the two vacant Order-in-Council appointments will be confirmed by the Government of British Columbia in the coming weeks. This represents a third of the Bencher table turning over and, if measured based on experience of less than two years, the turn over is closer to fifty percent.

With this degree of change we will be taking a somewhat different approach to our new Bencher Orientation sessions with more comprehensive briefings on some of the key issues that will be coming before the Benchers for consideration this year. The first session, scheduled to take place the Wednesday before the first Bencher meeting, will cover a number of matters including the role of the Law Society as regulator of the profession, the Law Society's Strategic Plan and Priorities and a briefing on participating in board and committee meetings. Participants will also have an opportunity to hear from and ask questions of Harry Cayton who delivered his report to Benchers at the December 3, 2021 meeting. I expect the sessions will also address a number of other matters including the rule development process, the Society's Anti-Money Laundering initiatives, the national role of the Federation of Law Societies of Canada and external engagement with the public, the profession, with the Courts and with governments.

2. Departmental Updates

I believe it would be useful through the early part of 2022 to dedicate a portion of Bencher meetings to updates on the work of various Law Society departments. The first of these will focus on Member Services and Trust Audit and Assurance. Subsequent sessions will focus on the work of our Professional Conduct group, on the Lawyers Indemnity Fund and finally on Credentials, the Professional Legal Training Course and Practice Advice.

3. The Cayton Report – Next Steps

The year's first Bencher meeting will continue the process of Bencher's consideration of the recommendations set out in the Cayton Report.

To facilitate that discussion, President Lisa Hamilton, QC and I will speak to Cayton's recommendations, where related work is either done or underway, potential follow-up action where Bencher direction is required and the key questions that will require Bencher decisions over the course of the next several meetings.

Some of the key questions that will require consideration include whether a smaller Board is more appropriate in the modern context, whether Benchers terms should be modified (Cayton recommends two terms of four years), and whether the ratio of lawyer Benchers to those publically appointed should be altered. It may also be necessary to consider the implications of the as yet unproclaimed provisions of the *Legal Profession Act* in shaping the direction of any changes to Law Society governance.

4. Some Important Transitions

On February 14, 2022 Richard Fyfe, QC, will step down from his role as the Deputy Attorney General for British Columbia.

Richard is one of the longest serving Deputy AG's in the history of the province and he has met a standard of consistent excellence throughout the course of his time in that role. He was appointed Queen's Counsel in 2009, has received the Premier's Award for Leadership and a Distinguished Alumnus Award from the Gustavson School of Business at the University of Victoria.

Richard has been a leader on many fronts, perhaps most significantly with the calm and thoughtful approach he brought to helping guide the administration of justice through the many challenges of a global pandemic. Richard has been a regular participant at the Benchers table and, while he will be missed on that front, I expect he will continue to play an important role in the profession.

At the end of last year, Mark Benton, QC, stepped down from his position as the Chief Executive Officer of Legal Aid BC, a role he has been in since 2002.

The Legislative Assembly has recognized Mark as *“a passionate advocate for access to justice for the economically disadvantaged in BC, and he brings along with that passion great creativity in the search for solutions for how to make a difference in people's lives”*. Mark is also highly regarded for speaking truth to power, even when doing so may be uncomfortable.

On a personal note, I can say it has been a true pleasure working with both Mark and Richard. They have both made massive contributions to the public interest in this province and at a national level.

Departures also generate arrivals and we welcome Michael Bryant who succeeds Mark Benton, QC at Legal Aid BC. Mr. Bryant comes home to British Columbia after serving most recently as Executive Director and General Counsel to the

Canadian Civil Liberties Association. He is also a former Attorney General for the Province of Ontario.

Welcome also to Dean Ngai Pindell who has recently arrived to take on the position of Dean at the Allard School of Law at the University of British Columbia.

Don Avison, QC
Chief Executive Officer



2023 Bencher & Executive Committee Meetings

Executive Committee	Bencher	Other Dates
Thursday, January 19 Hybrid	Friday, February 3 Hybrid	Jan 1: New Year's Day Jan 2: Public Holiday (in lieu of New Years' Day) Jan 22: Lunar New Year <i>TBD</i> : CBABC Provincial Council Meeting <i>TBD</i> : CBA Annual General Meeting Feb 20: Family Day
Thursday, February 23 Virtual	Friday, March 10 Virtual	Mar 13-24: Spring Break (TBC) Mar 22 (sundown)-Apr 21 (sundown): Ramadan
Thursday, April 13 Hybrid	Friday, April 28 Virtual	Apr 7-10: Easter April 14: Vaisakhi Apr 21 (sundown) – 22 (sundown) Eid
Thursday, May 18 Virtual	Saturday, June 3 Hybrid	May 22: Victoria Day June 1-3: LSBC Bencher Retreat <i>TBD</i> : Federation Council Meeting
Thursday, June 29 Hybrid	Friday, July 14 Virtual	June 20: AGM June 21: National Indigenous Peoples Day July 1: Canada Day July 3: Public Holiday (in lieu of Canada Day) Aug 7: BC Day <i>TBD</i> : IILACE Conference
Thursday, September 7 Virtual	Friday, September 22 Hybrid	Sept 4: Labour Day Sept 15 (sundown) - 17 (sundown): Rosh Hashanah Sept 24 (sundown) - 25 (sundown): Yom Kippur Sept 30: Truth and Reconciliation Day Oct 9: Thanksgiving Day
Thursday, October 19 Virtual	Friday, November 3 Virtual	<i>TBD</i> : IBA Annual Conference Nov 8: National Indigenous Veterans Day Nov 11: Remembrance Day Nov 13: Public Holiday (in lieu of Remembrance Day) Nov 12: Diwali
Thursday, November 30 Hybrid	Friday, December 8 Hybrid	Dec 8: Welcome/Farewell Dinner Dec 7 (sundown) - 15 (sundown): Hanukkah Dec 25: Christmas Day Dec 26: Boxing Day Dec 26 – Jan 1: Kwanzaa



Minute of Approval

Benchers

Date: Wednesday, January 05, 2022

Bencher Approval: Appointment of the Tribunal Chair

Background

At the December 2021 Bencher meeting, Benchers approved a significant consolidation of the Tribunal Rules, along with changes to assist in ensuring the independence of our Tribunal process. One of those changes was the creation of the position of Tribunal Chair. The new Rules came into effect on January 1 of this year. As the Tribunal Chair has a number of responsibilities under the Rules in relation to our hearings and hearing processes, it was determined that the appointment should not wait until the next regular Bencher meeting on January 28.

President Lisa Hamilton, QC proposed the following resolution:

BE IT RESOLVED that Chris McPherson, QC, First Vice-President of the Law Society of British Columbia, is hereby appointed as Tribunal Chair for a term commencing January 1, 2022 and ending January 1, 2024.

Approval by email

In accordance with s. 6(3) of the *Legal Profession Act*, a motion assented to in writing by at least 75% of the Benchers has the same effect as a resolution passed at a regularly convened meeting of the Benchers.

By email confirmed on January 5, 2022, 75 % of Benchers approved the resolution.



December 14, 2021

Sent via email

Linda W. Russell
Chief Executive Officer
The Continuing Legal Education Society of BC
500-1155 W Pender St
Vancouver, BC V6E 2P4

Dean Lawton, QC
President

Office Telephone
604.605.5394

Office Email
president@lsbc.org

Dear Linda Russell:

Re: Appointments to the Board of Directors of the Continuing Legal Education Society of BC

I am pleased to confirm that I have appointed Cheryl D'Sa and Paul Pearson as Benchers Representatives to the Continuing Legal Education Society of BC's Board of Directors for three-year terms, effective January 1, 2022.

I am confident that the Continuing Legal Education Society of BC and its important work will be well served by the contributions of Ms. D'Sa and Mr. Pearson.

Yours truly,

Dean Lawton, QC
President, Law Society of BC

c Don Avison, QC
Chief Executive Officer, Law Society of BC