Agenda

Benchers

Date:	Friday, April 22, 2022
Time:	**8:00 am – Breakfast** **9:00 am – Call to order** ***For those attending virtually, please join the meeting anytime from 8:45 am to allow enough time to resolve any video/audio issues before the meeting commences.***
Location:	Hybrid: Bencher Room, 9th Floor, Law Society Building & 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:

President Hamilton will administer the oath of office (in the form set out in Rule 1-3) to newly appointed Benchers Michèle Ross and Natasha Tony.

CONSENT AGENDA:

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

1	Minutes of March 4, 2022 meeting (regular session)
2	Minutes of March 4, 2022 meeting (*in camera* session)
3	Rule Amendments: Approval of Alternative Discipline Process
4	Rule Amendments: Administrative Penalties

The Law Society of British Columbia

Agenda

REPORTS			
5	President's Report	15 min	Lisa Hamilton, QC
6	CEO's Report • The Public Interest in Legal Regulation • LIF 2021 Year in Review • Communications and Engagement Strategy Presentation	60 min	Don Avison, QC Don Avison, QC Su Forbes, QC Jason Kuzminski
7	Remarks	15 min	Shannon Salter
DISCUSSION/DECISION			
8	Continuing Professional Development Course Accreditation	15 min	Lesley Small
9	Continuing Professional Development Credit for Pro Bono Legal Services	15 min	Lisa Dumbrell
10	Governance Reform	30 min	Lisa Hamilton, QC Don Avison, QC
UPDATES			
11	Financial Matters: • 2021 Financial Report – Unaudited Financial Results to Budget • 2022 First Quarter Financial Report	15 min	Jeevyn Dhaliwal, QC Jeanette McPhee
12	Report on Outstanding Hearing & Review Decisions (*Materials to be circulated at the meeting*)	1 min	Christopher McPherson, QC
FOR INFORMATION			
13	Briefing by the Law Society's Member of the Federation Council		
14	Submission to the Special Committee to review FIPPA		

The Law Society of British Columbia

Agenda

15	Minutes of April 7, 2022 Executive Committee Meeting
16	Three Month Bencher Calendar – April to June 2022
IN CAMERA	
17	Other Business

The Law Society of British Columbia

Minutes

Benchers

Date:	Friday, March 04, 2022	
Present:	Lisa Hamilton QC, President	Geoffrey McDonald
	Christopher McPherson, QC, 1st Vice-President	Steven McKoen, QC
	Jeevyn Dhaliwal, QC, 2nd Vice-President	Jacqueline McQueen, QC
	Paul Barnett	Paul Pearson
	Kim Carter	Georges Rivard
	Tanya Chamberlain	Kelly H. Russ
	Jennifer Chow, QC	Gurminder Sandhu
	Cheryl S. D'Sa	Thomas L. Spraggs
	Lisa Dumbrell	Barbara Stanley, QC
	Brian Dybwad	Michael Welsh, QC
	Brook Greenberg, QC	Kevin B. Westell
	Katrina Harry	Sarah Westwood
	Sasha Hobbs	Guangbin Yan
	Lindsay R. LeBlanc	Gaynor C. Yeung
	Dr. Jan Lindsay	
Unable to Attend:	Not Applicable	
Staff:	Don Avison, QC	Jason Kuzminski
	Avalon Bourne	Michael Lucas, QC
	Barbara Buchanan, QC	Claire Marchant
	Jennifer Chan	Tara McPhail
	Lynwen Clark	Jeanette McPhee
	Lance Cooke	Cary Ann Moore
	Natasha Dookie	Rose Morgan
	Jackie Drozdowski	Doug Munro
	Su Forbes, QC	Michelle Robertson
	Andrea Hilland, QC	Lesley Small
	Kerryn Holt	Michael Soltynski
	Jeffrey Hoskins, QC	Adam Whitcombe, QC
	Alison Kirby	Vinnie Yuen

Guests:	Dom Bautista	Executive Director & Managing Editor, Law Courts Center
	Aleem Bharmal, QC	First Vice President, Canadian Bar Association, BC Branch
	Michelle Casavant	Vice-Chair, Aboriginal Lawyers Forum
	Christina Cook	Member, Aboriginal Lawyers Forum
	Dr. Cristie Ford	Professor, Allard School of Law
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program of BC
	Jamie Maclaren, QC	Life Bencher
	Dr. Val Napoleon	Interim Dean of Law, University of Victoria
	Caroline Nevin	CEO, Courthouse Libraries BC
	Josh Paterson	Executive Director, Law Foundation of BC
	Michèle Ross	President, BC Paralegal Association
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
	Jocelyn Stacey	Associate Dean of Graduates Studies, Peter A. Allard School of Law
	Katie Sykes	Associate Professor, Thompson Rivers University
	Ron Usher	General Counsel and Practice Advisor, The Society of Notaries Public of British Columbia

CONSENT AGENDA

1. Minutes of January 28, 2022, meeting (regular session)

The minutes of the meeting held on January 28, 2022 were approved unanimously and by consent as circulated.

2. Minutes of January 28, 2022, meeting (*in camera* session)

The minutes of the *In Camera* meeting held on January 28, 2022 were approved unanimously and by consent as circulated.

3. Rule Amendments: Delegation to Discipline Committee Chair

The following resolution was passed unanimously and by consent:

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

1. In Rule 1, the definition of "vice-chair" is rescinded and the following substituted:

"vice chair" means a person appointed to preside at meetings of a committee in the absence of the chair;

2. In Rules 3-6, 3-81 (3) and (4) and 3-86:

(a) **"**the Discipline Committee***" where it occurs is struck and "***the chair of the Discipline Committee***" is substituted, and***

(b) **"**in its discretion***" where it occurs is struck and "***in the chair's discretion***" is substituted.***

3. Rule 3-7.1 (3) and (4) is rescinded and the following is substituted:

(3) A consent agreement is not effective unless it is

(a) signed by the Executive Director,

(b) personally signed by the lawyer or, where the complaint is made against a law firm, by the representative of a law firm, and

(c) approved by the chair of the Discipline Committee.

(4) Under subrule (3) (c), the chair of the Discipline Committee may

(a) approve the agreement as proposed, or

(b) decline to approve the agreement.

4. Rule 4-2 (4) is rescinded and the following is substituted:

(4) Any function of the chair of the Discipline Committee under these rules may be performed by the vice chair or by another Bencher member of the Committee designated by the chair.

4. Rule Amendments: Indigenous Intercultural Course – Late Fee

The following resolution was passed unanimously and by consent:

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

1. The following rule is added:

Late completion of Indigenous intercultural course

3-28.11 (1) A practising lawyer who fails to comply with Rule 3-28.1 *[Indigenous intercultural course]* by the date by which the lawyer is required to comply is deemed to be in compliance with the Rule if the lawyer does all of the following within 60 days following that date:

(a) completes the Indigenous intercultural course;

(b) certifies the completion of the Indigenous intercultural course as required in Rule 3-28.1 (2) (b);

(c) pays the late completion fee specified in Schedule 1.

(2) A practising lawyer who complies with Rule 3-28.1 (2) (a) *[Indigenous intercultural course]* by the date by which the lawyer is required to comply but fails to comply with Rule 3-28.1 (2) (b) by that date is deemed to be in compliance with the Rule if the lawyer does both of the following within 60 days following that date:

(a) certifies the completion of the required professional development as required in Rule 3-28.1 (2) (b);

(b) pays the late reporting fee specified in Schedule 1.

2. Schedule 1, section L is amended by adding the following:

6.	Indigenous intercultural course late completion fee (Rule 3-28.11 (1) (c) *[Late completion of Indigenous intercultural course]*)	500.00
7.	Indigenous intercultural course late reporting fee (Rule 3-28.11 (2) (b))	200.00

REPORTS

5. President's Report

Lisa Hamilton, QC confirmed that no conflicts of interest had been declared.

Ms. Hamilton began her report by speaking about the announcement made by the Ministry of the Attorney General regarding the development of a single legal regulator. She indicated that this announcement would have implications for the consideration of the recommendations made by Harry Cayton in his Report on the Law Society's governance.

Ms. Hamilton informed Benchers of a letter she had received from a member expressing gratitude for the Law Society's recognition of the member's 70 years of service. Ms. Hamilton expressed her appreciation at receiving such positive feedback and expressed her congratulations to the member.

Ms. Hamilton concluded her report with an overview of her upcoming activities, including attending the Rule of Law lecture featuring Marie Henein on April 4 and co-chairing a virtual event on April 29 regarding the retention of women in the law that will be jointly hosted by the Law Society, the CBABC, and the International Association of Women Judges.

6. CEO's Report

Don Avison, QC began his report by informing Benchers that the Law Society had been named one of BC's Top 100 Employers for 2022. Mr. Avison noted that this was a significant achievement, and a tribute to Law Society staff.

Mr. Avison informed Benchers that call ceremonies for entrants into the profession would likely be starting in May, if the BC Supreme Court would be able to accommodate, with a number of ceremonies to take place over the course of the summer to address the backlog.

Mr. Avison spoke about the sessions the Canadian Bar Association of BC (CBABC) is holding to solicit feedback from the profession regarding the recommendations made in the Cayton Report. Mr. Avison indicated that CBABC would provide the Law Society with the input received from the profession.

Mr. Avison updated Benchers on plans for the upcoming Bencher Retreat taking place in Kelowna in May. Arrangements are well underway, and Mr. Avison noted that the Retreat conference would focus on lawyer formation, and discussions on the evolution of the Law Society Tribunal would continue.

Mr. Avison introduced Claire Marchant and Rose Morgan, who then presented an overview of the new Practice Advice online system, the Advice Decision-Making Assistant (ADMA). Mr. Avison also thanked Quinn Ashkenazy, Research Assistant at the Peter A. Allard School of Law, and Katie Sykes, Associate Professor at Thompson Rivers University for their assistance with the development of ADMA. Mr. Avison noted that ADMA is one of a number of initiatives that are being developed to increase the effectiveness of engagement with the profession and public.

Mr. Avison introduced Jeanette McPhee and Lynwen Clark, who then presented on the Member Services Department, and its current priorities. Benchers discussed the timelines for reporting Continuing Professional Development (CPD) credits and annual fee payments. Ms. Clark noted that the profession could report CPD credits at any time, though the bulk of reporting occurs towards the end of the year.

Mr. Avison indicated that the Lawyers Indemnity Fund would provide an update at the April 22 Bencher meeting.

UPDATES

8. National Discipline Standards Report

Natasha Dookie provided background information on the National Discipline Standards and then presented the findings of the 2021 Report. She indicated that in 2021, the Law Society met 21 of the 23 standards, a performance similar to previous years; the two standards not met were 9 and 10.

Ms. Dookie noted that Standard 10 requires 90% of hearing panel decisions to be rendered within 90 days of the last submission, and the Law Society is currently at 58% for 2021. Ms. Dookie spoke about the challenges in meeting this standard, particularly in the timeliness of delivering decisions. Christopher McPherson, QC, Tribunal Chair, reiterated the importance of Benchers delivering decisions in a timely matter. Alison Kirby, Tribunal Counsel, provided some statistical information related to the submission of decisions.

Ms. Dookie noted that Standard 9 requires 75% of hearings to be commenced within 9 months of the citation being authorized. Tara McPhail spoke about the challenges in meeting this standard, which include an increase in the total number of hearings, as well as addressing a backlog of files.

Benchers discussed the provision of mental health resources to members of the profession who are awaiting decision. Ms. Dookie noted that the Mental Health Task Force would be developing a recommendation on this matter to be presented to Benchers later this year.

Mr. Avison reported on the number of complaints over the last five years. He indicated that the number of closed complaints had increased significantly within the last two years.

DISCUSSION/DECISION

7. Governance Reform: Further Discussion

Ms. Hamilton spoke about the approach to categorizing the recommendations in Mr. Cayton's report, which involved identifying those items that would likely already have consensus from Benchers to implement and those that would require more consideration. She also spoke about the impact the development of a single legal regulator would have on the consideration of some of Mr. Cayton's recommendations.

Mr. Avison presented on a number of recommendations from Harry Cayton's Report on the Law Society's Governance, which were either in place prior to his report, or on which work had started since. He also spoke about the recommendations for which he thought there was consensus and, unless the board disagreed, staff would begin, and in some cases continue, to implement those recommendations.

There was general consensus amongst the Benchers on recommendations related to procedural matters; board agendas and meetings; declaring and recording any conflicts of interest at the beginning of Bencher meetings; board effectiveness; identifying and responding to risk; modernizing the complaint process; implementing regulatory impact assessments; the reduction, establishment, and appointment processes of committees; reviewing the terms of reference of committees; committee reports; changing the term member to "licensee"; and implementing an optional induction day for candidates for election.

Benchers agreed that before any decisions could be made, further discussion was required on those recommendations related to the establishment of a register of conflicts of interest; requiring that committees justify their value at an annual review; making legislative changes to sections 12 and 13 of the *Legal Profession Act*; bringing about an end to the annual presentation of awards; creating a nominations committee; disallowing a member who is under investigation to stand for election; amending the terms of office for Benchers, Presidents, and Vice-Presidents; and changing the size and composition of the board.

Recommendations regarding limits on the roles of Benchers and reformation of the Law Society's electoral structure were not discussed, and will likely be discussed at a later meeting.

9. Report on Outstanding Hearing & Review Decisions

Ms. Hamilton 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

10. Minutes of February 17, 2022, Executive Committee Meeting

There was no discussion on this item.

11. Law Society Appointment: Law Foundation of BC

There was no discussion on this item.

12. Update on Access to Justice Advisory Committee Recommendations from December 2021

There was no discussion on this item.

13. Three Month Bencher Calendar – March to May 2022

There was no discussion on this item.

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

AB
2022-03-04

The Law Society of British Columbia

Memo

To: Benchers
From: Executive Committee
Date: April 12, 2022
Subject: Rule Amendments: Approval of Alternative to Discipline Process

Purpose

1. The Benchers are asked to resolve to approve rules necessary to support the implementation of their earlier policy decision to create the Alternative to Discipline Process ("ADP").

2. These rules establish a regulatory framework that comports with the purpose, guiding principles, key design features and policy rationale described in the Mental Health Task Force's ADP report ("ADP Report"), including the overriding consideration of the protection of the public interest as set out in the *Legal Profession Act*. The rules are consistent with the Benchers' policy decisions, pursuant to their approval of the report's recommendations, and drafting conventions for Law Society rules.

Background

3. In October 2021, the Benchers unanimously approved the recommendation of the Mental Health Task Force to create an alternative process to address circumstances in which a health issue has contributed to lawyer misconduct. A link to the ADP Report is provided in the event Benchers wish to review the recommendations and the details of the ADP's design.

4. Specifically, the Benchers adopted the following resolution:

> No later than September 2022, the Law Society will implement an alternative discipline process ("ADP") to address circumstances in which there is a connection between a health condition and a conduct issue that has resulted in a complaint investigation. The ADP will comport with the purpose, principles, design features and policy rationale described in the Mental Health Task Force's September 2021 recommendation report and commence as a three year pilot

project. Following an interim and final review of the pilot project in 2023 and 2025, respectively, the matter will return to the Benchers for a final determination as to whether to establish the ADP as a permanent regulatory program.

5. The overarching goal of this new regulatory program is to encourage lawyers to share relevant health information with the Law Society and participate in a consent-based process to take the necessary steps to address their health issues in a manner that is likely to improve their ability to meet their professional responsibilities. In this respect, the ADP serves the public interest as provided for in section 3(e) of the *LPA.*

6. The framework for the ADP is established in the proposed new rules contained in Division 1.01 *[Health issues]* and amendments to several existing rules. The attachments to this memorandum show two versions of the proposed changes. The first is the redlined version that documents changes from the rules, as they currently exist. The second is the clean version that shows the relevant changes as they would look after adoption of the changes. A suggested resolution to effect the changes is also attached.

7. The Executive Committee has reviewed the rules and recommend they be approved to give effect to the ADP.

Drafting Notes

8. The drafting process has required staff to incorporate, into the rules, a relatively high degree of detail regarding how the alternative process will operate, as described in the ADP Report. Other aspects of the program will be addressed through guidelines, forms and operational policies and processes. This combination has made this project fairly complicated. Drafting notes are therefore provided that address the rule changes in sequential fashion, to assist with the review of the rules and describe the manner in which a matter would typically progress through the ADP.

(a) Establishing the ADP as a separate regulatory process

9. Rules 3-4 and 3-8 have undergone a number of changes to reflect that the ADP is an independent, alternative process to the Law Society's regular discipline and practice standards programs. These rules provide the authority for the Executive Director to take action on a complaint by proceeding through the ADP under Division 1.01 at any time before the matter is referred to the Practice Standards or Discipline Committees. The rules also establish that, when a complaint is being addressed through the ADP, no further action will be taken under Division 1, including referrals to the Discipline or Practice Standards Committees.

10. Rule 3-9(3) is added to reflect the timing of notification to the complainant that their complaint is being addressed through the ADP rather than the regular discipline process. This rule provides a level of transparency and accountability with respect to how the Law Society handles complaints, while at the same time, ensuring that complainants are not provided this notice before a matter's eligibility for the ADP has been assessed. Additionally, the information provided in the notice is highly circumscribed, pursuant to the confidentiality provisions in Rule 3-9.8 which are described later in these drafting notes.

(b) Determining "threshold eligibility" for the ADP

11. Division 1.01 creates the overarching framework for the ADP. The rules discussed in the remainder of these drafting notes all fall within this new division.

12. Rule 3-9.1 establishes the manner in which a matter's "threshold eligibility" for the ADP is determined.

13. Subrule (1) provides a definition for "health issue" that indicates that both physical and mental health issues may be appropriate for the ADP. Subrule (2) reflects that information about a health issue potentially affecting a lawyer's conduct can come to the attention of the Law Society in a variety of ways, including a self-report by the lawyer.

14. Subrule (3) sets out the factors that are assessed by the Executive Director in determining whether a matter is eligible to proceed through the ADP, as set out in the ADP Report, namely: the lawyer must acknowledge the existence of a health issue that may have contributed to an alleged discipline violation; the lawyer must consent to the matter proceeding through the ADP, and; the Executive Director must be satisfied, taking into account the nature of the alleged conduct, that it is in the public interest for the matter to be addressed through the ADP. This factor-based approach supports consistent and transparent decision-making with respect to entry into the ADP, while also providing the flexibility to make a case-by-case assessment of whether a matter is suitable for the alternative process.

(c) Interim consent agreement

15. The ADP Report directs that once the threshold eligibility determination has been made, if medical, clinical or other information indicates that it is reasonably likely that the lawyer's health condition will result in behaviour that may have an imminent, adverse impact on the public, the protection of the public may require the Law Society to seek the

lawyer's consent to enter into an interim agreement that includes restrictions or conditions on practice prior to negotiation and approval of the final consent agreement.

16. Rule 3-9.2 reflects this policy direction. In keeping with the consent-based approach of the ADP, this rule does not include the use of undertakings. Additionally, as described in the ADP Report, failure to enter into, or fulfill the terms of, an interim consent agreement will not be associated with any disciplinary sanction, but may result in the matter being returned back to the Law Society's regular investigatory and disciplinary processes for further action. This process is addressed in Rule 3-9.9 and discussed later in these drafting notes.

(d) Health information

17. Rule 3-9.3 is consistent with the design features described in the ADP Report relating to the collection of health information and the criteria set out therein. This rule establishes that once threshold eligibility for the ADP has been determined, but prior to negotiating the terms of the consent agreement, the lawyer will be asked to provide health information that satisfies the Executive Director that the health issue may have contributed to an alleged discipline violation by the lawyer, that the lawyer could benefit from remedial initiatives, and that it is in the public interest for the lawyer to engage in remedial measures.

18. The confidentiality of the health information collected, which is emphasized throughout the ADP Report, is addressed in Rule 3-9.8 and discussed later in these drafting notes.

19. If the lawyer does not provide sufficient health information, or the information provided does not support a linkage between the alleged misconduct and a health issue, the matter is referred back to the complaint investigation process, as described Rule 3-9.9, which is addressed later in these drafting notes.

(e) Consent agreement

20. The negotiation of the possible terms of a consent agreement is an operational feature of the scheme that occurs by way of discussions between ADP counsel and the lawyer. Rule 3-9.4, however, is necessary to establish the conditions and criteria governing the content and final approval of a consent agreement.

21. Subrule (1) describes the pre-conditions for advancing to the approval of the consent agreement. Subrule (2) establishes that the complainant has an opportunity to provide a statement regarding the effect that the alleged misconduct has had on them before a

consent agreement is approved. Subrules (3) and (4) reflect the mandatory and optional terms of an agreement, respectively, as described in the ADP Report.

22. Subrule (5) reflects the policy direction that the Executive Director is responsible for the final approval of a consent agreement and enumerates the factors that may inform this decision. This provision embodies one of the key guiding principles of the ADP, which is that all decisions must be based, ultimately, on what is in the public interest. Subrule (6) clarifies that the agreement is voluntary.

23. Subrule (7) indicates that the complainant will be informed of the fact that a consent agreement has been approved, to provide transparency regarding how the complaint is being addressed by the Law Society. Rule 3-9.8, which is described later in these drafting notes, addresses the confidentiality of the ADP and ensures that in all circumstances, information-sharing with the complainant is highly circumscribed and will not include details about the terms of the agreement or the lawyer's health issue, absent the lawyer's consent.

24. Subrule (8) permits the Executive Director to disclose anonymized information about consent agreements, as is contemplated in the ADP Report, and facilitates the Executive Director providing the Executive Committee with summaries of decisions approving agreements, as well as summarizing the outcomes of consent agreements more generally and including this information in the pilot project's interim and final reports. To maintain the confidentiality of the ADP, the identity of a lawyer who is a party to a consent agreement is not revealed.

25. Subrule (9) establishes that no further action will be taken on a complaint following the approval of a consent agreement unless one of the circumstances described in Rule 3-9.9 arises.

26. Rule 3-9.8, described later in these drafting notes, provides additional parameters regarding the confidentiality of information and records related to steps taken in the ADP, including consent agreements.

(f) Conditions or limitations on practice

27. Rule 3-9.5 addresses circumstances in which a lawyer has agreed to conditions or limitations on their practice for a period of time as part of an interim or final consent agreement. This rule facilitates the disclosure of practice conditions or limitations in the Lawyer Directory on the Law Society website for a limited period of time, but ensures that no information is provided that would indicate that the restrictions have arisen in the

course of the lawyer's participation in the ADP or that the lawyer is otherwise experiencing health issues.

28. This approach is necessary to strike a balance between safeguarding the confidentiality of a lawyer's participation in the ADP and ensuring that the Law Society can fulfill its public interest mandate by providing access to information about practice restrictions in the same manner as the public is informed about restrictions that arise in the course of the regular discipline process.

(g) Amendments to, and breaches of, a consent agreement

29. Rule 3-9.6 permits the amendment of a consent agreement. Rule 3-9.7 sets out the possible outcomes of a breach of a consent agreement, which are informed by public interest considerations. These outcomes may include: termination of the consent agreement, a referral of the matter back to the complaint investigation process, an amendment to the consent agreement or taking other appropriate action (e.g. an amendment to an agreement may not be required for the lawyer to continue to participate in the ADP depending on the particular circumstances).

(h) Records and confidentiality

30. Confidentiality is a guiding principle of the ADP and is critical to the success of the alternative process. Limits on information-sharing are variously described in the ADP Report, as is the fact that this confidentiality must be balanced with another of the ADP's guiding principles: the protection of the public.

31. Rule 3-9.8 reflects this policy direction. Subrule (1) establishes that the lawyer's participation in the ADP will not form a part of their professional conduct record ("PCR"). The definition of "professional conduct record" in Rule 1 has also been amended to ensure that information about conditions or limitations on a lawyer's practice contained in their PCR will not indicate that the restrictions are associated with participation in the ADP.

32. Subrule (2) establishes that no one is permitted to disclose any information or records related to steps taken under the ADP, including health and other personal information, to the public, the lawyer's firm or to other regulatory programs or Committees within the Law Society unless the circumstances described in Rule 3-9.5 (discussed previously) or subrule (3) apply. Subrule (3)(a) indicates that these circumstances include the lawyer consenting to the disclosure, or the information-sharing is required to meet the Law Society's legal duty to accommodate a lawyer with a health-related disability in the event

that the lawyer is unsuccessful in completing the ADP and the matter is returned to the regular discipline process.

33. Subrule (3)(b) permits the limited disclosure of non-identifying information in the course of the Executive Director consulting on the appropriateness of proposed terms of consent agreement or, as previously discussed, in developing anonymous summaries and reports regarding steps taken under the ADP. Subrule (3)(c) enumerates the limited circumstances in which information is disclosed to the complainant, as discussed in the ADP Report and previously in these drafting notes. This provision ensures there is a level of transparency with respect to how the complaint is being addressed by the Law Society while maintaining the confidentiality of the process to the greatest extent possible. Importantly, this provision does not permit providing the complainant with information about the lawyer's health issue or the specifics of the terms of a consent agreement, absent the lawyer's consent.

34. Subrule (4) reinforces the confidentiality of the ADP by ensuring that information that is subject to solicitor and client privilege or confidentiality will not be disclosed.

(i) Referring a matter back to the complaint investigation process

35. Another of the guiding principles of the ADP is that it is a "no risk" process. The ADP Report characterizes this approach as one in which there will not be a worse regulatory outcome for either the lawyer or the Law Society if a lawyer is unable or unwilling to complete the ADP. The matter will simply return to the complaint investigation process and both the lawyer and the Law Society will be in the same position they would have been had the ADP never been attempted. In this regard, the public interest will be served either by the successful completion of the ADP or the application of the Law Society's regular processes.

36. Rule 3-9.9 sets out a framework for the referral of a matter back to the complaint investigation process under Division 1 of Part 3. The circumstances for such a referral are enumerated in subrule (1) and include: if the matter no longer meets the threshold eligibility criteria set out in Rule 3-9.1 (i.e. the lawyer withdraws consent to participate in the ADP or it is no longer in the public interest to proceed through the ADP); if insufficient health information is provided; if terms of the interim or final consent agreement cannot be reached in a reasonable period of time or are not approved; or if there is a breach of an agreement that cannot be addressed through an amendment or other action.

37. Subrule (2) is consistent with the notice provisions in a number of the Law Society's other regulatory processes.

(j) Dispute resolution

38. The ADP Report specifies that an appeal of a decision made under the ADP is limited to a review of whether the terms of a consent agreement have been fulfilled, and will be determined following an application to the President of the Law Society, and adjudicated by the President or their delegate. Since the report was adopted, however, the Benchers' have approved significant amendments to the Law Society rules and, as result, matters previously assigned to the President or their designate have been reassigned to the Tribunal, with a motions adjudicator hearing submissions and making decisions.

39. Rule 3-9.10 is consistent with these amendments, and the process described therein is recommended by legislative counsel to maintain the consistency of the Law Society Rules and, more specifically, to comport with the role of the Tribunal and the Tribunal chair recently approved by the Benchers.

40. Subrules (1) and (2) establish that if there is an allegation that the lawyer has breached the terms of a consent agreement or has failed to successfully fulfill the terms of an agreement, and a decision is made by the Executive Director to refer the matter back to the complaint investigation process, the lawyer may file an application with the Tribunal for the decision to be reviewed. Subrule (3) establishes that the written notice must set out the substance of the application, the grounds for it and the order sought within a specified period of time.

41. Subrule (4) permits an extension of time to make such an application and is consistent with other Law Society rules providing extensions of time. Subrules (5) and (6) establish the process by which the motions adjudicator grants or refuses the order and provides reasons for that decision. Subrule (7) reinforces the confidentiality of the review process and the limited disclosure of information pertaining to the lawyer's participation in the ADP.

Decision

42. The Executive Committee recommends that the Benchers resolve to approve the rules. A resolution is attached.

ADP RULES RESOLUTION:

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

1. Paragraph (b) of the definition of "professional conduct record" is rescinded and the following substituted:

(b) any conditions or limitations of practice or articles accepted or imposed under the Act or these rules, subject to Rule 3-9.8 *[Records and confidentiality]*;

2. The following subrule is added to Rule 3-4:

(3) At any time before a complaint is referred to a Committee or the chair of the Discipline Committee under Rule 3-8 *[Action on a complaint]*, the Executive Director may proceed on a complaint under Division 1.01 *[Health issues]*, without further investigation of the matter.

3. In Rule 3-8

(a) subrule (2) is rescinded and the following substituted:

(2) The Executive Director may take no further action under this division on a complaint if the Executive Director is satisfied that the matter giving rise to the complaint has been resolved.

(2.1) Subject to Rule 3-9.9 *[Referral to complaint investigation process]*, the Executive Director must take no further action under this division on a complaint if the Executive Director has proceeded on the complaint under Division 1.01 *[Health issues]*.

(b) in subrule (3), "Unless subrule (1) applies***" is struck and "***Unless subrule (1) or (2.1) applies***" is substituted.***

4. The following subrule is added to Rule 3-9:

(3) Despite subrule (1), when proceeding on a complaint under Division 1.01 *[Health issues]*, the Executive Director may delay notifying the complainant until health information has been collected and assessed.

5. The following division is added to Part 3:

Division 1.01 – Health issues

Proceeding on health issue

3-9.1 (1) In this division, **"health issue"** includes matters that may affect a lawyer's physical or mental health.

(2) The Executive Director may proceed under this division on the basis of information about a health issue that may affect a lawyer received from any source, including the lawyer.

(3) The Executive Director may proceed under this division if

(a) the lawyer acknowledges the existence of a health issue that may have contributed to an alleged discipline violation by the lawyer,

(b) the lawyer consents in writing to the Executive Director proceeding under this division, and

(c) the Executive Director is satisfied, in all the circumstances of the alleged discipline violation, including whether it involved substantial harm to the complainant or another person, that it is likely to be in the public interest to proceed under this division.

Risk mitigation

3-9.2 Unless a consent agreement is in effect under this division, if the Executive Director is satisfied on reasonable grounds that interim measures are necessary to protect the public, the Executive Director may enter into an interim agreement under which the lawyer agrees to do one or more of the following:

(a) not engage in the practice of law indefinitely or for a specific period of time;

(b) restrict the lawyer's practice to a specific area of law or other type of practice;

(c) accept practice supervision on terms approved by the Executive Director;

(d) any other measure that the Executive Director considers necessary in the public interest.

Health information

3-9.3 (1) The Executive Director may request that the lawyer provide health information that demonstrates to the satisfaction of the Executive Director that

(a) a health issue may have contributed to an alleged discipline violation by the lawyer,

(b) the lawyer could benefit from remedial initiatives, and

(c) it is in the public interest for the lawyer to engage in remedial measures.

(2) The Executive Director may request further health information from the lawyer as, in the judgment of the Executive Director, is required to determine whether a consent agreement under Rule 3-9.4 *[Consent agreement]* is appropriate.

Consent agreement

3-9.4 (1) The Executive Director may enter into a consent agreement with a lawyer if the Executive Director is satisfied that

(a) proceeding under this division is permitted under Rule 3-9.1 *[Proceeding on health issue]*, and

(b) the lawyer has provided sufficient health information requested under Rule 3-9.3 *[Health information]* for the Executive Director to make a decision under subrule (5).

(2) Before entering into a consent agreement under this rule, the Executive Director must ensure that each complainant in the complaint giving rise to the agreement is given an opportunity to provide a statement regarding the effect on the complainant of the lawyer's conduct.

(3) A consent agreement under this rule must include provisions addressing the following:

(a) the duration of the agreement and, if different, of any obligation of a party**;**

(b) confidentiality and information sharing;

(c) the fulfillment of or amendment to the terms of the agreement;

(d) responsibility for reporting a breach of the terms of the agreement;

(e) the consequences of the lawyer's fulfilling or failing to fulfill the terms of the agreement;

(f) responsibility for costs associated with fulfilling the terms of the agreement;

(g) the lawyer's undertaking not to assert delay or any other prejudice as the result of proceeding under this division if the matter is subsequently referred to the complaint investigation process under Rule 3-9.9 *[Referral to complaint investigation process]*.

(4) A consent agreement under this rule may also include other provisions, including but not limited to the following:

(a) a recommended treatment plan;

(b) medical monitoring and reporting requirements;

(c) practice conditions and limitations;

(d) mitigation of loss or harm resulting from an alleged discipline violation;

(e) an apology, restitution or other remedial steps.

(5) The Executive Director may enter into a consent agreement if the Executive Director is satisfied that the agreement is in the public interest having considered all the relevant circumstances, including the following:

(a) the nature and scope of the terms of the agreement, including specific action to be taken to protect the public;

(b) the nature and seriousness of the alleged discipline violation;

(c) the impact of the lawyer's conduct on the complainant or others;

(d) any previous complaints concerning the lawyer proceeded on under this division;

(e) the effect of the agreement on the administration of justice and the public's confidence in the integrity of the legal profession;

(f) whether measures to be taken under the agreement are likely to improve the lawyer's ability to fulfill the duties of a lawyer in the practice of law;

(g) the presence of aggravating or mitigating factors, such as acknowledgement of a discipline violation or steps taken to redress a wrong where appropriate.

(6) An agreement under this rule is

(a) voluntary and requires the consent of the lawyer, and

(b) not valid unless signed by the Executive Director and the lawyer.

(7) When a consent agreement is made under this rule, the Executive Director must notify the complainant in writing of that fact.

(8) The Executive Director may report to the Benchers or the Executive Committee on a consent agreement made under this rule, but the report must not identify the lawyer concerned.

(9) Subject to Rule 3-9.9 *[Referral to complaint investigation process]*, the Society is bound by an effective consent agreement made under this rule, and no further action on the complaint that gave rise to the agreement is permitted.

Practice conditions and limitations

3-9.5 (1) When a condition or limitation on the practice of a lawyer is agreed to under this division, the Executive Director may disclose the fact that the condition or limitation applies, the nature of the condition or limitation and its effect on the lawyer's practice.

(2) A disclosure under this rule must not indicate that the agreement was made under this division.

(3) If the Executive Director discloses the existence of a condition or limitation under this rule by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.

Amending consent agreement

3-9.6 (1) A consent agreement may be amended by agreement of the parties reduced to writing and given effect in accordance with Rule 3-9.4 *[Consent agreement]*.

(2) An agreement amended under subrule (1) has the same effect as if given effect under Rule 3-9.4.

Breach of consent agreement

3-9.7 If a lawyer is in breach of a consent agreement made under this division, the Executive Director may do any of the following as appears to the Executive Director to be consistent with the public interest:

(a) terminate the consent agreement;

(b) refer the matter under Rule 3-9.9 *[Referral to complaint investigation]* for investigation of the complaint that gave rise to the consent agreement;

(c) enter into an amended consent agreement under Rule 3-9.6 *[Amending consent agreement]*;

(d) take any other appropriate action consistent with these rules.

Records and confidentiality

3-9.8 (1) Nothing done under this division forms part of a lawyer's professional conduct record.

(2) Unless permitted under this division, no one is permitted to disclose any information or records related to a step taken under this division.

(3) The Executive Director may do any of the following:

(a) disclose information related to a step taken with respect to a lawyer under this division if

(i) the lawyer consents to the disclosure, or

(ii) the disclosure is necessary to comply with a legal duty to accommodate;

(b) disclose or publish information about consent agreements or other steps taken under this division, but that information must not identify the lawyer, clients or complainants concerned;

(c) disclose information to the complainant to the extent necessary

(i) to comply with Rule 3-9 *[Notice]*,

(ii) to comply with Rule 3-9.4 *[Consent agreement]*,

(iii) to report to the complainant on the successful fulfillment of the terms of the consent agreement, or

(iv) to report to the complainant that the complaint has been referred for investigation or further investigation under Rule 3-9.9 *[Referral to complaint investigation process]*.

(4) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.

Referral to complaint investigation process

3-9.9 (1) The Executive Director may refer a matter that has been proceeded on under this division for investigation or further investigation under Division 1 *[Complaints]* if

(a) a condition required under Rule 3-9.1 *[Proceeding on health issue]* is not present or no longer present,

(b) the lawyer fails or refuses to provide sufficient health information requested under Rule 3-9.3 *[Health information]*,

(c) it is not possible, in the opinion of the Executive Director, to reach an interim agreement or a consent agreement within a reasonable period of time, or

(d) the lawyer breaches an interim agreement or a consent agreement made under this division.

(2) The Executive Director must give the lawyer 30 days' notice in writing before taking action under this rule.

Dispute resolution

3-9.10 (1) This rule applies to resolution of a dispute arising from an allegation that the lawyer

(a) has committed a breach of an interim agreement or a consent agreement, or

(b) has failed to successfully fulfill the terms of a consent agreement.

(2) A lawyer may apply to the Tribunal for the determination of a dispute if the Executive Director has given notice under Rule 3-9.9 *[Referral to complaint investigation process]* that

(a) an interim agreement or consent agreement will be terminated as a result of an alleged breach or failure to fulfill the terms of a consent agreement, and

(b) the matter that gave rise to the interim agreement or consent agreement will be referred for investigation or further investigation under Division 1 *[Complaints]*.

(3) The lawyer may make an application under subrule (2) within 30 days of receiving notice under Rule 3-9.9 *[Referral to complaint investigation process]* by filing with the Tribunal and delivering to the Executive Director written notice setting out the substance of the application, the grounds for it and the order that is sought.

(4) On application by the lawyer, a motions adjudicator may extend the time to apply for a determination under this rule.

(5) When an application is made under subrule (2), the motions adjudicator must do one of the following as appears to the motions adjudicator to be appropriate:

(a) grant all or part of the order applied for, with or without conditions;

(b) refuse the order.

(6) The motions adjudicator must provide written reasons for a decision under this rule.

(7) For greater certainty, Rule 3-9.8 *[Records and confidentiality]* applies with respect to an application under this rule, and the written reasons for a decision must not be published or otherwise disclosed except as permitted by Rule 3-9.8.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

"complainant" means a person who has delivered a complaint about a lawyer or a law firm to the Society under Rule 3-2 *[Complaints]*;

"complaint" means an allegation that a lawyer or a law firm has committed a discipline violation;

"conduct unbecoming the profession" includes a matter, conduct or thing that is considered, in the judgment of the Benchers, a panel or a review board,

(a) to be contrary to the best interest of the public or of the legal profession, or

(b) to harm the standing of the legal profession;

"discipline violation" means any of the following:

(a) professional misconduct;

(b) conduct unbecoming the profession;

(c) a breach of the Act or these rules;

(d) incompetent performance of duties undertaken by a lawyer in the capacity of a lawyer;

(e) conduct that would constitute professional misconduct, conduct unbecoming the profession or a contravention of the Act or these rules if done by a lawyer or law firm;

"investigate" includes authorizing an investigation and continuing an investigation in progress;

"professional conduct record" means a record of all or some of the following information respecting a lawyer:

(a) an order under Rule 2-57 (5) *[Principals]*, prohibiting the lawyer from acting as a principal for an articled student;

(b) any conditions or limitations of practice or articles accepted or imposed under the Act or these rules, subject to Rule 3-9.8 *[Records and confidentiality]*;

(c) a decision by a panel or a review board to reject an application for enrolment, call and admission or reinstatement;

(d) a decision by the Credentials Committee to reject an application for an inter-jurisdictional practice permit;

(e) any suspension or disbarment under the Act or these rules;

LAW SOCIETY RULES

(f) recommendations made by the Practice Standards Committee under Rule 3-19 *[Action by Practice Standards Committee]*;

(g) an admission accepted by the Discipline Committee under Rule 4-29 *[Conditional admission]*;

(h) an admission and consent to disciplinary action accepted by a hearing panel under Rule 5-6.5 *[Admission and consent to disciplinary action]*;

(i) any Conduct Review Subcommittee report delivered to the Discipline Committee under Rule 4-13 *[Conduct Review Subcommittee report]*, and any written dispute of that report considered by the Committee;

(j) a decision made under section 38 (4) (b) *[Discipline hearings]*;

(k) an action taken under section 38 (5), (6) or (7);

(l) an action taken by a review board under section 47 *[Review on the record]*;

(m) a payment made under section 31 on account of misappropriation or wrongful conversion by the lawyer;

(n) an order for costs made against the lawyer under Part 5 *[Hearings and Appeals]*;

(o) any failure to pay any fine, costs or penalty imposed under the Act or these rules by the time that it is to be paid.

(p) the outcome of an application made by the lawyer under the *Judicial Review Procedure Act* concerning a decision taken under the Act or these rules, including a predecessor of either;

(q) the outcome of an appeal under section 48 *[Appeal]*;

(r) any disciplinary or remedial action taken by a governing body or body regulating the legal profession in any other jurisdiction;

(s) a decision of or action taken by the Benchers on a review of a decision of a hearing panel;

LAW SOCIETY RULES

PART 1 – ORGANIZATION

Division 1 – Law Society

General

Executive Director's delegate

1-44.1 (1) Any power or authority delegated to the Executive Director under these rules may be exercised by the Executive Director's delegate.

(2) In the absence of evidence to the contrary, an employee of the Society or a person retained by the Society is the Executive Director's delegate when acting within the scope of his or her employment or retainer to exercise a power or authority delegated to the Executive Director under these rules.

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Application

3-1 This division applies to the following as it does to a lawyer, with the necessary changes and so far as it is applicable:

(a) a former lawyer;

(b) an articled student;

(c) a visiting lawyer permitted to practise law in British Columbia under Rules 2-16 to 2-20;

(d) a practitioner of foreign law;

(e) a law firm.

Complaints

3-2 Any person may deliver a written complaint against a lawyer or law firm to the Executive Director.

Consideration of complaints and other information

3-4 (1) The Executive Director must consider every complaint received under Rule 3-2 *[Complaints]*.

LAW SOCIETY RULES

(2) Information received from any source that indicates that a lawyer's conduct may constitute a discipline violation must be treated as a complaint under these rules.

(3) At any time before a complaint is referred to a Committee or the chair of the Discipline Committee under Rule 3-8 *[Action on a complaint]*, the Executive Director may proceed on a complaint under Division 1.01 *[Health issues]*, without further investigation of the matter.

Investigation of complaints

3-5 (1) Subject to subrule (3), the Executive Director may, and on the instruction of the Discipline Committee must, investigate a complaint to determine its validity.

(2) For the purpose of conducting an investigation under this division and section 26 *[Complaints from the public]*, the Executive Director may designate an employee of the Society or appoint a practising lawyer or a person whose qualifications are satisfactory to the Executive Director.

(3) The Executive Director may decline to investigate a complaint if the Executive Director is satisfied that the complaint

(a) is outside the jurisdiction of the Society,

(b) is frivolous, vexatious or an abuse of process, or

(c) does not allege facts that, if proven, would constitute a discipline violation.

(4) The Executive Director must deliver to the lawyer who is the subject of a complaint a copy of the complaint or, if that is not practicable, a summary of it.

(5) Despite subrule (4), if the Executive Director considers it necessary for the effective investigation of the complaint, the Executive Director may delay notification of the lawyer.

(6) When acting under subrule (4), the Executive Director may decline to identify the complainant or the source of the complaint.

(7) A lawyer must co-operate fully in an investigation under this division by all available means including, but not limited to, responding fully and substantively, in the form specified by the Executive Director

(a) to the complaint, and

(b) to all requests made by the Executive Director in the course of an investigation.

(8) When conducting an investigation of a complaint, the Executive Director may

(a) require production of files, documents and other records for examination or copying,

(b) require a lawyer to

(i) attend an interview,

(ii) answer questions and provide information relating to matters under investigation, or

(iii) cause an employee or agent of the lawyer to answer questions and provide information relating to the investigation,

(c) enter the business premises of a lawyer

(i) during business hours, or

(ii) at another time by agreement with the lawyer.

(9) Any written response under subrule (7) must be signed by

(a) the lawyer personally, or

(b) a representative of the law firm, if the complaint is about a law firm.

(10) The Executive Director may deliver to the complainant a copy or a summary of a response received from the lawyer, subject to solicitor and client privilege and confidentiality.

(11) A lawyer who is required to produce files, documents and other records, provide information or attend an interview under this rule must comply with the requirement

(a) even if the information or files, documents and other records are privileged or confidential, and

(b) as soon as practicable and, in any event, by the time and date set by the Executive Director.

Resolution by informal means

3-7 The Executive Director may, at any time, attempt to resolve a complaint through mediation or other informal means.

Resolution by consent agreement

3-7.1 (1) At any time before a complaint is referred to a Committee or the chair of the Discipline Committee under Rule 3-8 *[Action ~~after investigation~~on a complaint]*, the Executive Director may resolve a complaint by agreement with the lawyer.

LAW SOCIETY RULES

Breach of consent agreement

3-7.2 If a lawyer is in breach of a consent agreement, the Executive Director may do one or more of the following:

(c) refer the matter to a Committee or the chair of the Discipline Committee under Rule 3-8 *[Action ~~after investigation~~on a complaint]*;

Action ~~after investigation~~on a complaint

3-8 (1) After investigating a complaint, the Executive Director must take no further action if the Executive Director is satisfied that the complaint

(a) is not valid or its validity cannot be proven, or

(b) does not disclose conduct serious enough to warrant further action.

(2) The Executive Director may take no further action under this division on a complaint if the Executive Director is satisfied that the matter giving rise to the complaint has been resolved.

(2.1) Subject to Rule 3-9.9 *[Referral to complaint investigation process]*, the Executive Director must take no further action under this division on a complaint if the Executive Director has proceeded on the complaint under Division 1.01 *[Health issues]*.

(3) Unless subrule (1) or (2.1) applies or the Executive Director takes no further action under subrule (2), the Executive Director must refer the complaint to the Practice Standards Committee or to the Discipline Committee.

(4) Despite subrule (3), the Executive Director may refer a complaint to the chair of the Discipline Committee if the complaint concerns only allegations that the lawyer has done one or more of the following:

(a) breached a rule;

(b) breached an undertaking given to the Society;

(c) failed to respond to a communication from the Society;

(d) breached an order made under the Act or these rules.

~~Notifying the parties~~Notice

3-9 (1) When a decision has been made under Rule 3-8 *[Action ~~after investigation~~on a complaint]*, the Executive Director must notify the complainant and the lawyer in writing of the disposition.

LAW SOCIETY RULES

(2) When the Executive Director takes no further action on a complaint under Rule 3-8 (1) *[Action ~~after investigation~~on a complaint]*, notice to the complainant under subrule (1) must include

(a) the reason for the decision, and

(b) instructions on how to apply for a review of the decision under Rule 3-14 *[Review by Complainants' Review Committee]*.

(3) Despite subrule (1), when proceeding on a complaint under Division 1.01 *[Health issues]*, the Executive Director may delay notifying the complainant until health information has been collected and assessed.

Division 1.01 – Health issues

Proceeding on health issue

3-9.1 (1) In this division, **"health issue"** includes matters that may affect a lawyer's physical or mental health.

(2) The Executive Director may proceed under this division on the basis of information about a health issue that may affect a lawyer received from any source, including the lawyer.

(3) The Executive Director may proceed under this division if

(a) the lawyer acknowledges the existence of a health issue that may have contributed to an alleged discipline violation by the lawyer,

(b) the lawyer consents in writing to the Executive Director proceeding under this division, and

(c) the Executive Director is satisfied, in all the circumstances of the alleged discipline violation, including whether it involved substantial harm to the complainant or another person, that it is likely to be in the public interest to proceed under this division.

Risk mitigation

3-9.2 Unless a consent agreement is in effect under this division, if the Executive Director is satisfied on reasonable grounds that interim measures are necessary to protect the public, the Executive Director may enter into an interim agreement under which the lawyer agrees to do one or more of the following:

(a) not engage in the practice of law indefinitely or for a specific period of time;

(b) restrict the lawyer's practice to a specific area of law or other type of practice;

(c) accept practice supervision on terms approved by the Executive Director;

LAW SOCIETY RULES

(d) any other measure that the Executive Director considers necessary in the public interest.

Health information

3-9.3 (1) The Executive Director may request that the lawyer provide health information that demonstrates to the satisfaction of the Executive Director that

(a) a health issue may have contributed to an alleged discipline violation by the lawyer,

(b) the lawyer could benefit from remedial initiatives, and

(c) it is in the public interest for the lawyer to engage in remedial measures.

(2) The Executive Director may request further health information from the lawyer as, in the judgment of the Executive Director, is required to determine whether a consent agreement under Rule 3-9.4 *[Consent agreement]* is appropriate.

Consent agreement

3-9.4 (1) The Executive Director may enter into a consent agreement with a lawyer if the Executive Director is satisfied that

(a) proceeding under this division is permitted under Rule 3-9.1 *[Proceeding on health issue]*, and

(b) the lawyer has provided sufficient health information requested under Rule 3-9.3 *[Health information]* for the Executive Director to make a decision under subrule (5).

(2) Before entering into a consent agreement under this rule, the Executive Director must ensure that each complainant in the complaint giving rise to the agreement is given an opportunity to provide a statement regarding the effect on the complainant of the lawyer's conduct.

(3) A consent agreement under this rule must include provisions addressing the following:

(a) the duration of the agreement and, if different, of any obligation of a party;

(b) confidentiality and information sharing;

(c) the fulfillment of or amendment to the terms of the agreement;

(d) responsibility for reporting a breach of the terms of the agreement;

(e) the consequences of the lawyer's fulfilling or failing to fulfill the terms of the agreement;

(f) responsibility for costs associated with fulfilling the terms of the agreement;

LAW SOCIETY RULES

(g) the lawyer's undertaking not to assert delay or any other prejudice as the result of proceeding under this division if the matter is subsequently referred to the complaint investigation process under Rule 3-9.9 *[Referral to complaint investigation process]*.

(4) A consent agreement under this rule may also include other provisions, including but not limited to the following:

(a) a recommended treatment plan;

(b) medical monitoring and reporting requirements;

(c) practice conditions and limitations;

(d) mitigation of loss or harm resulting from an alleged discipline violation;

(e) an apology, restitution or other remedial steps.

(5) The Executive Director may enter into a consent agreement if the Executive Director is satisfied that the agreement is in the public interest having considered all the relevant circumstances, including the following:

(a) the nature and scope of the terms of the agreement, including specific action to be taken to protect the public;

(b) the nature and seriousness of the alleged discipline violation;

(c) the impact of the lawyer's conduct on the complainant or others;

(d) any previous complaints concerning the lawyer proceeded on under this division;

(e) the effect of the agreement on the administration of justice and the public's confidence in the integrity of the legal profession;

(f) whether measures to be taken under the agreement are likely to improve the lawyer's ability to fulfill the duties of a lawyer in the practice of law;

(g) the presence of aggravating or mitigating factors, such as acknowledgement of a discipline violation or steps taken to redress a wrong where appropriate.

(6) An agreement under this rule is

(a) voluntary and requires the consent of the lawyer, and

(b) not valid unless signed by the Executive Director and the lawyer.

(7) When a consent agreement is made under this rule, the Executive Director must notify the complainant in writing of that fact.

(8) The Executive Director may report to the Benchers or the Executive Committee on a consent agreement made under this rule, but the report must not identify the lawyer concerned.

LAW SOCIETY RULES

(9) Subject to Rule 3-9.9 *[Referral to complaint investigation process]*, the Society is bound by an effective consent agreement made under this rule, and no further action on the complaint that gave rise to the agreement is permitted.

Practice conditions and limitations

3-9.5 (1) When a condition or limitation on the practice of a lawyer is agreed to under this division, the Executive Director may disclose the fact that the condition or limitation applies, the nature of the condition or limitation and its effect on the lawyer's practice.

(2) A disclosure under this rule must not indicate that the agreement was made under this division.

(3) If the Executive Director discloses the existence of a condition or limitation under this rule by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.

Amending consent agreement

3-9.6 (1) A consent agreement may be amended by agreement of the parties reduced to writing and given effect in accordance with Rule 3-9.4 *[Consent agreement]*.

(2) An agreement amended under subrule (1) has the same effect as if given effect under Rule 3-9.4.

Breach of consent agreement

3-9.7 If a lawyer is in breach of a consent agreement made under this division, the Executive Director may do any of the following as appears to the Executive Director to be consistent with the public interest:

(a) terminate the consent agreement;

(b) refer the matter under Rule 3-9.9 *[Referral to complaint investigation]* for investigation of the complaint that gave rise to the consent agreement;

(c) enter into an amended consent agreement under Rule 3-9.6 *[Amending consent agreement]*;

(d) take any other appropriate action consistent with these rules.

Records and confidentiality

3-9.8 (1) Nothing done under this division forms part of a lawyer's professional conduct record.

LAW SOCIETY RULES

(2) Unless permitted under this division, no one is permitted to disclose any information or records related to a step taken under this division.

(3) The Executive Director may do any of the following:

(a) disclose information related to a step taken with respect to a lawyer under this division if

(i) the lawyer consents to the disclosure, or

(ii) the disclosure is necessary to comply with a legal duty to accommodate;

(b) disclose or publish information about consent agreements or other steps taken under this division, but that information must not identify the lawyer, clients or complainants concerned;

(c) disclose information to the complainant to the extent necessary

(i) to comply with Rule 3-9 *[Notice]*,

(ii) to comply with Rule 3-9.4 *[Consent agreement]*,

(iii) to report to the complainant on the successful fulfillment of the terms of the consent agreement, or

(iv) to report to the complainant that the complaint has been referred for investigation or further investigation under Rule 3-9.9 *[Referral to complaint investigation process]*.

(4) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.

Referral to complaint investigation process

3-9.9 (1) The Executive Director may refer a matter that has been proceeded on under this division for investigation or further investigation under Division 1 *[Complaints]* if

(a) a condition required under Rule 3-9.1 *[Proceeding on health issue]* is not present or no longer present,

(b) the lawyer fails or refuses to provide sufficient health information requested under Rule 3-9.3 *[Health information]*,

(c) it is not possible, in the opinion of the Executive Director, to reach an interim agreement or a consent agreement within a reasonable period of time, or

(d) the lawyer breaches an interim agreement or a consent agreement made under this division.

(2) The Executive Director must give the lawyer 30 days' notice in writing before taking action under this rule.

LAW SOCIETY RULES

Dispute resolution

3-9.10 (1) This rule applies to resolution of a dispute arising from an allegation that the lawyer

(a) has committed a breach of an interim agreement or a consent agreement, or

(b) has failed to successfully fulfill the terms of a consent agreement.

(2) A lawyer may apply to the Tribunal for the determination of a dispute if the Executive Director has given notice under Rule 3-9.9 *[Referral to complaint investigation process]* that

(a) an interim agreement or consent agreement will be terminated as a result of an alleged breach or failure to fulfill the terms of a consent agreement, and

(b) the matter that gave rise to the interim agreement or consent agreement will be referred for investigation or further investigation under Division 1 *[Complaints]*.

(3) The lawyer may make an application under subrule (2) within 30 days of receiving notice under Rule 3-9.9 *[Referral to complaint investigation process]* by filing with the Tribunal and delivering to the Executive Director written notice setting out the substance of the application, the grounds for it and the order that is sought.

(4) On application by the lawyer, a motions adjudicator may extend the time to apply for a determination under this rule.

(5) When an application is made under subrule (2), the motions adjudicator must do one of the following as appears to the motions adjudicator to be appropriate:

(a) grant all or part of the order applied for, with or without conditions;

(b) refuse the order.

(6) The motions adjudicator must provide written reasons for a decision under this rule.

(7) For greater certainty, Rule 3-9.8 *[Records and confidentiality]* applies with respect to an application under this rule, and the written reasons for a decision must not be published or otherwise disclosed except as permitted by Rule 3-9.8.

PART 4 – DISCIPLINE

Action on complaints

4-4 (1) After its consideration under Rule 4-3 *[Consideration of complaints by Committee*, the Discipline Committee must

(a) decide that no further action be taken on the complaint,

(b) authorize the chair or other Bencher member of the Discipline Committee to send a letter to the lawyer concerning the lawyer's conduct,

LAW SOCIETY RULES

(c) require the lawyer or law firm to attend a meeting with one or more Benchers or lawyers to discuss the conduct of the lawyer,

(d) require the lawyer or law firm to appear before a Conduct Review Subcommittee, or

(e) direct that the Executive Director issue a citation against the lawyer under Rule 4-17 (1) *[Direction to issue, expand or rescind citation]*.

(2) In addition to the determination made under subrule (1), the Discipline Committee may refer any matter or any lawyer to the Practice Standards Committee.

(3) In addition to any action taken under subrules (1) and (2), if a complaint discloses that there may be grounds for revoking a law corporation's permit under Rule 9-11 *[Revocation of permits]*, the Discipline Committee may order a hearing on the revocation of the law corporation's permit.

(4) At any time before the Discipline Committee makes a decision under Rule 4-13 (6) (a) to (c) *[Conduct Review Subcommittee report]*, the Committee may resolve to rescind a decision made under subrule (1) (d) to require a lawyer to appear before a Conduct Review Subcommittee and substitute another decision under subrule (1).

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

"complainant" means a person who has delivered a complaint about a lawyer or a law firm to the Society under Rule 3-2 *[Complaints]*;

"complaint" means an allegation that a lawyer or a law firm has committed a discipline violation;

"conduct unbecoming the profession" includes a matter, conduct or thing that is considered, in the judgment of the Benchers, a panel or a review board,

(a) to be contrary to the best interest of the public or of the legal profession, or

(b) to harm the standing of the legal profession;

"discipline violation" means any of the following:

(a) professional misconduct;

(b) conduct unbecoming the profession;

(c) a breach of the Act or these rules;

(d) incompetent performance of duties undertaken by a lawyer in the capacity of a lawyer;

(e) conduct that would constitute professional misconduct, conduct unbecoming the profession or a contravention of the Act or these rules if done by a lawyer or law firm;

"investigate" includes authorizing an investigation and continuing an investigation in progress;

"professional conduct record" means a record of all or some of the following information respecting a lawyer:

(a) an order under Rule 2-57 (5) *[Principals]*, prohibiting the lawyer from acting as a principal for an articled student;

(b) any conditions or limitations of practice or articles accepted or imposed under the Act or these rules, subject to Rule 3-9.8 *[Records and confidentiality]*;

(c) a decision by a panel or a review board to reject an application for enrolment, call and admission or reinstatement;

(d) a decision by the Credentials Committee to reject an application for an inter-jurisdictional practice permit;

(e) any suspension or disbarment under the Act or these rules;

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(f) recommendations made by the Practice Standards Committee under Rule 3-19 *[Action by Practice Standards Committee]*;

(g) an admission accepted by the Discipline Committee under Rule 4-29 *[Conditional admission]*;

(h) an admission and consent to disciplinary action accepted by a hearing panel under Rule 5-6.5 *[Admission and consent to disciplinary action]*;

(i) any Conduct Review Subcommittee report delivered to the Discipline Committee under Rule 4-13 *[Conduct Review Subcommittee report]*, and any written dispute of that report considered by the Committee;

(j) a decision made under section 38 (4) (b) *[Discipline hearings]*;

(k) an action taken under section 38 (5), (6) or (7);

(l) an action taken by a review board under section 47 *[Review on the record]*;

(m) a payment made under section 31 on account of misappropriation or wrongful conversion by the lawyer;

(n) an order for costs made against the lawyer under Part 5 *[Hearings and Appeals]*;

(o) any failure to pay any fine, costs or penalty imposed under the Act or these rules by the time that it is to be paid.

(p) the outcome of an application made by the lawyer under the *Judicial Review Procedure Act* concerning a decision taken under the Act or these rules, including a predecessor of either;

(q) the outcome of an appeal under section 48 *[Appeal]*;

(r) any disciplinary or remedial action taken by a governing body or body regulating the legal profession in any other jurisdiction;

(s) a decision of or action taken by the Benchers on a review of a decision of a hearing panel;

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PART 1 – ORGANIZATION

Division 1 – Law Society

General

Executive Director's delegate

1-44.1 (1) Any power or authority delegated to the Executive Director under these rules may be exercised by the Executive Director's delegate.

(2) In the absence of evidence to the contrary, an employee of the Society or a person retained by the Society is the Executive Director's delegate when acting within the scope of his or her employment or retainer to exercise a power or authority delegated to the Executive Director under these rules.

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Application

3-1 This division applies to the following as it does to a lawyer, with the necessary changes and so far as it is applicable:

(a) a former lawyer;

(b) an articled student;

(c) a visiting lawyer permitted to practise law in British Columbia under Rules 2-16 to 2-20;

(d) a practitioner of foreign law;

(e) a law firm.

Complaints

3-2 Any person may deliver a written complaint against a lawyer or law firm to the Executive Director.

Consideration of complaints and other information

3-4 (1) The Executive Director must consider every complaint received under Rule 3-2 *[Complaints]*.

(2) Information received from any source that indicates that a lawyer's conduct may constitute a discipline violation must be treated as a complaint under these rules.

(3) At any time before a complaint is referred to a Committee or the chair of the Discipline Committee under Rule 3-8 *[Action on a complaint]*, the Executive Director may proceed on a complaint under Division 1.01 *[Health issues]*, without further investigation of the matter.

Investigation of complaints

3-5 (1) Subject to subrule (3), the Executive Director may, and on the instruction of the Discipline Committee must, investigate a complaint to determine its validity.

(2) For the purpose of conducting an investigation under this division and section 26 *[Complaints from the public]*, the Executive Director may designate an employee of the Society or appoint a practising lawyer or a person whose qualifications are satisfactory to the Executive Director.

(3) The Executive Director may decline to investigate a complaint if the Executive Director is satisfied that the complaint

(a) is outside the jurisdiction of the Society,

(b) is frivolous, vexatious or an abuse of process, or

(c) does not allege facts that, if proven, would constitute a discipline violation.

(4) The Executive Director must deliver to the lawyer who is the subject of a complaint a copy of the complaint or, if that is not practicable, a summary of it.

(5) Despite subrule (4), if the Executive Director considers it necessary for the effective investigation of the complaint, the Executive Director may delay notification of the lawyer.

(6) When acting under subrule (4), the Executive Director may decline to identify the complainant or the source of the complaint.

(7) A lawyer must co-operate fully in an investigation under this division by all available means including, but not limited to, responding fully and substantively, in the form specified by the Executive Director

(a) to the complaint, and

(b) to all requests made by the Executive Director in the course of an investigation.

(8) When conducting an investigation of a complaint, the Executive Director may

(a) require production of files, documents and other records for examination or copying,

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(b) require a lawyer to

(i) attend an interview,

(ii) answer questions and provide information relating to matters under investigation, or

(iii) cause an employee or agent of the lawyer to answer questions and provide information relating to the investigation,

(c) enter the business premises of a lawyer

(i) during business hours, or

(ii) at another time by agreement with the lawyer.

(9) Any written response under subrule (7) must be signed by

(a) the lawyer personally, or

(b) a representative of the law firm, if the complaint is about a law firm.

(10) The Executive Director may deliver to the complainant a copy or a summary of a response received from the lawyer, subject to solicitor and client privilege and confidentiality.

(11) A lawyer who is required to produce files, documents and other records, provide information or attend an interview under this rule must comply with the requirement

(a) even if the information or files, documents and other records are privileged or confidential, and

(b) as soon as practicable and, in any event, by the time and date set by the Executive Director.

Resolution by informal means

3-7 The Executive Director may, at any time, attempt to resolve a complaint through mediation or other informal means.

Resolution by consent agreement

3-7.1 (1) At any time before a complaint is referred to a Committee or the chair of the Discipline Committee under Rule 3-8 *[Action on a complaint]*, the Executive Director may resolve a complaint by agreement with the lawyer.

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Breach of consent agreement

3-7.2 If a lawyer is in breach of a consent agreement, the Executive Director may do one or more of the following:

(c) refer the matter to a Committee or the chair of the Discipline Committee under Rule 3-8 *[Action on a complaint]*;

Action on a complaint

3-8 (1) After investigating a complaint, the Executive Director must take no further action if the Executive Director is satisfied that the complaint

(a) is not valid or its validity cannot be proven, or

(b) does not disclose conduct serious enough to warrant further action.

(2) The Executive Director may take no further action under this division on a complaint if the Executive Director is satisfied that the matter giving rise to the complaint has been resolved.

(2.1) Subject to Rule 3-9.9 *[Referral to complaint investigation process]*, the Executive Director must take no further action under this division on a complaint if the Executive Director has proceeded on the complaint under Division 1.01 *[Health issues]*.

(3) Unless subrule (1) or (2.1) applies or the Executive Director takes no further action under subrule (2), the Executive Director must refer the complaint to the Practice Standards Committee or to the Discipline Committee.

(4) Despite subrule (3), the Executive Director may refer a complaint to the chair of the Discipline Committee if the complaint concerns only allegations that the lawyer has done one or more of the following:

(a) breached a rule;

(b) breached an undertaking given to the Society;

(c) failed to respond to a communication from the Society;

(d) breached an order made under the Act or these rules.

Notice

3-9 (1) When a decision has been made under Rule 3-8 *[Action on a complaint]*, the Executive Director must notify the complainant and the lawyer in writing of the disposition.

(2) When the Executive Director takes no further action on a complaint under Rule 3-8 (1) *[Action on a complaint]*, notice to the complainant under subrule (1) must include

(a) the reason for the decision, and

(b) instructions on how to apply for a review of the decision under Rule 3-14 *[Review by Complainants' Review Committee]*.

(3) Despite subrule (1), when proceeding on a complaint under Division 1.01 *[Health issues]*, the Executive Director may delay notifying the complainant until health information has been collected and assessed.

Division 1.01 – Health issues

Proceeding on health issue

3-9.1 (1) In this division, **"health issue"** includes matters that may affect a lawyer's physical or mental health.

(2) The Executive Director may proceed under this division on the basis of information about a health issue that may affect a lawyer received from any source, including the lawyer.

(3) The Executive Director may proceed under this division if

(a) the lawyer acknowledges the existence of a health issue that may have contributed to an alleged discipline violation by the lawyer,

(b) the lawyer consents in writing to the Executive Director proceeding under this division, and

(c) the Executive Director is satisfied, in all the circumstances of the alleged discipline violation, including whether it involved substantial harm to the complainant or another person, that it is likely to be in the public interest to proceed under this division.

Risk mitigation

3-9.2 Unless a consent agreement is in effect under this division, if the Executive Director is satisfied on reasonable grounds that interim measures are necessary to protect the public, the Executive Director may enter into an interim agreement under which the lawyer agrees to do one or more of the following:

(a) not engage in the practice of law indefinitely or for a specific period of time;

(b) restrict the lawyer's practice to a specific area of law or other type of practice;

(c) accept practice supervision on terms approved by the Executive Director;

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(d) any other measure that the Executive Director considers necessary in the public interest.

Health information

3-9.3 (1) The Executive Director may request that the lawyer provide health information that demonstrates to the satisfaction of the Executive Director that

(a) a health issue may have contributed to an alleged discipline violation by the lawyer,

(b) the lawyer could benefit from remedial initiatives, and

(c) it is in the public interest for the lawyer to engage in remedial measures.

(2) The Executive Director may request further health information from the lawyer as, in the judgment of the Executive Director, is required to determine whether a consent agreement under Rule 3-9.4 *[Consent agreement]* is appropriate.

Consent agreement

3-9.4 (1) The Executive Director may enter into a consent agreement with a lawyer if the Executive Director is satisfied that

(a) proceeding under this division is permitted under Rule 3-9.1 *[Proceeding on health issue]*, and

(b) the lawyer has provided sufficient health information requested under Rule 3-9.3 *[Health information]* for the Executive Director to make a decision under subrule (5).

(2) Before entering into a consent agreement under this rule, the Executive Director must ensure that each complainant in the complaint giving rise to the agreement is given an opportunity to provide a statement regarding the effect on the complainant of the lawyer's conduct.

(3) A consent agreement under this rule must include provisions addressing the following:

(a) the duration of the agreement and, if different, of any obligation of a party**;**

(b) confidentiality and information sharing;

(c) the fulfillment of or amendment to the terms of the agreement;

(d) responsibility for reporting a breach of the terms of the agreement;

(e) the consequences of the lawyer's fulfilling or failing to fulfill the terms of the agreement;

(f) responsibility for costs associated with fulfilling the terms of the agreement;

(g) the lawyer's undertaking not to assert delay or any other prejudice as the result of proceeding under this division if the matter is subsequently referred to the complaint investigation process under Rule 3-9.9 *[Referral to complaint investigation process]*.

(4) A consent agreement under this rule may also include other provisions, including but not limited to the following:

(a) a recommended treatment plan;

(b) medical monitoring and reporting requirements;

(c) practice conditions and limitations;

(d) mitigation of loss or harm resulting from an alleged discipline violation;

(e) an apology, restitution or other remedial steps.

(5) The Executive Director may enter into a consent agreement if the Executive Director is satisfied that the agreement is in the public interest having considered all the relevant circumstances, including the following:

(a) the nature and scope of the terms of the agreement, including specific action to be taken to protect the public;

(b) the nature and seriousness of the alleged discipline violation;

(c) the impact of the lawyer's conduct on the complainant or others;

(d) any previous complaints concerning the lawyer proceeded on under this division;

(e) the effect of the agreement on the administration of justice and the public's confidence in the integrity of the legal profession;

(f) whether measures to be taken under the agreement are likely to improve the lawyer's ability to fulfill the duties of a lawyer in the practice of law;

(g) the presence of aggravating or mitigating factors, such as acknowledgement of a discipline violation or steps taken to redress a wrong where appropriate.

(6) An agreement under this rule is

(a) voluntary and requires the consent of the lawyer, and

(b) not valid unless signed by the Executive Director and the lawyer.

(7) When a consent agreement is made under this rule, the Executive Director must notify the complainant in writing of that fact.

(8) The Executive Director may report to the Benchers or the Executive Committee on a consent agreement made under this rule, but the report must not identify the lawyer concerned.

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(9) Subject to Rule 3-9.9 *[Referral to complaint investigation process]*, the Society is bound by an effective consent agreement made under this rule, and no further action on the complaint that gave rise to the agreement is permitted.

Practice conditions and limitations

3-9.5 (1) When a condition or limitation on the practice of a lawyer is agreed to under this division, the Executive Director may disclose the fact that the condition or limitation applies, the nature of the condition or limitation and its effect on the lawyer's practice.

(2) A disclosure under this rule must not indicate that the agreement was made under this division.

(3) If the Executive Director discloses the existence of a condition or limitation under this rule by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.

Amending consent agreement

3-9.6 (1) A consent agreement may be amended by agreement of the parties reduced to writing and given effect in accordance with Rule 3-9.4 *[Consent agreement]*.

(2) An agreement amended under subrule (1) has the same effect as if given effect under Rule 3-9.4.

Breach of consent agreement

3-9.7 If a lawyer is in breach of a consent agreement made under this division, the Executive Director may do any of the following as appears to the Executive Director to be consistent with the public interest:

(a) terminate the consent agreement;

(b) refer the matter under Rule 3-9.9 *[Referral to complaint investigation]* for investigation of the complaint that gave rise to the consent agreement;

(c) enter into an amended consent agreement under Rule 3-9.6 *[Amending consent agreement]*;

(d) take any other appropriate action consistent with these rules.

Records and confidentiality

3-9.8 (1) Nothing done under this division forms part of a lawyer's professional conduct record.

(2) Unless permitted under this division, no one is permitted to disclose any information or records related to a step taken under this division.

(3) The Executive Director may do any of the following:

(a) disclose information related to a step taken with respect to a lawyer under this division if

(i) the lawyer consents to the disclosure, or

(ii) the disclosure is necessary to comply with a legal duty to accommodate;

(b) disclose or publish information about consent agreements or other steps taken under this division, but that information must not identify the lawyer, clients or complainants concerned;

(c) disclose information to the complainant to the extent necessary

(i) to comply with Rule 3-9 *[Notice]*,

(ii) to comply with Rule 3-9.4 *[Consent agreement]*,

(iii) to report to the complainant on the successful fulfillment of the terms of the consent agreement, or

(iv) to report to the complainant that the complaint has been referred for investigation or further investigation under Rule 3-9.9 *[Referral to complaint investigation process]*.

(4) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.

Referral to complaint investigation process

3-9.9 (1) The Executive Director may refer a matter that has been proceeded on under this division for investigation or further investigation under Division 1 *[Complaints]* if

(a) a condition required under Rule 3-9.1 *[Proceeding on health issue]* is not present or no longer present,

(b) the lawyer fails or refuses to provide sufficient health information requested under Rule 3-9.3 *[Health information]*,

(c) it is not possible, in the opinion of the Executive Director, to reach an interim agreement or a consent agreement within a reasonable period of time, or

(d) the lawyer breaches an interim agreement or a consent agreement made under this division.

(2) The Executive Director must give the lawyer 30 days' notice in writing before taking action under this rule.

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Dispute resolution

3-9.10 (1) This rule applies to resolution of a dispute arising from an allegation that the lawyer

(a) has committed a breach of an interim agreement or a consent agreement, or

(b) has failed to successfully fulfill the terms of a consent agreement.

(2) A lawyer may apply to the Tribunal for the determination of a dispute if the Executive Director has given notice under Rule 3-9.9 *[Referral to complaint investigation process]* that

(a) an interim agreement or consent agreement will be terminated as a result of an alleged breach or failure to fulfill the terms of a consent agreement, and

(b) the matter that gave rise to the interim agreement or consent agreement will be referred for investigation or further investigation under Division 1 *[Complaints]*.

(3) The lawyer may make an application under subrule (2) within 30 days of receiving notice under Rule 3-9.9 *[Referral to complaint investigation process]* by filing with the Tribunal and delivering to the Executive Director written notice setting out the substance of the application, the grounds for it and the order that is sought.

(4) On application by the lawyer, a motions adjudicator may extend the time to apply for a determination under this rule.

(5) When an application is made under subrule (2), the motions adjudicator must do one of the following as appears to the motions adjudicator to be appropriate:

(a) grant all or part of the order applied for, with or without conditions;

(b) refuse the order.

(6) The motions adjudicator must provide written reasons for a decision under this rule.

(7) For greater certainty, Rule 3-9.8 *[Records and confidentiality]* applies with respect to an application under this rule, and the written reasons for a decision must not be published or otherwise disclosed except as permitted by Rule 3-9.8.

PART 4 – DISCIPLINE

Action on complaints

4-4 (1) After its consideration under Rule 4-3 *[Consideration of complaints by Committee*, the Discipline Committee must

(a) decide that no further action be taken on the complaint,

(b) authorize the chair or other Bencher member of the Discipline Committee to send a letter to the lawyer concerning the lawyer's conduct,

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(c) require the lawyer or law firm to attend a meeting with one or more Benchers or lawyers to discuss the conduct of the lawyer,

(d) require the lawyer or law firm to appear before a Conduct Review Subcommittee, or

(e) direct that the Executive Director issue a citation against the lawyer under Rule 4-17 (1) *[Direction to issue, expand or rescind citation]*.

(2) In addition to the determination made under subrule (1), the Discipline Committee may refer any matter or any lawyer to the Practice Standards Committee.

(3) In addition to any action taken under subrules (1) and (2), if a complaint discloses that there may be grounds for revoking a law corporation's permit under Rule 9-11 *[Revocation of permits]*, the Discipline Committee may order a hearing on the revocation of the law corporation's permit.

(4) At any time before the Discipline Committee makes a decision under Rule 4-13 (6) (a) to (c) *[Conduct Review Subcommittee report]*, the Committee may resolve to rescind a decision made under subrule (1) (d) to require a lawyer to appear before a Conduct Review Subcommittee and substitute another decision under subrule (1).

The Law Society of British Columbia

Memo

To: Benchers

From: Executive Committee

Date: April 11, 2022

Subject: Administrative Penalties: Proposed Rule Amendments and proposed addition to include Rule 3-96.1 (the "Password Protection Rule").

Purpose

In January 2022, the Benchers resolved, in principle, to amend the rules to create provisions for "administrative penalties" that could be imposed on lawyers who acted in breach of the cash transactions rule (Rule 3-59) and the Client Identification and Verification Rules (Rules 3-98 to 3-110).

This memorandum:

- attaches draft rule amendments to implement the Benchers' approval in principle to implement administrative penalties in general and as an available enforcement mechanism for Rules 3-59 and 3-98 to 3-101 in particular; and

- recommends adding Rule 3-96.1 (the "Password Protection Rule") to the list of rules that can be enforced by way of administrative sanction.

Drafting Notes on Rule Amendments

The Rules are proposed to be amended to outline several Divisions within Part 4 (Discipline) to improve the organization of the Rules. Division 6 (Rules 4-58 to 4-60) has been added to create and provide provisions for implementing administrative penalties, including provisions to allow for a review of the Executive Director's decision to levy an administrative penalty to ensure that administrative fairness is provided.

The amended rules also provide for publication of a summary of the circumstances of the rules breach giving rise to the penalty, in order to provide for transparency of the result of the conduct. The rules also provide for administrative penalties forming part of a lawyer's professional

conduct record, as the penalty is a disciplinary action imposed arising from a violation by the lawyer of the Rules. Requirements to pay the penalty in full by prescribed dates are also included to ensure that the penalty will be an amount owing to the Society and can be enforced as such.

Analysis Relating to Adding the Password Protection Rule

The Law Society established Juricert Services Inc. about 20 years ago to create secure digital signatures for lawyers that could be utilized for electronic transactions and filings. The Land Title and Survey Authority uses Juricert to enable electronic filing of land title and other documents at the Land Registries. Lawyers access Juricert through a password that is unique to each lawyer.

Because considerable harm can arise from the fraudulent filing of land title documents, steps were taken to require the electronic signatures on the transfer documents to be affixed by a lawyer (or notary) and not by others on their behalf in order to ensure that the unique passwords given to the lawyer (or notary) were not shared with others. The integrity of the electronic signature system, as well as the overall integrity of the Land Title system would thus be better protected.

Consequently, s. 168.7(2) was added to the *Land Title Act*. It states:

> *(2) A person commits an offence if the person*
>
> *(a) signs, using an electronic signature of another person, a document that may be submitted electronically under this Part, or*
>
> *(b) permits an electronic signature of the person to be used by another person to sign a document that may be submitted electronically under this Part.*

The Law Society also added Rule 3-96.1, stating:

> ***3-96.1*** *A lawyer authorized to access and use the electronic filing system of the land title office for the electronic submission or registration of documents must not*
>
> *(a) disclose the lawyer's password associated with an electronic signature to another person, or*
>
> *(b) permit another person, including a non-lawyer employee*
>
> > *(i) to use the lawyer's password to gain such access, or*
> >
> > *(ii) to affix an electronic signature to any document or gain access to the electronic filing system unless otherwise authorized to do so.*

From time-to-time, it is established that a lawyer has shared the lawyer's Juricert password with the lawyer's staff in order to affix the lawyer's electronic signature to land transfer or other documents. While this may often be done in good faith in order to expedite the transfer where the lawyer is absent or otherwise unavailable, and may be done with assistants whom the lawyer trusts impeccably, it is nevertheless contrary to both the *Land Title Act* and the Law Society Rules, and creates a weakness in the integrity of the system. However, because the rule is not one that establishes financial standards of responsibility, it was not therefore included under the initial approval in principle for administrative penalties.

It is, however, a rule of importance to the integrity of the Land Title system. A first violation is routinely addressed through a Conduct Review, which carries with it no penalty or consequence other than a recording on the lawyer's professional conduct record.

Section 11(1) and (2) of the *Legal Profession Act* states:

> ***11*** *(1) The benchers may make rules for the governing of the society, lawyers, law firms, articled students and applicants, and for the carrying out of this Act.*
>
> *(2)Subsection (1) is not limited by any specific power or requirement to make rules given to the benchers by this Act.*

This is a very broad rule-making power. It is capable of being read to permit the Benchers to make a rule on almost anything in order to govern lawyers and carry out the Act. Despite subsection (2), the Law Society has historically used caution in resorting to this rule for the application of sanctions, given the more specific provisions elsewhere in the Act on that subject. Where, however, a reasonable rationalization of the use of the power has been described, the Benchers have from time to time used it.

Rule 3-96.1 is a somewhat unusual rule as it creates a regulatory requirement prohibiting conduct that establishes an offence in another Act. On that basis, it may be reasonable to assume that the ultimate enforcement mechanism would be through the offence provision. A Law Society investigation that uncovered the rule breach could be sanctioned through an administrative penalty for violating professional standards, with the possibility of a referral to another agency for prosecution if that avenue was thought necessary. An administrative penalty sanction could therefore provide an effective manner of governing lawyers' conduct relating to the use of their Juricert passwords, while leaving the question of sanctions that could be imposed for the commission of an offence to be addressed in another forum. With that in mind, the addition of Rule 3-96.1 to the provisions available for sanction by way of administrative penalties can be supported under s. 11.

Evaluation Criteria

A Regulatory Impact Assessment is attached.

The public interest in the administration of justice remains a principal criteria for consideration in the implementation of any policy initiative. Rule 3-96.1 is a rule the Benchers approved to demonstrate the importance attached to maintaining a password for a signature that allows access to making transfers in the Land Registry. The integrity of the system of Land Titles depends on the involvement of lawyers (and notaries) making filings properly. Access to passwords by people other than lawyers creates a risk that submissions for filing can be made by people who are not regulated and this could create increased risk of fraud to land titles.

The current sanction for a first offence is usually through a Conduct Review. While Conduct Review results are published, anonymously, and are noted on a lawyer's professional conduct record, the public will see neither the actual proceedings nor the full report. While a Conduct Review should not be viewed as an insignificant process, they take time to organize and conclude, meaning the consequence of the lawyer's conduct is often considerably delayed from the date of the breach. An administrative penalty on the other hand provides an effective sanction for a breach of an important rule, and an appropriately significant monetary penalty may be a more effective penalty and deterrent for many lawyers, as it will come out-of-pocket, than would a meeting to discuss the conduct. Moreover, an administrative penalty can be implemented quickly, assuring the public that sanctions for violation of the Rule take place in a timely way. There is, however, a danger that an administrative penalty will be viewed as a "cost of doing business" for lawyers who do not take their responsibilities seriously and that could decrease the public's confidence in the administration of justice, which would adversely affect the public interest and the Law Society's standing as an effective regulator.

However, on balance, the concerns can likely be ameliorated by treating second violations of the rule in a much more serious manner – such as by authorizing the issue of a citation where appropriate. An appropriately calculated monetary penalty in the first instance to reflect the importance of the rule and the consequences for a breach followed by a significant sanction for a second breach if any should unhappily occur should be sufficient to ensure that the public interest is not adversely affected, and public confidence in the Law Society as an effective regulator is maintained.

Decision

BE IT RESOLVED that the Benchers:

a) resolve in principle to add Rule 3-96.1 to the list of rules, the violation of which can give rise to an administrative penalty; and

b) approve, in the form of the resolution attached, the proposed amended rules to implement their approval, in principle, of the addition of administrative penalties.

ADMINISTRATIVE PENALTIES

SUGGESTED RESOLUTION:

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

1. In Rule 1 the definition of "professional conduct record" is amended by adding the following paragraph:

(d.2) an administrative penalty assessed under Rule 4-59 *[Administrative penalty]* unless cancelled under Rule 4-60 *[Review and order]*;

2. Rule 3-8 (3) is amended by striking "the Executive Director must refer the complaint to the Practice Standards Committee or to the Discipline Committee.***" and substituting the following:***

the Executive Director must

(a) refer the complaint to the Practice Standards Committee,

(b) refer the complaint to the Discipline Committee, or

(c) impose an administrative penalty under Part 4, Division 6.

3. Rule 4-48 is amended by adding the following subrule:

(1.2) The Executive Director must publish and circulate to the profession a summary of the circumstances of the rule breach deemed admitted under Rule 4-59 *[Administrative penalty]* and the administrative penalty imposed.

4. Rule 4-56 is amended by adding the following subrule:

(1.1) A lawyer must pay in full an administrative penalty by the date set under Division 6 *[Administrative penalty]*.

5. Part 4 is amended

(a) by establishing the following divisions:

(i) Division 1 [Discipline Committee], comprising Rules 4-2 to 4-46;

(ii) Division 2 [Disclosure and publication], comprising Rules 4-47 to 4-51;

(iii) Division 3 [Criminal Conviction], comprising Rules 4-52 to 4-54;

(iv) Division 4 [Investigation], comprising Rule 4-55;

(v) Division 5 [Enforcement], comprising Rules 4-56 to 4-57, and

(b) by adding the following division:

Division 6 – Administrative penalty

Application

4-58 (1) This division applies to allegations of breaches of the following provisions:

(a) Rule 3-59 *[Cash transactions]*;

(b) Rule 3-96.1 *[Electronic submission of documents]*;

(c) Part 3, Division 11 *[Client Identification and Verification]*.

(2) This division applies to a law firm or an articled student as it does to a lawyer.

Administrative penalty

4-59 (1) If the Executive Director is satisfied on a balance of probabilities that a lawyer has breached a rule, the Executive Director may assess an administrative penalty.

(2) The maximum administrative penalty that the Executive Director may assess is as follows:

(a) if no previous administrative penalty has been assessed against the lawyer, $5,000;

(b) if one or more administrative penalties have previously been assessed against the lawyer, $10,000.

(3) At least 30 days before the effective date of an administrative penalty under this rule, the Executive Director must deliver to the lawyer notice in writing of the following:

(a) the effective date of the penalty, by which the penalty must be paid if not disputed;

(b) the amount of the penalty;

(c) the reasons for the penalty, including the specific rule breach alleged;

(d) the means by which the lawyer may apply to the chair of the Discipline Committee for an order under Rule 4-60 *[Review and order]* and the deadline for making such an application before the effective date of the penalty.

(4) A lawyer who has received a notice under this rule must do one of the following on or before the date specified in the notice:

(a) pay the administrative penalty in the amount specified in the notice;

(b) apply to the chair of the Discipline Committee for an order under Rule 4-60 *[Review and order]*.

(5) A lawyer is deemed to admit the breach of the rule as alleged in the notice from the Executive Director under subrule (3) if

(a) the lawyer pays the administrative penalty,

(b) the lawyer fails to comply with subrule (4), or

(c) the chair of the Discipline Committee orders under Rule 4-60 *[Review and order]* that a penalty be paid.

(6) When an administrative penalty has been imposed under this division and the lawyer has paid the amount assessed, the Discipline Committee must not take any action against the lawyer under Rule 4-4 *[Action on complaints]* with respect to the rule breach giving rise to the administrative penalty.

Review and order

4-60 (1) A lawyer who has received a notice of administrative penalty under Rule 4-59 *[Administrative penalty]* may apply before the effective date of the penalty to the chair of the Discipline Committee for a review of the penalty and an order under this rule.

(2) The chair of the Discipline Committee must consider submissions regarding the administrative penalty received within the time allowed under subrule (1) from the lawyer and, if satisfied that the lawyer has breached a rule as alleged, make an order

(i) confirming that the penalty must be paid in accordance with the notice delivered under Rule 4-59 *[Administrative penalty]*,

(ii) reducing the amount of the penalty, or

(iii) extending the date by which the penalty is to be paid.

(3) If not satisfied that the lawyer has breached a rule as alleged, the chair of the Discipline Committee must make an order cancelling the administrative penalty.

(4) The chair of the Discipline Committee must promptly notify the lawyer and the Executive Director of a decision under this rule.

(5) The lawyer must pay an administrative penalty as ordered under this rule.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

Regulatory Impact Assessment

The Law Society of British Columbia

Title of Report:	Administrative Penalties (Password Protection Rule Addition)
Committee:	Executive

The intent of the Regulatory Impact Checklist is to provide Benchers with a high level evaluation on the impact of the policy recommendations being recommended. The "Comments" box included with each question can direct Benchers on where to find further analysis of the issues, such as the relevant pages of a Policy Analysis, Policy Report or other materials prepared by staff at the Committee level. It can also provide additional context to an answer, where required.

For some recommendations, a 'no' answer may be warranted in the checklist and would not be considered as contrary to the intent of the Regulatory Impact Assessment.

A. Impact on the Public

A.1 Public Interest		
A.1.1 How will the public benefit from the recommendation?		The recommendation creates a quick, effective way of imposing a meaningful sanction against a lawyer for breaching a rule that underpins the integrity of the Land Title system. Public confidence in the integrity of Land Titles is addressed, and it will permit other sanctions through the *Land Title Act* to be applied where considered necessary. While an administrative monetary risks being viewed as a "cost of business" to lawyers, this concern can be addressed by escalating second breaches, should any occur, to a more serious form of sanction..
A.1.2 How does what is being recommended address the risk of harm to the public interest?		
A.1.3 Does the recommendation have any other impacts that will affect the public?	☒ **Yes** ☐ **No** ☐ **N/A**	The Law Society taking action on rule violations through administrative penalties may result in the Land Title and Survey Authority not taking any action through the *Land Title Act*, but this already

		seems to be the case so would not change the *status quo*.
A.2 Indigenous Reconciliation		
A.2.1 Does the reach of the policy issue extend to addressing Indigenous reconciliation?	☐ **Yes** ☐ **No** ☒ **N/A**	
A.2.2 Does the reach of the policy issue otherwise impact Indigenous reconciliation?	☒ **Yes** ☐ **No** ☒ **N/A**	
A.3 Equity, Diversity and Inclusion		
A.3.1 Does the recommendation affect the Law Society's equitable treatment of diverse individuals?	☐ **Yes** ☐ **No** ☒ **N/A**	The particular recommendation of enforcing the Juricert password rule through administrative penalties does not, itself, affect EDI as it only aims to identify alternate ways to enforce an existing rule.
A.4 Transparency and Disclosure		
A.4.1 Does the recommendation impact current levels of transparency and disclosure?	☐ **Yes** ☒ **No** ☐ **N/A**	The addition of Rule 3-96.1 to the rules providing for administrative penalties will be clearly stated in the Rules.

B. External Impacts

B.1 Licensee Interest		
B.1.1 Is the recommendation likely to impact the administrative burdens or overhead costs on lawyers?	☐ **Yes** ☒ **No** ☐ **N/A**	The Rule already exists. The recommendation simply addresses an alternative way of enforcing it.
B.1.2 Is the recommendation likely to impact licensee perception of the Law Society?	☒ **Yes** ☐ **No** ☐ **N/A**	The effect on overall perception by licensees will likely be neutral. Some may appreciate the recommendation as an effective and appropriate regulatory measure, while others will view the imposition of any penalty for the sharing of passwords as unwarranted.
B.2 Public Relations		
B.2.1 Is the recommendation likely to impact the public perception of the legal profession generally?	☒ **Yes** ☐ **No** ☐ **N/A**	Effective and timely sanctions for a violation of a rule that protects the integrity of the Land Titles system ought on balance to be viewed positively.
B.2.2 Is the recommendation likely to impact public perception of the Law Society?	☒ **Yes** ☐ **No** ☐ **N/A**	See B.2.1 above.
B.3 Government Relations		
B.3.1 Is the recommendation likely to impact the government perception of the legal profession?	☒ **Yes** ☒ **No** ☐ **N/A**	Insofar as the recommendation provides for effective sanctions of rules violations, the government's confidence in the Law Society as an effective regulator can be maintained.

		The recommendation preserves government ability, through other entities, to enforce the issue through prosecution of an offence.
B.3.2 Is the recommendation likely to impact government perception of the Law Society?	☐ **Yes** ☐ **No** ☐ **N/A**	See B.3.1 above.
B.4 Privacy Impact Assessment		
B.4.1 Does the recommendation include the collection, use or disclosure of personal information?	☒ **Yes** ☐ **No** ☐ **N/A**	Information is collected through an investigation, but that already happens with respect to enforcement of Rule 3-96.1 Disclosure of personal information to the LTSA could result if the Law Society were to forward the results of an investigation to them for prosecution under se. 168.7 of the *LTA*, but this possibility already exists.
B.4.1.2 Was a Privacy Risk Assessment completed?	☐ **Yes** ☒ **No** ☐ **N/A**	

C. Internal (Organizational) Impacts

C.1 Legal		
C.1.1 Does the recommendation meet legal requirements, statutory or otherwise?	☒ **Yes** ☐ **No** ☐ **N/A**	Section. 11 of the *LPA allows* for a rule permitting an administrative penalty for breach of Rule 3-96.1.e
C.1.2 Does the recommendation affect outstanding legal issues or litigation?	☐ **Yes** ☒ **No** ☐ **N/A**	
C.2 Law Society Programs		
C.2.1 Does the recommendation affect the current operations of Law Society programs, either by adding to the scope of work or significantly altering the current scope of work?	☒ **Yes** ☒ **No** ☐ **N/A**	Staff already investigate matters relating to Rule 3-96.1. The recommendation may reduce the scope of work by reducing the number of, and associated costs of, conduct reviews, although there will be some anticipated increase in work in sending out notices of the penalty and providing for review should reviews be sought.
C.3 Costs		
C.3.1 Will the recommendation increase operational costs?	☐ **Yes** ☒ **No** ☐ **N/A**	Collection of the penalties may require some increased staff costs, but the recommendation should also decrease the number of Conduct reviews and related investigation costs. .On balance, the costs savings should offset the cost increases, but it is difficult to assess exactly at this time, and is dependent on the number of related investigations.
C.3.2 Will the recommendation require additional staff or significant staff time?	☐ **Yes** ☒ **No** ☐ **N/A**	See comments above.

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

"professional conduct record" means a record of all or some of the following information respecting a lawyer:

(d.1) a consent agreement to resolve a complaint under Rule 3-7.1 *[Resolution by consent agreement]*;

(d.2) an administrative penalty assessed under Rule 4-59 *[Administrative penalty]* unless cancelled under Rule 4-60 *[Review and order]*;

(e) any suspension or disbarment under the Act or these rules, including resignation requiring consent under Rule 4-6 *[Continuation of membership during investigation or disciplinary proceedings]*;

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Action after investigation

3-8 (1) After investigating a complaint, the Executive Director must take no further action if the Executive Director is satisfied that the complaint

(a) is not valid or its validity cannot be proven, or

(b) does not disclose conduct serious enough to warrant further action.

(2) The Executive Director may take no further action on a complaint if the Executive Director is satisfied that the matter giving rise to the complaint has been resolved.

(3) Unless subrule (1) applies or the Executive Director takes no further action under subrule (2), the Executive Director must

(a) refer the complaint to the Practice Standards Committee, ~~or~~

(b) refer the complaint to the Discipline Committee, or

(c) impose an administrative penalty under Part 4, Division 6.

LAW SOCIETY RULES

Division 7 – Trust Accounts and Other Client Property

Cash transactions

3-59 (1) This rule applies when a lawyer or law firm engages in any of the following activities on behalf of a client, including giving instructions on behalf of a client in respect of those activities:

(a) receiving or paying funds;

(b) purchasing or selling securities, real property or business assets or entities;

(c) transferring funds or securities by any means.

Division 9 – Real Estate Practice

Electronic submission of documents

3-96.1 A lawyer authorized to access and use the electronic filing system of the land title office for the electronic submission or registration of documents must not

(a) disclose the lawyer's password associated with an electronic signature to another person, or

(b) permit another person, including a non-lawyer employee

(i) to use the lawyer's password to gain such access, or

(ii) to affix an electronic signature to any document or gain access to the electronic filing system unless otherwise authorized to do so.

Division 11 – Client Identification and Verification

Monitoring

3-110 (1) While retained by a client in respect of a financial transaction, a lawyer must monitor on a periodic basis the professional business relationship with the client for the purposes of

(a) determining whether the following are consistent with the purpose of the retainer and the information obtained about the client under this division:

(i) the client's information in respect of their activities;

(ii) the client's information in respect of the source of the money used in the financial transaction;

(iii) the client's instructions in respect of transactions, and

(b) assessing whether there is a risk that the lawyer may be assisting in or encouraging dishonesty, fraud, crime or other illegal conduct.

LAW SOCIETY RULES

PART 4 – DISCIPLINE

Interpretation and application

4-1 (1) In this part,

"conduct meeting" means a meeting that a lawyer or a law firm is required to attend under Rule 4-4 (1) (c) *[Action on complaints]*;

"conduct review" means a meeting with a conduct review subcommittee that a lawyer or a law firm is required to attend under Rule 4-4 (1) (d).

(2) This part applies to a former lawyer, an articled student, a law firm, a visiting lawyer permitted to practise law under Rules 2-16 to 2-20 and a practitioner of foreign law as it does to a lawyer, with the necessary changes and so far as it is applicable.

(3) This part must be interpreted in a manner consistent with standards of simplicity, fairness and expediency, and so as to provide maximum protection to the public and to lawyers.

(4) In this part, a law firm may act through its designated representative or another lawyer engaged in the practice of law as a member of the law firm.

Division 1 – Discipline Committee

Discipline Committee

4-2 (1) For each calendar year, the President must appoint a Discipline Committee, including a chair and vice chair, both of whom must be Benchers.

Division 2 – Disclosure and publication

Public notice of suspension or disbarment

4-47 (1) When a person is suspended under this part or Part 5 *[Tribunal, Hearings and Appeals]*, is disbarred or, as a result of disciplinary proceedings, resigns from membership in the Society or otherwise ceases to be a member of the Society as a result of disciplinary proceedings, the Executive Director must immediately give effective public notice of the suspension, disbarment or resignation by means including but not limited to the following:

LAW SOCIETY RULES

Publication of discipline decisions

4-48 (1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of any decision, reasons and action taken by a hearing panel, a motions adjudicator or a review board.

(1.1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of an admission of a discipline violation accepted by the Discipline Committee under Rule 4-29 *[Conditional admission]*.

(1.2) The Executive Director must publish and circulate to the profession a summary of the circumstances of the rule breach deemed admitted under Rule 4-59 *[Administrative penalty]* and the administrative penalty imposed.

Division 3 – Criminal Conviction

Conviction

4-52 (1) In this rule, **"offence"** means

(a) an offence that was proceeded with by way of indictment, or

(b) an offence in another jurisdiction that, in the opinion of the Benchers, is equivalent to an offence that may be proceeded with by way of indictment.

Division 4 – Investigation

Investigation of books and accounts

4-55 (1) If the chair of the Discipline Committee reasonably believes that a lawyer or former lawyer may have committed a discipline violation, the chair may order that the Executive Director conduct an investigation of the books, records and accounts of the lawyer or former lawyer, including, if considered desirable in the opinion of the chair, all electronic records of the lawyer or former lawyer.

LAW SOCIETY RULES

Division 5 – Enforcement

Failure to pay fine, costs or administrative penalty or fulfill practice condition

4-56 (1) An applicant or respondent must do the following by the date set by a hearing panel, review board or Committee or extended under Rule 5-12 *[Application to vary order]*:

(a) pay in full a fine or the amount owing under Rule 5-11 *[Costs of hearings]*;

(b) fulfill a practice condition as imposed under section 21 *[Admission, reinstatement and requalification]*, 22 *[Credentials hearings]*, 27 *[Practice standards]*, 32 *[Financial responsibility]*, 38 *[Discipline hearings]* or 47 *[Review on the record]*, as accepted under section 19 *[Applications for enrolment, call and admission, or reinstatement]*, or as varied under these Rules.

(1.1) A lawyer must pay in full an administrative penalty by the date set under Division 6 *[Administrative penalty]*.

(2) If, on December 31, an applicant or respondent is in breach of subrule (1) or (1.1), the Executive Director must not issue to the applicant or respondent a practising certificate or a non-practising or retired membership certificate, and the applicant or respondent is not permitted to engage in the practice of law.

Division 6 – Administrative penalty

Application

4-58 (1) This division applies to allegations of breaches of the following provisions:

(a) Rule 3-59 *[Cash transactions]*;

(b) Rule 3-96.1 *[Electronic submission of documents]*;

(c) Part 3, Division 11 *[Client Identification and Verification]*.

(2) This division applies to a law firm or an articled student as it does to a lawyer.

Administrative penalty

4-59 (1) If the Executive Director is satisfied on a balance of probabilities that a lawyer has breached a rule, the Executive Director may assess an administrative penalty.

LAW SOCIETY RULES

(2) The maximum administrative penalty that the Executive Director may assess is as follows:

(a) if no previous administrative penalty has been assessed against the lawyer, $5,000;

(b) if one or more administrative penalties have previously been assessed against the lawyer, $10,000.

(3) At least 30 days before the effective date of an administrative penalty under this rule, the Executive Director must deliver to the lawyer notice in writing of the following:

(a) the effective date of the penalty, by which the penalty must be paid if not disputed;

(b) the amount of the penalty;

(c) the reasons for the penalty, including the specific rule breach alleged;

(d) the means by which the lawyer may apply to the chair of the Discipline Committee for an order under Rule 4-60 *[Review and order]* and the deadline for making such an application before the effective date of the penalty.

(4) A lawyer who has received a notice under this rule must do one of the following on or before the date specified in the notice:

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(5) A lawyer is deemed to admit the breach of the rule as alleged in the notice from the Executive Director under subrule (3) if

(a) the lawyer pays the administrative penalty,

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(6) When an administrative penalty has been imposed under this division and the lawyer has paid the amount assessed, the Discipline Committee must not take any action against the lawyer under Rule 4-4 *[Action on complaints]* with respect to the rule breach giving rise to the administrative penalty.

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(5) The lawyer must pay an administrative penalty as ordered under this rule.

The Law Society of British Columbia

CEO's Report to the Benchers

April 22, 2022

Prepared for: Benchers

Prepared by: Don Avison, QC

1. Towards a Single Legal Professions Regulator

As Benchers know, the Attorney General of British Columbia announced on March 3, 2022 his intention to introduce legislation that would:

- regulate all legal professionals in BC under a single statute and by a single regulator;
- establish a mandate for the regulator that clarifies its duty to protect the public, including the public's interest in accessing legal services and advice;
- establish a modern regulatory framework that is consistent with best practices in professional regulatory governance; and
- establish clearly defined scopes of practice for each regulated profession with procedures to allow for expanded scopes as needed.

Discussions at the senior official's level have now commenced. Assistant Deputy Minister Paul Craven has the lead for the Ministry of the Attorney General and has invited myself and Adam Whitcombe, QC to participate on behalf of the Law Society, CEO John Mayr to participate on behalf of the Society of Notaries Public of BC and a representative to be determined to participate on behalf of the BC Paralegal Association.

As this stage, the discussions have been preliminary. A brief session on April 11 included a presentation on the process and outcomes associated with consolidation of the various regulators associated with the nursing professions in British Columbia.

The first full-day session will take place in Victoria on April 27 with a number of additional sessions set for May and June.

To participate effectively in the upcoming discussions with government, and with the other interested parties, it was considered essential to develop a proposed framework for modernizing legal regulation. Following discussion with the Executive Committee at their April 7, 2022 meeting the proposed elements of that framework include:

- The importance of protecting and promoting the public interest through a focus on identifying and mitigating the risk of harm that would flow from the unlicensed, unregulated and uninsured provision of legal services.
- The vital importance of the continued independence of legal professionals in protecting the public interest and preserving the rule of law.
- The importance of ensuring that regulation supports and promotes access to justice

through access to legal services.

- The importance of addressing both truth and reconciliation in any new legislation and recognizing the importance of engaging with indigenous communities in ensuring that legal services are appropriate and available to them.

- The importance of ensuring that the providers of legal services reflect the diverse public whom they serve.

- The importance of ensuring that regulation of legal services is agile, responsive, efficient and cost effective.

As opportunities for legislative amendment are infrequent, we will also wish to consider proposing other changes, such as increasing the maximum fines that may be imposed and granting hearing panels the authority to award the recovery of investigation costs, disgorgement, or restitution.

I believe that, through principled participation in discussions with government and with other participants based on our proposed framework, we will have an opportunity to work towards the development of new legislation that will properly reflect our conception of the important features of the future of the regulation of legal professions here in British Columbia.

2. The Cayton Report – Next Steps

At the March 4, 2022 meeting of Benchers, considerable progress was made on consideration of the various recommendations set out in Mr. Cayton's report. At that meeting it was agreed that we would develop a summary showing where there was consensus, recommendations that were addressed but where further discussion/clarity remained necessary and matters that Benchers were not able to get to at the March meeting. A copy of the summary is included with this report.

My hope is that the attached document will be helpful in confirming consensus on a number of recommendations and facilitating further discussion on others.

There are clearly some areas, including the role of Benchers and board size/composition that will also be subjects of discussions in relation to the likely implementation of a single legal regulator, but it would be helpful for us to have the board's perspective on such matters.

3. Judicial 'Welcoming' Ceremonies, QC Ceremonies and a Return to In-Person Call and Admission Ceremonies

With recent reductions in COVID-19 restrictions, plans are now taking shape for a return to a number of traditions both with the Courts and with the profession.

The BC Supreme Court has now scheduled a number of sessions to formally welcome new judges and masters appointed during, or shortly before, the commencement of COVID-19 related restrictions in March of 2020. The Provincial Court is also establishing a number of similar sessions.

I have also been advised that, while there had been a plan for a virtual recognition event for those designated as Queens Counsel for 2019, 2020 and 2021, there has been a reconsideration with plans now under way for an in-person ceremony. A date for that event has not yet been confirmed but it will be circulated as soon as it becomes available.

I am also pleased to report that we will be returning to in-person Vancouver call and admission ceremonies with the first of these is expected to take place on May 20, 2022. As we have licensed more than 1,100 students and 500 transfers since our last call ceremony, we expect it may take some time to accommodate all those interested in participating in a call ceremony.

4. Federation of Canadian Law Societies – Montreal Meetings – April 25, 2022

The last time law society representatives met together and with staff and Council members of the Federation, was during the first week of March in 2020.

Since that time there has been a significant degree of turnover in the elected leadership and, in some cases, with the senior staff at the provincial and territorial level. The Montreal meetings will provide an overdue opportunity to reconnect with colleagues from across the country. BC's delegation will consist of President Lisa Hamilton, QC, First Vice-President Chris McPherson, QC and BC's Federation Council representative, Pinder Cheema, QC. Adam Whitcombe, QC and I will also be attending.

There has been a considerable amount of activity happening with law societies around the country and we expect that significant time on the Federation agenda will be dedicated to regional updates.

Council President Nicolas Plourde and CEO Jonathan Herman will be attending the BC Bencher Retreat in Kelowna at the end of May and will provide an update on the Montreal meetings and other Federation initiatives. We are also hoping to have Jonathan Herman do a session on "Federation 101" prior to the commencement of the Kelowna Bencher meeting on Saturday, May 28 for Benchers who would benefit from background information on Federation operations, goals and priorities.

5. Annual Reports from the Supreme Court of British Columbia and from the Court of Appeal

The recent annual reports can be found at the following links:

- Supreme Court of BC – 2021 Annual Report
- Court of Appeal for BC – 2021 Annual Report

I would encourage Benchers to take time to review both documents as they contain a considerable amount of useful information and data.

6. The Action Plan on the Declaration on the Rights of Indigenous Peoples

I wrote to Benchers on this when the Action Plan was released but I include the link here again as the content is deeply relevant to all aspects of life in BC including the administration of justice.

- The Action Plan on the Declaration on the Rights of Indigenous Peoples

Don Avison, QC
Chief Executive Officer

The Law Society of British Columbia

Memo

To: Benchers

From: Don Avison, QC

Date: April 12, 2022

Subject: Law Society Governance: Summary of Discussion at March 4, 2022 Bencher Meeting

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Recommendations with Board Consensus

Procedural

Recommendation: *7.7.1 The Society should seek to improve the efficiency and effectiveness of its governance arrangements by always bearing in mind the Right-touch regulation principles of proportionality and simplicity.*

Status: Consensus

Next Steps: The right-touch regulation principles of proportionality and simplicity were topics of discussion at the October Bencher Retreat. Administrative penalties work is already underway by staff.

Recommendation: *7.3.1 The Society should clarify the role of the Benchers meeting in relation to the Executive Committee to ensure that both are effective and not duplicative. […]*

Status: Consensus

Next Steps: Staff to conduct a review of the governance policies to clarify the role of the Benchers in relation to the Executive Committee.

Board Agendas and Meetings

Recommendation: *7.7.2 The Society should review the agendas of Benchers meetings, it should eliminate items that are unnecessary, shorten papers so they are concise and clear and identified as 'for information', 'for discussion' or 'for decision'. […]*

Status: Consensus

Next Steps: This work is underway within the organization and has already been implemented into the agendas for Bencher meetings since the start of 2022.

Recommendation: *7.7.4 Benchers should take account of the convenience to Benchers and the savings the Society has obtained by moving to virtual meetings during the pandemic and continue to use virtual meeting where possible while recognizing the value of some person to person meetings and the relationships they enable.*

Status: Consensus with the broad statement though some Benchers requested flexibility to allow for additional hybrid meetings as necessary.

Next Steps: Virtual and hybrid meetings have been provided for in the 2022 and 2023 Bencher meeting schedules, but the meeting format will be adjusted as necessary.

Addressing Potential Conflicts

Recommendation: *7.5.5 […] Benchers should declare any interests relating to the agenda at the beginning of a meeting and that should be recorded in the minutes. The guidance on conflicts of interests in the Benchers Manual should be consistently observed and enforced.*

Status: Consensus

Next Steps: Benchers to declare any conflicts at the beginning of Bencher meetings. This was implemented by President Hamilton during the March 4 Bencher meeting.

Board Effectiveness

Recommendation: *7.7.6 Benchers should fill in and discuss a mandatory board effectiveness questionnaire annually and commit to any necessary individual or group training that is needed*

Status: Consensus

Next Steps: Staff to develop a questionnaire.

Identifying and Responding to Risk

Recommendation: *7.6.1 The Society should carry out a comprehensive audit of the risks of harm to legal clients and the public from failures by lawyers to meet*

the standards in the Law Society Rules and Code of Professional Conduct.

7.6.3 The Society should take a preventative approach to regulation, collecting data on outcomes of decisions by the discipline committees and tribunals, and the Professional Conduct group and adjusting its decisions and standards and guidance accordingly.

Status: Consensus

Next Steps: Some of this work has already been implemented by the Lawyers Indemnity Fund (LIF). Staff to apply what LIF does to other parts of the Law Society, such as Professional Conduct, in relation to the identification of areas of risk and outcomes. Staff to review the Law Society Rules to see if they are setting the appropriate standards as well as consider more lawyer outreach and conduct meetings.

Recommendation: *7.6.2 The Society should identify the most frequent and most severe risks of harm and agree specific actions to mitigate them.*

7.6.4 The Society should take a more serious approach to repeat offending and recidivism, recognising that a very small number of lawyers are responsible for a large number of complaints at great cost to the public interest and indeed to all competent and honest lawyers.

Status: Consensus that the Law Society should take a more "effective" approach to the very small number of lawyers that are responsible for a large number of complaints.

Next Steps: Repeat offending and recidivism were topics of discussion during the October Bencher Retreat. Staff to consider the development of a risk based approach to whether someone should be permitted to continue to practice.

Modernizing the Complaint Process

Recommendation: *7.6.5 The Society should review the way it receives complaints in the light of its work on equality and diversity and cultural understanding. It should make it easier to make a complaint in ways other than in writing including by telephone and in languages other than English. It should simplify the description of the complaints process on the website and commit itself to actively helping complainants from the public to explain their concerns*

Status: Consensus

Next Steps: This work is already underway throughout the organization, such as the development of a solutions explorer tool for the complaints process, as well as other tools.

Implementing Regulatory Impact Assessments

Recommendation: *7.7.5 Before implementing any policy change affecting legal services or the public's interests the Society should carry out and publish a Regulatory Impact Assessment, covering three areas; economic impact (including cost to legal providers and the Society), equity, diversity and inclusion impact and public benefit. Benchers must take these impacts into account in making their decisions.*

Status: Consensus

Next Steps: Development of a Regulatory Impact Assessment process is already underway at the staff level, and committees and Benchers can expect all policy papers to include discussion of regulatory impacts going forward.

Committees, Task Forces and Working Groups

Recommendation: *7.3.2 The Society should reduce the number of committees, working groups and taskforces. […] New groups should not be established unless their role is convergent with the Society's Strategic Plan and reasons are clear as to why they are in the public interest.*

Status: The number of Committees were reduced for 2022.

Next Steps: The 2023 President to consider the overall number of committees at the end of 2022.

Recommendation: *7.7.3 Before setting up any advisory committee, working group or taskforce the Benchers should be aware of the cost and resources necessary. This will include volunteer costs (travel, accommodation, subsistence) and executive team costs, (staff time, administration, external resources and so on). The Benchers should make a decision as to whether setting up a new group is the most efficient and effective way of approaching the issue.*

Status: Consensus

Next Steps: Staff to do cost assessments and propose criteria for forming new committees.

Recommendation: *7.3.1 […] The terms of reference of all committees and groups should be reviewed and decision-making powers and lines of accountability clarified. This should apply particularly to advisory committees, working groups and taskforces.*

Status: Consensus

Next Steps: Staff to conduct a review of the terms of reference.

Recommendation: *7.2.3 Reports from Committees, Working Groups and Taskforces should always set out their evaluation criteria and be explicit about how they engaged the public and why their recommendations are in the publics interests.*

Status: Consensus, with slight wording change to add "and, where appropriate, be explicit…" to Recommendation 7.2.3.

Next Steps: Future reports will include these elements.

Recommendation: *7.3.3 Criteria for appointment to committees should be transparent and based on expertise and merit. They should be applied consistently even when the President changes.*

Status: Consensus, though concerns with developing appointment criteria.

Next Steps: Staff to conduct a review of the appointment criteria.

Recommendation: *7.2.2 The Society should open up the membership of advisory committees and groups to suitably knowledgeable and experienced and diverse members of the public. The Society should actively engage the public and legal clients in developing its policies.*

Status: Consensus

Next Steps: Staff to review the appointments process to integrate more public membership.

A Shift Away from a Culture of Membership

Recommendation: *7.4.6 The Society should change the term member to 'registrant' [or 'licensee'] […].*

Status: Consensus on licensee.

Next Steps: Staff will begin implementing the change internally and externally via the Law Society website and the required legislation.

Changes to the Bencher Selection Process

Recommendation: *7.4.4 The Society should introduce an induction day for all candidates for election prior to them deciding whether or not to stand for election […].*

Status: Consensus on an optional induction day.

Next Steps: Pilot a voluntary induction day (orientation session) in conjunction with the next Bencher by-election. [A recommendation has been made to provide this for the next general Bencher election rather than the next by-election].

Recommendations Which Require Further Discussion

Addressing Potential Conflicts

Recommendation: *7.5.5 The Code of Conduct for Benchers says Benchers should make an annual declaration of interests. This not published and is insufficient to comply with transparency and best practice. The Society should establish a register of conflicts of interest for all Benchers, committee members and senior executives. The register should be published. […].*

Status: Further discussion required

Next Steps: Staff to prepare a proposal that provides for different treatment of conflicts of roles and conflicts of interest with clients or others (it may be sufficient to start with declaring conflicts at the start of Bencher meetings).

Committees, Task Forces and Working Groups

Recommendation: *7.3.2 […] All advisory committees and groups should justify their value at an annual review or be discontinued.*

Status: Further discussion required

Next Steps: Recommendation to return to the Bencher table for further discussion.

A Shift Away from a Culture of Membership

Recommendation:	*7.4.1 […] It should seek to remove the power of members to challenge or countermand the decisions of the Benchers meeting and to remove the ability of a minority of members to block changes supported by a majority.*
Status:	Further discussion required
Next Steps:	Recommendation to return to the Bencher table for further discussion
Recommendation:	*The Society should bring an end to the annual presentation of awards to members of the profession.*[1]
Status:	Consensus in principle, but further discussion required.
Next Steps:	Staff to prepare a proposal considering where there is existing overlap with other organizations that provide awards. [Note: There is a need for clarity on whether the Law Society Award and the Law School Gold Medal Award would be maintained.]

Changes to the Bencher Selection Process

Recommendation:	*7.4.4 The Society should […] consider creating a nominations committee*.
Status:	Further discussion required
Next Steps:	This will likely return to the table after further discussions with Government regarding the Single Legal Regulator.
Recommendation:	*7.4.5 No member who is currently under investigation should be permitted to stand for election while the investigation continues; no member against whom there has been a finding of professional misconduct, conduct unbecoming or a breach of the rules should be allowed to stand for election as a Bencher.*
Status:	Consensus that the recommendation is too broad.
Next Steps:	Further discussion required about a possible vetting process but not as broad and restrictive as Cayton's recommendation.

[1] Not a formal recommendation of the report. The presentation of awards is mentioned in the report on page 14.

Terms of Office

Recommendation: *7.4.2 The Society should seek to amend the terms of office so that Benchers serve for two terms of four years and Presidents and vice-Presidents serve for at least two years.*

Status: Majority consensus on three terms of three years for elected Benchers.

Next Steps: The President was to poll past Presidents about the length of term in office for the President and Vice-Presidents.

Board Size and Composition

Recommendation: *7.4.1 The Society should seek amendments to its rules to reduce the number of elected Benchers and increase the proportion of public appointed Benchers. […].*

Status: No consensus on size of board, though support for increased public representation. Maintaining the independence of the profession viewed as a fundamental principle.

Next Steps: This will likely return to the table after further discussions with Government regarding the proposal to create a single legal regulator.

Not Discussed

Limits on the Roles of Benchers

Recommendation: *7.5.1 Benchers should do less so that they can concentrate more on what matters. In particular they should cease the practice of interviewing articled students, which is time-consuming for both parties and a pointless initiation rite. They should also cease to provide confidential advice to members, a practice fraught with ethical conflicts and a service to members in any event provided by the Society through the Practice Advice service.*

7.5.4 The Society should consider separating the disciplinary tribunal from the Society to create independence of adjudication, leaving investigation and prosecution with the regulator. Benchers should not sit on hearing panels at the same time as serving as Benchers. […].

Next Steps: This will likely return to the table after further discussions with the provincial government regarding the proposal to create a single legal regulator.

Board Size and Composition

Recommendation: *7.4.3 The Society should revisit recommendations made in previous external and internal reviews to reform the electoral college structure and should move away from geographical diversity towards diversity of skills, lived experience, gender and ethnicity.*

Next Steps: This will likely return to the table after further discussions with the provincial government regarding the proposal to create a single legal regulator.

The Law Society of British Columbia

The Public Interest

April 22, 2022

Prepared for: Benchers

Purpose: For Discussion

DM3548798

Introduction

1. Section 3 of the *Legal Profession Act* says that the purpose and object of the Law Society is to protect the public interest in the administration of justice in a number of ways that are listed in the section. The Law Society routinely speaks about the need to develop policy and regulate the profession by "acting in the public interest." Nowhere in the Act is the phrase "public interest" defined, however. Jurisprudence also provides little help on providing a definition, as the many cases that speak about the public interest rarely try to define it.

2. The original intent of this paper was to review how "public interest" has been described and applied, with a view to identifying a common understanding of the public's interests, given its importance to Law Society operations and the recommendation to that effect in Harry Cayton's report on the Law Society's governance. However, it is remarkable how often the public interest is referred to but how little agreement there is about it. It is clearly recognized that the public interest is to be distinguished from what is purely in the interest of lawyers, and there is some consensus that the public interest is different, and broader, than what may be in the interest of any *particular* member (or group of members) of the public, but beyond that there is not much with which to anchor it.

The public interest defined?

3. Much academic consideration idea of the "public interest" has focused on providing a definition or considering how it applies in general to society or in specific circumstances, such as professional regulation.[1] The courts have had to wrestle with legislation that references or invokes the "public interest" in attempting to discern and apply legislative intent in specific circumstances.[2] The one observation that unites much of the discussion and consideration is that the phrase is almost universally malleable.

4. Chief Justice Lamer may have said it best in *R. v. Morales*, [1992] 3 SCR 711 when considering the use of the phrase in s. 515(10)(b) of the Criminal Code:

> *As currently defined by the courts, the term "public interest" is incapable of framing the legal debate in any meaningful manner or structuring discretion in any way. Nor would it be possible in my view to give the term "public interest" a*

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[1] Frank J. Sorauf, The Conceptual Muddle, 5 NOMOS: Am. Soc'y Pol. Legal Phil. 183 (1962) | Adams TL. Professional self-regulation and the public interest in Canada. Professions and Professionalism. 2016 Sep 28;6(3). | Klosterman RE. A public interest criterion. Journal of the American Planning Association. 1980 Jul 1;46(3):323-33 | 1995 Oct 1.| Abel RL. Lawyer self-regulation and the public interest: a reflection. Legal Ethics. 2017 Jan 2;20(1):115-24. | Woolley A, Salyzyn A. Protecting the Public Interest: Law Society Decision-Making after Trinity Western University. Can. B. Rev.. 2019;97:70 | Mayson S. Legal services regulation and 'the public interest. Wordpress. com. 2013 | Pearson J. Canada's Legal Profession: Self-Regulating in the Public Interest. Can. B. Rev.. 2013;92:555.

[2] A search of the CanLII database turns up 1,144 SCC decisions and over 71,000 judicial and tribunal decisions in total where the phrase occurs.

constant or settled meaning … No amount of judicial interpretation of the term "public interest" would be capable of rendering it a provision which gives any guidance for legal debate.

5. While the Chief Justice was writing in relation to a particular provision in a particular statute, his observations about the use and meaning of the phrase "public interest" in legislation provide a cautionary note for anyone attempting to pin down a precise meaning for the phrase.

6. Other law societies, such as in Ontario, Alberta and Nova Scotia, have provided some assistance, and we focused some attention on the subject at the 2015 Bencher Retreat, followed by a paper from the Rule of Law and Lawyer Independence Advisory Committee in 2018. There are also a few published articles on the topic, but not as many as might be thought. Overall, the academic, judicial and regulatory discussion of the public interest has largely failed to provide an accepted definition or a consistent understanding of the idea of the "public interest".

7. While a useful and universal definition of the "public interest" may not be attainable, the purpose of this paper is to propose a framework for how the "public interest" in relation to a specific initiative or regulation may be evaluated, and how the results of that evaluation might inform a discussion with the provincial government about the regulation of the legal professions in the public interest.

What interests and for whom?

8. In a 1987 article, *The Professions: Public Interest and Common Good*[3], the "public interest" is described as:

… the aggregation of the private interests of individuals who join together ….dedicated to the pursuit of mutual advantage.

9. The same article contrasts this with the "common good" which may also be instructive for our purposes. It describes the common good as:

… a vision of society as a community whose members are joined in a shared pursuit of values and goals that they hold in common, a community of individuals whose own good is inextricably bound up with the good of the whole. The common good, therefore, refers to that which constitutes the well-being of the community – its safety, the integrity of its basic institutions and practices, and the preservation of its core values.

[3] Jennings, B., Callahan, D., Wolf, S. M., & Wolf, S. M. (1987). The Professions: Public Interest and Common Good. *Hastings Center Report*, 3-11

10. Connecting these two concepts, the authors suggest that the:

> *… public duties of professions extend beyond the realm of service to the public interest into the realm of service to the common good.*

11. This contemplates that the public interest should encompass more than maximizing individual benefit and should also contemplate maximizing the institutions and values of society in order to ensure confidence in the integrity of public institutions such as the courts and the preservation of core values such as are reflected in the Charter or other justice values that underpin a Western democracy. For example, the Legal Services Board in England put it this way:

> [the public interest] *includes our collective stake as citizens in the rule of law and in society achieving the appropriate balance of rights and responsibilities.*

12. The Law Society of Alberta has recently reflected on the public interest and regulatory objectives[4]. It stated:

> *While the "public" as that concept relates to the work of the Law Society will often be represented by those accessing or seeking to access legal services, and even more specifically, those who have questions or complaints about lawyers, the "public interest" refers to society at large. Many decisions and actions taken by the Law Society have the potential to impact the societal view of the legal profession, and therefore, the profession's role in the larger legal system.*

13. This echoes what the Supreme Court of Canada's had to say in *Edwards v. Law Society of Upper Canada* concerning the law society's public interest mandate.

> *The* Law Society Act *[Ontario] is geared for the protection of clients and thereby the public as a whole… Decisions made by the Law Society….. involve pursuing a myriad of objectives consistent with public rather than private law duties.*[5]

14. Both these statements support the idea that individual interests are not the only constituents of the "public interest."

15. In the last two decades, a considerable amount of discussion around the "public interest" in the legal profession has focused on the marketplace for legal services and the interests of "consumers" of legal services. Some authors have raised concerns about this focus. For instance, Stephen Mayson, the Director of the Legal Service Institute in England notes[6] that the

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[4] Law Society of Alberta: *Regulatory Objectives of the Law Society of Alberta* September 24, 2019

[5] *Edwards v. Law Society of Upper Canada* [2001] 3 S.C.R. 562 at para 14

[6] Mayson , S *Legal Services Regulation and the Public Interest* Legal Services Institute, 2011 (revised 2013)

public interest is not measured only by an effective marketplace:

> *…regulatory intervention on economic grounds to encourage competition is legitimate; but so is intervention to control competitive behaviours which undermines the fabric of society. To encourage the latter is to expect a values-based or moral foundation for intervention alongside – or even to supersede – a strictly economic one.*

16. While market factors might be logical measures of the public interest if one were to focus solely on the regulation of the delivery of legal services and consumer protections, Mayson suggests that the outcomes sought require the protection of the public interest in a broader sense.

17. Mayson suggests that while things like competition and perhaps other factors like competency and ethics would improve the public interest, the overall public interest in the administration of justice needs to include broader considerations. He lists the rule of law, the institutions of law and access to justice as examples. From a BC perspective, the public interest would include values like reconciliation with Indigenous peoples.

18. Mayson's assessment concedes that there is a public interest in ensuring competition and a consumer focus but those values do not make up the entirety of the public interest. Mayson concludes that the reforms in England arising from the Clementi Report were intended to give more primacy to market forces in how legal services are delivered. But he argues that it is "right to question" how markets, competition or consumerism, if given a dominant focus, may themselves affect the broader public interest.

A Framework for Evaluating the Public Interest

19. It is clear that the public interest is contextual, and where relevant, is dependent to some large degree on the enabling statutory authority. Those factors allow organizations to describe values or criteria that can form the bedrock of a discussion of the public interest, and the organization can assess risks to those values that will permit it to find ways to mitigate against those risks.

20. In a recent paper considering regulation of the legal profession, Adam Dodek and Emily Alderson assert:

> *… that the only legitimate normative basis for regulation of the legal profession — whether that continues to be self-regulation or some other form of regulation as exists in other jurisdictions — is the protection of the public interest. This should not be a particularly controversial proposition; it is part of the standard justification for self-regulation of the legal profession. However, much of the criticism of self-regulation relates to the failure of the legal profession to live up to this standard, or the profession's pursuit of its own interests. We believe that risk*

> *regulation provides a better, more targeted way for law societies to fulfil their mandates to regulate legal services in the public interest.*[7]

21. Harry Cayton made a similar observation in his recent report on Law Society governance:

> *The purpose of a regulator is to manage risk of harm and promote good professional practise. We should therefore expect a regulator to have an understanding of harms and how they are caused within its sector. The management of the risk of harm should be at the centre of its many roles, whether it be public protection, lawyer education, financial management or policy development.*

22. Stephen Mayson, in his recent comprehensive report on legal regulation in the UK, also observed:

> *The nature of the regulation applied to registered providers would be founded on the public interest of furthering the rule of law and administration of justice. It would also focus on protecting consumers from harm or detriment caused by poor or inappropriate provision of legal services.*
>
> *Regulation would also proceed from an assessment of the risk to the public interest or to consumers (particularly those who are vulnerable) in the services provided. This would allow it to be targeted on the risks of what practitioners actually do, and to be proportionate in burden and cost to that risk. Higher-risk activities would attract additional regulatory requirements and attention.*
>
> *These risks should be broadly conceived and not over-specified. In this way, regulation could reflect the circumstances, vulnerability and challenges inherent in the life-events of consumers seeking legal advice and assistance.*[8]

23. As both Cayton and Mayson note, evaluating the public interest through the lens of the risk of harm is not limited to the individual provision of legal services or to protecting consumer interests in obtaining legal advice and assistance. The public interest in addressing the risk of harm can and should extend to consideration of the harm to the rule of law and the administration of justice. In fact, Mayson observes:

> *… we should not regard market forces, competition, or consumer interests as complete encapsulations of the public interest – even in areas of activity where those factors might be thought to be the principal objectives. I do not believe that law (the rule of law, the institutions of law, the administration of justice, access to justice, and authorisation to practise) can have those market factors as their*

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[7] Dodek A, Alderson E. Risk Regulation for the Legal Profession. Alta. L. Rev.. 2017;55:621

[8] Stephen Mayson, Reforming Legal Services Regulation: Beyond the Echo Chambers p. X

principal objectives; if I am right in this, the pursuit of 'the public interest' in law and legal services must seek a broader foundation – even if some elements of the fabric of society might be improved by the effects of competition.[9]

Risk of Harm

24. Dodek and Alderson suggest that using risk as a basis, law societies can better define the public interest and what risks to the public exist that they wish to better control. Identifying goals that are framed in the terms of "risk reduction" allows the organization to identify initiatives that will reduce the risk of harm in measurable ways. Doing so would allow the Law Society to focus on particular areas of identifiable risk to the public or justice system, such as the danger posed by poorly regulated lawyers, lack of public access to legal services, or deterioration of the rule of law.

25. Assessing the risk of harm as a conceptual framework for evaluating the public interest in regulation of legal services requires consideration of two factors in making decisions about acting in the public interest. The first is identifying the harms. The second is assessing the risk or probability of those harms occurring.

26. As Cayton recommended in his review of Law Society governance –

7.6.1 The Society should carry out a comprehensive audit of the risks of harm to legal clients and the public from failures by lawyers to meet the standards in the Law Society Rules and Code of Professional Conduct.

7.6.2 The Society should identify the most frequent and most severe risks of harm and agree specific actions to mitigate them.

27. Some direction along these lines is already encompassed in the Bencher Code of Conduct when it directs that the Benchers should –

In enacting, rescinding or amending proposed rules, the Benchers must ensure they have:

a) a clear and comprehensive understanding, based on evidence and analysis, of the problem or issue and that intervention by the Law Society is needed to address the problem or issue;

b) sufficient information demonstrating through evidence and analysis that a rule is the best means to address the problem or issue;

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[9] Mayson S. Legal services regulation and 'the public interest. Wordpress. com. 2013.

c) evidence that, where appropriate, engagement and consultation with stakeholders has occurred and been considered;

d) sufficient understanding of the potential positive and negative effects, including costs and benefits, of a proposed rule on the delivery of legal services, access to justice and the public interest in the administration of justice and the operations of the Society; and

e) an effective method for evaluating whether the proposed rule successfully addressed the problem or issue

28. While identifying the harms is the first step in the framework for evaluating the public interest, assessing the risk is equally important. Bringing proportionality to the opportunity to make rules about the conduct of the legal profession ensures that, although the Law Society has a hammer, not every nail needs to be hammered.

29. The Ontario *Law Society Act* recognizes this directly when it requires the Society to have regard to the principle that –

… Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.

30. As the Bencher Code of Conduct directs, to a significant extent, the Benchers have already been considering the risk of harm and addressing it in our policies and rules.

31. As one example, the work of the Mental Health Task Force has been informed by a substantial understanding of the harm that arises for both lawyers and the public when the stigma of mental health and substance use prevents acknowledgement and treatment. The Task Force noted both the harm and the risk in its first interim report to the Benchers -

The ABA Study observed significant mental health concerns among its participants. More than 60% of lawyers reported experiencing anxiety issues over the course of their careers, while 45% had experienced depression. Rates of panic disorder, bipolar disorder and self-injurious behaviour were also notable. Disturbingly, more than 11% of lawyers reported having suicidal thoughts at some point during their career, and 0.7% — more than 90 lawyers in the study cohort — reported at least one prior suicide attempt … the majority of lawyers in need of help were reluctant to seek it based on fears of others finding out about their mental health or substance use issue and related concerns regarding privacy and confidentiality ... As a result, many legal professionals do not share their mental health concerns with others, fearing the loss of their jobs, their professional reputations and even their licences.

32. As a result of the assessment of both the harm and probability or prevalence of that harm, the

Task Force has made a number of recommendations intended to address this risk of harm.

33. Another example is the work of the Access to Justice Advisory Committee in addressing the unmet need for legal services. Survey work conducted by the Law Society in 2009 and 2020 found that roughly, six-in-ten British Columbians experienced a serious and difficult to resolve problem and did not get legal assistance and that about 45% of those surveyed reported that the major problem was not resolved at the time of the survey. By far, cost was reported to be the single biggest barrier to seeking legal assistance. In recognition of that harm and its prevalence, the Committee has made a number of recommendations over the last decade supporting the unbundling of legal services, encouraging adequate legal aid funding and most recently supporting non-adversarial family law dispute resolution.

Conclusion

34. As the examples illustrate, applying a risk of harm framework to the work of the Law Society requires no great change in how the Benchers have been governing. However, a more explicit recognition of that framework within the context of identifying and advancing the public interest in legal regulation would provide a clear, comprehensive and transparent principle to be applied in assessing whether action by the Law Society is required and if so, how much. The Benchers are encouraged to discuss the risk of harm framework and consider whether what is proposed here should be adopted in grounding our public interest work.

The Law Society of British Columbia

Continuing Professional Development - Accreditation

April 22, 2022

Prepared for: Benchers

Prepared by: Executive Committee

Purpose: For Discussion/Decision

Purpose

1. This report outlines reasons for a recommendation from the Executive Committee to the Benchers to approve setting aside the current Continuing Professional Development ("CPD") accreditation requirement and instead require lawyers to simply report to the Law Society the learning activities they have engaged in.

Background

2. In 2007, the Lawyer Education Committee (LEAC) recommended that each practising member complete *"not fewer than 12 hours per year of continuing professional development undertaken in approved educational activities that deal primarily with the study of law or matters related to the practice of law."*

3. LEAC also recommended that, in order to qualify for CPD credit, reported activities would have to meet certain criteria as set out in its report to the Benchers. In order to operationalize the accreditation model, Law Society staff would evaluate the nature, content and length of a professional development activity, and determine how much and what type of CPD credit lawyers would receive.

4. In 2009 the Law Society of BC became the first Canadian law society to implement a mandatory CPD program. Since then, all other Canadian law societies have adopted some form of continuing professional development requirement (with the exception of Alberta which has recently decided to revamp its program and suspended its existing CPD program).

5. Within Canada, the accreditation model has been adopted by some, but not all law societies.

6. The issue of whether we should continue with the accreditation model was considered by LEAC in its last review of the CPD program. At that time, LEAC concluded that replacing the accreditation model with an approach in which lawyers are required to self-evaluate whether an activity qualifies for credit would not improve the overall design, functionality or quality of the CPD program.

7. In addition to recommending continuation of the accreditation model, LEAC also proposed a number of modifications to the program resulting in an expansion of eligible learning activities and greater flexibility regarding how and when lawyers could satisfy their CPD credits. Specific recommendations included: the addition of two new subject matters, including Professional Wellness, an increase in the number and type of eligible Practice Management and Lawyering Skills topics, amendments to the criteria governing CPD learning modes, and the introduction of new reporting requirements in which a portion of a lawyer's annual credits can be carried-over to satisfy the following year's CPD requirements. These recommendations were implemented over the course of 2018 and 2019.

Why change now?

8. Throughout the reviews of the CPD program over the years, the Benchers have agreed that over-regulation of the CPD program should be avoided and that any introduction of modifications should increase reliance on, and trust in, lawyers to make wise CPD choices. To date, of the more than 100,000 requests for CPD approval over the last 13 years, only about 750 or less than 1% were rejected on the basis that they did not meet the criteria for approval.

9. The majority of the CPD approvals (74,673) were pre-approved courses because of the provider. This equates to approximately two-thirds of all requests being approved without evaluation. Of the remaining one-third (37,019) that we did evaluate, 98% to 99% were approved and that percentage has been consistent for years.

10. The ongoing evaluation of CPD accreditation requests takes staff resources. In addition, it takes time on the part of the providers or lawyers seeking to obtain accreditation for the course or activity. For example, the online Course Request Form requires completion of at least 14 questions, including providing a detail description of the course. This time and effort multiplied 37,000 times amounts to a considerable amount of resources dedicated to obtaining approval that is almost always given.

11. We should trust that lawyers will make wise choices about what they take in the way of CPD and that lawyers will continue to take these acceptable courses, teach and write, and engage in study groups whether we continue to evaluate and accredit CPD requests or not.

12. In an effort to improve efficiency and effectiveness of our regulatory requirements and processes, we propose that we should cease requiring pre-approval and accreditation of courses and activities in order to obtain CPD credit. However, to be clear, we are not proposing a change in the criteria that CPD should meet or that lawyers should not have to report a minimum of 12 hours of CPD. Only that we should be confident lawyers will take what is required.

13. To facilitate the change, the current CPD on-line system will be reconfigured in order that lawyers can simply report their learning activities without waiting for review and approval and we expect the accreditation process will be discontinued as soon as staff has been able to make the necessary technical changes.

Resolution

BE IT RESOLVED that the Benchers approve that the CPD accreditation process be discontinued and that lawyers instead simply report to the Law Society the learning activities they have engaged in.

Regulatory Impact Assessment

The Law Society of British Columbia

Title of Report:	Continuing Professional Development Accreditation
Committee:	Executive Committee

The intent of the Regulatory Impact Checklist is to provide Benchers with a high level evaluation on the impact of recommendations. The "Comments" box included with each question can direct Benchers on where to find further analysis of the issues, such as the relevant pages of a Policy Analysis, Policy Report or other materials prepared by staff at the Committee level. It can also provide additional context to an answer, where required.

For some recommendations, a 'no' answer may be warranted in the checklist and would not be considered as contrary to the intent of the Regulatory Impact Assessment.

A. Impact on the Public

A.1 Public Interest		
A.1.1 How will the public benefit from the recommendation?		The recommendation to remove the requirement for accreditation of CPD courses is purely administrative and should be neutral regarding the public interest. Lawyers will still be required to take a certain number of hours of CPD each year and the criteria for the educational and professional development that qualifies for CPD credit will not change.
A.1.2 How does what is being recommended address the risk of harm to the public interest?		
A.1.3 Does the recommendation have any other impacts that will affect the public?	☐ **Yes** ☒ **No** ☐ **N/A**	

A.2 Indigenous Reconciliation		
A.2.1 Does the reach of the policy issue extend to addressing Indigenous reconciliation?	☐ Yes ☒ No ☐ N/A	
A.2.2 Does the reach of the policy issue otherwise impact Indigenous reconciliation?	☐ Yes ☒ No ☐ N/A	
A.3 Equity, Diversity and Inclusion		
A.3.1 Does the recommendation affect the Law Society's equitable treatment of diverse individuals?	☐ Yes ☒ No ☐ N/A	
A.4 Transparency and Disclosure		
A.4.1 Does the initiative impact current levels of transparency and disclosure?	☐ Yes ☒ No ☐ N/A	

B. External Impacts

B.1 Licensee Interest		
B.1.1 Is the recommendation likely to impact the administrative burdens or overhead costs on lawyers?	☒ Yes ☐ No ☐ N/A	The recommendation will lessen the resources and time required by lawyers to complete the required forms and wait for a decision to be made on accreditation.
B.1.2 Is the recommendation likely to impact licensee perception of the Law Society?	☒ Yes ☐ No ☐ N/A	It is anticipated that this will be a welcome change by the licensee and have a positive perception of the Law Society trusting that they will continue to partake in educational activities that meet the current approved criteria.
B.2 Public Relations		
B.2.1 Is the recommendation likely to impact the public perception of the legal profession generally?	☐ Yes ☒ No ☐ N/A	The public perception of the legal professional generally will not likely be impacted as the requirement to complete and report CPD will not change.
B.2.2 Is the recommendation likely to impact the public perception of the Law Society?	☒ Yes ☐ No ☐ N/A	Potentially. The public may perceive that the Law Society is loosening its CPD requirements. Care will be taken in the Law Society's communications to reflect that based on data over a number of years there is no reason to believe that lawyers can't be trusted to continue to take approved education and that the requirement to complete and report CPD will remain.
B.3 Government Relations		
B.3.1 Is the recommendation likely to impact the government perception of the legal profession?	☐ Yes ☒ No ☐ N/A	

B.3.2 Is the recommendation likely to impact government perception of the Law Society?	☐ Yes ☒ No ☐ N/A	
B.4 Privacy Impact Assessment		
B.4.1 Does the recommendation include the collection, use or disclosure of personal information?	☐ Yes ☒ No ☐ N/A	
B.4.1.2 Was a Privacy Risk Assessment completed?	☐ Yes ☒ No ☐ N/A	

C. Internal (Organizational) Impacts

C.1 Legal		
C.1.1 Does the recommendation meet legal requirements, statutory or otherwise?	☒ Yes ☐ No ☐ N/A	
C.1.2 Does the recommendation affect outstanding legal issues or litigation?	☐ Yes ☒ No ☐ N/A	
C.2 Law Society Programs		
C.2.1 Does the recommendation impact the current operations of Law Society programs, either by adding to the scope of work or significantly altering the current scope of work?	☒ Yes ☐ No ☐ N/A	It will alter the current scope of the work and reduce the required staff resources.
C.3 Costs		
C.3.1 Will the recommendation increase operational costs?	☐ Yes ☒ No ☐ N/A	The recommendation is expected to reduce the overall costs of administering the CPD program
C.3.2 Will the recommendation require additional staff or significant staff time?	☒ Yes ☐ No ☐ N/A	The IS department will need to make adjustments to the current online CPD reporting but it is not expected to be significant. The Communications department will be involved with communicating the changes.

The Law Society of British Columbia

Continuing Professional Development Credit for pro bono legal services

Access to Justice Advisory Committee:
Lisa H. Dumbrell (Chair)
Kevin B. Westell (Vice-chair)
Tanya Chamberlain
Jennifer Chow, QC
The Hon. Thomas Cromwell
Brian D. Dybwad
Mark K. Gervin
Guangbin Yan

Date: April 2022

Prepared for: Benchers

Prepared by: Access to Justice Advisory Committee

Purpose: Discussion & Decision

Purpose

1. The President asked the Committee to *Consider how to encourage the profession to provide more pro bono legal services, including whether pro bono work should count towards lawyers' annual continuing legal education requirements and if so provide recommendations to the board by April 2022.*

2. This report focuses on the topic of continuing professional development ("CPD") credit for the provision of pro bono legal services. Later in the year the Committee will consider the general issue of what the Law Society can do to encourage more lawyers to provide pro bono legal services.

Background

3. The Benchers, this Committee, and the Lawyer Education Advisory Committee (now the Lawyer Development Task Force) have considered the issue of providing lawyers with CPD credit for pro bono legal service provision a number of times in the past 12 years. On each occasion, this Committee recommended providing such credit in order to advance access to justice, while the Lawyer Education Advisory Committee recommended against it because the initiative did not fit within the parameters of the CPD program. When the matter came to a vote by the Benchers in each instance they declined to give credit for pro bono legal services. However, the view of the Benchers has not been unanimous. Most recently, in March 2019, the vote was 15 against granting credit and 14 in favour.[1] The lack of unanimity around the issue has led to the issue resurfacing for continued consideration. It is within this history and context that the Committee analyzed the issue.

4. The Committee observes that in 2017 the object of the CPD program was changed to read: "The purpose of the mandatory CPD program is to uphold and protect the public interest in the administration of justice by actively supporting the Law Society's members in achieving and maintaining high standards of competency, *professionalism,* and learning in the practice of law" [emphasis added]. Achieving and maintaining professionalism was then, and remains now, the basis on which the Access Committee advances CPD credit for pro bono.

Problem

5. The objective identified by the President for the Committee was how to encourage lawyers to provide more pro bono legal services. In conjunction with that general objective, the

[1] The vote was on the recommendation from the Lawyer Education Advisory to oppose granting the credit. 15 were in favour of the motion, and thus not in favour of providing CPD credit.

President also suggested the Committee consider whether the provision of pro bono legal services could and should count towards a lawyer's annual CPD requirement and, if so, provide recommendations.

Discussion

6. The Law Society has long supported efforts to improve the uptake of pro bono service delivery both through funding and through express policy statements to encourage lawyers' engagement in pro bono, because the Law Society has recognized that the provision of pro bono legal service advances the public interest in the administration of justice. While not codified as an ethical requirement, the provision of pro bono legal services is recognized as an important tradition that contributes to what it means to be a professional. In 2017 the Benchers adopted the following as part of an aspirational vision for the profession: *"The Legal Profession Act restricts the practice of law, almost exclusively, to lawyers. This privilege carries with it a duty to society for lawyers to find ways to make their services accessible and to promote access to justice.*"[2]

7. The Committee has advanced proposals in the past that offering some CPD credits for providing pro bono legal services will increase the number of lawyers delivering the services and advances the objects of professionalism contemplated in the vision for the profession. However, there has been disagreement concerning both whether pro bono service delivery supports the lawyer development purposes of the CPD program, and whether providing CPD credit will actually entice more lawyers to engage in pro bono.

8. It is important to recognize that at the same time that the Committee has been asked to re-explore the issue of providing CPD credit for pro bono legal services, the Lawyer Development Task Force is engaged in a system-wide review of lawyer development, including the CPD program, and that Task Force will be responsible for the analysis and potential implementation of any policy decisions arising from this report.

9. The issue of whether to provide CPD credit for pro bono legal services continues to surface because it is connected to the more general objective of encouraging the profession to provide pro bono legal services. While encouraging lawyers to provide legal services to people who cannot afford them can help improve access to justice, the Committee has long recognized that there is far more to the topic than simply improving access to justice.

10. As a result of the recent Review of the Law Society's Governance conducted by Harry Cayton, the Benchers have been reminded of the importance of what it means to govern in the public interest. The subject matter of the Report provides an opportunity to explore that

[2] See, "The Law Society of British Columbia's vision for how lawyers can advance access to justice and legal services" at: Law Society's vision for how lawyers can advance access to justice and legal services.

theme within the tangible concept of how providing pro bono legal services inculcates in lawyers a rich understanding of what it means to be a professional, while developing practical skills and knowledge that otherwise might remain dormant. Conceptually, credit should be provided for pro bono legal services not as a reward or an incentive to undertake pro bono work, but in recognition that in providing pro bono services lawyers learn about and cultivate a professional ethos that distinguishes the profession from a mere money-making trade.

11. In order for this professional ethos to be realized, the Committee firmly believes that the provision of pro bono legal services must be defined so as to ensure a focus on services for people with limited means or non-profit organizations, as it has been defined in the access to justice questions of the Annual Practice Declaration (APD). This will better ensure that the initiative is aimed at developing a culture of giving to the less-advantaged in our society, and to prevent lawyers from simply writing-off some services for clients in order fit the definition.

Recommendation

12. The Committee presents two recommendations for consideration:

    a. That the Benchers approve providing CPD credits to lawyers who provide minimum levels of pro bono service delivery for people with limited means or non-profit organizations, and that the matter be referred to staff to develop the number of available hours to be credited and the amount of CPD that must be provided to obtain the credits; and

    b. That the Benchers refer the matter to the Lawyer Development Task Force as part of its anticipated review of the CPD program, to consider extending the intended purpose of the program beyond conventional educational program to include developing in lawyers the knowledge, competence, professionalism and experience that also support the policy objective of advancing the public interest in the administration of justice.

Analysis of the Recommendations

Granting CPD Credit for Pro Bono Services within the Current CPD Program

13. The Committee's recommendation on granting CPD credit for pro bono builds upon the consideration by past Committees since 2010.

14. The Committee acknowledges that the proposition that granting CPD credit for pro bono will increase lawyer provision of pro bono is speculative. The Committee has assumed that

it would not *hurt* the cause, but it has gathered no evidence on the issue. Provided communications from the Law Society make it clear that lawyers who take on a pro bono file are required to treat it with all of the professional responsibility and obligations that adhere to a standard fee-for-service retainer, the Committee does not anticipate any harm arises from making a change to permit CPD credit for pro bono legal services. While increasing the number of lawyers delivering pro bono services would be advantageous to access to justice, the Committee believes there are other reasons to adopt CPD credit for pro bono.

15. The Committee is of the view the main reason to provide CPD credit for pro bono legal services relates to professionalism. It is wrong to operate from the assumption that lawyers have nothing to learn as professionals from reaching out and finding ways to serve the most vulnerable members of society. Over the years, each time the Committee has considered the issue, it has recognized that pro bono activity exposes lawyers to important professional development opportunities that are not always present in a paid retainer, including supporting an ethos of professionalism and giving back as professionals who hold a privileged place in society.

16. By taking on a pro bono file, lawyers are exposed to new perspectives on how to provide services in an effective manner, are made aware of a wide range of possible factors that can be present: from income disparity, homelessness, addiction and mental health issues, as well as dealing with clients who face systemic barriers to equality of justice. From the intake and interview process, to triage and communicating with clients, and finding solutions that are practical to the client's needs, different professional skills or perspectives are developed and honed.

17. The Committee observes that past consideration of whether to expand the CPD program to allow credit for pro bono have been based on the stated purpose of the educational function that the CPD program exists to advance. While the professional value of pro bono has not been discounted, the links to lawyer development are argued to be ephemeral. The Committee does not share this view.

18. The Committee is of the view that pro bono service delivery fits within the CPD framework because it supports the development of professionalism and likely has a modest access to justice benefit as well.

Referring the Matter to Lawyer Development Task Force to consider Expanding the CPD Program to Include Activities Focusing on Professionalism

19. In addition to recommending that CPD credit be granted for pro bono legal services, the Committee recommends that the Benchers refer to the Lawyer Development Task Force the consideration of extending the purpose of the CPD program beyond narrow education parameters to include developing in lawyers the knowledge, competence, professionalism

and experience that support the policy objective of advancing the public interest in the administration of justice. In other words, to consider a more holistic and encompassing set of objects and criteria by which legal professionals can better serve the public, and trust that through this process they will continually improve in accordance with the privilege associated with the license to practice law.

20. Given the scope of the Committee's mandate and terms of reference it is of the view that it would be inappropriate to analyze or be prescriptive about what such a consideration should include, but it is confident that such consideration could be expansive enough to contemplate whether CPD credit for pro bono fits within whatever modified, public interest paradigm is established. The Committee notes that even if the Benchers adopt the preferred approach of the Committee, nothing would prevent the Benchers from also tasking the Lawyer Development Task Force to explore the more transformative vision of the program contemplated above.

Decision

21. The Committee recommends the following resolution be adopted by the Benchers:

BE IT RESOLVED the following recommendations of the Access to Justice Advisory Committee relating to providing CPD credit for pro bono legal services be adopted:

a. the Benchers approve providing CPD credits to lawyers who provide minimum levels of pro bono service delivery for people with limited means or non-profit organizations, and that the matter be referred to staff to develop the number of available hours to be credited and the amount of pro bono services that must be provided to obtain the credits; and

b. the Benchers refer to the Lawyer Development Task Force as part of its anticipated review of the CPD program, the consideration of extending the intended purpose of the program beyond conventional educational program to include developing in lawyers the knowledge, competence, professionalism and experience that also support the policy objective of advancing the public interest in the administration of justice.

While the Committee recommends that the Benchers adopt both of the recommendations, the concepts are not intended to be contingent on each other.

/DM

Regulatory Impact Assessment

The Law Society of British Columbia

Title of Report:	Continuing Professional Development Credit for Pro Bono Legal Services
Committee:	Access to Justice Advisory Committee

The intent of the Regulatory Impact Checklist is to provide Benchers with a high level evaluation on the impact of recommendations. The "Comments" box included with each question can direct Benchers on where to find further analysis of the issues, such as the relevant pages of a Policy Analysis, Policy Report or other materials prepared by staff at the Committee level. It can also provide additional context to an answer, where required.

For some recommendations, a 'no' answer may be warranted in the checklist and would not be considered as contrary to the intent of the Regulatory Impact Assessment.

A. Impact on the Public

A.1 Public Interest		
A.1.1 How will the public benefit from the recommendation?		The intent of what is being recommended is to increase the number of lawyers who provide pro bono services by creating an incentive to provide such services with a credit towards the Law Society's minimum CPD requirement. If the proposed change is successful in increasing the number of lawyers who provide some pro bono legal services, the public who could not otherwise afford such legal services will benefit.
A.1.2 How does what is being recommended address the risk of harm to the public interest?		The risk of harm to the public interest here arises because some portion of the public is unable to afford legal advice and assistance. The Law Society supports a variety of programs and initiatives, including the provision of legal aid and the unbundling of legal services, with a view to mitigating this risk of harm. The provision of pro bono legal services by lawyers is another means of addressing this risk of harm. The intention of this recommendation is to motivate more lawyers

		to provide pro bono legal services which should further address the public interest in mitigating the risk that some members of the public do not receive legal advice and assistance.
A.1.3 Does the recommendation have any other impacts that will affect the public?	☒ Yes ☒ No ☐ N/A	By providing CPD credit for the provision of pro bono legal services, some lawyers may take advantage of fewer educational opportunities within the currently prescribed subject matter dealing primarily with one or more of professional ethics, practice management, lawyering skills, professional wellness, substantive law, procedural law or non-legal topics sufficiently connected to the practice of law. As there is a countervailing benefit if more lawyers do provide pro bono legal services, if the additional impact does arise, the net benefit to the public interest may still warrant the proposed regulatory change.
A.2 Indigenous Reconciliation		
A.2.1 Does the reach of the policy issue extend to addressing Indigenous reconciliation?	☐ Yes ☒ No ☐ N/A	
A.2.2 Does the reach of the policy issue otherwise impact Indigenous reconciliation?	☐ Yes ☒ No ☐ N/A	
A.3 Equity, Diversity and Inclusion		
A.3.1 Does the recommendation affect the Law Society's equitable treatment of diverse individuals?	☒ Yes ☐ No ☐ N/A	Members of equity-seeking groups tend to experience legal problems at a rate greater than the general public and can face distinct barriers to accessing legal services and justice. Assuming any increase in pro bono services realized by permitting CPD credits were to include a proportionate increase in legal services to equity-seeking people, EDI would benefit.
A.4 Transparency and Disclosure		
A.4.1 Does the recommendation impact current levels of transparency and disclosure?	☐ Yes ☒ No ☐ N/A	

B. External Impacts

B.1 Licensee Interest		
B.1.1 Is the recommendation likely to impact the administrative burdens or overhead costs on lawyers?	☐ Yes ☒ No ☐ N/A	
B.1.2 Is the recommendation likely to impact licensee perception of the Law Society?	☒ Yes ☐ No ☐ N/A	Insofar as some licensees advocate strongly for the recognition of professional development by giving CPD credits for pro bono work, yes. However, the bar seems roughly divided on this subject.

B.2 Public Relations		
B.2.1 Is the recommendation likely to impact the public perception of the legal profession generally?	☐ **Yes** ☐ **No** ☐ **N/A**	Insofar as the recommendation would increase the delivery of pro bono services, public perception of the profession should be enhanced. If there was a perception that more pro bono services were provided only because lawyers were incentivized to do so, that could have negative implications.
B.2.2 Is the recommendation likely to impact the public perception of the Law Society?	☒ **Yes** ☐ **No** ☒ **N/A**	Public perception might suffer if the recommendation were viewed as a primarily "licensee benefit" program as opposed to a public interest enhancement. This could be exacerbated if the result was that pro bono work was treated as an educational opportunity for lawyers to gain knowledge by acting for society's less-advantaged citizens, the regulatory change would not be in the public interest.
B.3 Government Relations		
B.3.1 Is the recommendation likely to impact the government perception of the legal profession?	☐ **Yes** ☐ **No** ☒ **N/A**	Efforts to improve the delivery of pro bono legal services to increase access to justice would be consistent with government policy on encouraging the legal profession to find ways to improve the delivery of affordable legal services, although this recommendation is likely to result in only a modest improvement.
B.3.2 Is the recommendation likely to impact government perception of the Law Society?	☐ **Yes** ☐ **No** ☒ **N/A**	See B.3.1 above
B.4 Privacy Impact Assessment		
B.4.1 Does the recommendation include the collection, use or disclosure of personal information?	☒ **Yes** ☐ **No** ☐ **N/A**	If structured appropriately, the recommendation will not impact privacy. The Law Society may be collecting personal information that the lawyer provided pro bono services, but this is different only in kind from the personal information collected about what courses the lawyer took and when.
B.4.1.2 Was a Privacy Risk Assessment completed?	☐ **Yes** ☒ **No** ☐ **N/A**	

C. Internal (Organizational) Impacts

C.1 Legal		
C.1.1 Does the recommendation meet legal requirements, statutory or otherwise?	☒ **Yes** ☐ **No** ☐ **N/A**	The Supreme Court of Canada has held that law societies have broad authority to create regulatory requirements on lawyers where they have a reasonable connection to regulation and competence. There are no specific prohibitions in the *Legal Profession Act* or Law Society rules concerning the recommendation.

C.1.2 Does the recommendation affect outstanding legal issues or litigation?	☐ **Yes** ☒ **No** ☐ **N/A**	
C.2 Law Society Programs		
C.2.1 Does the recommendation impact the current operations of Law Society programs, either by adding to the scope of work or significantly altering the current scope of work?	☒ **Yes** ☐ **No** ☐ **N/A**	The recommendation would add another layer to a program and that should be expected to add to the scope of the required work. If no auditing of responses is imposed, the addition of work would be slight. If auditing were imposed, the amount of extra work could be significant.
C.3 Costs		
C.3.1 Will the recommendation increase operational costs?	☒ **Yes** ☐ **No** ☐ **N/A**	The existing CPD reporting interface will need to be revised to accommodate reporting of pro bono activity. This is not expected to consume a significant amount of time or resources.
C.3.2 Will the recommendation require additional staff or significant staff time?	☒ **Yes** ☐ **No** ☐ **N/A**	See C.3.1 above

The Law Society
of British Columbia

Year End Financial Report - *Unaudited*

December 2021

Prepared for: Finance & Audit Committee Meeting – April 6, 2022
Bencher Meeting – April 22, 2022

Prepared by: The Finance Department

Year End Financial Report - December 2021

Attached are the *unaudited* financial results and highlights for the 2021 fiscal year.

The audit is scheduled in April, so the audited financial statements will be presented for approval at the May Bencher meeting.

General Fund

General Fund (excluding capital and TAF)

For the 2021 fiscal year, the General Fund operations resulted in a positive variance to budget. This was due to positive variances in both revenues and operating expenses. Further details can be found on the attached Summary of Financial Highlights.

Revenue

The total revenue to the end of December was $30.6 million, $2.1 million (8%) ahead of budget. This was primarily due to higher than expected practice fees and electronic filing revenue. Additionally fines, penalties and recoveries are ahead of budget, along with credentials and member services revenue.

The 2021 practice fee budget projected a lower number of practicing lawyers due to the unknown impact of COVID-19, with the budget set at 12,673. Over 2020 and into 2021, the number of practicing lawyers increased and we ended 2021 with 13,317 FTE lawyers. This is a 3.3% increase from 2020, one of the highest annual increases in practicing lawyers. With the increase in lawyers, practice fee revenue was significantly ahead of budget, an increase of $818,000, net of $480,000 COVID-19 practice fee discounts provided to firms most affected by the pandemic.

Electronic filing revenue was significantly ahead of budget due to increased activity in the real estate market. The BC Real Estate Association reported a 33% increase in unit sales over 2020. Additionally, with the introduction of the Land Owner Transparency Act (LOTA), there are new electronic filing requirements, resulting in additional electronic filing revenue.

Fines, penalties and recoveries are ahead of budget due to additional late fees and penalties related to trust reports and continuing professional development.

Additional revenue in member services and credentials is related to a higher number of transfer applications and call and admission fees.

Operating Expenses

Operating expenses for the period were $27.3 million, $1.9 million (6%) below budget.

The positive expense variance was mainly due lower than expected compensation costs, along with lower travel and meeting, general office and building cost savings

related to COVID-19 restrictions. There were also lower recruiting fees and staff event costs. Offsetting these savings was an increase in external counsel fees and costs associated with a governance review. Further detail is noted below:

Compensation savings: Compensation costs were below budget $1.0 million, primarily due to savings related to staff vacancy savings, lower benefit costs, lower vacation accruals and reduced costs for professional development courses and conferences.

Savings attributed to COVID-19 restrictions amounted to approximately $1.0 million:

- Meetings and travel cost savings: The 2021 budget assumed Bencher and staff meetings would be conducted 50% fully virtually. As almost all meetings were conducted virtually during the year, there was $640,000 in savings for Bencher and staff travel, meeting costs and events.
- General office & administration savings: General office costs were below budget $130,000 due to lower use of supplies, postage and printing.
- Building savings: Building related costs were below budget $200,000, with $75,000 related to reduced janitorial and other building costs. In addition, there was a lighting upgrade project deferred until early 2022 due to shipping and supply chain issues ($125,000).

Human resources savings: There were cost savings of $119,000 primarily due to savings in recruitment and other staff-related event costs.

External Counsel Fees: Total external counsel fees for the year were over budget by $282,000. Investigations has seen an increase in external counsel costs due to a higher number of complex files requiring specialized expertise. Discipline has seen an increase in fees due to additional costs associated with a higher number of section 47 reviews, along with several large and complex hearing files. Additionally, there has been an increase in Legal Defense file costs due to a higher number of appeals and judicial reviews. These increases were partially offset by reductions in external fees in other areas.

Governance Review: The unbudgeted costs of the governance review was $95,000.

TAF-related Revenue and Expenses

TAF revenue was $5.2 million in the year, compared to a budget of $3.3 million, with higher than expected real estate unit sales. At the time the budget was set, we were anticipating a 5% reduction in unit sales based on projections from the BC Real Estate Association, however the real estate market was very strong in 2021 with unit sales increasing 33% over 2020 levels.

Trust assurance program costs were below budget primarily due to lower travel costs with most trust audits being performed remotely.

Lawyers Indemnity Fund

LIF fee revenues for the year were $17.0 million, compared to a budget of $15.7 million, with higher than expected practicing indemnified lawyers.

LIF operating expenses were $8.3 million, $100,000 under budget, with savings primarily related to lower compensation costs, external counsel fees and general office expenses. These savings were partially offset by increased costs for the new cyber insurance policy and an increase in investment management fees due to a larger portfolio value and asset mix changes.

Investment income (realized and unrealized) was $27.1 million, significantly ahead of the budget with higher investment returns and a larger portfolio value. Investment returns for the year were 12.8% compared to a benchmark of 9.2%.

The LIF portfolio asset mix now includes infrastructure funds. To date, $57.2 million has been called by the infrastructure investment managers, with another $4.4 million to invest. Infrastructure investments will eventually comprise 30% of the investment portfolio.

The Law Society of British Columbia

Summary of Financial Highlights ($000's)

2021 General Fund Results - Year Ending December 2021 (Excluding Capital Allocation & Depreciation)

	Actual	Budget	$ Var	% Var
Revenue (excluding capital)				
Practice fees	24,007	23,189	818	4%
PLTC and enrolment fees	1,826	1,753	73	4%
Electronic filing revenue	1,335	700	635	91%
Interest income	330	255	75	29%
Membership & Credentials	891	634	257	41%
Fines, penalties & recoveries	493	275	218	79%
Insurance recoveries	52	10	42	0%
Other revenue	218	187	31	17%
Other cost recoveries	188	122	66	54%
Building revenue & tenant cost recoveries	1,306	1,382	(76)	-5%
	30,646	28,507	2,139	8%
Expenses (excluding depreciation)	27,286	29,157	1,871	6%
	3,360	(650)	4,010	

Summary of Variances - Year Ending December 2021

Revenue Variances:	
Practice Fees - 13,317 actual vs 12,673 budget	818
PLTC - 616 actual vs 594 budget	73
Electronic Filing Revenue	635
Fines, Penalties and Recoveries	218
Member Services and Credentials	257
Miscellaneous	138
	2,139
Expense Variances:	
Compensation Savings - vacancies, benefits and vacation accruals	1,007
Savings attributed to COVID restrictions, comprised of:	970
Meetings and travel savings ($640)	
General office and admin savings ($130)	
Building maintenance savings ($75)	
Deferral of building lighting project to 2022 ($125)	
HR savings - recruiting & events	119
Miscellaneous savings	152
External counsel fees - overage	(282)
Governance review - unbudgeted	(95)
	1,871

Trust Assurance Program

	2021 Actual	2021 Budget	Variance	% Var
TAF Revenue	5,238	3,300	1,938	58.7%
Trust Assurance Department	3,168	3,433	265	7.7%
Trust Assurance Program	2,070	(133)	2,203	
Transfer from TAF to LIF	2,300	-	2,300	
Net Trust Assurance Program	(230)	(133)	(97)	

2021 Lawyers Indemnity Fund Long Term Investments (before investment management fees)

Portfolio Performance	12.8%
Benchmark Performance	9.2%

The Law Society of British Columbia
General Fund
Results for the 12 Months ended December 31, 2021 ($000's)

	2021 Actual	2021 Budget	$ Variance	%
REVENUE				
Practice fees **(1)**	25,684	24,769	915	4%
PLTC and enrolment fees	1,826	1,753	73	4%
Electronic filing revenue	1,335	700	635	91%
Interest income	330	255	75	29%
Credentials and membership services	891	634	257	41%
Fines, penalties and recoveries	493	275	218	79%
Program Cost Recoveries	185	122	63	52%
Insurance Recoveries	52	10	42	420%
Other revenue	218	187	31	17%
Other Cost Recoveries	3	-	3	0%
Building Revenue & Recoveries	1,306	1,382	(76)	-5%
Total Revenues	32,323	30,087	2,236	7.4%
EXPENSES				
Benchers Governance and Events				
Bencher Governance	514	635	121	19%
Board Relations and Events	324	298	(26)	-9%
	838	933	95	10%
Corporate Services				
General Office	536	778	242	31%
CEO Department	790	808	18	2%
Finance	1,116	1,133	17	2%
Human Resources	575	695	120	17%
Records Management	238	271	33	12%
	3,255	3,685	430	12%
Education and Practice				
Licensing and Admissions	1,754	1,904	150	8%
PLTC and Education	2,733	2,864	131	5%
Practice Standards	412	466	54	12%
Practice Support	-	70	70	100%
	4,899	5,304	405	8%
Communications and Information Services				
Communications	501	541	40	7%
Information Services	1,661	1,725	64	4%
	2,161	2,266	105	5%
Policy and Legal Services				
Policy and Legal Services	1,729	1,459	(270)	-19%
Tribunal and Legislative Counsel	595	630	35	6%
External Litigation & Interventions	8	50	42	84%
Unauthorized Practice	306	332	26	8%
	2,638	2,471	(167)	-7%
Regulation				
CLO Department	857	875	18	2%
Intake & Early Assessment	2,110	2,135	25	1%
Discipline	2,851	2,821	(30)	-1%
Forensic Accounting	693	1,182	489	41%
Investigations, Monitoring & Enforcement	3,458	3,671	213	6%
Custodianships	1,753	1,846	93	5%
	11,722	12,530	808	6%
Building Occupancy Costs	1,773	1,972	199	10%
Depreciation	1,080	1,160	80	7%
Total Expenses	28,366	30,324	1,955	6.4%
General Fund Results before Trust Assurance Program	**3,957**	**(237)**	**4,191**	
Trust Assurance Program (TAP)				
TAF revenues	5,238	3,300	1,938	58.7%
TAP expenses	3,168	3,433	265	7.7%
TAP Results	**2,070**	**(133)**	**2,203**	1656.4%
General Fund Results including Trust Assurance Program	**6,027**	**(370)**	**6,394**	
Contribution from Trust Assurance Program to Lawyers Insurance Fund	**2,300**			
General Fund Results	**3,727**			

(1) Membership fees include capital allocation of $1.68 million (Capital allocation budget- $1.58 million)

The Law Society of British Columbia
General Fund - Balance Sheet
As at December 31, 2021
($000's)

	Dec 31 2021	Dec 31 2020
Assets		
Current assets		
Cash and cash equivalents	31,979	24,920
Unclaimed trust funds	2,151	2,144
Accounts receivable and prepaid expenses	2,292	1,871
Due from Lawyers Insurance Fund	6,171	9,015
	42,593	37,950
Property, plant and equipment		
Cambie Street property	11,241	11,735
Other - net	1,701	1,816
	12,942	13,551
Long Term Loan	535	452
	56,070	**51,953**
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	5,431	5,406
Liability for unclaimed trust funds	2,151	2,144
Current portion of building loan payable	100	500
Deferred revenue	14,607	13,720
Deposits	57	86
	22,346	21,856
Building loan payable	-	100
	22,346	21,956
Net assets		
Capital Allocation	3,967	3,693
Net Assets	29,757	26,304
	33,724	29,997
	56,070	**51,953**

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
Results for the 12 Months ended December 31, 2021
($000's)

	Invested in Capital	*Working Capital*	Unrestricted Net Assets	Trust Assurance	Capital Allocation	2021 Total	Year ended 2020 Total
	$	$	$	$	$	$	$
Net assets - At Beginning of Year	12,951	11,282	24,233	2,071	3,693	29,997	26,247
Net (deficiency) excess of revenue over expense for the period	(1,512)	3,790	2,278	2,070	1,678	6,027	3,750
Contribution to LIF				(2,300)		(2,300)	
Repayment of building loan	500	-	500	-	(500)	-	-
Purchase of capital assets:						-	
LSBC Operations	393	-	393	-	(392)	-	-
845 Cambie	512	-	512	-	(512)	-	-
Net assets - At End of Period	**12,844**	**15,072**	**27,916**	**1,841**	**3,967**	**33,724**	**29,997**

The Law Society of British Columbia
Lawyers Indemnity Fund
Results for the 12 Months ended December 31, 2021
($000's)

	2021 Actual	2021 Budget	$ Variance	% Variance
Revenue				
Annual assessment	17,010	15,669	1,341	9%
Investment income	27,135	8,528	18,607	218%
Other income	127	65	62	95%
Total Revenues	44,272	24,262	20,010	82.5%
Expenses				
Insurance Expense				
Provision for settlement of claims	6,488	17,952	11,464	64%
Salaries and benefits	3,150	3,599	449	12%
Contribution to program and administrative costs of General Fund	1,374	1,381	7	1%
Provision for ULAE	177	-	(177)	0%
Insurance	1,068	444	(624)	-141%
Office	547	1,088	541	50%
Actuaries, consultants and investment brokers' fees	1,119	891	(228)	-26%
Special fund - external counsel fees	53		(53)	0%
Premium taxes	-	8	8	100%
Income taxes	(1)	5	6	120%
	13,975	25,368	11,393	45%
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	1,002	1,056	54	5%
Total Expenses	14,977	26,424	11,447	43.3%
Lawyers Indemnity Fund Results before Contributions	**29,295**	**(2,162)**	**31,457**	
Contribution from Trust Assurance Program and Special Compensation Fund				
Contribution from Trust Assurance Program	2,300		2,300	
Lawyers Indemnity Fund Results	**31,595**	**(2,162)**	**33,757**	

The Law Society of British Columbia
Lawyers Indemnity Fund - Balance Sheet
As at December 31, 2021
($000's)

	Dec 31 2021	Dec 31 2020
Assets		
Cash and cash equivalents	1,353	3,545
Accounts receivable and prepaid expenses	886	496
Current portion General Fund building loan	100	500
LT Portion of Building Loan	-	100
Investments	241,160	213,188
	243,499	**217,829**
Liabilities		
Accounts payable and accrued liabilities	2,149	1,981
Deferred revenue	8,647	8,371
Due to General Fund	6,171	9,015
Provision for claims	71,405	75,105
Provision for ULAE	12,399	12,222
	100,771	106,695
Net assets		
Internally restricted net assets	17,500	17,500
Net assets	125,228	93,634
	142,728	111,134
	243,499	**217,829**

The Law Society of British Columbia
Lawyers Indemnity Fund - Statement of Changes in Net Assets
Results for the 12 Months ended December 31, 2021

	Unrestricted $	Internally Restricted $	2021 Total $	2020 Total $
Net assets - At Beginning of Year	93,634	17,500	111,134	97,921
Net excess of revenue over expense for the period	31,595	-	31,595	13,213
Net assets - At End of Period	**125,228**	**17,500**	**142,728**	**111,134**

The Law Society
of British Columbia

Quarterly Financial Report

February 2022

Prepared for: Finance & Audit Committee Meeting – April 6, 2022
Bencher Meeting – April 22, 2022

Prepared by: The Finance Department

Quarterly Financial Report - End of February

Attached are the financial results and highlights to the end of February 2022.

General Fund

General Fund (excluding capital and TAF)

To the end of February 2022, the General Fund operations resulted in a positive variance to budget. This positive result is due to an increase in revenue comprised mainly of permanent differences and lower operating expenses primarily due to timing differences.

Revenue

As noted on the attached financial highlights, total revenue for the period was $5.2 million, $236,000 (5%) ahead of budget.

This increase is partially due to an increase in practice revenue, with the number of practicing members projected at 13,650, compared to a budget of 13,545.

Electronic filing revenue is also ahead of budget to date. The real estate market continues to be strong and with the introduction of the Land Owner Transparency Act (LOTA), there are new electronic filing requirements, which will result in additional electronic filing revenue.

Operating Expenses

Operating expenses for the period were $4.4 million, $468,000 (10%) below budget, due to timing differences.

As noted on the attached financial highlights, $124,000 of the timing differences are related to the timing of external counsel fees and $160,000 is related to the timing of meetings and travel costs.

TAF-related Revenue and Expenses

First quarter 2020 TAF revenue is not received until the April/May time period. The TAF receipts of $26,000 are related to the 2021 year, but were received after the 2021 year-end financial statement cutoff.

Trust assurance program costs are below budget with lower travel and compensation costs.

The BCREA forecasts real estate unit sales in the province to decline 17 per cent from a record high in 2021. Even with this decline, we expect to be slightly ahead of the TAF revenue budget in 2022.

Lawyers Indemnity Fund

LIF assessment revenues were $2.8 million, at budget. LIF operating expenses were $1.4 million, $200,000 under budget, with savings in compensation costs and external fees.

The market for the first two months of the year has been very volatile, especially in global equities, so the market value of the LIF long term investment portfolio has decreased by $9 million since December 2021. The portfolio returns for the period were -3.3%, slightly below the benchmark of -2.74%.

The LIF portfolio asset mix now includes infrastructure funds, with $57.2 million invested to date, and another $4.4 million to invest. Infrastructure investments will eventually comprise 30% of the investment portfolio.

The Law Society of British Columbia

Summary of Financial Highlights ($000's)

2022 General Fund Results - YTD Feb 2022 (Excluding Capital Allocation & Depreciation)

	Actual	Budget	$ Var	% Var
Revenue (excluding capital)				
Practice fees	4,260	4,127	133	3%
PLTC and enrolment fees	40	32	8	25%
Electronic filing revenue	212	131	81	62%
Interest income	60	48	12	25%
Credentials & membership services	118	129	(11)	-9%
Fines, penalties & recoveries	201	193	8	4%
Insurance Recoveries	-	-	-	0%
Other revenue	28	28	-	0%
Other cost recoveries	14	20	(6)	-
Building revenue & tenant cost recoveries	242	231	11	5%
	5,175	4,939	236	5%
Expenses (excluding depreciation)	4,364	4,832	468	10%
	811	107	704	

Summary of Variances to Date - Feb 2022

Revenue Variances:	
Permanent Variances	
Practice fees (Budget 13,545 Forecast 13,650)	30
Electronic Filing Revenue	81
	111
Timing Differences	
Other misc. timing differences	125
	236
Expense Variances:	
Timing Differences	
External counsel fee timing	124
Meetings and Travel	160
Other miscellaneous timing differences	184
	468

Trust Assurance Program Actual

	2022 Actual	2022 Budget	Variance	% Var
TAF Revenue*	26	-	26	-
Trust Assurance Department	508	594	86	14.5%
Net Trust Assurance Program	(482)	(594)	112	

* Q1 revenue not due until April 30th - small amount relating to Q4, 2021, received in 2022

2022 Lawyers Indemnity Fund Long Term Investments - YTD February 2022 *Before investment management fees*

Performance	-3.33%
Benchmark Performance	-2.74%

The Law Society of British Columbia
General Fund
Results for the 2 Months ended February 28, 2022 ($000's)

	2022 Actual	2022 Budget	$ Variance	%
REVENUE				
Practice fees **(1)**	5,109	4,931	178	4%
PLTC and enrolment fees	40	32	8	25%
Electronic filing revenue	212	131	81	62%
Interest income	60	48	12	25%
Credentials and membership services	118	129	(11)	-9%
Fines, penalties and recoveries	201	193	8	4%
Program Cost Recoveries	14	20	(6)	-30%
Insurance Recoveries	-	-	-	0%
Other revenue	28	28	-	0%
Other Cost Recoveries	-	-	-	0%
Building Revenue & Recoveries	242	231	11	5%
Total Revenues	6,024	5,743	281	4.9%
EXPENSES				
Benchers Governance and Events				
Bencher Governance	24	89	65	73%
Board Relations and Events	71	54	(17)	-31%
	95	143	48	34%
Corporate Services				
General Office	101	117	16	14%
CEO Department	119	129	10	8%
Finance	180	187	7	4%
Human Resources	109	124	15	12%
Records Management	34	37	3	8%
	543	594	51	9%
Education and Practice				
Licensing and Admissions	265	335	70	21%
PLTC and Education	511	508	(3)	-1%
Practice Standards	51	87	36	41%
Practice Support	-	-	-	0%
	827	930	103	11%
Communications and Information Services				
Communications	86	93	7	8%
Information Services	376	383	7	2%
	462	476	14	3%
Policy and Legal Services				
Policy and Legal Services	226	283	57	20%
Tribunal and Legislative Counsel	90	125	35	28%
External Litigation & Interventions	-	4	4	100%
Unauthorized Practice	55	55	-	0%
	371	467	96	21%
Regulation				
CLO Department	90	115	25	22%
Intake & Early Assessment	366	378	12	3%
Discipline	370	386	16	4%
Forensic Accounting	110	159	49	31%
Investigations, Monitoring & Enforcement	496	563	67	12%
Custodianships	277	294	17	6%
	1,709	1,895	186	10%
Building Occupancy Costs	357	328	(29)	-9%
Depreciation	170	211	41	19%
Total Expenses	4,534	5,042	510	10.1%
General Fund Results before Trust Assurance Program	**1,490**	**701**	**791**	
Trust Assurance Program (TAP)				
TAF revenues	26	-	26	0.0%
TAP expenses	508	594	86	14.5%
TAP Results	**(482)**	**(594)**	**112**	18.9%
General Fund Results including Trust Assurance Program	**1,008**	**107**	**903**	

(1) Membership fees include capital allocation of 849k (Capital allocation budget = 804k)

The Law Society of British Columbia
General Fund - Balance Sheet
As at February 28, 2022
($000's)

	Feb 28 2022	Feb 28 2021
Assets		
Current assets		
Cash and cash equivalents	22,983	16,108
Unclaimed trust funds	2,154	2,051
Accounts receivable and prepaid expenses	1,495	1,878
Due from Lawyers Insurance Fund	9,683	11,781
	36,315	31,817
Property, plant and equipment		
Cambie Street property	11,072	11,617
Other - net	1,678	1,757
	12,750	13,374
Long Term Loan	535	452
	49,600	**45,643**
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	2,664	2,348
Liability for unclaimed trust funds	2,154	2,056
Current portion of building loan payable		100
Deferred revenue	9,963	9,347
Deposits	88	86
	14,869	13,937
Net assets		
Capital allocation	4,669	3,967
Net assets	30,062	27,739
	34,731	31,706
	49,600	**45,643**

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
Results for the 2 Months ended February 28, 2022
($000's)

	Invested in Capital	*Working Capital*	Unrestricted Net Assets	Trust Assurance	Capital Allocation	2022 Total	Year ended 2021 Total
	$	$	$	$	$	$	$
Net assets - At Beginning of Year	12,844	15,072	27,916	1,841	3,967	33,723	29,998
Net (deficiency) excess of revenue over expense for the period	(241)	881	640	(482)	850	1,008	3,727
Contribution to LIF				-		-	
Repayment of building loan	100	-	100	-	(100)	-	-
Purchase of capital assets:						-	
LSBC Operations	48	-	48	-	(48)	-	-
845 Cambie	-	-	-	-	-	-	-
Net assets - At End of Period	**12,751**	**15,953**	**28,704**	**1,359**	**4,669**	**34,731**	**33,723**

The Law Society of British Columbia
Lawyers Indemnity Fund
Results for the 2 Months ended February 28, 2022
($000's)

	2022 Actual	2022 Budget	$ Variance	% Variance
Revenue				
Annual assessment	2,842	2,828	14	0%
Investment income	(7,914)	612	(8,526)	-1393%
Other income	55	11	44	400%
Total Revenues	(5,017)	3,451	(8,468)	-245.4%
Expenses				
Insurance Expense				
Provision for settlement of claims	2,938	2,938	-	0%
Salaries and benefits	547	619	72	12%
Contribution to program and administrative costs of General Fund	228	252	24	10%
Provision for ULAE	-	-	-	0%
Insurance	292	283	(9)	-3%
Office	100	156	56	36%
Actuaries, consultants and investment brokers' fees	85	117	32	27%
Special fund - external counsel fees	2		(2)	0%
	4,192	4,365	173	4%
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	175	209	34	16%
Total Expenses	4,367	4,574	207	4.5%
Lawyers Indemnity Fund Results before Contributions	**(9,384)**	**(1,123)**	**(8,261)**	

The Law Society of British Columbia
Lawyers Indemnity Fund - Balance Sheet
As at February 28, 2022
($000's)

	Feb 28 2022	Feb 28 2021
Assets		
Cash and cash equivalents	1,588	947
Accounts receivable and prepaid expenses	1,048	780
Current portion General Fund building loan	-	100
Investments	232,289	211,205
	234,925	**213,031**
Liabilities		
Accounts payable and accrued liabilities	282	428
Deferred revenue	5,849	5,660
Due to General Fund	9,683	11,781
Provision for claims	73,368	75,254
Provision for ULAE	12,399	12,222
	101,581	105,345
Net assets		
Internally restricted net assets	17,500	17,500
Net assets	115,844	90,186
	133,344	107,686
	234,925	**213,031**

The Law Society of British Columbia
Lawyers Indemnity Fund - Statement of Changes in Net Assets
Results for the 2 Months ended February 28, 2022

	Unrestricted $	Internally Restricted $	2022 Total $	2021 Total $
Net assets - At Beginning of Year	125,228	17,500	142,728	111,134
Net excess of revenue over expense for the period	(9,384)	-	(9,384)	31,595
Net assets - At End of Period	**115,844**	**17,500**	**133,344**	**142,728**

The Law Society
of British Columbia

2022 Forecast

February 2022

Prepared for: Finance & Audit Committee Meeting – April 6, 2022
Bencher Meeting – April 22, 2022

Prepared by: The Finance Department

Forecast - as at February 2022

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

Overview

Although early in the year, we are projecting to be slightly ahead of budget by $325,000. As the 2022 budget is a deficit budget of $(825,000), the projected deficit would be $(500,000).

Revenue Forecast

At this time, total revenue is projected at $30.7 million, $325,000 (1%) ahead of budget, primarily due to higher than budgeted practicing lawyers and an increase in electronic filing revenues.

Practice Fees: The 2022 practice fee budget was set at 13,545 practicing lawyers. As noted in the 2021 financial reports, the number of practicing lawyers increased 3.3% in 2021, leading to a higher number of practicing lawyers in 2022. Therefore, we are projecting 13,650 practicing lawyers in 2022, a 2.5% over 2021 levels.

Electronic Filing Revenue: We are projecting electronic filing revenue to be $100,000 ahead of budget at this time. Electronic filing revenue is related to the real estate market which is expected to remain strong in 2022. Also, with the introduction of the Land Owner Transparency Act (LOTA), there are new electronic filing requirements, which will result in additional electronic filing revenue.

PLTC Revenue: At this time, we are projecting 622 PLTC students this year, on budget, as the final number of students for the year is still being finalized.

Operating Expenses Forecast

At this time, operating expenses are projected to be on budget, at $31.2 million.

External Counsel Fees: With increases in the number and complexity of files, we are projecting that external counsel costs will be over budget but as it is still early in the year, we expect these overages could be offset by savings in other areas. We continue to have a higher number of investigation files requiring specialized expertise, along with a higher number of section 47 reviews, and several large and complex hearing files, in Discipline. In addition, there has been an increase in Legal Defense file costs due to a higher number of appeals and judicial reviews. We will monitor this area closely as we move through the year.

The Law Society of British Columbia
General Fund
For the 12 Months ending December 31, 2022 ($000's)

	Q1 Forecast	Budget	Variance $	Variance %
REVENUE				
Practice fees	24,955	24,762	193	1%
PLTC and enrolment fees	1,779	1,779	-	0%
Electronic filing revenue	917	785	132	17%
Interest income	290	290	-	0%
Credentials and membership services	775	775	-	0%
Fines, penalties and recoveries	275	275	-	0%
Program Cost Recoveries	122	122	-	0%
Other revenue	187	187	-	0%
Building Revenue & Recoveries	1,384	1,384	-	0%
Total Revenues	30,684	30,359	325	1%
EXPENSES				
Benchers Governance and Events				
Bencher Governance	653	653	-	0%
Board Relations and Events	312	312	-	0%
	965	965	-	0%
Corporate Services				
General Office	749	749	-	0%
CEO Department	821	821	-	0%
Finance	1,189	1,189	-	0%
Human Resources	802	802	-	0%
Records Management	275	275	-	0%
	3,836	3,836	-	0%
Education and Practice				
Licensing and Admissions	2,305	2,305	-	0%
PLTC and Education	3,229	3,229	-	0%
Practice Standards	518	518	-	0%
Practice Support	-	-	-	0%
	6,052	6,052	-	0%
Communications and Information Services				
Communications	590	590	-	0%
Information Services	1,936	1,936	-	0%
	2,526	2,527	-	0%
Policy and Legal Services				
Policy and Legal Services	1,771	1,771	-	0%
Tribunal and Legislative Counsel	748	748	-	0%
External Litigation & Interventions	25	25	-	0%
Unauthorized Practice	337	337	-	0%
	2,881	2,881	-	0%
Regulation				
CLO Department	945	945	-	0%
Intake & Early Assessment	2,318	2,318	-	0%
Discipline	2,857	2,857	-	0%
Forensic Accounting	984	984	-	0%
Investigations, Monitoring & Enforcement	3,987	3,987	-	0%
Custodianships	1,802	1,802	-	0%
	12,893	12,893	-	0%
Building Occupancy Costs	2,030	2,030	-	0%
Total Expenses	31,183	31,184	-	0%
General Fund Results	**(499)**	**(825)**	**325**	

The Law Society of British Columbia

Memo

To:	Benchers
From:	Pinder K. Cheema, QC, Law Society Representative on the Federation Council
Date:	March 7, 2022
Subject:	Briefing by the Law Society's Member of the Federation Council

Purpose

This memorandum is to provide the Benchers with an update on the Federation Council, following their March 7, 2022 meeting. The Council meeting began with a welcome and introduction by President Nicholas Plourde. He thanked all Council members for supporting the Federation's recent statement denouncing the Russian invasion of Ukraine. The Territorial acknowledgement was made by Louis Martin, Council member from Chambre des Notaires.

Discussion

1. Strategic Priorities Update

Council was updated on the following initiatives:

a. **The NCA Assessment Modernization Committee (NCA AMC)**: Chair Jill Perry (Council member from Nova Scotia) reported that the NCA AMC, which is tasked with reviewing and updating the NCA competency profile, is planning a joint meeting with the National Requirement Review Committee (NRR). It is expected that a joint meeting will provide both groups an opportunity to discuss concerns and to develop approaches to the development of the competency profile, whether it apples to the NCA graduates or to both nationally and internationally trained graduates.

b. **Anti-Money Laundering Initiatives**: the adoption and enforcement of consistent rules remains a critical part of the strategy of the Federation and law societies to address risks of money laundering and terrorism present in the practice of law.

   This Working Group has completed work on additional amendments to the anti-money laundering Model Rules Amendments, which will address source of funds and wealth, risk assessment, compliance measures, virtual currencies, the treatment of politically exposed persons, and enhancements to monitoring requirements. A discussion paper

relating to the exemption of electronic fund transfers and cash exemption for fees is also being developed.

Further work is underway to develop five online modules to supplement educational materials already released by this Working Group and available on the Federation's public website.

c. **Reconciliation Initiatives**: work continues on the following three initiatives:

   i. A joint working group of the Federation and the Council of Canadian Law Deans, which was set up in December 2020, met in November 2021 to provide updates on major trends in law school and law society responses to the Truth and Reconciliation Commission (TRC) report, and to discuss planning for a symposium in 2022;
   ii. Work continues to identify members to sit on the Federation's Indigenous Advisory Council, which was approved in September 2021 by Council; and
   iii. TRC initiatives are being explored by both by the Standing Committee on the Model Code and National Discipline Standards.

d. **National Well Being Study**: this initiative is a joint project of the Federation and the University of Sherbrook in collaboration with the law societies and the Canadian Bar Association (CBA). The objective is to address the gap in data on the mental health of legal professionals. There are two parts to the study:

   i. Phase 1 is a national survey of legal professionals, which is expected to be completed with a draft report in June; and
   ii. Phase 2, which is optional, will focus on specific regions, and will be conducted through qualitative interviews of volunteers in participating provinces and territories yielding regional results. It is expected that Phase 2 will begin in the northern jurisdictions in May and will then expand to the rest of Canada.

   An omnibus report has been requested for the Federation, the CBA, and member law societies.

e. **Law Society priorities**: law societies were asked to provide a summary of their priorities. Below is a summary of the common, recurring issues of those law societies who submitted summaries:

   i. **British Columbia**: focused on governance, alternative discipline processes, regulatory sandbox, Anti-Money Laundering (AML) initiatives, and Indigenous

Intercultural Course. A question arose about the Attorney General's announcement proposing the amalgamation of the Notaries and the Law Society. Council was advised that further details would be provided at the April 25th meeting scheduled to take place in Montreal.

ii. **Alberta**: highlighted CPD changes, innovation sandbox approval, and articling placement program pilot.

iii. **Manitoba**: mentioned improvements to access to justice (including sandbox programs), lawyer competence, (regulatory process), and Equity, Diversity & Inclusion (exploration of mandatory cultural awareness training).

iv. **Ontario**: listed their "Access to Innovation" program (5 year sandbox type project), competence initiatives, including training, post licensure training, and succession planning as priorities.

v. **Barreau du Québec**: stated that access to justice, the future of the profession including sandbox considerations, regional issues, and harassment and discrimination, wellness, and articling program reviews were on their list of priorities.

vi. **Chambre Des Notaires**: listed a review of their organizational structure, access to services, and affirming role of the Chambre as priorities.

vii. **New Brunswick**: referenced access to justice, CPD, TRC, and contingency fee agreements as priorities.

viii. **Newfoundland and Labrador**: focused on access to justice, enhanced public engagement, health and wellness, competence, Reconciliation, governance and EDI.

ix. **Prince Edward Island**: listed AML guidance, access to justice, mentorship, Reconciliation, and governance.

x. **Yukon**: mentioned strategic planning, restructure of internal processes, and reconciliation as their priorities.

2. Annual Activity Plan

The 2022-2023 draft activity plan was approved, guided by the following three strategic goals set out below:

a. **Information Sharing**

i. Providing law societies with data about law societies and the legal profession;

ii. Sharing information on law society initiatives, national and international trends, including reconciliation;

iii. Facilitating exchange of information through the Federations' Counterpart groups, both Federation and law society members, such as the Discipline Administrators Group, the Equity Network, and Policy Council Group;

iv. Sharing discipline and admission information among law societies by developing a discipline and admission database; and
v. Organizing national forums such as the Federation's Annual Conference, to be held in Saskatoon in October 2022, and organizing a joint President and CEO Forum for April 25, 2022 in Montreal.

b. **Collaboration**

i. Supporting law societies by co-ordinating and overseeing the National Well-Being study, and exploring other approaches to wellbeing challenges faced by the legal profession and staff;
ii. Exploring initiatives to support law societies' responses to emerging legal technologies, including developing a national forum for ongoing dialogue regarding legal technology, and creating an information sharing portal for legal technology;
iii. Developing recommendations for a national good character standard;
iv. Continuing to support law societies to mitigate money laundering and terrorist financing risks in the practice of law, including a review of the Model Rules, and, developing educational materials;
v. Fostering reconciliation by implementing TRC Calls to action, including reviewing the Model Code, and identifying potential candidates to be appointed to the Indigenous Advisor Council;
vi. Developing and implementing a new competency based assessment for internationally trained lawyers under the auspices of the NCA Assessment Modernization Committee;
vii. Supporting the Standing Committee on the Model Code in its efforts to review the Discrimination and Harassment provisions;
viii. Supporting the implementation of national discipline standards, including in the context of reconciliation; and
ix. Conducting the five year review of the National Requirement, which is the statement of competencies and skills that every nationally trained law graduate must possess following law school. Committee membership has been established and a joint meeting of the NCA (Requirement Review) and the NCA (Assessment Modernization) is being scheduled.

c. **Advocacy and Stakeholder Engagement**

i. Exploring opportunities to engage with the Indigenous Bar and the legal academy;
ii. Supporting the Public Affairs committee to respond to public policy issues of national importance;

iii. Supporting the Litigation Committee in identifying cases of national importance that are of concern to the law societies, such as the intervention in *the Law Society v. Abrametz* argued at the SCC (Supreme Court of Canada) on November 8, 2021; and

iv. Supporting Can Lii, and the National Criminal Law and Family Law Programs, both to be held in person in BC in July 2022.

3. International Engagement Plan

The Federation's international engagement is founded on its Vision Statement, which states as follows: "acting in the public interest by strengthening Canada's system of governance of an independent legal profession and making it a leading example for justice systems around the world".

The draft 2022-2023 International Engagement Plan was approved as presented to Council in December 2021. Highlights include ongoing activities and attendance at international events. Ongoing activities include sharing information on national and international trends and engaging with stakeholders on issues of mutual interest.

Events and Meetings in 2022-2023 include the following:

a. American Bar Conference to be held in Chicago;
b. Opening of the Legal Year to be held in London, UK;
c. International Institute of Law Association Chief Executives (IILACE) to be held in Washington DC;
d. International Conference of Legal Regulators to be held in Chicago;
e. International Bar Conference to be held in Miami; and
f. International Bar Leaders Conference to be held in Helsinki, Finland.

4. Report of the Finance and Audit Committee

The draft budgets for the Federation's General Operations and the National Committee on Accreditation were approved as well as the proposed allocation of the "Special Projects Reserve" which will help fund initiatives such as the National Wellbeing Study.

5. CLE Programs

Both the Criminal Law and the Family Law programs will be held in person in BC in July 2022.

6. Spring Business Meetings and Annual Conference

Both events are being planned as in person events; the Spring Business meeting is scheduled for April 25 in Montreal and the Annual Conference in Saskatoon in October 2022. Details of agendas have yet to be released.

7. President's Report

The President reported that he has been in touch with a number of Law Societies and plans to attend meetings and retreats, including in BC. He has also engaged with the Minister of Justice, the Honourable David Lametti, calling on the Canadian government to increase, in particular, quotas to resettle female Afghan judges. Last August, the Federation issued a statement on the plight of female Afghan judges.

8. CEO's report

The CEO Jonathan Herman reported that remote work continues for the time being. He also updated Council on staff changes and responsibilities. He also advised that the Federation will have a new website, and an active Twitter account is planned.

The Law Society
of British Columbia

April 6, 2022

Sent via E-mail

Rick Glumac, Chair of the Special Committee to Review the Freedom of Information and Protection of Privacy Act
c/o Parliamentary Committees Office
Room 224, Parliament Buildings
Victoria, BC V8V 1X4
Email: foicommittee@leg.bc.ca

Donald J. Avison, QC
Executive Director/Chief Executive Officer

Dear Rick Glumac:

RE: Submission to the Special Committee - Review the *Freedom of Information and Protection of Privacy Act*

We enclose the Law Society of British Columbia's submission to the Special Committee of the Legislative Assembly on the Review of the *Freedom of Information and Protection of Privacy Act.*

If the Special Committee has any questions or would like further information concerning the Law Society's submission, we would be pleased to provide answers or discuss it. We look forward to the subsequent report to the Legislative Assembly.

Sincerely,

Don Avison, QC *(he/him)*
Executive Director/Chief Executive Officer

Encl.

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The Law Society
of British Columbia

Submission to the Special Committee of the Legislative Assembly of British Columbia on the Review of the *Freedom of Information and Protection of Privacy Act*

April 6, 2022

The Law Society of British Columbia
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INTRODUCTION

The Law Society of British Columbia is the governing body of the legal profession in British Columbia. The mandate of the Law Society, as stated in section 3 of the *Legal Profession Act*, is to uphold and protect the public interest in the administration of justice by, amongst other things, preserving and protecting the rights and freedoms of all persons. The Law Society regulates the legal profession in BC, protecting the public interest in the administration of justice by setting and enforcing standards of professional conduct for lawyers.

The Law Society has made previous submissions to the Special Committee to review the *Freedom of Information and Protection of Privacy Act* (the "Act") in 1998, 2004, 2010, and 2016. Some of our previous submissions have been accepted by the Special Committee but not implemented in the Act. The Law Society's current submission includes six recommendations for the Special Committee's consideration. Some of our recommendations are related to how certain provisions of the Act operate procedurally for public bodies in the efforts to meet the standards of transparency, accountability, the duty to assist, and timeliness in receiving and handling requests for records in a purposeful way in keeping with what the Law Society's views as the original intention behind the legislation (recommendations #1, #3 and #6). Our recommendations relate to how the legislation can be improved to best serve the common goals of the Act and the Law Society's governing legislation, the *Legal Profession Act*, and the Law Society Rules.

We are submitting for the first time two new recommendations: Recommendation #1 relates to section 5 (How to make a request) and Recommendation #3 is about section 43 (Power to authorize a public body to disregard a request). Both of these recommendations are submitted in the interest of reducing the operational impact these sections can have on a public body subject to the Act that, if amended, will improve the way the provisions of the Act function in practice, which in turn may ensure access requests are more consistently purposeful, with timely and cost-effective processing of requests.

Four of the recommendations are similar to those previously submitted by the Law Society to the Special Committee for consideration in 2004, 2010 and 2016: Recommendation #2 on section 15 (Disclosure harmful to law enforcement) and Schedule 1 - Definitions, Recommendation #4 on section 14 (Legal Advice), Recommendation #5 on section 44 (Powers of the commissioner conducting investigations, audits or inquiries), and Recommendation #6 on section 75 (Fees) and related Regulation. We have chosen to resubmit these recommendations as they are points of tension between the public interest served by the Act and our statutory mandate in the *Legal Profession Act*.

I. RECOMMENDATION 1: HOW TO MAKE A REQUEST (SECTION 5)

As a public body we strive to uphold our obligations under the Act and fulfil requests for information in an efficient and timely manner. However, we are concerned that section 5, requiring the applicant to provide "enough detail to enable an experienced employee of the public body, with a reasonable effort, to identify the record sought" is simply too broadly worded. Our experience has been that applicants will make a request for "all records" regardless of what they may be actually seeking, which can return thousands of records when the detail provided is, for example, "all records containing my name". Given the focus of the Law Society's work as a governing body of a profession, there can be, in relation to some requests, many areas to search and a large number of records requested. There may also be systematic requests. Asking an applicant to narrow a request to specific records, types of records or time frame has, in our experience, not resulted in a narrowing of a request to any specific categories of records sought for the purpose of the request. Often an applicant will maintain the request as "all of the records that the Law Society has", regardless of purpose or relevance to the matter that led to making the access request and there is no requirement in the Act for an applicant to do otherwise.

These overly broad requests impact the ability to fulfil obligations under the Act in a timely manner, and can require extraordinary amounts of time and resources. With the Law Society experiencing an increase in the number of overly broad requests, which has a compounding impact on our operations in responding to other requests for information under the Act, we are proposing that amending section 5 may improve the timeliness of responses from public bodies (which also could result in the positive impact of reducing the volume of matters dealt with at the Office of the Information and Privacy Commissioner for BC). Although section 5 is written in a manner that requires an applicant to provide enough detail about the record sought to enable staff to identify the record, we find that in practice the use of section 5 has not matched its intention.

We submit that the Special Committee should consider additional wording to better guide how to make request for access that is purposeful and focused and wording that clarifies what, more specifically, is required from an applicant to allow an experienced employee of the public body to provide a response that better meets the specific needs of an applicant, and better provides for responding in a timely and purposeful manner.

<u>Recommendation #1</u>

We recommend that section 5 be amended to include additional requirements for identifying specific records to which access is sought to provide applicants with more information about how to make a request from a public body that is not excessively broad.

II. RECOMMENDATION 2: DISCLOSURE HARMFUL TO LAW ENFORCEMENT (SECTION 15 AND SCHEDULE 1)

Section 15(1)(a) of the Act applies to Law Society investigations that lead to disciplinary proceedings involving a penalty or sanction. However, there are two other categories of investigations that the Law Society uses that we believe fall outside of the exception to disclosure in section 15(1)(a) and Schedule 1's definition of "law enforcement". These methods of investigation are integral to the Law Society's purpose in protecting the public and accordingly, we submit that they should be included as an exception to disclosure under section 15(1) and Schedule 1.

The first category of investigation is related to Credentials investigations. Under Part 2 of the *Legal Profession Act*, the Law Society (through its Benchers and the Credentials Committee) has the responsibility of ensuring that candidates for admission to the bar in BC must be "of good character and fit to be a solicitor of the Supreme Court". Credentials investigations are common when there is a question of an applicant's character or fitness, with the Law Society frequently receiving confidential information, often from confidential sources, as part of an investigation. Our concern is that under section 15(1) and Schedule 1, the confidential information received as part of a Credentials investigation may be not protected from disclosure to an applicant because the investigation does not or might not lead to the imposition of a penalty or sanction.

The second category of investigation that the Law Society utilizes that may be not captured under section 15(1) and Schedule 1 is our auditing power authorized under section 33 of the *Legal Profession Act*. An audit allows for the Law Society to ensure that lawyers are maintaining proper accounting records, especially when money is held in trust. An audit can be initiated on the basis of confidential information, and confidential information is often obtained during an audit. Although the purpose of an audit is to enforce the law with respect to lawyers' trust accounts, an investigation in this category does not necessarily lead to the imposition of a penalty or sanction. Our concern is that audit reports produced under section 33 of the *Legal Profession Act* which contain confidential information might not be protected from disclosure under section 15(1) and Schedule 1 of the Act as they could be considered "routine inspections" of a lawyer's practice.

Our second recommendation is that the Act should be expanded in section 15(1) and Schedule 1 to include other forms of investigation that do not necessarily lead to a sanction or penalty, but are necessary for the Law Society to conduct in order to meet our statutory mandate of protecting the public. We expect these considerations may apply to other regulatory bodies as well.

In considering this recommendation of the Law Society on the previous review of the Act, the Special Committee, in its May 2016 report, recommended to the Legislative Assembly that the provincial government consider "*whether an explicit reference to investigations that are within the mandate of a professional regulatory body should be added to the definition of "law*

enforcement" in Schedule 1 so that a professional regulatory body may refuse to disclose information that may harm an investigation."

Recommendation #2

We recommend that the definition of "law enforcement" in Schedule 1 be expanded to include:

> (d) proceedings or investigations authorized by an Act to be conducted by a professional governing body in furtherance of its duties and obligations in the public interest.

Alternatively, we recommend using more specific and restrictive language to define "law enforcement" as it applies to professional governing bodies:

> (d) proceedings or investigations conducted by a professional governing body in the furtherance of its duties and obligations in the public interest, including but not limited to investigations or audits regarding
>
> > (i) the qualification, character and fitness of an individual to become a member of the professional governing body or to be enrolled as a student under the authority of the professional governing body,
> >
> > (ii) the ability of a member of a professional governing body to practise and continue to practise a profession,
> >
> > (iii) a complaint, allegation or other information concerning the conduct of a member or former member of a professional governing body or a student under the authority of the professional governing body, and
>
> compliance with rules or regulations governing the profession.

III. RECOMMENDATION 3: POWER TO AUTHORIZE A PUBLIC BODY TO DISREGARD A REQUEST (SECTION 43)

Section 43 allows the Commissioner to authorize a public body to disregard a request because the request is frivolous, vexatious, or responding to the request would unreasonably interfere with the operations of the public body because the request is excessively broad, or is repetitious or systematic. Section 43, as amended in 2021, now also includes wording about records already disclosed or accessible to the applicant from another source.

Section 43 requires a public body to apply to the Commissioner to ask that this discretionary power be used to authorize the public body to disregard a request. The threshold for a section 43 authorization by the Commissioner is justifiably high, as it impacts an individual's right under the Act to request information from a public body. The Law Society is concerned, however, that

applications under section 43 often result in a decision not to authorize the public body to disregard a request or a series of requests and do not provide the relief sought even in part. The Law Society may receive multiple filings of requests from the same applicant over a relatively short span of time or an excessively broad request that an applicant is not interested in narrowing, and still, what will meet the test for authorization to disregard the request(s) is not clear and making an application may only add an additional step in the process with an unsuccessful outcome.

Each application may be reasonably narrow enough viewed in isolation and would fail to qualify as frivolous, vexatious, excessively broad or repetitious, and therefore would not meet the test for the Commissioner to authorize the Law Society to disregard an applicant's individual request, however, the cumulative impact of the volume of requests from one applicant in a certain period of time becomes onerous and impacts the Law Society's operations and the ability to meet, in a timely way, obligations to other applicants making requests for access under the Act.

We suggest that the Act be amended to include in section 43 or in a new or other more appropriate section provisions that allow a public body without an application to the Commissioner to hold in abeyance an individual applicant's request(s), in instances that meet clear and specific criteria set out in the provision, and with written notice to the applicant. For example, where a requestor has submitted or is submitting multiple requests, subsequent responses may be held in abeyance with written notice to the applicant to allow the public body to prioritize the requests of other applicants over further responses to a frequent requester applicant, to allow for providing timely responses to all applicants in the interest of fairness to all applicants exercising access rights under the Act. Essentially, public bodies such as the Law Society would prioritize responding to other applicants with other requests over responding to a frequent requester applicant already responded to on one or some requests from a series of requests so that we can meet the needs of other applicants in a more timely way, without making a formal application to the Commissioner for authorization to do so.

Recommendation #3

We recommend that section 43 (or other related section of the Act) be amended to include provisions allowing the head of a public body to, without an application to the Commissioner, consider a pattern of requests from an applicant over a set time period, and have the authority to prioritize responding to other requests while the applicant's requests are held in abeyance until completion of other applicants' requests.

IV. RECOMMENDATIONS 4 AND 5: SOLICITOR-CLIENT PRIVILEGE

Recommendations #4 and #5 both involve solicitor-client privilege. Our recommendations to the Special Committee in this area are similar to previous submissions we have made in the past. The Law Society's interest in this area is the preservation and protection of solicitor-client

privilege. Although we have previously submitted our concerns that some provisions of the Act are in conflict with decisions of the Supreme Court of Canada concerning solicitor-client privilege, the Act has not been amended to address our concerns. We note in particular that recommendation #4 was accepted by the Special Committee in 2010 and 2016 but has not yet been enacted.

1. Section 14 (Legal Advice)

Solicitor-client privilege is a principle of fundamental justice. The Supreme Court of Canada has held that it is a civil right of supreme importance in Canadian law in *Lavallee, Rackell & Heintz v. Canada (Attorney General)* [2002] 3 S.C.R. 209. In *Lavallee,* Madam Justice Arbour stated that

> *Solicitor-client privilege must be as close to absolute as possible to ensure public confidence and retain relevance. As such, it will only yield in certain clearly defined circumstances, and does not involve a balancing of interests on a case-by-case basis.*

Our concern is that due to the use of the word "may" in section 14 of the Act, there is an implied discretion by the head of the public body in deciding whether to disclose information that is subject to solicitor-client privilege, which goes against the very case-by-case balancing of interests that Madam Justice Arbour said must not happen in *Lavallee*.

Recommendation #4

We recommend that section 14 be amended to make it mandatory that the head of a public body *must* refuse to disclose to an applicant information that is subject to solicitor client privilege, unless the public body is the client and chooses to waive privilege, or, where the privilege-holder is a third party, they agree to waive privilege.

2. Section 44 (Powers of commissioner in conducting investigations, audits or inquiries)

In addition to *Lavallee* establishing that solicitor-client privilege is a civil right of supreme importance, the case also established that solicitor-client privilege is more than an evidentiary rule, it is a substantive right, and it is a principle of fundamental justice. The privilege lies with the person sharing their information with their lawyer to enable justice to be properly administered. Since *Lavallee* was decided the Supreme Court of Canada has upheld and expanded this line of reasoning, stating that solicitor-client privilege has "acquired *constitutional* dimensions as both a principle of fundamental justice and a part of a client's fundamental right to privacy": *Alberta (Information and Privacy Commissioner) v. University of Calgary* [2016] 2 S.C.R. 555. In *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65, the Court recognized solicitor-client privilege as a general question of law of central importance to the legal system as a whole, requiring a single determinate answer and therefore being

recognized as one of the categories of cases requiring the standard of review to be correctness. The Court supported *University of Calgary's* finding that solicitor-client privilege needs to be protected in order for justice system to function properly. While a statutory provision can alter the common law, we believe that because the Court in *University of Calgary* has recognized solicitor-client privilege having acquired constitutional dimensions beyond being simply a procedural right at common law, the Act needs to conform to the recognition of this status.

The Law Society is concerned that section 44(1) and (3) requires us to produce to the commissioner records that may be privileged. While subsection (2.1) provides that the disclosure of a privileged document to the commissioner under subsection (1) does not affect privilege, we are respectfully of the opinion that it does not go far enough and, in fact, is only relevant if the putative privilege-holder voluntarily provides the document or information to the commissioner.

The Law Society is of the opinion that where a principle of fundamental justice is at issue, such as solicitor-client privilege, the courts should be the adjudicative authority over whether privilege exists and not the commissioner. In *Lavallee*, the Court held that the impugned statutory provision more than minimally impaired solicitor-client privilege, and identified three problems with the provision which included:

- the naming of clients;
- the fact that notice may not be given to clients; and,
- the possibility of access by the Attorney General to the information prior to the determination of privilege.

We are concerned that all three of those problems as identified in *Lavallee* exist in subsections (1) and (3) of section 44 of the Act. Our concern comes from the perspective as a professional regulator of legal professionals and as a client of legal services. As a professional regulator, we have a statutory obligation to investigate complaints made against lawyers, and as part of our investigations, we obtain privileged or confidential information of a lawyer's client. In addition, we are also often a party to litigation, and like other entities, we require and seek legal advice and instruct counsel in matters affecting our legal rights and obligations as clients. Should the commissioner compel the Law Society, as a public body, to produce information or documents in its possession over which a claim of solicitor-client privilege is made by a third party client of a lawyer, such information would, at the very least, name the client and could contain detailed instructions from the client, or advice given by the lawyer, on a legal matter. This would violate the sanctity of that privilege. There is no statutory provision in the Act requiring notification a client that their privileged information is being compelled to be produced to the commissioner.

Between *Lavallee* and *University of Calgary*, the Supreme Court of Canada has heard several cases in which it has upheld the need to protect solicitor-client privilege as a principle of fundamental justice. In *Goodis v. Ontario (Ministry of Correctional Services)* [2006] 2 S.C.R.

32, the Court followed *Lavallee* and stated that any statutory provision permitting access to privileged documents must, in order to pass constitutional scrutiny, be "absolutely necessary" and "no more than minimally impair the privilege". It is not "absolutely necessary" for the commissioner to access the documents, and a court process is available to make a determination on privilege if needed. While the commissioner's compelling production of the documents or information to consider whether privilege applies may make it more expedient for the commissioner's functions under the Act, the violation of a principle of fundamental justice ought never to be permissible simply due to expediency. In our opinion, access to documents to which solicitor-client privilege is claimed by the commissioner is not "absolutely necessary" nor would such access more than "minimally impair the privilege," particularly where, by virtue of s. 47(4) of the Act, the commissioner may disclose information to the Attorney General derived from the violation of privilege where such information may disclose information that amounts to the evidence of an offence. It is our opinion, this constitutes an absolute, not a minimal, impairment of solicitor-client privilege. .

Moreover, if the commissioner were, in error, to determine that the documents were not privileged and order the documents or information be released accordingly, the client's privilege would also be absolutely impaired and the privilege would be lost on disclosure, even with the existence of subsection (2.1) of the Act.

A process could be developed where the courts, instead of the commissioner, can determine contested claims of privilege which would mitigate against the risk of impairing solicitor-client privilege. This recommendation is consistent with the recommendation made and accepted by the Special Committee in 2010 and 2016, but not implemented, that section 14 of the Act should be amended to say that the privileged status of records requested under the Act be referred to the Supreme Court of British Columbia for decision.

In *Canada (Privacy Commissioner) v. Blood Tribe Department of Health* [2008] 2 S.C.R. 574 the Court held that an adjudication of solicitor-client privilege by the Federal Privacy Commissioner (or their delegate), who is an administrative investigator and not an adjudicator would be an infringement of privilege. Although there are some differences between the provincial Act and federal *Personal Information Protection and Electronic Documents Act*, in our opinion the decision of the Court in *Blood Tribe* on this point is pertinent. Consequently, the purpose for which section 44(3) contemplates the production of documents over which a claim of solicitor-client privilege is made would itself be an infringement of the privilege, and would apply equally whether the documents were those of third parties in the hands of the public body (for example, the client of a lawyer who is under investigation by the Law Society) or of the public body itself (for example, the Law Society as the client of legal services).

The Supreme Court of Canada has also held in *Canada (Attorney General) v. Federation of Law Societies* 2015 SCC 7 that lawyers have a duty of commitment to their client's cause. The Court

stated that a client's ability to place unrestricted and unbounded confidence in their lawyer, which is at the core of a solicitor-client relationship, is part of the legal system itself and not merely ancillary to it. The Court held that it was a fundamental principle of justice that the state cannot impose duties on lawyers that undermine their duty of commitment to their client's causes. The Law Society considers the statutory compulsion in section 44(1) and (3) of the Act to provide the commissioner information over which a claim of solicitor-client privilege is made interferes with a lawyer's duty of commitment to their clients cause by violating both the protection of the client's confidences, as well as violating a principle of fundamental justice.

Lastly, in *University of Calgary*, the Supreme Court of Canada also stated that compelled disclosure to the commissioner or their delegate for the "purpose of verifying solicitor-client privilege is itself an infringement of the privilege, regardless of whether or not the Commissioner may disclose the information onward to the applicant." The Court noted that because the commissioner had both investigatory and adjudicative functions, they are unlike a court and can become adverse to the interest of the body refusing to disclose information. The commissioner can even become a party to litigation against that body. The Court found that these features of the commissioner "further indicate that disclosure to the Commissioner is itself an infringement of solicitor-client privilege." The features of the Alberta *Freedom of Information and Protection of Privacy Act* at issue in *University of Calgary* are comparable to those in the Act in BC. The Law Society believes that it is important that the Special Committee considers the implications of the *University of Calgary* decision on the Act.

Our submission is not intended to mean that every time privilege is claimed, the matter must be dealt with by the courts. The commissioner can, at first instance, make a determination of the claim without having to see the documents. We note that this is the usual process of determining privilege even before the courts. It is only in what we expect to be relatively rare cases where the issue of privilege cannot be addressed without having access to the documents that a process to adjudicate the matters before the courts would be called into effect.

Recommendation #5

We recommend that section 44(3) be amended to exclude from disclosure to the commissioner all records that are subject to solicitor-client privilege. We recommend that where an issue arises about the validity of a claim of privilege, a process be developed that would permit the court to rule on the issue, on notice to all persons whose privilege may be affected by the order.

V. RECOMMENDATION 6: FEES (SECTION 75 AND REGULATIONS)

The Law Society is concerned with the cost burden that is to be assumed by public bodies, in particular professional governing bodies, in complying with the provisions of the Act. Most professional regulatory bodies receive no public funds, and are financed through assessments on a relatively small group of private individuals. Comparatively, the provincial government relies

on a sizeable tax base of over 3.7 million people. Moreover, most of the applications we receive under the Act are made by persons who are not regulated by the Law Society. While it is appropriate for a government to make a policy decision to provide certain services to the public at little or no cost and finance the cost of providing the services from general revenue, it is another thing to impose this same service requirement on relatively small organizations such as many of the professional governing bodies in this province.

The Act in section 75 and the Regulations in B.C. Reg. 155/2012 propose that there are two types of persons who make applications under the Act: individual applicants and commercial applicants. As recognized in B.C. Reg. 155/2012, for commercial applicants, where the application is made for information in connection with a business or venture for profit, the "actual cost" of the processing services is more justifiable. Comparatively, individuals who want to make applications are not precluded from doing so by reason of the risk of having to bear the costs of the public body in processing the request.

The Law Society submits that some clarification of fees is warranted, in light of current technology and media (which does not typically involve photocopying, but creates other work) as well as the Commissioner's Order in F09-05. In that order, fees for certain services that the Law Society undertook in the course of processing an application under the Act were disallowed, including:

- the cost of making working copies;
- staff time spent making working copies;
- staff time spent severing records; and,
- staff time spent drafting lists of records.

In many circumstances, these types of services are inherent in or ancillary to the nature of activities listed in section 75(1) of the Act. By disallowing a fee for these types of services, the public body cannot recover the actual cost of processing a request under the Act because some necessary services are, by virtue of the Commissioner's decision, apparently excluded by the Act. Applicants, particularly commercial applicants, therefore are not having to pay the reasonable costs of their requests, and the public body is having to subsidize the cost of the service. It is not that the Commissioner considered these types of services to be necessarily unreasonable, but just that it is not a service under section 75(1).

In Order F09-05, the Commissioner permits only the "actual cost" of a given service (in that case, photocopying). If this is to be the case, the Law Society submits that ancillary costs must be recoverable at their actual cost. Otherwise, applicants, particularly commercial applicants, will receive a benefit at the cost to the public body. We submit that if the service is reasonable or useful in processing the application or if it is necessarily inherent in or ancillary to a service

required to process a request, then the Law Society should be able to charge a commercial applicant the actual cost of that service. The Act and Regulations should not place limits on the services that can be charged, at least to commercial applicants, provided they are reasonable services that aid in properly responding to the request as required by the Act.

Recommendation #6

We recommend that section 75 and Regulation 155/2012 be amended or clarified with respect to the cost of ancillary services related to processing applications. We recommend that public bodies be permitted to charge for all services that are useful or reasonable in the processing of a request made under the Act by a commercial applicant.