



# Agenda

## Benchers

Date: Friday, July 8, 2022

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

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

Location: Virtual Meeting: Zoom

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

### VIRTUAL MEETING DETAILS

The Bencher Meeting is taking place via a virtual meeting. If you would like to attend the meeting, please email [BencherRelations@lsbc.org](mailto:BencherRelations@lsbc.org).

### RECOGNITION

1	2022 Rule of Law Essay Contest: Presentation of Winner
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### CONSENT AGENDA:

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

2	Minutes of May 28, 2022 meeting (regular session)
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3	Minutes of May 28, 2022 meeting ( <i>in camera</i> session)
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4	2022 Law Society Indigenous Scholarship
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5	2022 Law Society Scholarship for Graduate Studies
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6	Law Society Nomination of a Member to the Federation of Law Societies of Canada Council – Revised Terms of Reference
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7	Rule 2-29: Amendment to provide for Executive Director’s Discretion
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8	Various Rules: Non-substantive Corrections
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# Agenda

<b>REPORTS</b>			
9	President's Report	15 min	Lisa Hamilton, QC
10	CEO's Report <ul style="list-style-type: none"> <li>• Single Legal Regulator</li> </ul>	15 min	Don Avison, QC
<b>DISCUSSION/DECISION</b>			
11	Cullen Commission Report <ul style="list-style-type: none"> <li>• A Trust Review Task Force</li> </ul>	30 min	Don Avison, QC
12	An Independent Tribunal Chair	20 min	Christopher McPherson, QC Don Avison, QC
<b>UPDATES</b>			
13	2022 May Financial Report	10 min	Jeevyn Dhaliwal, QC Jeanette McPhee
14	Report on Outstanding Hearing & Review Decisions ( <i>Materials to be circulated at the meeting</i> )	1 min	Christopher McPherson, QC
<b>FOR INFORMATION</b>			
15	Mid-Year Updates on Work Plans		
16	Mental Health Task Force: Progress on Implementing Past Recommendations		
17	Briefing by the Law Society's Member of the Federation Council		
18	Report of the Special Committee to Review FIPPA		
19	Minutes of June 23, 2022 Executive Committee Meeting		
20	Three Month Bench Calendar – July to September 2022		
<b>IN CAMERA</b>			
21	Other Business		60 min



# Memo

To: Benchers  
From: Ethics and Lawyer Independence Advisory Committee  
Date: June 7, 2022  
Subject: Rule of Law Secondary School Essay Contest 2021/2022

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The Law Society's rule of law essay contest that is overseen by the Ethics and Lawyer Independence Advisory Committee has recently completed. We received 25 essays this year, and the winners have now been chosen.

Students were asked to write an essay on the following topic:

The right to freedom of expression is used to justify demonstrations for or against various causes in our society. How does freedom of expression intersect with the rule of law? In what circumstances can courts prohibit or limit a protest or demonstration? Discuss whether your answer is affected by the popularity or unpopularity of the cause.

The winning essays were:

**Winner:** Christopher Zimmerman (Duchess Park Secondary School) "An Analysis on the Rule of Law and Freedom of Expression"

**Runner-Up:** Julien Yuen (Eric Hamber Secondary School) "What the Rule of Law means to the Freedom of Expression"

Their essays are linked for your information.

It is usual that the winner and runner-up are invited to attend a Bencher meeting where a certificate and cheque are presented. The winner, Chris Zimmerman, will be available to attend the Bencher meeting on July 8, 2022, virtually. The runner-up, Julien Yuen, will be available to attend the Bencher meeting on September 23, 2022, in person. In the meantime, the essays will be published on the Law Society's website as well as in the *Benchers Bulletin*, and steps will be taken to have the cheques issued to the winner and runners-up through mail.

MDL/al



# Minutes

## Benchers

Date: Saturday, May 28, 2022

Present:	<p>Lisa Hamilton QC, President          Christopher McPherson, QC, 1<sup>st</sup> Vice-President          Jeevyn Dhaliwal, QC, 2<sup>nd</sup> Vice-President          Paul Barnett          Kim Carter          Tanya Chamberlain          Jennifer Chow, QC          Cheryl S. D'Sa          Lisa Dumbrell          Brian Dybwad          Brook Greenberg, QC          Katrina Harry          Sasha Hobbs          Lindsay R. LeBlanc          Dr. Jan Lindsay</p>	<p>Geoffrey McDonald          Steven McKoen, QC          Jacqueline McQueen, QC          Paul Pearson          Michèle Ross          Kelly H. Russ          Gurminder Sandhu          Thomas L. Spraggs          Barbara Stanley, QC          Natasha Tony          Michael Welsh, QC          Kevin B. Westell          Sarah Westwood          Guangbin Yan</p>
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Unable to Attend: Georges Rivard  
 Gaynor C. Yeung

Staff:	<p>Don Avison, QC          Avalon Bourne          Barbara Buchanan, QC – virtual          Natasha Dookie          Su Forbes, QC          Kerryn Holt          Jeffrey Hoskins QC - virtual</p>	<p>Jason Kuzminski          Alison Luke - virtual          Michael Lucas, QC          Claire Marchant          Jeanette McPhee          Lesley Small          Adam Whitcombe, QC</p>
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Guests:	Dom Bautista	Executive Director & Managing Editor, Law Courts Center
	Aleem Bharmal, QC	First Vice President, Canadian Bar Association, BC Branch
	Pinder K. Cheema, QC	Law Society of BC Representative on the Federation Council
	Dr. Cristie Ford	Professor, Allard School of Law
	Jonathan G. Herman	CEO, Federation of Law Societies of Canada
	Elizabeth Kollias	President, BC Paralegal Association
	Robert Lapper, QC	Lam Chair in Law and Public Policy
	Dean Lawton, QC	Past-President, Law Society of British Columbia
	Jamie Maclaren, QC	Executive Director, Access Pro Bono
	Elizabeth J. Osler, QC	CEO & Executive Director, Law Society of Alberta
	Ngai Pindell	Dean of Law, Peter A. Allard School of Law
	Bâtonnier Nicolas	President, Federation of Law Societies of Canada
	Plourde, Ad.E.	
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
	Lana Walker	Assistant Dean, Thompson Rivers University
	Ken Warren, QC	President, Law Society of Alberta

## CONSENT AGENDA

### 1. Minutes of April 22, 2022, meeting (regular session)

The minutes of the meeting held on April 22, 2022 were approved unanimously and by consent as circulated.

### 2. Minutes of April 22, 2022, meeting (*in camera* session)

The minutes of the *In Camera* meeting held on April 22, 2022 were approved unanimously and by consent as circulated.

### 3. External Appointment: Legal Aid BC

The following resolution was passed unanimously and by consent:

**BE IT RESOLVED** the Benchers reappoint Karen Christiansen as recommended by Legal Aid BC, and agreed to by CBABC, to its Board of Directors for a three-year term commencing June 8, 2022 and concluding June 7, 2025.

### 4. Rule Amendments: Rule 3-77 to conform with *Canadian Deposit Insurance Corporation Act*

The following resolution was passed unanimously and by consent:

***BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 3-77 and substituting the following:***

#### **Canada Deposit Insurance Corporation**

- 3-77** (1) A lawyer who holds pooled trusts funds in a designated savings institution insured by the Canada Deposit Insurance Corporation must meet the conditions required under the Schedule to the *Canada Deposit Insurance Corporation Act* to ensure that each client's funds, rather than the account itself, are insured up to the limit of CDIC insurance.
- (2) The lawyer must not disclose information that is subject to solicitor and client privilege or confidentiality without the consent of the client.

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

### 5. Rule Amendments: Non-substantive Rule Corrections

The following resolution was passed unanimously and by consent:

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

1. ***Rule 1, definition of “professional corporation” is amended by striking “registered under Part 10 of the Business Corporations Act” and substituting “registered under Part 11 of the Business Corporations Act”.***
2. ***Rule 1-8 (7) (a) is rescinded and the following substituted:***
  - (a) a notice containing the following information:
    - (i) the locations at which the meeting is to be held;
    - (ii) each resolution received in accordance with subrule (6), with any changes submitted under subrule (6.2), unless the resolution has been withdrawn under that subrule;
    - (iii) notice of advance voting if it is to be permitted under Rule 1-13.1, and
3. ***Rule 1-10 (7) is amended by striking “to prepare his or her report” and substituting “to prepare the auditor’s report”.***
4. ***Rule 2-55 (1) (a) is rescinded and the following substituted:***
  - (a) whose application for enrolment has been rejected by a panel that is not satisfied that the person is of good character and repute and fit to become a barrister and solicitor of the Supreme Court,
5. ***Rule 2-69 (4) is amended by striking “in addition to her entitlement” and substituting “in addition to the student’s entitlement”.***
6. ***Rule 5-5.1 (8) (d) is amended by striking “an application under subrule (5) (f)” and substituting “an application under subrule (7) (k)”.***

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

## **REPORTS**

### **6. President’s Report**

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

Ms. Hamilton began her report by thanking staff for all their efforts in organizing and coordinating the Bencher Retreat.

The election for the Benchers’ nominee for 2023 Second Vice-President closed on May 25, and Ms. Hamilton informed Benchers that Brook Greenberg, QC was the successful candidate. She indicated that the Benchers’ nominee for 2023 Second Vice-President would be announced in the second notice of the Law Society’s Annual General Meeting sent to the profession in early June,

and then pursuant to Rule 1-19(1), the election of the Second Vice-President-elect would take place at the AGM on June 22, 2022. Ms. Hamilton thanked Mr. Greenberg and Jacqueline McQueen, QC for putting their names forward for consideration.

Ms. Hamilton spoke about her plans to engage with different regional bars on the Law Society's priorities, including the establishment of a single legal regulator.

Ms. Hamilton then spoke about her involvement as the Law Society's representative on the Judicial Council of BC, which advises the provincial government on the appointment of Provincial Court judges and judicial justices. She asked that Benchers give some thought as to good candidates and to encourage them to put forward their names.

Ms. Hamilton concluded her report by mentioning the outcome of the proposed Bencher Resolution for the upcoming AGM, which had been circulated to Benchers on May 16 for approval. The proposed resolution provided for rule changes respecting future AGMs to require that in order for a member resolution to be considered at an annual general meeting it must describe how it serves the public interest in a manner consistent with section 3 of the *Legal Profession Act* and what the potential financial implications of the resolution may be if the resolution were to be implemented. She indicated that a number of Benchers were concerned that requiring members to assess the financial implications, as proposed in the resolution, was not feasible and therefore were not in favour of putting it to the members. As the required threshold for approval was not met, Ms. Hamilton informed Benchers that the resolution would not be on the AGM agenda.

## **7. CEO's Report**

Don Avison, QC began his report with an update on the Cullen Commission. The Final Report is expected towards the beginning of June, and he indicated that staff would brief Benchers on the Report and its recommendations once received.

Mr. Avison informed Benchers that Judge Kimberly Prost of the International Criminal Court would be speaking on August 11 at a Rule of Law lecture regarding the role of the International Criminal Court. He encouraged Benchers and others to attend.

The Law Society of Scotland hosted a virtual event to commemorate the *Donoghue v Stevenson* case on May 26, and Mr. Avison indicated that staff would confirm whether the session was recorded and could be made available. He noted that the session was eligible for CPD credits.

Mr. Avison updated Benchers on discussions with government, the Society of Notaries Public BC, and the BC Paralegal Association regarding the creation of a single legal regulator. He indicated that discussions thus far have been technical in nature and focused on determining how the professions are currently operating. He informed Benchers that the most recent meeting had



focused on the background and operations of the Innovation Sandbox and different models for the licensing of paralegals. The next meetings are scheduled for June 6 and 27, and Mr. Avison indicated that the Deputy Attorney General would be in attendance at the latter meeting. Mr. Avison then informed Benchers that government is planning to release an intentions paper in July, and that discussions will continue after the paper has been released.

Benchers discussed the issues of board size and composition and whether the independence of the regulator would be included in the paper.

Mr. Avison indicated that further discussion was needed regarding the governance framework for the single legal regulator, particularly in regard to board size and composition, maintaining diversity at the board level, and the independence of the regulator and the professions.

## **GUEST PRESENTATIONS**

### **8. Update on the Federation of Law Societies of Canada**

Ms. Hamilton introduced Bâtonnier Nicolas Plourde, Ad.E., President of the Federation of Law Societies of Canada, and Jonathan Herman, Chief Executive Officer of the Federation of Law Societies of Canada, and welcomed them to the meeting.

Mr. Plourde spoke about the role of the Federation, as well as the importance of collaboration between the Federation and Canada's individual law societies, particularly in regard to the Model Code, anti-money laundering rules, the National Wellbeing Study, national discipline standards, the competency profile, the national admittance requirement, the evaluation of international lawyers, and the Canadian Legal Information Institute (CANLII). Mr. Plourde spoke about the importance of the relationship between the Federation and the law societies, and between the individual law societies in carrying out these important initiatives.

Mr. Plourde spoke about the importance of reconciliation with Indigenous peoples as a national priority, and that the Federation would be establishing an Indigenous Advisory Council to help continue this work.

Mr. Plourde concluded his report by recognizing Benchers, Law Society staff, and other volunteers for all their contributions and involvement with the Federation's committees and initiatives.

Mr. Herman spoke about the importance of the collaborative relationship between the Federation and the Law Society of BC. He emphasized the advocacy role the Federation plays at the national and international level, including as an intervenor at the Supreme Court of Canada and in speaking on behalf of Canada's law societies in regard to geopolitical matters.

Mr. Herman updated Benchers on several of the Federation's current initiatives and priorities, including the National Wellbeing Study, the work being done to combat money laundering, and lawyer formation and competencies for entrance to the profession.

Benchers discussed the composition and mandate of the Indigenous Advisory Council. Mr. Herman indicated that there would be representation from First Nations, Metis, and Inuit, and spoke to the pool of nominees for the Advisory Council. He also indicated that the competency profile being developed by the Advisory Council will be informed by consultation and engagement with a variety of different groups.

## **9. Update on the Law Society of Alberta**

Ms. Hamilton introduced Ken Warren, QC, President of the Law Society of Alberta, and Elizabeth Osler, QC, Chief Executive Officer of the Law Society of Alberta, and welcomed them to the meeting.

Ms. Osler provided an overview of the Law Society of Alberta's acknowledgement of systemic discrimination within the justice system, which was approved by the board at its April meeting. Ms. Osler provided some background to the acknowledgement, which included interviews and consultation with lawyers, articling students, law students, and internationally trained lawyers regarding their experiences of racial discrimination with the Law Society of Alberta and within the legal profession. The Law Society of Alberta then retained an independent consultant to conduct an analysis of the submissions, and Ms. Osler indicated that three main barriers were determined: discriminatory culture, biased practices in hiring, and poor representation within the bar. Ms. Osler indicated that these barriers formed the basis of the acknowledgement and directed next steps in terms of addressing these issues, including building out the role of the equity ombudsperson and forming the first ever Equity, Diversity, and Inclusion Council.

Mr. Warren spoke about the Law Society of Alberta's strategic plan, and noted that two of the four objectives related to competence; wellness; and equity, diversity, and inclusion. He informed Benchers that the Law Society of Alberta's committees had been restructured to have greater focus on these objectives, and that board and committee composition was being considered through an equity, diversity, and inclusion lens.

Mr. Warren then spoke about the development process of the acknowledgement, noting that it went through several drafts and rounds of consultation. He indicated that the purpose of the acknowledgement was to recognize the existence of systemic discrimination and racism in the Law Society of Alberta itself, as well as within the justice system and the legal profession. He indicated that the acknowledgement was a commitment to reduce the barriers that BIPOC people face. Key messaging was developed for the board, and Mr. Warren noted that the acknowledgement had generated quite a bit of positive feedback.

Benchers discussed the Law Society of Alberta's development of a training course for principals. Mr. Warren noted that this program was developed through the Lawyer Competency Committee and involved a great deal of consultation. He further noted that feedback regarding the course has been positive, and that Alberta's Chief Justice is encouraging all principals within the courts to take the course. Ms. Osler added that the impetus for the course was to demonstrate to students that the Law Society of Alberta was taking seriously the challenges that students face. She noted that the Law Society of Alberta also has a roster of alternative articling placements for students with untenable situations.

Benchers discussed the Law Society of Alberta's mentoring programs. Mr. Warren spoke about the Mentor Express program, which matches mentors and mentees based on availability, interests, and subject matter expertise. He also spoke about the Mentor Connect program, which is a one-on-one program compulsory for new calls. He noted that the Law Society of Alberta was looking into better alignment between mentors and mentees for a more effective experience.

## **DISCUSSION/DECISION**

### **10. Approval of the Law Society's 2021 Audited Financial Statements**

Jeevyn Dhaliwal, QC, Chair of the Finance and Audit Committee introduced the item, thanking Committee members and staff for all their hard work, which led to a clean audit.

The following motion was passed unanimously:

***BE IT RESOLVED*** to approve the Law Society's 2021 Financial Statements for the General Fund and the 2021 Consolidated Financial Statements for the Lawyers Indemnity Fund.

Benchers discussed challenges with the current one size fits all model for practice fees, as well as plans for the 2023 budget. Mr. Avison indicated that practice fees were being considered by the Finance and Audit Committee. He also spoke about the importance of considering a differential fee structure.

Ms. McPhee added that further information regarding the 2023 budget would be provided at the July Bencher meeting.

## **UPDATES**

### **11. Report on Outstanding Hearing & Review Decisions**

Christopher McPherson, QC, as Tribunal Chair, 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**

### **12. Minutes of May 12, 2022 Executive Committee Meeting**

There was no discussion on this item.

### **13. Three Month Bencher Calendar – June to August 2022**

There was no discussion on this item.

### **Other Business**

Paul Pearson indicated he intended to propose a motion, which he had mentioned at the April Bencher meeting, to appoint an Indigenous representative to the “working group” meetings with government to discuss the move towards a single legal regulator.

Mr. Avison indicated that the meetings with government to date had focused on issues related to the operations of the Law Society, the Society of Notaries Public of BC, and the BC Paralegal Association, and that the Law Society would need to have specific meetings with the government regarding board size and composition and the involvement of Indigenous representation at the appropriate time.

Some Benchers were of the view that the involvement of Indigenous Benchers at this stage would signal to the Attorney General the importance of Indigenous representation in these discussions, particularly when taking into consideration the number of Indigenous Benchers elected during the last Bencher election.

Other Benchers expressed concerns with the timing of the resolution, as the discussions with government to date have been at the staff and operational level, not at the political level, and have not yet included the President or any Benchers. There were also comments that once the discussions with government moved to the political stage, it would then be appropriate that an Indigenous Bencher should be involved in the discussions. Some Benchers also expressed concerns regarding the conflation of the operational role of staff with the strategic role of the board, and highlighted the importance of listening to the advice of staff regarding the approach to the discussions with government.

Ms. Hamilton informed Benchers that she would be asking an Indigenous Bencher to attend with her once she was involved in the discussions, which would likely occur in late June.

The following resolution was made and seconded:

***BE IT RESOLVED*** that the Law Society request that the Ministry of the Attorney General invite an Indigenous Bencher to any meetings regarding the proposed changes to the regulatory framework for legal professionals in BC.

The motion failed.

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

AB  
2022-06-30

DRAFT



# Memo

To: Benchers  
From: Credentials Committee  
Date: July 8, 2022  
Subject: 2022 Law Society Indigenous Scholarship

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The Benchers are asked to ratify the recommendation of the Credentials Committee to award the 2022 Indigenous Scholarship equally between [REDACTED] and [REDACTED].

The Indigenous Scholarship is offered for Indigenous students enrolled in full time legal studies in the province of British Columbia. The scholarship may be awarded to one student (\$20,000) or divided equally between two students (\$10,000 per student) at the discretion of the Credentials Committee. The Indigenous Scholarship aims to enhance the demographic representation of Indigenous lawyers in British Columbia by supporting their legal education.

## Eligibility

The Indigenous Scholarship is open to Canadian Indigenous students who are enrolled in full-time studies at the University of British Columbia, University of Victoria, or Thompson Rivers University law schools.

## Criteria

The Credentials Committee takes the following criteria into consideration:

- i. Academic standing;
- ii. Positive social contributions, such as volunteer work;
- iii. The applicant's intention to practise in British Columbia after completing legal studies; and
- iv. Financial need.

## Recipients

1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

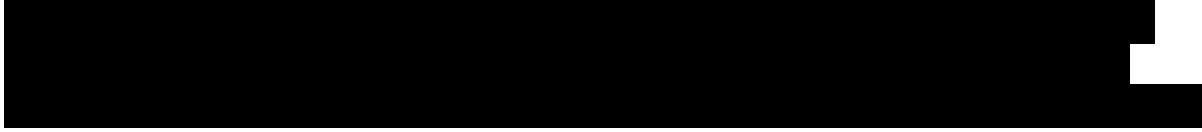
[REDACTED]

2. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



## Attachments

1. Letter of application from [REDACTED], dated April 26, 2022; and
2. Letter of application from [REDACTED], undated.





# Memo

To: Benchers  
From: Credentials Committee  
Date: July 8, 2022  
Subject: 2022 Law Society Scholarship for Graduate Legal Studies

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The Benchers are asked to ratify the recommendation of the Credentials Committee to award the 2022 Law Society Scholarship for Graduate Legal Studies to [REDACTED].

The Law Society Scholarship of \$20,000 is offered annually to eligible candidates to encourage and financially assist those candidates in completing graduate legal studies which will, in turn, ultimately benefit the individual, the province, and the legal profession in British Columbia.

## Guidelines

In addition to examining how the candidate's proposed graduate studies will benefit the individual, the province, and the legal profession in British Columbia, the Committee also takes into consideration:

- i. The candidate's academic standing;
- ii. The candidate's positive social contributions, such as volunteer work;
- iii. Whether the candidate intends to practise in British Columbia after their graduate studies;
- iv. Financial need; and
- v. Importance or significance of proposed graduate work.

Candidates awarded the Scholarship are required to provide a reporting letter on the use of the Scholarship and a copy of the relevant work.

## Recipient

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Attachments**

1. Letter of application from [REDACTED] dated April 11, 2022.



# Memo

To: Benchers  
From: Executive Committee  
Date: July 8, 2022  
Subject: Nomination of the Law Society's Member of the Federation of Law Societies of Canada Council

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## Purpose

The purpose of this memorandum is to recommend revisions to the process and Terms of Reference governing the nomination of the Law Society's member of the Federation of Law Societies of Canada Council (Federation Council).

## Background

On November 14, 2022 the term of the Law Society's current member of the Federation Council, Pinder K. Cheema, QC will expire.

The Federation's Bylaws and Governance Policies require each member (Law Society) to advise the Federation President of its nominee for the position of Director on the Federation Council before the annual general meeting of the Federation, which normally takes place each year in the fall. The slate of nominees for election as Directors is put forward, and the members then vote on the slate of nominees for election as Council members at the annual general meeting.

The Federation's Governance Policies require that each member shall ensure that its nominee for the position of Director on the Federation Council possesses, amongst other things, "knowledge of and adequate connection to the current affairs of the law society he or she represents" and "demonstrated leadership in a Canadian law society or other relevant institution".<sup>1</sup>

Under the current Terms of Reference, all current elected and Life (elected) Benchers are eligible to be nominated and to serve as our Council member, provided they are members in good standing.

The Terms of Reference set out the obligations of serving as our Council member, which include attending Federation meetings and conferences and providing a report after each Council

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<sup>1</sup> 2.1.7 of the Federation of Law Societies of Canada Governance Policies "Competencies Required of Directors".

meeting to Benchers and the Executive Committee, as appropriate. Our Council member is also expected to keep the Law Society fully informed about Federation initiatives and priorities, to remain fully informed about the work of the Law Society and the Benchers' strategic priorities and current issues, and to use this information to inform the work of the Council and manage the Council's expectations regarding the Law Society's ability to deal with Federation agenda issues.

## Discussion

At its meeting of June 23, the Executive Committee considered whether there should be a stronger linkage between our Council member and the Law Society's current board, due to the nature of the role of Council member, and the competencies required of directors as stated in the Federation's Governance Policies. Council meetings will often have a number of items that require careful consideration, as well as knowledge of the Law Society's position on current issues. Current Benchers generally have greater familiarity and understanding of these issues, particularly as they develop over the course of the year or years.

The Executive Committee considered the nomination process for the Law Society's Council member and agreed to recommend to Benchers that the Terms of Reference governing the nomination of the Law Society's member of the Federation of Law Societies of Canada Council be revised, so as to nominate only a current Bencher, preferably a member of the Executive Committee, as the Law Society's member of the Federation Council. The Committee also agreed that the Terms of Reference should allow for some flexibility in the event that, during their term on the Federation Council, the Law Society's member becomes a Life Bencher or is not re-elected, that the Council member could still finish out the term. Redlined and clean versions of the Terms of Reference are attached as Appendix A and B, respectively.

## Decision

The Executive Committee recommends that the Benchers the following resolution for Benchers' approval:

***BE IT RESOLVED*** the Benchers approve the revised Terms of Reference governing the nomination of the Law Society's member of the Federation of Law Societies of Canada Council to:

- a) nominate a current Bencher, preferably a member of the Executive Committee, as the Law Society's member of the Federation Council, and
- b) provide that, if the Council member is or becomes a Life Bencher, or is defeated in a Bencher election, the Council member will complete the current balance of their term but will not be eligible for a further term unless re-elected.



## **LSBC Member of the Federation of Law Societies of Canada Council**

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**Terms of Reference**

June 23, 2022

Prepared for: Benchers

Prepared by: Executive Committee

## LSBC Member of the Federation of Law Societies of Canada Council

### TERMS OF REFERENCE

#### Background

[The Federation of Law Societies of Canada](#) (FLSC) is the national coordinating body of [Canada's 14 law societies](#) ~~mandated which collectively~~ regulates Canada's 95,000 lawyers and Quebec's 3,500 notaries. The Federation is the common voice of Canada's law societies on a wide range of issues critical to the protection of the public and the rule of law, including solicitor-client privilege, the importance of an independent and impartial judiciary, and the role of the legal profession in the administration of justice. The Federation is governed by a [national Council](#) that includes a representative from each of the 14 member law societies.

#### Appointment

1. All current elected ~~and Life (elected)~~ Benchers are eligible to be nominated and to serve as LSBC's FLSC Council Member, provided that they are members in good standing.
2. The Benchers appoint LSBC's Council member from the pool of nominees presented by the Executive Committee.
3. To ensure the Council member possesses adequate knowledge of and connection to the current strategic affairs of the Law Society, it is preferable that the nominee be a member of the Executive Committee in the year the nomination is presented to the Federation.
4. Based on the pool of nominees provide by the Executive Committee, the Benchers decide on who to put forward for election as the LSBC's Council member from the pool of nominees presented by the Executive Committee.
35. The Executive Committee manages the appointment process, which includes:
  - setting the term of appointment (generally a period of three years, unless the Executive Committee directs otherwise);
  - inviting and reviewing nominations;
  - preparing a pool of nominees from the nominations received for the Benchers' consideration; and
  - notifying the nominees and FLSC of the Benchers' appointment decision.
46. The Council member, on completing a first term, may be considered by the Executive Committee to be ~~appointed-nominated~~ by the Benchers for one further term.

Note that Appendix 35, section 2 of the Bencher Governance Policies applies: "Law Society appointments to any position will normally be up to a total period of six years, ~~provided that other considerations relating to that particular appointment may result in a shortening or~~

~~lengthening of this period.~~ An initial appointment to a position ~~does should~~ not ~~carry create~~ with it an expectation of automatic reappointment ~~for up to six years.~~”

7. If the Council member becomes a Life Bencher, or is defeated in a Bencher election, the Council member will complete the current balance of their term, but will not be eligible for a further term unless re-elected.

## Service

1. The Council member, as a condition of accepting the position, will agree to make genuine efforts to complete the full term and then, if offered, to accept and complete the term on the FLSC Executive Committee ladder. More particularly, the Council member will not accept a judicial appointment or other position that requires withdrawing from Council.

~~2. If the Council member is or becomes a Life Bencher, or is defeated in a Bencher election, the Council member will complete the full term of the Council appointment.~~

~~3.2.~~ The Council member will strive to:

a. attend all FLSC Council meetings; ~~(currently three in person and one telephone meeting per year)~~

b. provide a written report to the Benchers after each Council meeting ~~to the Benchers at for~~ their next meeting, and where appropriate, to the Executive Committee at their next meeting and attend Benchers meetings as requested to facilitate this obligation and answer questions;

~~e.~~ provide supporting documentation received from FLSC to LSBC as appropriate to ensure that LSBC is fully informed about ~~national~~ initiatives and the FLSC agenda;

~~d.c. attend Benchers meetings to facilitate this obligation and answer questions~~

~~e.d.~~ attend all FLSC Conferences; ~~(currently semi-annual)~~

~~f.e.~~ obtain instructions ~~from LSBC, where necessary~~ regarding ~~matters matters for~~ decision on the FLSC agenda;

i. ~~which instructions may come~~ from the President in consultation with the First Vice-President, Second Vice-President and the CEO, or the Executive Committee, or the Benchers;

ii. Bencher approval will generally be obtained for matters touching on regulatory issues such as rule or policy changes, and financial commitments;

~~g.f.~~ remain fully informed about the work of LSBC and in particular, the Benchers' strategic priorities and current issues;<sup>1</sup>

~~h.g.~~ where appropriate, use such information to inform the work of the Council and manage Council's expectations regarding LSBC's ability to deal with FLSC agenda issues;

~~i.h.~~ as appropriate, convey LSBC 's desire for FLSC to achieve certain objectives;

~~j.i.~~ facilitate an exchange of information between LSBC and other law societies on matters of common interest; and

~~k.j.~~ participate fully in the national deliberations and work of whatever Council committee(s) the Council member may join.

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<sup>1</sup> Therefore the Council member will be included in the distribution of agendas and supporting materials (including *in camera*) for Benchers and Executive Committee meetings.



The Law Society  
*of British Columbia*



## **LSBC Member of the Federation of Law Societies of Canada Council**

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**Terms of Reference**

June 23, 2022

Prepared for: Benchers

Prepared by: Executive Committee

## LSBC Member of the Federation of Law Societies of Canada Council

### TERMS OF REFERENCE

#### Background

[The Federation of Law Societies of Canada](#) (FLSC) is the national coordinating body of [Canada's 14 law societies](#) which collectively regulate Canada's 95,000 lawyers and Quebec's 3,500 notaries. The Federation is the common voice of Canada's law societies on a wide range of issues critical to the protection of the public and the rule of law, including solicitor-client privilege, the importance of an independent and impartial judiciary, and the role of the legal profession in the administration of justice. The Federation is governed by a [Council](#) that includes a representative from each of the 14 member law societies.

#### Appointment

1. All current elected Benchers are eligible to be nominated and to serve as LSBC's FLSC Council Member, provided that they are members in good standing.
2. The Benchers appoint LSBC's Council member from the pool of nominees presented by the Executive Committee.
3. To ensure the Council member possesses adequate knowledge of and connection to the current strategic affairs of the Law Society, it is preferable that the nominee be a member of the Executive Committee in the year the nomination is presented to the Federation.
4. Based on the pool of nominees provide by the Executive Committee, the Benchers decide on who to put forward for election as the LSBC's Council member from the pool of nominees presented by the Executive Committee.
5. The Executive Committee manages the appointment process, which includes:
  - setting the term of appointment (generally a period of three years, unless the Executive Committee directs otherwise);
  - inviting and reviewing nominations;
  - preparing a pool of nominees from the nominations received for the Benchers' consideration; and
  - notifying the nominees and FLSC of the Benchers' appointment decision.
6. The Council member, on completing a first term, may be considered by the Executive Committee to be nominated by the Benchers for one further term.

Note that Appendix 5, section 2 of the Bencher Governance Policies applies: "Law Society appointments to any position will normally be up to a total period of six years. An initial appointment to a position should not create an expectation of automatic reappointment."

7. If the Council member is or becomes a Life Bencher, or is defeated in a Bencher election, the Council member will complete the current balance of their term, but will not be eligible for a further term unless re-elected.

## Service

1. The Council member, as a condition of accepting the position, will agree to make genuine efforts to complete the full term and then, if offered, to accept and complete the term on the FLSC Executive Committee ladder. More particularly, the Council member will not accept a judicial appointment or other position that requires withdrawing from Council.
2. The Council member will strive to:
  - a. attend all FLSC Council meetings;
  - b. provide a written report to the Benchers after each Council meeting for their next meeting, and where appropriate, to the Executive Committee at their next meeting and attend Benchers meetings as requested to facilitate this obligation and answer questions;
  - c. provide supporting documentation received from FLSC to LSBC as appropriate to ensure that LSBC is fully informed about initiatives and the FLSC agenda;
  - d. attend all FLSC Conferences;
  - e. obtain instructions regarding matters for decision on the FLSC agenda:
    - i. from the President in consultation with the First Vice-President, Second Vice-President and the CEO, or the Executive Committee, or the Benchers;
    - ii. Bencher approval will generally be obtained for matters touching on regulatory issues such as rule or policy changes, and financial commitments;
  - f. remain fully informed about the work of LSBC and in particular, the Benchers' strategic priorities and current issues;<sup>1</sup>

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<sup>1</sup> Therefore the Council member will be included in the distribution of agendas and supporting materials (including *in camera*) for Benchers and Executive Committee meetings.

- g. where appropriate, use such information to inform the work of the Council and manage Council's expectations regarding LSBC's ability to deal with FLSC agenda issues;
- h. as appropriate, convey LSBC 's desire for FLSC to achieve certain objectives;
- i. facilitate an exchange of information between LSBC and other law societies on matters of common interest; and
- j. participate fully in the national deliberations and work of whatever Council committee(s) the Council member may join.



# Memo

To: Benchers  
 From: Executive Committee  
 Date: June 29, 2022  
 Subject: Executive Director's Authority and Discretion under Rule 2-29

## Background

The Legal Profession Act provides that the Benchers may make rules to do any or all of the following:

- (a) permit a person holding professional legal qualifications obtained in a country other than Canada to practise law in British Columbia;*
- (b) attach conditions or limitations to a permission granted under paragraph (a);*
- (c) make rules establishing conditions or limitations under which permission may be granted under paragraph (a), including payment of a fee.*

In accordance with that authority, the Benchers provided in Rules 2-28 to 2-34 for a process by which a person holding professional qualifications in another country could be issued a permit to act as a practitioner of foreign law in British Columbia. The issuance of the permit is contingent on the applicant meeting certain requirements set out in Rule 2-29(2) to the satisfaction of the Executive Director but the requirements as set out in the subsection are mandatory.

Presently, we have only 35 practitioners of foreign law (POFLs, pronounced "Poffles") with current permits. The table shows that the vast majority of POFLs are US attorneys.

USA	26
China	2
England	2
Iran	2
Namibia	1
Hong Kong	1
Mexico	1

## Problem

As the applicant must meet all the requirements set out in Rule 2-29(2) to the satisfaction of the Executive Director, the failure to meet even one of the requirements, in whole or in part, means that the applicant cannot be issued a permit.

Recently, an applicant for a POFL permit was denied a permit as he was unable to meet the requirement that the applicant must have practised the law of a foreign jurisdiction for at least 3 of the past 5 years. Rule 2-29(2)(d) does provide that if the applicant does not meet that requirement, the applicant can undertake to act as a POFL in British Columbia under the direct supervision of a POFL who has practised law in that foreign jurisdiction for at least 3 of the past 5 years. However, there was no POFL able to meet this requirement and supervise the applicant. Despite this, the circumstances of the applicant's proposed scope of work were such that an appropriate limitation on the extent of applicant's practice could have been acceptable if the Rule had permitted it. Given the wording of Rule 2-29, such an exercise of discretion was not available.

## Decision

As the POFL Rules provide that the Executive Director *may* issue a POFL permit if *satisfied* that the requirements in Rule 2-29(2) are met, the intent of the Rule is clearly to provide the Executive Director with the discretion to issue the permit. The Executive Committee recommends that the POFL Rules be amended to provide that the Executive Director has the discretion to consider an applicant's exceptional circumstances and to accept some non-compliance with the requirements, with or without conditions or limitations on the POFL's scope of practice as a result.

The following resolution is before the Benchers for approval:

**BE IT RESOLVED** that the Benchers approve in principle amending the Rules to provide that the Executive Director has the discretion to consider an applicant for a practitioner of foreign law permit's exceptional circumstances and to issue the permit notwithstanding that the applicant has not fully met all of the requirements and to impose conditions or limitations on the practice of the applicant as appropriate.

The required Regulatory Impact Assessment is attached.

# Regulatory Impact Assessment

The Law Society  
of British Columbia



<b>Title of Report:</b>	Executive Director's Authority and Discretion Under Rule 2-29
<b>Committee:</b>	Executive Committee
<p><i>The intent of the Regulatory Impact Assessment is to provide Benchers with a high level evaluation on the impact of the policy 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.</i></p>	

## A. Impact on the Public

A.1 Public Interest		
<b>A.1.1 What aspects of the public interest are impacted or advanced through the recommendation?</b>	<input type="checkbox"/> Access to Justice <input checked="" type="checkbox"/> Improved regulation of the practice of law <input type="checkbox"/> Protection or advancement of the Rule of Law <input type="checkbox"/> Addressing an area of identifiable risk to the public and/or justice system	
<b>A.1.2 How will the public benefit from the recommendation?</b>	<b>Comments:</b> The provision of legal advice within British Columbia regarding the laws of a foreign jurisdiction may assist the public to obtain legal advice more conveniently by seeking advice from someone practising in British Columbia rather than from someone resident in the foreign jurisdiction. The recommendation will provide the Executive Director with some discretion in applying the current requirements to the specific circumstances of an applicant.	
<b>A.1.3 Does the recommendation have any other regulatory impacts that will affect the public?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	<b>Comments:</b>

A.3 Reconciliation with Indigenous Peoples		
A.3.1 Does the recommendation extend to addressing reconciliation with Indigenous Peoples?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:
A.4 Equity, Diversity and Inclusion		
A.4.1 Does the recommendation impact the equitable treatment of diverse individuals?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Comments: To the extent that applicants for a permit to act as a practitioner of foreign law in British Columbia are citizens of the foreign jurisdiction, the provision of discretion to the Executive Director as recommended may increase the ability of foreign lawyers to obtain a permit.
A.5 Transparency and Disclosure		
A.5.1 Does the recommendation impact current levels of transparency and disclosure?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:

## B. External Impacts

B.1 Licensee Interest		
B.1.1 Does the recommendation impact the administrative burdens or overhead costs on lawyers?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:
B.1.2 Does the recommendation impact licensee perception of the Law Society?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:
B.2 Public Relations		
B.2.1 Does the recommendation impact the public perception of the legal profession generally?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:
B.2.2 Does the recommendation impact the public perception of the Law Society?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:
B.3 Government Relations		
B.3.1 Does the recommendation impact the government perception of the legal profession?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:
B.3.2 Does the recommendation impact government perception of the Law Society?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:
B.4 Privacy Impact Assessment		
B.4.1 Does the recommendation include the collection, use or disclosure of personal information?	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments: The recommendation may require the applicant to provide further information in relation to the non-compliance with one or more of the requirements.
B.4.1.1 Was a Privacy Risk Assessment completed?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments: The nature of the further information is the same as the current information required of



		an applicant. The recommendation may simply increase the amount of information required.
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## C. Internal (Organizational) Impacts

C.1 Legal		
C.1.1 Does the recommendation meet legal requirements, statutory or otherwise?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Comments:
C.1.2 Does the recommendation impact outstanding legal issues or litigation?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:
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?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Comments: Some small amount of additional work may be required to evaluate and assess additional information about exceptional circumstances but there only a small number of applications for the permit each year and only a small portion of those could be expected to require the exercise of discretion in light of exceptional circumstances.
C.3 Costs		
C.3.1 Does the recommendation increase operational costs?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:
C.3.2 Does the recommendation require additional staff or significant staff time?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:



# Memo

To: Benchers  
From: Jeffrey G. Hoskins, QC  
Date: June 15, 2022  
Subject: **Minor corrections to Law Society Rules**

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1. I attach draft rule amendments and a resolution to correct minor errors in the Law Society Rules that have recently come to light. These changes do not affect the rules in any substantive way, but clarify that a provision applies to both credentials and discipline hearings and restore a provision that was inadvertently omitted from the general revision of Tribunal rules effective January 2022.

## Drafting notes

2. Rule 5-4.3(2) is intended to allow the Tribunal Chair to refer a preliminary question to the panel that will conduct the eventual hearing on the merits of the matter. However, the current wording refers only to “the hearing of the application.” To clarify that the provision applies to discipline hearings as well as credentials, it is proposed to expand that phrase to “the hearing of the citation or credentials application.”
3. The rule on “Notice to admit” in citation procedure, currently Rule 5-4.8 was previously Rule 4-28. In the general update of Tribunal rules, the provision for a party to apply to withdraw an admission before or during the hearing of the citation was inadvertently omitted. While that provision is not strictly necessary, it is proposed to reinstate the provision as Rule 5-4.8(9).

Attachments: drafts  
resolution

JGH

**CORRECTIONS****RESOLUTION:**

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

1. *Rule 5-4.3 (2) (c) is amended by striking “at the hearing of the application” and substituting “at the hearing of the citation or credentials application”.*
2. *Rule 5-4.8 is amended by adding the following subrule:*
  - (9) A party who has admitted or is deemed to have admitted the truth of a fact or the authenticity of a document under this rule may withdraw the admission with the consent of the other party or with leave granted on an application
    - (a) before the hearing has begun, under Rule 5-4.3 [*Preliminary questions*] or 5-5.1 [*Pre-hearing conference*], or
    - (b) after the hearing has begun, to the hearing panel.

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

# LAW SOCIETY RULES

## PART 5 – TRIBUNAL, HEARINGS AND APPEALS

### Practice and procedure before a hearing panel

#### Preliminary questions

- 5-4.3 (2) When an application is made under subrule (1), the Tribunal Chair must do one of the following as appears to the Tribunal Chair to be appropriate:
- (c) refer the question to the panel at the hearing of the citation or credentials application.

#### Notice to admit

- 5-4.8 (9) A party who has admitted or is deemed to have admitted the truth of a fact or the authenticity of a document under this rule may withdraw the admission with the consent of the other party or with leave granted on an application
- (a) before the hearing has begun, under Rule 5-4.3 [Preliminary questions] or 5-5.1 [Pre-hearing conference], or
  - (b) after the hearing has begun, to the hearing panel.



## **CEO's Report to the Benchers**

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July 8, 2022

Prepared for: Benchers

Prepared by: Don Avison, QC

## 1. The Cullen Commission Report

Commissioner Cullen’s final report was provided to the Attorney General on June 3 and was released publically on June 15. The report resulted from a 3-year process during which the Commission heard from almost 200 witnesses. Commissioner Cullen confirmed that money laundering is a serious problem in British Columbia, one that requires serious attention from government, law enforcement and regulators.

Below are Commissioner Cullen’s observations regarding the Law Society:

- “It is clear to me that the Law Society, with the support of the Federation, has taken its role as the public interest regulator seriously. I find that it is engaged with anti–money laundering issues and continues to revisit its Rules to address emerging issues and risks.”
- Regarding the risk of money laundering and lawyers: “In my view, the rules adopted by the Law Society with respect to limitations on accepting cash, customer identification and verification, and trust account regulation go a long way to mitigating those risks.”
- Regarding the powers of the Law Society to investigate and regulate, and its effectiveness:
  - “The Law Society has significant powers to regulate its members. In my view, some of the critiques that have been levelled at the Canadian anti–money laundering regime with respect to lawyers have failed to fully appreciate the extent of these powers and the degree to which the Law Society engages in anti– money laundering regulation and oversight.”
  - “Nor should the Law Society’s role in regulating lawyers be underestimated. The Law Society is empowered to review all material possessed by lawyers, including privileged information. It is therefore uniquely placed to examine all aspects of a lawyer’s practice, and it has powerful sanctions at its disposal. In some ways, Law Society regulation is able to target lawyer misconduct more effectively than the criminal justice system.”
- Regarding suggestions for a FINTRAC-style reporting regime for lawyers:
  - “[I]t has been suggested that the Province of British Columbia should design its own reporting regime for lawyers ... In my opinion, the difficulties

that would be involved in designing such a regime are so great that the Province should not attempt to do so.”

The Commissioner’s key findings in relation to the legal professions (including notaries), included the following:

- Lawyers are exposed to significant money laundering risks, but are subject to extensive regulation by the Law Society of British Columbia.
- Solicitor-client privilege and the duty of commitment have received constitutional protection for good reason.
- Given the nature of sophisticated money laundering schemes, the involvement of a lawyer at some point is almost inevitable. Areas of money laundering risk involving lawyers include: the use of lawyers’ trust accounts, the purchase and sale of real estate, private lending, incorporations, the creation of trusts and partnerships, and the facilitation of financial transactions.
- Although risks are significant, “the Law Society has mitigated many of them through robust regulation” and lawyers face “extensive regulation for money laundering by the Law Society.” This regulation “goes a long way to addressing the exclusion of lawyers from the *PCMLTFA* regime, although there is room for improvement.”
- The cash transactions rule “is actually more stringent than large cash transactions reporting under the *PCMLTFA*”. The Law Society’s client identification and verification rules parallel or exceed *PCMLTFA* measures. The trust accounting rules and audit process “significantly mitigate the money laundering risks associated with trust accounts.”
- Ethical obligations prohibiting assisting crime, fraud, or dishonesty and a requirement to withdraw if a client persists in instructing a lawyer to act contrary to professional ethics “enable the Law Society to quickly respond to evolving risks [as] an important part of its anti-money laundering regulation.”
- A reporting regime for lawyers poses significant constitutional challenges and should not be pursued. Although the Commissioner’s report is not the proper forum to determine if it is possible to create a constitutionally compliant reporting regime for lawyers, “attempting to do so would be very challenging due to issues with solicitor-client privilege and the duty of commitment” to a client’s cause. The province should not attempt to design such a reporting regime.

- Lawyer AML regulation must take a different form than other sectors, in order to accommodate constitutional rules that apply to lawyers. Instead of a reporting regime, a better approach for the legal sector should focus on:
  - continuing to revisit and expand anti–money laundering regulation by the Law Society, including limiting the circumstances in which a client’s funds can be deposited to a trust account;
  - strengthening and making better use of information-sharing arrangements between the Law Society and other stakeholders;
  - increasing the Law Society’s use of its ability to refer matters to law enforcement where there is evidence of a potential offence;
  - encouraging law enforcement to make better use of existing mechanisms by which it can access the information it needs from lawyers during investigations; and
  - increasing public awareness about these measures to counter any perception that transactions conducted through a lawyer in furtherance of an unlawful aim are immune from detection.
- It is essential that law enforcement bodies and regulators bring concerns about the involvement (or potential involvement) of lawyers in money laundering activity to the attention of the Law Society for investigation.

Commissioner Cullen made 13 recommendations of direct relevance to the legal professions and the Law Society. Recommendations 53 through 65 can be viewed in the final report here: [Commission of Inquiry into Money Laundering in British Columbia \(cullencommission.ca\)](http://cullencommission.ca)

I would also commend to your attention recommendations 3, 33 and 43 that have relevance to the work of the Law Society.

We are currently reviewing the report and Benchers can expect that we will be bringing forward a number of recommendations at future Bencher meetings, beginning with establishment of a proposed Trust Review Task Force which, if approved, will result in focused assessment of the Commission’s recommendations, assess current trust accounting rules and consider creation of a set of uniform trust accounting rules in light of a potential single regulator for lawyers, notaries and licensed paralegals.



At the July 8, 2022 meeting of Benchers, I am planning to have Ludmila Herbst, QC, counsel for the Law Society during the Commission proceedings, available to speak about the Commissioner's Report and to answer any questions for her that Benchers might have.

That meeting will also provide an opportunity for me to recognize the considerable contributions made by a number of colleagues and others who did outstanding work in providing the Commissioner with information regarding the role of, and performance by, the Law Society.

I can also advise Benchers that I was asked to provide a Canadian perspective on anti-money laundering initiatives, the 2015 Supreme Court of Canada decision in the Federation case and on the implications of the Cullen Commission Report at a Commonwealth Lawyers Association webinar. The event on "Anti-Money Laundering and Counter-Terrorist Financing Measures and their Impact on Legal Professional Privilege and Privacy Rights" took place on June 28 and was attended by approximately 500 participants. I believe our contribution to this dialogue was well-received.

## **2. Discussions Regarding Proposed Single Legal Regulator**

The first phase of discussions with government, notaries and paralegals has now been completed. The next step will be the release of the government's "Intentions Paper" which we expect will happen in July of this year.

At the July 8 meeting of Benchers an *in camera* update will be provided regarding the most recent discussions that took place in Victoria on June 27, 2022.

President Hamilton and I will be doing some regional sessions on this in July and August and I expect additional roundtables will take place beyond the summer months.

## **3. Call and Admission Ceremonies**

After a gap of more than two years, we were able to conduct two call ceremonies at the Vancouver Law Courts on June 17, 2022. Two additional ceremonies are now scheduled for the morning and afternoon of July 15.

I wish to express my thanks to Lesley Small and her colleagues for all the work they did to make our return to in-person call ceremonies a success.

## **4. Data Set on Age Distribution in the Profession (2002-2021)**

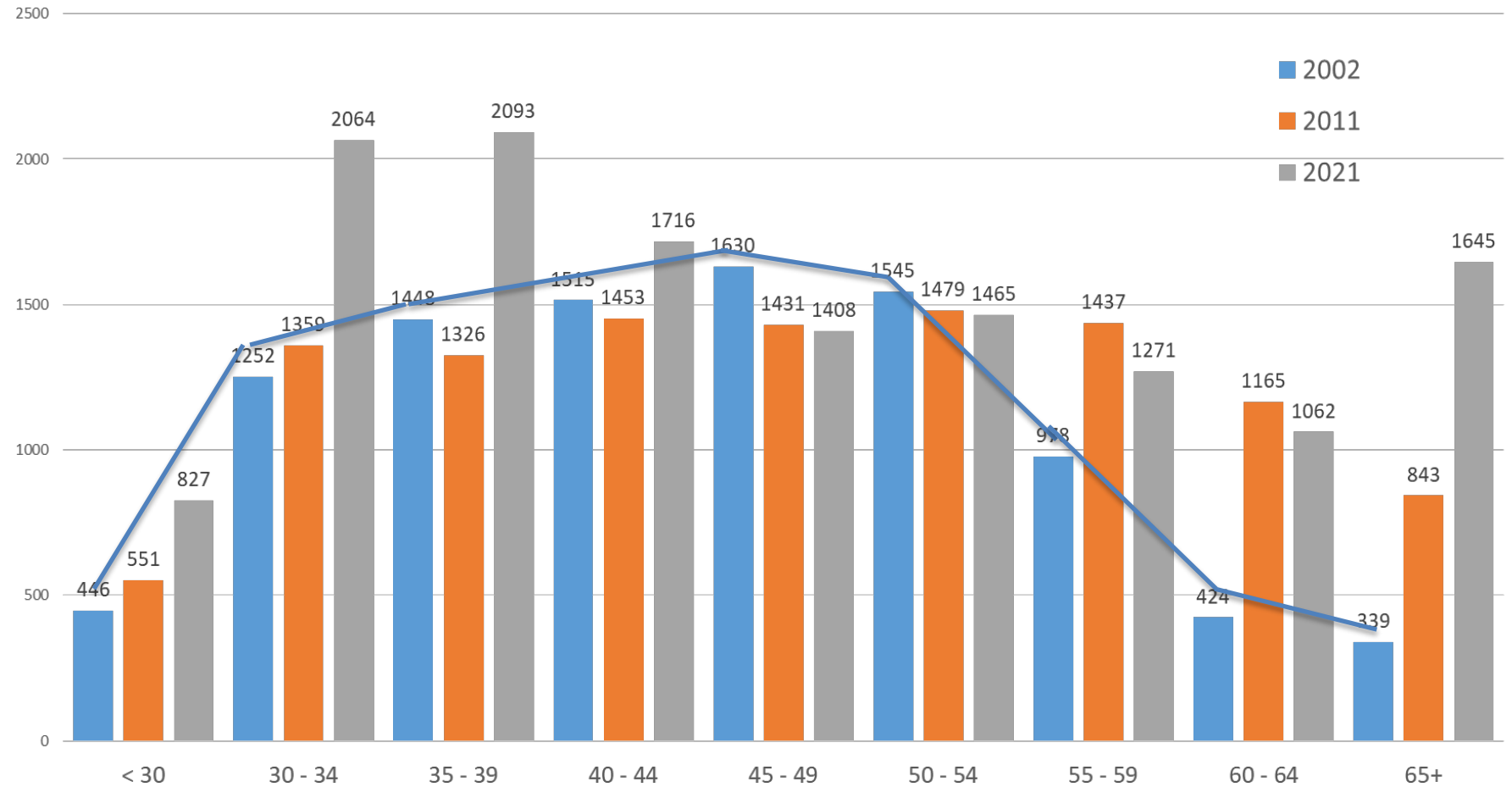
I am always grateful for the data analysis my colleague Adam Whitcombe, QC does on various aspects of the profession. In the attached set Adam has looked at the shift in age

distribution over the course of the last two decades. The Benchers may wish to consider having a discussion about the significance of this information at a future meeting.

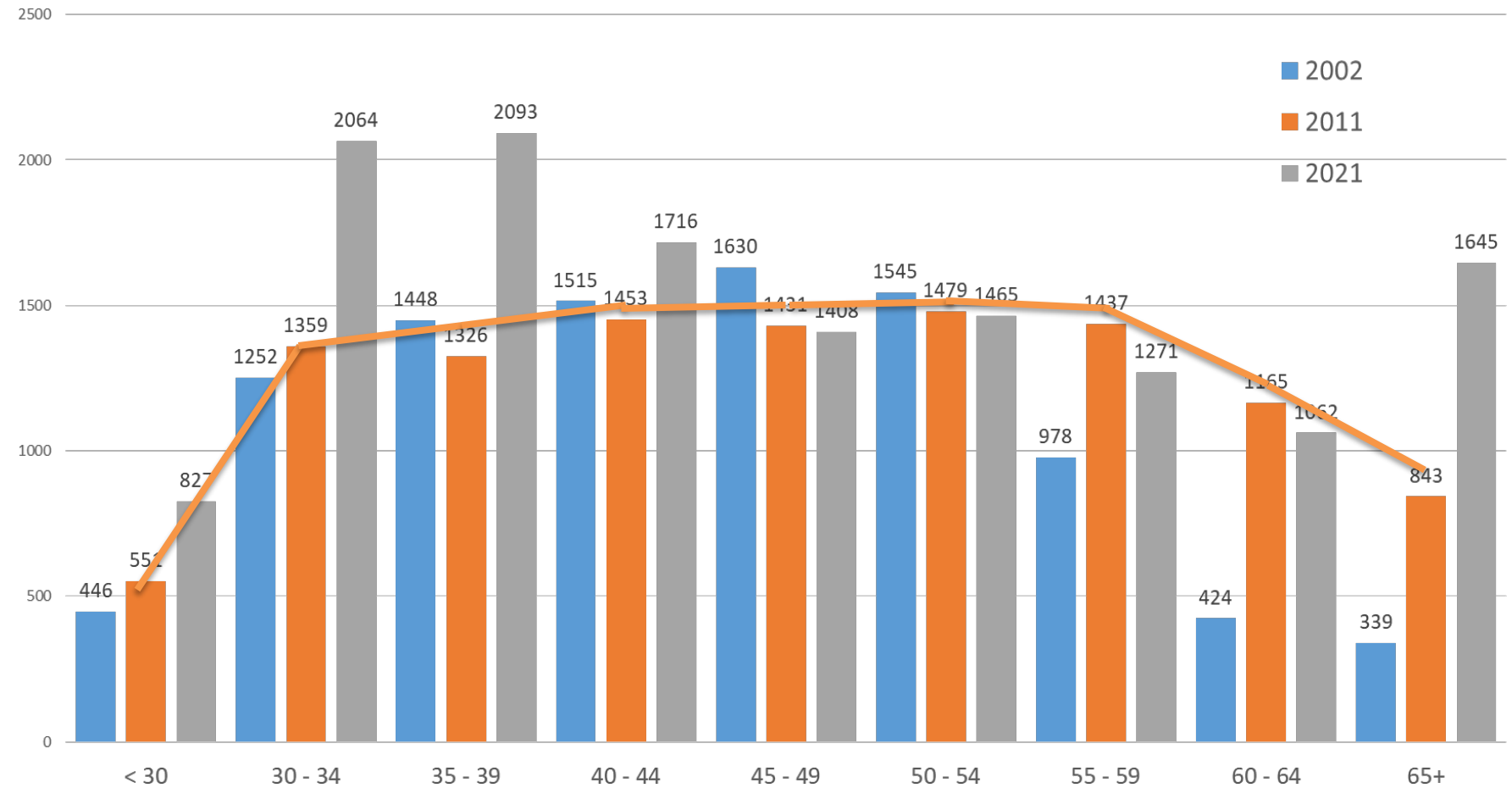
Don Avison, QC  
Chief Executive Officer

Over the 20 year period from 2002 to 2021, the age distribution of the profession has changed significantly.

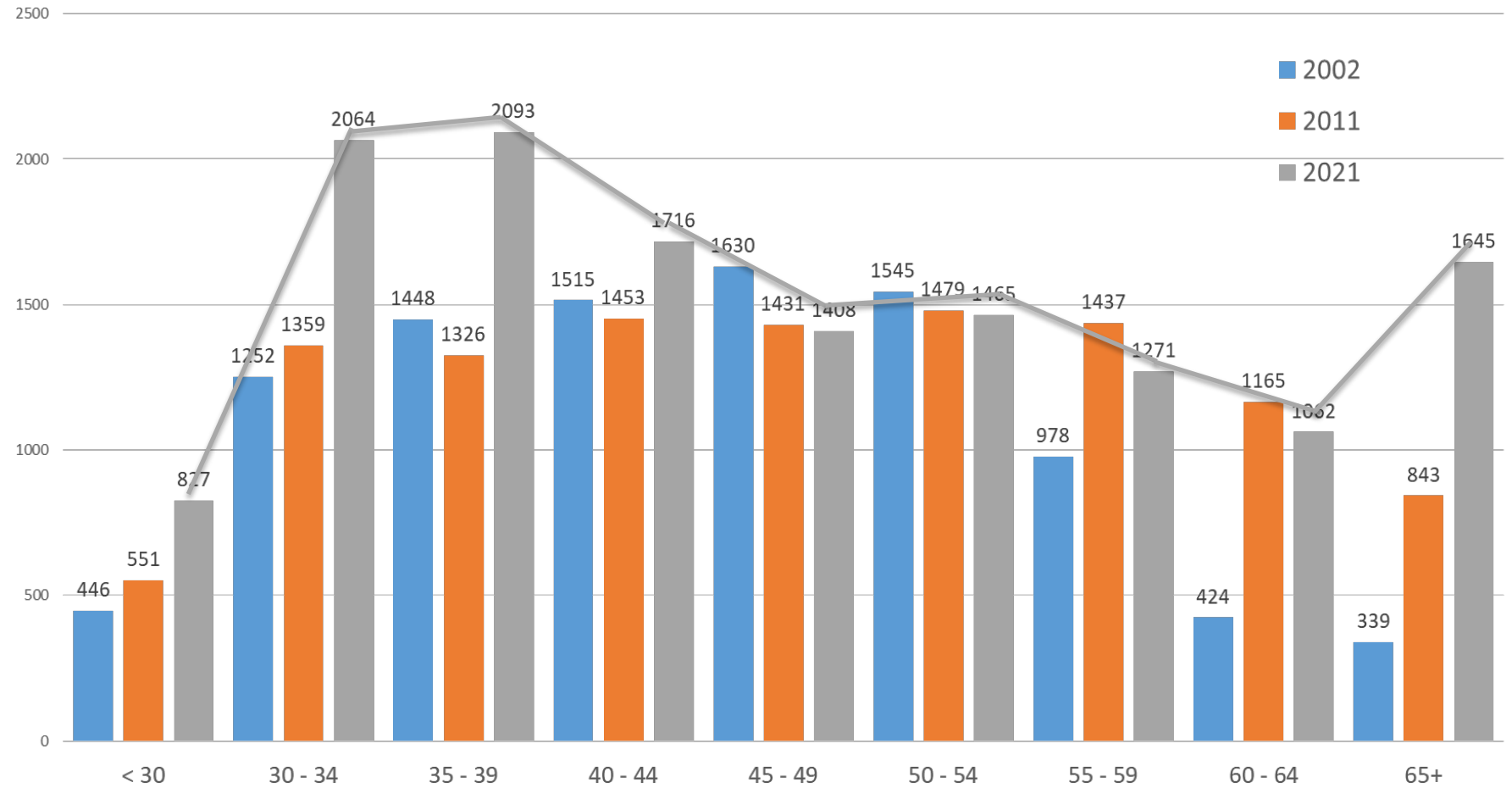
In 2002, the age distribution was very close to a bell curve, with 446 practising lawyers less than 30, rising to 1,630 between the ages of 45 – 49 and declining to 339 65 or older.



By 2011, the curve had flattened considerably, such that the number of lawyers between 30 and 59 averaged just over 1,400 in each of the 5 year age groups.



By 2021, the curve had inverted somewhat such that fully 1/3<sup>rd</sup> of the bar was under the age of 40 and those 65 or older accounted for 12%, up from 3.5% in 2002.





# Memo

To: Benchers  
From: Executive Committee  
Date: June 30, 2022  
Subject: A Trust Review Task Force

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The Committee is very aware of Harry Cayton’s observation “*Not-for-profit bodies seem obsessed with committees and working groups and taskforces.*” However, the Committee is also of the view that there is a need for a comprehensive look at our trust accounting and related rules in light of three recent developments and is also of the view that a task force is required because of the scope of work and the need for consultation and engagement.

The first development is the 13 recommendations to the Law Society in the report of Commission of Inquiry into Money Laundering in British Columbia (the “Cullen Commission”). The recommendations provide directions on continued cooperation with the Federation of Law Societies of Canada regarding anti-money laundering policy, suggest amendments and improvements to our trust and client identification rules, propose further anti-money laundering education of both our staff and lawyers and greater coordination with law enforcement and communication with the public. A copy of the 13 recommendations is attached as Appendix A.

The second development is the likelihood that within the next 12 to 18 months, we will have to reconcile our trust accounting rules with those of the Society of Notaries Public and produce a uniform set of trust accounting rules that, among other considerations, reflect the requirement that solicitor-client privilege applies to lawyer management of trust funds but does not apply to notarial management of trust funds.

The third development is one that has been raised a number of times, both generally and specifically, regarding the increasing complexity of our trust accounting obligations and related requirements and the difficulty that practitioners have in complying completely with the rules and having the resources required to meet those obligations. While the rules may need to be as they are to ensure that the public can have confidence that money entrusted to lawyers is handled properly, we have not tested that proposition for some time and it seems appropriate to give this consideration now if we have to look at our trust accounting rules at any rate.

The Committee therefore recommends the creation of a Trust Review Task Force with the Terms of Reference set out in Appendix B.

## Appendix A

### Cullen Commission Recommendations to the Law Society

#### **Pages 1107 – 1232**

**Recommendation 53:** I recommend that the Law Society of British Columbia work with the Federation of Law Societies of Canada to develop uniform metrics to track, at a minimum:

- the nature and frequency of breaches of rules that are relevant to anti–money laundering regulation;
- the number of breaches that are referred for investigation or into a remedial stream;
- the outcome of the referrals, including the nature and frequency of sanctions that are imposed;
- the rules, policies, and processes law societies have regarding information sharing with and referrals to law enforcement;
- the frequency, nature, and circumstances of the information sharing or referrals, including whether this includes sharing of non-public or compelled information and the stage of a proceeding or investigation at which it occurs; and
- the use of data analytics by law societies.

**Recommendation 54:** I recommend that the Law Society of British Columbia and the Federation of Law Societies of Canada develop systems to facilitate the more effective sharing of tactical information and coordination on investigations that affect multiple jurisdictions or involve lawyers who practise in multiple jurisdictions.

**Recommendation 55:** I recommend that the Law Society of British Columbia amend Rule 3-59 of the *Law Society Rules* to make explicit that any cash received under the professional fees exception to the cash transactions rule must be commensurate with the amount required for a retainer or reasonably anticipated fees.

**Recommendation 56:** I recommend that the Law Society of British Columbia amend its client identification and verification rules to explain what is required when inquiring into a client’s source of money. The rules should make clear, at a minimum:

- that the client identification and verification rules require the lawyer to record the information specified in the fall 2019 *Benchers’ Bulletin*;
- the meaning of the term “source of money”; and
- that lawyers must consider whether the source of money is reasonable and proportionate to the client’s profile.

## Appendix A

### Cullen Commission Recommendations to the Law Society

**Recommendation 57:** I recommend that the Law Society of British Columbia extend the ambit of its client identification and verification rules to include the situations in which a lawyer is truly acting as a gatekeeper. The rules should be extended to include, at a minimum:

- the formation of corporations, trusts, and other legal entities;
- real estate transactions that may not involve the transfer of funds, such as assisting with the transfer of title; and
- litigation involving enforcement of private loans.

**Recommendation 58:** I recommend that the Law Society of British Columbia amend the *Law Society Rules* to require lawyers to verify a client’s identity when holding fiduciary property on the client’s behalf.

**Recommendation 59:** I recommend that the Law Society of British Columbia amend Rule 3-58.1 of the *Law Society Rules* to clarify, at a minimum, what is meant by “directly related to legal services” and to consider how to further limit the use of trust accounts so that they are used only when necessary.

**Recommendation 60:** I recommend that the Law Society of British Columbia promptly remove Commentary [3.1](a) from the *Code of Professional Conduct for British Columbia*.

**Recommendation 61:** I recommend that the Law Society of British Columbia require that all trust auditors and investigators charged with investigating possible transgressions of the trust accounting rules receive anti–money laundering training.

**Recommendation 62:** I recommend that the Law Society of British Columbia implement mandatory anti–money laundering training for lawyers who are most at risk of facing money laundering threats. The education should be required, at a minimum, for lawyers engaged in the following activities:

- the formation of corporations, trusts, and other legal entities;
- transactional work, including real estate transactions;
- some transactions that do not involve the transfer of funds (such as transfer of title); and
- litigation involving private lending.

**Recommendation 63:** I recommend that the British Columbia Solicitor General direct law enforcement to refer matters involving lawyers to the Law Society of British Columbia where appropriate, and that the Law Society continue its advocacy with government, regulators, and other stakeholders about its role and when referrals to the Law Society should be made.



## Appendix A

### Cullen Commission Recommendations to the Law Society

**Recommendation 64:** I recommend that the Law Society of British Columbia review and assess its approach to determining whether it possesses information or documents that may be evidence of an offence, and, if so, whether the executive director should seek approval from the Discipline Committee to deliver the information or documents to law enforcement.

**Recommendation 65:** I recommend that the Law Society of British Columbia and the Province work to increase public awareness of measures available to investigate wrongdoing involving lawyers, including:

- the limitations on the use of a lawyer's trust account;
- the information-sharing agreements that exist between the Law Society and government agencies;
- the ability of the Law Society to refer matters to law enforcement when there is evidence of a potential offence; and
- the pathways that exist for law enforcement to obtain information about lawyers during investigations.

## Appendix B



# Trust Review Task Force

## Terms of Reference

As of:

## Mandate

1. The Task Force is responsible for considering recommendations from the Commission of Inquiry into Money Laundering in British Columbia (the “Cullen Commission”) regarding the handling of trust funds and management of trust accounts by lawyers, notaries and licensed paralegals.
2. The Task Force is also responsible for assessing the current trust accounting rules and any related rules, such as the client identification requirements, against the objectives of those rules and any expressions of concern about the rules or their enforcement.
3. Finally, the Task Force is also responsible for taking into account both its findings about the existing trust accounting and related rules and any recommendations from the Cullen Commission to develop a set of uniform trust accounting rules in light of the intended creation of a single legal regulator of lawyers, notaries and licensed paralegals.

## Composition

The Task Force shall consist of:

1. a Chair, who must be a sitting Bencher;
2. at least one appointed Bencher;
3. at least one practising notary; and
4. a minimum of four members who are not Benchers, including at least two lawyers from firms of five or fewer lawyers.

The composition should also reflect as much as possible the diversity of the legal profession, including geographic diversity.

## Meeting Practices

1. The Task Force shall operate in a manner that is consistent with the Benchers’ governance policies.
2. The Task Force shall meet as required.
3. Meetings may be held in-person, virtually or a combination of both.
4. Quorum is at least half of the members of the Task Force (Rule 1-17(1))

## **Accountability**

The Task Force is accountable to the board.

## **Reporting Requirements**

The Task Force will provide to the Benchers an interim report within six months describing the problems or issues, if any, the Task Force has identified arising from the three areas of its mandate. The Task Force will also provide additional interim reports as necessary to keep the board advised of progress on fulfilling its mandate and provide a final report to the Benchers with any recommendations no later than December 31, 2023.

## **Duties and Responsibilities**

1. Take an evidenced-based, data-driven, outcomes-focused approach to the matters identified in the mandate and to any recommendations to the Benchers that it may make.
2. Ensure that the assessment focusses on the risk of harm to the public, the legal professions and the justice system and that the recommendations reflect a proportionate response to the risk of harm, taking into account the regulatory impact of the recommendations.
3. Ensure the work of the Task Force provides for input from the public, the legal professions and other stakeholders regarding matters within the Task Force's mandate.
4. Consult widely to ensure a broad engagement on the matters identified in the mandate and to assess any expressions of concern about the trust and related rules and their enforcement.
5. Take into account the work of the Federation of Law Societies of Canada and other law societies on the matters identified in its mandate.

## **Staff Support**

Chief Financial Officer & Director of Trust Regulation  
Deputy Director of Trust Assurance  
Director, Policy and Planning



# **An Independent Tribunal Chair**

## **Report to Benchers**

Date: June 28, 2022

Prepared by: Staff

Purpose: For Decision

## A. Resolution

1. The following resolution is proposed for consideration by the Benchers:

**BE IT RESOLVED** to amend Rule 5-1.3 along with any necessary consequential amendments to provide for the appointment of an independent Tribunal Chair who is compensated, who is not a current Bencher, and whose appointment is based on the skills, experience and character necessary to carry out the duties of Tribunal Chair.

## B. Background

2. At the May 2022 Bencher retreat, the issue of whether the appearance of independence of the Tribunal Chair is compromised where a current Bencher is required to be appointed to that role was considered and discussed in the breakout groups. Overall, there appeared to be a consensus that the person holding the office of Tribunal Chair should be independent of the Benchers. Several Benchers suggested that a past Bencher might be the most appropriate appointee, having knowledge of the Law Society and its procedures but no longer involved in the policy and regulatory functions of the board.
3. Staff has prepared this report outlining the history of this issue, a review of the policy considerations and a recommendation reflected in the resolution above.
4. The evolution of the Law Society's regulatory hearing processes has been an incremental project keeping pace with contemporary thinking about administrative hearings by regulatory bodies.
5. Prior to 2011, only benchers and life benchers were eligible to adjudicate discipline and credentials hearings and reviews. In 2008, the *Lawyer Independence and Self-Governance Committee* concluded that the Benchers should consider differentiating more between the adjudicative and prosecutorial functions of the Bencher, either by establishing a class of Benchers who do hearings and Benchers who don't or by separating the functions altogether. The Committee reported, in part:

*There is an overlap between the prosecutorial and adjudicative functions of the Law Society. The Law Society is responsible for the prosecution of discipline hearings and credentials applications, a process that is overseen by the Discipline and Credentials Committees of the Benchers. The President appoints the members of hearing panels and panels must be chaired by a lawyer Bencher. In practice, hearing panels are routinely comprised of Benchers or life-Benchers. The Committee recognizes that, on its face, this overlap of functions could be viewed as a conflict and may raise an*

*apprehension of bias on the part of both the public at large and members of the Law Society.*

6. The Benchers received the Committee's report in April 2008 and resolved to refer the matter to the *Independence and Self-Governance Advisory Committee*, forerunner of the current Ethics and Lawyer Independence Advisory Committee. At the end of 2009, that Committee recommended that the Benchers establish a task force to develop models for separation of the Law Society's adjudicative and investigative functions and to make a recommendation about which model to adopt.
7. The *Task Force Examining the Separation of Adjudicative and Investigative Functions of the Benchers* was established and reported to the Benchers in July 2010. Following a policy discussion, the Benchers adopted the Task Force's recommendation to "create a pool of individuals who can be appointed to hearing panels" and that the pool include:
  - a. sitting Benchers (the "Bencher pool")
  - b. life Benchers, and former lawyer Benchers and other lawyers ... (the "lawyer pool"); and
  - c. life appointed Benchers, former appointed Benchers, and other non-lawyer non- benchers ... (the "public pool").
8. In May 2014, the Benchers established the *Tribunal Program Review Task Force* to review the tribunal processes implemented since 2011 and to identify any further reforms that the benchers should consider. That Task Force presented its final report to the Benchers in September 2015 and among its nine recommendations, proposed that the Benchers appoint an independent Tribunal Chair stating:

*We recommend the appointment of an independent Chair of the Law Society Tribunal who would be the leader and administrative head of the Tribunal. This Chair would appoint panels and review boards from existing members of the adjudicator pools. He or she would also manage the size and experience of the pools, act as a mentor to adjudicators, assist them and evaluate their performance.*

*Further duties would include the current regulatory duties of the President and the Executive Director and overseeing a skills-based appointments process for new members of the hearing panel pools. The Chair would also be the spokesperson for the Tribunal when one is needed and make a regular (annual or semi-annual) report to the Benchers and the public on the activities of the Tribunal.*

9. After discussion, the Benchers did not accept the recommendation to create an independent Tribunal Chair. Some Benchers thought that there was a potential loss of accountability and transparency over the functions of the Tribunal and others objected to a group of recommendations, including the independent Tribunal Chair recommendation, as they together represented a further step along the continuum toward removal of the Benchers' adjudicative function, which many viewed as a key function of a governor of the Law Society. However, a suggestion was made that consideration be given to appointing an elected Bencher as tribunal chair, rather than an independent person.
10. At the October 2020, the Bencher received a report from the Executive Committee noting that for three of the past five years the President has appointed a designate to take on responsibility for president's duties in the rules for the Tribunal. The Committee noted that the process had worked well, but would benefit from a fixed appointment. As a result, the Committee recommended, among a number of other recommendations, the establishment of the position of Tribunal Chair, available to all current Benchers, to be appointed by the Benchers for a two year term. The justification was that the creation of the formal position of Tribunal Chair would provide more stability in the position as well as giving the role the imprimatur of the entire Bencher table.
11. In December 2021, the Benchers passed a number of amendments to the Rules, including creating the position of Tribunal Chair and assigning to that position many of the responsibilities previously assigned to the President or Executive Director.
12. The new Tribunal Rules came into effect on January 1, 2022. First Vice-President Christopher McPherson, QC was appointed Tribunal Chair by the Benchers for a term commencing January 1, 2022 and ending January 1, 2024. Subsequent discussion among the Benchers resulted in Mr. McPherson agreeing to step down as Tribunal Chair when he became President at the start of 2023.

### **C. The Issue**

13. Since 2008, the Law Society has made considerable progress in modernizing our Tribunal process. While the recent amendments creating the position of Tribunal Chair and assigning responsibilities previously exercised by the President and Executive Director to the new Tribunal Chair represent an important further step toward establishing a greater distance between the rule-making, prosecutorial and adjudicative responsibilities of the board, the requirement that the Tribunal Chair be a current Bencher retains some element of that triumvirate of responsibilities.
14. As was discussed at the Bencher Retreat, there remains the opportunity to suggest that the multiple roles the Benchers fill in creating the Rules, having governance oversight of the Law Society's implementation of the Rules and prosecution of those who contravene the Rules and

sitting in judgment of those accused of contravening the Rules might create an apprehension of bias on the part of the Benchers.

## D. Discussion

15. While moving the responsibilities for the Tribunal's administrative functions from the President and the Executive Director to the Tribunal Chair was an important step toward a more manifest independence for the Tribunal, the appointment of a current Bencher to the position of Tribunal Chair raises the possibility of a continuing apprehension of bias.
16. The collegial relationship among Benchers often mentioned and clearly valued among Benchers may create the impression of the close relationship that was the subject of comment in *Sam Lévy & Associés Inc. v. Mayrand*, 2005 FC 702 (CanLII), [2006] 2 FCR 543 at paragraphs 146 – 147 citing the comments of Gonthier, J. in 2747- 3174 *Québec Inc v. Quebec (Régie des permis d'alcool)* [1996] 3 S.C.R. 919:

*Briefly, the fact that the actual wording of the Act does not guarantee the administrative tribunal's impartiality and independence is not fatal to its constitutionality. It will suffice if the wording is neutral and does not prevent the institution from organizing itself so that a fully informed person having thought the matter through in a realistic and practical way would not have a reasonable apprehension of bias or of the existence of a lack of independence in practice.*

*However, as Gonthier J. noted in 2747-3174 Québec Inc., at paragraph 48, "[a]lthough an overlapping of functions is not always a ground for concern, it must nevertheless not result in excessively close relations among employees involved in different stages of the process" (emphasis added). Thus, he noted at paragraph 45 that "this necessary flexibility, and the difficulty involved in isolating the essential elements of institutional impartiality, must not be used to justify ignoring serious deficiencies in a quasi-judicial process. The perception of impartiality remains essential to maintaining public confidence in the justice system" (emphasis added).*

17. Administrative tribunals are bound by the principles of natural justice, one of which is a requirement of an independent and impartial decision maker (*Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, [2001] 2 SCR 781) although what "independent" means can vary. As it currently stands, the Tribunal Chair is a Bencher, and is responsible for appointing hearing panels and review boards with a mandatory requirement of having a colleague Bencher sit. While the legislation does not specifically provide for such a process (it is set out in the Law Society Rules), the legislation has been drafted in a way to permit the process being created. Thus, while the legislation may currently



permit a process that may create the apprehension of conflicting interests or even bias, it is safe to assume that a member of the public, viewing the matter realistically and practically, could at least wonder about the potential of bias in the appointment process of a Bencher to a hearing by another Bencher acting as Tribunal Chair. The question as to whether that was intended given the Law Society's obligation to protect the public interest in the regulation of the legal profession is a real one, and warrants being addressed by creating processes that make the Tribunal more independent from the Law Society, such as through the recommendation being advanced.

18. The Tribunals Task Force concluded that a Tribunal Chair who was not involved in Law Society governance or in decision-making relating to which matters should proceed to the tribunal improved the independence of the Tribunal both in real and in perceived terms. Although the decision was not made to take that step in 2015, the conclusion might be different today, and in fact the need to *demonstrate* the Tribunal's independence likely takes on a more important position in demonstrating that the regulation of lawyers is in the public interest, and is less capable of being guided through the board of the Society.

## E. Key comparisons

19. Other law societies in Canada have made policy decisions adopting rules to create a position equivalent to "Tribunal Chair" and setting out the eligibility for and processes to become Chair.. For example:
  - In Manitoba, Law Society Rule 5-93(4) and (5) set out the eligibility and role of the "Chairperson." The Chairperson is appointed by the Benchers, but he or she must not be a current bencher, officer or employee of the Law Society. The benchers *may* (but not must) appoint a Vice Chairperson, and if they do, that person must be a lawyer bencher.
  - In Ontario, s. 49.02.2 of the *Law Society Act* sets out that Convocation can appoint as chair a person who is licensed to practice law in Ontario as a barrister and solicitor, to a term of four years, with the potential for reappointment for one further term, and the position is held at the pleasure of Convocation. Most significantly, subsection (2) states that a person is not eligible for appointment if they are a Bencher. However, the *Law Society Act* does allow for Convocation to appoint vice-chairs of the hearing and appeal divisions of the Tribunal, who must be an elected Bencher member. The vice-chairs assume responsibility for their divisions should the Tribunal Chair be unable to act.
  - In Nova Scotia, the Chair is appointed by the Law Society Council (benchers), and must be eligible to be a member of the Hearing Committee (equivalent to our Tribunal). Members of the Hearing Committee must not be benchers. The Chair is

appointed from amongst those who are on the Hearing Committee, and the benchers must also appoint a vice-Chair.

20. Other BC regulatory bodies also provide some comparators.

- The bylaws of the College of Dental Surgeons of BC (authorized under the *Health Professions Act (HPA)*), require the Board to appoint a discipline committee, but provide that no member of that Committee can be a member of the Board. Once appointed, the committee then must elect a Chair and may elect a vice-Chair from amongst its members. The bylaws of the College of Nurses and Midwives of BC similarly prohibit Board members from being appointed as Chair of the discipline committee, although the Board designates the Chair from amongst the members of the Committee.
- On the other hand, the bylaws of the College of Physicians and Surgeons of BC (also authorized under the *HPA*) provide for a Chair of the discipline committee, the members of whom are appointed to hearing tribunals by the Chair. There are no specific provisions that preclude board members from being on the discipline committee though currently no Board members are on discipline committee. The Chair and at least one vice Chair are appointed by the Board from amongst the members of the Committee.
- The *Professional Governance Act (PGA)* provides that all committees must have a chair who is appointed under a process, and according to merit-based selection criteria, that is set out in regulations for the regulatory body. The chair is appointed by the board (Council) of the regulatory body from the members of the Committee, and the *Act* provides for board members and others to be on the committee, so the chair may not necessarily be a board member. The role of and other matters relating to the chair are set out in the bylaws of each professional regulatory body subject to the *PGA*. For example, the Engineers and Geoscientists of BC must appoint a chair and may appoint one or more vice-chairs of the committee. The role of the Chair of the discipline committee includes appointing panels.

21. While this is obviously not an exhaustive review of regulatory bodies, there is some movement towards appointing chairs of the disciplinary function of professional regulatory bodies who do not sit on the board. That trend, however, is not required by the *PGA* or the *HPA*.

## F. Analysis

22. The Benchers have accepted that increasing the independence of the Tribunal from the investigative and rule-making functions of the Law Society improves public confidence in the administration of the disciplinary function of the Law Society.

23. Because of the importance of ensuring that our regulation of the profession is in the public interest, it should be noted that the public interest in demonstrating a greater degree of independence of the Tribunal from the day-to-day operations of the Law Society (including the investigation of complaints) has been discussed at length in previous materials that have been before the Benchers and were considered in the report at the recent benchers retreat.
24. Providing for a Tribunal Chair who is *not* a member of the governing board of the Law Society demonstrates that the appointment of hearing panels, and general operation of the Tribunal itself, is less likely to be compromised by relationships or ties to the board or the Law Society than would be the case where the Chair was a currently sitting Bencher. Because it is important in dealing with any concerns about the apprehension of bias in hearing matters that “justice is not only done, but that it is manifestly seen to be done,” taking the further step of providing for an independent chair is a further step in advancing that objective.

## **G. Recommendation**

25. On the basis of the considerations discussed above, combined with the previous review by the Tribunal Review Task Force, the recommendation to the Benchers is to amend the Rules to provide for the appointment of an independent Chair of the Law Society Tribunal as provided in the proposed resolution.
26. The required Regulatory Impact Assessment is attached.

# Regulatory Impact Assessment

The Law Society  
of British Columbia



<b>Title of Report:</b>	An Independent Tribunal Chair
<b>Committee:</b>	Executive
<p><i>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.</i></p>	

## A. Impact on the Public

A.1 Public Interest	
A.1.1 What aspects of the public interest are impacted or advanced through the recommendation?	<input type="checkbox"/> Access to Justice <input checked="" type="checkbox"/> Improved regulation of the practice of law <input type="checkbox"/> Protection or advancement of the Rule of Law <input type="checkbox"/> Addressing an area of identifiable risk to the public and/or justice system
A.1.2 How will the public benefit from the recommendation?	<p>The Benchers have previously agreed that the public interest can be improved by increasing the degree of independence of the Tribunal from the rest of the organization. A clearer separation of the adjudicative function from the rule-making and investigatory function reduces the likelihood, and the perception, of bias in regulatory decision-making. Providing for a Chair of the Tribunal who is not a current sitting Bencher of the Law Society improves those public interest outcomes.</p>

A.1.3 Does the recommendation have any other regulatory impacts that will affect the public?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:
<b>A.3 Reconciliation with Indigenous Peoples</b>		
A.3.1 Does the recommendation extend to addressing reconciliation with Indigenous Peoples?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:
<b>A.4 Equity, Diversity and Inclusion</b>		
A.4.1 Does the recommendation impact the equitable treatment of diverse individuals?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:
<b>A.5 Transparency and Disclosure</b>		
A.5.1 Does the recommendation impact current levels of transparency and disclosure?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:

## B. External Impacts

<b>B.1 Licensee Interest</b>		
B.1.1 Does the recommendation impact the administrative burdens or overhead costs on lawyers?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:
B.1.2 Does the recommendation impact licensee perception of the Law Society?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	The recommendation is meant in part to reduce the possibility of apprehension of bias relating to how the Tribunal is operated and how panels are chosen.
<b>B.2 Public Relations</b>		
B.2.1 Does the recommendation impact the public perception of the legal profession generally?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:
B.2.2 Does the recommendation impact the public perception of the Law Society?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	The recommendation is meant to reduce the possibility of public perception of a conflict or bias in the Tribunal by establishing a chair who is not a sitting Bencher of the Law Society.:
<b>B.3 Government Relations</b>		
B.3.1 Does the recommendation impact the government perception of the legal profession?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:

B.3.2 Does the recommendation impact government perception of the Law Society?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	While not the main purpose of the recommendation, the recommendation is likely to demonstrate to the government that the Law Society continues to take its responsibilities relating to regulation of the profession seriously and continues to find ways, consistent with other regulatory bodies' procedures, to demonstrate the independence of its adjudicative function.
<b>B.4 Privacy Impact Assessment</b>		
B.4.1 Does the recommendation include the collection, use or disclosure of personal information?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	Comments:
B.4.1.1 Was a Privacy Risk Assessment completed?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	Comments:

## C. Internal (Organizational) Impacts

<b>C.1 Legal</b>		
C.1.1 Does the recommendation meet legal requirements, statutory or otherwise?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	There are no legislative impediments to appointing an independent Tribunal Chair. :
C.1.2 Does the recommendation impact outstanding legal issues or litigation?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:
<b>C.2 Law Society Programs</b>		
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?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	The recommendation will have some effect on the Tribunal Department because it will need to integrate a new position and work out processes for how the role will operate.
<b>C.3 Costs</b>		
C.3.1 Does the recommendation increase operational costs?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	It is expected that the position of Tribunal Chair will be compensated, although the position is not expected to be a full-time position, although that may change in the future. Other costs associated with an independent Tribunal Chair are largely already incorporated in the budget for the Tribunal Office
C.3.2 Does the recommendation require additional staff or significant staff time?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	After an initial period of orientation, the appointment of an independent Tribunal Chair is not likely to require additional staff time on an ongoing basis.

The Law Society  
*of British Columbia*



## Quarterly Financial Report

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May 2022

Prepared for: Finance & Audit Committee Meeting – July 5, 2022

Bencher Meeting – July 8, 2022

Prepared by: The Finance Department

## **Quarterly Financial Report - End of May**

Attached are the financial results and highlights to the end of May 2022.

### **General Fund**

#### **General Fund (excluding capital and TAF)**

To the end of May 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 due to a combination of permanent variances and timing differences.

#### **Revenue**

As noted on the attached financial highlights, total revenue for the period was \$13.4 million, \$1.0 million (8%) ahead of budget.

This increase is partially due to an increase in the number of practicing lawyers projected at 13,717, compared to a budget of 13,545. Electronic filing revenue is ahead of budget to date by \$200,000, with higher real estate unit sales and LOTA transactions. PLTC revenue is ahead \$163,000 as more waitlist students are placed into PLTC. In addition, fines, penalties and recoveries are higher, similar to recent trends.

#### **Operating Expenses**

Operating expenses for the period were \$12.0 million, \$1.1 million (8%) below budget, due to both permanent variances and timing differences.

As noted on the attached financial highlights, \$920,000 of the variance to date is due to timing differences, related to the timing of external counsel fees, meetings and travel, software maintenance and call ceremonies.

The permanent variances to date are primarily related to staff meeting and travel savings, partially offset by higher external counsel fees.

#### **TAF-related Revenue and Expenses**

TAF revenue to date is slightly ahead of budget. It should be noted that the BCREA forecast for 2022 expects real estate unit sales to decline 22 per cent from a record high in 2021. As TAF revenue is closely correlated with the real estate market, we are projecting a decline from the large amount of TAF revenues received in 2021.

Trust assurance program costs are below budget with lower travel costs with more remote audits, and lower compensation costs due to staff vacancies.



**Lawyers Indemnity Fund**

LIF assessment revenues were \$7.1 million, close to budget. LIF operating expenses were \$3.8 million, \$432,000 under budget, with savings in compensation costs and external fees.

The market for the first five months of the year has been very volatile, especially in global equities, and the market value of the LIF long term investment portfolio decreased \$12.3 million since December 2021, although this loss of value mainly consists of unrealized losses at this time. The portfolio returns for the period were -5.09%, slightly below the benchmark of -4.75%.

Summary of Financial Highlights (\$000's)

<b>2022 General Fund Results - YTD May 2022 (Excluding Capital Allocation &amp; Depreciation)</b>				
	<u>Actual</u>	<u>Budget</u>	<u>\$ Var</u>	<u>% Var</u>
<b>Revenue (excluding capital)</b>				
Practice fees	10,708	10,317	391	4%
PLTC and enrolment fees	629	466	163	35%
Electronic filing revenue	527	327	200	61%
Interest income	178	121	57	47%
Credentials & membership services	384	323	61	19%
Fines, penalties & recoveries	258	115	143	124%
Insurance Recoveries	12	-	12	0%
Other revenue	57	57	-	0%
Other cost recoveries	37	51	(14)	-
Building revenue & tenant cost recoveries	609	577	32	6%
	<u>13,399</u>	<u>12,354</u>	<u>1,045</u>	<u>8%</u>
<b>Expenses (excluding depreciation)</b>	<u>11,960</u>	<u>13,057</u>	<u>1,097</u>	<u>8%</u>
	<u>1,439</u>	<u>(703)</u>	<u>2,142</u>	

Summary of Variances to Date - May 2022

Revenue Variances:

Permanent Variances

Practice fees (Budget 13,545 Forecast 13,717)	241
PLTC and Enrollment Fees	163
Electronic Filing Revenue	200
Interest Income	57
Other miscellaneous permanent differences	120
	<u>781</u>

Timing Differences

Other miscellaneous timing differences	264
	<u>1045</u>

Expense Variances:

Permanent Variances

Meetings and Travel - Staff	137
External Counsel fees	(164)
Other misc. permanent differences	125
	<u>98</u>

Timing Differences

Information Services - Timing of software maintenance	207
Meetings and Travel - Bencher retreat/ Bencher travel and events	138
External counsel fees timing	123
Call ceremonies deferred	92
Meetings and Travel - Staff	90
Scholarships	40
Other miscellaneous timing differences	309
	<u>999</u>
	<u>1097</u>

Trust Assurance Program Actual

	<u>2022 Actual</u>	<u>2022 Budget</u>	<u>Variance</u>	<u>% Var</u>
<b>TAF Revenue*</b>	1,098	1,014	84	8.3%
Trust Assurance Department	1,296	1,485	189	12.7%
<b>Net Trust Assurance Program</b>	<u>(198)</u>	<u>(471)</u>	<u>273</u>	

2022 Lawyers Indemnity Fund Long Term Investments - YTD May 2022 Before investment management fees

Performance	-5.09%
Benchmark Performance	-4.75%

**The Law Society of British Columbia**  
**General Fund**  
**Results for the 5 Months ended May 31, 2022**  
(\$000's)

	2022 Actual	2022 Budget	\$ Variance	%
<b>REVENUE</b>				
Practice fees (1)	12,422	12,040	382	3%
PLTC and enrolment fees	629	466	163	35%
Electronic filing revenue	527	327	200	61%
Interest income	178	121	57	47%
Credentials and membership services	384	323	61	19%
Fines, penalties and recoveries	258	115	143	124%
Program Cost Recoveries	36	51	(15)	-29%
Insurance Recoveries	12	-	12	0%
Other revenue	57	57	-	0%
Other Cost Recoveries	1	-	1	0%
Building Revenue & Recoveries	609	577	32	6%
<b>Total Revenues</b>	<b>15,113</b>	<b>14,077</b>	<b>1,036</b>	<b>7.4%</b>
<b>EXPENSES</b>				
<b>Benchers Governance and Events</b>				
Bencher Governance	257	445	188	42%
Board Relations and Events	105	126	21	17%
	362	571	209	37%
<b>Corporate Services</b>				
General Office	249	295	46	16%
CEO Department	317	319	2	1%
Finance	457	475	18	4%
Human Resources	270	325	55	17%
Records Management	95	91	(4)	-4%
	1,388	1,505	117	8%
<b>Education and Practice</b>				
Licensing and Admissions	680	940	260	28%
PLTC and Education	1,234	1,268	34	3%
Practice Standards	150	215	65	30%
	2,064	2,423	359	15%
<b>Communications and Information Services</b>				
Communications	215	250	35	14%
Information Services	822	1,036	214	21%
	1,037	1,287	250	19%
<b>Policy and Legal Services</b>				
Policy and Legal Services	701	718	17	2%
Tribunal and Legislative Counsel	273	308	35	11%
External Litigation & Interventions	-	10	10	100%
Unauthorized Practice	136	135	(1)	-1%
	1,110	1,171	61	5%
<b>Regulation</b>				
CLO Department	227	373	146	39%
Intake & Early Assessment	966	945	(21)	-2%
Discipline	1,445	1,180	(265)	-22%
Forensic Accounting	312	403	91	23%
Investigations, Monitoring & Enforcement	1,468	1,641	173	11%
Custodianships	737	738	1	0%
	5,155	5,280	125	2%
<b>Building Occupancy Costs</b>				
Depreciation	844	821	(23)	-3%
	434	527	93	18%
<b>Total Expenses</b>	<b>12,394</b>	<b>13,584</b>	<b>1,191</b>	<b>8.8%</b>
<b>General Fund Results before Trust Assurance Program</b>	<b>2,719</b>	<b>493</b>	<b>2,227</b>	
<b>Trust Assurance Program (TAP)</b>				
TAF revenues	1,098	1,014	84	8.3%
TAP expenses	1,296	1,485	189	12.7%
<b>TAP Results</b>	<b>(198)</b>	<b>(471)</b>	<b>273</b>	<b>58.0%</b>
<b>General Fund Results including Trust Assurance Program</b>	<b>2,521</b>	<b>22</b>	<b>2,500</b>	
<b>Contribution from Trust Assurance Program to Lawyers Insurance Fund</b>				
	-			
<b>General Fund Results</b>	<b>2,521</b>			

(1) Membership fees include capital allocation of 1714k (Capital allocation budget = 1723k)

**The Law Society of British Columbia**  
**General Fund - Balance Sheet**  
**As at May 31, 2022**  
(\$000's)

	<b>May 31 2022</b>	<b>May 31 2021</b>
<b>Assets</b>		
<b>Current assets</b>		
Cash and cash equivalents	31,918	23,703
Unclaimed trust funds	2,186	2,088
Accounts receivable and prepaid expenses	4,231	4,143
Due from Lawyers Insurance Fund	5,970	9,827
	<u>44,305</u>	<u>39,761</u>
<b>Property, plant and equipment</b>		
Cambie Street property	10,518	11,674
Other - net	2,042	1,810
	<u>12,560</u>	<u>13,484</u>
<b>Long Term Loan</b>	535	535
	<u><b>57,400</b></u>	<u><b>53,780</b></u>
<b>Liabilities</b>		
<b>Current liabilities</b>		
Accounts payable and accrued liabilities	3,130	3,391
Liability for unclaimed trust funds	2,186	2,088
Current portion of building loan payable		100
Deferred revenue	15,750	15,110
Deposits	89	86
	<u>21,156</u>	<u>20,775</u>
<b>Net assets</b>		
Capital Allocation	5,359	3,967
Unrestricted Net Assets	30,885	29,038
	<u>36,244</u>	<u>33,005</u>
	<u><b>57,400</b></u>	<u><b>53,780</b></u>

**The Law Society of British Columbia**  
**General Fund - Statement of Changes in Net Assets**  
**Results for the 5 Months ended May 31, 2022**  
(\$000's)

	<i>Invested in Capital</i> \$	<i>Working Capital</i> \$	Unrestricted Net Assets \$	Trust Assurance \$	Capital Allocation \$	2022 Total \$	Year ended 2021 Total \$
<b>Net assets - At Beginning of Year</b>	12,844	15,072	27,916	1,841	3,967	33,723	29,998
Net (deficiency) excess of revenue over expense for the period	(614)	1,618	1,004	(198)	1,715	2,521	3,727
Contribution to LIF				-		-	
Repayment of building loan	100	-	100	-	(100)	-	-
Purchase of capital assets:						-	
LSBC Operations	215	-	215	-	(215)	-	-
845 Cambie	9	-	9	-	(9)	-	-
<b>Net assets - At End of Period</b>	<b>12,554</b>	<b>16,690</b>	<b>29,244</b>	<b>1,643</b>	<b>5,358</b>	<b>36,244</b>	<b>33,723</b>

**The Law Society of British Columbia**  
**Lawyers Indemnity Fund**  
**Results for the 5 Months ended May 31, 2022**  
(\$000's)

	<b>2022</b>	<b>2022</b>	<b>\$</b>	<b>%</b>
	<b>Actual</b>	<b>Budget</b>	<b>Variance</b>	<b>Variance</b>
<b>Revenue</b>				
Annual assessment	7,128	7,070	58	1%
Investment income	(12,322)	3,371	(15,693)	-466%
Other income	75	27	48	178%
<b>Total Revenues</b>	<b>(5,119)</b>	<b>10,468</b>	<b>(15,587)</b>	<b>-148.9%</b>
<b>Expenses</b>				
<b>Insurance Expense</b>				
Provision for settlement of claims	7,346	7,346	-	0%
Salaries and benefits	1,366	1,547	181	12%
Contribution to program and administrative costs of General Fund	610	631	21	3%
Provision for ULAE	-	-	-	0%
Insurance	570	706	136	19%
Office	263	389	126	32%
Actuaries, consultants and investment brokers' fees	562	447	(115)	-26%
Special fund - external counsel fees	17	-	(17)	0%
	<b>10,733</b>	<b>11,066</b>	<b>333</b>	<b>3%</b>
<b>Loss Prevention Expense</b>				
Contribution to co-sponsored program costs of General Fund	423	522	99	19%
<b>Total Expenses</b>	<b>11,156</b>	<b>11,588</b>	<b>432</b>	<b>3.7%</b>
<b>Lawyers Indemnity Fund Results before Contributions</b>	<b>(16,275)</b>	<b>(1,120)</b>	<b>(15,155)</b>	
Contribution from Trust Assurance Program	-			
<b>Lawyers Indemnity Fund Results</b>	<b>(16,275)</b>	<b>(1,120)</b>	<b>(15,155)</b>	

**The Law Society of British Columbia**  
**Lawyers Indemnity Fund - Balance Sheet**  
**As at May 31, 2022**  
(\$000's)

	May 31 2022	May 31 2021
<b>Assets</b>		
Cash and cash equivalents	1,598	3,550
Accounts receivable and prepaid expenses	735	607
Current portion General Fund building loan		100
Investments	228,046	219,711
	<u>230,380</u>	<u>223,967</u>
<b>Liabilities</b>		
Accounts payable and accrued liabilities	187	115
Deferred revenue	10,220	9,577
Due to General Fund	5,970	9,827
Provision for claims	75,153	77,687
Provision for ULAE	12,399	12,222
	<u>103,928</u>	<u>109,427</u>
<b>Net assets</b>		
Internally restricted net assets	17,500	17,500
Unrestricted net assets	108,952	97,040
	<u>126,452</u>	<u>114,540</u>
	<u>230,380</u>	<u>223,967</u>

***The Law Society of British Columbia***  
***Lawyers Indemnity Fund - Statement of Changes in Net Assets***  
***Results for the 5 Months ended May 31, 2022***

	Unrestricted \$	Internally Restricted \$	2022 Total \$	2021 Total \$
<b>Net assets - At Beginning of Year</b>	125,228	17,500	142,728	111,134
Net excess of revenue over expense for the period	(16,276)	-	(16,276)	31,595
<b>Net assets - At End of Period</b>	<b>108,952</b>	<b>17,500</b>	<b>126,452</b>	<b>142,728</b>



The Law Society  
*of British Columbia*



## 2022 Forecast

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As at May 2022

Prepared for: Finance & Audit Committee Meeting – July 5, 2022

Bencher Meeting – July 8, 2022

Prepared by: The Finance Department

## 2022 Forecast - as at May 2022

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

### Overview

At this time, we are projecting a slightly positive result of \$207,000 for the 2022 year. As the 2022 budget was a deficit budget of \$825,000, this is a positive variance of \$1.0 million, mainly due to higher than expected revenues.

### Revenue Forecast

At this time, total revenue is projected at \$31.5 million, \$1.1 million (4%) ahead of budget, primarily due to a higher number of practicing lawyers, along with increased electronic filing revenues, PLTC fees and interest income.

Practice Fees: We are forecasting the number of practicing lawyers at 13,717, compared to a budget of 13,545, 172 lawyers ahead of budget, and \$411,000 more in practice fees.

Electronic Filing Revenue (EFR): Currently, EFR is \$256,000 ahead of budget at this time, so the forecast takes this into account. In the first quarter of the year, the real estate market was very active, increasing EFR. In addition, LOTA filing revenues were received. As the BC Real Estate Association anticipates a 22% decline in unit sales by the end of 2022, any further excess EFR revenue is difficult to forecast at this time.

PLTC Revenue: We are projecting 683 PLTC students this year, 73 students ahead of budget, as additional waitlist students were placed into PLTC. Additional PLTC revenue of \$168,000 is projected for the year.

Interest income: With interest rates rising, we anticipate higher interest revenue for the year.

### Operating Expenses Forecast

At this time, operating expenses are projected at \$31.3 million, \$73,000 over budget.

With increases in the number and complexity of files, and specialized expertise needs, we are projecting that external counsel costs will be over budget by approximately \$500,000. These overages will be partially offset by savings in meeting and travel expenses, so expenses are projected close to budget for the year.

**The Law Society of British Columbia**  
**General Fund Forecast**  
**For the 12 Months ending December 31, 2022**  
(\$000's)

	Q2		Forecast vs Budget	
			\$	%
	Forecast	Budget	Variance	
<b>REVENUE</b>				
Practice fees	25,173	24,762	411	2%
PLTC and enrolment fees	1,947	1,779	168	9%
Electronic filing revenue	1,041	785	256	33%
Interest income	364	290	74	26%
Credentials and membership services	805	775	30	4%
Fines, penalties and recoveries	317	275	42	15%
Program Cost Recoveries	122	122	-	0%
Insurance Recoveries	68	-	68	100%
Other revenue	243	187	56	30%
Building Revenue & Recoveries	1,384	1,384	-	0%
<b>Total Revenues</b>	<b>31,464</b>	<b>30,359</b>	<b>1,105</b>	<b>4%</b>
<b>EXPENSES</b>				
<b>Benchers Governance and Events</b>				
Bencher Governance	606	653	47	7%
Board Relations and Events	290	312	22	7%
	896	965	69	7%
<b>Corporate Services</b>				
General Office	701	749	48	6%
CEO Department	838	821	(17)	-2%
Finance	1,175	1,189	14	1%
Human Resources	766	802	36	4%
Records Management	281	275	(6)	-2%
	3,761	3,836	75	2%
<b>Education and Practice</b>				
Licensing and Admissions	2,287	2,305	18	1%
PLTC and Education	3,101	3,229	128	4%
Practice Standards	516	518	2	0%
	5,902	6,052	150	2%
<b>Communications and Information Services</b>				
Communications	581	590	9	1%
Information Services	1,930	1,936	6	0%
	2,511	2,526	15	1%
<b>Policy and Legal Services</b>				
Policy and Legal Services	1,826	1,771	(55)	-3%
Tribunal and Legislative Counsel	740	748	8	1%
External Litigation & Interventions	18	25	7	28%
Unauthorized Practice	341	337	(4)	-1%
	2,925	2,881	(44)	-2%
<b>Regulation</b>				
CLO Department	700	945	245	26%
Intake & Early Assessment	2,404	2,318	(86)	-4%
Discipline	3,455	2,857	(598)	-21%
Forensic Accounting	780	984	204	21%
Investigations, Monitoring & Enforcement	4,075	3,987	(88)	-2%
Custodianships	1,876	1,802	(74)	-4%
	13,290	12,893	(397)	-3%
<b>Building Occupancy Costs</b>	1,972	2,030	59	3%
<b>Total Expenses</b>	<b>31,257</b>	<b>31,184</b>	<b>(73)</b>	<b>0%</b>
<b>General Fund Results</b>	<b>207</b>	<b>(825)</b>	<b>1,032</b>	



## **2022 Mid-Year Update**

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### **Advisory Committees and Task Forces**

**July 8, 2022**

Prepared for: Benchers

Prepared by: Policy and Planning Staff

Purpose: For information

1. The President has requested a very brief update from the Advisory Committees and Task Forces regarding progress on initiatives identified in the Mandate Letters sent to each group at the beginning of the year, and to identify if there are expected to be any changes in anticipated reporting processes.

## **I. Access to Justice Advisory Committee**

2. This Committee has focused on the provision of pro bono services, unbundled service, and areas of unmet or underserved need. A recommendation to provide CPD credits for pro bono work has been approved by the Benchers. The Committee had initially planned to report on unbundling in the Spring of 2022 and has been gathering information, but has elected to review and consider the topic in combination with unmet and underserved legal needs. Further reporting on this topic is still expected for the fall.
3. The Committee's terms of reference require it to report that the Committee has agreed with the Law Foundation's recommendation to utilize the Law Society's Access to Justice Fund (overseen by the Law Foundation) to support the Virtual Legal Advocacy Project at the Rise Women's Legal Centre

## **II. Equity, Diversity and Inclusion Advisory Committee**

4. The Committee's work has been guided by the items identified in the Mandate Letter. In particular, an EDI podcast has taken place and an event titled "On the Path to Equity for Women in Law" was co-hosted together with the International Association of Women Judges and the CBA (BC Branch). Consideration of the collection of demographic data continues, as does consideration of anti-discrimination and harassment matters. Committee Members and staff have also led or attended various events focusing on equity and diversity, including speaking at women lawyers' events, and guest speaking on podcasts and events held by external groups. The Committee does not currently anticipate significant impediments to continuing its work.

## **III. Truth and Reconciliation Advisory Committee**

5. The Committee continues to work on the eight priority areas identified in its work plan. Amongst other things, it has completed the initial roll-out of the Indigenous Intercultural Course, is examining the development of intercultural competency standards and has provided detailed comments to the Federation of Law Societies in this regard, and is developing for consideration by the Benchers a high level Indigenous framework that is meant to guide the application of the *Act*, Rules, and Code in a way that alleviates systemic barriers for Indigenous People. It has also considered whether it is appropriate to develop best practices for demographic data collection, and is of the view that further discussion

should be deferred until the province completes data standards in consultation with Indigenous peoples. The Committee currently does not anticipate any changes with the time lines it has identified for its work.

#### **IV. Ethics and Lawyer Independence Advisory Committee**

6. The Committee has particularly spent time preparing to make recommendations on Rule 3.4-2 and commentaries and expects to report to the Benchers in late summer or the fall. It continues to review annotations to the Code, and continues to oversee the high school essay contest, rule of law lecture, and podcasts. It anticipates no impediments to its continued work on the mandate letter items and its work plan.

#### **V. Indigenous Engagement in Regulatory Matters Task Force**

7. The Task Force has been engaged in information gathering and has undertaken consultation efforts with various external groups. It is beginning to put together a final report, and is holding a “summit” in early August to obtain feedback on proposed recommendations. It anticipates being able to report to the Benchers in the fall as planned.

#### **VI. Lawyer Development Task Force**

8. The main focus of the Task Force is on the issues relating to articling student hours of work and remuneration, the development of entry-level competencies, and the examination of alternative pathways to articling. The consultation on the articling student matters was unfortunately delayed, which is anticipated to set back to the fall the time for reporting by the Task Force on these matters. The Task Force is following up on the report from Jordan Furlong and the discussion held concerning its recommendations at the May retreat, and hopes to be able to meet its planned timelines for reporting on competencies and alternatives to articling later in the year, although it is possible that, depending on the complexities of the discussions, that timeline may extend into the new year.

#### **VII. Mental Health Task Force**

9. The Task Force has reported separately on the status of the implementation of its previous 21 recommendations and is currently considering some proposed final recommendations. Unfortunately, the report on the Federation of Law Societies National Well-Being survey has been delayed, meaning that the Task Force will not be able to review its conclusions and consider how this data may support the development of any other additional recommendations to the Benchers until later in the year. The Task Force is also currently considering a recommendation for transition as the Task Force nears its conclusion and will report to the Benchers accordingly.



# Implementation of the Mental Health Task Force recommendations

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## Mental Health Task Force

Brook Greenberg, QC (Chair)  
Kim Carter  
Cheryl D'Sa  
Phil Dwyer  
The Honourable Madam Justice Nitya Iyer  
Derek LaCroix, QC  
Christopher McPherson, QC  
Kendra Milne  
The Honourable Judge Patricia Stark

Date: June 24, 2022

Prepared by: Policy and Planning Department

Purpose: For Information

## Purpose

1. As the Mental Health Task Force’s term nears completion, and as required by the Task Force’s 2022 mandate letter, this report provides an overview of the status of the implementation of the Task Force’s previous recommendations and provides context for the Task Force’s forthcoming recommendation regarding the Law Society’s future engagement with mental health issues.

## Background

2. To address the prevalence of mental health and substance use issues in the profession as they relate to the Law Society’s public interest mandate, the Mental Health Task Force was established in 2018 and issued with a mandate to identify ways to reduce stigma and to develop an integrated review of regulatory approaches to discipline and admissions in relation to mental health.
3. The Task Force has since authored three reports containing a total of 21 recommendations that address mental health and substance use issues within the profession and the potential implications for lawyers and the public they serve.<sup>1</sup> These recommendations —listed at **Appendix A** —fall into two broad categories: regulatory strategies that focus on how health issues are appropriately addressed in the Law Society’s processes, and educational strategies that increase awareness and understanding of mental health and substance use issues and reduce stigma. The recommendations aim to protect the public by taking supportive steps such as educational, information-sharing and stigma-reduction initiatives and modifying the Law Society’s regulatory approaches in ways that reduce the likelihood that a health issue will contribute to negative outcomes for lawyers, their clients or the justice system as a whole.
4. Having completed the policy work necessary to develop these recommendations, the focus necessarily shifts to implementation. This work is typically undertaken by staff, as is expected based on the separation of policy and operational roles within the Law Society. It is within this context that the implementation status of the Task Force’s recommendations is discussed and reviewed.

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<sup>1</sup> See the Mental Health Task Force’s [First Interim Report](#) (December 2018), [Second Interim Report](#) (January 2020) and the [Alternative Discipline Process Report](#) (September 2021).



## Discussion

5. The remainder of this report summarizes the implementation status of the Task Force’s past recommendations. This material is organized in relation to the degree to which this operational work is complete, and discusses those recommendations that have been fully implemented, those that will be implemented in the short-term and those requiring ongoing efforts by the Law Society, respectively.

### I. Fully implemented or otherwise concluded recommendations

#### Amending the *BC Code*

6. One of the Task Force’s early regulatory recommendations was to eliminate the stigmatizing language and approaches to the “duty to report” provisions in the *BC Code* by amending Rule 7.1-3 and the associated Commentary. In addition to addressing problematic language, the recommendation sought to revise aspects of the Commentary that may have deterred some lawyers from seeking peer support for mental health or substance use issues based on concerns about the confidentiality of information shared with a lawyer-counsellor. In collaboration with the Ethics Committee, a series of amendments to both the rule and the Commentary were approved by the Benchers to address these issues and the *BC Code* has been revised accordingly.

#### Amending the Admission Program enrollment application

7. The Task Force discussed a re-evaluation of the Law Society’s approach to inquiries into mental health and substance use in the Admission Program enrolment application form. This resulted in a recommendation to remove the medical fitness questions and the enrolment application form was subsequently modified in manner consistent with this policy direction. At the meeting in which the Benchers approved the recommendation to remove the questions, the consensus was that replacement questions, if any, could be considered separately at a later date.

#### Amending the Law Firm Regulation self-assessment tool

8. The Task Force also recommended that the self-assessment tool developed for the purposes of law firm regulation include specific guidance encouraging legal employers to put in place policies, processes and resources to assist lawyers experiencing mental health and substance use issues, in recognition of the important role that access to appropriate resources can play in obtaining support and treatment. Following the approval of this recommendation, additional content was added to the draft self-assessment and is anticipated to be included in the finalized tool when it is rolled out to the profession.

## Hosting a Mental Health Forum

9. Pursuant to the Task Force’s recommendation to host a town hall-type event to engage legal employers in constructive dialogue regarding mental health within the profession, the Law Society partnered with the Continuing Legal Education Society of BC to co-host the Mental Health Forum for Legal Professionals. The forum comprised three parts: a panel devoted to lawyers’ lived experience of mental health and substance use issues, a series of sessions tailored to exploring opportunities and challenges for legal employers in addressing these issues and a panel of experts providing information about the mental health resources and supports available to lawyers. The event attracted over a thousand registrants, underscoring the leadership role the Law Society can play in facilitating dialogue and reducing stigma around these issues.

## Expanding the role of Practice Advisors and improving access to LifeWorks

10. In order to improve information-sharing and to reduce barriers to lawyers accessing support, the Task Force recommended that the Law Society develop a targeted communications campaign to advertise an expanded role for Practice Advisors to include availability for confidential consultations about mental health and substance use issues and referrals to appropriate resources. The implementation of this recommendation has been addressed in a number of ways, including ensuring that Practice Advisors are promoted on the Law Society’s website and other communications platforms as offering support for stress and personal coping mechanisms in addition to traditional forms of practice advice. As discussed later in this report, Practice Advisors are also provided with enhanced training to assist them in fulfilling this expanded role.
11. In developing additional initiatives for reducing barriers to accessing support, the Task Force also recommended making changes to the manner in which lawyers access the information and services offered by the LifeWorks member assistance program. A series of changes were subsequently made to the member portal and the Law Society website and, as a result, lawyers are no longer required to utilize their Law Society username and password to connect with LifeWorks. Information about accessing these services is now prominently displayed on the Law Society’s website and has been highlighted in a number of communications to the profession. Supplemental materials have also been developed to provide lawyers with additional details about the scope of LifeWorks’ services in an effort to encourage use.

## Considering the role of CPD

12. To improve awareness and reduce stigma in relation to mental health and substance use issues, the Task Force recommended exploring of the merits of introducing continuing

professional development requirements in relation to these topics. In the context of the recent expansion of professional development opportunities in this area and the Law Society's evolving approach to CPD, as well as the establishment of the Lawyer Development Task Force, the Mental Health Task Force has not actively considered this issue further, effectively deferring to the Lawyer Development Task Force on this matter.

### **Enhancing communications strategies**

13. Pursuant to the Task Force's recommendation, the Law Society has integrated addressing mental health and substance use issues into its overall communications strategy. Examples of this work include: establishing a dedicated webpage profiling the work of the Mental Health Task Force; coordinating a communications campaign for Mental Health Week; promoting resources to the profession; developing communications relating to mental health issues in the *Benchers' Bulletin*, E-brief and *Notice to the Profession* and ensuring appropriate language is used in relation to these issues; promoting participation in the Federation's National Well-Being study, and; facilitating messaging from successive Law Society presidents in relation to mental health awareness.
14. Recognizing that the pandemic has exacerbated and created new stressors for many practitioners, the Law Society also hosted two virtual sessions to bring together lawyers to participate in a discussion on mental health and wellness during this unprecedented time. As part of the Law Society's pandemic response updates, lawyers have also been regularly reminded of the importance of being aware of, and addressing, their health and stress, as well as the availability of support services and other resources. Given the critical role that communication plays in reducing stigma and increasing awareness about these issues, mental health-related content will continue to be included in the Law Society's communications with the profession.

## **II. Recommendations expected to be implemented within 12 months**

### **Developing inclusive language resources**

15. The Task Force recommended that the Law Society develop additional resources providing guidance on best practices for the use of non-discriminatory and non-stigmatizing language in order to foster an inclusive and respectful workplace and profession and to combat stigma, each of which the Task Force's research showed was important to the mandate it was given. To implement this recommendation, a practice resource for the profession is under development that sets out guiding principles and suggestions to support the use of language that is free from words, phrase or tones that reflect prejudiced, stereotyped or discriminatory views. A draft of the resource has been

reviewed by the Task Force, the Truth and Reconciliation Advisory Committee and the Equity, Diversity and Inclusion Advisory Committees, and is currently the subject of external consultations with equity-seeking groups. Once finalized, the respectful language guidelines will be published on the Law Society's website.

16. Work is also underway to update the Law Society's internal style guide to similarly support the use of non-stigmatizing and non-discriminatory language in all its publications. Once finalized, training on the use of the style guide will be provided to staff, Benchers and non-Bencher committee and Tribunal members.

### **Improving guidance for Benchers' interviews with articulated students**

17. To better support Benchers in addressing mental health and substance use issues that may be discussed in the course of interviews with articulated students, the Task Force recommended a series of changes to the content of the Benchers' orientation manual. The orientation manual and related materials were subsequently revised to ensure the use of non-stigmatizing language and to provide Benchers with supplemental information and resources in relation to these issues. Further work is required to ensure that Benchers receive this information at regular intervals, rather than only during the initial orientation period, and to expand these materials in regard to substance use issues.

### **Providing staff with access to appropriate resources**

18. The Task Force has endorsed the Law Society taking steps to improve the guidance available to staff that may interact with lawyers experiencing mental health and substance use issue in the course of their regulatory roles. It was proposed that one of the ways that this goal could be achieved was by creating a roster of qualified mental health professionals who would be available to provide arms-length assistance to staff responding to situations in which a mental health issue arises.
19. However, several of the individuals approached for the roster indicated that in many circumstances they would be unable to provide staff with this type of support in a professionally responsible manner. It was suggested that the goals of the recommendation could instead be achieved through a modified approach in which Law Society staff are provided with additional training from qualified professionals and recognized service providers to better equip them to respond directly to these issues as they arise and to make referrals to appropriate resources and support.
20. Based on this feedback, a comprehensive mental health resource is being developed for Law Society staff that includes information about training, resources and referrals. Training opportunities are also being expanded for staff that regularly interact with licensees to

ensure that they can skillfully respond to information or disclosures about mental health and substance use issues and emergent situations such as suicidal ideation.

### **Collaborating with law schools to enhance information about resources**

21. Due to the prevalence of mental health and substance use issues among law students and young lawyers, the Benchers approved the Task Force’s recommendation that the Law Society consult and collaborate with BC law schools to improve the exchange of information about the support resources available within the profession and to assist students in transitioning to these supports from those provided by the law schools. Work has begun on implementing this recommendation through Law Society staff meetings with counselors, career advisors and program administrators in each of BC’s law schools to identify opportunities to provide new entrants to the profession with this type of information. Staff also provided assistance to one of the law schools in developing a resource for students that identifies mental health supports that are available to new lawyers.
22. Conversations with the law schools about enhancing this type of information-sharing are expected to be ongoing. Information about the mental health supports available to lawyers also continues to be provided to students in the course of the PLTC, in presentations on the Law Society’s practice advice and support program and as part of mental health-related presentations by the Task Force’s Chair to upper year law students enrolled in ethics courses.

## **III. Recommendations with an implementation period of 18 months or more**

### **Enhancing education and training within the Law Society**

23. A number of the Task Force’s past recommendations focus on improving mental health training for Law Society staff, Benchers and other committee and Tribunal members. Efforts to implement these recommendations commenced with a focus on developing a series of educational and training modules for Law Society staff in collaboration with several providers, including the Canadian Mental Health Association. Steps have also been taken to ensure that all new employees are provided with mental health and substance use training as part of their orientation, and to promote mental health-related continuing professional development across the organization. Those working in roles that are more likely to encounter a lawyer experiencing these issues are encouraged to participate in a more intensive set of training opportunities, including those addressing addictions, suicide alertness and mental health first aid.

24. Unfortunately, the pandemic has caused delay to more fully implementing training related initiatives due to the inability attend in-person events and the associated disruptions in program delivery. Several of the Task Force’s other education-based recommendations, including those extending this type of training to Bencher and non-Bencher committee and Tribunal members have been affected. As organizations adapt to remote and hybrid learning models, and opportunities to travel and gather increase, additional training opportunities will be expanded to these groups.
25. Recognizing that ad-hoc educational programming is not an effective way to create sustained organizational change, training initiatives must be frequent and ongoing and integrated into all aspects of the Law Society’s operations.

### **Alternative Discipline Process pilot project**

26. The Alternative Discipline Process (“ADP”), which represents the most complex and ambitious aspect of the Task Force’s work to date, was approved by the Benchers in October 2021. Designed to address circumstances in which a health issue has contributed to lawyer misconduct, the ADP aims to place lawyers in a stronger position to meet their professional responsibilities and, in this regard, has the potential to realize significant public interest benefits by reducing the likelihood that problematic behaviour will escalate or reoccur. Rules and associated operational steps necessary to implement the program have been completed, and intakes have taken place. The program, however, is designed as a three-year pilot project and ongoing work will be required to support the operational aspects of the program, evaluate its effectiveness and communicate these findings to the Benchers.

### **Improving evidence-based understanding of mental health issues**

27. To improve evidence-based understanding of mental health and substance use issues affecting lawyers, and to support data-driven decision-making, the Task Force recommended that the Law Society conduct a survey, in partnership with a third party, to explore the prevalence and impact of these issues within the legal profession in BC. Implementation of this recommendation was re-directed to supporting the National Well-Being study developed by the Federation of Law Societies and researchers at the Université de Sherbrooke, which is the first research of its kind to examine the psychological health and well-being risk factors specific to the practice of law in Canada. With significant contributions from the Law Society, the survey has completed, and the Task Force is pleased to note that BC responses exceeded the target response rate. The data is now being reviewed by the researchers and recommendations for the law societies and others are being developed.

28. The survey results and associated recommendations are expected to be provided to the law societies in the fall, following which, the Task Force will review the results and will make additional recommendations to the Benchers with respect to the findings. The Law Society has also committed to participating in the second phase of the study, which entails the collection of qualitative data to contextualize the national survey data and generate further recommendations for BC later in 2023 that are tailored to regional factors.

## Conclusion

29. Over the past five years, the Task Force has made significant progress in fulfilling its mandate, developing 21 recommendations that address mental health and substance use issues within the legal profession. Considerable work continues to take place across the Law Society to implement these proposals. Many of the Task Force's recommendations have been fully implemented, while others require ongoing work to achieve their objectives. The differing degrees to which these recommendations have been operationalized is both a product of the diversity of initiatives, and reflects that creating systemic change in how the profession understands and responds to these issues requires considerable and sustained efforts from all members of the legal community. In this regard, the Task Force's final report will include a series of additional recommendations, including a transition plan for the Law Society's engagement with mental and substance use issues once the Task Force's term concludes.

# Mental Health Task Force Recommendations 2018 - 2021

## First Interim Report (December 2018)

### Educational strategies

- Recommendation 1: Promote, through a targeted communication campaign, an expanded role for Practice Advisors to include availability for confidential consultations about mental health and substance use issues and referrals to appropriate support resources.
- Recommendation 2: Provide Practice Advisors with specialized education and training to enhance their knowledge, skills and access to resources related to mental health and substance use issues.
- Recommendation 3: Provide Practice Standards lawyers and support staff with specialized education and training to enhance their knowledge, skills and access to resources related to mental health and substance use issues.
- Recommendation 4: Provide lawyers and paralegals in the Professional Regulation Department with specialized education and training to enhance their knowledge, skills and access to resources related to mental health and substance use issues.
- Recommendation 5: Provide Credentials Officers, auditors in the Trust Assurance Program and staff lawyers in the Lawyers Insurance Fund with basic education and training to improve their awareness of mental health and substance use issues.
- Recommendation 6: Establish a roster of qualified mental health professionals that Practice Advisors, Practice Standards lawyers, Credentials Officers and staff in the Professional Regulation Department may consult to assist them in addressing mental health and substance use issues that arise in the course of Law Society processes involving lawyers or applicants.
- Recommendation 7: Provide members of the Credentials Committee, the Practice Standards Committee and the Discipline Committee and their associated hearing panels, as well as individuals who are responsible for practice reviews, conduct meetings and conduct reviews, with basic education and training to improve awareness and knowledge of mental health and substance use issues.



- Recommendation 8: Develop a comprehensive, profession-wide communication strategy for increasing awareness about mental health and substance use issues within the legal profession.
- Recommendation 9: Seek assistance from LifeWorks to help the Law Society better explain to the profession what services are available and who may benefit from them, and to explore alternate means for lawyers to connect with LifeWorks support services that do not require access through the Law Society's member portal.
- Recommendation 10: Collaborate with the Lawyer Education Advisory Committee to explore the merits of the Law Society introducing a mandatory continuing professional development requirement for mental health and substance use disorder programming.

## **Regulatory strategies**

- Recommendation 11: Collaborate with the Law Firm Regulation Task Force to consider developing additional guidance for the self-assessment tool that encourages firms to put in place policies, processes and resources designed to support lawyers experiencing mental health and substance use issues, and to promote the use of these policies, processes and resources within firms.
- Recommendation 12: Collaborate with the Credentials Committee in re-evaluating the Law Society's current approach to inquiries into mental health and substance use in the Law Society Admission Program Enrolment Application.
- Recommendation 13: To eliminate stigmatizing language and approaches to the reporting requirements in BC Code provision 7.1-3(d) [Duty to report] and the associated Commentary.

## **Second Interim Report (January 2020)**

### **Educational strategies**

- Recommendation 1: The Law Society will consult and collaborate with BC law schools to improve the exchange of information about the availability of support resources for mental health and substance use issues within the profession and to assist students in transitioning to these supports from those provided during law school.
- Recommendation 2: Revise the material in the Bencher Orientation Manual and expand in-person training to improve the manner in which mental health and substance use issues are addressed during the Bencher interview process.

- Recommendation 3: Host a town hall to encourage lawyers and firms and other legal employers to engage in a discussion about mental health and substance use within the profession, including the role that legal employers can play in improving lawyer wellness.
- Recommendation 4: Staff will develop a style guide that provides guidance on the use of non-stigmatizing and non-discriminatory language in all future Law Society publications and communications and update the current practice resource on respectful language and ensure that this material is prominently displayed on the Law Society’s website.
- Recommendation 5: Conduct a voluntary, confidential member survey exploring mental health and substance use among BC lawyers.

## **Regulatory strategies**

- Recommendation 6: Amend BC Code Rule 7.1-3 (“duty to report”) and the associated Commentary.
- Recommendation 7: The medical fitness questions in Schedule A of the LSAP Application Form be removed.

## **Recommendation on the Development of an Alternative Discipline Process (October 2021)**

- Recommendation 1: 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.



# Memo

To: Benchers  
From: Pinder K. Cheema, QC, Law Society Representative on the Federation Council  
Date: July 8, 2022  
Subject: Briefing by the Law Society's Member of the Federation Council

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## Purpose

This memorandum is to provide the Benchers with an update on the Federation Council, following their June 6, 2022 meeting. The Council meeting began with an acknowledgment by President Nicolas Plourde of the Algonquin and Anishinaabe nations on whose lands the Federation is situated, and the enduring presence of Indigenous legal orders. He also recognized that June was National Indigenous month and in that context today's agenda addressed the appointment of the inaugural Indigenous Advisory Council.

## Discussion & Decisions

### 1. Strategic Briefing: National and International Mobility of the Profession

Frederica Wilson, Deputy CEO of the Federation, informed Council of two issues: new mobility rules proposed for federal government lawyers and an update on international mobility or trade in legal services, including Foreign Legal Consultants (FLCs).

Legal regulators have worked to ensure temporary mobility for legal professionals either through the National Mobility Agreement (NMA and its successor NMA 2013) or the Territorial Mobility Agreement, between common law jurisdictions, and between Québec.

- a. In the case of federal government lawyers, they routinely provide advice across the country which makes compliance with the NMA difficult. Now, a tentative agreement has been reached on a draft memorandum of understanding (MOU) that would modify the application of the NMA and the NMA 2013 to federal government lawyers. It is hoped that approval may take place before the end of the year. Further updates will be provided in due course.

- b. The FLC regime, also known as the ‘fly in, fly out’ regime, permits a lawyer licensed outside of Canada to apply for a permit to provide legal advice on the law of their home jurisdiction, provided they meet necessary requirements and they have insurance to cover their situation.

In all jurisdictions except BC, FLCs cannot provide legal advice on a temporary basis without a permit. The LSBC permits FLCs to provide legal services for up to 30 days provided they meet the conditions for a “Practitioner of Foreign Law” and do not establish an economic nexus in BC (See Rule 2-31).

There are ongoing negotiations between Canada and the UK for a free trade agreement relating to legal services and, in that context, the status of FLCs may be reviewed. Further information will be provided as available.

## 2. Strategic Priorities Update

- a. **The National Committee on Accreditation (NCA):** The role of this Committee is to develop policies on assessment and appeals relating to qualifications of internationally trained candidates wishing to come to Canada to practice. Recent events prompted a revision of some language in those policies. It is anticipated that Council will review and vote on those proposals shortly. Further details will be provided once the revisions have been passed.
- b. **The NCA Assessment Modernization Committee (NCA AMC):** The role of this committee is to review and update the NCA competency profile for internationally trained lawyers. A joint meeting with the National Requirement Review Committee (NRR) was held in April and stakeholders identified concerns of the implications of the draft competency profile for law schools and the bar admission process. The NCA AMC will pause work on the draft competency profile until options to address these issues are explored.
- c. **National Requirement Review (NRR):** The National Requirement (NRR) approved by all law societies sets the competencies that all graduates of Canadian common law programs must have. It is the standard against which the credentials of internationally trained lawyers (see NCA in ‘a’ above) are assessed.

It must be reviewed every 5 years. The last review was completed in 2017 and the next one was expected to be completed by December 2022.

In April 2022, joint meetings were held between the NCA AMC and the NRR and were productive. Those meetings are ongoing and will impact the NRR schedule to complete

its task by December 2022. It was resolved to extend the deadline for completion of the NRR to December 2023. The motion passed unanimously.

- d. **Anti-Money Laundering (AML) 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 financing present in the practice of law.

This Working Group has completed work on additional amendments to the anti-money laundering Model Rules Amendments and will address source of funds, as well as 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 being also 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. The educational modules are expected to be ready by the end of the year. The AML is also awaiting the release of the Cullen Report on June 15, 2022 to determine next steps.

- e. **Indigenous Advisory Council (IAC):** In October 2021, Council unanimously approved Terms of Reference to establish an Indigenous Advisory Council, which would comprise 8-10 persons, regionally, culturally, age, and gender diverse to ensure that First Nations, Metis, and Inuit voices and perspectives are represented.

Following the April 2022 meeting, potential candidates were identified, approached and agreed to put their names forward for the IAC. A list of eight persons was placed before Council and the following were unanimously appointed as the inaugural members of the IAC:

Terri-Lynn Williams-Davidson, QC: BC;  
 Jessica Saunders: Manitoba;  
 Catherine Banning: Ontario;  
 Dr. Darcy Lindberg: UVic Law;  
 Beth Kotierk: Nunavut;  
 Wina Sioui: Barreau du Québec;  
 Melinda Moch: University of Manitoba (law student); and  
 Sarah Schmaus: University of Saskatchewan (law student).

- f. **National Well Being Study:** This initiative is a joint project of the Federation and the Université de Sherbrooke, 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. Council heard that the study, which was to have been completed by June, will now be completed by early August and the draft final report to be issued. It is anticipated that the final Phase 1 report will be distributed by the fall of 2022. Law Societies will be advised once details are confirmed.
  - 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. Phase 2 began in the northern jurisdictions in May, to be followed by preliminary interviews, which are being conducted in Alberta, Saskatchewan, and BC. Ultimately, Phase 2 will expand to the rest of Canada.
- g. **Public Affairs and Government Relations Committee (PAGRC):** This committee was asked in May 2022 to comment on BILL S-7 (An Act to amend the Customs Act and Preclearance Act, 2016), which was before the Senate Committee on National Security and Defence. It proposed a new standard for border searches of cell phones of a ‘standard of reasonable general concern’.

The PAGRC provided submissions, arguing that the proposed standard was unconstitutional and failed to provide adequate protection for solicitor client information contained in the personal digital devices of legal professionals. It was submitted that the proposed standard appeared to establish a lower threshold than for other searches. The PAGRC also submitted that an uncertain standard would increase the likelihood of breaches of solicitor client privileged information.

One presenter before the Senate committee described the proposed standard as one that was equivalent to whether ‘the spidey senses are tingling’. On June 14, 2022, the Senate committee, as proposed by Senator Mobina Jaffer, QC of BC, voted to amend the proposed standard and replace it with “reasonable grounds to suspect”, which is consistent with other current standards. The Bill will now be referred back to the Senate, which will determine whether to accept or reject the committee’s recommendations.

- h. **Standing Committee on the Model Code (SCMC):** This committee is proposing draft amendments to the Discrimination and Harassment Provisions of the Model Code. Work began in 2019 following concerns that the existing rules and commentary did not adequately reflect the importance of preventing discrimination and harassment.

Beginning in 2020, there have been two rounds of lengthy, complex, and detailed consultations with law societies, other legal groups, and the Indigenous Bar Association about the draft provisions. A limited second consultation with law societies took place in the summer of 2021. Feedback was accepted until early November 2021 and a finalized version was prepared. The proposed final amendments address the ongoing problems of harassment and discrimination faced by members of the profession whose personal characteristics are the subject of human rights protections.

The following rules were the subject of study and proposed amendment, as set out below:

- i. Rule 6.3-1: the duty not to discriminate. Legal professionals are to respect and remain current of human rights obligations, and to be aware of the ongoing repercussions for indigenous persons and to not engage in discrimination or harassment against indigenous person.
- ii. Rule 6.3-2: the prohibition against harassment, and bullying. The commentary provides examples of behaviours which constitute harassment and bullying. The commentary reminds lawyers that the Rule extends beyond the workplace.
- iii. Rule 6.3-3: the prohibition against sexual harassment. This rule will be amended to ensure consistency with the proposed changes in Rules 6.3-1 and 6.3-2.
- iv. Rule 6.3-4: This is a new rule, proposed to prohibit reprisals against persons who may inquire about their rights or the rights of others in proceedings relating to a complaint of discrimination, harassment or sexual harassment.

The proposed provisions will be put before Council at a later date. A more detailed update will be provided once approved by Council.

### **3. Annual Activity Plan**

The 2022-23 draft activity plan, approved in March 2022, includes the following three strategic goals: information sharing, collaboration, and advocacy and stakeholder engagement. Significant updates include the following:

#### **a. Information Sharing**

- i. An online data collection form to gather law society demographic data will be implemented in summer 2022, in collaboration with the Law Society Equity Network (LSEN). It is designed to enhance the collection analysis and reporting of data from law societies.
- ii. The launch of the discipline and admission database is scheduled for summer-fall of 2022. The admissions related information to be shared is still under discussion with law societies.

- iii. The Federation’s annual 2022 Conference will be held in Saskatoon on October 13 and 14. It will focus on the competencies required of legal professionals in the future and what that means for legal education and training today. The discussions will also explore the needs of the public and the skills and competencies lawyers will need to respond to those needs. It is anticipated that it will provide a forum for dialogue between law societies, the legal academy, and other key stakeholders.

#### **b. Collaboration**

- i. Interviews in Phase 2 of the National Wellbeing study are taking place in the north and will commence in the west in June.
- ii. An information sharing portal to be created in summer of 2022 outlining law society initiatives and other stakeholders related to the wellbeing of legal professionals.
- iii. Consultations will begin in summer 2022 with the law societies to establish a Working Group to continue development of a common good character standard.
- iv. As indicated earlier, work will continue on online anti-money laundering modules to be ready by the end of the year.

#### **c. Advocacy and Stakeholder Engagement**

- i. Support was provided to the PAGRC (see 2g. above) to make submissions regarding Bill S-7 to the Senate committee on National Security and Defence.

### **4. CLE Programs**

Both the Criminal Law and the Family Law programs will be held in person in BC in July 2022.

### **5. President’s Report**

The President reported that he attended the LSBC retreat in Kelowna and updated the Benchers about key Federation initiatives. He reminded Council of the ongoing importance of TRC and in that context Brooks Arcand-Paul, of the Indigenous Bar Association, was invited to address Council by Zoom. He also referenced the war in Ukraine and invited Valentyn Gvozdiy, the Vice President of the Ukrainian National Bar Association (UNBA), to address Council.

### **6. Special Guests**

- a. Brooks Arcand-Paul, Vice-President of Indigenous Bar Association, spoke to Council by Zoom. He reminded Council of the need to move the needle forward in order to embrace Reconciliation and to have regard to s. 25 of the Charter (“Aboriginal rights and



freedoms not affected by Charter”). He also suggested that it was too early to predict how cultural competency training would impact the practice of law. He closed by asking what we as lawyers can do to help restore that sacred relationship, which was supposed to flow between indigenous peoples and the settlers.

- b. Valentyn Gvozdiy, Vice-President of the Ukrainian National Bar Association spoke to Council by Zoom. He began by stating that he would avoid all political comments and would instead focus on the role and situation of the Bar Association. Created in 2012 it is the national regulator of all 65,000 advocates in Ukraine. The Bar Association is independent.

He told Council that it is a very difficult time, but their court system continues to operate and they continue to execute their constitutional obligation to provide legal assistance to those who require it, as well as ensuring the safety of their members. He advised that some members had left the country due to security reasons.

The Association tries to draw as much international attention to their situation as they can. They have drafted special recommendations and guidelines for their members about how to behave toward prisoners of war (POWs). In that context, he told Council that Ukraine had charged Russian POWs with war crimes and the Ukrainian Bar Council was providing them with legal assistance funded by the state. He reiterated that even in a war zone ‘basic human rights cannot be violated’ and they are actively working with their government to deal with these violations. Especially at risk are those who are tasked with collecting evidence of war crimes, which is expected to be put before a national or an international criminal court.

Finally, he told us that the provision of legal education continues. The Association has held almost 100 online events to educate members in humanitarian, immigration, and administrative law. They are also actively assisting members to find jobs, especially those who have had to leave the country. He confirmed that they have a good relationship with Lexus Nexus, and that if anyone is interested in assisting, they can register that assistance on the Lexus Nexus website.

In closing he reiterated the importance of the legal profession, which is responsible for upholding the core values of a society, even in a war zone.



# Memo

To: Benchers  
From: Staff  
Date: June 29, 2022  
Subject: Report of the Special Committee to Review the *Freedom of Information and Protection of Privacy Act*

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The Special Committee to Review the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) submitted its report “[FIPPA for the Future](#)” (“the Report”) to the Legislative Assembly on June 8, 2022. The Special Committee made 34 recommendations to improve and modernize access to information and privacy rules in British Columbia’s public sector. The Special Committee had held a public consultation and heard from 97 organizations and individuals, one of which was the Law Society of BC.

The Law Society provided its submission<sup>1</sup> to the Special Committee on April 6, 2022, which contained six recommendations. Four of the recommendations were similar to those previously submitted by the Law Society to the Special Committee for consideration in 2004, 2010 and 2016 and relate to preserving the confidentiality of records related to solicitor-client privilege or sensitive information related to investigations (that lead to disciplinary proceedings involving a penalty or sanction) by strengthening non-disclosure directions/abilities under FIPPA. Additionally, a recommendation related to fees was resubmitted with the goal of increasing cost-effectiveness and efficacy of responses to requests for information. The remaining two recommendations were submitted for the first time and sought to address, respectively, the overly broad scope of some requests for information and the frequency and number of requests from a given requestor.

In addition to making recommendations aimed at increasing efficiency (by imposing a shorter timeline for responses to requests, increasing publically available data of timeliness of requests, and implementing fee estimates and waiver of fees in certain circumstances), the Special Committee agreed with the Law Society’s recommendation to amend FIPPA to promote greater specificity of requests and better inform applicants about how to make a request that is not overly broad.

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<sup>1</sup> At page 146/174 of the April 22, 2022 Bencher agenda package:  
[https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/agendas/2022-04-22\\_agenda.pdf](https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/agendas/2022-04-22_agenda.pdf)

The Special Committee also made recommendations related to increasing transparency by clarifying that background and factual materials cannot be withheld, differentiating legal advice from policy or program advice provided by a lawyer (with the latter not qualifying for non-disclosure on the basis of solicitor-client privilege), and requiring more fulsome documentation of decisions/actions by public bodies. In making these recommendations, the Special Committee did not include the Law Society's recommendations to bolster non-disclosure of solicitor-client privilege – an omission that is a departure from the 2016 Report<sup>2</sup> which did include such a recommendation.

Should the government proceed with implementing any of the recommendations made by the Special Committee by amending FIPPA, there may be further consultation with interested parties.

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<sup>2</sup> At page 117 of the July 8, 2016 Bencher agenda package:  
<https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/agendas/2016-07-08-agenda.pdf>