



Agenda

Benchers

Date: Friday, September 23, 2022

Time: **8:00 am – Breakfast**

9:00 am - Call to order

For those attending virtually, please join the meeting anytime from 8:30 am to allow enough time to resolve any video/audio issues before the meeting commences.

Location: Hybrid: Bencher Room, 9th Floor, Law Society Building & Zoom

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

VIRTUAL MEETING DETAILS

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

RECOGNITION

1	Presentation of Law Society Indigenous Scholarship to Co-Recipient
2	2022 Rule of Law Essay Contest: Presentation of Runner-Up

CONSENT AGENDA:

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

3	Minutes of July 8, 2022 meeting (regular session)
4	Minutes of July 8, 2022 meeting (<i>in camera</i> session)
5	Rule Amendments: Practitioners of Foreign Law
6	Rule Amendments: Tribunal Chairs
7	External Appointment: Federation of Law Societies of Canada Council



Agenda

8	Code of Professional Conduct Rule 3.4-1 & Commentaries		
REPORTS			
9	President's Report	15 min	Lisa Hamilton, KC
10	CEO's Report	15 min	Don Avison, KC
DISCUSSION/DECISION			
11	2023 Initiatives, Finances, and Fees	15 min	Jeevyn Dhaliwal, KC Don Avison, KC & Jeanette McPhee
12	Indigenous Framework Report	30 min	Christopher McPherson, KC
13	A Competence Framework for Lawyer Licensing	30 min	Steven McKoen, KC
14	Ministry of the Attorney General Intentions Paper	30 min	Shannon Salter
UPDATES			
15	Report on Outstanding Hearing & Review Decisions <i>(Materials to be circulated at the meeting)</i>	1 min	Christopher McPherson, KC
FOR INFORMATION			
16	Three Month Bench Calendar – September to November 2022		
IN CAMERA			
17	Litigation Report		
18	Other Business		



Minutes

Benchers

Date: Friday, July 08, 2022

Present:	<p>Lisa Hamilton QC, President Christopher McPherson, QC, 1st Vice-President Jeevyn Dhaliwal, QC, 2nd 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</p>	<p>Dr. Jan Lindsay Geoffrey McDonald Steven McKoen, QC Jacqueline McQueen, QC Paul Pearson Georges Rivard Michèle Ross Thomas L. Spraggs Barbara Stanley, QC Natasha Tony Michael Welsh, QC Sarah Westwood Guangbin Yan Gaynor C. Yeung</p>
Unable to Attend:	<p>Kelly H. Russ Gurminder Sandhu</p>	<p>Kevin Westell</p>
Staff:	<p>Don Avison, QC Avalon Bourne Barbara Buchanan, QC Jennifer Chan Natasha Dookie Su Forbes, QC Andrea Hilland, QC Kerryn Holt Jeffrey Hoskins, QC Jason Kuzminski</p>	<p>Michael Lucas, QC Alison Luke Claire Marchant Jeanette McPhee Cary Ann Moore Doug Munro Michelle Robertson Lesley Small Nick Wells Adam Whitcombe, QC</p>

Guests:	Dom Bautista	Executive Director & Managing Editor, Law Courts Center
	Pinder K. Cheema, QC	Law Society of BC Representative on the Federation Council
	Dr. Cristie Ford	Professor, Allard School of Law
	Ludmila Herbst, QC	Partner, Farris LLP
	Clare Jennings	President, Canadian Bar Association, BC Branch
	Derek LaCroix, QC	Executive Director, Lawyers Assistance Program of BC
	Robert Lapper	Lam Chair in Law and Public Policy, University of Victoria
	DJ Larkin	Director of Legal Service Grants, Law Foundation of BC
	Jamie Maclaren, QC	Executive Director, Access Pro Bono Society of BC
	Mark Meredith	Treasurer and Board Member, Mediate BC Society
	Ngai Pindell	Dean of Law, Peter A. Allard School of Law
	Allison Read	Rule of Law Essay Contest Winner Guest
	Brenda Rose	Director of Community Engagement, BC Courthouse Libraries
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Shannon Salter	Deputy Attorney General of BC
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
	Karen St. Aubin	Director of Membership & Education, Trial Lawyers Association of BC
	Ron Usher	General Counsel and Practice Advisor, The Society of Notaries Public of British Columbia
	Lana Walker	Assistant Dean, Thompson Rivers University
	Chris Zimmerman	Rule of Law Essay Contest Winner
	Grant Zimmerman	Rule of Law Essay Contest Winner Guest

RECOGNITION

1. 2022 Rule of Law Essay Contest: Presentation of Winner

President Hamilton introduced the winner of the 2022 Rule of Law Essay Contest. This year's contest asked students to explain how the right to freedom of expression is used to justify demonstrations for or against various causes in our society; how the freedom of expression intersects with the rule of law; in what circumstances can courts prohibit or limit a protest or demonstration; and whether their answer was affected by the popularity or unpopularity of the cause. Christopher Zimmerman is the winner of this year's contest. He wrote an exemplary essay, which is posted on the Law Society website.

CONSENT AGENDA

2. Minutes of May 28, 2022, meeting (regular session)

The minutes of the meeting held on July 8, 2022 were approved unanimously and by consent as circulated.

3. Minutes of May 28, 2022, meeting (*in camera* session)

The minutes of the *In Camera* meeting held on July 8, 2022 were approved unanimously and by consent as circulated.

4. 2022 Law Society Indigenous Scholarship

The following resolution was passed unanimously and by consent:

BE IT RESOLVED that the Benchers ratify the recommendation of the Credentials Committee to award the 2022 Law Society Indigenous Scholarship equally between Mercediese Dawson and Jaxxen Wylie.

5. 2022 Law Society Scholarship for Graduate Studies

The following resolution was passed unanimously and by consent:

BE IT RESOLVED that the Benchers ratify the recommendation of the Credentials Committee to award the 2022 Law Society Scholarship for Graduate Studies to Oludolapo Makinde.

6. Law Society Nomination of a Member to the Federation of Law Societies of Canada Council – Revised Terms of Reference

The following resolution was passed unanimously and by consent:

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.

7. Rule 2-29: Amendment to provide for Executive Director's Discretion

The following resolution was passed unanimously and by consent:

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.

8. Various Rules: Non-substantive Corrections

The following resolution was passed unanimously and by consent:

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

REPORTS

9. President's Report

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

Ms. Hamilton began her report by thanking Pinder Cheema, QC, the Law Society's Member to the Federation of Law Societies of Canada Council, for attending the meeting to answer any questions about the written briefing she had prepared that was included in the Bencher agenda materials for information.

Ms. Hamilton updated Benchers on a recent meeting with Paul Craven, the Superintendent of Professional Governance and other government representatives, as well as representatives from the Society of Notaries Public BC and the BC Paralegal Association, which took place on June 27 to discuss the creation of a single legal regulator. She indicated that Mr. Craven had confirmed that the Intentions Paper being developed by government was on track to be released in the summer, and that legislation establishing a single legal regulator of the legal professions in BC would likely be introduced during the fall 2023 legislative session.

Ms. Hamilton then provided an overview of recent events she had attended, including the QC Ceremony and Reception, which took place on July 6 at Government House; a welcoming Ceremony in Williams Lake for Judge Michelle Stanford; and regional outreach events across the province, including in Kamloops and Penticton. Ms. Hamilton encouraged Benchers to let her and Mr. Avison know if they would like to organize an outreach event in their regions of the province.

Professor Gerry Ferguson recently retired from the University of Victoria, and Ms. Hamilton acknowledged his many years of service, in particular his work in criminal law.

Ms. Hamilton then spoke about two upcoming events, starting with the Indigenous Engagement in Regulatory Matters Task Force's Summit taking place on August 5. Ms. Hamilton encouraged Benchers to attend, and she indicated that recommendations from the Task Force would likely be coming to the Bencher table in the fall. The second event is being held in collaboration with Doctors of BC on September 24, Ms. Hamilton indicated that the focus would be on developing ideas regarding how doctors and lawyers can work together to reduce harm on families navigating the family justice system.

Ms. Hamilton concluded her report with an update on the next quarterly meeting taking place with Kerry Simmons, QC, Clare Jennings, and the incoming President on July 18. Ms. Jennings term as President of the CBABC concludes in September, and Ms. Hamilton expressed her appreciation for the relationship between the Law Society and the CBABC.

10. CEO's Report

Don Avison, QC began his report by reviewing the recent Supreme Court of Canada decision on the Abrametz matter, which restored the decision of the Law Society of Saskatchewan. He noted that the matter had stemmed from a Law Society of Saskatchewan decision, which was overturned by the Saskatchewan Court of Appeal. Mr. Avison indicated that there had been a number of intervenors in the Supreme Court case, including the Federation, other Canadian law societies, and other Canadian regulatory bodies. Mr. Avison informed Benchers that a detailed summary of this significant decision would be provided to Benchers.

Mr. Avison informed Benchers that he had been 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 the June 28 meeting of the Commonwealth Lawyers Association. He indicated that the findings of the Cullen Commission would continue to be a key theme at future meetings of the Commonwealth Lawyers Association, as well as at future meetings of the Federation and the International Institute of Law Association Chief Executives.

Mr. Avison then spoke about the data provided in his CEO's Report analyzing the age distribution of the profession from 2002 to 2021, and how it has evolved over the last few years, particularly in higher concentrations of members under 40 and over 65. Mr. Avison indicated that these changes in age distribution would likely have policy implications for the Law Society that would need to be considered.

Mr. Avison informed Benchers that he would be attending a celebration of the implementation of the First Nations Education Jurisdiction Agreements on Seabird Island, which have been in development for some time. Mr. Avison expressed the significance of this important step for First Nations' law making authority.

Mr. Avison spoke about the upcoming Pulling Together Canoe Journey, which would be taking place from July 11 to 20 in the Shuswap and North Thompson regions. The event is organized by the Pulling Together Canoe Society to enhance the understanding between public service agencies and Indigenous peoples, and Mr. Avison noted that it represented an important step in the Law Society's work towards reconciliation. He further noted that several staff members and Benchers would be attending, and that he hoped the Law Society would continue to be involved in future years.

Mr. Avison concluded his report with an update on the return to in-person call ceremonies. He indicated that two ceremonies would take place in June and two would take place in July at the Vancouver Law Courts.

DISCUSSION/DECISION

11. Cullen Commission Report – Trust Review Task Force

Mr. Avison provided some background to the recommendation to establish a Trust Review Task Force. He spoke about the importance of taking a comprehensive look at the Law Society's trust accounting and related rules, and referenced the 13 recommendations specific to the Law Society in the Cullen Commission Report. Mr. Avison then reviewed with Benchers each of the 13 recommendations in detail to provide additional context and background. Mr. Avison spoke to the necessity of establishing a Trust Review Task Force and provided some commentary on the composition and mandate, as set out in the draft Terms of Reference.

Benchers discussed the mandate of the Task Force and whether the Task Force should consider the comments made in the Cullen Report regarding unexplained wealth orders. Mr. Avison indicated that he was of the view that these matters already fall within the scope of the Task Force's proposed mandate, and that the Task Force would have sufficient latitude to consider these matters.

A motion to approve the establishment of a Trust Review Task Force was passed unanimously.

12. An Independent Tribunal Chair

Mr. McPherson introduced the item and spoke about the importance of increasing the independence of the Tribunal from the investigative and rule-making functions of the Law Society, so as to improve public confidence in the administration of the disciplinary function of the Law Society. Mr. McPherson indicated that this was of particular importance with government's intention to establish a single legal regulator.

Mr. Avison referenced the discussions that took place at the October 2021 and May 2022 Bencher retreats regarding the independence of the Tribunal, noting that this had been under consideration for quite some time. He also spoke about the importance of ensuring that disciplinary cases are managed effectively, particularly in light of the Abrametz matter.

Benchers discussed whether or not the role of Tribunal Chair should be held by a lawyer, and whether or not former Benchers would be eligible. Mr. Avison advised that the job description would include specific requirements, but that the nature of the role would necessitate someone with significant legal and regulatory experience.

The following resolution was passed unanimously:

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.

UPDATES

13. 2022 May Financial Report

Jeevyn Dhaliwal, QC, as Chair of the Finance and Audit Committee, introduced the item.

Jeanette McPhee provided an update on the financial results and highlights to the end of May 2022, noting that the General Fund operations resulted in a positive variance to budget, which was due to an increase in revenue mainly comprising permanent variance and timing differences. Ms. McPhee indicated that revenue was ahead of budget due to an increase in the number of practising lawyers in BC, and operating expenses were below budget; however, external counsel fees are projected to be over budget due to the increase in number and complexity of files. Ms. McPhee indicated that these costs would be partially offset by savings in meeting and travel expenses.

Mr. Avison provided additional clarification regarding the increasing complexity of some of the files that are utilizing external counsel, particularly those involving securities and anti-money laundering. He indicated that these complex files require additional time, which increases costs as well. He further indicated that discussion on this matter would continue at future Bencher meetings.

14. 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

15. Mid-Year Updates on Work Plans

There was no discussion on this item.

16. Mental Health Task Force: Progress on Implementing Past Recommendations

There was no discussion on this item.

17. Briefing by the Law Society’s Member of the Federation Council

There was no discussion on this item.

18. Report of the Special Committee to Review FIPPA

There was no discussion on this item.

19. Minutes of June 23, 2022 Executive Committee Meeting

There was no discussion on this item.

20. Three Month Bencher Calendar – July to September 2022

There was no discussion on this item.

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

AB
2022-09-15



Memo

To: Benchers
From: Policy and Planning Department
Date: September 14, 2022
Subject: Rule 2-29 Amendments: Practitioners of Foreign Law

Attached are draft rule amendments to implement the Benchers' approval in principle given at the July Bencher meeting, to amend Rule 2-29 [*Practitioners of Foreign Law*] in order to give the Executive Director discretion to issue a permit to an applicant seeking to practise the law of a foreign jurisdiction in BC, notwithstanding the applicant has not met all of the requirements.

Red-lined and clean versions of the proposed amendments are attached, and have been reviewed by the Executive Committee.

Drafting Notes

Rule 2-29 (2.1) has been added to implement the decision that was approved in principle by the Benchers.

Because the determination of “exceptional circumstances” will justify granting a permit to practise foreign law even though the applicant could not meet the requirements that the Benchers have set out for such a grant, we have added that the Executive Director must also be satisfied that the exercise of discretion is also in the public interest. This is consistent with the exercise of discretion elsewhere in the rules and makes clear that the exceptional circumstances are material for the purposes of the rule only where they are relevant to advancing the public interest.

Staff proposes amendments to Rule 2-29(3) and (4). As the Benchers' approval in principle appears to have been to give the Executive Director a broader degree of discretion, it is presumed that the current requirement that conditions or limitations that the Executive Director attaches in the course of exercising the discretion ought not to be required to be first approved by the Credentials Committee. Such a requirement constrains the Executive Director's powers granted under the rule. Subrule (3) is therefore amended to remove the requirement for Credentials Committee approval of conditions and limitations that the Executive Director has determined should apply before the permit is issued.

Other proposed amendments are made to “clean up” some language in the relevant rules:

- As “provide for legal services” is defined to mean giving legal advice on foreign law *in BC*, Rule 2-29, 2-30 and 2-32 should be amended to delete redundant references to “British Columbia” in those rules.
- “act as a practitioner of foreign law” is replaced with “provide foreign legal services” in Rule 2-29(1) because the “act” denoted in the phrase proposed to be deleted is better described in the phrase proposed to replace it.
- “direct” is proposed to be deleted in Rule 2-29(2)(d) as, in light of changes to practice models, it may connote a higher degree of proximity than is intended.

Staff also draw attention to the fact that the lack of reference to Rule 2-29(2.1) in Rule 2-31 is intentional. No decision was made to change the requirements for when a practitioner of foreign law could practise the law of a foreign jurisdiction temporarily in BC *without* a permit.

Decision

A recommended resolution is attached.

LAW SOCIETY RULES

Definitions

1 In these rules, unless the context indicates otherwise:

“**foreign jurisdiction**” means a country other than Canada or an internal jurisdiction of a country other than Canada;

“**practitioner of foreign law**” means a person qualified to practise law in a foreign jurisdiction who provides foreign legal services ~~in British Columbia~~ respecting the laws of that foreign jurisdiction;

“**provide foreign legal services**” means give legal advice in British Columbia respecting the laws of a foreign jurisdiction in which the person giving the advice is qualified;

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Practitioners of foreign law

Definitions

2-28 In Rules 2-28 to 2-34,

“**business day**” means any calendar day or part of a calendar day in which a practitioner of foreign law provides foreign legal services;

“**permit**” means a practitioner of foreign law permit issued under Rule 2-29 [*Practitioners of foreign law*];

“**resident**” has the meaning respecting a province or territory that it has with respect to Canada in the *Income Tax Act* (Canada).

Practitioners of foreign law

2-29 (1) A person who qualifies under section 17 [*Practitioners of foreign law*] may apply to the Executive Director for a permit to provide foreign legal services ~~act as a practitioner of foreign law in British Columbia~~ by delivering to the Executive Director

- (a) a completed permit application in the prescribed form, including a written consent for the release of relevant information to the Society, and
- (b) the application fee specified in Schedule 1.

LAW SOCIETY RULES

- (2) The Executive Director may issue a permit to a person applying under subrule (1) if the Executive Director is satisfied that the person
- (a) is a member of the legal profession in one or more foreign jurisdictions,
 - (b) is not suspended or disbarred and has not otherwise ceased, for disciplinary reasons, to be a member of a governing body or of the legal profession in any foreign jurisdiction,
 - (c) is a person of good character and repute,
 - (d) has practised the law of a foreign jurisdiction for at least 3 of the past 5 years, or undertakes in writing to provide foreign legal services act as a practitioner of foreign law in British Columbia only under the direct supervision of a practitioner of foreign law who has practised law in that foreign jurisdiction for at least 3 of the past 5 years, and
 - (e) carries professional liability insurance or a bond, indemnity or other security
 - (i) in a form and amount at least reasonably comparable to the indemnity coverage required of lawyers under Rule 3-39 (1) [*Compulsory professional liability indemnification*], and
 - (ii) that specifically extends to services rendered by the activities of the practitioner of foreign law in providing foreign legal services while acting as such in British Columbia.
- (2.1) In exceptional circumstances, the Executive Director may issue a permit to a person applying under subrule (1) who does not meet the requirements set out in subrule (2) if the Executive Director is satisfied that it is in the public interest to do so.
- (3) ~~Subject to subrule (4),~~ The Executive Director may attach conditions or limitations to a permit issued or renewed under this rule.
 - (4) ~~The Executive Director may only attach under subrule (3) conditions or limitations that are authorized by the Credentials Committee~~[rescinded].
 - (5) A permit issued under ~~subrule (2)~~ this rule is valid for one year from the issue date shown on it.
 - (6) Despite subrule (5), a practitioner of foreign law permit ceases to be valid if the practitioner of foreign law
 - (a) is suspended as a result of proceedings taken under Part 4 [*Discipline*], or
 - (b) ceases to comply with any of the requirements of this Part.

LAW SOCIETY RULES

Conditions and limitations

- 2-30** (1) Subject to Rule 2-31 [*Providing foreign legal services without a permit*], no one may provide foreign legal services or market a foreign legal practice in British Columbia without a permit issued under Rule 2-29 (2) [*Practitioners of foreign law*].
- (2) A practitioner of foreign law who holds a current permit may provide foreign legal services ~~in British Columbia~~ respecting
- (a) the law of a foreign jurisdiction in which the practitioner of foreign law is fully licensed to practise law, and
 - (b) trans-jurisdictional or international legal transactions.
- (3) A practitioner of foreign law must not
- (a) provide advice respecting the law of British Columbia or another Canadian jurisdiction, or
 - (b) deal in any way with funds that would, if accepted, held, transferred or otherwise dealt with by a lawyer, constitute trust funds, except money received on deposit for fees to be earned in the future by the practitioner of foreign law.
- (4) The Act, these rules and the *Code of Professional Conduct* apply to and bind a practitioner of foreign law.
- (5) A practitioner of foreign law must notify the Executive Director promptly if the practitioner of foreign law
- (a) is the subject of criminal or professional discipline proceedings in any jurisdiction,
 - (b) ceases to be a member in good standing of the legal profession in any jurisdiction, or
 - (c) fails to complete satisfactorily any continuing legal education program required of the practitioner of foreign law as a member of the legal profession in a foreign jurisdiction.

Providing foreign legal services without a permit

- 2-31** (1) Subject to the other requirements of this rule, a practitioner of foreign law may provide foreign legal services without a permit for a maximum of 30 business days in any calendar year.
- (2) Subject to subrule (3), to qualify to provide foreign legal services without a permit, a practitioner of foreign law must at all times
- (a) qualify for a permit under Rule 2-29 (2) [*Practitioners of foreign law*],
 - (b) comply with Rules 2-30 (3) to (5) [*Conditions and limitations*],

LAW SOCIETY RULES

- (c) not be subject to conditions of or restrictions on membership in the governing body of the practitioner of foreign law or on qualification to practise law in any jurisdiction imposed as a result of or in connection with proceedings related to discipline, competency or capacity,
 - (d) not be the subject of criminal or disciplinary proceedings in any jurisdiction,
 - (e) have no criminal or disciplinary record in any jurisdiction, and
 - (f) not establish an economic nexus with British Columbia.
- (3) A practitioner of foreign law who provides foreign legal services without a permit must, on request,
- (a) provide evidence to the Executive Director that the practitioner of foreign law has complied with and continues to comply with this rule, and
 - (b) disclose to the Executive Director each governing body of which the practitioner of foreign law is a member.
- (4) For the purposes of this rule, an economic nexus is established by actions inconsistent with a temporary basis for providing foreign legal services, including but not limited to doing any of the following in British Columbia:
- (a) providing foreign legal services beyond 30 business days in a calendar year;
 - (b) opening an office from which foreign legal services are offered or provided to the public;
 - (c) becoming resident;
 - (d) holding oneself out or allowing oneself to be held out as willing or qualified to provide legal services, except as a practitioner of foreign law without a permit.
- (5) A practitioner of foreign law who practises law in a law firm in the home jurisdiction of the practitioner of foreign law and provides foreign legal services in or from an office in British Columbia affiliated with that firm does not, for that reason alone, establish an economic nexus with British Columbia.
- (6) A practitioner of foreign law who becomes disqualified under subrule (4) must cease providing foreign legal services forthwith, but may apply under Rule 2-29 [*Practitioners of foreign law*] for a permit.
- (7) On application by a practitioner of foreign law, the Executive Director may allow the practitioner of foreign law to begin or continue to provide foreign legal services pending consideration of an application under Rule 2-29 [*Practitioners of foreign law*].

LAW SOCIETY RULES

Dual qualification

2-32 A lawyer, other than a retired or non-practising member, who is qualified to practise law in a foreign jurisdiction may ~~act as a practitioner of foreign law in British Columbia~~ provide foreign legal services without obtaining a permit, provided the lawyer maintains professional liability insurance that

- (a) specifically extends to the lawyer's activities ~~as a practitioner of foreign law in British Columbia~~ in providing foreign legal services, and
- (b) is in a form and amount at least reasonably comparable to the indemnity coverage required of lawyers under Rule 3-39 (1) [*Compulsory professional liability indemnification*].

Marketing of legal services by practitioners of foreign law

2-33 A practitioner of foreign law who is not a member of the Society must do all of the following when engaging in any marketing activity as defined in the *Code of Professional Conduct*, section 4.2 [*Marketing*]:

- (a) use the term “practitioner of foreign law”;
- (b) state the foreign jurisdiction in which the practitioner of foreign law holds professional legal qualifications, and the professional title used in that jurisdiction;
- (c) not use any designation or make any representation from which a recipient might reasonably conclude that the practitioner of foreign law is a member of the Society.

Renewal of permit

- 2-34** (1) In order to renew a practitioner of foreign law permit, a practitioner of foreign law must apply to the Executive Director for a renewal of the permit before it expires.
- (2) A renewal application must include
- (a) a completed permit renewal application in the prescribed form, including a written consent for the release of relevant information to the Society,
 - (b) evidence satisfactory to the Executive Director that the practitioner of foreign law continues to ~~meet~~ comply with the requirements set out in Rule 2-29 (2) ~~or, in exceptional circumstances, that it is in the public interest to issue the permit under Rule 2-29 (2.1)~~ [*Practitioners of foreign law*], and
 - (c) the renewal fee specified in Schedule 1.
- (3) The Executive Director may renew the permit of a practitioner of foreign law who has complied with the Act and these rules.

LAW SOCIETY RULES

- (4) Subject to subrule (5), a permit renewed under subrule (3) is valid for one year.
- (5) Rule 2-29 (6) [*Practitioners of foreign law*] applies to a permit renewed under subrule (3).
- (6) A practitioner of foreign law who fails to pay when due the fee for renewal of a permit under subrule (2), including applicable taxes, or any part of it, must pay the late payment fee specified in Schedule 1.

LAW SOCIETY RULES

Definitions

1 In these rules, unless the context indicates otherwise:

“**foreign jurisdiction**” means a country other than Canada or an internal jurisdiction of a country other than Canada;

“**practitioner of foreign law**” means a person qualified to practise law in a foreign jurisdiction who provides foreign legal services respecting the laws of that foreign jurisdiction;

“**provide foreign legal services**” means give legal advice in British Columbia respecting the laws of a foreign jurisdiction in which the person giving the advice is qualified;

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Practitioners of foreign law

Definitions

2-28 In Rules 2-28 to 2-34,

“**business day**” means any calendar day or part of a calendar day in which a practitioner of foreign law provides foreign legal services;

“**permit**” means a practitioner of foreign law permit issued under Rule 2-29 [*Practitioners of foreign law*];

“**resident**” has the meaning respecting a province or territory that it has with respect to Canada in the *Income Tax Act* (Canada).

Practitioners of foreign law

2-29 (1) A person who qualifies under section 17 [*Practitioners of foreign law*] may apply to the Executive Director for a permit to provide foreign legal services by delivering to the Executive Director

- (a) a completed permit application in the prescribed form, including a written consent for the release of relevant information to the Society, and
- (b) the application fee specified in Schedule 1.

(2) The Executive Director may issue a permit to a person applying under subrule (1) if the Executive Director is satisfied that the person

- (a) is a member of the legal profession in one or more foreign jurisdictions,

LAW SOCIETY RULES

- (b) is not suspended or disbarred and has not otherwise ceased, for disciplinary reasons, to be a member of a governing body or of the legal profession in any foreign jurisdiction,
 - (c) is a person of good character and repute,
 - (d) has practised the law of a foreign jurisdiction for at least 3 of the past 5 years, or undertakes in writing to provide foreign legal services only under the supervision of a practitioner of foreign law who has practised law in that foreign jurisdiction for at least 3 of the past 5 years, and
 - (e) carries professional liability insurance or a bond, indemnity or other security
 - (i) in a form and amount at least reasonably comparable to the indemnity coverage required of lawyers under Rule 3-39 (1) [*Compulsory professional liability indemnification*], and
 - (ii) that specifically extends to the activities of the practitioner of foreign law in providing foreign legal services.
- (2.1) In exceptional circumstances, the Executive Director may issue a permit to a person applying under subrule (1) who does not meet the requirements set out in subrule (2) if the Executive Director is satisfied that it is in the public interest to do so.
- (3) The Executive Director may attach conditions or limitations to a permit issued or renewed under this rule.
- (4) [rescinded]
- (5) A permit issued under this rule is valid for one year from the issue date shown on it.
- (6) Despite subrule (5), a practitioner of foreign law permit ceases to be valid if the practitioner of foreign law
- (a) is suspended as a result of proceedings taken under Part 4 [*Discipline*], or
 - (b) ceases to comply with any of the requirements of this Part.

Conditions and limitations

- 2-30** (1) Subject to Rule 2-31 [*Providing foreign legal services without a permit*], no one may provide foreign legal services or market a foreign legal practice in British Columbia without a permit issued under Rule 2-29 [*Practitioners of foreign law*].
- (2) A practitioner of foreign law who holds a current permit may provide foreign legal services respecting
- (a) the law of a foreign jurisdiction in which the practitioner of foreign law is fully licensed to practise law, and
 - (b) trans-jurisdictional or international legal transactions.

DM3731476

DM3705596

POFL - Executive Director's discretion draft 9 (clean) September 14, 2022

page 2

LAW SOCIETY RULES

- (3) A practitioner of foreign law must not
 - (a) provide advice respecting the law of British Columbia or another Canadian jurisdiction, or
 - (b) deal in any way with funds that would, if accepted, held, transferred or otherwise dealt with by a lawyer, constitute trust funds, except money received on deposit for fees to be earned in the future by the practitioner of foreign law.
- (4) The Act, these rules and the *Code of Professional Conduct* apply to and bind a practitioner of foreign law.
- (5) A practitioner of foreign law must notify the Executive Director promptly if the practitioner of foreign law
 - (a) is the subject of criminal or professional discipline proceedings in any jurisdiction,
 - (b) ceases to be a member in good standing of the legal profession in any jurisdiction, or
 - (c) fails to complete satisfactorily any continuing legal education program required of the practitioner of foreign law as a member of the legal profession in a foreign jurisdiction.

Providing foreign legal services without a permit

- 2-31** (1) Subject to the other requirements of this rule, a practitioner of foreign law may provide foreign legal services without a permit for a maximum of 30 business days in any calendar year.
- (2) Subject to subrule (3), to qualify to provide foreign legal services without a permit, a practitioner of foreign law must at all times
- (a) qualify for a permit under Rule 2-29 (2) [*Practitioners of foreign law*],
 - (b) comply with Rules 2-30 (3) to (5) [*Conditions and limitations*],
 - (c) not be subject to conditions of or restrictions on membership in the governing body of the practitioner of foreign law or on qualification to practise law in any jurisdiction imposed as a result of or in connection with proceedings related to discipline, competency or capacity,
 - (d) not be the subject of criminal or disciplinary proceedings in any jurisdiction,
 - (e) have no criminal or disciplinary record in any jurisdiction, and
 - (f) not establish an economic nexus with British Columbia.

LAW SOCIETY RULES

- (3) A practitioner of foreign law who provides foreign legal services without a permit must, on request,
 - (a) provide evidence to the Executive Director that the practitioner of foreign law has complied with and continues to comply with this rule, and
 - (b) disclose to the Executive Director each governing body of which the practitioner of foreign law is a member.
- (4) For the purposes of this rule, an economic nexus is established by actions inconsistent with a temporary basis for providing foreign legal services, including but not limited to doing any of the following in British Columbia:
 - (a) providing foreign legal services beyond 30 business days in a calendar year;
 - (b) opening an office from which foreign legal services are offered or provided to the public;
 - (c) becoming resident;
 - (d) holding oneself out or allowing oneself to be held out as willing or qualified to provide legal services, except as a practitioner of foreign law without a permit.
- (5) A practitioner of foreign law who practises law in a law firm in the home jurisdiction of the practitioner of foreign law and provides foreign legal services in or from an office in British Columbia affiliated with that firm does not, for that reason alone, establish an economic nexus with British Columbia.
- (6) A practitioner of foreign law who becomes disqualified under subrule (4) must cease providing foreign legal services forthwith, but may apply under Rule 2-29 [*Practitioners of foreign law*] for a permit.
- (7) On application by a practitioner of foreign law, the Executive Director may allow the practitioner of foreign law to begin or continue to provide foreign legal services pending consideration of an application under Rule 2-29 [*Practitioners of foreign law*].

Dual qualification

- 2-32** A lawyer, other than a retired or non-practising member, who is qualified to practise law in a foreign jurisdiction may provide foreign legal services without obtaining a permit, provided the lawyer maintains professional liability insurance that
- (a) specifically extends to the lawyer's activities in providing foreign legal services, and

LAW SOCIETY RULES

- (b) is in a form and amount at least reasonably comparable to the indemnity coverage required of lawyers under Rule 3-39 (1) [*Compulsory professional liability indemnification*].

Marketing of legal services by practitioners of foreign law

2-33 A practitioner of foreign law who is not a member of the Society must do all of the following when engaging in any marketing activity as defined in the *Code of Professional Conduct*, section 4.2 [*Marketing*]:

- (a) use the term “practitioner of foreign law”;
- (b) state the foreign jurisdiction in which the practitioner of foreign law holds professional legal qualifications, and the professional title used in that jurisdiction;
- (c) not use any designation or make any representation from which a recipient might reasonably conclude that the practitioner of foreign law is a member of the Society.

Renewal of permit

- 2-34** (1) In order to renew a practitioner of foreign law permit, a practitioner of foreign law must apply to the Executive Director for a renewal of the permit before it expires.
- (2) A renewal application must include
- (a) a completed permit renewal application in the prescribed form, including a written consent for the release of relevant information to the Society,
 - (b) evidence satisfactory to the Executive Director that the practitioner of foreign law continues to meet the requirements set out in Rule 2-29 (2) or, in exceptional circumstances, that it is in the public interest to issue the permit under Rule 2-29 (2.1) [*Practitioners of foreign law*], and
 - (c) the renewal fee specified in Schedule 1.
- (3) The Executive Director may renew the permit of a practitioner of foreign law who has complied with the Act and these rules.
- (4) Subject to subrule (5), a permit renewed under subrule (3) is valid for one year.
- (5) Rule 2-29 (6) [*Practitioners of foreign law*] applies to a permit renewed under subrule (3).
- (6) A practitioner of foreign law who fails to pay when due the fee for renewal of a permit under subrule (2), including applicable taxes, or any part of it, must pay the late payment fee specified in Schedule 1.

PRACTITIONERS OF FOREIGN LAW

RESOLUTION:

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

1. *In Rule 1, the definition of “practitioner of foreign law” is amended by striking “in British Columbia”.*
2. *Rule 2-29 (1) is rescinded and the following is substituted:*

2-29 (1) A person who qualifies under section 17 [*Practitioners of foreign law*] may apply to the Executive Director for a permit to provide foreign legal services by delivering to the Executive Director

 - (a) a completed permit application in the prescribed form, including a written consent for the release of relevant information to the Society, and
 - (b) the application fee specified in Schedule 1.

(2) The Executive Director may issue a permit to a person applying under subrule (1) if the Executive Director is satisfied that the person

 - (a) is a member of the legal profession in one or more foreign jurisdictions,
 - (b) is not suspended or disbarred and has not otherwise ceased, for disciplinary reasons, to be a member of a governing body or of the legal profession in any foreign jurisdiction,
 - (c) is a person of good character and repute,
 - (d) has practised the law of a foreign jurisdiction for at least 3 of the past 5 years, or undertakes in writing to provide foreign legal services only under the supervision of a practitioner of foreign law who has practised law in that foreign jurisdiction for at least 3 of the past 5 years, and
 - (e) carries professional liability insurance or a bond, indemnity or other security
 - (i) in a form and amount at least reasonably comparable to the indemnity coverage required of lawyers under Rule 3-39 (1) [*Compulsory professional liability indemnification*], and
 - (ii) that specifically extends to the activities of the practitioner of foreign law in providing foreign legal services.

- (2.1) In exceptional circumstances, the Executive Director may issue a permit to a person applying under subrule (1) who does not meet the requirements set out in subrule (2) if the Executive Director is satisfied that it is in the public interest to do so.
- (3) The Executive Director may attach conditions or limitations to a permit issued or renewed under this rule.
- (5) A permit issued under this rule is valid for one year from the issue date shown on it.
- (6) Despite subrule (5), a practitioner of foreign law permit ceases to be valid if the practitioner of foreign law
 - (a) is suspended as a result of proceedings taken under Part 4 [*Discipline*],
 - or
 - (b) ceases to comply with any of the requirements of this Part.

3. ***Rule 2-30 is amended as follows:***

- (a) ***in subrule (1) by striking “a permit issued under Rule 2-29 (2)” and substituting “a permit issued under Rule 2-29”;***
- (b) ***in subrule (2) by striking “in British Columbia”.***

4. ***Rule 2-32 is rescinded and the following substituted:***

- 2-32** A lawyer, other than a retired or non-practising member, who is qualified to practise law in a foreign jurisdiction may provide foreign legal services without obtaining a permit, provided the lawyer maintains professional liability insurance that
- (a) specifically extends to the lawyer’s activities in providing foreign legal services, and
 - (b) is in a form and amount at least reasonably comparable to the indemnity coverage required of lawyers under Rule 3-39 (1) [*Compulsory professional liability indemnification*].

5. ***Rule 2-34 (2) (b) is rescinded and the following substituted:***

- (b) evidence satisfactory to the Executive Director that the practitioner of foreign law continues to meet the requirements set out in Rule 2-29 (2) [*Practitioners of foreign law*] or, in exceptional circumstances, that it is in the public interest to issue the permit under Rule 2-29 (2.1), and

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: Benchers
From: Policy and Planning Department
Date: September 14, 2022
Subject: Rule 5-1.3 Amendments: Tribunal Chair

At the July Bencher meeting, the Benchers resolved in principle

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.

Red-lined and clean versions of the proposed amendments are attached, and have been reviewed by the Executive Committee.

Drafting Notes

The amendments proposed are relatively straightforward.

No direction was given in the approval in principle to change the term given to the Tribunal Chair. The current term is based on the current structure of appointments to the Tribunal, and on the fact that the Chair is a Bencher. The Executive Committee was asked to make a recommendation on term, and settled on a term of 2 years, renewable up to two times, and that is what has been included in the proposed rule amendments.

The Chair's term currently has fixed start dates. Again, that was premised on the current position being filled by a Bencher and the current structure of the Tribunal. While specific start dates could be maintained, they are not necessary, and staff has recommended removing them. This way, the appointment can be made as needed. The Executive Committee agreed with the staff recommendation. The Committee discussed whether there should be a limit on any terms of re-appointment, but ultimately a decision on that issue was not made at this time.

Staff also recommended replacing the designation power that currently exists in Rule 5-1.3 with a more directed power similar to that in Rule 1-8 with respect to how the President is able to

designate, in order to address where the Chair is either absent or unable to act or otherwise consents. The Executive Committee agreed with that recommendation as well.

Designation is given to a “practising lawyer” who will presumably be a person appointed to the Tribunal. Staff advises that operational policies can be put with regard to such designation.

As salaries and conditions are not generally contained in the rules, the rules remain silent on those matters.

The proposed resolution delays the implementation of the Rule until January 1, 2023 to allow for time to advertise for and identify a Tribunal Chair, and to ensure a continuation of the current Chair’s term until a date on which the new Chair can be ready to assume responsibilities.

Decision

A recommended resolution is attached.

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

“**Tribunal Chair**” means the Bencher-practising lawyer appointed under Rule 5-1.3 [Tribunal Chair];

PART 5 – TRIBUNAL, HEARINGS AND APPEALS

Application

- 5-1 (1) This part applies to
- (a) a hearing of an application for enrolment, call and admission or reinstatement,
 - (b) a hearing of a citation, and
 - (c) unless the context indicates otherwise, a review by a review board of a hearing decision.
- (2) In this part, a law firm may act through its designated representative or another lawyer engaged in the practice of law as a member of the law firm.

The Tribunal

Tribunal Chair

- 5-1.3 (1) The Benchers must appoint a Bencher-practising lawyer as Tribunal Chair.
- (2) The Tribunal Chair must not be a Bencher or a member of the Discipline, Credentials or Practice Standards Committee.
- (3) The term of office of the Tribunal Chair is two years, ~~beginning and ending January 1 of each even-numbered year~~
- (4) If the office of Tribunal Chair becomes vacant for any reason, the Benchers must promptly appoint a Bencher-practising lawyer to complete the term of office.
- (5) The ~~Tribunal Chair may designate another Bencher to fulfill the~~ functions of the Tribunal Chair may be exercised by another practising lawyer designated by the Tribunal Chair ~~from time to time.~~
- (a) if the Tribunal Chair is absent or otherwise unable to act, or
 - (b) with the authorization of the Tribunal Chair.

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

“**Tribunal Chair**” means the practising lawyer appointed under Rule 5-1.3 [*Tribunal Chair*];

PART 5 – TRIBUNAL, HEARINGS AND APPEALS

Application

- 5-1 (1) This part applies to
- (a) a hearing of an application for enrolment, call and admission or reinstatement,
 - (b) a hearing of a citation, and
 - (c) unless the context indicates otherwise, a review by a review board of a hearing decision.
- (2) In this part, a law firm may act through its designated representative or another lawyer engaged in the practice of law as a member of the law firm.

The Tribunal

Tribunal Chair

- 5-1.3 (1) The Benchers must appoint a practising lawyer as Tribunal Chair.
- (2) The Tribunal Chair must not be a Bencher or a member of the Discipline, Credentials or Practice Standards Committee.
 - (3) The term of office of the Tribunal Chair is two years.
 - (4) If the office of Tribunal Chair becomes vacant for any reason, the Benchers must promptly appoint a practising lawyer to complete the term of office.
 - (5) The functions of the Tribunal Chair may be exercised by another practising lawyer designated by the Tribunal Chair.
 - (a) if the Tribunal Chair is absent or otherwise unable to act, or
 - (b) with the authorization of the Tribunal Chair.

TRIBUNAL CHAIR**RESOLUTION:**

BE IT RESOLVED to amend the Law Society Rules effective January 1, 2023, as follows:

1. *In Rule 1, the definition of “Tribunal chair” is rescinded and the following substituted:*

“Tribunal Chair” means the practising lawyer appointed under Rule 5-1.3
[*Tribunal Chair*];

2. *Rule 5-1.3 is rescinded and the following substituted:*

5-1.3(1) The Benchers must appoint a practising lawyer as Tribunal Chair.

(2) The Tribunal Chair must not be a Bencher or a member of the Discipline, Credentials or Practice Standards Committee.

(3) The term of office of the Tribunal Chair is two years.

(4) If the office of Tribunal Chair becomes vacant for any reason, the Benchers must promptly appoint a practising lawyer to complete the term of office.

(5) The functions of the Tribunal Chair may be exercised by another practising lawyer designated by the Tribunal Chair.

(a) if the Tribunal Chair is absent or otherwise unable to act, or

(b) with the authorization of the Tribunal Chair.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: Benchers
 From: Ethics and Lawyer Independence Advisory Committee
 Date: September 16, 2022
 Subject: Amendments to BC Code of Professional Conduct commentaries under rules 3.4-1 and 3.4-2 (Conflicts of Interests)

A key item on the Ethics and Lawyer Independence Advisory Committee’s work plan for 2022, and a specific request of Law Society President Lisa Hamilton, KC, has been a review of the general conflicts provisions under rules 3.4-1 and 3.4-2 of the *Code of Professional Conduct for British Columbia* (“BC Code”), in order to make recommendations that would bring the BC Code’s provisions into alignment with the jurisprudence of the Supreme Court of Canada (SCC), from the [Neil](#) (*R. v. Neil* 2002 SCC 70) and [McKercher](#) (*CNR v. McKercher LLP*, 2013 SCC 39) decisions, and into closer harmony with the provisions of the Federation of Law Societies’ [Model Code](#) of Professional Conduct (“Model Code”) and with the codes of conduct of the majority of Canadian provincial and territorial common law jurisdictions.

The Committee has completed its review and accordingly in this memorandum provides its recommendation for amendments to the commentaries to BC Code rules 3.4-1 and 3.4-2. The recommended amendments are set out in red-lined version below and the Committee is satisfied that they adequately reflect the state of Canadian law on conflicts of interest and, if adopted, they will substantially close the gap between the BC Code and the Model Code, as far as these particular rules and commentaries are concerned, while preserving those elements of the existing BC Code provisions that respond to unique aspects of the practice of law in BC and assist those seeking guidance from the BC Code to readily find the relevant provisions for their needs.

Background

In *McKercher* the SCC applied the ‘bright line rule,’ which it had previously recognized in *Neil*, and expanded on the correct analysis to apply in assessing potential conflicts of interest situations. The court was clear that the first step was to apply the bright line rule. Only where the bright line rule was found not to be applicable on the facts were further analytical steps required, potentially including an assessment of the substantial risk of a problematic conflict, in determining whether it was permissible to continue to act. The result of following the bright line rule where it could be applied was that a lawyer would not continue to act in absence of informed client consent. By contrast, the provisions of the BC Code suggest that a substantial risk analysis

is generally applicable and may be treated as *the first step* in determining whether it is appropriate for a lawyer to act or continue to act for a client. Whether there will be a difference in result of the two approaches is not very clear. But it is clear that there is a potential for a difference in result between, on one hand, a lawyer not continuing to act in absence of client consent and, on the other, a lawyer's continuing to act being predicated on the lawyer's own substantial risk assessment of the circumstances at hand. The potential for a different result is there because the lawyer's substantial risk assessment could theoretically result in a decision either way. It likely brings additional uncertainty because it is possible that different lawyers, or perhaps even the same lawyer on different days, would judge the risks differently in coming to a decision on whether they were "substantial."

The provisions of the Model Code reflect the approach of the SCC, with commentary [1] to rule 3.4-1 making it clear that, where applicable, the bright line rule prohibits lawyers from continuing to act in absence of client consent. The Model Code's commentary [2] then adds that where the bright line rule is inapplicable a determination must be made based on an assessment of substantial risk. Thus, by adopting these Model Code provisions to replace the BC Code provisions that recognize the substantial risk analysis as the primary consideration, the BC Code would be brought into closer alignment with both the Model Code (and the several jurisdictions whose codes generally track the Model Code) and with the SCC jurisprudence on conflicts of interest. Accordingly, such adoption can be viewed as serving the dual purpose of respecting Canadian law on conflicts of interest and honouring the Law Society's commitment to the Federation of Law Societies of Canada to work collaboratively toward increasingly uniform ethical rules and standards of practice for lawyers across Canadian regulatory jurisdictions.

It may be observed that the standards of the law on co-regulated issues such as conflicts of interest do not necessarily determine what standards law societies must expect of their registrant lawyers. While that may be true, the legal standards are best viewed as minimums, with the law societies having some discretion to set their ethical expectations higher than the courts. The obligations of lawyers, as officers of the court, to follow and respect the law, and the obligation of law societies to enforce professional standards, would preclude the potential for the law societies to set the bar lower than the courts and to allow lawyers to behave in a manner that fails to meet their legal obligations. One potential criticism of the present BC Code conflicts provisions is that they may seem to allow that sort of lower standard possibility, for any case where the bright line rule could be applied but where a lawyer in BC might alternatively determine that the risks of a problematic conflict are not sufficient to require the lawyer's withdrawal in absence of client consent.

The extent of the required amendments

It is worth noting that the changes required to bring the BC Code's conflicts provisions into alignment with the law from McKercher and into significantly closer alignment with the Model

Code are somewhat limited. They do not involve changing any of the actual rules in the BC Code, as rules 3.4-1 and 3.4-2 are already identical with their Model Code counterparts. The changes are limited to some of commentary provisions under those rules, which is where guidance about how to understand and apply the rules is located. Additionally, many of the commentary paragraphs are already word-for-word identical with the corresponding portion of the other code. Further, some of the changes are ‘merely apparent,’ such as the deletions in commentary [7] to rule 3.4-1, which reappear unchanged in the added commentary [10] that is drawn from the Model Code.

Through all of the recommended changes, to the extent that there may be a substantive difference resulting, the Committee’s view is that it is limited to what is required to adopt the SCC’s and the Model Code’s approach on the primacy of the bright line rule and the relegation of substantial risk analysis to the subsequent consideration, wherever such may be necessary.

As part of its review and evaluation process, the Committee has turned its mind to each of the recommended changes and determined that in moving from what now exists to the recommended amendments, there is no reduction in professional standards, from the perspective of attending to the public interest in the administration of justice, and that the solution as provided by a move to adopt the Model Code provisions does not amount to any hardship or untenable standard for lawyers practicing in BC. The fact is that the Model Code commentary provisions under rules 3.4-1 and 3.4-2 have already been in use in a number of Canadian jurisdictions for several years. Lawyers in the jurisdictions whose codes of conduct substantially track the Model Code have been bound by these provisions for some time; that would include some members of any multiply-located firms that have offices in those jurisdictions as well as in BC. The track record of these provisions has not resulted in their requiring the subsequent attention of the Federation’s Standing Committee on the Model Code, as one would otherwise expect if they had been found to be problematic. The Model Code provisions appear to have been in substantially their present form since 2013.

Recommendation and resolution

The Ethics and Lawyer Independence Advisory Committee recommends that the Benchers adopt the following resolution:

BE IT RESOLVED the Benchers adopt the amendments to the commentaries to rules 3.4-1 and 3.4-2 of the *Code of Professional Conduct for British Columbia*, as recommended by the Ethics and Lawyer Independence Advisory Committee, and set out in the red-lined version of those provisions included in the Committee’s memorandum to the Benchers dated July 6, 2022.

Red-lined version of rules 3.4-1 and 3.4-2 and commentaries showing the recommended amendments

3.4 Conflicts

Duty to avoid conflicts of interest

3.4-1 A lawyer must not act or continue to act for a client where there is a conflict of interest, except as permitted under this Code.

Commentary

[0.1] In a real property transaction, a lawyer may act for more than one party with different interests only in the circumstances permitted by Appendix C.

[1] Lawyers have an ethical duty to avoid conflicts of interest. Some cases involving conflicts of interest will fall within the scope of the bright line rule as articulated by the Supreme Court of Canada. The bright line rule prohibits a lawyer or law firm from representing one client whose legal interests are directly adverse to the immediate legal interests of another client even if the matters are unrelated unless the clients consent. However, the bright line rule cannot be used to support tactical abuses and will not apply in the exceptional cases where it is unreasonable for the client to expect that the lawyer or law firm will not act against it in unrelated matters. See

also rule 3.4-2 and commentary [6]. As defined in these rules, a conflict of interest exists when there is a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person. The risk must be more than a mere possibility; there must be a genuine, serious risk to the duty of loyalty or to client representation arising from the retainer. A client's interests may be seriously prejudiced unless the lawyer's judgment and freedom of action on the client's behalf are as free as possible from conflicts of interest.

[2] In cases where the bright line rule is inapplicable, the lawyer or law firm will still be prevented from acting if representation of the client would create a substantial risk that the lawyer's representation of the client would be materially and adversely affected by the lawyer's own interests or by the lawyer's duties to another current client, a former client, or a third person. The risk must be more than a mere possibility; there must be a genuine, serious risk to the duty

of loyalty or to client representation arising from the retainer. A lawyer should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest.

[3] This rule applies to a lawyer's representation of a client in all circumstances in which the

lawyer acts for, provides advice to or exercises judgment on behalf of a client. Effective representation may be threatened where a lawyer is tempted to prefer other interests over those of his or her own client: the lawyer's own interests, those of a current client, a former client, or a third party. ~~The general prohibition and permitted activity prescribed by this rule apply to a lawyer's duties to current, former, concurrent and joint clients as well as to the lawyer's own interests.~~

Representation

[4] Representation means acting for a client and includes the lawyer's advice to and judgment on behalf of the client.

The fiduciary relationship, the duty of loyalty and conflicting interests

[5] ~~The value of an independent bar is diminished unless the lawyer is free from conflicts of interest.~~ The rule governing conflicts of interest is founded in the duty of loyalty which is grounded in the law governing fiduciaries. The lawyer-client relationship is a fiduciary relationship and as such, the lawyer has a duty of loyalty to the client. To maintain public confidence in the integrity of the legal profession and the administration of justice, in which lawyers play a key role, it is essential that lawyers respect the duty of loyalty. Arising from the duty of loyalty are other duties, such as a duty to commit to the client's cause, the duty of confidentiality, the duty of candour and the duty not to act in a conflict of interest. ~~This obligation is premised on an established or ongoing lawyer-client relationship in which the client must be assured of the lawyer's undivided loyalty, free from any material impairment of the lawyer and client relationship.~~

[6] A client must be assured of the lawyer's undivided loyalty, free from any material impairment of the lawyer and client relationship. The relationship may be irreparably damaged where the lawyer's representation of one client is directly adverse to another client's immediate legal interests. One client may legitimately fear that the lawyer will not pursue the representation out of deference to the other client. ~~The rule reflects the principle articulated by the Supreme Court of Canada in the cases of *R. v. Neil*, 2002 SCC 70 and *Strother v. 3464920 Canada Inc.*, 2007 SCC 24, regarding conflicting interests involving current clients, that a lawyer must not represent one client whose legal interests are directly adverse to the immediate legal interests of another client without consent. This duty arises even if the matters are unrelated. The lawyer-client relationship may be irreparably damaged where the lawyer's representation of one client is directly adverse to another client's immediate interests. One client may legitimately fear that the lawyer will not pursue the representation out of deference to the other client, and an existing client may legitimately feel betrayed by the lawyer's representation of a client with adverse legal interests. The prohibition on acting in such circumstances except with the consent of the clients guards against such outcomes and protects the lawyer-client relationship.~~

Other Duties Arising from the Duty of Loyalty

[7] The lawyer's duty of confidentiality is owed to both current and former clients, with the related duty not to attack the legal work done during a retainer or to undermine the former

client's position on a matter that was central to the retainer. Accordingly, factors for the lawyer's consideration in determining whether a conflict of interest exists include:

the immediacy of the legal interests;

whether the legal interests are directly adverse;

whether the issue is substantive or procedural;

the temporal relationship between the matters;

the significance of the issue to the immediate and long-term interests of the clients involved; and

the clients' reasonable expectations in retaining the lawyer for the particular matter or representation.

[8] The lawyer's duty of commitment to the client's cause prevents the lawyer from summarily and unexpectedly dropping a client to circumvent conflict of interest rules. The client may legitimately feel betrayed if the lawyer ceases to act for the client to avoid a conflict of interest.

[9] The duty of candour requires a lawyer or law firm to advise an existing client of all matters relevant to the retainer.

Identifying Conflicts

[10] A lawyer should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest. Factors for the lawyer's consideration in determining whether a conflict of interest exists include:

(a) the immediacy of the legal interests;

(b) whether the legal interests are directly adverse;

(c) whether the issue is substantive or procedural;

(d) the temporal relationship between the matters;

(e) the significance of the issue to the immediate and long-term interests of the clients involved; and

(f) the clients' reasonable expectations in retaining the lawyer for the particular matter or representation.

Examples of areas where conflicts of interest may occur

[811] Conflicts of interest can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that may give rise to conflicts of interest. The examples are not exhaustive.

(a) A lawyer acts as an advocate in one matter against a person when the lawyer represents that person on some other matter.

(~~e~~b) A lawyer provides legal advice to a small business on a series of commercial transactions and at the same time provides legal advice to an employee of the business on an employment matter, thereby acting for clients whose legal interests are directly adverse.

(~~d~~c) A lawyer, an associate, a law partner or a family member has a personal financial interest in a client's affairs or in a matter in which the lawyer is requested to act for a client, such as a partnership interest in some joint business venture with a client.

(i) A lawyer owning a small number of shares of a publicly traded corporation would not necessarily have a conflict of interest in acting for the corporation because the holding may have no adverse influence on the lawyer's judgment or loyalty to the client.

(~~e~~d) A lawyer has a sexual or close personal relationship with a client.

(i) Such a relationship may conflict with the lawyer's duty to provide objective, disinterested professional advice to the client. The relationship may obscure whether certain information was acquired in the course of the lawyer and client relationship and may jeopardize the client's right to have all information concerning the client's affairs held in strict confidence. The relationship may in some circumstances permit exploitation of the client by the lawyer. If the lawyer is a member of a firm and concludes that a conflict exists, the conflict is not imputed to the lawyer's firm, but would be cured if another lawyer in the firm who is not involved in such a relationship with the client handled the client's work.

(~~f~~e) A lawyer or a lawyer's law firm acts for a public or private corporation and the lawyer serves as a director of the corporation.

(i) These two roles may result in a conflict of interest or other problems because they may

1. affect the lawyer's independent judgment and fiduciary obligations in either or both roles,
2. obscure legal advice from business and practical advice,
3. jeopardize the protection of lawyer and client privilege, and

4. disqualify the lawyer or the law firm from acting for the organization.

(gf) Sole practitioners who practise with other lawyers in cost-sharing or other arrangements represent clients on opposite sides of a dispute. See rules 3.4-42 and 3.4-43 on space-sharing arrangements.

(i) The fact or the appearance of such a conflict may depend on the extent to which the lawyers' practices are integrated, physically and administratively, in the association.

The Role of the Court and Law Societies

[12] These rules set out ethical standards to which all members of the profession must adhere. The courts have a separate supervisory role over court proceedings. In that role, the courts apply fiduciary principles developed by the courts to govern lawyers' relationships with their clients, to ensure the proper administration of justice. A breach of the rules on conflicts of interest may lead to sanction by a law society even where a court dealing with the case may decline to order disqualification as a remedy.

Consent

3.4-2 A lawyer must not represent a client in a matter when there is a conflict of interest unless there is express or implied consent from all clients and the lawyer reasonably believes that he or she is able to represent each client without having a material adverse effect upon the representation of or loyalty to the other client.

- (a) Express consent must be fully informed and voluntary after disclosure.
- (b) Consent may be inferred and need not be in writing where all of the following apply:
 - (i) the client is a government, financial institution, publicly traded or similarly substantial entity, or an entity with in-house counsel;
 - (ii) the matters are unrelated;
 - (iii) the lawyer has no relevant confidential information from one client that might reasonably affect the other; and
 - (iv) the client has commonly consented to lawyers acting for and against it in unrelated matters.

Commentary

Disclosure and consent

[1] Disclosure is an essential requirement to obtaining a client's consent. Where it is not possible to provide the client with adequate disclosure because of the confidentiality of the information of another client, the lawyer must decline to act.

[2] The lawyer should inform the client of the relevant circumstances and the reasonably foreseeable ways that the conflict of interest could adversely affect the client's interests. This would include the lawyer's relations to the parties and any interest in or connection with the matter.

[2.1] While this rule does not require that a lawyer advise a client to obtain independent legal advice about the conflict of interest, in some cases the lawyer should recommend such advice. This is to ensure that the client's consent is informed, genuine and uncoerced, especially if the client is vulnerable or not sophisticated.

[3] Following the required disclosure, the client can decide whether to give consent. As important as it is to the client that the lawyer's judgment and freedom of action on the client's behalf not be subject to other interests, duties or obligations, in practice this factor may not always be decisive. Instead, it may be only one of several factors that the client will weigh when deciding whether or not to give the consent referred to in the rule. Other factors might include, for example, the availability of another lawyer of comparable expertise and experience, the stage that the matter or proceeding has reached, the extra cost, delay and inconvenience involved in engaging another lawyer, and the latter's unfamiliarity with the client and the client's affairs.

Consent in advance

[4] A lawyer may be able to request that a client consent in advance to conflicts that might arise in the future. As the effectiveness of such consent is generally determined by the extent to which the client reasonably understands the material risks that the consent entails, the more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. A general, open-ended consent will ordinarily be ineffective because it is not reasonably likely that the client will have understood the material risks involved. If the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, for example, the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation.

[5] While not a pre-requisite to advance consent, in some circumstances it may be advisable to recommend that the client obtain independent legal advice before deciding whether to provide consent. Advance consent must be recorded, for example in a retainer letter.

Implied consent

[6]

In limited circumstances consent may be implied, rather than expressly granted. In some cases it may be unreasonable for a client to claim that it expected that the loyalty of the lawyer or law firm would be undivided and that the lawyer or law firm would refrain from acting against the client in unrelated matters. In considering whether the client's expectation is reasonable, the nature of the relationship between the lawyer and client, the terms of the retainer and the matters

involved must be considered.~~In some cases consent may be implied, rather than expressly granted. As the Supreme Court held in *Neil* and in *Strother*, however, the concept of implied consent is applicable in exceptional cases only.~~ Governments, chartered banks and entities that might be considered sophisticated consumers of legal services may accept that lawyers may act against them in unrelated matters where there is no danger of misuse of confidential information. The more sophisticated the client is as a consumer of legal services, the more likely it will be that an inference of consent can be drawn. The mere nature of the client is not, however, a sufficient basis upon which to assume implied consent; the matters must be unrelated, the lawyer must not possess confidential information from one client that could affect the other client, and there must be a reasonable basis upon which to conclude that the client has commonly accepted that lawyers may act against it in such circumstances.

Lawyer belief in reasonableness of representation

[7] The requirement that the lawyer reasonably believes that the lawyer is able to represent each client without having a material adverse effect on the representation of, or loyalty to, the other client precludes a lawyer from acting for parties to a transaction who have different interests, except where joint representation is permitted under this Code.

[End of Memorandum]



CEO's Report to the Benchers

September 23, 2022

Prepared for: Benchers

Prepared by: Don Avison, KC

1. A Single Legal Regulator: the Intentions Paper

The Ministry of the Attorney General published an intentions paper on September 14, 2022 in respect of a proposal to establish a single legal regulator (“SLR”) for lawyers, notaries and licensed paralegals in British Columbia.

As proposed, the core elements of the SLR would include the following:

- a single statute and a single regulator for the legal professions;
- a clear mandate for the regulator “to facilitate access to legal services”;
- a unified model that will enhance confidence that the regulator acts in the public interest and “not in the interest of any one particular profession”;
- a statutory obligation for the regulator to support reconciliation with Indigenous peoples;
- a broad authority for the regulator to regulate the competence and integrity of legal service providers and to promote the rule of law;
- a set of “guiding principles ... to assist the regulator in its decision making”

With respect to governance, the Intentions Paper proposes the following:

- the smaller board consisting of elected “licensee” directors, a minority of public directors appointed by the government and other directors appointed by the other members of the board through a fair, transparent, accountable and independent nomination process;
- the Attorney General would no longer be a member of the board;
- consideration would be given to a statutory requirement for Indigenous representation on the board;
- the board’s role would focus on strategic oversight.

The intentions paper also contemplates that the legislation will provide for scopes of practice for lawyers, notaries and licensed paralegals.

Some of government’s intentions will almost certainly generate disagreement from some within the profession. In this regard, I note the intention that licensees should not have the authority to bring forward resolutions that purport to direct the actions of the regulator’s board and that licensees should not have the authority to approve or reject the regulator’s rules.

The Ministry of the Attorney General is seeking input on the intentions paper from the public, from lawyers, notaries and paralegals, from the professional associations and from the regulators of lawyers and notaries until November 18th. The Law Society will be

providing a formal response that will be developed following a discussion by Benchers at the September 23, 2022 meeting.

Our expectation remains that any proposed legislation to establish the SLR will likely not be tabled in the Legislative Assembly until the fall of 2023.

2. Regional Engagement Sessions

Prior to the formal release of the government’s intentions paper, regional discussions on the implications of a single legal regulator model have taken place in Prince George, Kelowna and Kamloops. Further sessions will be scheduled for Vancouver Island, Westminister County and in the Kootenays.

While in Kamloops we were asked whether the member resolution passed at the June 2022 Law Society Annual General Meeting directing “the Benchers to oppose the proposed legislation and support the existing legal profession act regulating lawyers only” (copy attached) would be brought to the September 2022 Bencher meeting for consideration.

3. Update on the Indigenous Engagement in Regulatory Matters Task Force

Over the course of the last year the Indigenous Engagement in Regulatory Matters (IERM) Task Force has done a considerable amount of work.

Consultations included an August 5, 2022 session on “What We Heard” moderated by Co-Chairs Terri-Lynn Williams-Davidson, KC and Christopher McPherson, KC with participation from a number of individuals and Indigenous groups/organizations.

While the Task Force was expected to report to Benchers at the September meeting, the Task Force will take some additional time to facilitate further important consultations before the Task Force finalizes a report and recommendations to Benchers. Mr. McPherson will provide an update at the September meeting.

4. War Crimes, the Rule of Law and the Role of the International Criminal Court

On August 11 the Law Society held our second Rule of Law Lecture for 2022. Judge Kimberly Prost, who was appointed to the International Criminal Court in March of 2018, and who played a key role as part of the Canadian delegation in negotiations to establish the Court through the Statute of Rome, spoke about the origins of the Court, the role that it plays and about the kinds of matters that have come before the Court for consideration.

We had a very strong attendance at this session – both in-person and online, and I was particularly pleased by the very high level of participation by members of the public.

The video of the session has been uploaded to the Law Society’s website and can be viewed [here](#).

5. The International Conference of Legal Regulators (ICLR) and the International Bar Association

Legal regulation in British Columbia seems to be getting quite a bit of attention on the international front at present.

I will be on two panels at this year’s ICLR; one on Anti-Money Laundering initiatives that will focus on recommendations resulting from the Cullen Commission and the other at closing plenary session addressing the role of regulators in ensuring ongoing lawyer competence.

At this year’s annual meeting of the International Bar Association, I have also been asked to be part of a panel talking about the benefits and implications of innovation “sandboxes.” I will be joining Deno Himoras, who recently retired from the Utah Supreme Court of Justice and Christina Blacklaws, the former President of the Law Society of England and Wales.

6. Standing Committee on Finance Report on the Budget 2023 Consultation

I have attached a copy of the Public Safety and Justice portion of the Standing Committees recent report and recommendations on matters the committee believes the provincial government should consider in developing Budget 2023 (the full report can be found [here](#)).

As you will see, the Committee responded positively to recommendations made by President Lisa Hamilton, KC on behalf of the Law Society with respect to improved access to legal aid services and an expansion of broadband capacity to facilitate more effective virtual proceedings.

Benchers will also be interested in what the report says regarding the submission of the Notaries Association regarding an expanded scope of practice (see page 86).

Don Avison, KC
Chief Executive Officer

SPECIAL RESOLUTION

WHEREAS:

- The government has intentions of creating a single regulator of legal services; see link here: <https://www.lawsociety.bc.ca/about-us/news-and-publications/news/2022/moving-toward-a-single-regulator-of-legal-professi/>.
- Such intended regulation would affect the interests of lawyers, notaries, law students and the public.
- Notaries have existed and have been regulated independently since the 19th century. Notaries in BC are regulated by their own statute and permitted to provide restricted legal work in discrete areas. They are not just commissioners as in other provinces. (There are about 400 notaries in British Columbia now);
- The number of lawyers serving the public has increased exponentially over time. In the 19th century there were only a few lawyers and a few notaries doing legal work. Today there are over 13,000 lawyers in BC serving the public in various capacities;
- The Law Society and Notaries considered having a single regulator between 2010 and 2015 but concluded that such a model was not a good fit for the lawyers, the notaries or the public;
- The Law Society of Ontario has become a single regulator of both lawyers and paralegals with mixed results. (Recently the paralegals of Ontario have brought on a motion for the AG to regulate both lawyers and paralegals);
- Many professionals have co-existed with lawyers but have been regulated by their various other regulators including Realtors, Accountants, Immigration consultants, Labor negotiators and others;
- The membership of the Law Society has previously opposed non-lawyer membership in the Law Society by passing the following resolution at the 2018 AGM:

“Be it resolved that the membership directs the Benchers:

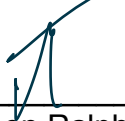
- *to request that the provincial government not pass regulations to bring the licensed paralegal amendments into force until the Benchers have had more time to complete their consultations regarding licensed paralegals; and*
- *not to authorize licensed paralegals to practice family law under the authority provided in the amendments to the Legal Profession Act.”*

- Independence and independent regulation of lawyers is a hallmark of the rule of law;

BE IT RESOLVED that the membership directs the Benchers to oppose the proposed legislation and support the existing legal profession act regulating lawyers **only**.

The following members are in good standing support and move this resolution.

Dated the 16 day of May 2022



Name: Jason Ralph

Dated the 16 day of May 2022



Name: Cameron Matthee-Johnson

PUBLIC SAFETY AND JUSTICE

A number of organizations described the need for funding for legal aid and digitization of court services to improve access to justice. Another area of emphasis was natural disasters and emergency preparedness, with organizations and communities requesting funding for prevention, response, and recovery. The Committee also heard about a need for investments in supports and services that respond to gender-based violence and sexual assault, as well as measures to improve safety of sex workers. Challenges regarding prolific offenders and emergency communications were also key themes.

ACCESS TO JUSTICE AND LEGAL AID

Committee Members heard from organizations advocating for increased access to justice. The Law Society of British Columbia highlighted that broadband internet is essential to the future delivery of legal services and access to justice. They explained that as court services move onto virtual and online platforms, participants in court processes will require secure, reliable internet and communication infrastructure. Similarly, Canadian Bar Association BC Branch noted that funding is still required to continue support remote appearances for pre-trial hearings in criminal, civil and family matters, digital information-sharing platforms, and a digitally skilled workforce to support the justice system. As some individuals cannot afford a computer or device that enables virtual access to services and hearings, the Law Society advocated for resources for access to legal services virtually in community-based locations and funding for broadband technology that enables British Columbians living in rural and remote communities to access legal services and participate in virtual justice hearings. Additionally, Pacific Legal Education and Outreach Society stated that the current system of legal support for non-profits is fragmented and more cross-sectoral collaboration would allow for legal support and services to help those who have traditionally been shut out such as Black-led and Indigenous-led organizations. They stated that allocating funds to these efforts will enable innovation in the provision of legal services, help meet access to justice, and heal social and economic inequalities.

Additionally, Canadian Bar Association BC Branch highlighted gaps in data collection regarding most areas involving public safety, justice and court services and administration that limit the ability of government, courts and tribunals to meet public expectations. They explained that collecting and publicly sharing data enables research and system improvements and increases access to justice.

With respect to legal aid, the Committee heard that the income thresholds for legal aid eligibility have not kept pace with inflation. Canadian Bar Association BC Branch stated that legal aid is an essential public service, but current funding is falling short of meeting the needs of British Columbians. Additionally, West Coast Leaf advocated for funding for legal aid services for child support matters. They explained that because of the gender division of caregiving, access to child support is a critical issue that is central to tackling increasingly feminized poverty and child poverty. They further noted that BC's current system of limited retainers provides some access to services but is ultimately inadequate to address complex matters, including those where family violence intersects. Furthermore, Battered Women's Support Services informed the Committee that, for survivors of gender-based violence, especially low-income racialized mothers, ongoing gaps in legal aid service delivery for family law and child protection matters creates serious barriers to accessing justice. They further noted that when leaving domestic violence, intimate partner violence, or sexual abuse, the complexities and stresses of navigating a legal system without legal counsel is an intimidating and traumatic burden, and becomes a significant barrier to both seeking safety and accessing justice. Lastly, an individual shared that the Canadian Bar Association BC Branch and its Sexual Orientation and Gender Identity Community section have identified the need for a specialized legal clinic to serve the needs of the queer community.

Community Legal Assistance Society informed the Committee that, starting in 2023, some 20,000 people per year may be eligible to have one or more opportunities to obtain legal advice from a rights adviser when they are detained under the

Mental Health Act. This new rights advice service will create an increasing wave of requests for representation particularly at Mental Health Review Board panel hearings. Therefore, they advocated for increased funding to expand free legal representation at hearings before the Mental Health Review Board and the BC Review Board for people who have been involuntarily detained under the *Mental Health Act* or the mental disorder provisions of the Criminal Code of Canada.

Several organizations highlighted the value of child and youth advocacy centres. BC Network of Child and Youth Advocacy Centres stated that these centres provide a coordinated response to incidences of abuse and violence against children and youth in BC. The Treehouse Child & Youth Advocacy Centre also highlighted the importance of these centres and noted that sustainable operational funding would free up time for their organization which could better be spent expanding service delivery to communities without child and youth advocacy centres, enhancing service offerings within the existing framework, and focusing on crucial education and prevention work in the community. These organizations, along with Child Advocacy Centre of Kelowna, advocated for increased, sustainable funding for child and youth advocacy centres.

The Committee also heard from the British Columbia Notaries Association about the need for an expanded scope of practice for notaries, including the ability to incorporate companies and to maintain such companies in good standing by preparing and filing standard resolutions, creating a testamentary trust and life estate when preparing a will, and providing advice in preparing and filing probate documents in the court registry.

CORRECTIONAL SERVICES

Downtown Victoria Business Association shared that, as identified by the BC Urban Mayors' Caucus, there is a challenge in many communities regarding prolific offenders. They explained that these individuals and their actions fuel the negative narrative regarding downtowns and main streets across BC. The association advocated for comprehensive supports for those with chronic mental health and addiction challenges, but also called for comprehensive responses for those whose repeated criminal actions cause distress to the rest of the community. The City of Kelowna echoed these concerns, noting that 204 prolific offenders are responsible for 11,000 negative police contacts in 10 of BC's largest cities.

CANNABIS AND TOBACCO

Organizations noted that the distribution and sale of illegal cigarettes in BC are reducing public tax revenues from legal cigarettes as well as undermining public health efforts to reduce smoking. National Coalition Against Contraband Tobacco described how the combined provincial and federal tax increases on tobacco have made cigarettes especially expensive in BC: while a carton of legal cigarettes sells for \$160, a carton of illegal cigarettes can sell for as low as \$40. They stated that this major price difference, and the availability of contraband tobacco, has set the stage for criminal gangs to begin selling more illegal cigarettes in the province, which funds other criminal activities. Both JTI-Macdonald Corp and Imperial Tobacco Canada Limited referenced Quebec's strategy as a model to replicate in BC, explaining that in Quebec there is a dedicated enforcement unit focused on the organized crime groups behind the illegal tobacco trade. They stated that the strategy has reduced Quebec's illegal tobacco rate from over 40 percent to below 15 percent, recouping hundreds of millions of dollars in the process. Regarding cannabis, Kindred noted that illicit producers and sellers provide unfair competition to legal sellers. Further, illegal retailers are not obligated to adhere to the regulatory framework that legal operators do and as such unregulated products can be contaminated. To ensure that the public is not put at risk by unregulated cannabis products and help lawful producers gain a larger share of the provincial market, they recommended funding additional resources to penalize illicit cannabis producers and sellers.

EMERGENCY RESPONSE AND COMMUNICATIONS

Increased capacity and resources for police were supported by Paul Liggett and the National Police Federation. The National Police Federation stated that due to inadequate funding for the BC RCMP, it has become increasingly difficult to continue to provide the level of service expected. Funding has remained flat in previous years despite increasing populations, rising equipment and infrastructure costs, and more complex threats to public safety. They noted that without adequate resources, RCMP members are becoming overworked, leading to burn-out and safety concerns, and are also being pulled away from core policing duties. Similarly, Liggett supported minimum policing levels for all large cities based on population and mechanisms to hire replacement officers to cover those on leave.

Committee Members heard calls for funding and new mandates with respect to 911 services. E-Comm 9-1-1 stated that municipally provided 911 services in BC are under considerable pressure: call volumes are growing, federally-mandated improvements are required, and E-Comm's governance and funding have not evolved to keep pace. They also noted that the federally mandated rollout of next generation 911 across Canada over the next three years, which involves the transition of the current 911 infrastructure to IP or digital-based infrastructure, will require significant additional funding and consistent, province-wide 911 standards and protocols. Additionally, Emergency Communications Professionals of BC noted that E-Comm 9-1-1's current funding model does not provide for excess resources to be crisis-ready in anticipation of call surges, large-scale events, and unforeseen disasters.

Several emergency response organizations suggested that the integration of mental health care professionals into 911 services could help alleviate broader issues. The Crisis Centre of BC noted that they de-escalate 98 percent of community-based calls, saving \$49 million each year in police costs alone. Emergency Communications Professionals of BC noted that E-Comm 9-1-1 is not currently equipped to support mental health issues which are present in virtually every call. E-Comm 9-1-1 recommended that their infrastructure be updated in line with the recommendations from the Special Committee on Reforming the Police Act with respect to integrating a mental health option within 911.

With respect to search and rescue, Air Rescue One Heli Winch Society discussed their lack of a dedicated rescue helicopter which has meant that they cannot respond to all rescue requests. They explained that a rescue helicopter reduces the risk to first responders while decreasing the time it takes to rescue and transport injured citizens; increases capacity for emergency services in the province; and increases the security net needed for climate change disasters. They requested funding for a dedicated winch and rescue helicopter as well as funding to enhance their capacity to provide year-round rescue services.

GENDER-BASED VIOLENCE AND SEXUAL ASSAULT

Several organizations advocated for increased funding and support for survivors of gender-based violence. Greater Victoria Coalition to End Homelessness informed the Committee that

each year 20,000 women in British Columbia experience relationship violence and up to 90 percent who have been in a violent relationship have received at least one brain injury at the hand of their partner. In light of this, Supporting Survivors of Abuse and Brain Injury through Research emphasized that training in intimate partner violence-caused brain injury must be mandatory for women's shelter staff, paramedics, police, child protection social workers, legal aid and other lawyers. They also recommended that this training include trauma-informed practice so that those tasked with caring for women understand the nuances and complexities of intimate partner violence, and the implications of trauma on survivors. Ishtar Women's Resource Society also highlighted that a lack of adequate resources to meet the needs of survivors directly perpetuates the cycle of gender-based violence. They explained that the current funding model of unpredictable donations and grants is precarious and exacts an additional time-consuming burden on over-taxed workers to research, apply for, and constantly seek contract renewal.

The Committee also heard calls for resources and support for sexual assault survivors. The Prince George Sexual Assault Centre highlighted that BC is one of the only provinces that is lacking a larger policy to guide, assist, and support all levels of sexual assault response which is especially problematic in the judicial system with reporting to police. They explained that a dedicated sexual assault response policy would provide guidance to law enforcement, the judicial system, and those who are doing the non-profit work of supporting survivors through their journey as well as supporting people who have done harm. Similarly, Sto:lo Service Agency - Qwi:qwelstom Wellness stated that it is important to provide effective services to ensure communities have the tools to address sexual violence in a culturally appropriate manner. They highlighted that the agency offers Elders support and mental health counselling for people who participate in the *Responding to Sexual Violence in Indigenous Communities* training and people who have disclosed that they have been harmed by sexual violence. WAVAW Rape Crisis Centre stated that 90 percent of sexual assault survivors will never seek support through conventional systems such as the medical system and the criminal legal system. They noted that sexual assault clinics increase access for the most marginalized and vulnerable survivors who will not seek attention within the conventional system.

With regards to education, Victoria Sexual Assault Centre shared that by learning about consent at an earlier age,

students not only learn how to prevent sexual harassment and violence but gain an understanding of what resources and supports are available if it happens to them. They advocated for funding for consent workshops in high schools and universities so that youth have an opportunity to learn about the importance of consent and how to recognize and talk about sexualized violence. Additionally, Kwantlen Student Association emphasized that sexualized violence continues to be an issue on post-secondary campuses across the province. They discussed the need for more funding for local non-profit organizations that support victims of sexualized violence, specifically on post-secondary campuses across BC. Alliance of BC Students, Anti-Violence Project and SD71 District Parent Advisory Council also advocated for funding and programs in this area.

Several organizations advocated for predictable funding for women's transition housing. Victoria Women's Transition House Society explained that by providing immediate shelter and services for women and children, transition houses reduce the longer-term impacts that result from intimate partner violence. However, they noted that current approaches mean that transition housing services are funded from multiple sources, often with conflicting priorities. Archway Society for Domestic Peace informed the Committee that the inability to secure safe affordable housing is a major barrier for women to successfully leave an abusive relationship which further increases the risk of serious harm. With respect to this, these organizations, as well as BC Society of Transition Houses, advocated for increased funding for transition houses including the Homelessness Prevention Program which provides critical resources for women to secure market rental housing and provides support to women and their families to access housing and employment.

GROUND DISTURBANCE

BC Common Ground Alliance advocated for a cross ministerial task force to examine the impacts of prescribing a ground disturbance program for all underground disturbance in British Columbia. They noted that underground infrastructure is often breached, creating vital outages for hospitals, homes, businesses, banks and emergency service providers and a task force should be convened to meld the experiential learning of ministries and industry, examining cause and effect, including environmental, financial, and societal impacts. They also recommended that the use of BC 1 Call be mandated prior to any underground disturbance on Crown Lands or properties

owned by the province of BC. They further explained that oil companies in BC are already required to utilize BC 1 Call prior to disturbing any ground but telecommunications, construction, and many other entities such as farmers or homeowners are not required even though they are all impacting underground safety.

NATURAL DISASTERS AND EMERGENCY PREPAREDNESS

The Committee heard from several organizations about emergency preparedness. Archway Community Services advocated for the creation of collective impact solutions for impending and imminent climate disasters and other catastrophic events, factoring in the needs of the most vulnerable populations. They emphasized that few communities are currently equipped to address natural disasters like last year's flooding with a systems-level approach to collaborative preparedness, response, recovery, resilience, prevention, and mitigation. An individual also advocated for the allocation of a larger portion of the provincial budget to nature-based solutions to future and current natural disasters. They explained that nature-based solutions are more resilient to natural disasters that are outside of expected norms than engineered ones. Additionally, the British Columbia Society for the Prevention of Cruelty to Animals advocated for animals to be included in emergency planning and response. They noted that they provide emergency response services for the pets of victims displaced by natural disasters and helped more animals in 2021, due to the wildfires and flooding, than ever before.

The Professional Employees Association advocated for a change in how professionals are compensated for their work in response to emergencies. The Committee heard that the Professional Employees Association's collective agreement allows for compensation of members who step up during emergencies. They noted that the compensation is often delayed by weeks or months after the member has contributed long hours not knowing if they will be paid for any of the work that they have performed and Professional Employees Association members are only compensated with straight time. This discourages Professional Employees Association members to contribute during times of natural disasters and emergencies and when deciding whether to pursue additional training. This has led to a shortage of professionals within BC who can step in to help resulting in increased reliance on out-of-province personnel and more expensive private contractors.

Regarding flooding, the Insurance Bureau of Canada explained that updating flood mapping, improving land-use planning and enhancing community resilience and consumer risk awareness, all allow the creation of a national flood insurance program to provide financial protection for those at highest risk. BC Dairy Association highlighted that BC dairy farmers have dealt with catastrophic floods throughout the Fraser Valley and other parts of BC while many farmers have lost crops and faced economic challenges due to drought and lack of water. Therefore, they advocated for prioritized funding for Abbotsford's \$2 billion flood prevention system.

With respect to wildfires, Farmland Advantage advocated for financial support of BC Wildfire Service to contract farmers through Farmland Advantage to manage their lands in such a way to provide wildfire protection to communities. They noted that provincial wildfire mitigation has mostly targeted Crown lands, but often it is private farms and ranches that border the developed areas. They explained that the province spent \$650 million fighting fires last year, and stated that for a fraction of this amount, BC farmers could be contracted to manage their land in a way that will create an effective fire break on the land surrounding communities. Also, with respect to wildfire, Insurance Bureau of Canada emphasized that in order to enhance community resilience to wildfires before they occur, the province must increase investments in forest fuel mapping and support initiatives that better protect homes and businesses.

The Insurance Bureau of Canada also discussed preparedness for earthquakes. They stated that there is a likelihood that a large earthquake could occur that may threaten the solvency of Canada's insurance industry. Thus, they advocated for continued support for the development of a national earthquake resilience strategy to address a catastrophic earthquake in Canada including increasing investment to better prepare British Columbians for an earthquake.

The City of Prince George advocated for a new model for emergency response, and the establishment of centres in the interior to support large-scale disaster response. They explained that Prince George has the track record, location, infrastructure, and knowledge to implement this recommendation.

RESTORATIVE JUSTICE

The Committee heard a presentation from Vancouver Island Region Restorative Justice Association which highlighted the value of restorative justice. They shared that restorative justice is known to make communities safer and reduce court costs and backlogs. Regarding funding, they explained that the Ministry of Public Safety and Solicitor General provides a \$4000 annual grant to Community Accountability Programs and there are opportunities to apply for Civil Forfeiture grants; however, applying for grants is time consuming and unpredictable and forces programs to compete with each for a limited pool of money. They also noted that the Ministry stopped allowing new programs to apply to the Community Accountability Program; therefore, communities that had not yet established programs are required to find alternative sources of support or accept restorative justice services from a neighbouring community. The Association advocated for the removal of the moratorium on the creation of new Community Accountability Programs as well as the recognition of restorative justice as a human right and an essential service by providing adequate, stable funding.

Prisoners' Legal Services stated that Indigenous people represent 35 percent of people in custody in BC correctional centres. Further, they noted that BC should be ensuring Indigenous communities have the resources to offer alternatives to incarceration in colonial prisons, such as Indigenous-run healing lodges. They recommended that, rather than fund BC Corrections, BC should negotiate with Indigenous groups to ensure responses to harm in Indigenous communities are led by the communities themselves.

SEX WORK

Living in Community advocated for increased funding for front-line organizations across BC that deliver peer-led and person-centred programming for sex workers. They explained that misguided approaches to address exploitation and trafficking, such as more criminalization, surveillance and interference, lead to the criminalization of sex work, which drives sex work underground. This leads to unsafe working conditions, prevents sex workers from reporting violence, makes it difficult to identify true victims of human trafficking, and creates further systemic vulnerabilities to trafficking and exploitation. They informed the Committee that by funding peer-led and person-centred programming, the province can ensure that sex workers are getting the specific supports that

they need without prescribing one solution that is meant to work for a variety of needs and experiences and without further criminalizing or marginalizing people.

Living in Community also described a project currently underway to develop and create a bad date and aggressor reporting system which is a peer-led tool where sex workers share information with each other and help keep each other safe. They recommended funding for this system to ensure that more sex workers and sex worker serving organizations can participate fully in the project's consultations and ensure that the tool will meet the needs of diverse sex workers across BC.

CONCLUSIONS

The need to ensure access to justice across the province, particularly in rural and remote communities, was brought to the Committee's attention. Members noted that limitations on access to justice and legal aid is causing denials of justice. Additionally, they highlighted that the digitization of court services is an important component to promote access to justice. They discussed several measures to improve access, including funding for legal aid services and examining the financial thresholds that determine eligibility for these services. Members also noted family law legal aid is difficult to access due to a lack of funding in this area, and agreed that more resources are required to reduce barriers for lower income individuals. Members also discussed the importance of support for those requiring legal representation for those detained under the *Mental Health Act*. The Committee highlighted the important work done by child and youth advocacy centres and the need to continue to support these centres.

The Committee discussed the importance of programs and services for people affected by gender-based and sexual violence and acknowledged a need to support these programs and review systems currently in place. Members noted that programs in this area are underfunded as is evident by the number of specific funding requests they received from organizations including Surrey Women's Centre, Sto:lo Service Agency - Qwi:qwelstom Wellness, and Archway Society for Domestic Peace. They discussed the need for a provincial sexual assault policy or process that will ensure that everyone interacting with sexual assault survivors is trained appropriately and that there is equity regarding the manner in which cases are addressed. Members heard about significant rates of sexualized violence on post-secondary campuses and

highlighted the need to increase prevention and response programs on campus as well as to educate students in K-12 education and the public on these issues. Committee Members also heard that there is an urgent need for transition housing and housing supports to ensure people affected by gender-based violence do not have to return to an abuser or experience homelessness due to lack of appropriate housing. Further, they recognized that child care is also an issue for those leaving gender-based violence. Committee Members noted that there needs to be supports for sex workers that are not criminalizing or stigmatizing and discussed the need to continue to fund the provincial bad date and aggressor reporting system to protect sex workers.

The Committee reflected that natural disasters and emergencies are more front of mind than ever before and noted that the province needs to be more proactive by investing in preparation, risk mapping, and climate change resiliency. Members also highlighted that the province needs more resources and a modern strategy for responding to emergencies, including public education and availability of consistent resources. Further, they discussed that there is a need for more public awareness about how to prepare for emergencies and what to do during natural disasters. In reflecting on last year's flooding driven by an extreme weather event, Members discussed the need to ensure animals and livestock are included in emergency planning and response. Additionally, the Committee highlighted the importance of search and rescue efforts and discussed emergency communications. The Committee expressed support for the recommendations of the Special Committee on Reforming the Police Act regarding integration of mental health within 911 options. When considering funding for 911 services, the Committee recognized that while the initial emergency call to 911 is answered by E-Comm 9-1-1, dispatch is operated by a number of agencies throughout the province including E-Comm 9-1-1, BC Emergency Health Services, a variety of city-based and RCMP-based police dispatch centres, as well as several municipal and regional fire dispatch centres. Committee Members noted that funding for these services must be equitable and all of these stakeholders, along with crisis centres, should be involved in reviewing how best to incorporate mental health as a 911 option. Further, Members heard that local governments in BC are currently only able to fund 911 services through property taxes or by collecting a call-answer levy from landline subscriptions, which have significantly decreased, but in other provinces there are

standardized wireless call-answer levies administered on behalf of municipal governments. Members also agreed that ground disturbance is a serious issue and supported the continued use of BC 1 Call.

Committee Members stated that restorative justice programs are part of a comprehensive justice system, many of which are run by volunteers and community-based organizations that are in need of funding. They heard that offenders involved with these programs are less likely to reoffend and there are potentially significant cost savings for the judicial and correctional systems. Further, they highlighted the importance of Indigenous justice and healing.

The Committee also recognized the challenges and issues created by prolific offenders, reflecting on the example of Kelowna, where Members heard that since 2016 one offender generated 346 files and 29 convictions for property crimes and assaults and continues to reoffend. They stated that resources need to be provided to address this issue. Additionally, Committee Members expressed concern about the rise of contraband tobacco in BC and were supportive of enforcement in this area. Further, they noted that illicit cannabis retailers are also a significant problem that has been identified by First Nations and Indigenous communities who expressed concerns that illegal cannabis dispensaries on reserve lands are having a negative impact on Indigenous youth.

RECOMMENDATIONS

The Committee recommends to the Legislative Assembly that the provincial government:

Access to Justice and Legal Aid

176. Increase ongoing annual funding for legal aid services and access to justice, including for family law and child protection matters, and examine the income thresholds for eligibility.
177. Provide stable and adequate funding and supports to child and youth advocacy centres across the province.

Correctional Services

178. Ensure proper resourcing and supports to deal with prolific offenders challenges.

Cannabis and Tobacco

179. Fund additional resources and enforcement to address the distribution of contraband tobacco and illicit cannabis.

Court Services

180. Increase funding to improve access to the courts and justice system, including by identifying opportunities to improve efficiencies; to enhance the skills and knowledge of court staff in all communities to support a modernized court administration system; and to complete the digital transformation and modernization of the court system.
181. Establish robust data collection and disclosure infrastructure within the justice system, including Court Services, BC Corrections, and administrative tribunals.

Gender-Based Violence and Sexual Assault

182. Provide funding and support, including mental health supports, for survivors of brain injury resulting from intimate partner violence.
183. Conduct a system-wide audit of how the province is dealing with gender-based violence and sexual assault to ensure supports are appropriate and adequate.

- 184. Create a provincial sexual assault policy, working with data and insights obtained from police and hospitals, to ensure appropriate response in all sexual assault cases across BC.
- 185. Develop and fund intersectional and culturally sensitive gender-based violence awareness and prevention programs in K-12 schools.
- 186. Develop and fund intersectional and culturally-sensitive gender-based violence awareness and prevention programs, as well as response and support services in post-secondary institutions.
- 187. Partner with community organizations to develop and fund intersectional and culturally sensitive gender-based violence awareness and prevention programs.
- 188. Provide funding for transition housing and expand the Homelessness Prevention Program to all eligible transitional housing programs across the province to prevent homelessness and increase safety for women and children leaving violence, with emphasis on paying attention to child care needs.

Ground Disturbance

- 189. Create a cross-ministerial task force to examine the beneficial impacts of prescribing a ground disturbance program for all underground disturbance in BC.

Natural Disasters and Emergency Preparedness

- 190. Invest in and upgrade Emergency Management BC, including necessary technical upgrades.
- 191. Provide more resources for responding to natural disasters and emergencies, and create a modern strategy that includes public education, investments in climate change resiliency, and proactive response.
- 192. Commit new funding for flood and wildfire risk mapping, improving land-use planning and community resilience, and building back better following a disaster
- 193. Include animals, particularly livestock, in emergency planning and response.

Emergency Response and Communications

- 194. Provide funding for the leasing of a dedicated rescue helicopter to Air Rescue One Heli Winch Society and funding for staffing and capacity of the Air Rescue One Heli Winch Society for year-round rescue services.
- 195. Implement a provincial wireless call-answer levy, similar to those that exist in other provinces, to ensure equitable funding for 911 dispatch services in the province and create a taskforce inclusive of all emergency services providers to determine how to best integrate mental health supports into emergency response through a fourth option for 911.

Restorative Justice

- 196. Recognize restorative justice as an essential service by providing adequate and stable funding, and by increasing system-wide awareness.

Sex Work

- 197. Provide increased funding for frontline organizations across BC that deliver peer-led and person-centered programming for sex workers.
- 198. Provide funding toward the provincial bad date and aggressor reporting system, which is being developed.



Memo

To: Benchers
From: Finance and Audit Committee
Date: September 6, 2022
Subject: 2023 Fees & Budgets - Review and Approval

Please find attached the Law Society of British Columbia - 2023 Fees and Budgets Report.

The 2023 Fees and Budgets were reviewed in depth by the Finance and Audit Committee, and the committee is recommending adoption of the following Bencher resolutions, as included in the report:

Be it resolved that:

- Effective January 1, 2023, the practice fee be set at \$2,303.00, pursuant to section 23(1)(a) of the Legal Profession Act.

Be it resolved that:

- the indemnity fee for 2023 pursuant to section 30(3) of the Legal Profession Act be set at \$1,800;
- the part-time indemnity fee for 2023 pursuant to Rule 3-40(2) be set at \$900; and
- the indemnity surcharge for 2023 pursuant to Rule 3-44(2) be set at \$1,000.

The Law Society
of British Columbia



LAWYERS
INDEMNITY
FUND

2023 Fees and Budget - DRAFT

Benchers

September 23, 2022

THE LAW SOCIETY OF BRITISH COLUMBIA
2023 Fees and Budgets Report

Contents

LAW SOCIETY OVERVIEW	3
GENERAL FUND - LAW SOCIETY OPERATIONS	3
OVERVIEW	3
FINANCIAL CONSIDERATIONS	3
KEY OPERATIONAL GOALS FOR 2023	4
KEY BUDGET ASSUMPTIONS	6
BUDGET RISKS.....	7
2023 OPERATING REVENUE SUMMARY	8
2023 OPERATING EXPENSE SUMMARY	8
NET ASSETS - GENERAL FUND WORKING CAPITAL	8
2023 PRACTICE FEE	9
2023 OPERATING REVENUES	9
2023 OPERATING EXPENSES	12
DEPARTMENTAL SUMMARIES	13
BENCHER GOVERNANCE AND BOARD RELATIONS.....	13
CORPORATE SERVICES.....	13
EDUCATION & PRACTICE.....	14
COMMUNICATIONS AND INFORMATION SERVICES.....	15
POLICY & LEGAL SERVICES.....	15
PROFESSIONAL CONDUCT, INVESTIGATIONS & DISCIPLINE.....	16
BUILDING COSTS.....	17
CAPITAL PLAN	17
EXTERNAL ORGANIZATION FUNDING	17
TRUST ASSURANCE PROGRAM AND FEE	18
LAWYERS INDEMNITY FUND	20
ANNUAL PRACTICE FEE AND INDEMNITY FEE	33
RESOLUTIONS FOR PRACTICE FEE AND INDEMNITY FEE	34
APPENDIX A – GENERAL FUND – OPERATING BUDGET	35
APPENDIX B – GENERAL FUND – REVENUES AND EXPENSES	36
APPENDIX C – CAPITAL PLAN	38
APPENDIX D – LAWYERS INDEMNITY FUND – OPERATING BUDGET	39
APPENDIX E – PRACTICE FEE COMPARISON	40
APPENDIX F – MANDATORY FEE COMPARISON	41
APPENDIX G – PLTC STUDENT HISTORY	42

Law Society Overview

General Fund - Law Society Operations

Overview

This report provides an overview of the recommendations for the 2023 annual practice and indemnity fees, and related budgets.

The objective of the 2023 budget is to ensure that the Law Society is able to fulfill its statutory mandate to protect the public interest in the administration of justice and to follow through on goals set out in its strategic plan. This will be achieved by having the resources required to carry-out these plans and continuing to hold the fees at a similar level for the fourth year in a row.

The Benchers will set the 2023 fees pursuant to the *Legal Profession Act*, following their review of the Finance and Audit Committee's recommendations at the September 23rd Bencher meeting.

Financial Considerations

1. 2022 forecast

The 2022 budget projected a deficit of \$825,000, and the latest forecast is close to a breakeven result. This change is related to a higher volume of practice fees and electronic filing revenue than expected.

2. No increase in the practice fee amount allocated to Law Society operations and no increase in the indemnity fee

The practice fee amount allocated to Law Society operations will remain the same as 2022, and is the same fee allocation to operations that has been in place since 2020.

The indemnity fee will remain the same as 2022, and is the same fee that has been in place since 2018.

3. Settling into the new normal

The 2022 budget contemplated a shift to the new normal following the pandemic, and this budget anticipates more certainty around areas that have had a high degree of variability in the past few years, such as travel and meetings costs and general office costs, as staff and volunteers settle into more consistent hybrid work schedules.

4. Raising interest rates, inflation and market uncertainty

Financial markets and real estate markets have seen a great degree of volatility and uncertainty in recent years. This budget uses the best estimates with regard to inflation rates, interest rates, investment returns and real estate markets.

Key Operational Goals for 2023

The Benchers have adopted a new Strategic Plan for 2021-2025 that will guide the Law Society during this period. The plan has five main objectives: leading as an innovative regulator of legal service providers; working toward reconciliation; taking action to improve access to justice; promoting a profession that reflects the diversity of the public it serves; and increasing confidence in the Law Society, the administration of justice and the rule of law.

In support of the strategic plan, some of the key operational goals that the 2023 budget and fees support are noted below:

1. Single Legal Regulator

The Law Society is engaged with the Ministry of Attorney General and others on development of a framework to consolidate the regulation of all legal professionals under a single regulator dedicated to the public interest. This work will ensure that the framework for a single regulator protects the public, improves access to legal services and continues to recognize the fundamental importance of independent legal professions. For now this work will be funded from current resources and there will likely be an allocation of net asset reserves as needed in the future.

2. Alternative pathways to lawyer development and licensing

Based on the Lawyer Development Task Force recommendations, the Law Society continues to review the current lawyer development and licensing program and exploration of new pathways for licensing lawyers – including ways to enhance the role of technology, remote learning and mentorship. A modest amount has been set

aside in the 2023 budget, and the net assets reserves will be used to provide further resources to complete the review of alternative pathways to licensing.

3. Continued focus on anti-money laundering initiatives

The Cullen Commission final report was delivered in mid-2022 and anti-money laundering will remain a focus of our regulatory efforts. We continue to enhance our rules and regulatory processes and education to improve our efforts to fight money laundering in the province.

4. Continued Implementation of the Professional Conduct Process Review and development of the Alternative Process Programs (APP)

In recognition of the increasing demand on our regulatory resources, the Professional Regulation Department will continue to review processes and implement changes to enhance the efficiency and effectiveness of our regulatory operations. In addition, staff will continue working on implementation of the Alternative to Discipline Program (“ADP”) arising from the work of the Mental Health Task Force. In 2022, in addition to ADP, administrative penalties were introduced as a regulatory tool, and staff have been working on the implementation of that alternative process as well. Estimated costs for the Alternative Process Programs have been included in the 2023 budget.

5. Enhanced practice support and online courses

We will continue to offer new and existing online courses through a new online learning platform, Brightspace from D2L. Through this platform, we will be providing access to Law Society courses including the new Indigenous Intercultural Awareness course, updated versions of the courses previously offered through learnlsbc.ca including the Practice Management and Practice Refresher courses, and other online course offerings. In addition, the Professional Legal Training Course (PLTC) is supported on this platform.

6. Innovation sandbox initiatives to improve access to legal services

The Law Society has established the innovation sandbox to pilot the provision of legal advice and assistance by individuals, businesses and organizations that are, for the most part, not lawyers or law firms. The Law Society’s innovation sandbox provides a structured environment that permits lawyers and other individuals and organizations to pilot their proposals for providing effective legal advice and assistance to address the public’s unmet legal needs. This work continues into 2023.

7. Diversity action plan

The Benchers have adopted the Diversity Action Plan, which includes 30 action items to foster diversity within the Law Society, support diversity in the legal profession, identify and remove discriminatory barriers, enhance intercultural competence education, improve outreach and collaboration, and track and report progress.

Key Budget Assumptions

Revenues

- Projecting a 3% increase in net lawyer growth in 2023 from forecasted 2022 levels, budgeting 14,128 lawyers
- PLTC revenues are projected to be similar to 2021 actuals with 627 students. Although the 2022 forecast expects a significant increase for 2022 to 683 students, the student numbers are expected to return to a more normal level in 2023 at 627 students
- Credentials and member services fees are set at historical averages
- Interest income is expected to increase with the rising interest rates
- Investment income is expected to be in line with the target rate of return
- Electronic filing and TAF revenues are projected to decrease 27% over 2021 actuals based on forecasts for reduced real estate market activity in 2022 and 2023
- Stable 845 Cambie building lease revenues expected

Expenses

- Salaries include contracted and non-union wage increases
- Other staffing costs set at historical levels
- Modest addition of staff resources to deliver core functions
- At least 50% of Bencher and committee meetings continue to be conducted fully virtually, lowering costs
- With the digitization of the workplace and technology upgrades, computer software costs have increased to support effective operations
- An increase in external counsel fees in Intake & Early Resolution, Investigations, Monitoring & Enforcement and Discipline due to large, complex files and special expertise resource needs
- Other than a modest deficit of \$775,000 budgeted for 2023, net asset reserves will be kept at current levels, anticipating the allocation of net asset reserves in the future for strategic long term initiatives.

Budget Risks

Number of Lawyers – The revenue received from the practice fee and other credentials and membership fees serves to cover over 80% of the budgeted costs. As such, any variation in the actual number of lawyers from the budget projection could result in a need to draw further on net assets reserves.

Inflation – Staff salaries and benefits comprise approximately 77% of the total expenses, so changes in inflation and salary market levels may cause unpredictability in costs.

External Counsel Fees – External counsel fees represent a significant portion of the overall budget. While these costs are analyzed, managed and tracked rigorously, they can also be unpredictable in nature. These costs are typically driven by three factors, conflicts, work load and the requirement of special skills. The complexity of new cases cannot be anticipated, which can have an impact on costs and demand.

Anti-Money Laundering Efforts – The additional costs relating to AML efforts, identifying misuse of trust accounts, and file costs related to investigations and discipline are unknown. The actual costs incurred could vary from what has been estimated.

Staff Vacancy Savings – In any given year, there are staff vacancies due to staff turnover. The time to recruit, and other factors, result in vacancy savings and we develop an estimate of the vacancy savings each year based on past experience. The amount of staff vacancy savings depends on the actual amount of staff vacancies in any given year. If there are lower or higher vacancies than estimated, operating costs will be different than budgeted.

Electronic Filing Revenues and Trust Administration Fees – These revenues correlate very closely with real estate unit sales in BC. Expected revenue from these sources has been set based on any available forecasts of the Real Estate Associations and actual results could vary from these forecasts.

2023 Operating Revenue Summary

General Fund revenues are projected to be \$32.4 million, \$2.0 million (6.7%) higher than the 2022 budget, due primarily to an increase in the number of lawyers year over year. PLTC student numbers are also expected to be slightly higher than the 2022 budget. Electronic filing revenue and interest are also expected to be higher than the 2022 budget. Credentials and member services revenue and fines and penalties are budgeted to increase in order to be more in line with historical averages. The budgeted revenue is based on estimates of 14,128 full-time equivalent practicing lawyers and 627 PLTC students.

2023 Operating Expense Summary

General Fund operational expenses are expected to be \$33.2 million, a 6.4% increase in expenses over 2022. Increases are primarily related to the addition of a few select staff positions and general wage increases. Other areas that have increased include computer technology costs and external counsel fees.

Net Assets - General Fund Working Capital

The 2023 budget proposes a General Fund deficit of \$775,000. The overall projected net asset working capital position based on the May 2022 forecast, is shown below.

2022	
Working Capital Balance - per 2021 audited financial statements	\$ 15,073,000
Forecasted 2022 Results- May 2022 Forecast	\$ 200,000
Projected 2022 Working Capital Closing Balance	\$ 15,273,000
2023	
Budgeted Deficit	\$ (775,000)
Projected 2023 Working Capital Closing Balance	\$ 14,498,000
Number of months of expenses	5.2

Appendix A and B contain the General Fund operating budgets.

2023 Practice Fee

Taking all factors into account, the practice fee will be as noted below:

The Law Society of BC
2023 Fee Recommendation

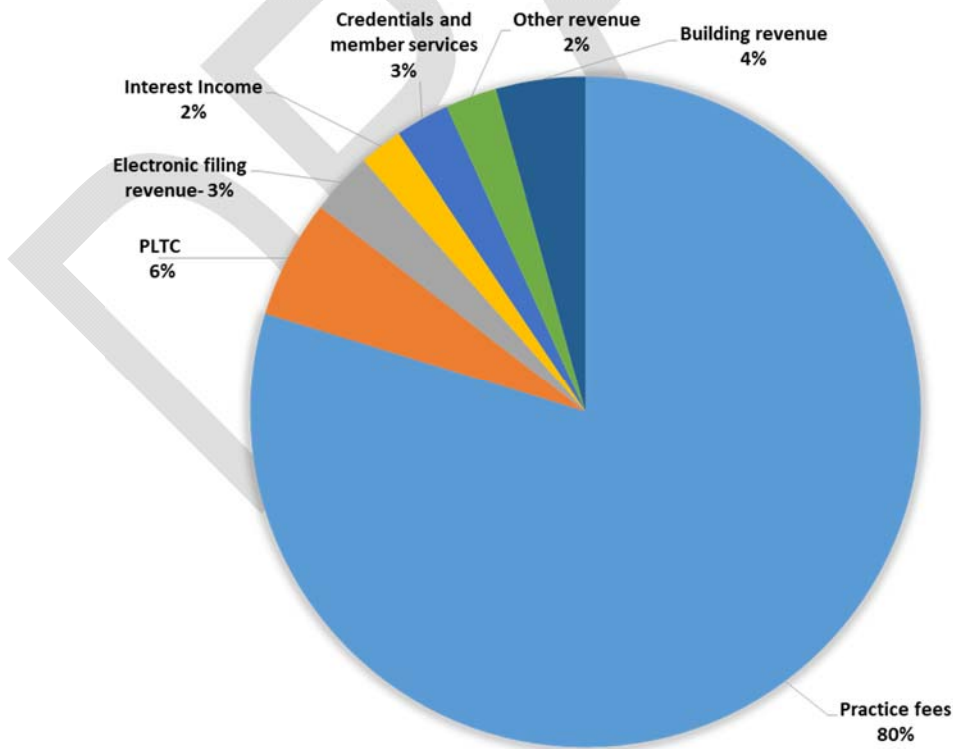
	Funding (in 000's)				Per Lawyer			
	2023	2022	Change (\$)	Change (%)	2023	2022	Change (\$)	Change (%)
Law Society Operating Expenses	\$ 33,166	\$ 31,184	1,982	6.4%	\$ 1,904.00	\$ 1,904.00	\$ -	0.0%
Federation of Law Societies	343	324	19	5.9%	24.00	24.00	-	0.0%
CanLII	593	566	27	4.8%	42.00	42.00	-	0.0%
CLBC*	2,985	2,759	226	8.2%	204.00	204.00	-	0.0%
The Advocate**	431	414	17	4.1%	25.00	25.00	-	0.0%
LAP*	1,140	850	290	34.1%	77.00	63.00	14.00	22.2%
Pro bono/Access*	378	365	13	3.6%	27.00	27.00	-	0.0%
Annual Practice Fee					\$ 2,303.00	\$ 2,289.00	\$ 14.00	0.6%

*2023 full fee paying equivalent members projected at 14,128

**2023 practicing, non-practicing and retired members projected at 17,257

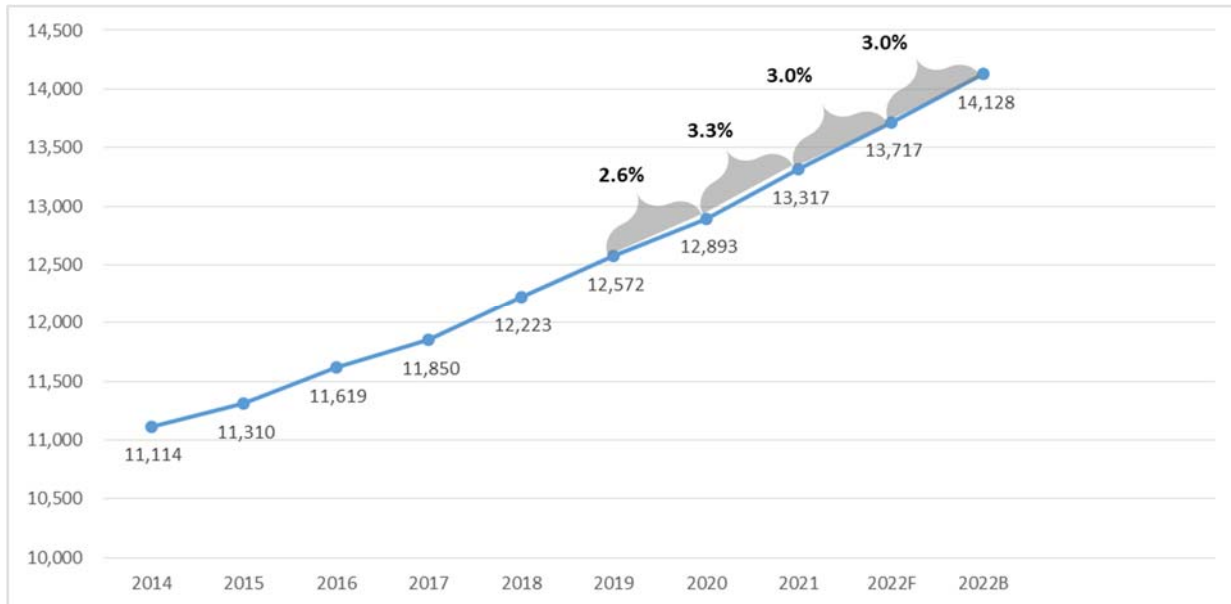
2023 Operating Revenues

The chart below provides details by type of operating revenue for the General Fund.



Practice fee revenues are budgeted at \$25.8 million, a 4.4% increase over the 2022 budget. The last few years have seen increases in practicing lawyers of 3% on average. Given this, we have projected a further increase to the number of practicing lawyers of 3% in 2022 over the 2021 actuals, and another 3% increase in 2023. The 2023 budget assumes an estimate of 14,128 full-time equivalent lawyers.

Practicing Lawyer History



PLTC revenues are budgeted at \$1.9 million, based on 627 students, slightly higher than the 2022 budget. The 2022 forecast for students projects a large increase in the year with a forecast of 683 students, which is not expected to continue into 2023. A chart showing the history of the number of PLTC students can be found in Appendix G.

Electronic filing revenues are budgeted at \$966,000, an increase of \$181,000 over the 2022 budget, but down from the 2022 forecast of \$1,040,000. This budget is consistent with the real estate projections at the time of budgeting. Even with the decline expected in the real estate market activity, the increase in electronic filing revenue is expected to remain higher than what we have historically seen due to the introduction of the Land Owner Transparency Registry (LOTA) at the end of 2020, which has increased the number of electronic filing transactions. The number of transactions associated with LOTA is unknown at this time.

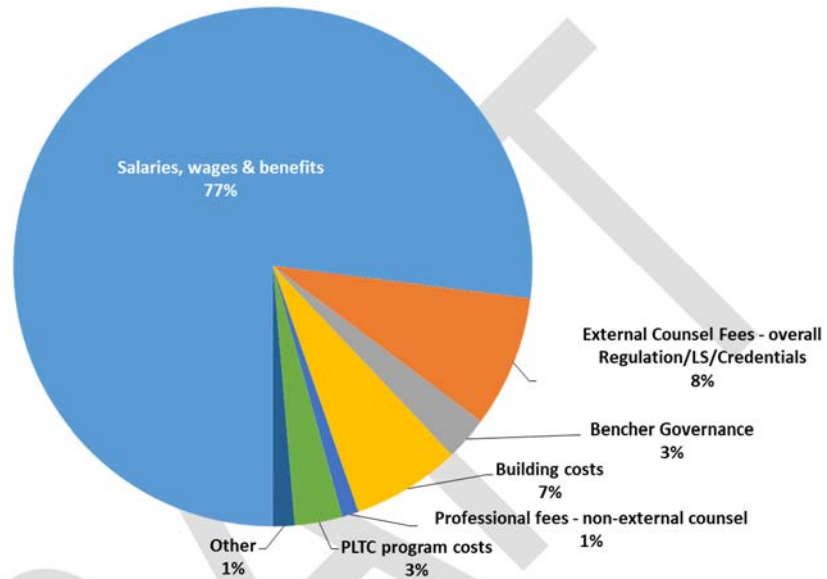
Other revenues, which include credentials and incorporation fees, fines, penalties and cost recoveries, and interest income are budgeted at \$2.3 million, \$685,000 more than 2022, due to recent increases in these revenues and higher interest rates.

Building revenue and recoveries are budgeted at \$1.4 million in 2023. The Law Society owns the 839/845 Cambie building, and occupies the majority of space, and the space that is not occupied by the Law Society is leased out to external tenants. In 2023, external lease revenues are budgeted at \$871,000. Also included in lease revenues is an inter-fund market rent allocation of \$526,000 charged by the General Fund for space occupied at 845 Cambie by the Lawyers Indemnity Fund and the Trust Assurance Program.

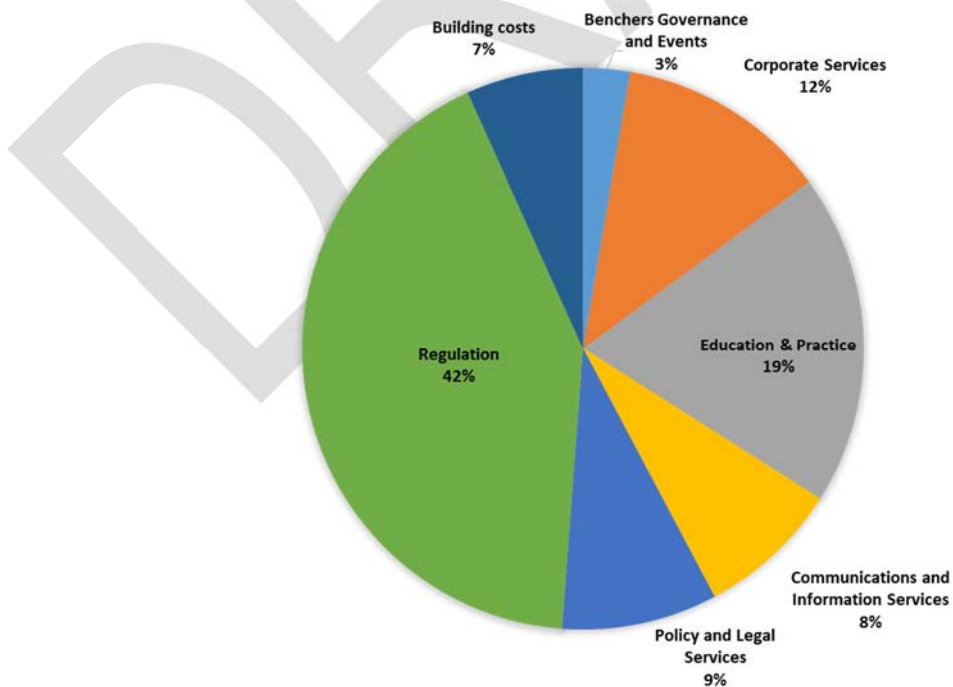
DRAFT

2023 Operating Expenses

The majority of operating expenses (77%) are related to staffing costs to provide the programs and services to both the public and lawyers. External counsel fees are 8% of overall spending, which is consistent with external counsel fee spending levels in 2022. The chart below provides information on type of operating expenses for General Fund.



The operating costs by program area as a percentage of the 2023 budget are:



Departmental Summaries

Bencher Governance and Board Relations

Bencher Governance and Board Relations includes the costs of the Bencher and committee meetings, the associated travel and meeting costs, Law Society meetings and events and the costs of new initiatives related to the Bencher Strategic Plan. This also includes the Board Relations and Events department that coordinates and organizes the Bencher and Executive meetings, coordinates external appointments, and plans and provides administrative and logistical support for Law Society events, the annual general meeting and Bencher elections.

The 2022 Bencher Governance and Board Relations operating expense budget is \$894,000 a decrease of \$71,000 (7%) from the 2022 budget. This decrease is primarily related the savings related to having a virtual Annual General Meeting. This savings is partially offset by market based salary adjustments in Bencher Relations and Events. It is planned that Bencher and committee meetings will continue to be held 50% in-person and 50% fully virtual during 2023.

Corporate Services

Corporate Services includes General Administration, Office of the CEO, Finance, Human Resources, and Records Management.

General Administration includes the Office of the CEO and the Operations department which provides general administrative services, such as reception, office services, office renovation services and building management oversight.

Finance provides oversight over all the financial affairs of the Law Society, including financial reporting, operating and capital budgeting, audit, payroll and benefits administration, cash and investment management, and internal controls.

Human Resources develops and maintains the human resource policies and procedures, and provides services related to recruiting, compensation, performance management, employee and labor relations, and training.

Records Management is responsible for the records management, library and archives program, including the oversight of the electronic document management system.

The 2023 Corporate Services operating expense budget is \$4.0 million, \$195,000 (5%) higher than the 2022 budget, with increases primarily related to market based salary adjustments and needed staff resources in Human Resources. Additionally the management of all subscriptions in the organization has been centralized into Corporate Services. Any additional amounts for subscriptions in this area are offset by savings in other departments.

Education & Practice

Education and Practice includes Member Services, Credentials, PLTC, Practice Support, Practice Standards and Practice Advice.

Member Services provides registration and licensing services to lawyers, including lawyer status changes, fee billings, unclaimed trust funds, and Juricert registration. This department also administers the annual continuing professional development program for all lawyers and the law student admission program.

Credentials ensures new and transferring lawyers are properly qualified to practice law in BC by preparing and assessing applicants for call and admission to the Law Society, licensing them to practice, and Call Ceremonies.

PLTC & Education includes PLTC and Practice Support. PLTC helps articulated students make the transition from law school to legal practice. Practice Support provides lawyer resources and online courses for the profession. A chart showing the historical levels of PLTC students is shown in Appendix G.

Practice Standards is a remedial program that assists lawyers who have difficulty in meeting core competencies and who exhibit practice concerns, which may include issues of client management, office management, personal matters, and substantive law. The Practice Standards department conducts practice reviews of lawyers whose competence is in question, and recommends and monitors remedial programs.

Practice Advice helps lawyers serve the public effectively by providing advice and assistance on ethical, practice and office management issues. The majority of the costs of this department are allocated to LIF.

The total 2023 Education & Practice operating expense budget is \$6.3 million, an increase of \$280,000 (5%) from the 2022 budget. Increases in this area are related to market based salary increases, higher external counsel fees, online course fees with the purchase on more licenses to provide all lawyers with access to online learning platforms and an amount set aside for lawyer development with the Lawyer Education Advisory committee.

Communications and Information Services

Communications is responsible for all lawyer, government and public relations and provides strategic communication advice to all areas of the Law Society. The department also manages and maintains the Law Society website, electronic communications and produces our regular publications such as the Bencher Bulletin, E-Brief and Annual Review.

Information Services is responsible for all technical services relating to computer business systems and databases, networks, websites, cyber security and data storage and information technology.

The 2023 Communications and Information Services operating expense budget is \$2.7 million, an increase of \$203,000 (8%). This increase is related market based salary increases along with computer technology needs. With the digitization of the workplace, new software and services are required related to file transferring, custodianships storage and an enterprise resource planning system in finance. Additionally, increased software costs are related to the need to move some software to annual subscription based services.

Policy & Legal Services

Policy & Legal Services includes policy, legal services, external litigation and interventions, ethics, tribunal and legislation, information and privacy, and unauthorized practice.

Policy and Legal Services develops policy advice, legal research and Rules drafting, and monitors developments involving professional regulation, independence of the Bar and Judiciary, access to justice, and equity and diversity in the legal profession, and supports the Ethics Committee. In addition, includes external counsel fees providing services for legal defence cases and interventions on behalf of the Law Society.

Tribunals and Legislation supports the work of Law Society hearing and review tribunals and drafts new rules and proposed amendments to the *Legal Profession Act*.

Information & Privacy handles requests made of the Law Society and maintains compliance of the Law Society data and training under the *Freedom of Information and Protection of Privacy Act* (FOIPPA).

Unauthorized Practice (UAP) investigates complaints of unauthorized practice of law.

The 2023 Policy and Legal Services operating expense budget is \$3.0 million, an increase of \$89,000 (3%) from the 2022 budget. This is primarily related to market based salary increases and an additional staff resource, offset by transferring subscription costs due to centralizing this function into records management.

Professional Conduct, Investigations & Discipline

The main program areas included in this area are: CLO Department, Professional Conduct, Discipline, Forensic Accounting and Custodianships.

The CLO department is responsible for providing oversight of all of the programs in Professional Regulation, which include: intake, early resolution, investigation, discipline, monitoring and enforcement, custodianships, litigation management, unauthorized practice and practice standards. Additionally the CLO department provides support to the Discipline Committee and conducts reviews of the professional regulation programs in order to ensure the effective utilization of Law Society resources.

Professional Conduct includes the Intake and Early Resolution and the Investigations, Monitoring and Enforcement groups, which receive and investigate complaints about lawyers' conduct and recommend disciplinary action where appropriate.

Discipline manages the conduct meeting and conduct review processes, represents the Law Society at discipline hearings and provides legal advice on investigations.

Forensic Accounting provides forensic investigation services to support the regulatory process.

Custodianships provides for the arrangement of locum agreements or custodians to manage and, where appropriate, wind-up legal practices when lawyers cannot continue to practice due to illness, death, or disciplinary actions.

The 2023 Professional Conduct, Investigations and Discipline operating expense budget is \$14.0 million, an increase of \$1.1 million (8%) from the 2022 budget. This is primarily related to market based salary increases, increases to external counsel fees as well as the addition of the Alternative Process Program.

Building Costs

The Law Society owns the 839/845 Cambie Street building and occupies 80% of the available space. The cost of occupying and maintaining the building is partially offset by lease revenues from tenants, which are recorded in the revenue section.

The property management department provides services in relation to tenant relations, leasing, building maintenance and preservation, fire and safety, energy management, and minor and major capital project management.

The 2023 building operating expense budget is \$2.2 million, an increase of \$200,000 (10%) over the 2022 budget. This is primarily the result of increases in property taxes and insurance costs.

Capital Plan

The Law Society maintains a rolling 10 year capital plan to ensure that capital funding is available for capital projects required to maintain the 839/845 Cambie building and to provide capital for operational requirements, including computer hardware and software, furniture and workspace improvements. The amount of the practice fee allocated to capital projects is set at \$125 per lawyer.

In the 2023 capital plan, \$2.1 million is budgeted for capital projects (Appendix C). Projects include base building maintenance, including future window and cladding repairs, and the replacement of the roof. In addition, the operational capital includes replacing computer hardware and software, furniture, and office renovations.

External Organization Funding

The Law Society collects a number of fees for external programs, which are included in the annual practice fee.

Federation of Law Societies – The Federation fee is expected to remain at \$24 per lawyer in 2023 as the Federation will continue to use some of their net asset reserves to fund their operations. The Federation of Law Societies of Canada provides a national voice for provincial and territorial law societies on important national and international issues.

CanLII – The CanLII fee is expected to remain at \$42 per lawyer. CanLII is a not-for-profit organization initiated by the Federation of Law Societies of Canada. CanLII's goal is to make primary sources of Canadian Law accessible for free on its website at

www.canlii.org. All provincial and territorial law societies have committed to provide funding to CanLII.

Courthouse Libraries of B.C. (CLBC) – With the support from the Law Society of British Columbia, the Law Foundation of British Columbia, and the Ministry of Attorney General, CLBC provides lawyers and the public in BC with access to legal information, as well as training and support in accessing and using legal information. Through its information services, curation of print and digital collections, website content and training, the library provides practice support for lawyers and access to justice support to the public across the province, through its 31 physical locations. CLBC will be funded \$2,985,000, and the contribution per lawyer remains at \$204 per lawyer.

The Advocate – The Advocate per lawyer funding will remain at \$25 per lawyer to fund \$431,425 for the 2023-2024 operating budget. The Advocate publication is distributed bi-monthly to all BC lawyers.

Lawyer's Assistance Program (LAP) – LAP provides confidential outreach, education, support and referrals to lawyers and other members of British Columbia's legal community. In the past few years, LAP has used net assets reserves to fund operations, reducing the LAP fee to \$63 per lawyer. LAP has requested funding of \$1,140,000, with net assets reserves staying at current levels. The contribution per lawyer will be increased to \$77 to fund the 2023 operating budget.

Pro bono and access to justice funding – with an increase for CPI, the contribution to pro bono and access to legal services funding will be set at \$378,000 for 2023. This would allow the per lawyer fee to remain at \$27. This funding is sent to the Law Foundation for distribution to pro bono and access to justice organizations.

Trust Assurance Program and Fee

The goal of the Trust Assurance program is to ensure that law firms comply with the rules regarding proper handling of clients' trust funds and trust accounting records. This is achieved by conducting trust accounting compliance audits at law firms, reviewing annual trust reports, and providing lawyer advice and resources.

The Trust Administration Fee (TAF) is currently set at \$15 per transaction. The 2023 TAF revenue is budgeted at \$3.8 million, assuming a 27% decrease in the real estate market projected from 2021 levels based on current BCREA forecasts.

The Trust Assurance operating expense budget is \$3.7 million, an increase of \$95,000 (3%) from 2022. Increases are primarily related to market based salary adjustments.

The compliance audit program ensures that all firms are audited at least once within a six year cycle. In addition, real estate and wills & estate firms are audited every four years, along with more frequent audits in higher risk practices. The program also develops and delivers webinars and trust accounting courses, and other resources for the profession.

The TAF reserve at December 31, 2021 was \$1.8 million. The Benchers recommend the TAF reserve be set at 6 months of operating expenses, with any excess transferred to Part B indemnity funding.

Trust Assurance Program Projections

	TAF		Total	Total	Net	Transfer to	Net Asset
	Matters	Rate	Revenue	Expense	Income/ (Deficit)	LIF	Balance
2021 Actuals	349,203	\$ 15	\$ 5,238,051	\$ 3,167,836	\$ 2,070,215	\$ (2,300,000)	\$ 1,842,249
2022 Projections*	272,379	\$ 15	\$ 4,085,680	\$ 3,627,751	\$ 457,929	\$ (450,000)	\$ 1,850,178
2023 Budget	254,800	\$ 15	\$ 3,822,000	\$ 3,722,000	\$ 100,000	\$ (100,000)	\$ 1,850,178
Actual results will determine the amount of the transfer in 2022.							

Lawyers Indemnity Fund

Overview and Recommendation

The goal of the Lawyers Indemnity Fund (LIF) is to maintain a professional liability indemnification program for BC lawyers that provides reasonable limits of coverage for the protection of both lawyers and their clients and exceptional service, at a reasonable cost to lawyers. This is within an overarching objective of maintaining a financially stable program over the long term, in the interest of the public and the profession.

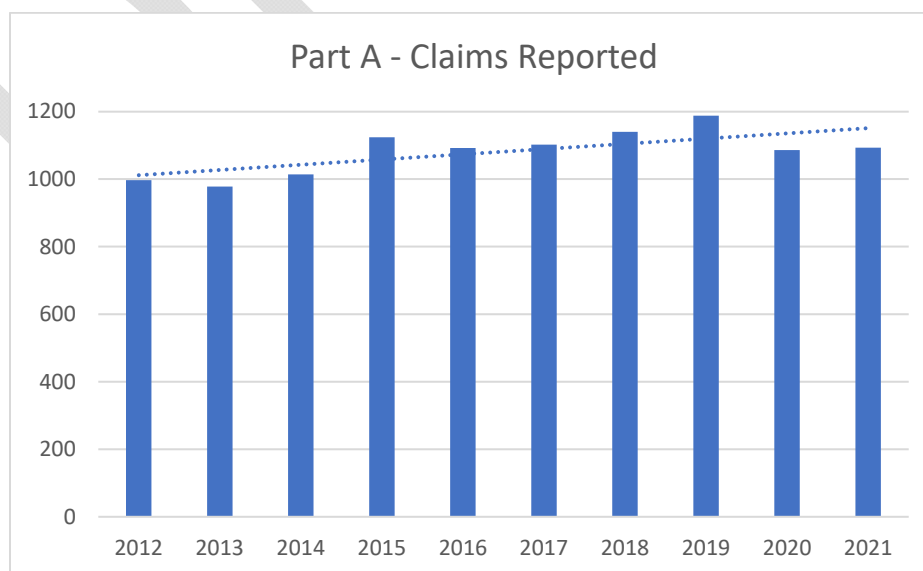
A number of factors influence the financial performance of our indemnification program, and we will review each below. Overall, although 2021 was another year of uncertainty arising from the waning pandemic and its later resurgence through the Omicron variant, the profession as a whole got back to business and the program's financial health was not affected. The number of claims, which had declined in 2020, rose to normal levels in 2021, and the equity markets remained in bull status (until the spring of 2022). Covid-19 is not expected to be a significant cause of future risk for the program.

Taking all factors into account, we recommend maintaining the fee at \$1,800 for 2023.

Frequency and Severity of Claims – Parts A, B and C, and Cyber

Part A:

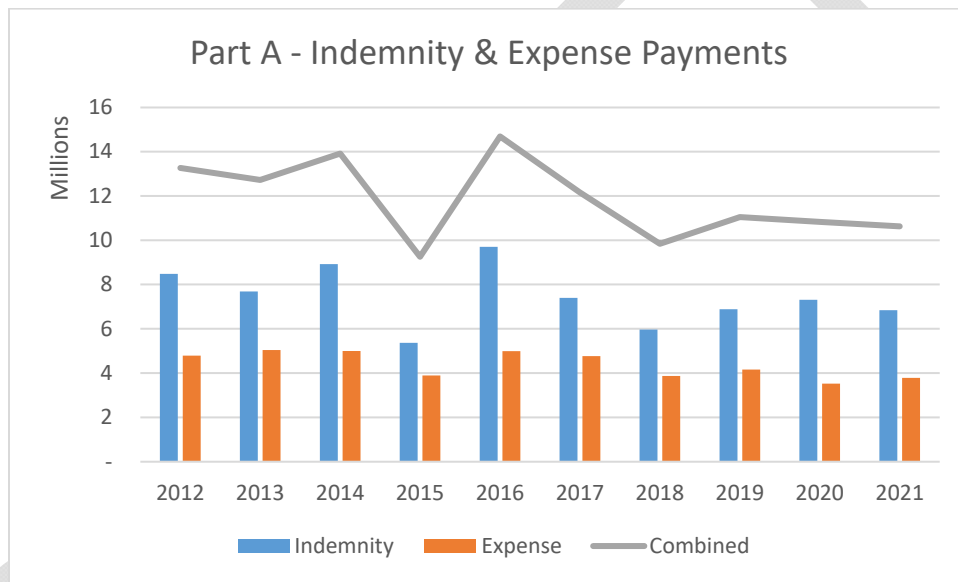
The first and a key factor is the total incidence of claims and potential claims, or “reports” under Part A. Both the number of reports and frequency (number of reports divided by the number of lawyers) received in 2020 were lower than the prior year (which itself was artificially high due to the reporting of 52 matters in December by one lawyer). The number of reports increased slightly to 1,094 in 2021, and projecting 2022 to year-end, we expect the number of reports to be 1,100, which is consistent with recent experience.



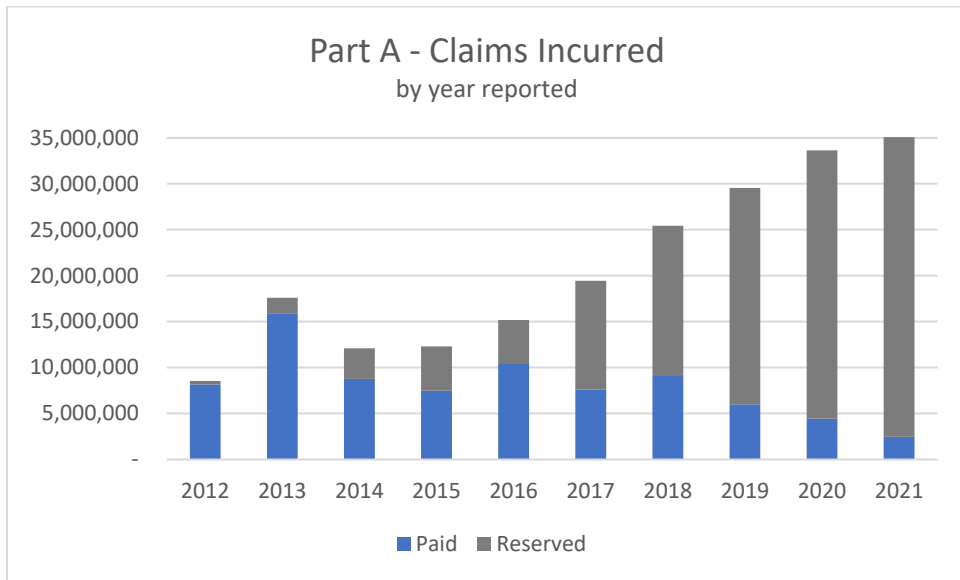
Report frequencies (rounded) for 2022 and the previous 10 years are:

2012 (projected)	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
13%	12%	12%	13%	13%	13%	13%	13%	11%	12%	11%

Another key factor is the amount paid to defend and resolve claims. As demonstrated in the graph below, the severity (the dollar value) of payments on a *calendar* year basis has varied between \$10 million and almost \$15 million. 2020 and 2021 closed out at \$12 million and \$11 million, respectively, and projected to year-end 2022, we expect total payments to fall within the same range.

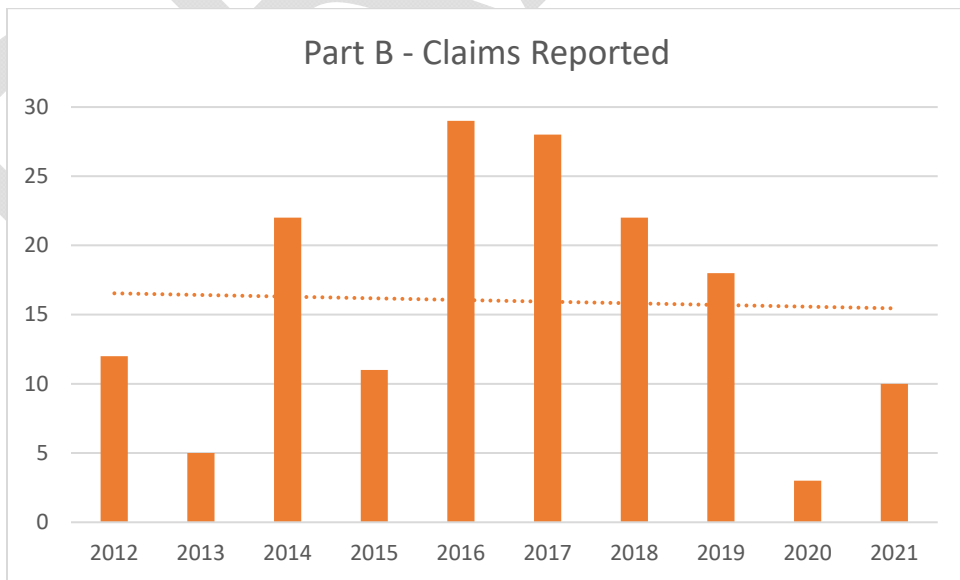


On a *claim year* basis, however, the total incurred (total reserves and payments) continues to trend up – see graph below. For example, the 2020 incurred increased from \$34 million to \$36 million in a single year. Primarily due to conservative reserving practices, the higher incurred values likely also signal increased severity. Time will tell what proportion of each is at play as the claims develop.

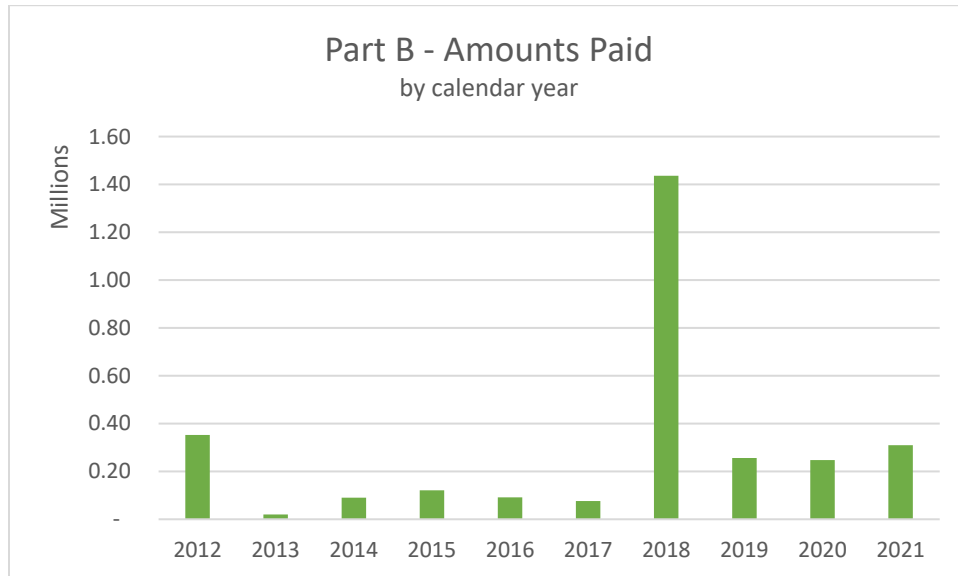


Part B:

Compared to Part A, there are relatively few Part B Trust Protection claims. The average annual number of claims in the previous 10 years is only 16. Accordingly, volatility is greater and apparent trends are less informative. As shown in the graph below, the number of new claims reported in recent years has been particularly low and only two claims have been reported so far in 2022. While the low frequency is obviously positive, we are cognizant of the potential for substantially higher levels of Part B claims activity.



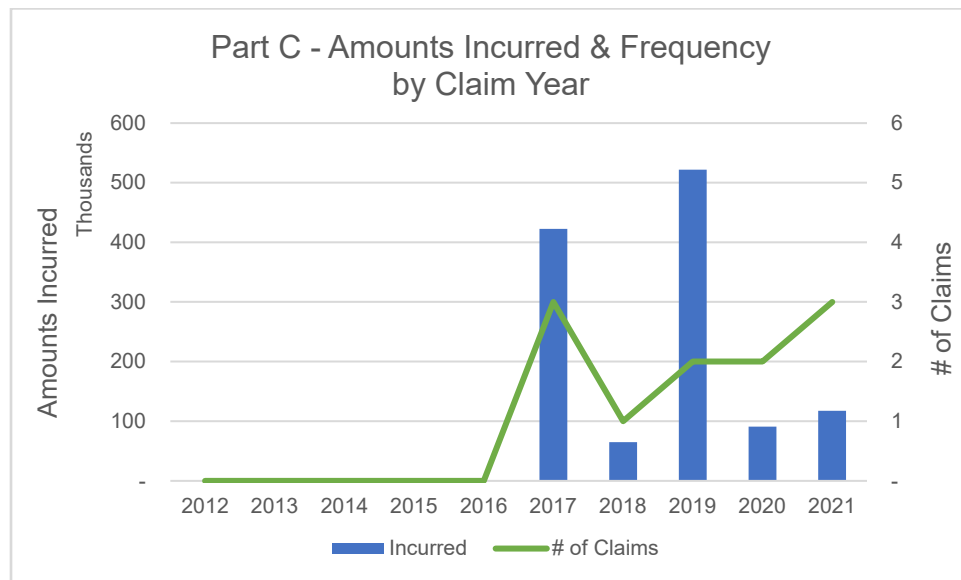
In 2021, the amount paid on Part B claims was \$309,684. This is consistent with the 10-year annual average (including \$1.4 million paid in 2018) of \$301,086. So far in 2022, only \$3,491 has been paid on Part B claims. Despite the negligible 2022 figure, we are not suggesting expectations should deviate from the longer-term averages.



Part C:

Part C coverage for trust shortages caused by bad cheques came into effect in 2012. Coverage for additional social engineering scams was added in 2017. In last year's report, we said that with the inception of the cyber insurance policy, we expected to realize fewer claims under Part C as coverage for social engineering fraud would fall primarily on the cyber policy. In fact, the cyber insurer significantly curtailed the scope of coverage such that it paid no social engineering claims, and coverage reverted to Part C.

With the world-wide surge in cybercrime resulting from lockdowns and remote working conditions, we can expect to see an increasing number of Part C claims. This is demonstrated in the graph below, albeit the sample size is very small. To May 30, we've received 4 claims, and have paid out, since 2012, \$1,059,071 in total.



Cyber Insurance:

Effective June 1, 2021, an insurance policy was arranged with Coalition Inc. to provide important protection against a broad range of cyber risks. The premium for this policy is fully funded by the annual indemnity fee, and LIF does not have any indemnity obligations under the policy. Firms are free to arrange excess or complementary coverage on their own. With the exception of a few firms that do not meet the insurer's qualifications, all BC firms are covered by the policy.

The first policy term has not yet finished. According to Coalition, 81 cyber incidents have been reported by BC law firms in 11 months, of which the most frequent have been (25) Email Compromise claims, and the most severe, (5) Ransomware claims.

The 2022-2023 renewal is in the final stages of confirmation. As the claims experience is less favourable than expected and cybercrime more prevalent, the renewal premium will be considerably higher than the \$1.2 million paid one year ago. Specific adjustments such as increasing the deductible and removing the social engineering fraud coverage have been negotiated to reduce the renewal premium to approximately \$1.65 million.

Future Practice Risks

The third factor is the risk of increased future claims.

The Pandemic:

LIF has successfully navigated the operational challenges of the pandemic, and has adapted to the new realities of a post-Covid world. Our experience to date suggests no cause for concern.

Revenue

On the revenue side, we saw increases in the total indemnity fees in 2020 and in 2021 despite the slowdown, and are budgeting a 3% increase to total fees in 2023. On the investment revenue side, projections are less certain as a result of inflation and recession worries, which are reflected in the poor performance of our investments to date in 2022. Weak returns on the equity markets are expected to be moderated by our diverse portfolio and our recent investments in two different infrastructure funds. Overall for 2023, we project investment returns of 5% based on advice from our investment advisors, George & Bell.

Payments

On the payment side, we have received a total of 38 reports of claims to date caused by the pandemic, of which 13 remain open. We expect these will continue to decline. To date, few payments have resulted, however, we anticipate that one claim may lead to the payment of a full policy limit. The guidelines to calculate limitation periods that we developed with the Ministry of the Attorney General appear to have been effective in reducing the key risk – missed limitation periods – caused by the pandemic. We were also able to take advantage of the suspension of limitation periods enacted by the Province to avoid many claims that would otherwise have been paid claims under the Policy.

On other fronts, our experience is that following a recession, claims against commercial solicitors increase in both number and value as development projects falter and commercial loan defaults occur causing parties to look for deep pockets from which to recoup their losses. But perhaps due to a quickly rebounding economy, we have not experienced a significant increase in commercial lending, borrowing, or real estate claims as a result of the 2020 recession. There was also a possibility that pandemic-related financial difficulties could cause some lawyers to misappropriate trust funds, leading to an increase in claims under Part B. Like recession-based claims, this has not been borne out – at least not yet.

Economic head-winds, however, may push the economy into another recession in the near future.

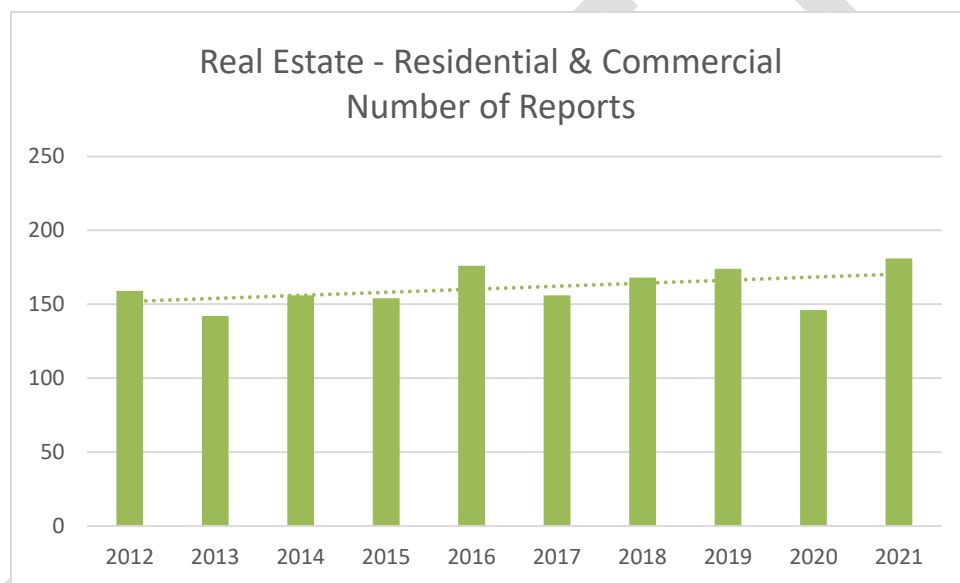
Real estate:

Claims arising from the *Real Estate Development Marketing Act* now account for \$5.25 million of payments and a projected further exposure of \$1.97 million. The number of reports and payments had been decreasing until we received five REDMA reports in 2020, two with reserves of almost \$1 million. Fortunately, despite the increase in interest rates, we have only received one report to date in 2022.

With respect to the BC government's tax on foreign purchases of Vancouver real estate, this has given rise to 42 claims against lawyers, with a total incurred of \$8.4 million. We have not yet received any foreign buyers tax claims in 2022, which is likely a result of not only extensive risk management initiatives but also a softening of the real estate market due to interest rate hikes.

In addition, the government's new land ownership registry, which imposed heightened obligations for lawyers acting for purchasers to disclose beneficial interests, was expected to result in additional claims, and we have received 3 to date. The new disclosure requirements were deferred for a further year, but will expand in the fall for every reporting body holding any interest in land. This development is also expected to generate claims.

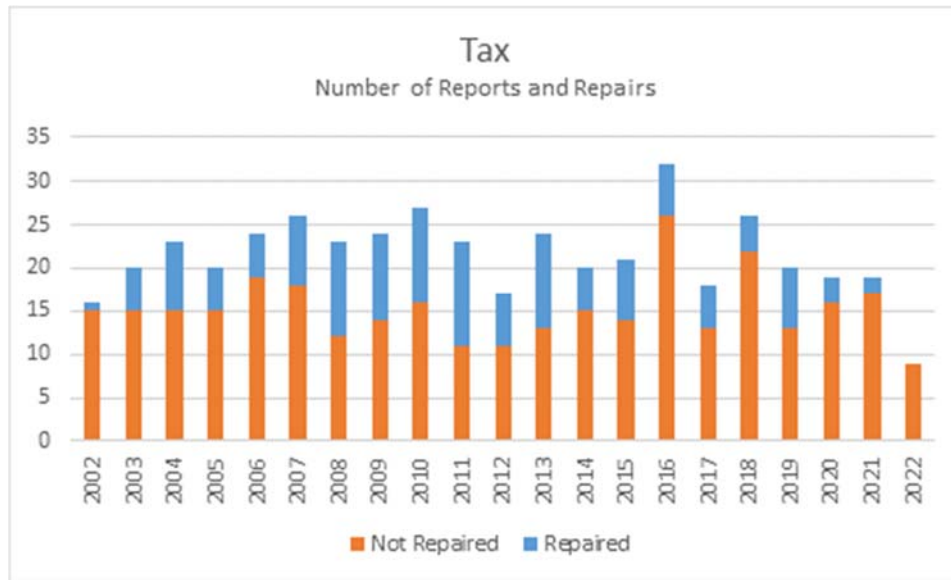
More broadly, as illustrated in the graph below, the overall frequency of reports arising from commercial and residential real estate practice, combined, has remained relatively consistent since the end of the impact of the 2008-9 recession. The number of claims has risen slightly due to the overheated residential property market in 2021, however, we don't anticipate further significant increases unless a recession occurs.



Tax:

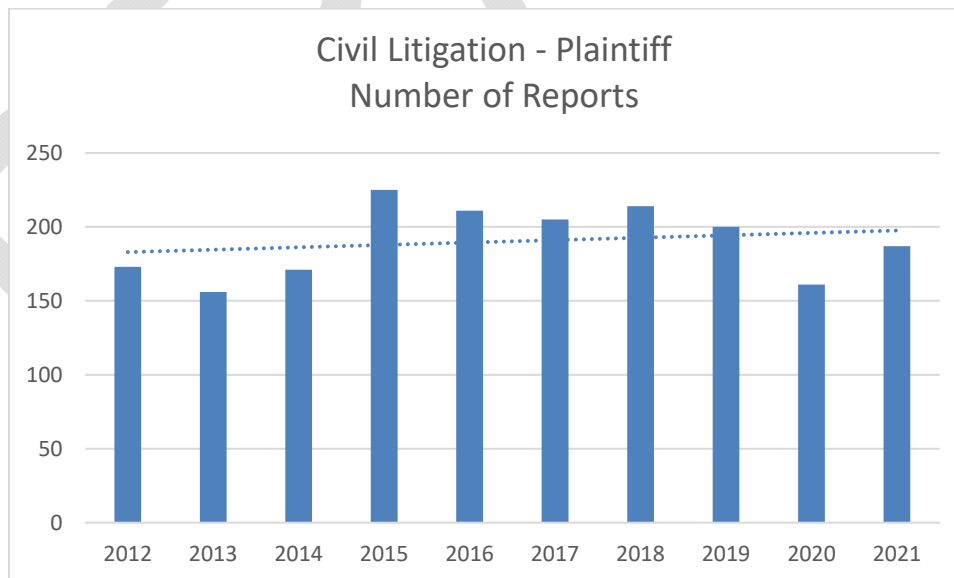
For over two decades, we have had great success in tax repairs, avoiding the payment of millions of dollars in indemnity to taxpayer clients by successfully obtaining rectification and rescission orders over corporate reorganizations involving significant tax implications. The graph below demonstrates this phenomenon.

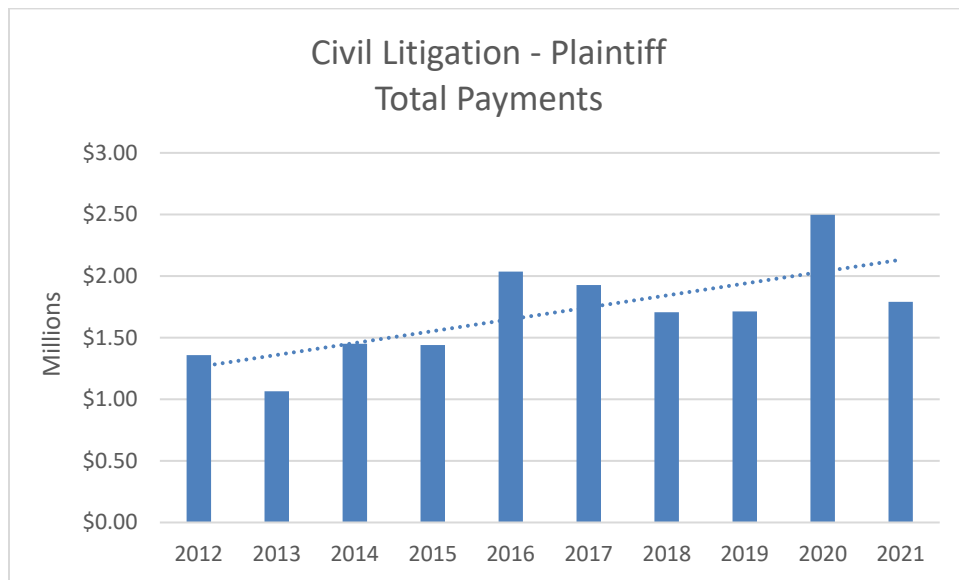
Unfortunately, the Supreme Court of Canada decision in *Canada (Attorney General) v. Collins Family Trust* handed down on June 17, 2022, will all but close the door on the largest dollar tax repairs. We fully expect to pay individual tax claims of hundreds of thousands of dollars or policy limits going forward.



Civil Litigation - Plaintiff:

Plaintiff-side civil litigation continues to be a significant cause of claims and payments – as demonstrated by the graphs below. In fact, these claims comprise almost 20% of reports across all practice areas. The decline in the number of claims in 2020 as a result of court closures was not repeated in 2021.



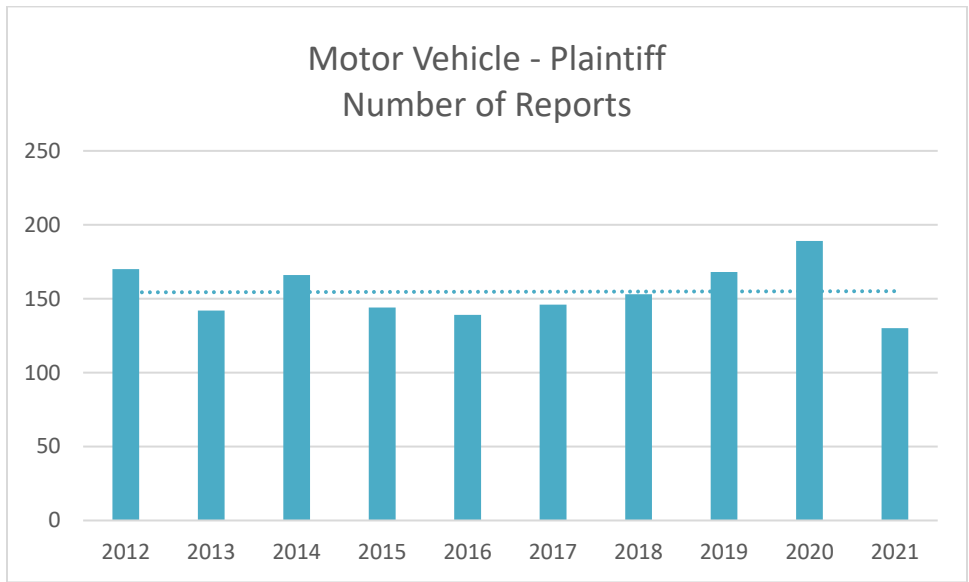


Motor Vehicle - Plaintiff:

Claims from MVA practice on the plaintiff's side have decreased (see graph below), and we will continue to see declines over the longer-term given the reality of no-fault insurance in BC as of May 2021.

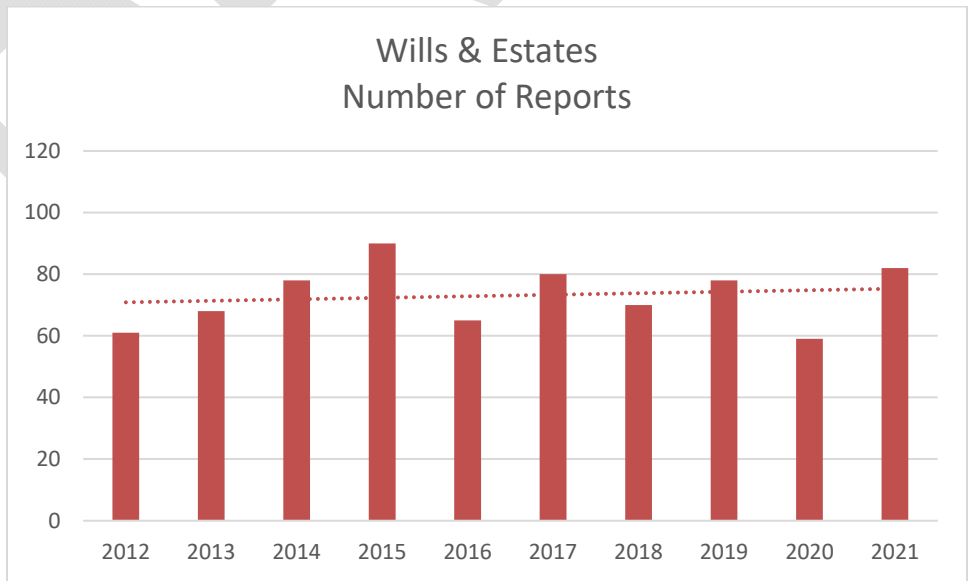
Moreover, the government was recently successful in the BC Court of Appeal, which upheld legislation that folds all "minor injury" claims and personal injury actions up to \$50,000 into the jurisdiction of the Civil Resolution Tribunal. We understand that TLABC will be seeking leave to appeal and also a stay of the decision in the interim. Although we may receive some claims from the change in the CRT's jurisdiction as a result of lawyers starting actions in the wrong venue, these will likely be relatively few since the no-fault regime will lead to fewer MVA actions overall.

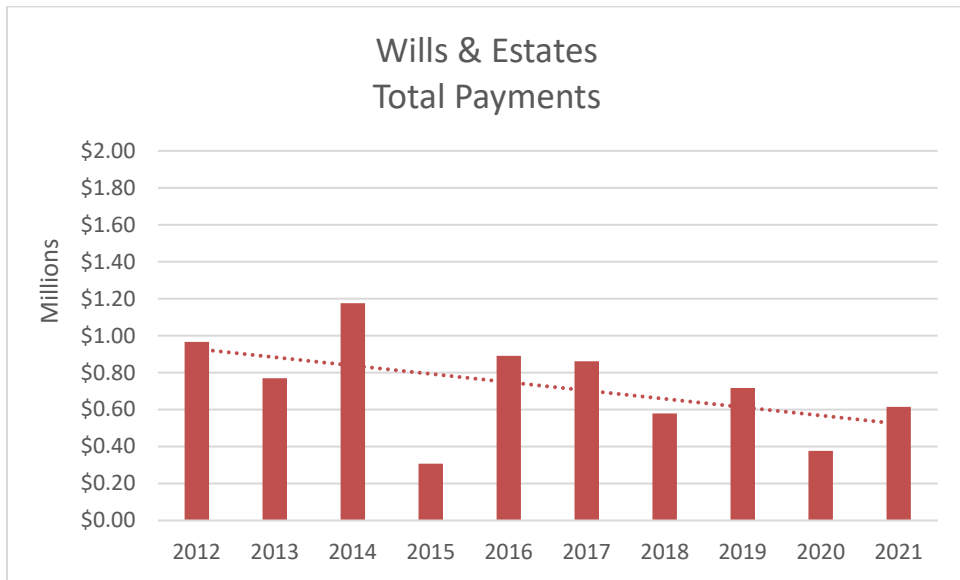
We will also be watching for an increase in claims elsewhere due to lawyers moving from MVA practices to other areas where they lack experience. We anticipate that over the next few years, a large number of personal injury lawyers will pivot to family, wills & estates, class actions, medical malpractice, employment law, general insurance defence, and general litigation.



Wills and Estates:

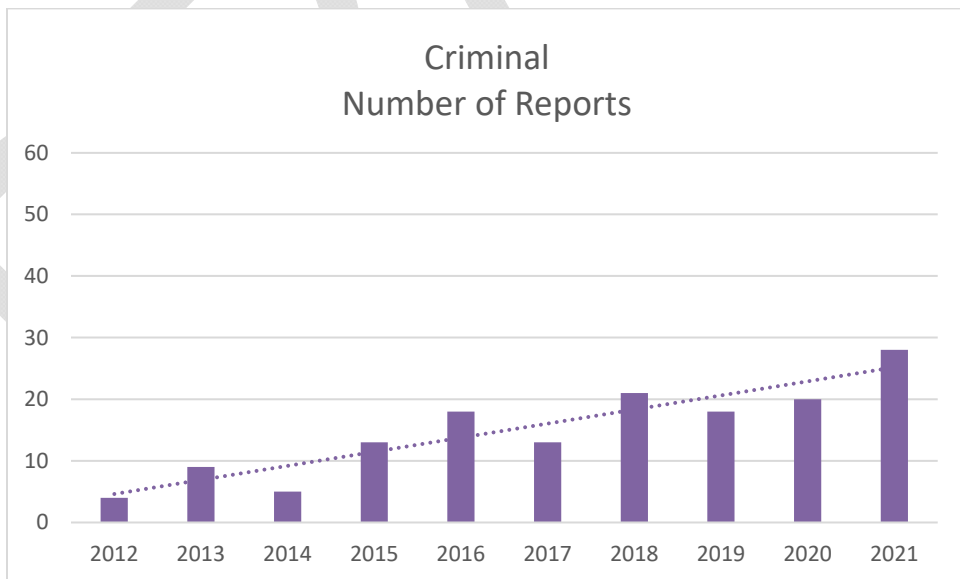
The *Wills, Estates and Succession Act* and rules that came into effect in March, 2014 was a net positive for claims in the wills and estates area of practice. This is due to the expanded opportunity to repair faulty wills, which has led to fewer losses for drafting and execution errors (see second graph below). The trend line in the first graph below illustrates that claims have increased only very slightly over the last 10 years, which, given our aging demographic, is better than expected. Nevertheless, we foresee the wills and estates practice area generating increasing numbers of future claims as the population ages and passes on substantial wealth to beneficiaries.

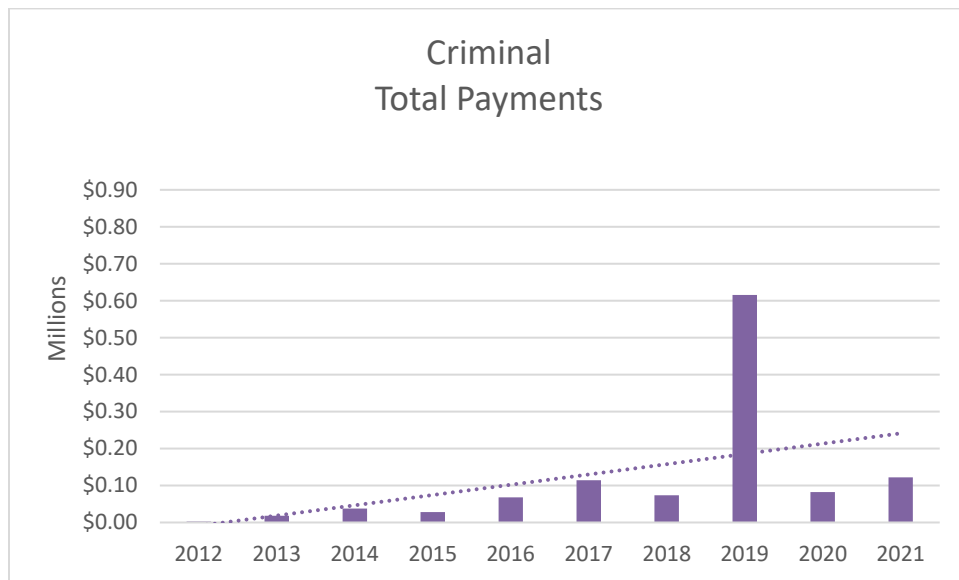




Criminal:

One area whose numbers have grown over the last 10 years is criminal defence law (for “ineffective assistance of counsel” claims). Overall, however, criminal practice generates relatively few reports and for the most part, modest indemnity payments, as demonstrated in the two graphs below.





Apart from the risks noted above, we are not aware of significant new covered areas of exposure for lawyers.

Investment Returns

The fourth factor is the return on investments available to fund the program. The 2021 return on LIF long-term investments – at 12.7% – was higher than the benchmark of 9.3%, and higher than the 5% return we had budgeted for 2021 and again for 2022. To May 31, however, the returns have been -5.1% vs the benchmark at -4.8%.

Minimum Capital (Net Asset) Requirements

In addition to the investment return, we must maintain a certain amount of the fund for contingencies and adverse developments. Applying the Minimum Capital Test – an industry-wide solvency benchmark for insurers – the Fund's actuary analyzed LIF's future risks relative to its net assets and advised on an appropriate level of capital funding. His opinion was that as of year-end 2021, LIF's MCT ratio was 306.6% and the program was adequately funded.

The actuary also stated last year that LIF might benefit from using an internal target MCT *range*, and suggests that a reasonable range is 225 – 275%. Although the current MCT ratio exceeds the top end of this range, the ratio was calculated as of December 31, 2021 and the variety of risks and factors we face cause us to believe the relatively high value is not a concern. The most relevant risk consideration as of the date of this report is economic uncertainty and the sharp downturn in investment returns. A 10% haircut to LIF's investment portfolio, for example, reduces the 306.6% MCT to 252% as capital available disappears.

While using the MCT as a gauge for our capital requirements is useful, it should not be interpreted in isolation as a measure of too much or too little capital. Accordingly, our fee recommendation is consistent with both the findings of the actuary and the future circumstances causing concern that we have identified in this report.

Net Assets

The LIF net assets as at December 31, 2021 were \$143 million, including \$17.5 million set aside for trust protection claims under Part B. The *unrestricted* net asset position of the fund was therefore \$125 million.

Revenue

Looking ahead to 2023, the total LIF assessment revenues are budgeted at \$17.4 million. As mentioned above, this is 3% more than the 2022 budgeted fee revenue of \$17 million. Investment income for 2023 is budgeted at \$11.6 million, based on an estimated return of 5% (see Appendix A).

Expenses

Operating expenses for 2023, excluding the claims provision, are budgeted at \$11.8 million, an increase of \$1 million, and 10% more than the 2022 budget (Appendix A). The increase is largely attributed to the cyber premium payable to Coalition, higher investment management expenses, increased contributions to general fund programs, as well as staff salaries.

Recommendation

The indemnity fee increased to \$1,800 in 2018 after being set at \$1,750 for the previous seven years. It has remained at \$1,800 for the last five years. Taking all factors into account, the indemnity fee will be maintained at \$1,800 (full-time) and \$900 (part-time) for 2023.

Annual Practice Fee and Indemnity Fee

The 2023 annual practice fee will be set at \$2,303.00 and the indemnity fee will be set at \$1,800.00. This results in the annual mandatory fees remaining very similar to the last four years. A comparison to other Canadian law societies is provided in Appendix F.

The 2023 mandatory fees for practicing, covered lawyers consists of the following:

The Law Society of BC 2023 Fee Recommendation

	Funding (in 000's)				Per Lawyer			
	2023	2022	Change (\$)	Change (%)	2023	2022	Change (\$)	Change (%)
Law Society Operating Expenses	\$ 33,166	\$ 31,184	1,982	6.4%	\$ 1,904.00	\$ 1,904.00	\$ -	0.0%
Federation of Law Societies	343	324	19	5.9%	24.00	24.00	-	0.0%
CanLII	593	566	27	4.8%	42.00	42.00	-	0.0%
CLBC*	2,985	2,759	226	8.2%	204.00	204.00	-	0.0%
The Advocate**	431	414	17	4.1%	25.00	25.00	-	0.0%
LAP*	1,140	850	290	34.1%	77.00	63.00	14.00	22.2%
Pro bono/Access*	378	365	13	3.6%	27.00	27.00	-	0.0%
Annual Practice Fee					\$ 2,303.00	\$ 2,289.00	\$ 14.00	0.6%
Indemnity Fee					\$ 1,800.00	\$ 1,800.00	-	-
Total Mandatory Fee					\$ 4,103.00	\$ 4,089.00	\$ 14.00	0.3%

*2023 full fee paying equivalent members projected at 14,128

**2023 practicing, non-practicing and retired members projected at 17,257

Resolutions for Practice Fee and Indemnity Fee

Be it resolved that:

- Effective January 1, 2023, the practice fee be set at \$2,303.00, pursuant to section 23(1)(a) of the *Legal Profession Act*.

Be it resolved that:

- the indemnity fee for 2023 pursuant to section 30(3) of the *Legal Profession Act* be set at \$1,800;
- the part-time indemnity fee for 2023 pursuant to Rule 3-40(2) be set at \$900; and
- the indemnity surcharge for 2023 pursuant to Rule 3-44(2) be set at \$1,000.

DRAFT

APPENDIX A – GENERAL FUND – OPERATING BUDGET

THE LAW SOCIETY OF BRITISH COLUMBIA
OPERATING BUDGET (excluding capital/depreciation)
For the Year ended December 31, 2023
GENERAL FUND SUMMARY

	2023 Budget	2022 Budget	2021 Actual	2023B vs 2022B Variance	%	2023B vs 2021A Variance	%
GENERAL FUND REVENUES							
Practice fees	25,838,058	24,761,537	24,005,886				
PLTC and enrolment fees	1,855,650	1,779,375	1,825,880				
Electronic filing revenue	966,364	785,000	1,334,626				
Interest income	684,925	290,000	329,723				
Credentials and membership services	843,600	775,570	890,547				
Fines & penalties	453,700	275,000	492,578				
Program cost recoveries	125,600	122,300	184,961				
Subscriptions	2,000	-	3,223				
Insurance recoveries	20,000	-	52,237				
Other cost recoveries	12,000	-	2,726				
Other revenue	192,925	186,600	214,475				
Building revenue and recoveries	1,396,615	1,384,086	1,305,731				
TOTAL GENERAL FUND REVENUES	32,391,437	30,359,468	30,642,593	2,031,969	6.7%	1,748,844	5.7%
GENERAL FUND EXPENSES							
Benchers Governance and Events	894,498	965,536	838,145				
Corporate Services	4,029,597	3,835,028	3,253,086				
Education & Practice	6,331,254	6,051,675	4,898,549				
Communications and Information Services	2,730,483	2,526,888	2,161,489				
Policy and Legal Services	2,971,232	2,881,889	2,638,550				
Regulation	13,976,781	12,893,736	11,721,990				
Building costs	2,232,594	2,029,716	1,772,738				
TOTAL GENERAL FUND EXPENSES	33,166,437	31,184,468	27,284,545	1,981,970	6.4%	5,881,892	21.6%
GENERAL FUND NET CONTRIBUTION	(775,000)	(825,000)	3,358,048	50,000		(4,133,048)	
Trust Assurance Program							
Trust Administration Fee Revenue	3,822,000	4,055,000	5,238,051				
Trust Administration Department	3,722,000	3,627,751	3,167,836				
Net Trust Assurance Program	100,000	427,249	2,070,215	(327,249)		(1,970,215)	
TOTAL NET GENERAL FUND & TAP CONTRIBUTION	(675,000)	(397,751)	5,428,263	(277,249)		(6,103,263)	

APPENDIX B – GENERAL FUND – REVENUES AND EXPENSES

THE LAW SOCIETY OF BRITISH COLUMBIA
OPERATING BUDGET (excluding capital/depreciation)
For the Year ended December 31, 2023
GENERAL FUND SUMMARY

	2023 Budget	2022 Budget	2021 Actual	2022 vs 2021 Budget Var	2022 v 2020 Actual Var
REVENUES					
Practice fees	25,838,058	24,761,537	24,005,886	1,076,521	1,832,172
PLTC and enrolment fees	1,855,650	1,779,375	1,825,880	76,275	29,770
Electronic filing revenue	971,257	785,000	1,334,626	186,257	(363,369)
Interest income	684,925	290,000	329,723	394,925	355,202
Credentials and membership services	843,600	775,570	890,547	68,030	(46,947)
Fines & penalties	278,700	165,000	296,037	113,700	(17,337)
Program cost recoveries	300,600	232,300	381,503	68,300	(80,903)
Subscriptions	2,000	-	3,223	2,000	(1,223)
Insurance recoveries	20,000	-	52,237	20,000	(32,237)
Other cost recoveries	12,000	-	2,726	12,000	9,274
Other revenue	192,925	186,600	214,475	6,325	(21,550)
Building revenue and recoveries	1,396,615	1,384,086	1,305,731	12,530	90,885
TOTAL GENERAL FUND REVENUES	32,396,330	30,359,468	30,642,593	2,036,862	1,753,737
EXPENSES					
Benchers Meetings	167,010	169,160	194,873	(2,150)	(27,863)
Office of the President	246,380	237,350	231,079	9,030	15,301
Benchers Retreat	150,050	139,950	170,893	10,100	(20,843)
Life Benchers Dinner	34,450	36,950	4,949	(2,500)	29,501
Certificate Luncheon	23,300	23,300	2,449	-	20,851
LS Award/Bench & Bar Dinner	3,150	4,350	-	(1,200)	3,150
Federation of Law Societies Mtgs	40,000	30,000	-	10,000	40,000
General Meetings	1,500	76,550	627	(75,050)	873
QC Reception	16,700	16,700	-	-	16,700
Welcome / Farewell Dinner	25,650	25,150	11,504	500	14,146
Volunteer Recognition	6,000	15,500	3,467	(9,500)	2,533
Gold Medal Award	6,950	6,900	7,111	50	(161)
Executive Committee	12,200	12,950	928	(750)	11,272
Finance & Audit Committee	-	1,750	24,392	(1,750)	(24,392)
Equity & Diversity Advisory Committee	2,500	2,500	50	-	2,450
Access to Justice Advisory Committee	2,500	2,500	-	-	2,500
Rule of Law & Lawyer Independence Advisory Committee	-	5,500	1,500	(5,500)	(1,500)
Acts and Rules Committee	-	1,800	-	(1,800)	-
Governance Committee	-	2,500	-	(2,500)	-
Truth and Reconciliation Advisory Committee	2,500	2,500	2,026	-	474
Rule of Law and Lawyer Independence Lecture	10,000	-	-	10,000	10,000
Lawyer Development Task Force	-	3,000	-	(3,000)	-
Executive Support	383,052	403,357	413,749	(20,305)	(30,697)
Elections	5,000	5,500	4,117	(500)	883
Bencher Governance allocated funds recovery	(150,793)	(163,499)	(141,645)	12,706	(9,148)
Board relations and events funds recovery	(93,601)	(96,682)	(93,921)	3,081	320
	894,498	965,536	838,145	(71,038)	56,353

THE LAW SOCIETY OF BRITISH COLUMBIA
OPERATING BUDGET (excluding capital/depreciation)
For the Year ended December 31, 2023
GENERAL FUND SUMMARY CONT...

	2023 Budget	2022 Budget	2021 Actual	2022 vs 2021 Budget Var	2022 v 2020 Actual Var
Corporate Services					
General Office	767,246	748,239	589,813	19,007	177,433
Office of the CEO	870,857	821,044	784,329	49,813	86,528
Finance	1,239,809	1,189,221	1,064,208	50,588	175,601
Human Resources	825,994	801,663	532,472	24,331	293,522
Records Management	325,691	274,861	239,962	50,829	85,728
	4,029,597	3,835,028	3,210,784	194,569	818,812
Education & Practice					
Licencing and Admissions	2,135,066	2,211,386	1,601,286	(76,320)	533,779
PLTC and Education	3,637,583	3,309,759	2,586,170	327,823	1,051,412
Practice Standards	558,605	530,530	384,526	28,075	174,080
Practice Support	-	0	207,000	-	(207,000)
	6,331,254	6,051,675	4,778,982	279,579	1,552,271
Communications and Information Services					
Communications	609,633	588,258	385,059	21,375	224,575
Information Services	2,120,850	1,938,630	1,624,370	182,220	496,480
	2,730,483	2,526,888	2,009,429	203,595	721,054
Policy and Legal Services					
Policy and Legal Services	1,814,062	1,784,292	1,480,322	29,770	333,740
Tribunal & Legislative Counsel	800,141	734,629	527,918	65,511	272,223
External litigation & Interventions	24,386	24,537	61,588	(151)	(37,202)
Unauthorized Practice	332,643	338,431	301,098	(5,788)	31,544
	2,971,232	2,881,889	2,370,926	89,343	600,306
Regulation					
CLO Department	1,136,820	929,214	974,231	207,606	162,589
Intake & Early Assessment	2,528,723	2,278,949	2,107,407	249,773	421,316
Discipline	2,912,460	2,809,004	2,764,687	103,456	147,772
Forensic Accounting	1,206,617	1,184,879	869,320	21,738	337,297
Investigations, Monitoring & Enforcement	4,160,107	3,920,150	3,316,419	239,957	843,688
Custodianships	2,032,055	1,771,540	1,645,616	260,515	386,439
	13,976,781	12,893,736	11,677,680	1,083,045	2,299,101
Building Occupancy Costs	2,232,594	2,029,716	1,650,222	202,878	582,372
TOTAL GENERAL FUND EXPENSES	33,166,437	31,184,468	26,536,168	1,981,970	6,630,270
GENERAL FUND INCOME/(LOSS)	(775,000)	(825,000)	4,106,425	50,000	(4,881,425)
TAF Revenue	3,822,000	4,055,000	3,861,523	(233,000)	(39,523)
Trust Administration Department	3,722,000	3,627,751	3,078,990	94,249	643,010
Net Trust Assurance Program	100,000	427,249	782,533	(327,249)	(682,533)
TOTAL GENERAL FUND & TAP INCOME (LOSS)	(675,000)	(397,751)	4,888,958	(277,249)	(5,563,958)

APPENDIX C – CAPITAL PLAN

	<u>2023</u>	<u>2022</u>
Computer hardware – Monitors, network switches and desktop computers	\$331,790	\$386,990
Computer software – ColdFusion Server Upgrade	\$115,000	\$206,800
System upgrades – LSIS development and wireless headsets	\$144,000	\$208,000
Equipment, furniture and fixtures replacement	\$139,000	\$139,000
Building projects – Building cladding and window repairs, 835 cambia roof replacement, space reconfiguration	\$1,334,000	\$1,400,000
Total	\$2,063,790	\$2,340,790

DRAFT

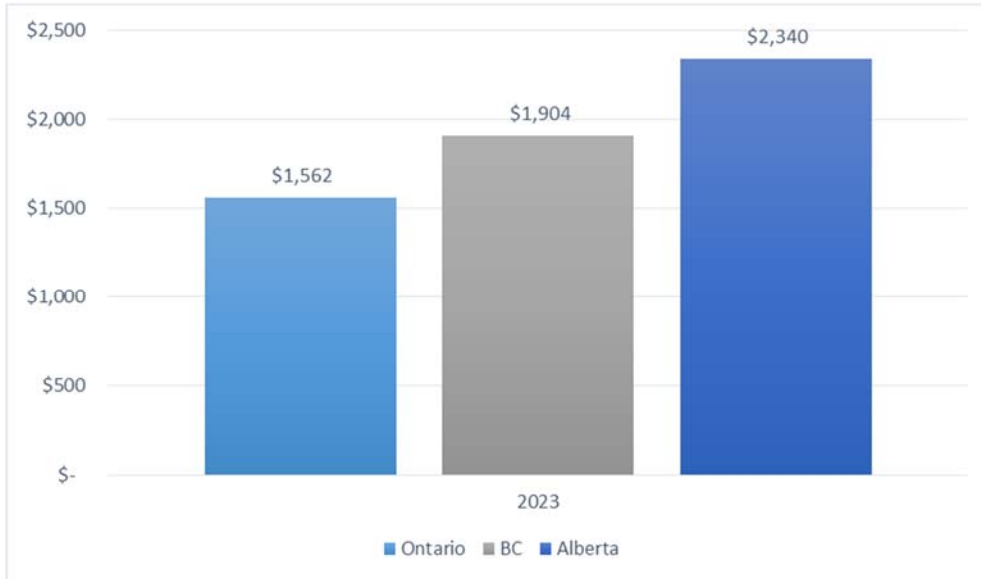
APPENDIX D – LAWYERS INDEMNITY FUND – OPERATING BUDGET

THE LAW SOCIETY OF BRITISH COLUMBIA
Lawyers Indemnity Fund
For the year ended December 31, 2023
CONSOLIDATED STATEMENT OF REVENUE AND EXPENSE

	2023 Budget	2022 Budget	Variance	%
REVENUE				
Annual Assessment	17,439,600	16,967,247		
Investment Income	11,640,197	11,034,561		
Other Income	65,000	65,000		
TOTAL REVENUE	29,144,797	28,066,808	1,077,989	3.8%
INDEMNITY EXPENSE				
Actuaries, consultants and investment management fees	1,844,941	1,716,419		
Allocated office rent	325,505	323,505		
Contribution to program and administrative costs of General Fund	1,567,639	1,513,403		
Insurance	2,324,218	1,695,150		
Office and Legal	651,701	610,610		
Provision for settlement of claims	15,852,000	17,630,000		
Provision for ULAE	-	-		
Salaries, wages and benefits	3,792,571	3,712,386		
	26,358,575	27,201,473	(842,898)	-3.10%
LOSS PREVENTION EXPENSE				
Contribution to co-sponsored program costs of General Fund	1,308,982	1,251,859		
TOTAL EXPENSE	27,667,557	28,453,332	(785,775)	(0.0)
Net Contribution	1,477,240	(386,524)	1,863,764	

APPENDIX E – PRACTICE FEE COMPARISON

- 2023 LSBC practice fee compared to 2022 LSO & LSA fees as the 2023 fees are not yet available.



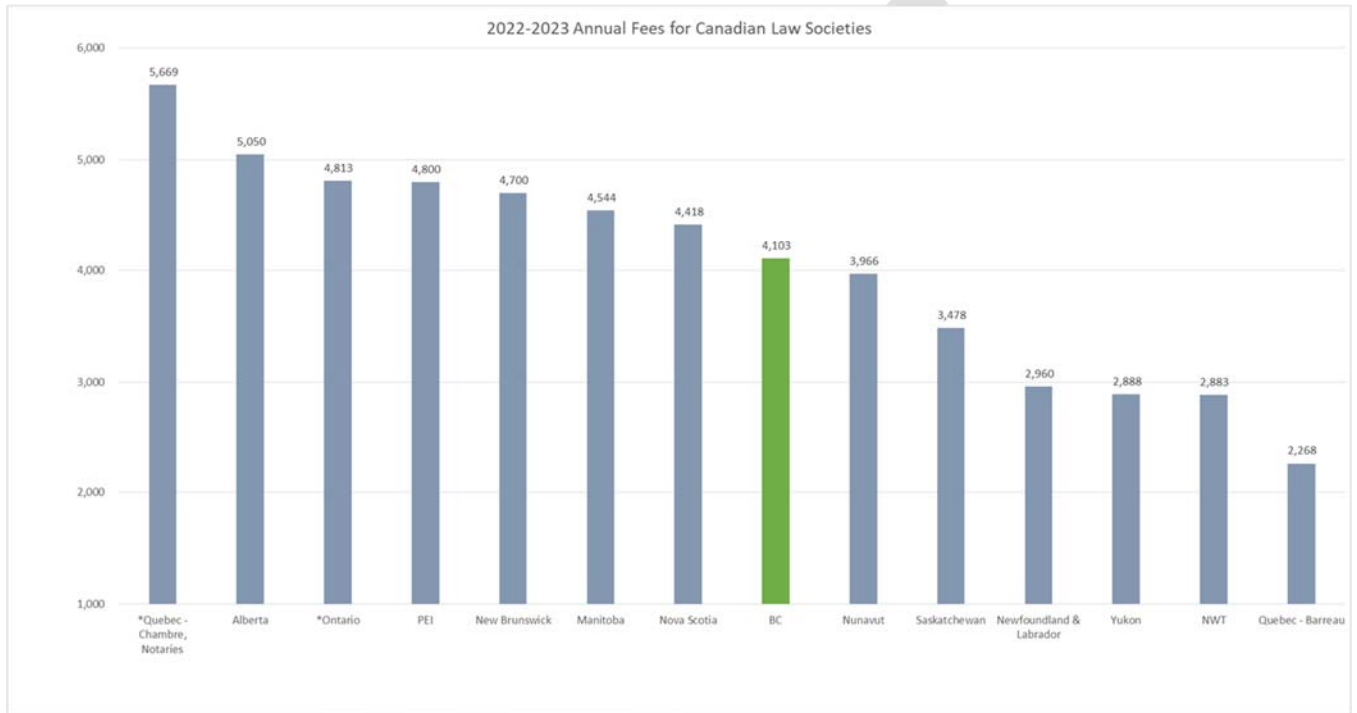
*Fees do not include external funding, if applicable, but include capital funding

DRY

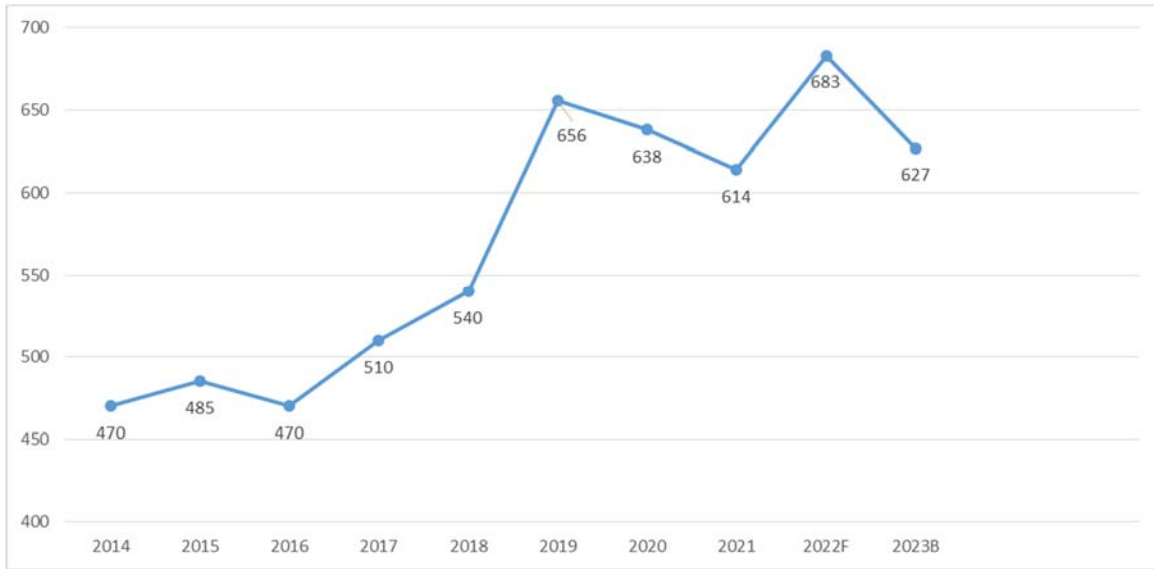
APPENDIX F – MANDATORY FEE COMPARISON

Mandatory Fee Comparison - 2023 (Full Time Practicing Covered Lawyers)

*Fees for Ontario and Quebec- Chambre, Notaries are based on 2021-2022 fees as that is the most current data available.



APPENDIX G – PLTC STUDENT HISTORY



DRAFT



Indigenous Framework Report

Truth and Reconciliation Advisory Committee

Katrina M.L. Harry (Co-chair)

Christopher A. McPherson, KC (Co-chair)

Brian B. Dybwad

Kelly H. Russ

Barbara Stanley, KC

Michael F. Welsh, KC

Terri-Lynn Williams-Davidson, KC

September 12, 2022

Prepared for: Benchers

Prepared by: Truth and Reconciliation Advisory Committee

Purpose: For Decision

Purpose

This report recommends an Indigenous framework to be endorsed by the Benchers. The framework is prepared to help guide the Law Society in its application of the *Legal Profession Act (Act)*, Law Society Rules (Rules), and the *Code of Professional Conduct for BC (Code)* or any future legislation regulating the legal profession in a manner that will advance the principles of reconciliation with Indigenous Peoples.¹

Proposed resolution

BE IT RESOLVED

that the Benchers endorse the principles set out below in this report as a framework to guide the Law Society's application of the *Act*, Rules, *Code*, policies, procedures, and practices.

Background

A key goal in the Law Society's Strategic Plan is implementing initiatives to take meaningful action toward reconciliation with Indigenous Peoples in the justice system. In furtherance of that goal, the Truth and Reconciliation Advisory Committee's (Committee) mandate letter calls on the Committee to:

1. Make recommendations on how the Law Society can support the advancement of the principles set out in the *Declaration on the Rights of Indigenous Peoples Act (DRIPA)*,² the First Nations Justice Strategy,³ and the Truth and Reconciliation Commission's Calls to Action,⁴ and
2. Review the *Act*, Rules, and *Code* and make recommendations to address systemic biases.

The British Columbia government has recently announced that: 1) all legal professionals will be governed through a single regulatory body under new legislation; and 2) through the *DRIPA* Action Plan, BC will "implement improvements to public...complaints processes...and new models for including Indigenous laws in complaints resolution."⁵

¹ "Indigenous Peoples" is a collective term referring to distinct social groups that share ancestral ties to specific territories. Where appropriate, "Indigenous individuals" is used to refer to individual Indigenous people.

² [DRIPA](#)

³ [BC First Nations Justice Strategy](#)

⁴ [TRC Calls to Action](#)

⁵ [DRIPA_action_plan.pdf, Action Item 3.10.](#)

The initiative of developing a framework of guiding principles arose in light of these announcements. Rather than conducting a detailed analysis of the existing regulatory regime that will soon change, the Committee reached the conclusion, and recommends, that it would be more effective to create a high level framework to guide the application of the Law Society’s *Act*, Rules, *Code*, policies, procedures, and practices, whether in the current or amended format, in a way that will promote the principles identified in the mandate letter and alleviate systemic barriers. In addition, the Committee hopes that the principles will influence the protection of Indigenous interests in the new legislation that is being developed by the Province.

Process

The draft principles were distilled from the Law Society’s Strategic Plan⁶ and Truth and Reconciliation Action Plan,⁷ and have been enhanced with principles from the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),⁸ the TRC Calls to Action, and the BC First Nations Justice Strategy. The draft principles were presented to both the Committee and the Indigenous Engagement in Regulatory Matters Task Force for feedback. Their feedback was incorporated, and refined principles were considered by the Committee. The Committee has developed and unanimously endorsed the resolution that is being proposed to the Benchers.

Principles

The principles listed below underlie the Law Society’s existing commitments (as set out in legislation, the Strategic Plan, and the Action Plan) and should guide the Law Society’s application of the *Act*, Rules, *Code*, policies, procedures, and practices. The commentaries provide additional context to assist in the application of the principles, but are not intended to create additional commitments.

Principle 1: The Law Society complies with the adage: “Nothing about us without us,” and will ensure that Indigenous individuals are engaged in the development of policy proposals or decisions that may affect Indigenous interests.

Commentary 1: The Law Society has committed to increasing Indigenous representation at all levels, including in its governance, tribunals, committees, employment, and membership.

⁶ [Strategic Plan 2021-2025 \(lawsociety.bc.ca\)](https://lawsociety.bc.ca/strategic-plan-2021-2025) (Strategic Plan)

⁷ [TruthandReconciliationActionPlan2018.pdf \(lawsociety.bc.ca\)](https://lawsociety.bc.ca/truthandreconciliationactionplan2018.pdf)

⁸ [UNDRIP](https://www.unhcr.org/refugees-and-asylum-seekers/indigenous-peoples)

Commentary 2: Effective Indigenous engagement requires the active inclusion⁹ of Indigenous individuals in genuine discussions, and responsiveness to Indigenous concerns.

Commentary 3: Any contemplated conduct that may affect Indigenous interests will engage Indigenous individuals at the earliest stage possible (i.e. as soon as any potential impact on Indigenous interests becomes apparent).

Commentary 4: The Law Society has established a practice of including an Indigenous panelist in any regulatory matter that involves an Indigenous person as a complainant, witness, or respondent, and Principle 1 supports and formalizes this practice.

Commentary 5: The enhancement of cooperative relationships with Indigenous Peoples, individuals, and organizations¹⁰ is necessary to facilitate Indigenous engagement regarding the development of Law Society policy proposals or decisions that may affect Indigenous interests.

Principle 2: The Law Society is mandated to protect the public interest in the administration of justice, and acknowledges that Indigenous individuals are members of the public with unique histories and specific constitutional recognition.

Commentary 1: Colonial laws have been harmful to Indigenous Peoples, individuals, and territories; the *Act*, Rules, *Code*, policies, procedures, and practices are meant to protect, not harm, Indigenous Peoples, individuals, and territories.

Commentary 2: The Law Society's longer term objective of improving the intercultural competency of all lawyers in BC is meant to help facilitate the transformation of Canada's legal system into an instrument of empowerment for Indigenous Peoples, individuals, and territories.

Principle 3: The Law Society acknowledges that Indigenous cultures, societies, traditions, governance systems, and laws continue to exist.

Commentary 1: The Law Society values Indigenous efforts to revitalize Indigenous legal systems, and encourages all lawyers in BC to better understand Indigenous laws and their potential applicability within the common law system.

Commentary 2: The Law Society's Indigenous Engagement in Regulatory Matters Task Force is considering possible approaches to making space for Indigenous laws within the Law Society's regulatory processes.

⁹ "Active inclusion" requires the opportunity to fully participate in discussions.

¹⁰ E.g. the BC First Nations Justice Council and Métis Justice Council of BC.

Principle 4: The Law Society regards Indigenous individuals as equal to all other people.

Commentary 1: Colonization has entrenched the racist “twin myths” of colonial superiority and Indigenous inferiority. The application of the *Act*, Rules, *Code*, policies, procedures, and practices must respect Indigenous individuals as equal to non-Indigenous people.

Commentary 2: Indigenous individuals have the right to non-discrimination that goes beyond equality. Non-discrimination requires the elimination of biases, attitudes, and behaviours that negatively impact Indigenous individuals. Anti-bias training for all Law Society Benchers, staff, panel members, and committee members, and all lawyers in British Columbia is encouraged.

Commentary 3: Indigenous individuals are entitled to substantive equality, which may require additional supports for Indigenous individuals to counteract the negative impacts of colonialism.

Principle 5: The Law Society respects the distinctiveness amongst Indigenous Peoples, individuals, and territories.

Commentary: Pan-Indigenous approaches must be avoided with respect to the accommodation of Indigenous interests in the application of the *Act*, Rules, *Code*, policies, procedures, and practices.

Principle 6: The Law Society understands that credibility requires follow through on its commitments, and that its commitments are ongoing.

Commentary 1: Publicizing regular progress reports to demonstrate that meaningful action is taking place is key to the development of credibility.

Commentary 2: Continual review, evaluation, and renewal of commitments is important to maintain credibility.

Analysis

The framework has been drafted so as not to create any new legal obligations or commitments, but rather to set out previously endorsed principles into a single document in order to facilitate their implementation by Law Society representatives (including Benchers, panel members, committee members, staff, and, insofar as possible, contractors). The chart below compares the principles and commentaries with the Law Society’s prior obligations and commitments.

Principles and commentaries	Prior obligations and commitments
<p>Principle 1: The Law Society complies with the adage: “Nothing about us without us,” and will ensure that Indigenous individuals are engaged in the development of policy proposals or decisions that may affect Indigenous interests.</p> <p>Commentary 1: The Law Society has committed to increasing Indigenous representation at all levels, including in its governance, committees, tribunals, employment, and membership.</p> <p>Commentary 2: Effective Indigenous engagement requires the active inclusion of Indigenous individuals in genuine discussions, and responsiveness to Indigenous concerns.</p> <p>Commentary 3: Any contemplated conduct that may affect Indigenous interests will engage Indigenous individuals at the earliest stage possible (i.e. as soon as any potential impact on Indigenous interests becomes apparent).</p> <p>Commentary 4: The Law Society has established a practice of including an Indigenous panelist in any regulatory matter that involves an Indigenous person as a</p>	<p>Action Plan, Action 1.v. states: The Law Society will be more inclusive of Indigenous people¹¹ by:</p> <ul style="list-style-type: none"> • Requesting that the government of British Columbia appoint an Indigenous benchers; • Ensuring Indigenous representation on Law Society committees; • Recruiting Indigenous Benchers, committee members, and staff; and • Connecting with Indigenous communities.¹² <p>The timing of engagement (as soon as any potential impact on Indigenous interests becomes apparent) is consistent with jurisprudence regarding Indigenous consultation and accommodation; Indigenous engagement should occur early so that Indigenous perspectives have influence through the entire decision-making process (rather than later, after key decisions have already been made).</p> <p>Including the phrase “as early as possible” anticipates logistical considerations that may preclude immediate Indigenous involvement.¹³</p>

¹¹ This is a direct quote from the 2018 Truth and Reconciliation Action Plan (Action Plan), which used small caps “people” to refer to Indigenous individuals.

¹² This is also a direct quote from the Action Plan. Since then, consultees for the Indigenous Engagement in Regulatory Matters Task Force have recommended that the Law Society build relationships with Indigenous organizations (such as the BC First Nations Justice Council and Métis Justice Council) as a precursor to connecting with Indigenous Peoples or communities.

¹³ E.g., the Law Society currently has an underrepresentation of Indigenous employees as compared to the Indigenous population of BC. If an Indigenous person makes a complaint, the Law Society may not be able to immediately arrange for an Indigenous investigator to investigate the complaint. The Law Society has already committed to increasing Indigenous representation at all levels, and the Indigenous Engagement in Regulatory Matters Task Force is developing recommendations to improve the Law Society’s complaints, investigations, and discipline processes with regard to Indigenous complainants and witnesses.

<p>complainant, witness, or respondent, and Principle 1 supports and formalizes this practice.</p> <p>Commentary 5: The enhancement of cooperative relationships with Indigenous Peoples, individuals, and organizations is necessary to facilitate Indigenous engagement regarding the development of Law Society policy proposals or decisions that may affect Indigenous interests.</p>	<p>Action Plan, Action 3 states: The Law Society will increase the involvement of Indigenous people in Law Society governance by:</p> <ul style="list-style-type: none"> • Requesting that the government of British Columbia appoint an Indigenous benchers; • Assigning Indigenous individuals to Law Society committees; • Fostering engagement with Indigenous communities; and • Enriching relations with Indigenous lawyers.
<p>Principle 2: The Law Society is mandated to protect the public interest in the administration of justice, and acknowledges that Indigenous individuals are members of the public with unique histories and specific constitutional recognition.</p> <p>Commentary 1: Colonial laws have been harmful to Indigenous Peoples, individuals, and territories, and the <i>Act</i>, <i>Rules</i>, <i>Code</i>, policies, procedures, and practices are meant to protect, not harm, Indigenous Peoples, individuals, and territories.</p> <p>Commentary 2: The Law Society’s longer term objective of improving the intercultural competency of all lawyers in BC is meant to help facilitate the transformation of Canada’s legal system into an instrument of empowerment for Indigenous Peoples, individuals, and territories.</p>	<p>Section 3(a) of the <i>Legal Profession Act</i> states: “It is the object and duty of the society to uphold and protect the public interest in the administration of justice...”</p> <p>Action Plan, Commitment 1 states: the Law Society of British Columbia commits to: “Improving the legal profession’s understanding of the detrimental impacts of the imposition of colonial laws and policies on Indigenous peoples.”</p> <p>Paragraph 11 of the Indigenous Intercultural Report affirms the TRC’s direction that: “In Canada, law must cease to be a tool for the dispossession and dismantling of Aboriginal societies [...and become] an instrument supporting Aboriginal...empowerment.”</p>
<p>Principle 3: The Law Society acknowledges that Indigenous cultures, societies, traditions, governance systems, and laws continue to exist.</p> <p>Commentary 1: The Law Society values Indigenous efforts to revitalize Indigenous legal systems, and encourages all lawyers in</p>	<p>Action Plan Commitments 2 and 3 state the Law Society commits to:</p> <p>2. Fostering the legal profession’s respect for Indigenous individuals, institutions, and laws;</p>

<p>BC to better understand Indigenous laws and their potential applicability within the common law system.</p> <p>Commentary 2: The Law Society’s Indigenous Engagement in Regulatory Matters Task Force is considering possible approaches to making space for Indigenous laws within the Law Society’s regulatory processes.</p>	<p>3. Increasing the legal profession’s appreciation of the applicability of Indigenous laws within the Canadian legal system.</p> <p>The Strategic Plan also identifies the strategic objective to update the Rules and <i>Code</i> to reflect Indigenous law.</p>
<p>Principle 4: The Law Society regards Indigenous individuals as equal to all other people.</p> <p>Commentary 1: The application of the <i>Act</i>, Rules, <i>Code</i>, policies, procedures, and practices must respect Indigenous individuals as equal to non-Indigenous people.</p> <p>Commentary 2: Indigenous individuals have the right to non-discrimination that goes beyond equality. Non-discrimination requires the elimination of biases, attitudes, and behaviours that negatively impact Indigenous individuals. Anti-bias training for all Law Society Benchers, staff, panel members, and committee members, and all lawyers in British Columbia is encouraged.</p> <p>Commentary 3: Indigenous individuals are entitled to substantive equality, which may require additional supports for Indigenous individuals to counteract the negative impacts of colonialism.</p>	<p>Section 15(1) of the <i>Charter</i> states:</p> <p>“Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.” “Indigenous identity” is a prohibited ground of discrimination in the <i>BC Human Rights Code</i>.</p> <p>Action Plan, Action 4 states: “The Law Society of will improve the intercultural competence of Benchers, staff, and committee members, and all lawyers and Admission Program candidates in BC by mandating Indigenous intercultural competence education.” The Indigenous Intercultural Course contains components on biases, micro-aggressions, and systemic racism.</p> <p>The Supreme Court of Canada characterizes the guarantee of equality as substantive: “the concept of equality does not necessarily mean identical treatment and ‘like treatment’ may in fact produce inequality.” (<i>R. v. Kapp</i>, [2008] 2 S.C.R. 483 at paragraph 15).</p>

<p>Principle 5: The Law Society respects the distinctiveness amongst Indigenous Peoples, individuals, and territories.</p> <p>Commentary: Pan-Indigenous approaches must be avoided with respect to the accommodation of Indigenous interests in the application of the <i>Act</i>, Rules, <i>Code</i>, policies, procedures, and practices.</p>	<p><i>DRIPA</i> refers to a distinctions-based approach with respect to Indigenous Peoples, and the Strategic Plan contains an objective to: “Support the advancement of the principles set out in <i>DRIPA</i>.” To align with <i>DRIPA</i>, the Law Society should apply a distinctions-based approach.</p>
<p>Principle 6: The Law Society understands that credibility requires follow through on its commitments, and that its commitments are ongoing.</p> <p>Commentary 1: Publicizing regular progress reports to demonstrate that meaningful action is taking place is key to the development of credibility.</p> <p>Commentary 2: Continual review, evaluation, and renewal of commitments is important to maintain credibility.</p>	<p>Action Plan, Action 5: The Law Society will regularly review, evaluate, and report on its progress.</p> <p>Action Plan, Action 6: In recognition that truth and reconciliation are ongoing and long term endeavors, the Law Society will ensure the Action Plan maintains relevance by: adapting the Action Plan in response to regular reviews, progress evaluations, and emerging Indigenous legal issues.</p>

Because the Law Society is legally bound by Principles 2 and 4, and has already committed to Principles 1, 3, and 6, the Committee has concluded that the principles do not create any new obligations for the Law Society. Principle 5 regarding the diversity of Indigenous Peoples is the only new principle, and it aligns with the distinctions-based approach set out in *DRIPA*.

Taken together, the principles constitute an assessment tool to ensure that the Law Society is meeting its legal obligations under the *Act*, Rules, *Code*, policies, procedures, and practices, and its prior commitments under the Strategic Plan and Truth and Reconciliation Action Plan with respect to Indigenous Peoples. The principles should help to avoid risks, and are not intended to add responsibilities or costs beyond what is already required. The Principles may also help to inform the Province’s development of legislation for a unified legal regulator.

Recommendation

The Committee recommends that the Benchers endorse the principles as a framework to guide the Law Society’s application of the *Legal Profession Act*, Law Society Rules, *Code of*

Professional Conduct for BC, policies, procedures, and practices as set out in the proposed resolution above.

Subsequent Steps

If endorsed by the Benchers, the Committee recommends that the principles be:

1. Publicized and shared with Law Society representatives (including Benchers, panel members, committee members, staff, and contractors);
2. Included in training materials for Law Society representatives; and
3. Used in the Law Society's application of the *Act*, Rules, *Code*, policies, procedures, and practices.

/AH

Regulatory Impact Assessment

The Law Society
of British Columbia



Title of Report:	Indigenous Framework Report
Committee:	Truth and Reconciliation Advisory Committee
<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>Comments:</p> <p>The framework is prepared to help guide the Law Society in its application of the <i>Legal Profession Act</i>, Law Society Rules, and the <i>BC Code of Professional Conduct</i> (or any future legislation regulating the legal profession) in a manner that will advance the principles of reconciliation with Indigenous Peoples.</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
	<p>Comments:</p>

A.2 Reconciliation with Indigenous Peoples		
A.2.1 Does the recommendation extend to addressing reconciliation with Indigenous Peoples?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Comments: Reconciliation is a key objective of the recommendation.
A.3 Equity, Diversity and Inclusion		
A.3.1 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: The recommendation promotes principles of equality.
A.4 Transparency and Disclosure		
A.4.1 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: The principles are aimed at ensuring the Law Society meets its legal obligations with respect to Indigenous Peoples in its application of the Act, Rules, Code, policies, and procedures. The recommendation does not add additional duties beyond what is already required.
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	Comments: The recommendation reaffirms the Law Society's prior commitments to advance reconciliation, and has been prepared with the intent of improving licensee perception of the Law Society.
B.2 Public Relations		
B.2.1 Does the recommendation impact the public perception of the legal profession generally?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Comments: The principles are aimed at the Law Society, but may be expected to incidentally have a positive effect on public perception of the legal profession as a driver of reconciliation
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	Comments: The recommendation reaffirms the Law Society's prior commitments to advance reconciliation, and is expected to have a positive impact on public perception of the Law Society.
B.3 Government Relations		
B.3.1 Does the recommendation impact the government perception of the legal profession?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Comments: The principles are aimed at the Law Society, but may be expected to incidentally have a positive effect on government perception of the legal profession as a driver of reconciliation.
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	Comments: The recommendation sets out principles regarding the Law Society's commitments in relation to Indigenous interests, and is expected to have a positive impact on government perception of the Law Society.

B.4 Privacy Impact Assessment		
B.4.1 Does the recommendation include the collection, use or disclosure of personal information?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:
B.4.2 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

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: The principles set out the Law Society's existing commitments (already established in legislation, the Law Society's Strategic Plan, and the Truth and Reconciliation Action Plan). The principles provide a checklist to help the Law Society meet legal requirements.
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: The principles outlined by the recommendation do not create any new obligations, but rather confirm previous commitments. Consequently, it is not expected that the adoption of the recommendation should affect any current legal issues, programs, or litigation in which the Law Society is involved. The principles may serve as a checklist to help the Law Society avoid legal issues or litigation in the future.
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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments: The recommendation should facilitate the implementation of previous commitments by setting them out into an easily readable format.
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: Because the principles set out are not new, costs should not be affected. The principles are expected to be an assessment tool to ensure that the Law Society is meeting its legal obligations under the Act, Rules, and Code, and previously made commitments under the Strategic Plan and Truth and Reconciliation Action Plan. The principles are meant to avoid/mitigate risks, not to add costs.
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: See above.



Recommendation to Develop a Competence Based System for lawyer licensing

Lawyer Development Task Force

Steven McKoen, KC (Chair)
Brook Greenberg, KC (Vice-Chair)
Katrina Harry
Sasha Hobbs
Michelle Lawrence
Jacqueline McQueen, KC
Caroline Nevin
Thomas Spraggs
Katie Sykes

Date: September 9 2022

Prepared for: Benchers

Prepared by: Policy and Planning Department

Purpose: For Decision

Purpose

The purpose of this report is to present the Benchers with a recommendation with respect to the development of a Competence Framework for lawyer licensing in British Columbia.

Proposed Resolution

BE IT RESOLVED the Law Society develop a competence based system for lawyer licensing in British Columbia beginning with the development of a Competence Framework that identifies the knowledge, skills, and other attributes necessary to perform the essential duties expected of, and entrusted to, lawyers in BC, as well as the threshold levels at which these competencies should be performed at the point of licensure.

If the resolution is approved, the Lawyer Development Task Force (the “Task Force”) will return to the Benchers at a later date with recommendations concerning how the Law Society can utilize the Competence Framework as the foundation of a new lawyer licensing system in which licensure candidates can acquire and demonstrate their possession of the threshold competence of entry-level lawyers.

Task Force Process

The Task Force has a broad mandate to evaluate what is required to ensure the future development and maintenance of a well-educated and qualified bar in British Columbia. This includes an examination of the Law Society’s pre-call education requirements and includes addressing the core professional competencies that entry-level lawyers need to possess.

In 2021, the Task Force retained Jordan Furlong to provide a series of issues papers identifying issues facing, and proposing possible changes to, the Law Society’s licensing process. This work culminated in a summary report (“the Competence Report”) that was presented to the Benchers in May 2022. The discussions that followed suggested that there was a strong consensus among the Benchers for the Competence Report’s central recommendation that the Law Society adopt a competence-based approach in which a Competence Framework is developed and implemented that provides the basis for future modifications to the lawyer licensing system. Having concluded a period of additional policy analysis, the Task Force members unanimously endorse these recommendations, and proposes that this work commence with the retention of experts in legal education and professional development.

Other matters addressed in the Competence Report will be considered by the Task Force at a future date.

Background and Issue Being Addressed

In recent years, significant changes have occurred throughout the legal services sector as public demands, client needs, specialization, technological capabilities, law firm business models and justice system access continually transform many aspects of the practice of law. The pandemic has further impacted the profession in ways that would have been inconceivable only a few years ago.

These developments stand in stark contrast to the relatively static nature of the licensing system over the last decades. The juxtaposition between this stasis and the transformations occurring within the profession raises a question as to whether BC ought to continue to educate, train and licence lawyers in the same ways that have been done in the past. It also invites an inquiry into whether a competence-based approach to licensure would better serve the public interest by enhancing the reliability, validity, transparency and fairness of the licensing system and improving the extent to which public and professional expectations of the competence and qualification of lawyers are met.

The Competence Report suggests that by maintaining the current credentials-based approach, which relies on the completion of law school, the PLTC and articling as a proxy measures of competence, the Law Society risks falling short of fulfilling its statutory duty. Specifically, if pressed to enumerate the capacities and attributes that collectively constitute competence in a new lawyer, the Law Society could cite various individual features (e.g. basic knowledge of fundamental laws) or the credentials obtained prior to being admitted to the bar, but cannot point to a comprehensive framework for identifying those competencies or a systemic process by which the core set of knowledge, skills and attributes that are required at the point of licensure are developed and demonstrated. On this basis, the Competence Report recommends that the Law Society establish a framework that answers the fundamental question that the lawyer licensing process seemingly ought to address, namely: at what level of competence is an aspiring lawyer fit to practise?

The Law Society established the Task Force to consider how the core competencies for entry-level practice are identified, demonstrated and assessed. The Competence Report is a foundational step in this process, providing the Benchers with a comprehensive overview of how and why BC's licensing system could be modified to ensure that the profession and the public are better informed about entry-level lawyer competencies, and that candidates are provided with opportunities to acquire and demonstrate their competence in a fair and accessible manner.

In a professional or regulatory context, competence is typically understood to be expressed through the acquisition of knowledge, skills and attributes (individual "competencies") that signal a professional's overall fitness to reliably perform the essential duties expected of, and entrusted to, their profession. A "competence framework" is a model that describes the competencies required to successfully fulfill a role within a profession.

The Competence Report recommends that the Law Society develop, test, validate and implement a Competence Framework for lawyer licensing in BC, and to subsequently utilize this framework as the basis for any future changes to the licensure system. For the reasons discussed in the next section of this report, the Task Force unanimously endorses those recommendations.

Within the legal profession, a competence-based approach to licensure begins with ensuring that all key stakeholders in the licensing process understand what the core competencies for entry-level practice are. This requires knowing the precise standards to which the regulator is holding those seeking admission to the bar in order to formulate a defensible, transparent licensure system. Maintaining confidence in the legal profession also demands that members of the public have an understanding of the parameters of the knowledge, skill, conduct and character they should expect from a lawyer. Licensing candidates and other stakeholders in the lawyer formation process, including law schools, legal employers, professional development organizations and the Federation of Law Societies also ought to know, with some degree of precision, the competencies that must be possessed by those individuals seeking to gain entry into the legal profession in BC.

Discussion

Once established, the Competence Framework is anticipated to improve the Law Society's regulatory capabilities by enhancing efforts to ensure competence and quality in the delivery of legal services. Improved identification and assessment of entry-level competence also benefits legal practitioners and the public by providing a more reliable, transparent and accurate gauge to determine the readiness of a candidate for licensure to take on the duties of a lawyer. Access to justice is also enhanced when the public understands what they are entitled to experience from lawyers. In the context of impending reforms to the regulation of the profession, clearly defining the competencies that aspiring lawyers must acquire may also bolster the government's confidence that the Law Society is fulfilling its statutory mandate.

As the gatekeeper to entry to the profession, the Law Society's paramount concern must be the protection of the public interest by ensuring that new lawyers are qualified to practise on the basis that they have demonstrated that they have met the requisite competence standards. Regardless of which core competencies are eventually identified, a competence-based licensure system must provide aspiring lawyers with accessible and equitable opportunities to acquire and demonstrate those competencies in order to support the Law Society's commitment to making access to the legal profession as transparent, consistent and fair as possible.

Significant work will be required to define, precisely, what knowledge, skills and attributes are required of entry-level practice. Additional efforts will subsequently be necessary to ensure that programs and processes are in place that support licensure candidates in acquiring these competencies and that enable the Law Society to confirm that they have done so. This process,

from start to finish, would likely last several years and will require a considerable investment of time, money and other resources.

Given the scale and significance of this initiative, a substantial portion of this work will be undertaken by experts in professional development and legal education, retained for this purpose by the Law Society. During this developmental phase, it is expected that the draft framework will be subject to consultation with, and validation by, a number of legal sector stakeholders, and consideration may want to be given about whether, and if so how, to engage the broader public in developing the initiative. Consideration will also need to be given to how continuous improvement to the Competence Framework will be addressed, such that systems are in place to ensure it remains effective in developing entry-level competence in a manner that protects the public interest for years to come.

The Task Force is of the view that these are required elements of laying a solid foundation for the restructuring of the processes and outcomes of lawyer licensing in BC.

Cost and Organizational Implications

The development of the competencies and addressing options for how they may be assessed must first be completed before the full cost and organizational implications can be assessed. The Benchers will be provided with a more comprehensive cost and organization impact assessment once the Competence Framework has been completed.

Subsequent Steps

If the recommendations contained in this report are approved by the Benchers, Law Society staff will commence the process of identifying experts to oversee the development of the Competence Framework. Once this expertise is retained, the Benchers will be provided with additional information regarding the process of, and associated timelines for, generating a robust and draft framework.

In considering these recommendations, the Benchers are reminded that establishing a Competence Framework represents the first stage of much larger set of potential changes to the system of lawyer licensing in BC. Although the approval of the proposed resolution does not commit the Law Society to other modifications, including those identified in the Competence Report, it is likely that further reforms to the programs and processes that support lawyer formation will logically flow from this policy decision.

Appendix A: Jordan Furlong, “A Competence-Based System for Lawyer Licensing in British Columbia: Interim Report (May 10, 2022)

Appendix B: Regulatory Impact Statement

A Competence-Based System For Lawyer Licensing in British Columbia

Interim Report

Submitted to the Law Society of British Columbia

May 10, 2022

Jordan Furlong, Law21

1. Introduction	4
2. The Credentials-Based System for Lawyer Licensing	7
<i>A. Practical Concerns</i>	9
1. Law School	9
2. The PLTC	13
3. Articling	16
<i>B. Principled Concerns</i>	18
3. A Competence-Based System for Lawyer Licensing	21
<i>A. What is Competence?</i>	21
<i>B. Competence Frameworks for Professional Licensing</i>	23
<i>C. Two Competence Framework Models</i>	26
<i>D. A Lawyer Competence Framework for B.C.</i>	29
4. Knowledge of the Law	34
<i>A. Acquiring Knowledge Competence</i>	34
1. Law Schools	36
2. New Providers	37
<i>B. Demonstrating Knowledge Competence</i>	40
5. Professional Responsibility and Awareness	45
<i>A. Professional Responsibility Competence</i>	45
<i>B. A Professional Awareness Program</i>	50
6. Lawyer and Professional Skills	55
<i>A. Redesign and Restructure the PLTC</i>	58
<i>B. Partner With a Third-Party Skills Programs</i>	60
<i>C. Considerations for Decision</i>	62

7. Supervised Practice	64
<i>A. Rationale for the Supervised Practice Requirement</i>	64
<i>B. Challenges to Supervised Practice</i>	67
1. Supervised Practice Criteria	69
2. A Reformed Articling System	72
3. New Methods of Supervised Practice	76
8. Conclusion	82

1. Introduction

1. This Report recommends that the Law Society of British Columbia (the “Law Society”) develop a competence-based system for the licensing of lawyers in this province. It sets out a rationale for abandoning B.C.’s current credentials-based licensing system, explains the nature of and reasoning behind a competence-based licensing system, suggests a process by which the new system could be developed, and outlines several ways in which the lawyer licensing system would change significantly as a result.
2. The provincial government grants the Law Society authority over the lawyer licensing process in British Columbia through the *Legal Profession Act*. Section 3(c) of that statute directs the Law Society to “uphold and protect the public interest in the administration of justice by ... establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission.”¹
3. In January 2021, Dean Lawton, Q.C., President of the Law Society of B.C., provided Steven McKoen, Q.C., Chair of the LSchools aw Society’s Lawyer Development Task Force, with a mandate letter² that enclosed the Terms of Reference³ of the Task Force. Included in those Terms of Reference were the following directions:

2. Identify the core professional competencies lawyers must possess at the various stages of their development in order to inform the educational and experiential requirements necessary to develop a well-educated and qualified B.C. bar;

3. Consider whether the current educational and development programs and processes develop and maintain those professional competencies lawyers must possess;

4. Take into account the work of the Federation of Law Societies of Canada, other law societies and legal professional organizations on the matters identified in the mandate.

¹ *Legal Profession Act*, 1998, British Columbia: https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/98009_01#division_d2e550

² 2021 Mandate for Lawyer Development Task Force, Law Society of British Columbia: https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/committees/mandate_LawyerDevelopment.pdf

³ Lawyer Development Task Force Terms of Reference: https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/committees/terms_LawyerDevelopment.pdf

4. Pursuant to these Terms of Reference, the Law Society’s Lawyer Development Task Force wishes to re-evaluate all the elements of the lawyer licensing process in British Columbia. This Report is intended to help the Task Force carry out that re-evaluation. It makes a single recommendation, supported by extensive additional information and suggestions for further inquiry and development.
5. **This Report recommends** that the Law Society take steps to create a Competence Framework for newly licensed lawyers in B.C., and to transform the lawyer licensing process so that it conforms to and fulfills that Framework.⁴ This Report goes on to describe how the Law Society can change the lawyer licensing system to ensure that candidates for licensure can be informed about entry-level lawyer competencies in British Columbia, can acquire those competencies in a fair and accessible manner, and can demonstrate to the Law Society their possession of those competencies.
6. It is a formidable task to contemplate the overhaul of a lawyer licensing system that has brought multiple generations of excellent lawyers into British Columbia. The Professional Legal Training Course (PLTC) was first introduced in 1983. The province’s first law school, at the University of British Columbia, opened in 1945. “Articling” has been part of bar admissions in B.C. for more than a century. No one can say that these elements of the current lawyer licensing system have not produced competent, honourable, and independent lawyers.
7. During that time, however, we have also experienced remarkable advances in understanding how adults learn,⁵ along with new thinking about how professional skills are acquired, developed, and applied.⁶ It can safely be said that the lawyer formation process in Canada has not kept pace with these trends in professional

⁴ A significant implication of this recommendation is that the Competence Framework could also be applied to experienced lawyers as part of their continuing competence requirements. This issue is outside the scope of this Report and is not addressed further.

⁵ “Lifelong Learning: Effective Adult Learning Strategies and Implementation for Working Professionals,” Jonathan Westover, *International Journal of Learning* 2009, Vol. 16 Issue 1, p 435-443: https://www.researchgate.net/publication/45072702_Lifelong_Learning_Effective_Adult_Learning_Strategies_and_Implementation_for_Working_Professionals

⁶ “Fostering Professional Formation (Professionalism): Lessons from the Carnegie Foundation’s Five Studies on Educating Professionals,” Neil W. Hamilton, 45 *Creighton L. Rev.* 763 (2011-2012): <https://heinonline.org/HOL/LandingPage?handle=hein.journals/creigh45&div=30&id=&page=>

learning. The three core components of Canadian lawyer development and licensing today — a three-year law degree, a bar admission program, and law firm articling — would be familiar to the Class of 1972, fifty years ago.

8. To state the obvious, the legal profession is not the same as it was fifty years ago. The last twenty years alone have seen an astonishing amount of change throughout the legal services sector, in terms of public demands, client needs, lawyer specialization, law firm business models, technological capabilities, and justice system access. The last two years of pandemic life have transformed parts of our society in ways that would have seemed inconceivable in 2019. The future promises us only more change — faster, more disruptive, and more transformational.
9. Given these extraordinary times, and the demands they are making on the legal system, we cannot continue to form lawyers — to educate, train, and license them — the same way we did fifty years ago, twenty years ago, or even two years ago. It is a disservice to our profession and the public we serve to pretend otherwise, or to merely make incremental, uncontroversial tweaks to an outdated and increasingly unfit system. We cannot continue to prepare lawyers for law practice in the 20th century nearly a quarter of the way into the twenty-first.
10. This Report does not, and is not intended to, constitute a standalone blueprint with which the lawyer licensing system in British Columbia can be transformed. A project of that size, scope, and effect is the work of several years, conducted by trained specialists and requiring extensive consultation with myriad legal sector stakeholders throughout the province and across the country. That is not a project to be undertaken lightly — but it is time to undertake it all the same. This Report is intended to serve as that project's starting gun.

2. The Credentials-Based System for Lawyer Licensing

11. The Lawyer Development Task Force has been directed to “identify the core professional competencies lawyers must possess at the various stages of their development.” It might come as a surprise to the casual observer that, here in 2022, these competences have not yet been formally identified.
12. Although the provincial legislature long ago directed the Law Society to establish standards for the competence of lawyers and applicants for bar admission, it specified neither what those competencies might be nor what standards should be applied when assessing that competence. This is not unique to British Columbia. Every other provincial and territorial legislature in Canada has also delegated to its respective legal regulator the determination of standards of lawyer competence. Up until very recently, however, no law society had actually done so.⁷
13. The failure to identify core lawyer competencies represents a problem for the Law Society’s public interest mandate. If pressed by a member of the public (or the provincial legislature) to enumerate the capacities and attributes that collectively constitute competence in a B.C. lawyer, the Law Society could cite various individual features such as “basic knowledge of fundamental laws,” “client service skills,” and “ethical and personal integrity.” But it could not point to a comprehensive framework of all those competencies, or to a systematic process by which licensure candidates can acquire and demonstrate their possession of those competencies.
14. Instead, the Law Society would refer to a series of competence *proxies* upon which it has traditionally relied as proof of a licensure candidate’s capacities and attributes.
 - Instead of a detailed description of the legal knowledge required of a new lawyer, the Law Society would cite completion of a Canadian common-law degree from an accredited law school (or a Certificate of Qualification from the Federation of Law Societies of Canada’s National Committee on Accreditation⁸) as acceptable legal knowledge to begin the licensure process.

⁷ The Law Society of New Brunswick’s work in this area will be detailed later in this Report.

⁸ Licensure applicants who did not attend a Canadian common-law school must obtain an NCA Certificate of Qualification, which is intended to show that an applicant’s knowledge of Canadian law is similar to the knowledge of an applicant who obtained their degree through an approved Canadian common-law school program: <https://nca.legal/>. Given that the NCA certification process is outside the Law Society’s authority, and that the process itself is currently under review, relatively little will be said about the NCA Certification system in this Report.

- Instead of a detailed description of the knowledge of professional responsibility required of a new lawyer, the Law Society would cite completion of a ten-week bar admission program (the PLTC) in which ethics and professional responsibility issues are briefly canvassed, as constituting acceptable proof that a licensure candidate possesses this understanding.
 - Instead of a detailed description of the legal and professional skills required of a new lawyer, the Law Society would cite completion of the PLTC, as well as a nine-month period of apprenticeship in a legal workplace, as constituting acceptable proof that a licensure candidate possesses these skills.
15. Rather than explicitly defining the content and standards of new lawyer competence, the Law Society accepts certain *credentials* obtained by a licensure candidate — graduation from an accredited law school or the NCA program, passage of the PLTC, and completion of a period of supervised practice in a legal workplace — to constitute *de facto* fulfillment of whatever the core competence of a newly licensed lawyer might be. The Law Society does not assess the competence of licensure applicants so much as it approves various mechanisms and entities through which these credentials are obtained.
16. In favour of this credentials-based lawyer licensing system, it can at least be said that, generally, it works. For nearly 40 years, ever since the PLTC was first introduced in 1983, British Columbia has licensed lawyers in this fashion, and the legal system has held together. Clients have been as well-served in B.C. as in any other jurisdiction; lawyers have led successful careers; the justice system has continued to operate. B.C.'s credentials-based lawyer licensing system is more or less doing the job it has been tasked with doing.
17. Additional benefits of this system are its familiarity (all the primary current stakeholders in the lawyer formation process — law schools, law students, PLTC administrators, licensure candidates, and the Law Society — understand this approach and make it work) and its affordability (by outsourcing much of the process to third parties such as law schools and law firms, the Law Society dramatically lowers its own costs of licensure assessment).
18. Against this credentials-based lawyer licensing system, however, more can be said. The Law Society's use of a credentials-based system for lawyer licensing suffers from two fundamental problems.

- As a matter of practice, the individual elements of B.C.'s credentials-based licensing system are inadequate to meet public and professional expectations of the competence and qualification of lawyers.
- As a matter of principle, the Law Society should create and administer a competence-based licensing system to increase the reliability, validity, transparency, and fairness of the process by which people become lawyers.

A. Practical Concerns

1. Law School

19. The Law Society does not direct the contents of the Canadian common-law programs whose degrees it accepts as a proxy for legal knowledge competence. Canadian law schools are entirely independent of law societies' control, and their faculty boards unilaterally determine their curricula. Law school deans in B.C. and elsewhere in Canada have repeatedly reminded law societies that regulators have no role in determining the substance of law schools' degree programs.
20. Nevertheless, if these schools wish their graduates to be eligible to enter law society admission programs, their law degrees must meet the FLSC's national accreditation standards. The "National Requirements for Canadian Common-Law Degree Programs," promulgated in their final form in 2018,⁹ specifies the competencies and skills law school graduates must have attained in order to be eligible for lawyer licensing. The National Requirement's list of competencies and skills, which occupy two-and-a-half-pages of the brief five-page document, can be summarized as follows:
- 1. Skills Competencies*
 - Problem-solving;
 - Legal research; and
 - Oral and written legal communication.
 - 2. Ethics and Professionalism*
 - Knowledge; and
 - Skills.

⁹ <https://flsc.ca/wp-content/uploads/2018/01/National-Requirement-Jan-2018-FIN.pdf>

3. *Substantive Legal Knowledge*, including:

- Foundations of Law, including:
 - a. principles of common law and equity;
 - b. the process of statutory construction and analysis; and
 - c. the administration of the law in Canada.
- Public Law of Canada, including
 - a. the constitutional law of Canada;
 - b. Canadian criminal law; and
 - c. the principles of Canadian administrative law.
- Private Law Principles, including:
 - a. contracts;
 - b. torts; and
 - c. property law.

21. It is important to note that the National Requirement was formulated decades *after* the content of most Canadian law degree programs — especially standard mandatory first-year courses in constitutional law, contract law, criminal law, torts, and property — had become entrenched. In other words, law schools did not develop their degree programs in accordance with the National Requirement so much as the Requirement codified the existing practice in law schools.

22. A Canadian common-law degree purportedly provides a licensure candidate with the legal knowledge necessary to become a lawyer. In reality, however, hardly anyone in the legal profession considers that to be true. “I didn’t learn in law school what I needed to practise law” is one the most common refrains of practising lawyers nationwide.

23. Many law school deans, interestingly, would agree. They would contend that people obtain law degrees for myriad reasons, that law schools are not trade schools, and that a law degree is not intended to give a person all the knowledge they need to practise law. Law schools’ longstanding resistance to “teaching the practice of law” is rooted in the firm belief that the law degree stands on its own merits; if law societies wish to use the degree as part of their lawyer licensing processes, that is their choice and their business. As independent entities that value and protect their academic freedom, law schools have every right to take this position.

24. But it is not only practising lawyers and law school administrators who believe a law degree does not provide all the legal knowledge needed by a competent lawyer. Law societies themselves also believe this.
25. Many law societies have decided that the legal knowledge components of the National Requirement — the mandatory elements of the common-law degree — do not adequately reflect the full range of knowledge competence that a newly licensed lawyer should possess. Accordingly, they have determined that licensure candidates must acquire and demonstrate other legal knowledge before they can be admitted to practice.
26. For example, in British Columbia, the PLTC addresses several legal subjects other than those listed in the National Requirement: commercial and company law, real estate, wills, civil litigation and procedure, criminal procedure, and family law. Much PLTC class time is devoted to learning about and applying knowledge of these areas of the law to hypothetical client situations; candidates' ability to recall and apply this knowledge is assessed in two Qualification Examinations at the conclusion of the course. Other law societies structure their bar admissions programs in similar fashion, presumably for similar reasons.
27. It is reasonable to conclude, therefore, that hardly anyone involved in the Canadian lawyer licensing system believes a common-law degree provides candidates with legal knowledge sufficient for lawyer licensing. Most legal regulators provide supplemental legal knowledge instruction in their bar admission programs to ensure candidates possess basic knowledge of a wider range of subjects. Nevertheless, all legal regulators make possession of a law degree a *mandatory* element of lawyer licensure, and consider it the primary proxy measure of legal knowledge competence.
28. This seems like an appropriate place to observe that at Canadian common-law schools, annual tuition alone ranges from \$10,370 at the University of Victoria to \$33,040 at the University of Toronto; fees, books, and room and board costs can easily double that expenditure.¹⁰ In 2018, the average Canadian law student graduated

¹⁰ "Canadian law schools 2021 / 22: Resources if you're considering whether, and where, to become a lawyer," *Canadian Lawyer*, Sep. 2, 2021: <https://www.canadianlawyermag.com/resources/legal-education/canadian-law-schools-202122-resources-if-youre-considering-whether-and-where-to-become-a-lawyer/359445>

with \$71,000 in debt.¹¹ Individual debt loads of \$200,000 or more are not uncommon.¹² Although most law schools have done an admirable job providing bursaries and scholarships to students with limited financial assets, these efforts are supplementary at best to the larger population of students who either pay their own way or take out loans to afford the cost.

29. It is also well-established that law school debt restricts the capacity of lawyers to offer affordable legal services and advance the goal of better access to justice.¹³ In addition, recent studies have found that high levels of debt compromise the mental and emotional well-being of newly called lawyers.¹⁴ Moreover, law school admission requirements¹⁵ and the ever-increasing cost of tuition might also be discouraging members of racialized minorities from pursuing a legal career.¹⁶

¹¹ "The debt burden," *Canadian Lawyer*, Aug. 7, 2018: <https://www.canadianlawyermag.com/resources/legal-education/the-debt-burden/275350>

¹² "Canada's growing student debt crisis," *National*, Oct. 21, 2019: <https://nationalmagazine.ca/en-ca/articles/law/in-depth/2019/canada-s-growing-student-debt-crisis>

¹³ "Educational Debt and Law Student Failure to Enter Public Service Careers: Bringing Empirical Data to Bear," Christa McGill, *Law & Social Inquiry*, Vol. 31, No. 3 (Summer, 2006), pp. 677-708: <https://www.jstor.org/stable/4092722>; "Skyrocketing law school tuition fees disrupting access to justice," Rabeea Khalid, *The Lawyers Daily*, Nov. 30, 2018: <https://www.thelawyersdaily.ca/articles/8844/skyrocketing-law-school-tuition-fees-disrupting-access-to-justice>; "Law Grads' Student Loan Burden is an Access-to-Justice Issue," Canadian Bar Association press release, April 11, 2019: <https://www.cba.org/News-Media/Press-Releases/2019/student-loan-burden>

¹⁴ "Just or Bust? Results of the 2018 Survey of Ontario Law Students' Tuition, Debt, & Student Financial Aid Experiences," Law Students' Society of Ontario report, January 2019: <https://s3.amazonaws.com/tld-documents.lnassets.com/0010000/10102/law%20students'%20society%20of%20ontario%20-%20just%20or%20bust%20report.pdf>; "Crushing Law School Debt Is Destroying Lawyers' Mental Health," Staci Zaretsky, *Above The Law*, Oct. 27, 2020: <https://abovethelaw.com/2020/10/crushing-law-school-debt-is-destroying-lawyers-mental-health/>

¹⁵ "Do Law Schools Limit Black Enrollment With LSAT?" Scott Jaschik, *Inside Higher Ed*, April 15, 2019: <https://www.insidehighered.com/admissions/article/2019/04/15/study-argues-law-schools-limit-black-enrollment-through-lsat>

¹⁶ "Tuition fee increases and the history of racial exclusion in Canadian legal education," Charles C. Smith, then-Equity Advisor to the Canadian Bar Association, December 2004: <https://www.ohrc.on.ca/en/book/export/html/8976>

30. In addition, the time commitment required to obtain a law degree should not be overlooked. From the first day to the last day of a full-time law degree, at least two years and eight months will elapse, not counting time spent working to afford tuition, books, and room and board. Those 32 months represent a significant commitment of a person's life, myriad opportunities postponed or foregone. It is true that the decision to pursue a legal career requires dedication and sacrifice on the part of an aspiring lawyer; but it also seems true that this dedication and sacrifice ought to deliver a payoff greater than "partial fulfillment of a single aspect of the licensing process."
31. A question worth asking, given all the foregoing, is why every law society in Canada — knowing that the legal knowledge conferred by the Canadian common-law degree is inadequate for lawyer licensing, knowing that law schools have no intention of adjusting their programs to suit the needs of law societies in this regard, and knowing that the cost of law school is a barrier to equitable entry into the legal profession — nevertheless makes the possession of this degree a mandatory element of the lawyer licensing process.
32. That question will be explored at more length in Section 4 of this Report. All that need be said here is that the Canadian common-law degree credential cannot reasonably be considered an effective proxy for the legal knowledge necessary for entry-level lawyer competence.

2. *The PLTC*

33. The PLTC, British Columbia's bar admission course, is a full-time, 10-week program that covers supplemental legal knowledge instruction, practical application of legal knowledge and procedures, some skills training, professional responsibility instruction, and practice management skills. Completion of the PLTC is the least "credential"-like aspect of the Law Society Admission Program — the Law Society develops and administers the program itself — but the execution of the program presents problems nonetheless. We have already canvassed legal knowledge issues in the previous section, so we will focus here on the PLTC's coverage of practice skills, professional responsibility, and practice management.
34. The PLTC carries out four skills assessments, which collectively evaluate on a range of lawyer skills, including opinion-letter writing, contract drafting, client interviewing, and advocating. Candidates are introduced to these skills, given the opportunity to practice them in simulated role-play sessions, and given feedback and guidance from instructors.

35. Candidates demonstrate their skills in these areas through four assessments near the end of the course — two written (drafting a contract and drafting a client opinion letter) and two performative (presenting an oral argument for a contested application, and interviewing and advising a new client), with a passing mark of 70% required for each assessment.¹⁷
36. The PLTC instructs licensure candidates on professional responsibility and practice management mostly in the course of developing candidates' other legal knowledge and skills. One day each in the PLTC schedule is devoted to "Professional Ethics" and "Practice Management." The relevant Practice Materials include the 84-page document "Professionalism: Ethics" and the 184-page document "Professionalism: Practice Management."¹⁸
37. Candidates demonstrate their professional responsibility and practice management competence in the PLTC in two ways: during the skills assessments, and by identifying and addressing issues that arise in the course of answering questions on the Qualification Examinations. However, 90% of the marks on each exam are devoted to substantive law topics, with just 10% devoted to practice management; ethics topics are "included throughout."
38. It perhaps goes without saying that the skills required of a new lawyer range well beyond the four that are taught and evaluated in the PLTC, and that the complex and vital issues of professional responsibility and law practice management require more than two days of classes to capably address. The PLTC, as currently structured, cannot be said to effectively ensure that licensure candidates are acquiring entry-level competence in the full range of professional responsibility knowledge and law practice and management skills needed for entry-level competence.
39. This problem is entirely understandable, however, given the remarkably wide remit of the PLTC and how much ground it is required to cover. The PLTC must:

¹⁷ <https://www.lawsociety.bc.ca/becoming-a-lawyer-in-bc/admission-program/professional-legal-training-course/pltc-skills-assessments/>

¹⁸ <https://www.lawsociety.bc.ca/becoming-a-lawyer-in-bc/admission-program/professional-legal-training-course/pltc-practice-material/>

- Instruct candidates on several areas of substantive law¹⁹ and assess their practical application of this knowledge to entry-level client situations;
- Instruct and assess candidates on four key lawyer and professional skills;
- Instruct and assess candidates on professional responsibility issues; and
- Instruct and assess candidates on practice management issues.

40. This is an intense, multi-faceted workload that PLTC candidates and their instructors must accomplish in a period of time shorter than a single law school semester. By contrast, law schools have three years to meet the various demands of the FLSC's National Requirement. PLTC administrators and instructors unquestionably are doing their utmost to bring candidates to a point of acceptable licensure competence in these areas. But the program's mandate is difficult to reconcile with its duration.

41. This conclusion is consistent with surveys of participants in the 2019 and 2021 PLTC sessions (no surveys were conducted in 2020), which paint a picture of a program that is obliged to do too much in too little time. These surveys suggest that candidates find the skills assessments to be significantly more difficult than the course had prepared them for, and that completing the assessments so close to the Qualification Examinations added to the difficulty.

42. Asked to rate their workload on a 1-to-5 scale, where 3 represented "Reasonable" and 5 represented "Too Much," participant scores ranged from 3.75 to 4.33. Asked to rate the quality of various practice materials on a 1-to-5 scale (1 was "Poor," 5 was "Excellent"), participants gave scores ranging from 3.46 to 3.75. In other words, PLTC participants reported that the heaviness of the workload outranked the quality of materials across virtually every subject.

43. While program participants gave the PLTC generally good reviews for its "overview of different areas of practice" and "exposure to subjects not covered in law school," they were critical of the intensity of the workload in such a short period of time, as well as both the length and currency of the materials. Especially troubling were concerns about the disconnect between what the PLTC taught and what "real-life practice" required, and the negative impact of the experience on participants' mental and emotional wellness.

¹⁹ The PLTC Practice Materials covering substantive law are themselves quite substantial. The current online version of the "Civil" materials runs 148 pages, "Criminal Procedure" is 151 pages, "Family" is 98, "Commercial" is 66, "Company" is 127, "Real Estate" is 135, and "Wills" is 131, for a total of 856 pages of reading: <https://www.lawsociety.bc.ca/becoming-a-lawyer-in-bc/admission-program/professional-legal-training-course/pltc-practice-material/>

44. Most importantly, there is reason for concern that the PLTC is not fulfilling its most essential role. One survey question, also offered on a 1-to-5 scale, asks: “As a result of PLTC, do you feel better able to perform the following entry-level tasks as a lawyer?” Across eight categories, participant scores ranged from 2.38 to 3.09 out of 5 — expressed in percentage terms, grades ranging from a low of 47.6% to a high of 61.8%.
45. There are other ways to evaluate the PLTC, of course, and other assessors whose input would be helpful; participant surveys should not be the sole measure. But it is difficult to resist the conclusion that completion of the PLTC cannot be considered a reliable and effective “proxy measure” of the knowledge, skills, and professional responsibility understanding the Law Society demands of licensure candidates.

3. *Articling*

46. Licensure candidates in British Columbia are also required to complete nine months of articles in a law firm or other legal workplace. It is perhaps noteworthy that the word “articles” is not defined anywhere on the Law Society website.
47. In practical terms, an “articling student” is a licensure candidate who spends several months in a legal workplace as a trainee lawyer with limited powers and responsibilities. The articling period is intended to provide the licensure candidate with a period of direct experience with law practice under the supervision of a veteran lawyer.
48. The numerous challenges and shortcomings of the articling experience — in terms of the effectiveness of articling as a preparation for law practice, the fair availability of articling opportunities, the salaries and working conditions of articling positions, the arbitrary length of the articling period, the absence of standards and training for articling principals, and the future viability of articling in a rapidly evolving legal sector — are explored in more detail in Section 5 of this Report. But it seems safe to say that articling in its current form has few staunch defenders in the legal profession, and fewer still who believe it does not require some kind of reform.
49. The Law Society has no direct control over a licensure candidate’s articling experience — it effectively “outsources” to a law firm or other legal workplace the conduct and oversight of the articling period. To compensate for this lack of direct supervision, the Law Society places the following requirements on the candidate and their articling principal:

- The candidate must submit an Articling Agreement²⁰ and an Articling Skills and Practice Checklist,²¹ each signed by the candidate and their articling principal, that outline the responsibilities of both parties during the articling term.
- Three months into the articling term, the candidate must conduct a personal interview with a Law Society Benchers, who will “make a report to the Law Society.” The purpose and content of the interview or the subsequent report are not specified in the Articling Guidelines.²²
- Approximately halfway through the articling term, the candidate and their principal must meet to discuss the candidate’s progress and must submit a mid-term report to the Law Society.²³
- At the end of the articling term, the candidate and their principal must meet to discuss the term, and the principal must submit a final report to the Law Society certifying that the candidate has completed their obligations under the Articling Agreement.

50. The Articling Skills and Practice Checklist specify that the candidate “shall obtain practical experience and training in” a detailed list of areas, including ethics, practice

²⁰ <https://www.lawsociety.bc.ca/Website/media/Shared/docs/forms/MS-admissions/articling-agmt.pdf>

²¹ <https://www.lawsociety.bc.ca/Website/media/Shared/docs/forms/MS-admissions/articling-check.pdf>

²² “Articling Guidelines for Students”: <https://www.lawsociety.bc.ca/becoming-a-lawyer-in-bc/admission-program/articling-centre/articling-guidelines-for-students/>. These interviews, it should be noted, commonly devolve into “venting sessions” by overworked or harassed articling students, who nonetheless often plead with the Benchers not to report or act on any complaints for fear of repercussions. These interviews change little about the individual articling experience and nothing about the articling system in general. Moreover, coming governance reforms that will reduce the size of the Law Society Board mean that fewer Benchers will have to conduct interviews with B.C.’s 650 articling students every year. In his December 2021 report on Law Society governance, Harry Cayton recommended that this practice be discontinued, finding it “time-consuming for both parties and a pointless initiation rite”: <https://www.lawsociety.bc.ca/about-us/governance-review/>. This Report agrees.

²³ “Details of Articling”: <https://www.lawsociety.bc.ca/becoming-a-lawyer-in-bc/admission-program/articling-centre/details-of-articling/>

management, research, writing, drafting, advocacy, negotiating, interviewing, and problem-solving, as well as a limited number of substantive law subjects. But these documents require only that the candidate receive “practical experience and training” in these areas, without specifying the levels or degrees of required knowledge and facility.

51. The Law Society, then, provides little guidance to and oversight of the articling experience. It does not set threshold parameters for the skills the candidate is to develop, it rarely interacts with the candidate during their term, and it neither seeks nor receives any final assessment of the candidate’s performance. The Law Society’s approach to the articling term can best be described as “hands-off.” In its own way, articling is as much of a “credential” as the law degree.

B. Principled Concerns

52. Taken together, there is reason to doubt that the three foregoing elements of the credentials-based lawyer licensing system — the law degree, the PLTC, and articling — would give an outside observer confidence that they collectively provide licensure candidates with the competence necessary to enter the legal profession and begin serving clients.
53. This is not intended as a blanket condemnation of these three elements. They each have excellent qualities and deliver real benefits to licensure candidates and the legal profession. Law schools teach the law and legal reasoning very well; the PLTC inculcates some much-needed legal skills and practical applications of the law; articling allows licensure candidates to test their knowledge and skills in a real-life legal services environment. Each of these three elements could conceivably be strengthened or reformed, albeit some more easily than others.
54. But therein lies the problem. If we were setting out to make these elements better at preparing competent lawyers, how would we know that we had succeeded? How could we objectively measure whether and when these elements became capable of meeting our goal? How can we know whether our lawyer licensing procedures and institutions are producing competent lawyers *if we do not even know what a “competent lawyer” looks like?*
55. Whatever we might tell ourselves, licensure candidates do not spend nearly four-and-a-half years acquiring “the competence of lawyers.” They spend that time taking courses, passing tests, writing essays, obtaining degrees, completing programs, learning and practising a few skills, and carrying out quasi-lawyer duties, all at

- considerable expense to themselves and others. These are admirable achievements. They are surely connected in some way to the competence of lawyers. But the nature of that relationship is opaque to everyone — most of all, to the licensure candidates themselves.
56. Many new lawyers anecdotally report feeling a surge of panic upon their arrival in the profession, confronted by the sudden reality that they are licensed to be lawyers but unaware of what that license demands. They know neither the competencies required of them nor their own inventory of professional capabilities, and so they fear they are incompetent, unready to practise law, and unfit to help clients.
57. Sometimes, those fears are unjustified — these new lawyers know more and can do more than they think. More often, however, there truly are gaps in the knowledge, skills, and other attributes new lawyers possess — gaps that are all the more dangerous because new lawyers “don’t know what they don’t know.” Because the lawyer competence profile is invisible, they have to feel it out over time, through trial and error. They have neither a map to their destination, nor any clear conception what that destination looks like. Licensure candidates are not acquiring the “competence of lawyers,” because no one knows what that is supposed to be.
58. The consequences of a failure to define entry-level lawyer competence are also felt by clients and members of the public. They have a vague sense of what a competent lawyer should look like — someone who understands the law, knows what to do in a legal situation, can argue on your behalf, and will keep confidential what you tell them. But they are normally incapable of judging whether any particular lawyer is actually qualified in these respects. They rely on the regulator to have made that assessment, and they would be dismayed to learn that the regulator does not actually assess the lawyer at all — it merely scans their credentials and issues a licence.
59. The lawyer licensing system assumes that by obtaining the required credentials, a candidate has thereby acquired the competence to practise law. That assumption has become invisibly integrated into the lawyer licensing process, in British Columbia and elsewhere in Canada. It has the strength and force of long tradition to sustain it. But it is still only an assumption.
60. Entry-level, “Day One” lawyers should be able to carry out certain tasks and perform certain roles to a certain level of achievement, because they possess certain knowledge and skills and have undergone certain training and experiences. The purpose of the licensing process should be to define these tasks, roles, attributes, and

experiences; to decide what “certain” means for each of those elements; to ensure that these elements can be reasonably acquired; and to confirm that new lawyers can demonstrate they have acquired them.

61. The Law Society is statutorily required to “establish standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission.” The Law Society has never defined the specific knowledge, skills, attributes, and experiences necessary for a person to gain admission to the legal profession. It is time that it did.
62. Enhancing the lawyer licensing process, therefore, first requires the Law Society to determine precisely what it demands of a newly licensed lawyer. It must define, as clearly as it can, the competence that must be possessed by successful licensure applicants. The balance of this Report will address that challenge.

3. A Competence-Based System for Lawyer Licensing

A. What is Competence?

63. Most Canadian law societies define “competence” in their rules of professional conduct, albeit in a rather circular fashion. The Code of Professional Conduct for British Columbia states:

3.1-2 A lawyer must perform all legal services undertaken on a client’s behalf to the standard of a competent lawyer.²⁴

64. The Commentaries following this definition suggest that competence means a lawyer is “knowledgeable, skilled and capable in the practice of law.... [M]ore than an understanding of legal principles, [competence] involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied. To accomplish this, the lawyer should keep abreast of developments in all areas of law in which the lawyer practises.” That is the extent of the Code’s formal guidance on the subject.

65. Broadly speaking, “competence” can be understood as the capacity to carry out a task or perform a function in order to generate an effective outcome. Competence in a professional context is expressed by the acquisition and application of myriad attributes and capabilities (individual “competencies”) that signal a professional’s overall fitness to reliably perform the essential duties expected of and entrusted to their profession.

66. Legal regulators use the term “competence” in this technical sense. They are statutorily mandated to define the standards of fitness and reliability for lawyers, and to ensure that everyone who is or wishes to become a lawyer meets those standards, in order to protect and advance the interests of clients and the public.

67. Lawyers, on the other hand, tend to use “competence” in the more common sense of the word, to mean “adequacy.” They might regard the term, if applied to themselves, almost as an insult. Few lawyers consider themselves to be merely adequate — most would prefer to be known as “adept,” “proficient,” or “expert.”

²⁴ “Chapter 3 – Relationship to Clients – annotated,” Code of Professional Conduct for British Columbia, Law Society of British Columbia: <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/code-of-professional-conduct-for-british-columbia/chapter-3-%E2%80%93-relationship-to-clients/#3.1-2>

68. Achieving “mere adequacy,” however, is cause for celebration for new lawyers. It represents the successful culmination of several years’ work and opens up an exciting new chapter in their lives. But it also signifies the arrival of many new expectations and responsibilities, which can quickly become burdens if the lawyer is unprepared or ill-equipped to fulfill them.
69. It is therefore essential that all key stakeholders in the lawyer licensing process understand exactly what “mere adequacy” to practise law represents:
- The Law Society needs to know the precise standards to which it is holding lawyers at the point of admission, in order to formulate a defensible licensing system that provides transparency to all stakeholders.
 - Members of the public deserve to know the precise degree of knowledge, skill, conduct, and character they should expect from the lawyers they encounter. Public confidence in the legal profession begins with public understanding of the parameters of minimum competence for lawyers.
 - Aspiring lawyers ought to know the precise attributes they must possess and skills they must acquire in order to gain entry to the profession. These elements are central to a lawyer’s professional purpose and career and should be accessible to anyone who wishes to enter the profession.
70. Point-of-licensure competence must represent a fine balance. Entry into the legal profession should not be too difficult, or else members of the public will have too few qualified lawyers available to assist them (with negative consequences for access to justice) and deserving licensure candidates will be unjustly barred from practising law. But entry to the profession should also not be too easy, or else the interest of the public in capable and trustworthy lawyers may be compromised (with negative consequences for the reputation of the profession and the rule of law). The challenge is immense, and the stakes are very high.
71. What are the individual components of lawyer competence that a licensure candidate must demonstrably possess? And what threshold level of overall competence must that candidate meet before they are considered fit to practise? To answer those questions — and thereby take the first step towards building a better lawyer licensing system — the Law Society must develop, test, validate, and implement a *Competence Framework for Lawyer Licensing*. This is the foundational task from which every other improvement in the licensing process will flow.

B. Competence Frameworks for Professional Licensing

72. There is no single all-purpose definition of “competence framework,”²⁵ perhaps because the concept is so widely used across many different disciplines and working environments. Its most frequent application is within a company or organization, as this description suggests:

*[A competence] framework outlines specifically what people need to do to be effective in their roles, and it clearly establishes how their roles relate to organizational goals and success. ... A competency framework defines the knowledge, skills, and attributes needed for people within an organization.*²⁶

73. In a professional or regulatory context, a competence framework is better understood as a model that describes the competencies required to successfully fulfill a role within a profession. Competence frameworks establish the standards to which a person performing a professional role must hold themselves and be held by others. To adapt the previous definition, a competence framework defines the knowledge, skills, and attributes required of people who wish to belong to a profession.

74. Most professions in Canada have developed competence frameworks or profiles for licensing new members. Some are relatively straightforward: The National Association of Pharmacy Regulation Authorities’ 2014 “Professional Competencies for Canadian Pharmacists at Entry to Practice” runs 28 pages.²⁷ Geoscientists Canada’s “Competency Profile for Professional Geoscientists at Entry to Practice,” also published in 2014, is just 17 pages.²⁸ The FLSC’s “National Entry to Practice Competency Profile for Lawyers and Québec Notaries,” which runs exactly 7 pages, also dates from this period (2012).

²⁵ Other professions and jurisdictions sometimes use the phrase “competence profile” or “competence map” to express the same concept.

²⁶ “Developing a Competency Framework: Linking Company Objectives and Personal Performance”: https://www.mindtools.com/pages/article/newISS_91.htm

²⁷ https://www.napra.ca/sites/default/files/2017-08/Comp_for_Cdn_PHARMACISTS_at_EntrytoPractice_March2014_b.pdf

²⁸ https://geoscientistscanada.ca/source/pubs/images/EN_Competency-Profile-for-Professional-Geoscientistsat-Entry-to-Practice.pdf

75. More recently, however, professional competence frameworks have become more detailed and sophisticated, as regulators learned more about professional development theory and conducted more wide-ranging consultations and in-depth research. For example, the fifth edition of the College of Licensed Practical Nurses of Alberta's Competency Profile for Licensed Practical Nurses, published in 2020, is a whopping 191 pages long.²⁹ The current version of Royal College of Physicians and Surgeons of Canada's CanMEDS Framework, first developed in 1996 and constantly updated since, is a deep and complex work that has been adopted by physician regulators worldwide.³⁰
76. The dynamic nature of professional competence is also spurring professional regulators to ensure their frameworks keep pace with the realities of a rapidly changing world. The Chartered Professional Accountants' "Competence Map," first published as a 100-page document in 2012,³¹ has just been updated to "Competence Map 2.0" after two years of study and consultation.³² The International Engineering Alliance, of which Engineering Canada is a member, is updating its "Graduate Attribute and Professional Competencies Framework" to account for several factors, including the United Nations Sustainable Development Goals.³³ The College of Patent and Trademark Agents of Canada has recently embarked on its own "multi-year initiative to refine entry-level and continuing competencies."³⁴
77. In contrast to their counterparts in other professions, Canada's legal regulators mostly have not grappled with issues of licensure competence or developed systems to delineate the features of a competent lawyer. The majority of law societies have no frameworks or profiles that describe what a new lawyer should know and be able to

²⁹ https://www.clpna.com/wp-content/uploads/2020/01/doc_Competency_Profile_for_LPNs_5th_Ed_2020.pdf

³⁰ <https://www.royalcollege.ca/rcsite/canmeds/about-canmeds-e>

³¹ <https://smith.queensu.ca/ConversionDocs/GDA/CFA.pdf>

³² "Competency Map 2.0: Learn today. Lead tomorrow": <https://www.cpacanada.ca/en/become-a-cpa/why-become-a-cpa/the-cpa-certification-program/the-cpa-competency-map/competency-map-2-0>

³³ "Updating the IEA's Graduate Attributes and Professional Competencies Framework," Nov. 19, 2020: <https://engineerscanada.ca/news-and-events/news/updating-the-ieas-graduate-attributes-and-professional-competencies-framework>

³⁴ "Competency Initiative," <https://cpata-cabamc.ca/en/about-us/competency-initiative/>

do. Those frameworks that do exist tend to resemble “wish lists” of desirable qualities or “kitchen sink” collections of legal know-how.

78. For example, the Law Society of Ontario’s “Entry-Level Solicitor Competencies” page lists no fewer than 247 separate items of knowledge, skill, or professional conduct required of a new solicitor.³⁵ The page does not make clear through what process this list was developed, or how the regulator determines whether a licensure candidate possesses all these competencies.³⁶ But at least there is a list.

79. In addition to the National Entry to Practice Competency Profile for Lawyers and Québec Notaries, there are a few other examples of lawyer competence frameworks or profiles in Canada:

1. The Law Society of Alberta uses a competence profile to guide lawyers using the LSA’s self-directed CPD system,³⁷ providing several examples of areas of learning and knowledge for each competency and suggesting activities by which an Alberta lawyer could acquire that learning and knowledge.
2. The Law Society of Ontario’s Competence Task Force published a report in 2021, “Renewing the Law Society’s Continuing Competence Frameworks,” that contains, among other things, a “Working Definition of Competence” that runs almost a full page.³⁸

³⁵ <https://lso.ca/becoming-licensed/lawyer-licensing-process/licensing-examinations/entry-level-solicitor-competencies>

³⁶ It is difficult to believe, for example, that every new Ontario lawyer “demonstrates knowledge of secondary real estate statutes and related regulations and case law (e.g., *Beds of Navigable Waters Act*; *Building Code Act, 1992*; *Business Corporations Act*; *Canada Business Corporations Act*; *Cemeteries Act (Revised)* (repealed); *Conservation Authorities Act*; *Criminal Code*, Section 347; *Environmental Protection Act*; *Extra-Provincial Corporations Act*; *Fraudulent Conveyances Act*; *Indian Act*; *Interest Act*; *Line Fences Act*; *Municipal Act, 2001*; *Ontario Water Resources Act*; *Power Corporation Act*; *Public Utilities Act*; *Religious Organizations’ Lands Act*; *Statute of Frauds*; *Surveys Act*; *Technical Standards and Safety Act, 2000*)” (competence #59).

³⁷ “Competencies,” Law Society of Alberta: <https://www.lawsociety.ab.ca/lawyers-and-students/continuing-professional-development/background/cpd-competencies>

³⁸ “Renewing the Law Society’s Continuing Competence Framework,” Report of the Law Society of Ontario’s Competence Task Force, June 23, 2021: <https://lawsocietyontario.azureedge.net/media/lso/media/about/convocation/2021/convocation-june-2021-competence-taskforce-report.pdf>

3. The Nova Scotia Barristers' Society employs a "competency framework" in its articling program, "identifying performance criteria for each identified skill, behaviour and attitude listed in the objective," meant to guide licensing candidates and their principals through the articling process.³⁹
4. In Alberta, Manitoba, Nova Scotia, and Saskatchewan, where the Canadian Center for Professional Legal Education (CPLED) runs the bar admission program, a Competency Framework,⁴⁰ designed by professional development experts and lawyers, underpins the Practice Readiness Education Program.⁴¹

80. Developing and implementing a competence framework for an entire profession can be a monumental undertaking. Professional development experts and psychometricians spend years researching, consulting, testing, and validating myriad aspects of professional knowledge and skill in order to generate a robust and defensible competence framework. That might explain why, to date, only two common-law jurisdictions seem to have developed full-scale competence framework for the legal profession: New Brunswick, and England & Wales.

C. Two Competence Framework Models

81. In June 2021, as part of its new bar admission program,⁴² the Law Society of New Brunswick published a detailed "Competency Profile."⁴³ This profile was developed by an independent social enterprise that reviewed, analyzed, classified, and compiled data from a range of sources, including:

- The FLSC's National Entry to Practice Competency Profile;
- The *Educating Tomorrow's Lawyers* Foundations for Practice report and subsequent work by the Institute for the Advancement of the American Legal System (IAALS);

³⁹ <https://nsbs.org/wp-content/uploads/2019/12/NSBSCompetencyFramework.pdf>

⁴⁰ <https://cpled.ca/about-cpled/competency-framework>

⁴¹ <https://cpled.ca/students/cpled-prep/>

⁴² <https://lawsociety-barreau.nb.ca/en/becoming-a-lawyer>

⁴³ https://lawsociety-barreau.nb.ca/uploads/LSNB_BNB_Competency_Profile_Profil_de_comp%C3%A9tences_2021_BIL.pdf

- Randall Kiser’s 2017 book *Soft Skills for the Effective Lawyer*, which describes and applies hundreds of multi-disciplinary studies in the areas of psychology, law, and “soft skills”;
- Other sources, including legal education and regulation trends, competency profiles from other disciplines, lawyer claims data, and perspectives of New Brunswick lawyers.

82. New Brunswick’s lawyer competence profile applies both to the licensing of new lawyers and the ongoing competence of experienced lawyers. It is structured according to seven related roles or functions of a lawyer — as a professional, a problem-solver, a communicator, a collaborator, a manager, a leader, and a practitioner — along with the qualities the lawyer should develop within each function and the key competencies the lawyer should be able to perform.
83. A total of 21 sub-categories of competence, consisting of 143 individual competencies, are identified under the first six lawyer functions, accompanied by several performance criteria to assess whether the competencies are being met. The seventh function, “Practitioner,” is accompanied by an additional 87 competencies in important knowledge areas, critical lawyering tasks, and suggested qualities associated with safe, effective, and sustainable practice.
84. The Profile’s individual competencies were approved by the Law Society’s Bar Admission Program Task Force in June 2018. In January 2019, the Law Society validated the core competencies (those required for safe and effective practice) through a large-scale validation survey of all New Brunswick lawyers, with oversight by PhD-level psychometricians. An interim competency review was conducted in May 2021, and the current version of the Competence Profile was published the following month. In other words, three years were required to turn task force approval of a proposed set of competencies into a published competence profile in a small province.
85. This brief summary of New Brunswick’s lawyer competence framework and the road travelled to develop it is not meant to suggest British Columbia should follow precisely the same path. It is meant to provide the Law Society with a clearer picture of the enormous amount of preparation, development, consultation, and review that a regulator must undertake to generate a comprehensive and defensible profile of a competent regulated professional — a profile that can then be used to build and maintain a vigorous and effective lawyer licensing system that all legal sector stakeholders will regard as legitimate and reliable.

86. The other useful illustration in this regard is provided by the Solicitors Regulatory Authority of England & Wales (SRA), the only other common-law jurisdiction to produce a competence profile for both lawyer licensing and continuing competence.⁴⁴ As with New Brunswick, the SRA's Competence Statement serves as both a new lawyer assessment framework and a tool for continuing professional development for experienced lawyers. It has three components:

1. A Statement of Legal Knowledge;⁴⁵
2. A Statement of Solicitor Competence; and
3. A Threshold Standard.⁴⁶

87. The Statement of Legal Knowledge sets out 12 broad categories of knowledge that solicitors are required to demonstrate at the point of qualification. The Statement of Solicitor Competence contains four categories (ethics, professionalism, and judgment; technical legal practice; working with others; and managing yourself) encompassing 91 individual competencies. The Threshold Standard sets out the level at which the competencies in the competence statement should be performed upon qualification as a solicitor.

88. To gain a sense of the process that led to this point, the Competence Statement dates back to the 2013 Legal Education and Training Review (LETR), a joint project of the SRA, the Bar Standards Board, and ILEX Professional Standards that conducted a fundamental, evidence-based review of education and training requirements across legal services in England and Wales.⁴⁷ In January 2022, the SRA conducted its first Solicitors Qualification Examination, based on the Competence Statement — more than eight years after the LETR's publication. British Columbia's legal profession is larger than New Brunswick's but smaller than that of England & Wales, and so the Law Society might reasonably anticipate a period of between three and eight years to follow a similar path.

⁴⁴ "Statement of solicitor competence," Solicitors Regulatory Authority of England & Wales: <https://www.sra.org.uk/solicitors/resources/cpd/competence-statement>

⁴⁵ "Statement of legal knowledge," Solicitors Regulation Authority: <https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/statement-legal-knowledge>

⁴⁶ "Threshold standard," Solicitors Regulation Authority: <https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/threshold-standard>

⁴⁷ <https://letr.org.uk/>

D. A Lawyer Competence Framework for B.C.

89. This Report concludes that the time has arrived to define the knowledge, skills, attributes, and experiences — that is to say, the competence — required of new lawyers in British Columbia. The shortcomings of the credentials-based licensing system have been outlined. The merits of a competence-based licensing system have been presented. The examples of licensing competence frameworks developed by other professional regulators and other legal regulators have been cited. This Report believes that switching to a competence-based lawyer licensing system in B.C. is not a matter of “if it should happen,” but “when and how it will happen.”
90. Therefore, **this Report recommends** that the Law Society develop a Competence Framework that identifies the knowledge, skills, and other attributes necessary to perform the essential duties expected of and entrusted to lawyers in British Columbia, as well as the threshold levels at which these competencies should be performed at the point of licensure. In addition, **this Report recommends** that the Law Society use the Competence Framework as the foundation of a new lawyer licensing system in which licensure candidates can acquire and demonstrate their possession of the threshold competence of entry-level lawyers.
91. It need hardly be said that these two recommendations, if accepted and implemented, would represent a fundamental restructuring of the culture, apparatus, and outcomes of the lawyer licensing system in British Columbia. This process, from start to finish, likely would last several years and would require a major investment of time, money and other resources, to say nothing of the extensive planning and careful management involved in rolling out the new system.
92. The Lawyer Development Task Force and the Law Society will no doubt wish to consult widely regarding a Competence Framework for lawyer licensing and the particular elements thereof. That being said, the Lawyer Development Task Force’s Terms of Reference, set forth in paragraph 3 of this Report, includes a directive to “identify the core professional competencies lawyers must possess at the various stages of their development.” This Report was commissioned in order to assist the Task Force in achieving that objective, among others.
93. Without seeking to prejudge the result of the consultation process, this Report believes there is value in providing the Task Force with a “starter kit” of competencies for its consideration, rather than obliging the Task Force to begin this process from scratch at considerable time and expense.

94. This Report accordingly presents, for the Task Force's consideration, four broad categories of lawyer competence and several entries under each category, based upon other lawyer competence frameworks as well as a detailed assessment of the changing demands of the Canadian legal market and the evolving interests of the public, now and in the future.

1. *Knowledge of the law*

- Administrative law and procedure
- Business and corporate law and procedure
- Civil litigation, procedure, and remedies
- Contract law and drafting
- Constitutional law
- Criminal law, procedure, and sentencing
- Evidence
- Family law and procedure
- Legislative, regulatory, and judicial systems
- Property and tenancy law and procedure
- Torts
- Wills, estates, and trust law and procedure

2. *Understanding of a lawyer's professional responsibilities*

- Client confidentiality
- Client trust accounts
- Conflicts of interest
- Fiduciary duties
- Select other aspects of the Code of Professional Conduct

3. *The skills of a lawyer*

- Gather relevant facts through interviews and research
- Carry out legal research
- Conduct due diligence
- Draft essential legal documents
- Solve problems using legal knowledge and analysis
- Help negotiate solutions and resolve disputes
- Advocate for a client's position
- Provide legal advice to clients
- Use law practice technology
- Fulfill the basic business and professional requirements of a private law practice

4. *The skills of a professional*

- Establish, maintain, and conclude a client relationship
- Establish and maintain respectful and collaborative relationships with colleagues and others
- Communicate accurately and concisely, verbally and in writing, to different audiences
- Understand and use information management systems effectively
- Understand and use financial management systems effectively
- Manage projects and responsibilities to ensure they are completed efficiently, on time, and to an appropriate professional standard
- Organize one's time and activities to ensure the prompt and successful fulfilment of one's obligations

95. Some readers of this Report might have reactions, perhaps strong ones, to some aspects of the foregoing lists. These readers are encouraged to develop these reactions into detailed arguments with supporting evidence and to be ready to submit them to the Law Society as part of an extensive consultative process of determining the eventual entry-level competence of British Columbia lawyers.

96. However, the Law Society should be careful not to restrict the ambit of its competence consultation solely or even mostly to lawyers. The views of related and affiliated legal sector participants — including judges, court staff, justice officials in government, law firm professionals, paralegals, and notaries — should also be solicited and seriously considered. Even more so, the Law Society should consult current and former clients of lawyers, members of communities frequently or systematically affected by the legal system, and members of the general public. The consultation tent should be large and welcoming.

97. But consultation alone will not be enough. Even if collaborative discussions with stakeholders yield a promising list of competencies, they should be validated by reference to focus groups, workshops, and panels of individuals experienced in entry-level legal skills and lawyer professional development, using experts with the appropriate technical skills and knowledge. A wide-scale survey of the B.C. legal profession to test the competence framework might also be valuable. Defining the threshold standard of all these competencies for licensing would be another task altogether.

98. This recommended course of action might seem daunting; certainly, most legal regulatory bodies have traditionally done much less when determining how to license new lawyers. But the more extensive efforts recently undertaken in New

Brunswick and England & Wales reflect the increasingly common approach taken by other professions, as the competence frameworks in paragraphs 74-76 also suggest. When it comes to assembling and defending a robust framework for licensing competence, lawyers appear to be lagging well behind other professionals.⁴⁸

99. A case can certainly be made that the development of a Competence Framework for lawyer licensing is a project better suited to the Federation of Law Societies of Canada. After all, the competence required of new lawyers is largely consistent across the country. The development of a “National Lawyer Competence Framework” could be seen as a natural successor to the National Entry to Practice Competency Profile for Lawyers and Québec Notaries. A national Competence Framework would also reduce the risk of a patchwork of such frameworks emerging across the country.
100. However, given the time and effort that would be required to coordinate such a wide-ranging project across all Canadian legal regulators, it is recommended that the Law Society forge ahead with this project while keeping its fellow regulators informed and inviting their input as appropriate. As subsequent sections of this report will make clear, some of the shortcomings of B.C.’s current lawyer licensing system cannot be ignored for much longer.

101. Regardless of which elements of competence are eventually determined to be essential for new lawyer licensing in British Columbia, and regardless of where the “entry-level” threshold of competence is set, any licensure system that is built upon this framework must accomplish two things:

- Ensure that aspiring lawyers have accessible and equitable opportunities to learn what the competencies are and *acquire* them.
- Allow aspiring lawyers to *demonstrate* their possession of these competencies to the Law Society in order to gain licensure.

102. These two outcomes are essential to the success of a competence-based system because they help ensure the transparency, fairness, and validity of the licensing process.

⁴⁸ See: Ronald M. Epstein and Edward M. Hundert, “Defining and Assessing Professional Competence,” *The Journal of the American Medical Association*, February 2002, 287(2):226

- Publicizing the competence framework and ensuring fair opportunities to obtain its competencies represents a commitment to making access to the legal profession transparent, equitable, consistent, and as barrier-free as it can be made.
- Allowing aspiring lawyers to show the Law Society they possess those competencies gives everyone — aspirants, regulators, the public — confidence that the baseline standards of lawyer competence have been met by every successful applicant for licensure.

103. The next three sections of this Report will set out several ideas and suggestions for ways in which these conditions could be met in a new lawyer licensing system. Without explicitly endorsing any specific potential competencies, this Report will examine three broad categories of lawyer competence — knowledge of the law, understanding of professional responsibility, and deployment of legal and professional skills — and describe how they could be more transparently, fairly, and validly accounted for in a competence-based licensing system.

4. Knowledge of the Law

104. Under a competence-based licensing system, successful candidates must be able to acquire and demonstrably possess the elements of competence required by the regulator. This section describes how a lawyer licensure candidate could accomplish these goals with regard to legal knowledge competence, beginning with the means by which a candidate acquires this competence.

A. Acquiring Knowledge Competence

105. This section proceeds on the assumption that the Law Society has created, tested, and validated a Competence Framework for lawyer licensing, and that this Framework includes both the nature and the extent of “knowledge of the law” that an entry-level lawyer is expected to possess. Notwithstanding the 12 legal knowledge competencies suggested in paragraph 94, this section of the Report does not and need not make any assumptions about which competencies the Framework will eventually specify in this category.

106. Setting aside for present purposes the NCA certification process for internationally trained lawyers, the Law Society currently considers that the acquisition of a Canadian common-law degree signifies possession of core legal knowledge necessary to begin the licensing process. The shortcomings of this approach were laid out in detail in paragraphs 19 to 32.

107. The introduction of a Competence Framework that requires candidates to acquire and demonstrate possession of regulator-specified legal knowledge would immediately conflict with the *status quo*. Law degrees contain only a few mandatory subjects, those codified in the FLSC’s National Requirement (*e.g.*, torts, criminal, property). It is possible, if not likely, that the Competence Framework will specify entry-level competence in many more subjects, and to different extents, than what the standard law degree includes. The mismatch would be clear and significant.

108. The Law Society has no formal authority over Canada’s law schools and cannot direct schools to teach their students any specified content. Exercising its power more indirectly — for example, by refusing to accept the validity of any law degree that does not meet the Competence Framework standards — would be politically challenging, since law school accreditation is currently managed by the Federation of Law Societies on a national basis. And in any event, the Law Society has little to gain by starting a war with Canada’s law schools, especially one that would be seen as threatening schools’ academic integrity. That war would have no winners.

109. It is certainly possible that one or more of the three law schools in British Columbia, working alongside the Law Society in a collaborative fashion, might voluntarily decide to overhaul their degree program to reflect the requirements of a Competence Framework for lawyer licensure in this province. In that event, it would be open to the Law Society to affirm that enrolling in that degree program would be a valid way for an aspiring lawyer to acquire the elements of legal knowledge required by the Competence Framework.
110. But that happy circumstance would be only half the battle. The licensure candidate would still have to *demonstrate* possession of knowledge competence to the Law Society. Possessing a degree from a common-law school, even one whose curriculum satisfied every aspect of the Competence Framework, would still be only a credential; it would not demonstrate possession of competence to the regulator.
111. The situation would be even more challenging with regard to law schools outside the province. It can safely be anticipated that the Competence Framework will include several areas of law and procedure specific to British Columbia. No law school outside B.C. is going to include these subjects in its mandatory curriculum. On that basis alone, a law degree from outside the province would not provide the licensure candidate with the full range of legal knowledge that the Competence Framework would require.
112. Nor would it be practical for the Law Society to evaluate every licensure candidate's law school transcript against the Competence Framework to decide whether the candidate had acquired all the required legal knowledge through their course selection and other activities. Not only would this require a significant injection of administrative resources, but it would also raise the difficult question of what to do if a candidate's transcript did not show the acquisition of core legal knowledge — does the Law Society send the graduate “back to school” to take more courses?
113. The inescapable conclusion from all the foregoing is that a competence-based lawyer licensing system would simply not be compatible with a system that “deems” a law degree to fulfill the core knowledge requirements of practising law. Obtaining a law degree is expensive and time-consuming; it brings a candidate only partway to the goal of acquiring the legal knowledge required by the Competence Framework; and it does not advance the candidate towards the goal of demonstrating possession of that competence to the regulator. A law degree re-engineered to match the Competence Framework would fully satisfy the

“acquisition” function, but not the “demonstration” function. How can this dilemma be resolved?

1. Law Schools

114. The first step towards resolution is to recognize that no law school ever forced a law society to make its degree a mandatory element of the lawyer licensing process. It was the decision of legal regulators to declare that every licensure candidate must first possess an expensive academic credential issued by a small handful of institutions that owe no obligations to those regulators. In making this decision, law societies effectively gave law schools an uncontested monopoly over the acquisition of legal knowledge for lawyer licensing.

115. By limiting themselves to a single “supplier” of legal knowledge, law societies gave law schools the exclusive right to develop this knowledge in licensure candidates without negotiating any control over or even persuasive input into how the schools go about it. Law schools can hardly be faulted for accepting these terms while defending their academic independence.

116. To achieve an outcome that better suits its needs, the Law Society must remember that by adopting a competence-based licensing system, it is creating two obligations for itself. The regulator must give candidates the opportunity to (a) acquire the knowledge necessary for licensure, and (b) demonstrate possession of this competence to the regulator.

117. By creating and publicizing to all stakeholders the Competence Framework and its “knowledge of the law” requirements, the Law Society will take a giant step towards fulfilling the first obligation. Aspiring B.C. lawyers can study the Framework’s “legal knowledge” requirements and identify what they must learn in order to be a viable candidate for licensure in the province. B.C. law schools can also study the requirements and, if they so desire, adjust their curricula to match the Law Society’s licensure needs. Everyone will be able to work from the same transparent set of legal knowledge standards; everyone will know what the Law Society requires entry-level lawyers to know.

118. But the next step towards that goal will be just as important. If the Law Society is to mandate legal knowledge competence standards for licensure, it must also enhance *the accessibility of opportunities to obtain* the knowledge competence it requires.

119. As previously noted, the current suppliers of legal knowledge are limited in number — just 20 common-law schools across Canada, only three in British Columbia — and their cost is high. Moreover, each of those suppliers places strict limits on their annual intake of law students. No law school is going to expand its first-year cohort to 3,000 students, even if there were sufficient demand — the schools’ facilities, infrastructure, and culture will not permit it. There are only so many “legal knowledge seats” available every year for licensure candidates, which represents another limit on the accessibility of a legal career.

120. Even if every B.C. law school decided to match its curricula precisely to the Competence Framework, therefore, these schools’ own structural features (exclusivity, cost, and size) would still constitute systemic barriers to acquiring the legal knowledge necessary to enter the legal profession in this province. And not every law school, it can safely be predicted, will match its curriculum to the Competence Framework.

121. What all this means is that in order to make opportunities for the acquisition of legal knowledge for licensure fairly and broadly accessible, the Law Society must think beyond law schools.

2. *New Providers*

122. A number of other organizations and entities in British Columbia already provide legal learning, training, and professional development services of various kinds. If these entities had access to legal knowledge competence standards for lawyer licensing, and if they wished to develop or adapt some programs to meet those standards, they could become additional options by which licensure candidates can acquire the legal knowledge they require. For example:

- Continuing Legal Education-British Columbia⁴⁹ and the Canadian Bar Association’s British Columbia Branch⁵⁰ produce a host of legal learning courses and programs every year.

⁴⁹ <https://www.cle.bc.ca/aboutcourses/>

⁵⁰ <https://www.cbabc.org/Professional-Development>

- Capilano University’s School of Legal Studies equips students for careers in administrative and paralegal services at law firms and a range of other employers.⁵¹
- Simon Fraser University’s Legal Studies program offers a minor, a certificate program, and a post-baccalaureate diploma in legal studies.⁵²

123. Other B.C. educational institutions or private-sector learning entities might also see an opportunity to develop programs that could deliver entry-level legal knowledge to meet the requirements of the Competence Framework. It is even conceivable that practicing lawyers might decide to offer entry-level education programs in their own areas of specialization. The ability to deliver legal knowledge education and training that meets the standards of a Competence Framework for new lawyer licensing should not be considered inherently exclusive to law schools.

124. All these potential providers, however, have no incentive to develop and offer programs of this type. Because the Law Society mandates the possession of a law degree to begin the licensure process, no candidate will spend time and money on other legal knowledge courses, and a market for these services cannot be expected to develop. It is difficult for the Law Society to “think beyond law schools” when it has made law schools an essential element of the licensing process.

125. The introduction of a competence-based licensing system for B.C. lawyers, therefore, leads to a remarkable yet inevitable conclusion: The Law Society should consider removing the law degree requirement for entry into the lawyer licensure process.

126. This would not be a decision that the Law Society should take lightly. It could only follow upon the establishment of a Competence Framework that sets out clear standards for the legal knowledge required for licensure. It would have to be preceded by extensive discussions with all current and potential future providers of legal knowledge education and training. Given its radical departure from accepted norms of legal education, it would have to be developed and implemented with deliberation and care.

⁵¹ <https://www.capilanou.ca/programs--courses/search--select/explore-our-areas-of-study/business--professional-studies/school-of-legal-studies>

⁵² <https://www.sfu.ca/students/admission/programs/a-z/1/legal-studies/overview.html>

127. But if the Law Society did decide to pursue this course of action, several benefits could be anticipated:

1. It would allow candidates to forgo a full three-year law degree, and instead enrol in only or primarily those law school courses and clinics by which they could acquire the knowledge competencies necessary for lawyer licensure. This would also reduce the amount of time and money required to begin the lawyer licensing process, increasing the accessibility of a legal career and the affordability of some legal services.
2. It would make possible and incentivize an “open space” for innovation for all providers of legal knowledge for licensure. For example, providers might develop individual “modules” of learning and offer them in combination — perhaps a mix of asynchronous online learning, in-person lectures and discussions, and simulated applied practice opportunities.
3. It would help prepare a pathway towards the eventual recognition of other legal professionals, including notaries and paralegals, as licensed providers in the delivery of legal services. If and when law societies are obliged to oversee the formation of other legal professionals, the development of a more modular approach to legal education and training would be beneficial.⁵³
4. It would allow licensure candidates trained outside British Columbia the opportunity to acquire B.C.-specific legal knowledge. A candidate with a law school degree from, say, Alberta, might choose to take individual courses in B.C. law as required by the Framework. This would also give the Law Society a licensure solution that encompasses internationally trained candidates.

128. None of the foregoing should be considered a rejection of the value and viability of a traditional legal education. Canada’s law schools have amply demonstrated their educational expertise and pedagogical proficiency, along with high standards of integrity, authority, and reliability in teaching and grading their courses. The experience of attending law school delivers significant benefits in terms of learning,

⁵³ This is particularly relevant given the March 2022 announcement by the British Columbia government that it intends to consolidate the regulation of all legal professionals in B.C., including lawyers, notaries, and paralegals, under a single statute and regulator: <https://news.gov.bc.ca/releases/2022AG0029-000285>. The Law Society might soon have a mandate to set licensing and competence standards for all legal professionals in the province, accelerating the need for a modular, multi-provider approach to legal knowledge and skill acquisition.

growth, networking, and socializing. It is also possible that some legal employers would still set a law degree as a requirement for hiring new lawyers.

129. But the Law Society's concern does not lie with the future employment and career prospects of the lawyers it licenses. The Law Society's concern is to ensure that aspiring lawyers can accessibly acquire the legal knowledge set out in the Competence Framework as a requirement for licensure. The foregoing discussion is offered as a potential pathway for the Law Society to consider in meeting that goal.

B. Demonstrating Knowledge Competence

130. Regardless of the method or methods the Law Society eventually chooses by which licensure candidates can acquire the legal knowledge required by the Competence Framework, there remains the equally important matter of how a candidate can demonstrate their possession of this competence to the regulator. The previous section established that the completion of a law degree, even one that has been tailored precisely to the Competence Framework's requirements, cannot constitute demonstration of competence to the Law Society.

131. How, then, can this requirement be met? An answer to this question can be found in current licensing systems — not just in the British Columbia legal sector, but throughout Canada, in other countries, and across myriad professions.

132. Every law society in Canada requires licensure candidates to pass several written examinations (in law school, through the NCA, and/or through bar admission exams) in order to prove their knowledge of the law. The PLTC itself requires candidates to pass two Qualifying Examinations on barristers' and solicitors' practice in order to complete the course. Obtaining a passing grade on a written examination is the most practical and widely used method for demonstrating knowledge competence.

133. The ubiquity of written examinations in lawyer licensure does not, in itself, prove their worthiness or validity. Indeed, as will be discussed shortly, written examinations are fraught with problems and challenges. But this Report has been unable to identify any superior alternative to using written exams for assessing knowledge competence at scale. Professional skills, responsibility, and demeanour can be assessed and proven through practical application in real or simulated client situations. Assessing and proving knowledge, however, for better or worse, remains the domain of examinations.

134. Accordingly, this Report suggests that the Law Society use the legal knowledge component of its Competence Framework as the foundation to develop a “Legal Knowledge Examination,” by which licensure candidates can demonstrate their possession of required legal knowledge competence. A candidate would have to obtain a passing grade on this Examination to satisfy the Law Society’s legal knowledge competence requirement.
135. Setting legal knowledge exams is a longstanding specialty of the legal profession. However, the Law Society should be aware that the creation of a valid and defensible Legal Knowledge Examination for licensing would be a more complex, challenging, and resource-intensive process than it might first appear.
136. It is widely accepted that high-stakes licensing exams ought to be developed in accordance with the Standards for Educational and Psychological Testing, developed jointly by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.⁵⁴
137. The Standards cover a wide range of issues related to all aspects of the testing process, including foundational concepts such as validity and fairness, details of test development and implementation, and applications in specific areas such as employment credentialing and educational accountability. The Standards are organized into 15 categories:
1. Validity;
 2. Reliability and Errors of Measurement;
 3. Test Development and Revision;
 4. Scales, Norms, and Score Comparability;
 5. Test Administration, Scoring, and Reporting;
 6. Supporting Documentation for Tests;
 7. Fairness in Testing and Test Use;
 8. The Rights and Responsibilities of Test Takers;
 9. Testing Individuals of Diverse Linguistic Backgrounds;
 10. Testing Individuals with Disabilities;
 11. The Responsibilities of Test Users;
 12. Psychological Testing and Assessment;
 13. Educational Testing and Assessment;
 14. Testing in Employment and Credentialing; and
 15. Testing in Program Evaluation and Public Policy.

⁵⁴ <https://www.apa.org/science/programs/testing/standards>

138. The Standards are in the process of becoming part of the lawyer licensing toolkit in the United States. The National Conference of Bar Examiners (NCBE) develops and produces the licensing tests used by most U.S. jurisdictions for admission to the bar: the Multistate Bar Examination, the Multistate Essay Examination, and the Multistate Performance Test. It also coordinates the Uniform Bar Examination and develops the Multistate Professional Responsibility Examination.⁵⁵ It is fair to describe American bar exams as “much-maligned,” and so the NCBE appointed a Testing Task Force to study how these exams might be improved. The task force’s January 2021 Final Report⁵⁶ recommended significant changes to the bar exam, all made in accordance with the Standards for Educational and Psychological Testing.⁵⁷

139. Outside of New Brunswick’s new bar admission course, however, it is not clear if any Canadian law society’s licensing exams have been created in accordance with the Standards. The legal profession has not traditionally developed its licensure exams on the basis of the Standards or any other cross-disciplinary systems and measures of fairness, validity, and defensibility. Doing so would be a much more expensive endeavour than that to which most legal regulators are accustomed. One rough estimate of the cost of developing an industry-grade legal knowledge examination ran into the hundreds of thousands of dollars.

140. To develop a comprehensive and reliable Legal Knowledge Examination, the Law Society would benefit from examples and models to study. The Law Society of New Brunswick offers one such model, but so too does the Solicitors’ Regulation Authority of England & Wales, which administers the Solicitors’ Qualification Examination (SQE) to assess the knowledge competence of its licensure candidates.⁵⁸

⁵⁵ <https://www.ncbex.org/about/>

⁵⁶ <https://nextgenbarexam.ncbex.org/reports/>

⁵⁷ “Testing Task Force Final Update,” *The Bar Examiner*, Spring 2021: <https://thebarexaminer.ncbex.org/article/spring-2021/testing-task-force-final-update/>

⁵⁸ <https://www.sra.org.uk/become-solicitor/sqe/>

141. The SQE is based on the SRA's Statement of Solicitor Knowledge, described in paragraph 87. The SQE tests a wide array of “functioning legal knowledge”⁵⁹ through a comprehensive, closed-book, multiple-choice, multi-day examination that poses 360 questions over the course of ten hours. The results of the initial edition of the SQE,⁶⁰ which featured an overall pass rate of just 53%, would be useful for the Law Society to consider as part of its inquiries in this area.

142. In addition to the challenges and considerations already cited, the Law Society should be aware of evidence that the results of written licensing examinations tend to reflect systematic discrimination on the basis of race and ethnicity.⁶¹ A 2021 ABA study⁶² found that among first-time bar exam takers in 2020, white candidates passed at a rate of 88%, compared with 80% of Asians, 78% of Native American candidates, 76% of Hispanic candidates, and 66% of Black candidates. In 2019, whites passed at a rate of 85%, compared with 74% of Asians, 72% of Native Americans, 69% of Hispanics, and 61% of Blacks.⁶³

143. Similar results occurred in the first administration of the Solicitors Qualification Exam last November. While 66% of white candidates passed the SQE, that total was 58% for candidates from mixed/ multiple ethnic groups, 43% for Asian/ Asian British candidates, and 39% for Black/ Black British candidates. The SRA stated that it had “anticipated the troubling difference in performance for candidates from Black,

⁵⁹ The Solicitors’ Regulation Authority describes “functioning legal knowledge” as “core legal principles and rules.... A candidate should be able to apply these fundamental legal principles and rules appropriately and effectively to realistic client-based and ethical problems and situations which might be encountered by a newly qualified solicitor in practice.” <https://www.sra.org.uk/sra/policy/solicitors-qualifying-examination/pilot/sqe-assessment-specification/>

⁶⁰ <https://www.sra.org.uk/sra/policy/solicitors-qualifying-examination/first-sqe-assessment-results/>

⁶¹ “Examining the Bar Exam: An Empirical Analysis of Racial Bias in the Uniform Bar Examination,” Scott DeVito, Kelsey Hample, and Erin Lain, Jan. 26, 2022: *University of Michigan Journal of Law Reform*, Forthcoming, <https://ssrn.com/abstract=4018386>

⁶² “2020 and 2021 Bar Passage Data by Race, Ethnicity, and Gender”: https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/20210621-bpq-national-summary-data-race-ethnicity-gender.pdf

⁶³ “Bar Exam Race Gap Shown in New Passage Rate Data for Law Grads,” Sam Skolnik, *Bloomberg Law*, June 22, 2021: <https://news.bloomberglaw.com/social-justice/bar-exam-race-gap-shown-in-new-passage-rate-data-for-law-grads>

Asian and minority ethnic groups, which has been a longstanding and widespread feature in examinations in the legal and other sectors.”⁶⁴

144. The Law Society should be fully aware of these perverse outcomes, and should take them into account when addressing itself to the challenge of crafting a truly fair Legal Knowledge Examination. The Law Society also must be clear-eyed about the potential costs of upgrading its legal knowledge assessment process to meet the cross-disciplinary professional standards noted earlier. The prospect of developing a new system by which licensure candidates can demonstrate their legal knowledge competence can certainly seem daunting.

145. This Report submits, however, that even if the Law Society does not adopt any of these recommendations and continues to employ a credentials-based licensing system in future, the issues raised herein with regard to knowledge exams for high-stakes licensing apply fully to the LPTC’s Qualification Examinations. Regardless of any other considerations, the Law Society should consider itself alerted to the new challenges, existing biases, and emerging standards in the assessment of the legal knowledge of licensure candidates.

⁶⁴ “First SQE assessment results,” Solicitors’ Regulation Authority, Jan. 21, 2022: <https://www.sra.org.uk/SQE1results>

5. Professional Responsibility and Awareness

146. There are few precise definitions of “professional responsibility” for lawyers. Most tend to be somewhat circular, referring to a lawyer’s “obligation to act professionally,”⁶⁵ “the duty to act in a professional manner,”⁶⁶ or the “obligation of lawyers to adhere to rules of professional conduct.”⁶⁷ The term is not defined in the British Columbia Code of Professional Conduct.

147. For present purposes, this Report will define “professional responsibility” as a lawyer’s duty to ethically and honourably exercise their powers, fulfill their obligations, comply with the lawyer’s governing Code of Professional Conduct, and promote the administration of justice and the rule of law. New lawyers are expected to understand and be able to fulfill these binding standards and ethical obligations. Professional responsibility lies at the heart of what it means for a lawyer to be trustworthy and reliable. It should be regarded as a separate category of competence for licensing.

148. This Report suggested, in paragraph 94, that entry-level professional responsibility competence should at least include matters of client confidentiality, client trust accounts, conflicts of interest, and fiduciary duties. In this section, the Report will further suggest that the Law Society develop (a) a standalone program for the acquisition and demonstration of professional responsibility competence, passage of which is necessary for licensing, and (b) a complementary education program in “professional awareness.”

A. Professional Responsibility Competence

149. Currently, licensure candidates in B.C. are instructed in professional responsibility through the PLTC. However, “professional responsibility” as a topic does not appear to occupy dedicated space on the PLTC schedule. Rather, professional responsibility is included along with instruction on other topics, and is assessed both through the four skills assessments as well as by embedding professional responsibility issues within the questions on the Qualification Examinations.

⁶⁵ <https://www.2civility.org/expanding-our-definition-of-professional-responsibility/>

⁶⁶ https://en.wikipedia.org/wiki/Professional_responsibility

⁶⁷ <https://legal-dictionary.thefreedictionary.com/Professional+Responsibility>

150. It seems doubtful that this approach gives licensure candidates the opportunity to be fully informed about their entry-level professional responsibility competence requirements, or to demonstrate their possession of this competence to the regulator. If the Law Society believes that the ability of a lawyer to act ethically and responsibly is a core element of professional licensure, then it ought to allocate more time and dedicate more resources to thoroughly establishing this competence through the lawyer licensing process.

151. Specifically, the Law Society should introduce a standalone online “Professional Responsibility Program” that both instructs licensure candidates on the elements of professional responsibility competence and allows candidates to demonstrate their understanding of and ability to respond to entry-level professional responsibility situations. Successful completion of this program should be a mandatory element of the lawyer licensing process.

152. Withdrawing professional responsibility issues from the “all-in-one” PLTC, and dedicating an entire standalone program to the topic instead, would deliver two significant advantages.

153. First, it would allow licensure candidates to delve more deeply into the complex and nuanced world of lawyers’ ethical duties than is currently afforded through the PLTC. The Code of Professional Conduct is 138 pages long, covering four separate sets of ethical duties: to clients and potential clients, to the administration of justice, to employees and students, and to the Law Society and other lawyers. Properly advising candidates of the Code’s contents, and helping them develop skills to detect ethical issues in practice and apply techniques to address them, requires significant dedicated time and attention. A standalone program in professional responsibility would make that outcome more achievable.

154. Secondly, it would solidify public respect for the Law Society’s determination to ensure that new lawyers are well-trained and duly assessed in legal ethics and professional conduct — two aspects of a lawyer’s competence that the public naturally considers to be especially important. The Law Society would be able to declare that its new lawyer licensure program has significantly increased the time and training devoted to ensuring that licensure candidates are deeply versed in their professional obligations.

155. The proposed Professional Responsibility Program should be conducted online rather than in person. This is not because “live” instruction is inferior to virtual. Indeed, licensure candidates would naturally be expected to benefit from interacting

with each other and with their instructors face-to-face more than they would in the confines of a “Zoom room.” In a perfect world, this program would be conducted entirely on-site and in-person.

156. But the realities of the licensing process mean that the disadvantages of in-person instruction outweigh these benefits. The greatest drawback is the cost to candidates of attending an in-person program for several weeks. Many candidates, as is the case now with the PLTC, would have to travel from their current locations to Vancouver or another urban centre, find affordable short-term rental accommodations (if any is available), and pay for travel, daily meals, and other expenses, in addition to the registration fees for the program. Those candidates who have not secured a position that pays a salary during the licensing process face greater challenges again.

157. By contrast, an online program dispenses with all these expenses, drastically reducing candidates’ financial outlay and logistical challenges. Although the cost of rent and meals during a short-term licensing program does not constitute the same barrier to entry as a massive law school debt load, nonetheless every extra burden, no matter how small, accumulates over time. Where the Law Society can do away with unnecessary costs and delays in the licensing process without compromising its integrity and effectiveness, it should do so.

158. In addition, the experience of the pandemic has demonstrated that every aspect of the lawyer licensing process (including law school classes) can be at least partially performed in an online environment. The PLTC has successfully made this transition, as have other bar admission courses across Canada. The new professional workplace ethic might be described as “in person if necessary, but not necessarily in-person.” The same philosophy should apply to the professional responsibility portion of the Law Society’s licensing process.⁶⁸

159. The actual structure and design of an online Professional Responsibility Program that both teaches and assesses candidates’ knowledge and skills in this area is best left to qualified Law Society personnel. However, as a starting point for discussion, the Law Society might wish to consider a diversified instructional format, perhaps along the following lines:

⁶⁸ This is not intended to minimize the difficulties some candidates encounter with online learning, including access to the internet, speed and bandwidth challenges, and private and secure locations from which to join an online licensing program. The Law Society should consider creating an “In-Person Cohort” for candidates who would prefer to attend a professional responsibility program in person. But the “default setting” should be online.

- The Professional Responsibility Program could run for a scheduled period of several weeks, with one or two topics introduced, studied and discussed each week. A candidate could spend part of each week accessing online materials and taking assessment tests asynchronously, and other parts of the week connecting by videoconference with classmates and an instructor for group activities.
- During their asynchronous time, candidates could complete a self-guided video series on each topic, including interactive comprehension tests to ensure that they understand the concepts, can spot them when they emerge, and can apply the knowledge and skills they have learned to hypothetical entry-level professional responsibility situations.⁶⁹
- During their synchronous time, candidates could hear from instructors and guest speakers, discuss ethical challenges, role-play professional responsibility scenarios, and identify opportunities to develop skills in practice, guided by their instructors, who could gauge and assess candidates' grasp of these issues and their ability to competently address them.
- Throughout the program, candidates could also maintain a "Reflective Journal," making ten entries of at least 150 words each, reflecting upon their learnings and observations related to professional responsibility. They could submit this Journal to their instructor at the end of the course, not for "assessment" so much as to demonstrate their attention and learning.

160. An online Professional Responsibility Program along these lines could give candidates the opportunity to demonstrate their possession of this competence in three ways:

1. Correctly answering professional responsibility questions and identifying valid responses to hypothetical scenarios in the asynchronous self-guided portion of the program;

⁶⁹ This format is loosely modelled on the Illinois Attorney Registration and Disciplinary Commission (ARDC)'s Proactive Management-Based Regulation Self-Assessment Program, used for experienced lawyers who have entered the state bar disciplinary process at some point. The program's educational focus and effective use of hypothetical professional responsibility quizzes have generated positive reviews from Illinois practitioners. <https://pathlms.iardc.org/courses/15664>

2. Participating successfully in group exercises and role-play simulations to such an extent that the course instructor is satisfied with the candidate's possession of professional responsibility knowledge and skill; and
3. Completing a Reflective Journal and submitting it to the course instructor, who would review the Journal to ensure that the minimum requirements of comprehension have been met.

161. The Code of Professional Conduct of British Columbia could reasonably be the foundational text for the development of this program's content. However, this Report wishes to draw the Law Society's attention to a subject not included in the provincial Code: the issue of a lawyer's technological competence.

162. In 2019, the Federation of Law Societies of Canada integrated technological competence into its Model Code of Professional Conduct.⁷⁰ Commentaries 4A and 4B to Rule 3.1-2 of the Model Code⁷¹ read as follows:

[4A] To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer's duty to protect confidential information set out in section 3.3.

[4B] The required level of technological competence will depend on whether the use of understanding of technology is necessary to the nature and area of the lawyer's practice and responsibilities and whether the relevant technology is reasonably available to the lawyer. In determining whether technology is reasonably available, consideration should be given to factors including: (a) the lawyer's or law firm's practice areas; (b) the geographic locations of the lawyer's or firm's practice; and (c) the requirements of clients.

163. Since 2019, legal regulators in six Canadian jurisdictions (the Law Societies of Alberta, Manitoba, Newfoundland & Labrador, the Northwest Territories, and Saskatchewan, as well as the Barreau du Québec) have incorporated a duty of technological competence into their codes of professional conduct. British Columbia

⁷⁰ Amy Salyzyn, "It's Finally (Sort Of) Here!: A Duty of Technological Competence for Canadian Lawyers," *Slaw.ca*, Nov. 26, 2019: <http://www.slaw.ca/2019/11/26/its-finally-sort-of-here-a-duty-of-technological-competence-for-canadian-lawyers/>

⁷¹ <https://flsc.ca/wp-content/uploads/2019/11/Model-Code-October-2019.pdf>

is not one of those jurisdictions, and this Report does not suggest the Law Society ought to change that. But given the clear importance of technology to the competent performance of lawyers' myriad duties, technological competence might usefully be incorporated into the Professional Responsibility Program.

B. A Professional Awareness Program

164. To the extent the lawyer licensing process requires candidates to acquire and demonstrate possession of entry-level competence in professional responsibility, that competence should cover only the core principles of legal ethics and the contents of the Code of Professional Conduct for British Columbia. This Report has no mandate, and no interest in attempting, to rewrite the binding ethical standards of British Columbia lawyers.

165. However, this Report does suggest that there are issues of importance and relevance to new lawyers that, while not rising to the level of "binding professional duties and responsibilities," nonetheless closely inform a new lawyer's understanding of and ability to competently navigate the rapidly changing professional landscape of modern legal sector. They are not really "knowledge of the law" or "lawyer and professional skills," but they do lie somewhere in between. This requires some explanation.

166. Traditionally, the legal profession has considered that lawyers' "professional responsibility" is owed to three entities: to lawyers' own clients, to the legal system, and to the public. For example, the Canadian Bar Association's Code of Professional Conduct states in its preface: "The essence of professional responsibility is that the lawyer must act at all times *uberrimae fidei*, with utmost good faith to the court, to the client, to other lawyers, and to members of the public."⁷² The preamble to the American Bar Association's Model Rules of Professional Conduct similarly begins: "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice."⁷³

⁷² [https://www.cba.org/getattachment/Publications-Resources/Resources/Ethics-and-Professional-Responsibility/Code-of-Conduct/Code-of-Professional-Conduct-\(2009\)/codeOfConduct2009Eng.pdf](https://www.cba.org/getattachment/Publications-Resources/Resources/Ethics-and-Professional-Responsibility/Code-of-Conduct/Code-of-Professional-Conduct-(2009)/codeOfConduct2009Eng.pdf), p. vii.

⁷³ https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/, s. 1.

167. From time to time, however, some members of the profession have argued that a lawyer's duties ought to extend in other directions and towards other entities than clients, the legal system, and the public. These suggestions have included:

- *A Duty to Improve Access to Justice*: The proposition that lawyers have an ethical obligation to enhance access to justice is not new.⁷⁴ Writing in the *Queen's Law Journal* in 2016,⁷⁵ Mr. Justice Thomas Cromwell and Siena Anstis stated: "[F]acilitating and improving access to justice is an ethical responsibility of lawyers. Most law societies have adopted the commentary on access to justice and *pro bono* services proposed in the Federation of Law Societies of Canada's Model Code of Professional Conduct."⁷⁶
- *A Duty to Respect the Self-Represented*: Many individuals engage with the justice system personally rather than hiring a lawyer to guide and assist them.⁷⁷ The Canadian Judicial Council's Statement of Principles on Self-Represented Litigants and Accused Persons⁷⁸ declares that lawyers are expected to be respectful of SRLs and "to adjust their behaviour accordingly" when dealing with them, in accordance with their professional obligations.⁷⁹

⁷⁴ More than 20 years ago, the Chief Justice of Ontario's Advisory Committee on Professionalism's Working Group on the Definition of Professionalism observed: "The lawyer's public interest mentality finds expression, for example, in advancing access to the law and the legal system for all persons, regardless of their means." https://clp.law.utoronto.ca/sites/clp.law.utoronto.ca/files/documents/Elements-of-Professionalism_CLP.pdf

⁷⁵ "The Legal Services Gap: Access to Justice as a Regulatory Issue," 2016 42-1 *Queen's Law Journal*: <https://www.canlii.org/en/commentary/doc/2016CanLIIDocs4538>

⁷⁶ See also the preamble to the December 2020 report of the Law Society's Access to Justice Advisory Committee: "Legal service providers, including lawyers who are authorized to provide legal services for a fee, have an obligation to make their services appropriately accessible to the public." <https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/2020AccessToJusticeVision.pdf>

⁷⁷ "The Rise of Self-Representation in Canada's Family Courts," Rachel Birnbaum, Nicholas Bala, and Lorne Bertrand, *The Canadian Bar Review*, Vol. 91 No. 1 (2013): <https://cbr.cba.org/index.php/cbr/article/view/4288>

⁷⁸ <https://cjc-ccm.ca/sites/default/files/documents/2020/Final-Statement-of-Principles-SRL.pdf>

⁷⁹ See also: "Analyzing the 2017 Supreme Court of Canada decision in *Pintea v. Johns*," Jennifer Leitch, *Slaw.ca*, July 31, 2020: <http://www.slaw.ca/2020/07/31/lawyers-and-self-represented-litigants-taking-pintea-more-seriously/>.

- *A Duty to Recognize Systemic Discrimination:* The legal profession is slowly acknowledging the considerable evidence⁸⁰ supporting the existence of systemic discrimination in the law, and the extent to which the justice system systematically discriminates against individuals from racialized communities and particularly against Indigenous people.⁸¹ Some commentators go so far as to suggest lawyers are ethically bound to fight this discrimination.⁸²
- *A Duty to Be Culturally Competent:* Lawyers can be considered culturally competent if they possess a set of skills, behaviours, attitudes, and knowledge that enable them to provide services appropriate to a diverse range of clients.⁸³ In 2021, the Law Society required Indigenous cultural competence training of all B.C. lawyers, covering “the history of Aboriginal-Crown relations, the history and legacy of residential schools, and specific legislation regarding Indigenous peoples of Canada.”⁸⁴

⁸⁰ See, for example: “Rooting out systemic racism is key to a fair and effective justice system,” Department of Justice Canada, Dec. 7, 2021: <https://www.canada.ca/en/departement-justice/news/2021/12/rooting-out-systemic-racism-is-key-to-a-fair-and-effective-justice-system.html>; “Systemic discrimination in the criminal justice system,” Ontario Human Rights Commission, April 19, 2017: <https://www.ohrc.on.ca/en/systemic-discrimination-criminal-justice-system-ohrc-letter-attorney-general-naqvi>; “Anti-Black Racism in Canada’s Criminal Justice System,” Canadian Civil Liberties Association, August 2021: <https://ccla.org/wp-content/uploads/2021/08/CCLA-Anti-Black-racism-criminal-justice-system.pdf>.

⁸¹ “Overrepresentation of Indigenous People in the Canadian Criminal Justice System: Causes and Responses,” Department of Justice Canada: <https://www.justice.gc.ca/eng/rp-pr/jr/oip-cjs/p4.html>

⁸² “Canada and the Rule of Law: 150 Years after Confederation” (excerpt), Raj Anand, June 21, 2017: <https://www.weirfoulds.com/rule-of-law-and-the-ethical-lawyer>

⁸³ “Reconciliation and Ethical Lawyering: Some Thoughts on Cultural Competence,” Pooja Parmar, *The Canadian Bar Review*, Vol. 97 No. 3 (2019): <https://cbr.cba.org/index.php/cbr/article/view/4558>.

⁸⁴ “B.C. law society requires Indigenous cultural competency training of all lawyers in the province,” Bernise Carolino, *Canadian Lawyer*, Dec. 17, 2021: <https://www.canadianlawyermag.com/practice-areas/esg/bc-law-society-requires-indigenous-cultural-competency-training-of-all-lawyers-in-the-province/324238>

- *A Duty to Safeguard One's Own Wellness.* The ABA's 2017 National Task Force for Lawyer Well-Being Report⁸⁵ directly linked a lawyer's wellness to "the affirmative ethical duties of competence, diligence, truthfulness, communications, and relationships with people other than clients."⁸⁶ The Canadian Judicial Council amended its Ethical Principles in 2021⁸⁷ to state: "Judges should set aside sufficient time and make a commitment to the maintenance of physical and mental wellness, and take advantage of judicial assistance programs as appropriate."⁸⁸

168. Reasonable people may disagree over whether a lawyer is ethically duty-bound to fight systemic discrimination in the law or help alleviate the access-to-justice crisis. But this Report contends that licensure candidates should at least *be made aware* that these issues and problems exist and will likely pose challenges to lawyers throughout their careers. New lawyers receive no advance notice of, and no preparation for dealing with, these subjects from their professional regulator.

169. To that end, while designing and implementing a Professional Responsibility Program along the lines suggested above, the Law Society should also consider developing, and requiring licensure candidates to complete, a complementary "Professional Awareness Program" that educates candidates about these emerging, important, and systemic professional issues.

⁸⁵ "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change": https://www.americanbar.org/groups/lawyer_assistance/task_force_report/

⁸⁶ "The Legal Ethics of Lawyer Wellness," Daniel O'Rielly, California Attorney Ethics Counsel Blog, Dec. 5, 2017: <https://attorneyethicscounsel.com/2017/12/05/the-legal-ethics-of-lawyer-wellness/>

⁸⁷ https://cjc-ccm.ca/sites/default/files/documents/2021/CJC_20-301_Ethical-Principles_Bilingual%20FINAL.pdf, p. 32.

⁸⁸ It should be noted that some experts believe reports of lawyers' poor mental health have been overstated. One recent American study suggested that lawyers' mental well-being resembles mental health in professions with similarly educated workers, and is actually better than that of the general population. Nonetheless, the study also found that "lawyers drink excessively at higher rates than the general population. In particular, lawyers drink excessively at much higher rates than other groups of highly educated professionals." Yair Listokin and Ray Noonan, "Measuring Lawyer Well-Being Systematically: Evidence from the National Health Interview Survey" (August 4, 2020), *Journal of Empirical Legal Studies* Forthcoming, Yale Law School, Public Law Research Paper: <https://ssrn.com/abstract=3667322>

170. In contrast to the Professional Responsibility Program, which would be formally structured and assessed and would feature instructors leading group discussions and activities, the Professional Awareness Program would be an entirely self-guided online offering and would not require candidates to demonstrate knowledge to the Law Society. It would exist to give clarity and depth to the lawyer licensing process without rising to the level of a “competence” required for licensure.
171. The content of the Professional Awareness Program, like the structure of the Professional Responsibility Program, should be determined by Law Society personnel. However, particularly careful attention should be paid to the subject of lawyer wellness, to ensure that no stigma or regulatory judgment is attached to issues of mental health or substance use. These are extremely sensitive matters that have been poorly understood and dealt with by legal regulators in the past. Experts both within and outside the legal profession should be closely consulted in these areas.
172. In order to make the Professional Awareness Program as accessible as possible for licensure candidates, the Law Society should make the program available at no charge, and should permit licensure candidates to complete the program at any point prior to or during the lawyer licensing process. Indeed, there is no reason why experienced lawyers should not be encouraged to access this program, perhaps as part of their continuing professional development requirements. The information supplied by this program would provide insights for lawyers at every stage of their careers.

6. Lawyer and Professional Skills

173. The category of “Lawyer Skills” refers to the myriad competencies required to carry out tasks specifically associated with effective law practice. The category of “Professional Skills” refers to the equally myriad competencies required to carry out the tasks associated with effective professional business practice. Together, they cover the entire spectrum of “practical competencies” expected of new lawyers. Partly for convenience, but mostly because the acquisition and application of these two groups of skills usually occurs in an integrated fashion, this Report groups both sets of skills together.

174. The capacity to effectively apply lawyer and professional skills is arguably the paramount ability of a good lawyer. It lies at the heart of the competence to practise law — to carry out tasks accurately and proficiently in order to accomplish clients’ goals and protect and advance their interests. It is therefore critically important that new lawyers enter the profession with clear and demonstrated competence in this regard.

175. The comprehensive development and reliable assessment of a licensure candidate’s lawyer skills and professional skills is a significant undertaking. This challenge is all the greater because many candidates arrive at this point in the licensure process with little knowledge of or experience in deploying these skills. PLTC administrators have noted that the overall competence of many recent licensure candidates is sufficiently substandard as to make the development of their skills to an acceptable professional level in a ten-week course a difficult task.

176. With regard to “Lawyer Skills,” the eight suggested in paragraph 94 represent only the most foundational skills of a lawyer, expressed in the broadest terms.⁸⁹ The lawyer skills identified in the competence profiles and frameworks of other jurisdictions are more numerous and detailed, reflecting the reality that lawyers are expected to carry out myriad tasks across a wide range of contexts and situations. When the Law Society sets out to develop its Competence Framework for lawyer

⁸⁹ For example, just the first aspect of the first skill on the list — “Establish, maintain, and conclude a client relationship” — would include elements such as confirming the client’s identity, explaining the nature of the lawyer-client relationship, assessing the client’s needs and objectives, noting the client’s instructions along with any resulting undertakings, estimating the time and fees likely required to achieve the client’s objectives, and confirming all the foregoing in a retainer letter.

licensing, it should strive to assemble a comprehensive list of such skills, without overburdening new lawyers beyond what mere entry-level competence requires.

177. The Law Society has a particular obligation to ensure that *all* newly licensed lawyers — regardless of where and how they begin their careers — have acquired and can deploy these skills to the same acceptable degree. This is necessary because some new lawyers will begin their careers in very different circumstances than others.

178. For example, a brand-new associate in a large law firm with a strong support and training infrastructure might not personally need entry-level competence in, say, providing legal advice to clients or meeting the day-to-day requirements of a law practice. Senior associates and experienced staff members in these workplaces often help new lawyers develop these skills over their first several months or years in the profession.

179. But these kinds of skills would be essential to a Day One sole practitioner, or a new associate in a law firm where business support and training are inadequate or unavailable altogether. Many lawyers begin their careers in such workplace environments, where they are obliged or expected to “fend for themselves” from the start. Clients of these lawyers deserve the same level of lawyer competence as do clients of lawyers in more well-supported environments.

180. So long as it is possible for a Day One lawyer to hang out their own shingle, “Day One preparedness” must include the ability to carry out all the fundamental tasks of a lawyer in that situation.

181. With regard to “Professional Skills,” the ten suggested in paragraph 94, as well as the competence profiles and frameworks developed by other jurisdictions, can be grouped into three broad categories:

- *Communication*: This includes understanding the difference between casual and professional communication, the various types of communication (written, oral, body language), the value of brevity and precision, and the central importance of timeliness and reliability in communication, especially with clients. Basic written communication skills, unfortunately, must also be included here.
- *Organization*: Prioritizing, coordinating, and regulating one’s time, tasks, and responsibilities, as well as managing one’s external files, projects, duties, and inquiries, is a key balancing act for a lawyer. Since the volume of these activities

and the intensity of their accompanying pressures will only increase over time, organizational basics are an essential core competence for new lawyers.

- *Relationships*: Starting, maintaining, fulfilling, and ending a relationship with clients is an extraordinarily valuable skill whose fundamentals a new lawyer should possess. But lawyers must also know how to build and maintain empathetic relationships with others — *e.g.*, colleagues, support staff, court and government personnel — and navigate a professional office environment.

182. As the Law Society knows only too well, shortcomings in these three areas of competence bring about most of the practice-related errors, client disappointments, and professional liability claims that lawyers experience. The Law Society should ensure that licensure candidates acquire baseline competence in these categories and prove to the regulator's satisfaction that they possess them.

183. Currently, the Law Society teaches and assesses lawyer skills and professional skills within the PLTC. This seems like an appropriate time to consider the impact of all the foregoing suggested changes on the Professional Legal Training Course.

184. As noted in paragraph 40, the PLTC is asked to accomplish a great deal within a very limited period of time. It must introduce licensure candidates, whose knowledge and experience of the law is often limited to a three-year law school degree, to the substantive and practical application of several different areas of law, legal ethics and professional responsibility, cultural competence, and law practice management, as well as assess candidates in these areas, in the space of ten weeks.

185. This Report has suggested that a licensure candidate should acquire and demonstrate legal knowledge competence before entering the bar admission process, and that the teaching and evaluation of a candidate's understanding of professional responsibility should be expanded and moved to a standalone online program. These changes, if implemented, would have the positive effect of "opening up" a great deal of time and space on the PLTC's schedule to focus on lawyer and professional skills.

186. On the other hand, the PLTC's schedule likely would have to accommodate a larger set of skills to teach and assess. Currently, the PLTC instructs and assesses licensure candidates on four skills assessments (opinion-letter writing, contract drafting, client interviewing and advocating). By way of contrast, paragraph 94 suggests 18 lawyer and professional skills; but that pales in comparison to the SRA's Statement of Solicitor Competence, which lists 91 skills, or the Law Society of New Brunswick's

Competence Profile, which sets out no fewer than 201. Again, recall that these latter two competence frameworks cover the entirety of a lawyer's career, not just the point of licensure, so the comparison is inexact. Nevertheless, these lists should give some sense of the size and scale of the legal and professional skills that define lawyer competence.

187. In all events, the introduction of a competence-based licensing system heralds a moment of reconsideration and perhaps an opportunity for reconfiguration of the PLTC. The Law Society will need to develop a new approach by which licensure candidates can acquire the skills of a lawyer and professional, and demonstrate to the Law Society their competent possession of these skills. This Report suggests two options through which the Law Society might develop this new approach:

- Expand and redesign the PLTC solely as a lawyer and professional skill development program to both train and assess candidates in these skills.
- Partner with an established third-party provider of lawyer and professional skill development to both train and assess candidates in these skills.

A. Redesign and Restructure the PLTC

188. The Law Society might redesign and restructure the PLTC so that it receives the resources and support needed to transform itself into a dynamic and authoritative Lawyer and Professional Skills Program for British Columbia. This would involve relocating all the PLTC's current other duties to new programs and narrowing its focus to lawyer and professional skill development, practice, and evaluation.

189. Obviously, the PLTC has several built-in features that make this option attractive to the Law Society. First and foremost is the PLTC's extensive experience in delivering law practice skill development in British Columbia for more than 35 years. The PLTC employs an array of professional educators and designers with comprehensive knowledge of and facility with the instruction of aspiring lawyers.

190. The PLTC also features a wide-ranging collection of instructional practitioners deeply versed in helping new lawyers learn the ropes of practice. The value of this diverse "faculty" should not be underestimated, considering that few lawyers can realistically be described as natural educators. Many of these practitioners, especially the more experienced ones, have the additional advantage of institutional memory — they have seen both the PLTC and the profile of the typical licensure candidate

evolve over time, and they can bring this perspective to bear both in their courses and in the feedback and advice they provide to course administrators.

191. Closely related to that asset is a third one: the PLTC's strong brand and reputation within the British Columbia legal community. Scores of experienced lawyers have given freely of their talents and billable time to serve as an instructor in or contributor to the PLTC. One reason they do so, certainly, is a commendable sense of professionalism that prompts them to "give back" to younger lawyers what they themselves received as candidates. But another reason is that these lawyers take pride in associating themselves with the PLTC and its well-earned reputation as a highly regarded bar admission program. That value is not easily found or quickly replicated.

192. A potential model to study for restructuring the PLTC to focus on practice and professional skills could be found in New Brunswick's new Bar Admission Program.⁹⁰ New Brunswick's program contains several elements touching on legal knowledge, sustainable practice, and continuing competence self-assessment, but two elements in particular are of present interest:

- Intensive Skills Training, an eight-day program in which candidates participate in several complex training cases and develop client-centred strategies, conduct "client" interviews, negotiations, and advocacy exercises, and conduct financial, work management, technology, and legal document exercises related to the cases. Candidates are actively engaged in activities, discussion, and debrief throughout the program, receiving regular feedback to help them hone their skills.
- A Professional Skills Exam, intended to assess the capabilities and competencies inculcated during the Intensive Skills Training (professionalism, problem-solving, communication, collaboration, and management skills). These competencies are assessed in three live performance simulations (interviewing, negotiation, advocacy), as well as a task-based technology simulation, and a written exam that is mainly performance-based.

193. It is not recommended that British Columbia simply copy-and-paste these aspects of New Brunswick's Bar Admission Program, which was specifically developed for that province's unique legal profession and culture. But if the Law Society wishes to

⁹⁰ https://lawsociety-barreau.nb.ca/uploads/LSNB_BAP_Program_Guide_EN_2021_2022_Rev_02.pdf

transform the PLTC into a lawyer and professional skill development program, it might find some useful guidance here.

B. Partner With a Third-Party Skills Programs

194. It is not just British Columbia and New Brunswick that include practical skill instruction in their bar admissions programs. In many ways, Canada leads the world in this area, nowhere more so than in two programs that develop licensure candidates' lawyer and professional skills through a combination of self-guided individual and directed group learning. These programs also provide candidates with an opportunity to apply these skills in a simulated law firm environment, and to have their competence in these skills evaluated by expert assessors.

- The *Practice Readiness Education Program* (PREP), operated by the Canadian Center for Professional Legal Education, provides law practice competence development and assessment for all licensure candidates in Alberta, Manitoba, Nova Scotia, and Saskatchewan. Licensure candidates in these provinces must complete PREP, along with a period of supervised practice; PREP does not replace the articling requirement in these provinces.
- The *Law Practice Program* (LPP) provides law practice competence development and assessment for some licensure candidates in Ontario. The LPP includes a four-month work placement that fulfills the supervised practice requirement; LPP candidates do not article. More than 1,600 licensure candidates have completed the LPP since its inception in 2014, although that is a relatively small percentage compared to those who chose to article.

195. PREP is organized into four parts.

1. Online "Foundation Modules" combine self-directed study and interactive assessments with multimedia learning to provide a foundation in lawyer skills, practice and self-management, and professional ethics and character.
2. In "Foundation Workshops," candidates work together and with facilitators in interactive sessions that include role-played interviewing, negotiating, and advocacy, as well as simulations and practice management.
3. In the "Virtual Law Firm," candidates work in online teams to manage multiple aspects of legal files in business law, criminal law, family law, and

real estate, interviewing simulated clients and being assessed and mentored by practice managers.

4. In the final “Capstone Assessment,” candidates demonstrate their decision-making skills and competencies in a simulated transaction, using case management and technical tools. A final written reflection on the entire program is also required.⁹¹

196. The PREP Capstone Assessment is a four-day assessment based on and carried out in the simulated law firm environment. It evaluates the primary skills inculcated and practised throughout the simulated firm experience, including:

- client interviewing,
- legal writing,
- legal drafting,
- principle-based negotiating,
- legal researching,
- managing client relationships,
- completing practice management tasks,
- making oral advocacy submissions, and
- responding to ethical issues.

197. Candidates are assessed in person by both lawyers (who play the roles of judges hearing a contested submission or observers listening to a negotiation) and lay people trained to present as clients or witnesses to be interviewed. Candidates are also required to submit written work of various kinds, such as a memo to file, a letter to a client, or a summary to a senior lawyer.

198. In the LPP operated at Metropolitan Toronto University,⁹² candidates are divided into “firms” of four to six members and work through simulated case files virtually, mentored throughout by a practicing lawyer. Candidates develop skills in ethics and professionalism, oral and written communication, legal analysis, legal research, client management, and practice management. In addition to regular weekly virtual meetings with a mentor, the candidates take simulated files from start to finish, including interviewing, drafting, researching, determining the approach,

⁹¹ <https://cpled.ca/students/cpled-prep/>

⁹² Formerly Ryerson University: <https://lpp.ryerson.ca/about/>. An LPP is also offered in French at the University of Ottawa’s French-Language Common-Law Program: <https://commonlaw.uottawa.ca/en/lawpractice>

negotiating, arguing motions and key parts of trials, and conducting business and real estate transactions.⁹³

199. For its assessment process, the LPP relies heavily upon the ongoing feedback and support offered by supervising lawyers and mentors throughout the program to help develop skills and competencies. The focus is on early and frequent interaction to help candidates see where they are doing well and where they require improvement. Assessors are looking for the “total performance” of the candidate. Overall, taking their entire body of work and presence into consideration, does this person appear ready for practice?

200. The fee for enrolment in PREP is \$6,100, approximately 40% of which is subsidized by the provincial law society if the PREP participant goes on to enrol as a lawyer in that province.⁹⁴ There is no separate fee for enrolment in the LPP, as the cost is included in the Law Society of Ontario’s overall licensing fee.⁹⁵

C. Considerations for Decision

201. Both the LPP and PREP offer an established external option by which the lawyer skills and professional skills of licensure candidates in British Columbia could be developed, applied, and evaluated. The advantages of transforming PLTC into a homegrown, full-scale skills development and assessment program are also real. This Report does not recommend either one of these options over the other; nor does it suggest that these are the only options possible.

202. Any decisions in this regard should be made based upon the Competence Framework that the Law Society eventually develops for licensure of British Columbia lawyers. The Framework ought to be the foundation of this and all other aspects of the province’s new lawyer licensing system. In this particular case, the nature and scope of the lawyer and professional skills competencies might give the Law Society some direction when deciding how best to pursue the skills development and assessment of licensure candidates.

⁹³ <https://lpp.ryerson.ca/prospective-candidates/>

⁹⁴ <https://cpled.ca/students/cpled-prep/program-cost-2/>

⁹⁵ <https://lso.ca/becoming-licensed/lawyer-licensing-process/law-practice-program?lang=en-ca>

203. For example, if B.C.'s eventual Competence Framework lines up closely with the CPLED Competence Framework that underpins PREP, or with the overall array of skills delivered by the LPP, it might make more sense to partner with one of these programs, rather than "reinventing the wheel" with a brand-new program that would take a great deal of time and money to create, test, and roll out.

204. However, should B.C.'s Competence Framework carve out a distinct profile unique to this province, then it might make more sense to transform the PLTC or develop a brand-new program customized to this province's new lawyers, rather than piggybacking on other programs designed with a very different competence profile in mind.

205. An additional point that the Law Society might wish to consider in this regard is standardization. Transforming the PLTC into a lawyer and professional skills program solely for British Columbia, while it could deliver real benefits to the provincial bar, might also increase the "patchwork" nature of licensing programs and new lawyer profiles across the country. While such a patchwork would not be so significant as to damage inter-jurisdictional mobility, it is also true that when it comes to the skills of a lawyer and the skills of a professional, there ought to be no real difference among lawyers across Canada.

206. Finally, the issue of cost cannot be disregarded. It would not be difficult for the Law Society to enquire with CPLED or with the Law Society of Ontario to estimate the likely financial aspects of partnering with either PREP or the LPP. Equally, a conversation with the Law Society of New Brunswick or with CPLED administrators might give a helpful indication of the cost of developing and operating a standalone skills program. Cost alone should never be the sole factor in these decisions, of course — the best interests of the province's legal sector and its stakeholders must always be the paramount consideration.

207. In some respects, the Law Society's choices in this regard would resemble the "build vs. buy" decision that many organizations face when evaluating how best to incorporate a necessary new feature or innovation. That decision is never an easy one, but it should always depend primarily on the organization's particular situation. That is an additional reason why the Competence Framework should play a significant role in this determination.

7. Supervised Practice

208. “Supervised Practice” refers to an opportunity for licensure candidates to further develop their competence before admission to the profession by engaging in real-life law practice situations under the supervision of a more experienced lawyer.⁹⁶ The Law Society, along with its counterparts elsewhere in Canada, mandates satisfactory completion of a period of supervised practice as a condition of law licensure.⁹⁷ A pre-admission period of supervised practice is also required in many legal professions worldwide.⁹⁸

209. In British Columbia, all licensure candidates receive supervised practice experience through the nine-month “articling term.” A candidate serves this term as a sort of apprenticed quasi-lawyer, usually in a law firm but occasionally in a court or legal department. The candidate carries out entry-level lawyer tasks and activities under the supervision of a “principal,” an experienced lawyer who takes responsibility for overseeing the candidate’s progress and who issues an approval at the conclusion of the term.

210. It is important to note that supervised practice, in and of itself, is not a licensure competence. It is an opportunity to *apply*, in a real legal workplace, all the competencies that a candidate has acquired through pre-admission education and training. Candidates use the period of supervised practice to apply their knowledge and hone their skills before achieving full licensure.

A. Rationale for the Supervised Practice Requirement

211. Why must aspiring Canadian lawyers “practise the practice of law,” so to speak, before licensure? In historical terms, the supervised practice requirement for law

⁹⁶ The period of supervised practice is almost universally referred to in Canada as “the articling term.” However, that phrase does not well describe the purpose and function of the supervised practice period. Moreover, using that phrase presupposes that an “articling term” is the sole means by which a period of supervised practice should be accomplished. Accordingly, “articling” will be used in this section only to refer to the traditional “law firm apprenticeship” model of supervised practice widely employed across Canada, whereas “period of supervised practice” will be used to refer to the overall concept of this licensing requirement.

⁹⁷ There are two exceptions to this rule, both of them in Ontario — the Integrated Practice Curricula at Bora Laskin Law School in Thunder Bay and Lincoln Alexander Law School in Toronto. Both will be addressed below.

⁹⁸ https://en.wikipedia.org/wiki/Admission_to_practice_law

licensing is something of an artifact. More than a century ago, apprenticeship to an experienced practitioner through an “articling term” was the only practical way in which an aspiring lawyer could learn their craft and acquire sufficient competence to practise law on their own.⁹⁹

212. Since then, however, Canada has seen the advent of formal legal education, the adoption of a law degree as a mandatory credential for licensing, and the development of bar admission courses to add practical training to academic instruction. Over the years, articling has gradually evolved into its current role as a kind of “competence backstop,” a real-world check on the education and training provided in law schools and bar admission programs.

213. This “competence check” is considered necessary for several reasons:

- Candidates need to apply in real situations the theoretical knowledge and practical skills acquired in law school and bar admission programs in order to truly understand how to use this knowledge and these skills effectively.
- Candidates need to spend time immersed in a legal workplace in order to grasp the realities and mechanics of law practice, business operations, and client service.
- Candidates need the guidance and support of a supervising lawyer in order to catch their mistakes, identify their shortcomings, and help continue their development into competent professionals.
- Candidates need the boost to their self-confidence that comes with proving to themselves, during their period of supervised practice, that they really can carry out lawyer tasks successfully.
- Members of the public need candidates to possess “real-world” experience serving actual clients with actual problems in order for them to have confidence in the quality and effectiveness of new lawyers.

⁹⁹ “Law School: The Story of Legal Education in British Columbia,” Professor W. Wesley Pue, University of British Columbia Faculty of Law, 1995 (<http://faculty.allard.ubc.ca/pue/historybook/school.html>)

214.If the overall rationale for requiring candidates to complete a period of supervised practice could be summed up in one sentence, it might be: “They’re not ready yet.” A law degree and a bar admission program are insufficient on their own to produce a truly competent lawyer who can reliably serve clients and run a legal business. A period of supervised practice is therefore necessary in order to “finish off” the lawyer development process.

215.This rationale reveals something interesting and important: The legal profession lacks faith in its own lawyer development process. If regulators felt that law school and bar admission programs produced practice-ready, entry-level lawyers, there would be no need for a period of supervised practice. Just as, if the profession felt that law school taught candidates everything they needed to know about being a lawyer, there would be no need for a bar admission course.

216.The underlying rationale for requiring a term of supervised practice for licensure, then, is that the traditional licensure system is inadequate. Supervised practice is necessary because law school and bar admission do not sufficiently prepare a candidate to practise law, and therefore these two requirements alone do not protect and advance the public interest in legal services.

217.The new lawyer licensing system for British Columbia proposed in this Issues Paper should go some distance towards correcting this problem and ensuring the competence of licensure candidates.

- The creation of a Competence Framework would set standards for the type and level of knowledge, skills, attributes, and experiences that constitute readiness to practise law.
- The development of a system by which candidates would acquire and demonstrate knowledge of the law would ensure candidates know the essentials of Canadian and B.C. law.
- Passage of a standalone professional responsibility and awareness program would show that candidates know their ethical obligations and understand the evolving nature of professional duties and systemic challenges.
- Completion of a lawyer and professional skills program would certify that candidates have learned the skills of law and professional practice, applied them to entry-level client situations, and demonstrated them to evaluators.

218. It is conceivable that in future, a strong, valid, and defensible competence-based lawyer licensing system could remedy the shortcomings of the traditional licensure system, thereby making the period of supervised practice a helpful but ultimately unnecessary element of bar admission.

219. Until that time, however, the mandatory period of supervised practice remains an important if not invaluable means to ensure the competence of lawyers and to protect and advance the public interest in legal services. Even if this Report's recommendations are accepted, the new licensing system it describes will take several years time to develop, implement, adjust and ultimately perfect. Supervised practice and its "competence backstop" function will be even more important during that time.

B. Challenges to Supervised Practice

220. While the period of supervised practice is an essential element of lawyer licensing in Canada, it is also clearly in trouble. Criticizing articling for its chronic shortage of positions, difficult work environments, and inadequate training and supervision is one of the legal profession's most durable pastimes. The Law Society has recently been grappling with questions related to minimum working and compensation standards for articling candidates, and other regulators face many of the same issues.

221. Other serious challenges for articling today include:

- Increasingly, there are fewer articling positions available than there are candidates seeking such positions.¹⁰⁰ Those unlucky candidates who miss out either must take unpaid or unacceptably low-paid articling positions, or must postpone or give up on their goal to become a lawyer, delaying or abandoning their investment after years of effort and tens of thousands of dollars.

¹⁰⁰ "Although the available data suggests that B.C. is not currently experiencing an articling shortage akin to that in Ontario, the increasing number of Canadian law school graduates and internationally trained applicants have fuelled a growing demand for positions. Anecdotally, there are reports of a highly competitive articling market in which NCA students, in particular, are facing challenges finding placements. Looking forward, a variety of factors have the potential to further reduce the number of available positions...." *Exploring the Development of Alternatives to Articling: Recommendations*, Report of the Law Society of B.C. Lawyer Development Task Force, September 2020, pp. 6-7: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/2020LawyerDevelopmentArticling.pdf>

- Anywhere from a fifth to a third of all articling candidates, when surveyed by law societies about their experiences, report incidents of harassment, abuse, poor supervision, sexism, or racism in their workplaces.¹⁰¹ These shocking findings reflect the absence of any real system of quality control by law societies over the legal workplaces in which candidates find themselves.
- Regulators' hands-off approach to the articling term is also reflected in the absence of robust standards for the lawyers who act as articling principals, including few requirements for acting as a principal, no guidelines for different types and consistent methods of articling supervision, and modest standards for affirming a candidate's successful completion of the term.

222. The unspoken but widely acknowledged reality is that most articling terms are not closely supervised internships that further develop the practice competencies of aspiring new lawyers. Instead, they are lengthy and modestly paid job auditions by licensure candidates who hope (or in some cases, desperately need) to be hired back as associates at the conclusion of their term.

223. In addition to these widespread and often chronic shortcomings of the articling term in practice, there are also disquieting long-term trends in this area:

- Accelerating innovation in legal technology and business processes is reducing the amount of basic "entry-level" work that law firms have long assigned to articling candidates, creating a potential vacuum of assignments that a threshold-competent lawyer can carry out.
- Increasingly competitive markets for legal services are driving law firms to spend less money to produce client work; combined with the trend towards setting minimum salaries and working conditions for articling candidates, fewer law firms can be expected to offer articling positions in future.

¹⁰¹ A 2018 survey by the Law Society of Ontario found that 21 percent of respondents who had completed articling indicated they had faced comments or conduct relating to personal characteristics that were unwelcome, while 17 percent felt that they had received different or unequal treatment relating to personal characteristics: https://lsdialogue.ca/wp-content/uploads/2018/05/lawyer_licensing_consultation_paper_bookmarks-weblinks-toc.pdf. In addition, a 2019 joint survey by the law societies of Alberta, Manitoba, and Saskatchewan found that 32 percent of respondents experienced discrimination or harassment during recruitment and/or articling, as well as an inconsistent experience in the competencies learned during articling and in how prepared students felt for entry-level practice: <https://www.lawsociety.ab.ca/2019-articling-survey-results/>

- COVID-related trends towards work-from-home and hybrid offices appear set to continue after the pandemic ends, suggesting that opportunities for experienced lawyers to directly supervise the development of articling candidates will become scarcer in the future law office.¹⁰²

224. Based on all the foregoing, it must be concluded that “articling for nine months in a legal workplace” is not sustainable as the Law Society’s sole method by which licensure candidates complete a period of supervised practice before admission. The Law Society must address and remedy as many of the problems with the articling system as it can. But the Law Society must also develop new pathways by which licensure candidates can obtain supervised practice experience. And to do both of these things, it must identify the essential elements of an acceptable period of supervised practice.

225. Therefore, this report suggests that the Law Society make the following changes to the supervised practice system:

- Identify the essential elements of an acceptable supervised practice period;
- Institute reforms to the current articling experience; and
- Authorize new opportunities for licensure candidates to complete a period of supervised practice.

C. Changes to the Supervised Practice Requirement

1. Supervised Practice Criteria

226. The Law Society’s guidance to articling principals and licensure candidates currently consists of a two-page Articling Agreement and a two-page Articling Skills and Practice Checklist, each of which must be read and signed by both parties.

227. The Articling Agreement describes in broad terms the obligations of both parties during the articling term and sets out three requirements for evaluating the articling experience (midterm report, principal’s evaluation, and final documentation). The Articling Skills and Practice Checklist states that “during the Articling Term, [the candidate] shall obtain practical experience and training in” a list of ethics issues, practice management issues, lawyering skills, and practice areas.

¹⁰² “The Five-Day Workweek Is Dying,” Derek Thompson, *The Atlantic*, Feb. 23, 2022: <https://www.theatlantic.com/ideas/archive/2022/02/work-from-home-revolution/622880/>

228. This approach provides little guidance to the parties and gives the articling principal enormous leeway in the structure and execution of the articling term. The licensure candidate does not know, and cannot be expected to know, the standards of performance they must attain in order for the principal to “tick the box” next to each item on the Checklist. The candidate has little knowledge about and less agency in the successful completion of their supervised practice period.
229. It is also apparent that in order to serve as an articling principal, a lawyer need demonstrate only a willingness to do so and an absence of past misconduct. They need not possess or acquire any particular skill in managing, mentoring, supervising, or giving feedback to a legal licensure candidate. There are also no standards regarding the safety, support systems, ethical infrastructure, or general professionalism of the working environment. In short, there are hardly any criteria for determining the minimum acceptability of an articling term.
230. Addressing this problem is not simply a matter of “fixing articling,” which is a nebulous and questionable objective in any event. Instead, the Law Society must develop new methods of supervised practice beyond articling, if it wishes to sustain this requirement as part of the licensing process.
231. It is therefore necessary that baseline criteria be established that apply to *all* types of supervised practice settings, whether “articling in a law firm” or otherwise. These baseline criteria, to be effective, must ensure that the purpose of a period of supervised practice is fulfilled: giving licensure candidates the opportunity to apply to real legal service situations the competencies they have acquired throughout the licensing process.
232. The criteria must be as applicable to a law firm articling position as to myriad other supervised practice opportunities that can be envisioned today or that might present themselves in future. They must meet the twin goals of the licensing process: ensuring that newly licensed lawyers are competent practitioners, and that bar admission requirements do not constitute an unnecessary barrier to professional entry.
233. This Report suggests that the Law Society designate three criteria that any period of supervised practice — “articling term” or otherwise — must meet in order to receive the Law Society’s approval.

1. *Legal Services Provision.* The period of supervised practice must take place in a working environment that includes at least one lawyer and that provides legal services to individual, commercial, or institutional clients.

2. *Supervisor Standards.* The licensure candidate must be overseen by a lawyer with at least five years' experience who meets the Law Society's qualification standards for fulfilling the role of supervising practitioner, which are set out in more detail in the next section.

3. *Competence Checklist.* The licensure candidate must, in the judgment of the practice supervisor, have demonstrated the successful application of a required minimum number of the competencies in the Competence Framework, as described and tracked through a plan jointly developed by the candidate and supervisor.

234. The first criterion is meant to ensure that the licensure candidate gains their supervised practice experience in an environment in which legal services are delivered to real individuals or entities. The goal of supervised practice is to ensure that candidates obtain experience serving actual clients and solving their problems. A "legal environment" is not enough. Real people or real entities must receive real legal help.

235. As to the second criterion, five years seems an acceptable minimum amount of experience for a lawyer to provide supervision and feedback to a licensure candidate to a standard that meets the Law Society's expectations. However, the Law Society ought to consider approving a less experienced lawyer for this role if the lawyer can clearly demonstrate their fitness to do so.

236. As to the third criterion, the entire point of the period of supervised practice is to allow the candidate to practice the application of the competencies they have acquired throughout the lawyer licensing process. It stands to reason that the Competence Framework should be the standard against which the candidate's progress in this regard should be measured, and that the candidate should have a central role in designing their supervised practice plan.¹⁰³ The appropriate "minimum number" of demonstrated competencies is a question for Law Society personnel to determine.

¹⁰³ For further reading on this topic, see: "The CASE for standards of supervised practice in lawyer licensing," *Law21*, May 19, 2021: <https://www.law21.ca/2021/05/the-case-for-standards-of-supervised-practice-in-lawyer-licensing/>

2. *A Reformed Articling System*

237.If we were to apply the first of the foregoing criteria to the articling system, little would change. Virtually every articling position in British Columbia already takes place in a legal services environment (either a law firm, a legal clinic, or a law department) under the supervision of a qualified lawyer. Non-profit entities such as law school clinics or community legal centres would also qualify here. Even a “virtual” legal services provider could meet this requirement.

238.One change would be necessary, however: A court would no longer be considered an acceptable location for supervised practice. It has always been at least questionable to consider a judicial clerkship an opportunity for a licensure candidate to practise the competencies of a lawyer. Given the challenges traditionally associated with finding articling positions, it is understandable why courts have been allowed to host articling terms. But if and as the various changes set out in this section are implemented, this exception should be closed.

239.Applying the other two criteria to the present system would have broader ramifications and would necessitate two significant reforms to the articling process.

(a) Create standards for practice supervisors

240.Acting as a practice supervisor for licensure candidates is one of the Canadian legal profession’s longest-standing traditions, and one of its most honourable. It is a significant commitment for a lawyer to take on the responsibility of overseeing the first professional steps of an aspiring lawyer, in terms of both time and effort expended as well as billable opportunities forgone.

241.But a positive outcome from a supervised practice relationship has often been more of a happy accident than the result of structured guidance and advance planning by both parties or by the Law Society. The traditional nature of the practice supervisor’s role has perhaps discouraged regulators from setting many formal standards for the role or approaching it in a more systematic manner.

242.Accordingly, many practice supervisors struggle with their role to a greater or lesser extent, unsure of their responsibilities or unclear about the desired regulatory outcomes. And some supervisors, as the statistics on discrimination and harassment in articling aptly demonstrate, are simply unfit for the job.

243. By assigning the practice supervisor such a critical role in the lawyer licensing process, the Law Society is effectively outsourcing some of its regulatory oversight responsibility to the individual supervisor. It is therefore incumbent on the Law Society to also provide these supervisors with the necessary support and resources to carry out their “quasi-regulatory” function and successfully navigate the challenges of the position.

244. Accordingly, the Law Society should set qualification standards that all lawyers who wish to act as practice supervisors must satisfy.¹⁰⁴ In addition to a minimum five years in practice and a clean disciplinary record, the qualification standards should include the completion of an online training program that instructs supervisors on:

- how to oversee, mentor, and develop a lawyer licensure candidate;¹⁰⁵
- how to help ensure the personal well-being of a candidate; and
- how to identify when a candidate has successfully demonstrated the application of a required competency.

245. The Law Society might wish to consider instituting other criteria, such as assessing the legal workplace itself for minimum standards of staff support, ethical infrastructure, and a commitment to diversity. As is always the case in such situations, a balance must be struck between prescribing justified workplace standards for new lawyers and assuring a reasonable supply of workplaces willing and able to meet such standards.

246. It is acknowledged that even a minimally onerous application and training program for practice supervisors would be a heavier burden than what is now required of articling principals, and that these additional demands might well discourage some lawyers from taking on the principal role and thereby reducing the pool of available articling positions.

¹⁰⁴ The Law Society might consider whether a lawyer who has acted as a practice supervisor in the past could apply for dispensation from completing the training course, although that lawyer ought to provide other supporting evidence, such as a testimonial from a previous supervisee.

¹⁰⁵ In this regard, the Law Society is encouraged to draw upon the findings of Professor Michael McNamara in *Supervision in the Legal Profession* (2020: Palgrave Macmillan, Singapore), which provides detailed guidance on professional supervision of new lawyers: <https://www.amazon.ca/dp/B087ZXR2YQ/ref=dp-kindle-redirect?encoding=UTF8&btkr=1>

247. But it is also true that the Law Society must publicly demonstrate its commitment to ensuring licensure candidates can competently apply their knowledge and skills in a safe and well-supervised environment. Practice supervisors are effectively acting as “agents” of the Law Society; they should be assessed accordingly.

248. Equally, the Law Society should take steps to increase the amount and depth of support it provides to practice supervisors. In addition to completing the training program, supervisors should be given resources and materials to consult when they are unsure how to proceed in a given situation, as well as contact information for a dedicated “supervision professional” at the Law Society who can answer questions or provide guidance if and as needed.

(b) Revisit the duration of supervised practice

249. The duration of the supervised practice requirement differs widely across Canada, from 6 months in Québec to 9 months in British Columbia to 12 months in Prince Edward Island, with other jurisdictions somewhere along this spectrum. These durations have also been affected by the pandemic: B.C. is one of several jurisdictions that have reduced the length of the articling term by a month or two over the last couple of years. There has been no suggestion that the articling experience has been diminished by the shortened duration.¹⁰⁶

250. The two shortest periods of supervised practice in Canada can be found in Québec and Ontario. The Barreau du Québec’s École du Barreau trains candidates in a wide range of practice skills, giving the Barreau enough confidence in their competence to set the supervised practice term in Québec at six months.¹⁰⁷ Ontario’s LPP provides its candidates with a simulated law firm experience that is sufficiently robust to allow the Law Society of Ontario to set LPP candidates’ subsequent period of supervised practice at just four months (versus ten months for articling students, or eight months during the pandemic).

¹⁰⁶ In fact, in its October 28, 2021, Report to Convocation, the Professional Development and Competence Committee of the Law Society of Ontario recommended that the eight-month COVID-shortened articling term of 2020-21 be renewed for the 2021-22 articling term. “Current data collected regarding candidate competencies and experiences does not indicate any significant shortcomings in candidates’ learnings or competencies when compared to previous cycles.” <https://lawsocietyontario.azureedge.net/media/lso/media/about/convocation/2021/convocation-october28-2021-consent-agenda-motion.pdf>, p. 2. LSO Convocation accepted the Committee’s recommendation.

¹⁰⁷ <http://www.ecoledubarreau.qc.ca/fr/formation/>

251. In both these cases, the duration of supervised practice is directly affected by the nature and quality of the practical skills training that preceded it. This might suggest that the proper duration of the supervised practice period should be determined not by reference to an arbitrary number of months, but on whether and when the candidate has developed entry-level competence.
252. These examples reinforce the value of the third suggested criterion, that the licensure candidate must demonstrate to their practice supervisor the successful application of a minimum number of the competencies set out in the Competence Framework. This would be accomplished through a “Supervised Practice Plan,” jointly developed and agreed by the candidate and supervisor, which would combine and replace the current Articling Agreement and Articling Skills and Practice Checklist.
253. The Supervised Practice Plan would set forth the complete list of competencies in the Competence Framework and would lay out a pathway by which the candidate could engage in activities that demonstrate a sufficient number of those competencies. The Plan would also describe the standards or measures that the supervisor would use to assess whether the candidate has successfully demonstrated the application of a given competency. The Law Society would prepare a standard Supervised Practice Plan template, and would allow each candidate and supervisor to jointly customize it for their particular situation. The supervisor would then file a copy of the customized Plan with the regulator.
254. The goal of this process would be to give the candidate and supervisor clear guidance for understanding what purpose the supervised practice period serves and how the candidate can practise the competencies they have acquired to this point in their development. Equally importantly, this process would give the practice supervisor more flexibility to assess when the candidate has achieved “readiness” for entry-level practice, and for the candidate to sign off on this assessment.
255. It is neither necessary nor realistic to expect a candidate to practise the application of every single competency in the Framework during their supervised practice period. Nor would it be wise to set a specific “minimum number” of competencies in this Report, before the contents of the Competence Framework have been decided. The ultimate test of licensure is whether the candidate is, taking all considerations into account, ready to be a lawyer. That point will be reached sooner in some supervised practice experiences and later in others; it is up to the candidate and supervisor to meet, assess, and agree on the candidate’s progress towards this point.

256. To return to the issue of duration, some parameters are advisable here. If no minimum amount of time is set, the candidate and supervisor could prematurely agree to an early approval in order for the candidate to be licensed and start working and billing as a lawyer. If no maximum amount is set, the supervisor could keep the candidate in perpetual indentured servanthood, unfairly delaying their admission to the bar.

257. Accordingly, the Law Society should set minimum and maximum periods of time for a supervised practice period in a legal services environment.¹⁰⁸ This report suggests using the LPP's four months as a minimum and the standard (pre-pandemic) B.C. articling period of ten months as a maximum.

3. New Methods of Supervised Practice

258. A period of supervised practice should remain as a requirement for lawyer licensure in British Columbia. But "articling in a law firm" cannot and should not be the sole means by which candidates obtain this experience. Working in a law firm under the supervision of an experienced lawyer remains a perfectly valid means of obtaining the experience required for licensure. But this route is not available for everyone who seeks it, and it is not the best route for everyone who wishes to become a lawyer.

259. Fortunately, new methods by which licensure candidates can gain the required degree of supervised practice experience have emerged over the past several years. The Law Society should examine and approve the use of one or more of the following methods as fulfilling the supervised practice requirement for licensure.

(a) Law school clinics and externships

260. Virtually all common-law schools in Canada (including all three in British Columbia) offer a range of courses, clinics, and externships that allow students to develop and practise lawyer and professional skills in real or simulated environments. Some of these clinics and externships render course credit to the students who take them, while others are entirely voluntary. All such clinics provide the opportunity for law students to develop and apply lawyering skills to actual clients in real-world situations under supervision.

¹⁰⁸ A different approach would be applied to a period of supervised practice carried out in law school clinics and secondments, where "months of work" is not always a viable measure.

261. Law school clinical courses, clinics, and externships deliver many of the same benefits to students that articling provides to licensure candidates: the opportunity to further develop practical skills and apply legal knowledge and professional responsibility rules, while providing legal services to real clients under the supervision of an experienced lawyer. They also deliver the opportunity to provide legal help to individuals who cannot afford most lawyers' fees and otherwise would be unable to access the justice system.
262. Therefore, the Law Society should certify completion of a threshold amount of clinical and externship experience at accredited Canadian common-law schools as constituting appropriate supervised practice experience to satisfy the requirement for licensing.
263. How much clinical and externship experience in law school should constitute a qualifying amount for licensing purposes? The precise degree should be determined by the Law Society in consultation with clinic and externship directors and legal professional development experts. A useful source of guidance in this regard could be proposed changes to lawyer licensing in the state of Oregon.
264. Currently, no American state requires a licensing candidate to complete a period of supervised practice in order to obtain a law license; a candidate need only graduate from law school and pass a bar exam. However, owing to growing dissatisfaction in Oregon (and other states) regarding the fairness and efficacy of the bar exam as a licensing tool, alternative pathways to licensure are under active consideration.
265. In June 2021, the Oregon State Board of Bar Examiners' Alternatives to the Exam Task Force published a report¹⁰⁹ calling for the authorization of two new pathways by which a candidate could obtain a law license in that state without writing a bar exam. One of those methods, interestingly, requires a candidate to complete between 1,000 and 1,500 hours (or roughly six months) of supervised legal work for an Oregon law firm — the report refers to it as the "Canadian articling model."
266. The other method, more germane to the present discussion, requires a candidate to complete, on top of 20-24 credits of foundational law school coursework (in areas such as evidence, criminal procedure, and personal income tax), 15 credits of clinical and externship work, along with a "Capstone" project to be assessed by the Board of Bar Examiners. The 15 credits of clinical and externship work must include "successful completion of no fewer than 9 credits of closely supervised clinical work

¹⁰⁹ <https://taskforces.osbar.org/files/Bar-Exam-Alternatives-TFReport.pdf>

or simulation coursework, and the successful completion of up to 6 credits of externship work.”

267. In January 2022, the Oregon Task Force Report received initial “approval in concept” from the State Supreme Court, which directed the establishment of a committee that will provide more details for the development and implementation of these new pathways to licensure.¹¹⁰

268. Oregon is not British Columbia, and the American legal profession is not the Canadian legal profession, so the parameters of the Oregon proposal should not simply be replicated in this jurisdiction. But the contents and recommendations of Oregon’s Alternatives to the Exam Task Force Report are offered as a useful guide for the Law Society if and as it considers this possibility.

(b) Integrated practice curricula

269. Another potential law school-based option by which licensure candidates could obtain required supervised practice experience involves what is known as an “Integrated Practice Curriculum” (IPC). This approach is currently employed by two law schools in Ontario: Bora Laskin Law School at Lakehead University in Thunder Bay¹¹¹ and Lincoln Alexander Law School at Metropolitan Toronto University.¹¹²

270. The Integrated Practice Curricula at these two schools incorporate “supervised practice” throughout the law school experience, in regular classes and in a third-year full-semester work term. The Law Society of Ontario considers these programs to constitute qualifying supervised practice experience for licensure, such that their graduates need not complete an articling term.

271. At Bora Laskin Law School, the IPC converts the standard 90-96 credit hours of an Ontario law degree into a 108-hour program that includes practical skill-building and the application of legal principles to potential client situations. In each course, law professors work with local practitioners to create hands-on, realistic learning opportunities for students. In the third year, an unpaid four-month work placement

¹¹⁰ “Oregon moves closer to a bar exam alternative,” Karen Sloan, Reuters, Jan. 22, 2022: <https://www.reuters.com/legal/litigation/oregon-moves-closer-bar-exam-alternative-2022-01-12/>

¹¹¹ <https://www.lakeheadu.ca/programs/departments/law/curriculum/ipc>

¹¹² <https://www.ryerson.ca/law/program/integrated-practice-curriculum-ipc/>

with a local legal workplace gives students the opportunity to apply their skills to actual client problems. The law school describes its program as one in which “the theory of the law is integrated into the practice of law.”

272. At Lincoln Alexander Law School, students receive hands-on mentorship throughout their IPC degree and work with technological innovations that are redefining legal practice. The first year is a co-teaching model where faculty and practitioners combine theory with real-world experience and bring an applied-skills approach into the classroom. In the second year, IPC practicums in each semester include lecture-based learning coupled with hands-on mentorship. In third year, similarly to Bora Laskin, one semester is devoted to a 15-week professional placement, while coursework in the other semester allows students to focus on key interest areas.

273. The Law Society, of course, cannot create an Integrated Practice Curriculum itself. An individual law school would have to put forth the very considerable effort and resources necessary to develop such a program. This would be a great challenge for an existing law school: both Bora Laskin and Lincoln Alexander Law Schools instituted their IPCs when they were initially launched.

274. However, there is nothing to prevent the Law Society from entering into informal dialogue with any of B.C.’s three law schools to discuss how an IPC might help prepare candidates for law licensure in British Columbia. There is also the potential for the development of a “modified IPC” that fuses some elements from the “clinic and externship” model previously suggested with a potential revision or renewal of certain foundational law school courses.

(c) A teaching law firm

275. A “teaching law firm” takes its name from teaching hospitals, where trainee medical personnel practise medicine on real patients under the eye of experienced doctors and nurses, receiving feedback on their performance and guidance on how to improve. In a similar fashion, a teaching law firm would place licensure candidates who have completed the other stages of bar admission into a Law Society-supported law firm to serve real clients under the supervision of experienced working practitioners.

276. Licensure candidates would learn first-hand the realities of legal service: applying legal knowledge and professional responsibility principles, solving client problems, organizing and managing files, and communicating and relating with clients,

including those from different cultures and backgrounds. The applicant's practice supervisor would debrief candidates on their performance, providing support and answering questions to accelerate the candidate's development.

277. In addition, by establishing the firm as a non-profit operation geared towards serving low-income clients or those from marginalized communities, the Law Society could help to alleviate the access-to-justice problem in local communities by making legal services available at low cost or no cost. It could also expose aspiring lawyers to the challenges faced by marginalized client communities that many of them might otherwise never encounter.

278. Obviously, the costs and challenges of this option would be significant. The most successful example of a teaching law firm today is the award-winning Legal Advice Center (LAC) located at Trent Nottingham University School of Law in Great Britain, now in its sixth year.¹¹³ The LAC took several years to develop and requires significant levels of funding from the university and private donors to keep its doors open.

279. In addition, the LAC is operated and supported by a university and is located in a single community. There is no precedent for a teaching law firm that is operated by a legal regulator for the purpose of training future lawyers, and that if created in B.C., might have to operate at least in Vancouver, Victoria, and Kamloops, with attendant extra costs in office space, equipment, maintenance, and salaries for each location.¹¹⁴

280. If the Law Society wishes to pursue the establishment of a teaching law firm, it should be aware that such a firm would not be independently profitable and would require extensive and ongoing funding to maintain. This option might aptly be described as a "moon shot" — with all the risks and rewards that phrase suggests.

¹¹³ "Legal Advice Centre: Our teaching law firm," Nottingham Trent University, <https://www.ntu.ac.uk/c/legal-advice-centre>; "First 'teaching law firm' celebrates benefits to students and clients," Neil Rose, *Legal Futures*, Mar. 14, 2019: <https://www.legalfutures.co.uk/latest-news/first-teaching-law-firm-celebrates-benefits-to-students-and-clients>

¹¹⁴ The Law Society might also wish to consider, in this regard, the Everyone Legal Clinic, a public interest law incubator launching this month that plans to hire a diverse first group of 25 articling students to offer a full range of free and affordable legal services to all British Columbians: <https://www.accessprobono.ca/program/everyone-legal-clinic>.

(d) A customized period of supervised practice

281. Finally, a licensure candidate theoretically could design their own supervised practice experience, so long as it meets all of the Law Society's criteria and standards. For example, a candidate might volunteer with an online legal service that has been accepted into the Law Society's Innovation Sandbox, or with a community organization that helps homeless urban residents find basic social services, including legal help.

282. In such a situation, a candidate could prepare and submit to the Law Society a proposal that sets out the parameters of the work they would be doing, the nature of their supervision, the experiences they expect to encounter, and so forth. If the proposal meets the three criteria set out earlier in this section, then the Law Society could approve the proposal, with any additional conditions for oversight that it deems appropriate.

8. Conclusion

283. This Report has recommended what amounts to a significant restructuring of the lawyer licensing system in British Columbia. As the author of the Paper, I recognize the immensity of much of what is proposed here. At the same time, these recommendations are the natural result and logical outcome of switching the lawyer licensing system from credentials-based to competence-based. If the Law Society is prepared to undertake that switch — and I believe that is the correct course for the regulator to pursue — then the ensuing disruption would be considerable.

284. But making that switch would also, I believe, address several fundamental shortcomings and inconsistencies in the current process by which the legal profession develops and authorizes new lawyers. And it would usher in a new and better era in lawyer development in B.C., giving the Law Society a rational, valid, and defensible means by which new lawyers are admitted to the legal profession.

285. A question commonly posed to companies and organizations that are re-evaluating their traditional practices is: “If we weren’t already doing it this way, is this the way we would start doing it?” If no lawyer licensure process previously existed in British Columbia — if we were starting today, for the first time, to train people to become lawyers — would we require that candidates first complete three full years of expensive education that is only tangentially related to the competence to practise law? Would we then try to re-educate these candidates by covering in ten weeks what the education failed to adequately cover in 156? Would we then require them to spend nearly a year working as apprentices in a legal workplace under often-questionable conditions?

286. Or would we go back to first principles and ask: “What is the profile of a competent lawyer on Day One of their career? How do adults acquire and apply professional knowledge, skills, and characteristics? What does the public need to know about a person before agreeing that that person should become a lawyer?” These are the questions that should be asked and answered when designing a new and better system for the formation of lawyers.

287. This Report has aimed to ask and answer those questions, and has arrived at these recommendations. It is hereby offered to the Law Society for its consideration, its discussion, and if it thinks appropriate, its approval and implementation.

Jordan Furlong
May 10, 2022

Regulatory Impact Assessment

The Law Society
of British Columbia



Title of Report:	Competence Based System for Lawyer Licensing
Committee:	Lawyer Development Task Force
<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>Comments: The public will benefit through ensuring that the competencies that must be possessed by a successful licensure candidate are clearly defined at the outset of the licensing process and that candidates are better equipped to achieve these standards. A Competence Framework will also help the public better identify the core skills expected of an entry-level lawyer.</p>	
A.1.3 Does the recommendation have any other regulatory impacts that will affect the public?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<p>Comments:</p>

A.2 Reconciliation with Indigenous Peoples		
A.2.1 Does the recommendation extend to addressing reconciliation with Indigenous Peoples?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Comments: It is expected that a Competence Framework would include ensuring new lawyers possess fundamental knowledge relating to reconciliation with Indigenous peoples.
A.3 Equity, Diversity and Inclusion		
A.3.1 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: The recommendation represents a commitment to making access to the legal profession transparent, equitable, and consistent.
A.4 Transparency and Disclosure		
A.4.1 Does the recommendation impact current levels of transparency and disclosure?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Comments: Improved identification and assessment of entry-level competence provides a more reliable, transparent, and accurate gauge of what a candidate is required to acquire and demonstrate to become, and the public can expect from, an entry-level lawyer.

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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Comments: Improved identification and assessment of entry-level competence allows licensees to know the precise standards to which the regulator is holding those seeking admission to the profession.
B.2 Public Relations		
B.2.1 Does the recommendation impact the public perception of the legal profession generally?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Comments: Public perception and confidence in the legal profession begins with public understanding of the minimum competence for entry-level lawyers.
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	Comments: The recommendation will make it clear to the public what constitutes a competent lawyer at the point of licensure and demonstrates a commitment by the Law Society to ensure that entry-level lawyers are equipped to provide effective, competent legal services to the public.
B.3 Government Relations		
B.3.1 Does the recommendation impact the government perception of the legal profession?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Comments: The recommendation will improve confidence in the legal profession's efforts to ensure competency and quality in the delivery of legal services.
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	Comments: Adoption of a competence-based approach to licensure demonstrates that the Law Society is fulfilling its regulatory purposes by

		clearly identifying the standards of competency required.
B.4 Privacy Impact Assessment		
B.4.1 Does the recommendation include the collection, use or disclosure of personal information?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:
B.4.2 Was a Privacy Risk Assessment completed?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Comments:

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: Section 3(c) of the <i>Legal Profession Act</i> grants the authority to establish standards and programs for the education, professional responsibility and competence of lawyers and applications for call and admission.
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: It is not expected that the recommendation to develop a Competence Framework would significantly alter the current scope of work, as qualified experts will be retained. Once developed, it is anticipated that there would be additional scope of work required to use the Framework.
C.3 Costs		
C.3.1 Does the recommendation increase operational costs?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Comments: A Request For Proposal will be used to request bids from qualified experts to oversee the development of the Competence Framework.
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	Comments: Staff will be involved in providing direction to the retained experts noted in C.3.1.