

Agenda

Law Society
of British Columbia

Benchers

Date: Saturday, June 3, 2023

Time: **8:00 am – Breakfast**
9:00 am – Call to Order

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

Location: Hybrid: Harmony Ballroom A at the Four Seasons Resort in Whistler & Zoom

Recording: *Benchers, staff and guests should be aware that the audio and video of the public portion of this Benchers meeting will be recorded 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

CONSENT AGENDA:

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

1	Minutes of April 28, 2023 meeting (regular session)
2	Minutes of April 28, 2023 meeting (<i>in camera</i> session)
3	2023 KC Appointments Advisory Committee

REPORTS

4	President's Report <ul style="list-style-type: none"> • Results of Election for Benchers' Nominee for 2024 Second Vice-President • Results of Executive Committee Election 	Christopher A. McPherson, KC
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Agenda

5	CEO's Report	Don Avison, KC
6	Remarks	The Honourable Niki Sharma, KC
DISCUSSION/DECISION		
7	Proactive Practice Assessments Pilot Project	Natasha Dookie
8	Federation of Law Societies of Canada and Law Societies of Alberta and Saskatchewan Roundtable Discussion	Jill Perry, KC Jonathan Herman Bill Hendsbee, KC Elizabeth Osler, KC Andrea Argue, KC Tim Brown, KC
FOR INFORMATION		
9	External Appointments: Continuing Legal Education Society of BC	
IN CAMERA		
10	Other Business	

Minutes

Benchers

Date: Friday, April 28, 2023

Present:	Christopher A. McPherson, KC, President Jeevyn Dhaliwal, KC, 1 st Vice-President Brook Greenberg, KC, 2 nd Vice-President Paul Barnett Kim Carter Tanya Chamberlain Jennifer Chow, KC Cheryl S. D'Sa Lisa Dumbrell Brian Dybwad Sasha Hobbs Lindsay R. LeBlanc	Geoffrey McDonald Steven McKoen, KC Paul Pearson Georges Rivard Michèle Ross Gurminder Sandhu Thomas L. Spraggs Barbara Stanley, KC Michael Welsh, KC Kevin B. Westell Sarah Westwood Guangbin Yan
Unable to Attend:	Tim Delaney Katrina Harry Dr. Jan Lindsay	Kelly H. Russ Natasha Tony Gaynor C. Yeung
Staff:	Don Avison, KC Gurprit Bains Avalon Bourne Barbara Buchanan, KC Jennifer Chan Natasha Dookie Su Forbes, KC Kerryn Holt Jeffrey Hoskins, KC Aara Johnson Julie Lee Michael Lucas, KC Alison Luke	Claire Marchant Fiona McFarlane Tara McPhail Jeanette McPhee Cary Ann Moore Rose Morgan Doug Munro Lesley Small Arrie Sturdivant Madison Taylor Bill Thiessen Adam Whitcombe, KC

Guests:	Dom Bautista	Executive Director, Courts Center & Executive Director, Amici Curiae Friendship Society
	Ian Burns	Digital Reporter, The Lawyer's Daily
	Christina Cook	Vice-Chair, Aboriginal Lawyers Forum
	Dr. Cristie Ford	Professor, Peter A. Allard School of Law
	Brittany Goud	Indigenous Engagement in Regulatory Matters Task Force Member
	Paul Hargreaves	CFO, Courthouse Libraries BC
	Andrea Hilland, KC	Indigenous Engagement in Regulatory Matters Task Force: Final Report main writer
	Derek LaCroix, KC	Executive Director, Lawyers Assistance Program of BC
	Jamie Maclaren, KC	Executive Director, Access Pro Bono Society of BC
	Mark Meredith	Treasurer and Board Member, Mediate BC
	Shawn Mitchell	CEO, Trial Lawyers Association of BC
	Scott Morishita	First Vice President, Canadian Bar Association, BC Branch
	Dr. Val Napoleon	Interim Dean of Law, University of Victoria
	Josh Paterson	Executive Director, Law Foundation of BC
	Ngai Pindell	Dean of Law, Peter A. Allard School of Law
	Rob Seto	Director of Programs, The Continuing Legal Education Society of BC
	Kerry Simmons, KC	Executive Director, Canadian Bar Association, BC Branch
	Megan Vis-Dunbar	Member, Law Society of BC / Staff Lawyer at BC Law Institute
	Lana Walker	Assistant Dean of Law, Thompson Rivers University & Continuing Legal Education Society of BC Board Director
	Terri-Lynn Williams-Davidson, KC	Co-Chair, Indigenous Engagement in Regulatory Matters Task Force

CONSENT AGENDA

1. Minutes of March 10, 2023, meeting (regular session)

The minutes of the meeting held on March 10, 2023 were approved unanimously and by consent as circulated.

2. Minutes of March 10, 2023, meeting (*in camera* session)

The minutes of the *in camera* meeting held on March 10, 2023 were approved unanimously and by consent as circulated.

3. Rule 4-47: Amending Public Notice of Suspension or Disbarment

The following resolution was passed unanimously and by consent:

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

1. Rule 4-47 (1) and (2) is rescinded and the following is substituted:

Public notice of suspension or disbarment

- 4-47** (1) When a person is suspended under this part or Part 5 [*Tribunal, Hearings and Appeals*], is disbarred or, as a result of disciplinary proceedings, resigns from membership in the Society or otherwise ceases to be a member of the Society as a result of disciplinary proceedings, the Executive Director must immediately give effective public notice of the suspension, disbarment or resignation.
- (2) When a person is suspended under Part 2 [*Membership and Authority to Practise Law*] or 3 [*Protection of the Public*], the Executive Director may give public notice of the suspension.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

4. General Rule Amendments and Corrections

The following resolution was passed unanimously and by consent:

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

- 1. Rule 4-15 (4) is amended by striking “under Rule 4-44 (5)” and substituting “under Rule 5-6.4 (5)”.***

2. **Rule 4-17 (3) is amended by striking “under Rule 4-44” and substituting “under Rule 5-6.4”.**
3. **Rule 5-6.4 (2) is amended by striking “under Rule 4-43 (2) (b)” and substituting “under Rule 5-6.3 (4)”.**
4. **Rule 10-1 (1) (b) (iv) is amended by striking “referred to in paragraphs (a) to (c)” and substituting “referred to in subparagraphs (i) to (iii)”.**
5. **Schedule 4 is amended as follows:**
 - (a) **in item no. 3, “under Rule 4-34” is struck and “under Rule 5-4.6” is substituted; and**
 - (b) **in item no. 5, “under Rule 4-40” is struck and “under Rule 5-5.2” is substituted.**

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

5. Amendments to the Code of Professional Conduct for British Columbia

The following resolution was passed unanimously and by consent:

BE IT RESOLVED to amend the *Code of Professional Conduct for British Columbia* as follows:

1. Rule 5.1-2.2 and its commentaries are added:

***Ex parte* proceedings**

5.1-2.2 In an *ex parte* proceeding, a lawyer must act with utmost good faith and inform a tribunal of all material facts, including adverse facts, known to the lawyer that will enable the tribunal to make an informed decision.

Commentary

[1] *Ex parte* proceedings are exceptional. The obligation to inform the tribunal of all material facts includes an obligation of full, fair and candid disclosure to the tribunal (see also rules 5.1-1 and 5.1-2).

[2] The obligation to disclose all relevant information and evidence is subject to a lawyer’s duty to maintain confidentiality and privilege (see section 3.3).

[3] Before initiating *ex parte* proceedings, a lawyer should ensure that the proceedings are permitted by law and are justified in the circumstances. Where no prejudice would

occur, a lawyer should consider giving notice to the opposing party or their lawyer (when they are represented), notwithstanding the ability to proceed *ex parte*.

2. Rule 5.1-2.3 and its commentaries are added:

Single-party communications with a tribunal

5.1-2.3 Except where authorized by law, and subject to rule 5.1-2.2, a lawyer must not communicate with a tribunal in the absence of the opposing party or their lawyer (when they are represented) concerning any matter of substance, unless the opposing party or their lawyer has been made aware of the content of the communication or has appropriate notice of the communication.

Commentary

[1] It is improper for a lawyer to attempt to influence, discuss a matter with, or make submissions to, a tribunal without the knowledge of the other party or the lawyer for the other party (when they are represented). A lawyer should be particularly diligent to avoid improper single-party communications when engaging with a tribunal by electronic means, such as email correspondence.

[2] When a tribunal invites or requests a communication from a lawyer, the lawyer should inform the other party or their lawyer. As a general rule, the other party or their lawyer should be copied on communications to the tribunal or given advance notice of the communication.

[3] This rule does not prohibit single-party communication with a tribunal on routine administrative or procedural matters, such as scheduling hearing dates or appearances. A lawyer should consider notifying the other party or their lawyer of administrative communications with the tribunal. Routine administrative communications should not include any submissions dealing with the substance of the matter or its merits.

[4] When considering whether single-party communication with a tribunal is authorized by law, a lawyer should review local rules, practice directives, and other relevant authorities that may regulate such a communication.

6. External Appointment: Vancouver Foundation

The following resolution was passed unanimously and by consent:

BE IT RESOLVED the Benchers put forward Amanda Baron as the Law Society of BC nominee, as recommended by the Vancouver Foundation, to the Vancouver Foundation Board of Directors for a three-year term commencing May 1, 2023.

7. Approval of 2023 Law Society Award Recipient

The following resolution was passed unanimously and by consent:

BE IT RESOLVED the Benchers resolve to grant the 2023 Law Society Award to Eloise Spitzer.

8. 2023 Annual General Meeting: Advance Voting

The following resolution was passed unanimously and by consent:

BE IT RESOLVED the Benchers authorize the Executive Director to permit members of the Society in good standing to vote by electronic means on general meeting resolutions in advance of the 2023 annual general meeting.

DISCUSSION

12. Indigenous Engagement in Regulatory Matters Task Force: Final Report

This item was moved on the agenda to be the first item of business following the consent agenda.

President Christopher A. McPherson welcomed Terri-Lynn Williams-Davidson, KC, Co-Chair of the Indigenous Engagement in Regulatory Matters Task Force, to the meeting and provided a brief introduction.

Ms. Williams-Davidson presented the Final Report of the Indigenous Engagement in Regulatory Matters Task Force and thanked the members of the Task Force, along with staff, for their hard work and efforts in the development of the report. She provided an overview of the work of the Task Force in preparing the report, as well as an overview of the Bronstein decision and its impacts on the Tsilhqot'in Nation. Ms. Williams-Davidson also provided an overview of the meeting with the Tsilhqot'in Chiefs, at which the report was presented. She indicated that the Chiefs were keen to engage in consultation of the report, and that they would likely be providing input prior to the approval of the report by Benchers at the July Bencher meeting. Ms. Williams-Davidson then reviewed with Benchers the report's recommendations. She indicated that the report and its recommendations are part of a needed ongoing transformation and are meant to help the Law Society in meeting its ongoing commitments to truth and reconciliation.

Mr. McPherson spoke about the importance of the report and its recommendations. He spoke about the significance of dedicating the report to those who have traditionally been deterred from lodging complaints and to those who have lodged complaints, but who have not received reasonable outcomes, and the importance of the report's acknowledgement that the Law Society is a colonial enterprise, rooted in the disenfranchisement of Indigenous people and in the belief that the common law trumps Indigenous legal systems. Mr. McPherson spoke about the

significance of the development of the report being led by Indigenous people, as well as the importance of engagement with the Tsilhqot'in Chiefs on this matter.

Mr. McPherson then thanked all those who contributed to the report. He indicated that the implementation of the report would be a lengthy process, but a vital one, and that significant energy and resources would need to be devoted to implementation.

Brittany Goud, Task Force member, spoke about her experiences with the development of the report, as well as the impact of the Bronstein decision on the Tsilhqot'in Nation and the importance of ensuring that this does not occur again through the implementation of the report's recommendations. She also spoke about the need to move away from the current adversarial model and to consider new ways of doing things in an effort to decolonize the legal system.

Benchers engaged in discussion regarding the report and its recommendations and the importance of having regular progress reports. Mr. Avison advised that an overview of the plans for progress reports would be provided at the July Bencher meeting. He spoke about the importance of implementing the recommendations of the report and using them as a guide for making changes within the legal system, as well as within other administrative bodies. He also spoke about the need to recognize the disproportionate negative engagement of Indigenous people within the criminal justice system and child welfare system.

Benchers discussed the implementation of the report, including the importance of keeping the report top of mind beyond the discussions at Bencher meetings, the role of Benchers in being bold and advocating for change in terms of exploring more collaborative models beyond the current adversarial model used within the justice system. Benchers also discussed the problems with the Law Society's current discipline processes, and the importance of putting the public interest first in considering changes to the current models.

Mr. Avison indicated that the implementation of the report would include some profoundly challenging elements. He stressed the importance of dedicating the necessary time and energy to think about how to respond to the report's recommendations and to effect change.

Mr. McPherson indicated the report would be brought forward for decision at the July Bencher meeting.

REPORTS

9. President's Report

Mr. McPherson confirmed that no conflicts of interest had been declared.

Mr. McPherson began his report with a review of the Commonwealth Law Conference, which he had attended in Goa, India. He spoke about the significant declaration that had come out of the conference meetings regarding the importance of preserving and strengthening the independence

of the judiciary and of the legal profession, and the particular importance of this declaration in the face of the challenges faced by the profession in other jurisdictions.

Mr. McPherson informed Benchers that the call for nominations for the Benchers' Nominee for the 2024 Second Vice-President would open the following week. He also informed Benchers that with the appointment of Judge Jacqueline McQueen as a Provincial Court Judge, a by-election would be held in the County of Vancouver. An Executive Committee election would also be held to replace Judge McQueen, and Mr. McPherson indicated that further information would be provided to Benchers the following week.

Mr. McPherson then informed Benchers that the Law Society's Annual General Meeting would be taking place on June 27, 2023. He indicated that the first notice of the meeting would be sent to the profession shortly, which would include the date and time of the meeting, information regarding the business of the meeting, and information on how to submit a member resolution.

Mr. McPherson updated Benchers on work being done to update the lawyer directory to allow for the use of traditional names and spellings. He indicated that work was well in hand, despite some technical challenges.

Mr. McPherson provided an overview of his upcoming activities including attending the Prince George Law Talks, the Solicitors' Central Vancouver Island Conference, welcoming ceremonies, a call ceremony, and the presentation of the Gold Medal Award to the top student at the University of British Columbia.

Mr. McPherson concluded his report with an update regarding the upcoming Bencher Retreat, which would be taking place at the beginning of June. He indicated that all three Chiefs of court would be in attendance, along with the Attorney General and Deputy Attorney General.

10. CEO's Report

Mr. Avison began his report by providing an update on the status of discussions with the Ministry regarding the single legal regulator initiative. He indicated that the Ministry intends to release a "What We Heard" Report, following upon the call for responses to the Ministry's Intentions Paper, and the Ministry continues to plan to bring forward legislation for the fall legislative session. Mr. Avison informed Benchers that there had not yet been a response from the Ministry regarding the request to proclaim the 2018 amendments to the *Legal Profession Act* to enable the licensing of paralegals, but that the Law Society would continue to advocate for the bringing into force of these amendments. He indicated that a great deal of work had already been done in terms of reviewing and developing rules for the licensing of paralegals, which would need to be done to support the implementation of the single legal regulator regardless.

Mr. Avison provided a further update regarding the Bencher Retreat. He indicated that the Attorney General would be in attendance for the President's Dinner and Bencher meeting. He

further indicated that the Presidents and Executive Directors from the Federation, Law Society of Alberta, and Law Society of Saskatchewan would also be in attendance, and that he was hoping to hold a roundtable session to discuss the most significant issues across each jurisdiction. Mr. Avison then spoke about the program for the Retreat, which would be focused on managing change within a rapidly changing environment.

Mr. Avison updated Benchers on recent Law Society staffing changes, including the hiring of Vicki George, Senior Advisor, Indigenous Engagement and the departure of Madeleine Holm-Porter, Senior Executive Assistant, Office of the Executive Director/Chief Executive Officer, who would be taking a leave of absence.

Mr. Avison spoke about the implementation of the Final Report of the Indigenous Engagement in Regulatory Matters Task Force, and provided some data related to the completion of the Indigenous Intercultural Course. He indicated that all lawyers are expected to have completed the course by the end of the year, and that all Law Society staff are encouraged to complete the course, with completion of the course now a condition of employment for all new employees. Mr. Avison spoke about some of the recommendations in the report and provided some data on trauma-informed training undertaken by staff.

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

Brook Greenberg, KC provided a brief overview of the written report he provided for Benchers’ information, which included an overview of the recent Federation meetings. He indicated that the next Federation Council meeting would take place on June 5, and he would provide an update at the July Bencher meeting.

DISCUSSION/DECISION

13. Lawyer Development Task Force: Recommendation for Mandatory Principal Training Program

Steven McKoen, KC, Chair of the Lawyer Development Task Force introduced the item and provided some background regarding the recommendation to develop a mandatory online principal training course. He spoke about the challenges with having only one pathway to become a licensed lawyer in BC, which involves the successful completion of nine months of experiential training through articles. Mr. McKoen indicated that although the Task Force was in the process of considering alternatives to articles for lawyer licensing, there still existed a pressing need and responsibility for the Law Society to address the problems within its control within the current licensing pathway.

Benchers discussed the rationale for the mandatory nature of the proposed training program, and agreed that the benefits of having the program be mandatory far outweighed any risks, particularly in terms of providing guidance and support to principles and increasing value and

consistency across articling experiences. Benchers also discussed the importance of referencing the benefits of the program to principals and articulated students in its communication.

Benchers discussed the format of the program, including the importance of offering the program at no fee, the value in requiring principals to take the training program every five years, and whether an introductory course should be developed for articulated students. Mr. McKoen indicated that the Task Force would consider making available the content of the training program for articulated students. He advised that the Task Force had considered a course for articulated students, and that this could be further discussed with PLTC.

Mr. McKoen provided some additional information regarding the review process and consultation undertaken by the Task Force, which included reviewing data from a similar program implemented by the Law Society of Alberta, Jordan Furlong's report "A Competence-Based System for Lawyer Licensing in British Columbia", the surveys of the Law Society's articulated students, as well as the discussions from past Bencher meetings on this matter.

The following resolution was passed unanimously:

BE IT RESOLVED that the Law Society of British Columbia develop an online principal training course comprising a series of modules that will be a mandatory requirement for all lawyers, regardless of experience, prior to serving as a principal to an articulated student. The course will qualify a lawyer to be a principal for a five-year period, will be offered at no cost, and will be eligible for CPD credit in an amount to be determined by the Executive Director.

14. Law Society's 2022 Audited Financial Statements and Financial Reports: Review and Approval

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

Jeanette McPhee provided an overview of the audited financial statements and highlights for 2022. She noted that the general fund operations resulted in a positive variance to budget, due to strong revenue performances for the year. She indicated that revenue was ahead of budget due to higher than expected revenues in almost all fee categories. Ms. McPhee reviewed practice fees and electronic filing revenue, both of which were ahead of budget, with the highest recorded increase in the number of practising lawyers. Ms. McPhee reviewed operating expenses for the year, which were under budget by 3%, likely due to expense savings in a number of areas, which was partially offset by higher external counsel fees.

Ms. McPhee reviewed TAF-related revenue and expenses. She indicated that TAF revenue was very close to budget with trust assurance program costs below budget primarily due to staff vacancies and lower travel costs with many audits being performed remotely.

Ms. McPhee reviewed revenue for the Lawyers Indemnity Fund, which was ahead of budget due to a higher number of practising indemnified lawyers. She indicated that operating expenses were under budget with savings primarily related to lower compensation costs, lower general office expenses, and lower general fund allocated costs. She indicated that expense savings were partially offset by increased investment management fees.

Ms. McPhee then reviewed the 2023 general fund forecast, which was forecasted to be ahead of budget. She indicated that expenses related to the single legal regulator initiative would be funded through net assets.

Ms. McPhee then provided an overview of the financial results and highlights to the end of February 2023, noting that year to date results are positive to budget, mostly due to higher interest income outweighing small negative variances and lower operating expenses.

Benchers discussed the 2022 highlights, particularly the trend of revenue being ahead of budget resulting in positive variances from year to year. Some Benchers questioned if this was an overly conservative approach in terms of budgeting, which could affect funding for programs and initiatives. Some Benchers referenced the challenges in estimating practice fees accurately. Ms. McPhee indicated that the approach to budgeting tended to be conservative as revenue and expenses changed year to year. She further indicated that the budgeting process took into account historical data from the past three to four years, which has shown an approximate increase in practice fees of 3% year over year. Ms. McPhee also referenced the annual timing of budgeting as lending itself to a conservative approach, since there was often a lag in terms of practice fee actuals, and that it was better to be under budget than over budget.

Benchers discussed whether a reduction in practice fees should be considered, particularly with a history of surpluses. Ms. McPhee advised that the intent was to have between three to four months of reserves. She indicated that the Law Society currently had a high amount of reserves, but that the Finance and Audit Committee had agreed that these would be used towards a number of upcoming strategic projects and initiatives, including the single legal regulatory initiative and mandatory courses. She further indicated that reducing practice fees could create a challenging situation if the Law Society had larger deficit budgets in the future, which in turn would likely require the increase of practice fees. Ms. McPhee added that the practice fees had remained static for the past several years.

The following resolution was passed unanimously:

BE IT RESOLVED to approve the Law Society's 2022 Financial Statements for the General Fund, and the 2022 Consolidated Financial Statements for the Lawyers Indemnity Fund.

UPDATES

15. 2023 First Quarter Financial Report

This item was incorporated into item 14.

FOR INFORMATION

16. Minute of Approval for Compensation for Public Adjudicators

Benchers reviewed the For Information items, which included a minute of approval for the following resolution, which had been approved via email on March 17, 2023.

BE IT RESOLVED that the compensation for the public members of our hearing panels be amended as proposed effective as of March 10, 2023.

There was no discussion on this item.

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

AB
2023-05-24

Memo

To: Benchers
From: Executive Committee
Date: June 3, 2023
Subject: **Law Society Representatives on the 2023 KC Appointments Advisory Committee**

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

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

The Executive Committee recommends that Benchers approve the following resolution:

BE IT RESOLVED that the Benchers appoint President Christopher A. McPherson, KC and First Vice-President Jeevyn Dhaliwal, KC as the Law Society's representatives on the 2023 KC Appointments Advisory Committee.

CEO Report

June 3, 2023

Prepared for: Benchers

Prepared by: Don Avison, KC

1. Single Legal Regulator Update

Recent indications from the Ministry of the Attorney General included confirmation that the Ministry remains committed to having the legislation necessary to establish a new Single Legal Regulator ready to be tabled in the fall session of the Legislative Assembly of BC.

We anticipate that the Ministry's "What We Heard" report will be released in the near term and, hopefully, prior to the Benchers meeting of June 3, 2023 where the Attorney General will be available to provide an update on the development of the legislation and other ministry priorities. Our expectation is that the Attorney General will also be prepared to answer questions regarding the policy directions of the proposed reforms.

2. 2023 AGM – Member Resolutions

This year's AGM will take place on June 27, 2023 and, once again, it will take place virtually.

There are six member resolutions that have been submitted for consideration.

The resolutions include proposals to establish an independent task force to review the Act, the Rules and the Code with a view towards making recommendations to improve the LSBC's inclusion of persons with physical disabilities and to "break down unintentional barriers that members of the legal profession may face".

A second resolution proposes changes to Rule 3-10 that would limit the ability of the LSBC to restrict the enrolment of a prospective articulated student whose principal is in good standing with the Law Society.

Another resolution focuses on the implications of climate change, the role and responsibility of the legal profession and proposes the establishment of a task force/advisory committee that would make for "climate conscious lawyering". That resolution also contemplates having the LSBC report publicly on the climate impacts of LSBC operations, steps taken to mitigate impacts and reporting obligation on the outcomes of mitigation strategies.

Changes are also recommended with respect to rules that govern who can be qualified to undertake work as family law arbitrators and/or as parenting coordinators. The resolution proposes to add those who "sat as a tribunal member" to the class of professionals contemplated by Rules 3-36(1)(b) and 3-37(1)(b).

A further resolution seeks to address those circumstances where a lawyer may take parental leave on two occasions within a 5-year period and, as a result, may be subject to rules that currently govern the return to practice of those who have not been in practice for more than three years. The resolution calls for an exemption to the “three year rule” that would accommodate the interests of those “not engaged in the practice of law for a time that is equivalent to their federally entitled parental leave(s).”

Lastly, we have received a resolution that again calls upon the Benchers to oppose government’s plans for the establishment of a single legal regulator. More accurately, this year’s resolution invites Benchers to call for an immediate referendum to oppose the single legal regulator concept. The resolution follows upon those passed at the AGMs of 2018 and 2022. However, what is being called for here is a referendum under section 13 of the *Legal Profession Act* in circumstances where the requirements necessary to trigger a referendum have not yet been met.

Members who have put forward resolutions will have until June 6 to amend (or withdraw) proposed resolutions. The resolutions are now available on the LSBC’s member portal which will also include capacity for discussion by licensees.

3. Professional Conduct Regulatory Reforms

At the June 3 Bencher meeting, Chief Legal Officer Natasha Dookie will brief Benchers on the proposed “Proactive Practice Assessment Pilot Project”. This is one of a number of reforms that have been initiated over the last few years to improve the efficiency of the Law Society discipline process. I have asked Natasha to provide an update on the status of those changes and how this has had a positive impact on resolving matters at an earlier stage.

4. Vancouver County By-election

With the recent appointment of Judge Jacqueline McQueen to the Provincial Court of BC, there will now be a by-election in Vancouver County with the nomination period open until 5:00pm on Monday, June 12, and online voting taking place from Wednesday, June 28 to 5:00 pm on Tuesday, July 11.

Plans are also underway to prepare for the general Bencher election which will take place in November of this year.

5. Meeting with CBABC and with Members of the Aboriginal Lawyers Forum (ALF)

On May 9th President McPherson, IERM Task Force Co-Chair Terri-Lynn Williams-Davidson, KC and I met with members of the CBA's Truth and Reconciliation Committee and with members of the ALF.

The primary focus of the discussion was about the recommendations of the IERM Task Force but a number of other matters were also canvassed.

The meeting was a productive one and I believe there was consensus that it would be helpful to meet on a more regular basis.

Don Avison, KC
Chief Executive Officer

Practice Assessments

A proactive practice review pilot project

Date: June 3, 2023

Prepared for: Benchers

Prepared by: Policy and Planning and Professional Regulation Departments

Purpose: Discussion and Decision

Purpose

1. This report analyses the policy rationale underlying a recommendation to amend the Law Society Rules to allow for the creation of a proactive practice review program to be administered by the Practice Standards department. The program, proposed as a two-year pilot project, would enable the Law Society to conduct a type of practice review — referred to throughout this report as a “practice assessment” — targeting at-risk lawyers prior to their involvement in the complaints investigation and committee-based professional conduct process.
2. The Executive Committee, acting in its capacity as the Regulatory Policy Committee, have considered this report and recommend the program as described.

The Problem

3. The Law Society’s current Practice Standards model is reactive in nature. Practice reviews take place only *after* a review of the matter by the Practice Standards Committee (the “Committee”), which occurs following a referral to the Committee once a lawyer is already involved in the complaints process. The majority of referrals are the result of an investigation prompted by a complaint about the subject lawyer’s conduct. As a result, the Law Society’s current practice review program is limited in scope, averaging 30 files a year, in a profession that has nearly 14,000 licensees and generates around 1,200 complaints annually.
4. Inherent in this reactionary regulatory response is the risk that practice management issues are not identified or addressed early on and, as a result, harm to the public may occur before the lawyer takes corrective action, or remedial or disciplinary steps are taken by the regulator. Opportunities to provide constructive feedback on how to set up strong practice management systems and to address practice issues that may arise are also missed. In contrast, a proactive model would enhance the practice review program’s protection of the public by intervening in situations where there may be greater risk to the public (i.e. based on the lawyer’s practice setting and level of experience) and prior to the occurrence of problematic conduct or a competence issue.

Background

5. In 2019, the Professional Regulation department undertook a process review of each functional area of its operations to identify areas that could be improved or revised. As part of this process, staff identified the need for implementing a more proactive approach to regulation.

6. In 2022, the Committee’s mandate included exploring the creation of a proactive element of the practice review program. At a special meeting in March, the Committee expressed support for staff developing such a program, which would commence as a pilot project in 2023. In September, the Benchers approved the budget to support the ongoing implementation of the recommendations arising out of the Professional Regulation department’s process review, including the practice assessment pilot project proposed in this report.

Self-Referral Practice Assessment Program Pilot Project

7. Early steps to develop a more expansive practice review program began last year when the Practice Standards department piloted a self-referral proactive practice assessment program (“SRP”) for lawyers seeking practice management assistance. The SRP pilot ran from April to September 2022. The objectives of the pilot were to develop and test a limited scope proactive practice assessment model, obtain feedback on its potential benefits and utilize this data to consider whether a larger scale proactive approach that builds on the successful components of the SRP may be in the public interest.
8. The SRP sought to provide participants with a flexible and practical approach to accessing assistance to improve their practice, to avoid the common pitfalls that can lead to complaints and to become more connected to the legal community. Ten lawyers were selected to participate, all of whom were in within two to four years of call and practising in a solo or small firm environment. Participants met with an experienced lawyer, referred to as an “assessor,” who provided a free, one-on-one assessment in which the participant lawyer’s practice was assessed and recommendations for improvements were made. During the course of the assessment, the lawyer’s practice management systems were reviewed, covering topics such as: file opening and closing procedures; bring-forward systems; accounting procedures; client communications; office and professional support; continuing education, and; succession planning. Samples of open files were also reviewed and substantive and procedural requirements for various areas of the lawyer’s practice were addressed.
9. The resulting report and recommendations were not subject to review by the Practice Standards Committee.
10. The Law Society evaluated the pilot by surveying participants both before and after the assessment process. The majority of participants expressed satisfaction with the program and many described it as a positive, useful, constructive and helpful experience. Most of the participants also indicated that they would be maintaining the relationship they developed with their assessors. Based on this positive feedback, staff in the Professional Regulation department undertook further work to consider how a more expansive

proactive practice assessment program might operate.

Similar programs undertaken by other legal regulators

11. Several Canadian law societies and the Chambre des Notaires du Québec have already adopted a proactive approach to practice reviews. These programs provide some additional insights as to how this type of program could operate in BC and the potential benefits of such an approach.

Law Society of Ontario

12. The Law Society of Ontario (“LSO”) has a practice review program comprising several different types of reviews.¹ Of these, “random reviews” are a proactive program specifically designed to assist recently called lawyers strengthen their practice management skills. Participants, who must be one to eight years of call and in private practice, are selected at random from a group of lawyers identified as presenting with certain risk factors.²
13. Practice reviews are conducted by a roster of experienced lawyers or in-house reviewers, all of whom complete an extensive training program to ensure the consistency and quality of the review process. During the assessment, the lawyer’s basic practice management systems will be reviewed, advice and feedback provided, risk areas identified and strategies for remediation discussed. To remediate risk areas promptly, matters requiring action are identified during the course of the review, and the lawyer is directed to appropriate resources. The reviewer also prepares a report containing an analysis and assessment, which may include recommendations for improvements and enhancements to current practice management systems, or may include mandatory recommendations where action is required to ensure that the lawyer meets standards of competence. A decision on competence will also be rendered. If no recommendations are made, or where recommendations have been successfully implemented, the file will be closed. If concerns remain that the lawyer is not meeting the standards of professional competence, a follow up attendance is scheduled that provides the lawyer with additional time to implement the recommendations and

¹ The LSO operates three types of [practice reviews](#). In addition to random reviews, discussed in this report, the LSO conducts “re-entry to private practice reviews” for lawyers that have not provided legal services to the public for 48 months over the past five years, and intend to practise in a firm of five or fewer lawyers, and “focused reviews” that are issued based lawyers meeting indicia related to the number and type of complaints and information received in the course of investigations or audits. Licensees experiencing practice difficulties may also be referred to a practice review via any of the LSO’s regulatory units.

² Approximately 450 lawyers are selected annually for this program. The selection process takes into account higher risk factors such as lawyers who are sole practitioners and those who have recently re-entered private practice in a weighted fashion (i.e. 50% sole practitioners, 25% working at firms of 2-5 lawyers, etc.).

remediate their practice management deficiencies.³

14. The LSO does not have statistics that measure the relationship between having undergone a practice review and future complaints. However, a positive correlation between sole practitioners who have remained in active practice and those that have had a practice review has been observed.⁴ Additionally, statistics gathered by the LSO show that common practice deficiencies found in practice reviews have declined in the period between 2009 and 2017. Participants of the LSO's broader practice review program have provided positive feedback and have characterized the program as "value added."

Law Society of Newfoundland and Labrador

15. The Law Society of Newfoundland and Labrador ("LSNL") recently introduced a practice management review program as a proactive tool to help lawyers recognize possible practice management problems before they become larger issues. The program is largely based on the LSO's model although due to fewer staff and licensees, it focuses on providing education and support rather than assessing competence. The program is separate from the discipline process and the reviews are conducted by staff.
16. Under the LSNL model, licensees may be selected to undergo a proactive practice management review by the Executive Director based on factors that tend to correlate with a higher risk of complaints and negligence claims. Licensees who commence or resume practice as a sole practitioner or in a firm with four or fewer lawyers are also automatically required to undergo a practice management review, representing another proactive approach to protecting the public from risks posed by the subset of lawyers who are statistically more likely to experience practice problems. The results of the practice management review are provided to the licensee and the Executive Director.
17. The LSNL reports that while the program is still fairly new, the feedback to date has been overwhelmingly positive.

Law Society of Saskatchewan

18. The Law Society of Saskatchewan ("LSS") also operates an extensive practice review program. There are a number of circumstances in which the LSS may conduct a proactive practice review in the absence of a single, specific initiating complaint. The LSS also requires practitioners that are commencing in a new sole practice or small firm

³ If the follow-up report still reveals issues, a consent order is drafted with terms that include the major recommendations from the follow-up report. If the lawyer fails to comply with the terms of the order, the matter will be referred to the Professional Regulation department.

⁴ Sole practitioners who underwent a practice review are 19% to 22 % more likely to remain in private practice than their peers. Law Society of Ontario, [Professional Development & Competence Committee Report](#), (February 2018).

to complete a mandatory New Solo/Small Firm Program, in which the lawyer is required to meet with a Practice Advisor within 6 months of commencing practice to review their setup, provide advice, and identify weaknesses in their practice management plan.

19. The LSS reports that proactive practice reviews have regularly uncovered serious financial and/or health issues impacting a lawyer's practice and that the proactive model has enabled the regulator to provide some lawyers with access to assistance programs or to safely transition out of practice, where appropriate.

Chambre des Notaires du Québec

20. The Chambre des Notaires' professional inspection service is responsible for ensuring that licensees maintain competence. To fulfill this mandate, qualified inspectors regularly visit notaires to inspect their files, deeds, registers and trust accounting records, and assist notaires with improving their professional practice by providing advice that reflects the standards of professional practice. Through its professional coaching inspection program, the Chambre's professional inspection service also meets with every new notaire within a year of their registration to guide them in the beginning of their practice.

Recommended policy option: Practice assessment pilot project

21. Given the positive outcomes of the SRP, and the success other legal regulators have reported in implementing various forms of proactive practice management support, staff and the Practice Standards Committee have considered how the Practice Standards department's processes might be expanded to include a proactive practice assessment program.
22. Under the Law Society Rules, most practice reviews are ordered by the Practice Standards Committee following a referral from the complaints investigation process. In contrast, the introduction of practice assessments would enable the Law Society to extend the reach of the current practice review model to identifying and addressing potential concerns *before* a licensee becomes involved in the professional conduct process and, in doing so, enhance the protection of the public.
23. The proposed program, which would run as a two year pilot project, would be similar to the LSO's model, with participants selected at random from an identified group of licensees. While eligibility criteria would ultimately be established by the Executive Director, it is proposed that the potential participant group be comprised of licensees

between two to five years of call who are currently in private practice in a solo or small firm environment,⁵ and further narrowed further based on risk factors identified through an analysis of current Law Society data, including information obtained through the SRP. Approximately 60 to 75 practice assessments would be conducted annually.

24. Licensees to whom the criteria apply would be required to complete a practice assessment, subject to staff discretion if, for example, the lawyer was commencing a leave, changing practising status, or switching jobs. In such cases, a practice assessment may either be postponed or deemed unnecessary.
25. The majority of practice assessments would be conducted by staff lawyers in the Practice Standards department on the basis of their considerable experience and expertise in conducting practice reviews. Utilizing existing staff to undertake this work, rather than contracting third parties, may also reduce costs. The Law Society would, however, also maintain a roster of external assessors with subject matter expertise who may conduct practice assessments in some circumstances.
26. Assessors would meet with participants, examine their practice to identify any issues, provide support and make recommendations that would be included in a report issued to the licensee and the Executive Director. Following the assessment, participants would be required to provide a compliance report the Executive Director confirming the steps taken to address any concerns raised or recommendations made. Failure to complete the report or to address the steps identified may result in a referral to the Practice Standards Committee.
27. If serious competency concerns are revealed in the course of a practice assessment that are better addressed through formal recommendations pursuant to Rule 3-19, the matter may be referred to the Practice Standards Committee. Similarly, if serious professional conduct issues are uncovered during the assessment, the matter may be referred to the Professional Conduct department or the Alternative Discipline Process for further action.
28. As is currently the case with practice reviews ordered by the Committee or consented to by lawyers through the SRP, a practice assessment would be recorded on a licensee's internal Law Society records but not on their Professional Conduct Record.

⁵ There are approximately 720 lawyers currently practising in BC that fall within this broad cohort. Four or fewer lawyers is selected as the threshold for "small firm" on the basis of the definition provided in Rule 3-26. As the aim of the practice assessment is to focus on practice management, lawyers with less than two years of experience would not be suitable as they typically do not have enough client files to review.

29. Over the course of the pilot, feedback from assessors and participants would be collected and analysed, and subsequently considered when assessing whether to establish practice assessments as a permanent regulatory program.

Policy Analysis: Discussion of evaluation criteria

30. Establishing a mandatory, proactive practice assessment program represents a change in policy direction from the Law Society’s current reactive, committee-based practice reviews and from the voluntary practice reviews conducted through the SRP. Although novel for BC, the proposed program aligns with the mandate of the Law Society, particularly as articulated in s. 2(c) of the *Legal Profession Act* (“LPA”), recommendations made in the course of the Law Society’s recent governance review,⁶ priorities reflected the Practice Standards Committee’s past mandate letters and supported by the Benchers part of the regulatory process review, and with the proactive approaches utilized by a number of other regulators.
31. In order to implement the proposed program, the Rules, which currently only permit practice reviews to be ordered by the Practice Standards Committee where a complaint exists or a lawyer has consented, would need to be amended. The amendments would be drafted to establish practice assessments as a distinct process from the reactive practice reviews ordered by the Committee and provide the Executive Director with the discretion to establish the circumstances in which a practice assessment is required.
32. In recommending this option, staff considered two alternatives, namely:
- a. maintaining the status quo, in which practice reviews would continue to be ordered only in response to referrals that come through the complaints process or when the lawyer consents; and
 - b. expanding the criteria for the voluntary SRP.
33. In analysing these three options, the evaluation criteria considered were: the public interest; legislative authority; transparency and accountability, and; equity, diversity, inclusion and reconciliation.
34. Both alternatives to the recommended policy option fail to sufficiently address the first criterion. Maintaining the status quo is not recommended on the basis that the current approach limits the Law Society’s ability to employ a proactive approach to regulation. Specifically, in the absence of an amendment to the Rules, practice reviews will

⁶ See Harry Cayton, [Report of a Governance Review of the Law Society of British Columbia](#) at p. 29 (2021) (7.6.2: The Society should identify the most frequent and most severe risks of harm and agree specific actions to mitigate them. 7.6.3: The Society should take a preventative approach to regulation [...]).

typically only occur in situations where problematic practice management, conduct or competence issues have already arisen, thus reducing the Law Society's ability to protect the public.

35. While the voluntary SRP pilot was successful, expanding that program is also not recommended on the basis of its limitations with respect to protect the public interest. Under a voluntary model, if a licensee belongs to a demographic that is at higher risk of competence issues but does not provide the requisite consent, they cannot be compelled to complete a practice assessment. Similarly, licensees who are actively experiencing practice management issues may not opt in to a voluntary program based on their concerns about the regulatory implications of doing so. As a result, the Law Society's ability to address potential practice issues is diminished.
36. Accordingly, the analysis that follows is specific to the recommended policy option.

Public interest

37. The public interest must be foremost among any evaluation criteria when the Law Society considers a policy option. A central consideration is, therefore, whether the practice assessment process described in this report furthers the Law Society's mandate to uphold and protect the public interest in the administration of justice.
38. There are a number of public interest benefits to introducing practice assessments for lawyers that, statistically, are at higher risk of experiencing practice management issues. Most critically, taking early action to provide lawyers with tools, recommendations and practice support should prevent competence or conduct issues from arising in the future. This can be expected to reduce both the volume of practice management issues that require consideration by the Practice Standards Committee as well as the number of complaints seen in the professional conduct process.
39. In addition to improving the delivery of legal services to clients, a program that supports and assists lawyers, and that focuses on preventing, rather than reacting to, practice concerns is also likely to enhance public confidence in the regulation of lawyers. Practice assessments also provide opportunities for the Law Society to enhance outreach to those that are new to the profession on a number of important topics, including anti-money laundering measures, Law Society Rules and other requirements.
40. Feedback from the LSO's practice review program provides evidence that a proactive approach can also provide critical, additional support for lawyers – particularly sole practitioners. The results of the SRP also indicate that participants experienced positive outcomes.

Authority

41. Section 3 of the *LPA* confers the Benchers with the broad authority to carry out the Law Society’s object and duty to protect the public interest in the administration of justice by, *inter alia*, ensuring lawyer competence and establishing standards and programs for the education, professional responsibility and competence of lawyers. Section 11(1) of the *LPA* provides the Benchers with a general power to make rules governing lawyers and the carrying out of the Act. Pursuant to section 11(2), this general rule-making power is not limited by the specific rule-making powers in the Act.
42. Section 27(1) of the Act, which is specific to practice standards, permits the Benchers to establish and maintain a program to assist lawyers on issues arising from the practice of law. Subsection (2)(c), however, only permits an investigation into a lawyer’s competence to practice law in two circumstances: if the lawyer consents or “there are reasonable grounds to believe that the lawyer is practicing law in an incompetent manner.” This section could be interpreted as limiting the Law Society’s ability to establish *proactive* practice assessments (i.e. where no competence issue has yet arisen) in the absence of consent. However, provided that the primary goal of the practice assessment program is to advance the regulatory objectives identified in section 3 of the Act, and with reference to the Benchers’ broad rule making authority under sections 11(1) and (2) staff conclude that there is sufficient legislative authority to develop rules and policies to support the proposed program.⁷

Transparency and accountability

43. The transparency and accountability of the Law Society’s processes is an important aspect of self-regulation and is a core element of modern regulatory best practices. The transparency of the practice assessment program, for both the profession and the public, will be supported by setting out the circumstances under which a lawyer may be required to attend an assessment and the potential outcomes of the process.
44. Participation in the program and any resulting recommendations would be included on the licensees internal Law Society’s record, but not their public Professional Conduct Record on the basis that the program is designed to be educational rather than a disciplinary in nature and participation is not based on complaints or specific conduct issues.

⁷ Previous legal opinions have affirmed that the Law Society may rely on s. 11 of the *LPA* to create rules where a specific section of the Act appears to otherwise limit such authority.

Equity, diversity, inclusion, and reconciliation

45. Practice assessments are not specifically designed to address equity, diversity and inclusion within the profession. However, to the extent that the process provides additional support and guidance to early career practitioners in small firm settings, and thereby improves the retention of this cohort of lawyers, practice assessments support the Law Society’s broader EDI objectives and improve access to justice,⁸ both of which are in the public interest.⁹
46. Similarly, although the proposed program is not specifically tailored to advancing reconciliation with Indigenous Peoples, the approach will support the Indigenous Engagement in Regulatory Matters Task Force’s recommendation that the Law Society be more proactive in the prevention of harm to the public. Practice assessments may, for example, provide the Law Society with additional opportunities to clarify the expected standard of conduct for lawyers serving Indigenous clients and to address any related concerns.¹⁰

Organizational impacts and costs

47. Practice assessments represent an expansion of the current practice review program. As participation will be established utilizing risk-based criteria rather than referrals from the complaint process, the Practice Standards Committee will only become involved in exceptional circumstances, such as where serious competence issues are revealed and/or the lawyer fails to comply with recommendations made during a practice assessment and more formal recommendations are considered necessary to protect the public.
48. Most assessments will be conducted by staff in the Practice Standards department. This approach is not expected to create any operational challenges for the Law Society and may realize costs savings as compared to hiring external counsel to complete the majority of assessments.¹¹ Creating procedures that are less reliant on Benchers resources is also beneficial in light of the anticipated reduction in the Board as part of the government’s regulatory modernization initiative.¹²

⁸ As previously noted, the LSO has observed a positive correlation between sole practitioners who have remained in active practice and those who have undergone a practice review.

⁹ *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33 at paras. 22-23.

¹⁰ Report of the Indigenous Engagement in Regulatory Matters Task Force (May 2023).

¹¹ External reviewers would receive approximately \$3,000 in compensation per practice assessment.

¹² Ministry of Attorney General, Intentions Paper: [Legal Professions Regulatory Modernization](#) (September 2022) (“Intentions Paper”) at p. 13 and Recommendation 3.6. Other examples where the Executive Director has been provided broad authority to administer regulatory programs include the ADP, the administrative monetary penalty program and pre-citation consent agreements.

49. Approximately \$90,000 has already been approved by the Benchers as part of the Law Society's 2023 budget to support the implementation of the pilot in the latter portion of this year. It is anticipated that the costs associated with hiring a lawyer on a two-year term to support the implementation of the pilot program through 2024 and the first half of 2025 will total an additional \$315,000.
50. On the basis that practice assessments have the potential to prevent serious issues from arising or escalating, it can be expected that any costs associated with operating the program will be offset by the benefits associated with addressing potential practice issues before they result in a referral to the traditional practice standards, investigation or discipline processes. During the pilot, the Law Society will gather feedback from participants, as well as other data and statistics to determine whether practice assessments contribute to preventing future complaints or professional conduct issues.
51. Costs associated with supporting a permanent program would be assessed at a later date, based on the results of the pilot project.

Recommendation for decision

52. Based on the forgoing analysis, and the recommendation of the Executive Committee acting in its capacity as the Regulatory Policy Committee, the following resolutions are presented to the Benchers for discussion and decision:

BE IT RESOLVED:

THAT the Benchers

- (a) approve, in principle, a two-year pilot project for a proactive practice assessment program as described in this report; and
- (b) upon such approval in principle, refer the matter to staff to prepare rules needed to implement the program to be returned to the Benchers for approval.