

# Law Society *of British Columbia*

## **Final Report of the Mental Health Task Force**

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### **Mental Health Task Force:**

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Date: December 8, 2023

Prepared by: Policy and Planning Department

Purpose: Discussion and Decision

## Purpose

1. The first purpose of this report is to present the Benchers with a set of recommendations following the Mental Health Task Force's comprehensive review of the *National Study on the Health and Wellness Determinants of Legal Professionals in Canada* (the "National Study").
2. The second purpose of this report is to provide recommendations for the Law Society of British Columbia (the "Law Society") to continue to engage with mental health and substance use issues in an ongoing manner once the Mental Health Task Force completes its work at the end of this year, recognizing the need for the Law Society to remain informed and up-to-date with respect to mental health and substance use issues and regulatory best practices in the absence of a task force dedicated to these matters.

## Proposed Resolution

3. The Mental Health Task Force recommends the following resolution:

BE IT RESOLVED that the Benchers approve the six recommendations contained in the Mental Health Task Force's Final Report:

**Recommendation 1:** Enhance the development, consolidation and dissemination of the Law Society's well-being resources and provide periodic reporting on resource-related development, collaboration, implementation and outreach activities.

**Recommendation 2:** Respond to the *National Study* data regarding factors that create barriers to lawyers seeking support by: (i) creating a set of tailored resources and communications that identify specific, practical strategies for overcoming the primary barriers to accessing support, and; (ii) highlighting and reducing the gap between real and perceived stigma.

**Recommendation 3:** Facilitate opportunities for lawyers to have greater time and means to address health issues by: (i) improving communications and resources in respect of existing options, and; (ii) exploring the potential development of additional options.

**Recommendation 4:** Assess and, if appropriate, adopt the Alternative Discipline Process as a permanent regulatory program at the conclusion of the three-year pilot program.

**Recommendation 5:** Implement a transition plan to support the Law Society's continued engagement with mental health issues once the Task Force concludes its work that includes a

combination of committee participation in strategic direction and policy decisions, and staff support for operational activities, outreach and collaboration with stakeholders.

**Recommendation 6:** Utilize the strategic planning process to periodically assess and update the Law Society’s engagement with mental health and substance use issues at a policy level.

## Background

4. The Mental Health Task Force (the “Task Force”) was established in 2018 to assist the Law Society in taking steps to improve mental health within the profession, for the benefit of both legal professionals and the public they serve. Guided by its terms of reference, the Task Force’s primary objectives are to identify ways to reduce stigma and to undertake an integrated review of the Law Society’s regulatory approaches to mental health issues.<sup>1</sup>
5. Over the past six years, the Task Force has authored numerous reports that examine the connection between the Law Society’s public interest mandate and the prevalence of these issues within the legal profession, and that make recommendations aimed at improving lawyer well-being and serving the public interest.<sup>2</sup>
6. Due to a paucity of Canadian data, the Task Force’s policy work has primarily relied on studies from other jurisdictions. However, in October 2022, researchers from the Université de Sherbrooke, in partnership with the Federation of Law Societies and the Canadian Bar Association, released the findings of the *National Study*, which analyzed data collected from over 7,300 Canadian legal professionals in relation to a range of psychological health issues.<sup>3</sup>
7. Representing the first comprehensive data set of its kind, the *National Study* confirms that Canadian legal professionals are at a significantly elevated risk of experiencing mental health issues as compared to the general working population. Among legal professionals that participated in the study, 29% provided responses consistent with experiencing moderate to severe depressive symptoms and 36% with experiencing anxiety. A majority provided responses consistent with burnout (56%) and psychological distress (60%), and potential alcohol dependence was observed in 37% and 42% of male and female respondents, respectively.

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<sup>1</sup> Law Society of BC Mental Health Task Force [Terms of Reference](#).

<sup>2</sup> Mental Health Task Force’s [First Interim Report](#) (December 2018), [Second Interim Report](#) (January 2020); [Alternative Discipline Process Report](#) (September 2021); [Implementation Report](#) (June 2022) and [Fourth Recommendation Report](#) (January 2023).

<sup>3</sup> Cadieux, N., et. al. (2022). Research report: Towards a Healthy and Sustainable Practice of Law in Canada. *National Study on the Health and Wellness Determinants of Legal Professionals in Canada, Phase I (2020-2022)*. Université de Sherbrooke (“[Research Report](#)”). Highlights of the 422-page report are provided in an [Executive Summary](#).

8. Approximately one in four respondents reported having had suicidal thoughts in the course of their careers. Significantly, the *National Study* found that a majority of legal professionals that felt they could benefit from assistance for a mental health issue did not seek support.
9. The *National Study* also examined risk factors that contribute to mental health issues, protective factors that can prevent or mitigate the development of health problems and barriers to support-seeking behaviours. Through this analysis, a large body of evidence emerged respecting intersectionality, with legal professionals from equity-deserving groups exhibiting elevated levels of psychological distress, burnout, depression and suicidal ideation, as well as experiencing frequent incivility, workplace violence and discrimination, all of which were found to negatively affect mental health outcomes.
10. New entrants to the profession, including articulated students, similarly experience high rates of psychological distress, depression and anxiety.
11. In December 2022, a supplemental recommendation report was released identifying 35 targeted measures addressing the *National Study*'s key findings, many of which are directed at law societies.<sup>4</sup> In order to devote sufficient time to the analysis of this large body of data, and to give consideration to how the *National Study* recommendations might be implemented in BC, the Task Force's tenure was extended for an additional year.
12. During this period of review, the Task Force determined that the Law Society had already fulfilled a number of the *National Study*'s regulatory recommendations, including removing mental health disclosures from the admission program application, amending the duty to report provisions in the *BC Code* and developing an alternative discipline process.<sup>5</sup> The Task Force also concluded that approximately one-third of the *National Study* recommendations are directed at other stakeholders and fall outside of the Law Society's public interest mandate.<sup>6</sup>
13. The majority of the remaining *National Study* recommendations were found to share commonalities with the Task Force's previous 24 recommendations and, in this regard, have been at least partially addressed by past policy decisions approved by the Benchers [see **Appendix A**]. Where such overlap exists, additional operational activities addressing the

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<sup>4</sup> Cadieux, N., et. al. (2022). Targeted Recommendations: Towards a Healthy and Sustainable Practice of Law in Canada. *National Study on the Health and Wellness Determinants of Legal Professionals in Canada, Phase I* (2020-2022). Université de Sherbrooke ("[Recommendations Report](#)").

<sup>5</sup> Mental Health Task Force First Interim Report (recommendations 12 and 13); Second Interim Report (recommendations 6 and 7) and the Alternative Discipline Process Report (*supra* note 2).

<sup>6</sup> *National Study* Recommendations Report *supra* note 4 at 1.1 (law schools); 2.3, 4.1, 7.3, 8.3, 8.4, 10.1, 10.2; (legal employers); 3.3 (CPD providers); 3.4 (mentoring and peer support programs), and; 10.4 (individual lawyers).

*National Study* findings were identified, recognizing that these initiatives generally do not require further policy approval.

14. For the final sub-set of *National Study* recommendations — namely, those that have not yet been addressed by the Law Society — the Task Force examined whether developing further recommendations for the Benchers was advisable.

## Discussion

15. The recommendations contained in this report respond to the *National Study* findings by identifying priority areas of work in relation to operational activities,<sup>7</sup> policy development and strategic planning efforts that support the Law Society in continuing to address mental health within the profession from a public interest perspective. In the discussion that follows, key issues are identified, supported by empirical data, and a series of recommended responses are proposed. The supporting policy analysis is presented toward the end of the report, with a focus on the public interest benefits of the recommended approaches.

## Continuous improvement of well-being resources

**Recommendation 1:** Enhance the development, consolidation and dissemination of the Law Society's well-being resources and provide periodic reporting on resource-related development, collaboration, implementation and outreach activities.

16. A key component of the Task Force's mandate is to improve understandings of the prevalence of mental health and substance use issues affecting legal professionals and to encourage lawyers to seek support for these issues. From a public interest perspective, this work remains a priority for the Law Society on the basis that increased awareness and use of support and resources can help place lawyers in a stronger position to serve their clients and reduces the risk that a health issue may impact on the delivery of legal services.
17. On this basis, many of the Task Force's early recommendations focused on improving communications about, and access to, mental health-related information and resources. Although these initiatives represent significant progress, the *National Study* data and associated recommendations suggest that more can, and should, be done.<sup>8</sup>

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<sup>7</sup> If an action or activity is an extension of current Law Society operations or does not represent a new policy direction or decision it can be undertaken by staff without the direct involvement of the Board or committees.

<sup>8</sup> *National Study* Recommendations Report *supra* note 4 at 5.7, 6.1, 6.2 and 10.3.

18. The Task Force therefore recommends that the Law Society commit to the continuous review and improvement of its well-being resources and to provide periodic reporting on resource-related development, collaboration, implementation and outreach activities. In parallel with this work, the Law Society should monitor and, as appropriate, participate in the Federation's activities in relation to the development of model policies and other resources, and consider the appropriateness of these materials for use in BC.
19. If approved by the Benchers, the Task Force suggests that the implementation of this recommendation commence with a number of priority operational activities, including: ongoing training and education within the Law Society, updating and providing refresher training as required, supporting a permanent well-being hub on the Law Society website to improve the collation and dissemination of mental health-related resources,<sup>9</sup> promoting the well-being resources available through LifeSpeak, continuing to develop expert system support tools and expanding the Law Society's practice resources in relation to the key topics identified in the *National Study*, including civility, burnout, vicarious trauma, technostress, setting boundaries, substance use, suicide, the intersectionalities between mental health and EDI issues, stress management and resilience.
20. To ensure ongoing development, implementation and improvement in respect of training and resources dedicated to mental health and substance use issues, the Task Force recommends that the Benchers receive periodic reports from staff, as requested by the Executive Committee, on the operationalization of this recommendation.

## **Develop additional resources and communications addressing barriers to accessing support**

**Recommendation 2:** Respond to the *National Study* data regarding factors that create barriers to lawyers seeking support by: (i) creating a set of tailored resources and communications that identify specific, practical strategies for overcoming the primary barriers to accessing support, and; (ii) highlighting and reducing the gap between real and perceived stigma.

21. Many of the Task Force's past recommendations have sought to improve access to, and use of, support services on the basis of the public interest benefits associated with lawyers obtaining support that may place them in an improved position to serve the public. However, in light of the *National Study* data that indicates that nearly half of legal professionals that felt they could benefit from obtaining professional support for a psychological health issue, and two-thirds of those with suicidal thoughts, did not seek assistance, the importance of prioritizing actions that remove barriers to seeking support cannot be overstated.<sup>10</sup>

<sup>9</sup> See [Lawyer Well-Being Hub | The Law Society of British Columbia](#), which highlights the work undertaken thus far.

<sup>10</sup> *National Study* Research Report *supra* note 3 at p. 54.

22. Historically, the Task Force has focused on reducing stigma and assuaging lawyers' concerns about the confidentiality of assistance programs, based on US studies identifying these as the primary barriers to lawyers accessing support.<sup>11</sup> The *National Study* data reveals, however, that Canadian legal professionals are influenced by a broader range of factors, with the dominant barriers cited as: a belief that the health issue is temporary and will pass (56%), lack of energy (38%), lack of time (28%), being unsure if professional help should be sought (23%) and financial constraints (23%). In contrast, stigma-related barriers were reported with less frequency.<sup>12</sup>
23. In response to this new data, the Task Force recommends that the Law Society develop a tailored set of resources and communications that identify specific, practical strategies for overcoming the particular barriers to support-seeking identified in the *National Study*. These materials should be prepared in consultation with subject-matter experts, regularly reviewed and updated, and promoted through the Law Society's various communications platforms.
24. Although stigma may play a more nuanced role in deterring support-seeking, the *National Study* nevertheless strongly supports the continuation of stigma-reduction initiatives.<sup>13</sup> In particular, the data provides new insights into the "dichotomy of stigma," namely: that although respondents overwhelmingly disagreed with the negative stereotypes associated with individuals with mental health issues, many respondents nevertheless expressed a belief that others within the profession held stereotypes about those experiencing mental health issues.<sup>14</sup> This dichotomy may be a contributing factor to many legal professionals' reluctance to seek support for mental health issues.
25. To address this concern, it is recommended that the Law Society develop targeted communications aimed at reducing both the actual and perceived stigma related to mental health and substance use issues, and addressing incorrect assumptions about the prevalence of negative stereotyping and discriminatory views within the profession. To support evidence-based policy development, consideration may also be given to any additional data from Phase 2 of the *National Study* in respect of barriers that prevent BC lawyers from obtaining assistance for mental health issues.<sup>15</sup>

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<sup>11</sup> Krill P.R., Johnson R. & Albert L., "[The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys](#)" (2016) 10 J. Addiction Med. 46.

<sup>12</sup> Stigma related barriers include being ashamed (13%), fear of others finding out (9%) and fear of discrimination (3%). See *National Study* Research Report *supra* note 3 at p. 56.

<sup>13</sup> One of the *National Study*'s ten meta- themes is to "implement actions aimed at destigmatizing mental health issues in the legal profession" (*National Study* Recommendations Report *supra* note 4 at p.28).

<sup>14</sup> The *National Study* observed a difference of approximately 41% between personal stigma and perceived stigma (*National Study* Recommendations Report *supra* note 4 at p. 278).

<sup>15</sup> Results of Phase 2 of the *National Study*, which focuses on qualitative data that contextualizes the national survey data and will generate further recommendations for BC that are tailored to regional factors, are expected in 2024.

## Facilitate opportunities to take time to address health issues

**Recommendation 3:** Facilitate opportunities for lawyers to have greater time and means to address health issues by: (i) improving communications and resources in respect of existing options, and; (ii) exploring the potential development of additional options.

26. As discussed in the previous recommendation, the *National Study* data provides new evidence that lawyers' lack of time and energy, and financial concerns, all present significant obstacles to accessing support for mental health issues. In the Task Force's view, these barriers are linked to the challenges, both real and perceived, of taking time to manage health issues.
27. A two-pronged approach is therefore recommended: First, improving communications and resources in respect of existing options to reduce or take time away from practice, and; second, exploring the potential to develop additional options for practice relief or coverage.

### Enhance information and resources regarding existing options

28. The Law Society has a variety of mechanisms that facilitate absences from, or reductions in, practice, as described below.
29. In addition to a non-practising status option, BC is one of only a few Canadian law societies with a part-time indemnity category, permitting lawyers to reduce their hours of work and indemnity fees while maintaining their practising status. Currently, the information provided to the profession about this option is narrowly focused on making the necessary changes to indemnity coverage, and lacks content that contextualizes the circumstances in which there may be merit in considering this option.
30. The Law Society also facilitates a locum registry through which lawyers can arrange a substitute professional to care for matters while they take time off, which provides another option for individuals that anticipate requiring practice coverage for health or other reasons. Notably, the registry was created more than a decade ago to address the issues now under consideration, namely: lawyers lacking options for either maintaining their practice while taking time-off or temporarily reducing their practice.<sup>16</sup> Locums were identified as a solution to the pressures, particularly on sole and small firm practitioners that can contribute to burnout, which may present risks to both lawyers and their clients.

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<sup>16</sup> Law Society of BC, [Small Firm Task Force Report](#) (2007) at p. 16. Locums are short-time employees or independent contractors that provide temporary practice coverage to lawyers requiring time away from practice (e.g. health-related leaves, maternity or parental leave, bereavement leave, vacation) or a reduction in practice load.

31. In undertaking a review of the Law Society's current locum registry, the Task Force identified a number of shortcomings, including the limited information available regarding the registry, the small pool of locums, the lack of accompanying resources and restricted access through the member portal. The stigma associated with seeking locum coverage and the lack of clarity around the services available likely also contribute to the limited uptake of the program.
32. To address these issues, and to reduce barriers to use, the Task Force recommends revitalizing the locum registry through a number of operational changes, including developing checklists, sample contracts and FAQs,<sup>17</sup> as well as materials that identify different scenarios in which lawyers might consider both acting as, and utilizing locums, as well as the benefits of doing so. Additionally, the Law Society should undertake a communications program to seek to increase the number of lawyers offering to be engaged for temporary practice coverage through the locum program and ensure that this information is both actively communicated to the profession and included in the practice resource and well-being sections of the website.
33. Improvements to the locum registry's functionality, including making it accessible through the public portion of the Law Society's website, may also encourage use. Consideration could also be given to re-branding the program as a short-term practice coverage network to overcome the stigma that has historically been associated with locums.
34. Once these changes are implemented, usage should be periodically evaluated to assess the extent to which these modifications increase the registry's utility.
35. As a final option, through the Custodianships program the Law Society may apply for a court order appointing the Society as the custodian of a lawyer's practice in a number of circumstances, including those in which a lawyer is unable to maintain their practice.<sup>18</sup> Although the Law Society's focus in a custodianship arrangement is typically on taking steps to wind up a practice, in situations in which a lawyer is undergoing medical treatment, there may be capacity for the Law Society to manage the practice for a short period of time until the individual is able to return. The Custodianships department also occasionally provides assistance in setting up short-term practice coverage outside of the court-ordered process.
36. Although these options are available in a limited set of circumstances, and as necessary to protect the public interest, communications to the profession regarding the Custodianships program would benefit from additional transparency. On this basis, it is recommended that

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<sup>17</sup> See for example, the [guides](#) for legal locums developed by organizational in the UK and resources supporting the LSO's [Contract Registry](#), Alberta's [Locum Connect](#) and Saskatchewan's [Locum Registry](#).

<sup>18</sup> The circumstances in which a custodianship may be sought are enumerated Part 6 of the *LPA*.

the Law Society develop further communications for the profession in respect of the role that the Custodianships department can play in arranging the conduct of a lawyer's practice.

37. More generally, the Task Force recommends that the Law Society develop additional practice resources that enhance the information about, and the potential benefits of, utilizing the various options described above in a manner that normalizes the need to take time off or to reduce one's practice load for a variety of reasons. These resources may include: materials that present different scenarios in which lawyers may require practice reductions or coverage, FAQs for those contemplating taking or returning from a period of leave or reduced practice and checklists addressing practical and ethical considerations in relation to absences from practice.<sup>19</sup> These resources should be consolidated in the practice resources section of the website, linked to the lawyer-well-being hub and actively promoted through Law Society communications.<sup>20</sup>

### **Explore the potential development of additional options**

38. The Task Force has considered whether expanding the use of court-ordered custodianships is likely to be an effective means of enhancing the options available to lawyers that need time to address a health issue. Several barriers to broader use of the program were identified, including the requirement for lawyers to disclose their health issue to support the issuance of an order, the stigma associated with a custodianship and the broad powers provided to custodians under the *LPA*. Accordingly, the Task Force concluded that court-ordered custodianships are not the preferred mechanism for enhancing opportunities for lawyers take time off to manage a health issue.
39. In undertaking a review of existing options, the Task Force identified a "gap" in the current resources between custodianships on the one hand, which are implemented through a court order and often address unforeseen and exigent circumstances, and a planned absence to be covered through the use of a pre-arranged locum, on the other. Neither approach may be suitable in circumstances in which a lawyer requires unanticipated coverage to seek support for a health issue where there is insufficient time to arrange for a locum but the lawyer is also not in a position where it is necessary to have their entire practice assigned to a custodian through a court order.
40. On this basis, the Task Force examined the merits of a voluntary custodianship-like program that operates outside of the court-ordered process established in the *LPA*. Although developing this, or other novel approaches to facilitating taking time to address health issues

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<sup>19</sup> In November 2023, the Benchers approved changes to the Law Society's return to practice requirements, extending the period of time that lawyers may maintain non-practicing status before triggering the Credentials Committee's review of their application to resume practice.

<sup>20</sup> This approach is preferred to creating a separate webpage for medical leaves in an effort to normalize the need to take breaks and reduce the stigma associated with doing so.

to help fill the gap described above are likely to be challenging from both a policy and practical perspective, the Task Force is of the view that it is in the public interest to explore innovative ways to better enable lawyers to seek support.

41. In undertaking this work, it is recommended that an approach similar to that leading to the development of the Alternative Discipline Process (“ADP”) is adopted. This process involved considerable policy analysis and program design, and ultimately, a balancing exercise to ensure that the program has as few barriers to utilization as possible but still operates in, and is seen to be operated in, the public interest. Similar challenges exist in considering the creation of additional options to facilitate lawyers taking time to address health issues. Included among those challenges are ensuring that such a program is accessible and non-stigmatizing, as well as being cost-effective and not subject to misuse.
42. As the Task Force’s tenure concludes, it is recommended that a working group of three Benchers be appointed as a sub-committee of the Equity, Diversity and Inclusion Advisory Committee (“EDIAC”) to consider and, if advisable, develop the purpose, goals and principles for a further option or options to fill the aforementioned gap in temporary coverage between locums and court-ordered custodianships. The working group would report to the Executive Committee to determine whether steps should then be taken by staff to operationalize a program or pilot program.

## Final assessment of the ADP pilot project

**Recommendation 4:** Assess and, if appropriate, adopt, the Alternative Discipline Process as a permanent regulatory program at the conclusion of the three-year pilot project.

43. In September 2021, the Benchers approved the Task Force’s recommendation to create the ADP as a three-year pilot program. The rule changes necessary to operationalize the program were subsequently adopted and the pilot commenced in April 2022.
44. A mid-pilot assessment of the ADP will be provided to the Benchers in early 2024. Based on informal reporting to date, the Task Force considers that the program is meeting or exceeding its objectives and expects future reporting will confirm this to be the case.
45. Although the rules necessary to maintain a permanent program are already in place, it is important that the ADP is formally assessed at the conclusion of the three-year pilot project and, if appropriate, adopted as a permanent regulatory program. In particular, taking active steps to formalize the ADP is necessary to document and convey, to both the profession and to the public, the benefits of the program. Further, in the event a new regulatory regime is implemented, this reporting and decision-making will ensure that the ADP’s background,

purposes, and public interest benefits are clearly articulated for the new governing body, which may otherwise lack an understanding of the institutional history and benefits of the program.

## Implement a mental health transition plan

**Recommendation 5:** Implement a transition plan to support the Law Society’s continued engagement with mental health issues once the Task Force concludes its work that includes a combination of committee participation in strategic direction and policy decisions, and staff support for operational activities, outreach and collaboration with stakeholders.

**Recommendation 6:** Utilize the strategic planning process to periodically assess and update the Law Society’s engagement with mental health and substance use issues at a policy level.

46. The Task Force has been asked to conclude its term at the end of this year. However, given the continued relevance of mental-health related work to both the profession and the public interest, it is recommended that a transition plan, comprised of the elements described below, is implemented to support the Law Society’s continued engagement with mental health and substance use issues.

### Strategic and policy direction

47. Once the Task Force’s tenure concludes, it is proposed that the Executive Committee oversee the strategic planning aspects of future mental-health initiatives and is assigned primary responsibility for reviewing reports respecting the implementation and effectiveness of the Task Force’s past recommendations, as well as proposals for new initiatives or policy directions.

48. To ensure that these issues are addressed and reported on periodically, the Task Force further recommends that consideration of the Law Society’s policies, processes, programs, resources, training, and ongoing implementation efforts in respect of mental health and substance use issues be expressly incorporated into the formal strategic planning process.

49. As the intersectionalities between equity, diversity and inclusion and mental health issues have become a growing focus for organizations advancing mental health policy and programming,<sup>21</sup> the EDIAC should also be involved in the Law Society’s future mental health work. The *National Study* data respecting the elevated risk that legal professionals from equity-deserving groups face with respect to experiencing mental health issues<sup>22</sup>

<sup>21</sup> See for example, Mental Health Commission Canada, “[Toward an Integrated and Comprehensive Equity Framework: Report - Mental Health Commission of Canada](#) (June 2023).

<sup>22</sup> *National Study* Recommendations Report *supra* note 4 at 7.1, 7.2 7.3.

provides further support for the EDIAC assuming key responsibility for future policy and advisory functions in relation to these issues, including the review of the forthcoming results of Phase 2 of the *Study*. To facilitate this work, the Task Force also recommends that the EDIAC's mandate be amended to expressly include responsibility for monitoring, reporting on, and making policy recommendations in respect of, mental health related issues.

50. The *National Study* also cites statistics regarding the high rates of psychological distress and mental health issues among those in their early years of legal practice<sup>23</sup> and makes corresponding recommendations on training, mentorship and continuing professional development to improve health outcomes for new entrants to the profession.<sup>24</sup> Accordingly, it is recommended that the relevant *National Study* findings are considered as part of any future changes to lawyer education and development in BC, including in the work being done by the Lawyer Development Task Force.
51. Although assigning consideration of mental health matters to specific policy committees and staff is important from the perspective of ensuring the coordination of, and accountability for, this work, it is critical to recognize that mental health issues have the potential to influence the full breadth of the Law Society's educational and regulatory functions, as well as having differential impacts across the profession. In this regard, these matters should not be viewed as being the sole responsibility of a few individuals or bodies. Rather, a mental health lens should be applied the across all facets of the Law Society's work, with a particular emphasis on consultation with impacted external and internal stakeholders, including bodies such as the Truth and Reconciliation Advisory Committee and the Ethics Committee, where appropriate.

### **Operational activities**

52. Collectively, the Task Force's 30 recommendations, combined with the *National Study* findings, provide Law Society staff with a detailed roadmap for taking a proactive, evidence-based approach mental health-related work moving forward.
53. To ensure continued success and leadership in this evolving area of policy development, it is recommended that the Law Society commit to maintaining current levels of staff support for mental health initiatives for at least the duration of the current Strategic Plan. Such an approach will enable staff to continue to undertake a wide range of operational activities including: issue monitoring, research, data and policy analysis, resource development,

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<sup>23</sup> The *National Study* Research Report *supra* note 3 documented that approximately half of articulated students reported being diagnosed with a mental health issue since commencing practice.

<sup>24</sup> *National Study* Recommendations Report *supra* note 4 at 2.2 and 3.1 to 3.4. Although recommendations 1.1 to 1.3, 2.1 and 2.3 are primarily directed at law schools, they may warrant consideration given the Law Society's role in lawyer development through the Admission Program.

program evaluation and reporting. In undertaking this work, staff would also be expected to seek input from subject matter experts as necessary.

54. The implementation of the Task Force’s recommendations, coupled with periodic updates in this regard, would ensure that the Benchers remain apprised of the Law Society’s progress in fulfilling the policy directions set during the Task Force’s tenure. Staff can also be expected to participate in ongoing outreach and collaboration with others within the legal community working to advance mental health initiatives. In particular, the Task Force encourages the Law Society to contribute in pan-Canadian efforts to implement the *National Study* recommendations, including working groups and projects spearheaded by the Federation.<sup>25</sup>

## Policy Analysis

55. In developing and approving the Task Force’s recommendations, the paramount consideration must be the extent to which a particular initiative advances the public interest, including advancing equity, diversity and inclusion and reconciliation with Indigenous Peoples. Secondary factors that warrant evaluation include a proposal’s impact on licensees, public and governmental relations, as well as the budgetary and organizational implications of a particular course of action.

### Public interest

56. The guiding principle of all work at the Law Society is to uphold and protect the public interest in the administration of justice. Section 3 of the *LPA* establishes that this statutory duty can be satisfied in a variety of ways, including assisting lawyers in fulfilling their professional responsibilities. Section 27 of the Act provides further authority to establish programming to assist lawyers in managing or avoiding personal, emotional, mental health or substance use issues.
57. The public interest benefits of the recommendations presented in this report are many and varied. In a general sense, the Law Society’s interest in supporting legal professionals’ well-being is grounded in a responsibility to uphold ethical standards, ensure the quality of legal services and create a healthy and sustainable legal community. Helping lawyers to be more aware of, better understand, and seek support in respect of, mental health and substance use issues has the potential to enhance lawyer well-being and raise the level of practice within the profession. The public also benefits when steps are taken to create a regulatory and professional culture in which these issues are better understood and lawyers are encouraged to obtain support, including being provided with opportunities to devote the necessary time and energy to addressing health concerns.

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<sup>25</sup> *National Study* Recommendations Report *supra* note 4 at 4.2, 5.1, 7.1, 9.1 and 10.3.

58. The transition plan also reflects a proactive regulatory approach, encouraging lawyers to obtain support and providing a framework through which the Law Society can continue to achieve its strategic goals in relation to mental health and their associated public interest benefits. Ensuring that sufficient resources are dedicated to supporting current and future work in this area is also one of the key ways that the Law Society can continue to reduce the risk of harm in relation to these issues.

### **Licensee, government and public relations**

59. Based on the profession's positive engagement with Task Force's work to this point, the significant interest generated by the *National Study* and the Law Society's approach to communications with respect to these issues, it is expected that the recommendations contained in this report will be viewed favourably by licensees. Additional actions that facilitate access to mental-health resources and overcome barriers to seeking support have the potential to benefit many lawyers, both professionally and personally. In taking a non-stigmatizing, supportive approach to mental health issues, the recommendations also reflect the Law Society's recognition that lawyers are human beings, each with a unique set experiences and circumstances, and that their well-being matters.

60. With renewed attention on the prevalence of these issues within the legal profession following the release of the *National Study*, some may question the timing of the dissolution of the Task Force. Such concerns can be met with reference to the transition plan, which reflects the Law Society's ongoing commitment to addressing mental health and substance use issues affecting lawyers.

61. The mental health-related initiatives undertaken by the Law Society are, in some areas, quite progressive and indicate a willingness to lead on policy initiatives for legal regulators in Canada. However, beyond the profession, awareness of the Law Society's work in relation to mental health issues appears to be less extensive. To date, the Law Society's approach to communications has been to identify and explain the public interest basis for all of its work in response to the Task Force's recommendations. Provided that the rationales for addressing these issues continue to be data-driven, evidence-based and clearly articulated in terms of their public interest benefits, it is expected that both the public and the government will recognize the value of this work and be satisfied that it falls within the scope of the Law Society's statutory mandate.

### **Equity, diversity and inclusion**

62. As discussed throughout this report, the *National Study* findings highlight the differences in the prevalence of mental health issues among various populations, with legal professionals

from equity-deserving groups, including individuals that identify as Indigenous, ethnicized, women, 2SLGBTQI+ and/or living with a disability, experiencing elevated rates of mental health issues as compared to the already high prevalence of these issues within the profession more generally. In this respect, actions, including those recommended in this report, that improve mental health outcomes for all legal professionals may be of particular benefit to individuals from equity-deserving groups. Providing the EDIAC with a key role in future policy development further strengthens the Law Society's ability to address the intersectionalities identified in the *National Study*.

63. The Task Force's recommendation pertaining to resource development, in particular, will enable the Law Society to address topics that contribute to improved health outcomes for diverse lawyers, including civility, violence, discrimination and harassment. As the *National Study* data shows that mental health issues and psychological distress tend to impact lawyers' commitment to, and intention to leave, the profession, efforts to improve the experiences of equity-deserving lawyers may also enhance diversity within the profession.

### **Reconciliation with Indigenous Peoples**

64. Although the recommendations contained in this report are not specifically designed to advance reconciliation with Indigenous Peoples, to support the Law Society's broader commitment to this goal, the Senior Advisor, Indigenous Engagement and the Truth and Reconciliation Advisory Committee will be regularly consulted to ensure the impacts of mental health issues on Indigenous lawyers are considered and addressed, as appropriate, in implementing the policy and operational initiatives associated with these recommendations.

### **Transparency and disclosure**

65. The Task Force does not anticipate that its recommendations will affect transparency or disclosure requirements and, on this basis, is of the view that a privacy impact assessment is not necessary.

### **Costs and organizational impacts**

66. If the transition plan is approved, it can be left to the Executive Director to allocate resources to implement this policy direction and identify where additional resources may be required. However, provided that the current level of staff support for policy and operational activities is maintained, no additional costs are anticipated, other than the opportunity costs associated with staff being assigned to mental health work rather than pursuing other strategic goals. As many aspects of the Task Force's recommendations are extensions of the Law Society's current activities, any additional costs are likely to will fall within existing departmental

budgets. Future initiatives requiring more significant budgetary allocations would be subject to Executive Committee, if not Benchers, approval.

## Summary of Recommendations

67. Based on the materials presented in its Final Recommendation Report, the Task Force advances six recommendations for the Benchers' discussion and decision:

**Recommendation 1:** Enhance the development, consolidation and dissemination of the Law Society's well-being resources and provide periodic reporting on resource-related development, collaboration, implementation and outreach activities.

**Recommendation 2:** Respond to the *National Study* data regarding factors that create barriers to lawyers seeking support by: (i) creating a set of tailored resources and communications that identify specific, practical strategies for overcoming the primary barriers to accessing support, and; (ii) highlighting and reducing the gap between real and perceived stigma.

**Recommendation 3:** Facilitate opportunities for lawyers to have greater time and means to address health issues by: (i) improving communications and resources in respect of existing options, and; (ii) exploring the potential development of additional options.

**Recommendation 4:** Assess and, if appropriate, adopt the Alternative Discipline Process as a permanent regulatory program at the conclusion of the three-year pilot program.

**Recommendation 5:** Implement a transition plan to support the Law Society's continued engagement with mental health issues once the Task Force concludes its work that includes a combination of committee participation in strategic direction and policy decisions and staff support for operational activities, outreach and collaboration with stakeholders.

**Recommendation 6:** Utilize the strategic planning process to periodically assess and update the Law Society's engagement with mental health and substance use issues at a policy level.

## Conclusion

68. The Task Force's final report provides an opportunity to reflect on the Law Society's remarkable progress in addressing mental health and substance use issue within the legal profession. Over a six-year period, the Task Force's recommendations have catalyzed a range of initiatives that simultaneously support lawyers, reduce stigma, contribute to positive changes within the profession and protect the public.

69. The *National Study* data confirms, however, that more needs to be done, including by law societies. In light of these findings, the recommendations presented in this report enhance and expand the actions taken by the Law Society to improve lawyer well-being both now, and into the future, within the scope of its public interest mandate.

## **Appendix A: Previous Mental Health Task Force recommendations**

### **First Interim Report (December 2018)**

Recommendation 1: Promote, through a targeted communication campaign, an expanded role for Practice Advisors to include availability for confidential consultations about mental health and substance use issues and referrals to appropriate support resources.

Recommendation 2: Provide Practice Advisors with specialized education and training to enhance their knowledge, skills and access to resources related to mental health and substance use issues.

Recommendation 3: Provide Practice Standards lawyers and support staff with specialized education and training to enhance their knowledge, skills and access to resources related to mental health and substance use issues.

Recommendation 4: Provide lawyers and paralegals in the Professional Regulation Department with specialized education and training to enhance their knowledge, skills and access to resources related to mental health and substance use issues.

Recommendation 5: Provide Credentials Officers, auditors in the Trust Assurance Program and staff lawyers in the Lawyers Insurance Fund with basic education and training to improve their awareness of mental health and substance use issues.

Recommendation 6: Establish a roster of qualified mental health professionals that Practice Advisors, Practice Standards lawyers, Credentials Officers and staff in the Professional Regulation Department may consult to assist them in addressing mental health and substance use issues that arise in the course of Law Society processes involving lawyers or applicants.

Recommendation 7: Provide members of the Credentials Committee, the Practice Standards Committee and the Discipline Committee and their associated hearing panels, as well as individuals who are responsible for practice reviews, conduct meetings and conduct reviews, with basic education and training to improve awareness and knowledge of mental health and substance use issues.

Recommendation 8: Develop a comprehensive, profession-wide communication strategy for increasing awareness about mental health and substance use issues within the legal profession.

Recommendation 9: Seek assistance from LifeWorks to help the Law Society better explain to the profession what services are available and who may benefit from them, and

to explore alternate means for lawyers to connect with LifeWorks support services that do not require access through the Law Society's member portal.

Recommendation 10: Collaborate with the Lawyer Education Advisory Committee to explore the merits of the Law Society introducing a mandatory continuing professional development requirement for mental health and substance use disorder programming.

Recommendation 11: Collaborate with the Law Firm Regulation Task Force to consider developing additional guidance for the self-assessment tool that encourages firms to put in place policies, processes and resources designed to support lawyers experiencing mental health 46 DM2114189 and substance use issues, and to promote the use of these policies, processes and resources within firms.

Recommendation 12: Collaborate with the Credentials Committee in re-evaluating the Law Society's current approach to inquiries into mental health and substance use in the Law Society Admission Program Enrolment Application.

Recommendation 13: To eliminate stigmatizing language and approaches to the reporting requirements in BC Code provision 7.1-3(d) [Duty to report] and the associated Commentary.

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

Recommendation 1: The Law Society will consult and collaborate with BC law schools to improve the exchange of information about the availability of support resources for mental health and substance use issues within the profession and to assist students in transitioning to these supports from those provided during law school.

Recommendation 2: Revise the material in the Benchers Orientation Manual and expand in-person training to improve the manner in which mental health and substance use issues are addressed during the Benchers interview process.

Recommendation 3: Host a town hall to encourage lawyers and firms and other legal employers to engage in a discussion about mental health and substance use within the profession, including the role that legal employers can play in improving lawyer wellness.

Recommendation 4: Staff will develop a style guide that provides guidance on the use of non-stigmatizing and non-discriminatory language in all future Law Society publications and communications and update the current practice resource on respectful language and ensure that this material is prominently displayed on the Law Society's website.

Recommendation 5: Conduct a voluntary, confidential member survey exploring mental health and substance use among BC lawyers.

Recommendation 6: Amend BC Code Rule 7.1-3 (“duty to report”) and the associated Commentary.

Recommendation 7: The medical fitness questions in Schedule A of the LSAP Application Form be removed.

### **Alternative Discipline Process Report (October 2021)**

Recommendation 1: No later than September 2022, the Law Society will implement an alternative discipline process (“ADP”) to address circumstances in which there is a connection between a health condition and a conduct issue that has resulted in a complaint investigation. The ADP will comport with the purpose, principles, design features and policy rationale described in the Mental Health Task Force’s September 2021 recommendation report and commence as a three year pilot project. Following an interim and final review of the pilot project in 2023 and 2025, respectively, the matter will return to the Benchers for a final determination as to whether to establish the ADP as a permanent regulatory program.

### **Fourth Report Recommendation Report (January 2023)**

Recommendation 1: The Law Society should enhance the support available to lawyers that, for reasons that may be related to health issues, do not respond to Law Society communications by creating a roster of pro bono support counsel to assist with the resolution of failure to respond matters and evaluating the effectiveness of the roster over a two year pilot project.

Recommendation 2: The Law Society should develop or adopt expert systems tools to broaden the means by which lawyers and articled students are aware of, and have access to, appropriate support, resources and referrals for mental health and substance use issues.

Recommendation 3: The Law Society should host a mental health forum to facilitate discussions within the legal community regarding the findings and recommendations of the National Study on the Psychological Health Determinants of Legal Professionals in Canada.