

Form 9
[Rule 3.19]

COURT FILE NUMBER 2301 14224

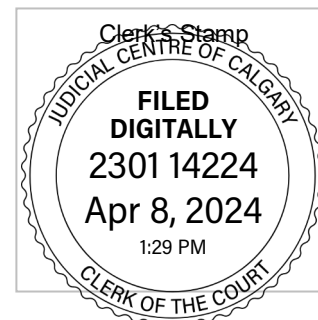
COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT: YUE SONG

RESPONDENT: THE LAW SOCIETY OF ALBERTA

DOCUMENT **CERTIFIED RECORD OF PROCEEDINGS**



ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

Field LLP

Attention: Katrina M. Haymond, KC, & Jason Kully

File No. 59201-23

1. Please find attached:

The written record of the decision or act that is the subject of the originating application for judicial review	
TAB A	Approved Benchers Public Minutes - October 4 & 5, 2023
	Memo re Code of Conduct Amendments - September 6, 2023
	Approved Benchers Public Minutes - April 27, 2023
	Memo re Continuing Professional Development (CPD) Rule and Guideline Amendments - April 27, 2023
	Continuing Professional Development Program Guideline, Final for Benchers - April 27, 2023
	Approved Benchers Public Minutes - September 29, 2022
	Memo re CPD Program Requirements and Review Process - September 29, 2022
	LSA Professional Development Profile, Final - June 2022
	Approved Benchers Public Minutes - April 21, 2022

	Memo to Benchers re Draft Professional Development Profile - April 21, 2022
	Memo to Benchers for Decision re Acknowledgment of Systemic Discrimination - April 21, 2022
	Approved Benchers Public Minutes - October 1, 2021
	Approved Benchers Public Minutes - December 3, 2020
	Memo re Rule 67.4 Mandatory Education Benchers - December 3, 2020
	Memo re Indigenous Cultural Competency Education Parameters Benchers - December 3, 2020
	Approved Benchers Public Minutes - October 1, 2020
	Memo re Lawyer Competence Committee Memo LSA Indigenous Training - October 1, 2020
	The Path module descriptions and learning outcomes including LSA content
	Approved Benchers Public Minutes – May 14, 2020
	Approved Benchers Public Minutes – February 20, 2020
	A Path Forward on Competence – February 11, 2020
The reasons given for the decision or act, if any	
TAB B	<i>See documents above</i>
The document which started the proceeding	
N/A	
The evidence and exhibits filed with the person or body; and	
N/A	
Anything else in our possession relevant to the decision or act, namely:	
TAB C	Approved Minutes of Policy and Regulatory Reform Committee - May 17, 2023
	Approved Minutes of Policy and Regulatory Reform Committee - April 13, 2023
	Approved Minutes of Lawyer Competence Committee - April 12, 2023
	Approved Minutes of Policy and Regulatory Reform Committee - March 15, 2023
	Approved 2023 Special Meeting Minutes of the Law Society of Alberta - February 6, 2023
	Petition for a Special Meeting of the Members of the Law Society of Alberta - January 13, 2023
	Approved Minutes of Lawyer Competence Committee minutes - April 27, 2022
	Approved Minutes of Equity Diversity and Inclusion Committee - March 31, 2022
	Approved Minutes of Lawyer Competence Committee - March 16, 2022

	Meeting Minutes of Indigenous Advisory Committee (IAC) Meeting - March 14, 2022
	Approved Minutes of Equity Diversity and Inclusion Committee - February 10, 2022
	Approved Minutes of Equity Diversity and Inclusion Committee - January 12, 2022
	Approved Minutes of Policy and Regulatory Reform Committee - September 14, 2021
	Approved Minutes of Lawyer Competence Committee - October 30, 2020
	Approved Minutes of Policy and Regulatory Reform Committee - September 17, 2020
	Approved Minutes of Lawyer Competence Committee - September 11, 2020
	Approved Minutes of Policy and Regulatory Reform Committee - August 13, 2020
	Approved Minutes of Policy and Regulatory Reform Committee - July 15, 2020
	Approved Minutes of Policy and Regulatory Reform Committee - March 11, 2020

2. The following are parts of the notice to obtain record of proceedings that cannot be fully complied with and the reasons why: N/A
3. I certify that I have attached all records as required by Rule 3.19(1).

Name of person who certifies this record: Elizabeth J. Osler, KC

Position: Chief Executive Officer & Executive Director, Law Society of Alberta

Signature:  _____



Approved Benchers Public Minutes

Public Minutes of the Five Hundred and Fifteenth Meeting of the Benchers of the Law Society of Alberta (Law Society)

Oct. 4, 2023

In person in Calgary, AB and by videoconference

ATTENDANCE	
Benchers:	Bill Hendsbee, President Deanna Steblyk, President-Elect Sony Ahluwalia (by videoconference) Ryan Anderson Glen Buick Lou Cusano Corie Flett Kene Ilochonwu (by videoconference) Cal Johnson (by videoconference) Levonnie Louie Jim Lutz Bud Melnyk Sharilyn Nagina Mary Ellen Neilson (by videoconference) Sanjiv Parmar Sandra Petersson Stacy Petriuk Ron Sorokin Margaret Unsworth Moirá Váně Grant Vogeli Louise Wasylenko
Executive Leadership Team:	Elizabeth Osler, CEO and Executive Director Cori Ghitler, Deputy Executive Director and Director, Policy and Education Nadine Meade, Chief Financial Officer Kendall Moholity, Director, Regulation and Professionalism



ATTENDANCE

	Andrew Norton, Chief Information Officer and Director, Business Operations
Staff:	<p>Susannah Alleyne, Equity, Diversity & Inclusion Counsel and Equity Ombudsperson</p> <p>Barbra Bailey, Manager, Education (in person)</p> <p>Reed Bjerkseth, Support Staff, Business Technology (in person)</p> <p>Colin Brandt, Senior Advisor, Communications (in person)</p> <p>Colleen Brown, Manager, Communications & Stakeholder Engagement (in person)</p> <p>Shabnam Datta, Manager, Policy (in person)</p> <p>Jennifer Freund, Policy & Governance Counsel</p> <p>Andrew McGrath, Support Staff, Business Technology (in person)</p> <p>Tina McKay, Senior Manager, Business Operations (in person)</p> <p>Noria Neuhart, Policy Counsel (in person)</p> <p>Rachel Provencher, Senior Advisor, Communications (in person)</p> <p>Christine Schreuder, Supervisor, Governance (in person)</p> <p>Julie James, Governance Coordinator (in person)</p> <p>Rebecca Young, Education Counsel</p>
Guests:	<p>Loraine Champion, Executive Director, Alberta Lawyers' Assistance Society</p> <p>Sarah Coderre, Secretary, Canadian Bar Association Alberta</p> <p>Hyder Hassan, Executive Director, Pro Bono Law Alberta</p> <p>Christine Sanderman, Executive Director, Legal Education Society of Alberta</p> <p>Liza Worthington, CEO, Canadian Centre for Professional Legal Education</p>
Regrets:	Ted Feehan, Benchers
Observer:	Ian Burns, Digital Reporter, The Lawyer's Daily

Secretary's Note: All Benchers and ELT attendees were in person unless otherwise stated. All staff, guests and observers attended via videoconference unless otherwise stated. The arrival or departure of participants during the meeting are recorded in the body of these minutes.

ITEM	
Call to Order	
The public meeting convened at 10:50 a.m.	
1	<p>Opening Remarks from the President (agenda item 4)</p> <p>Mr. Hendsbee extended a special welcome to Mr. Hassan, new Executive Director, Pro Bono Law Alberta and to Ms. Coderre, Secretary, Canadian Bar</p>



	ITEM
	<p>Association (CBA) Alberta sitting in for Robert Bassett, Vice-President, CBA Alberta, to their first meeting.</p> <p>Ms. Runnalls delivered an Alberta land acknowledgment statement.</p>
2	<p>Leadership Report (agenda item 5)</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p>
3	<p>Practice Fundamentals Program Outline (agenda item 6)</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p> <p>Ms. Young provided an overview of the Practice Fundamentals Program (Program) Outline and requested Benchers feedback.</p> <p>The key Benchers discussion and feedback and staff responses included:</p> <ul style="list-style-type: none">- The net cost to the Law Society to provide the Program for free is approximately \$400,000 over five years.- The webinars will initially be offered live, recorded, then available on demand. Workshops will be live only and the numbers capped to offer more meaningful active study. Once released, the self-directed lessons will be available as long as the Program is in place.- In response to a question regarding the number of students expected to use the Program, Ms. Young responded that it is difficult to assess given the nature of the Program and that it will be piloted on a voluntary basis. She noted that while a mandatory program would provide more reliable data, launching the Program as voluntary will allow time to build up content and test for future success.- Staff are considering how the Continuing Professional Development (CPD) tool may promote the Program for free to the targeted early years of practice demographic and at low cost to other lawyers.- The Program can be utilized for practice management and conduct related purposes.- It was suggested that staff consider whether the Program could be made available to law school graduates and internationally trained lawyers while they are looking for articles.



	ITEM
4	<p>Rule Amendments RE: <i>Labour Mobility Act</i> (agenda item 7)</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p> <p>Ms. Neuhart provided an overview of the Rules in need of amendment to align with the requirements of the new <i>Labour Mobility Act</i> and <i>Labour Mobility Regulation</i> (Labour Mobility legislation). Ms. Neuhart indicated that Ms. McKay was also available for questions.</p> <p>The key Benchers discussion, feedback and staff responses included:</p> <ul style="list-style-type: none"> - Gratitude was expressed for the work done to carry out the requirements under the Labour Mobility legislation, including the requirement to process interprovincial transfers within 20 days concurrently while managing reinstatement applications. - Staff reported that the new requirements also had a significant impact on the operations side, including the design and implementation of the online Canadian Lawyer Application. - Staff confirmed that the number of applicants is increasing. So far in 2023 there have been 155 new lawyers registered and there are 65 in the queue. - In response to a question regarding the National Mobility Agreement, staff responded that the Labour Mobility legislation impacts permanent mobility but will not impact temporary mobility. - Ms. McKay confirmed that it is possible to hold membership with multiple law societies if fees are paid. However, temporary mobility does not generally incur fees. <div style="border: 1px solid black; padding: 10px; margin-top: 10px;"> <p>Motion: Melnyk/Petriuk</p> <p>That the Benchers approve the Rules amendments and the new Rules, the amendments to the Rules headings, the new Rules headings, and the new Rules subdivision as proposed in Appendix A.</p> <p style="text-align: right;">Carried unanimously</p> <p><i>Secretary's note: The Rules amendments proposed in Appendix A are as follows:</i></p> <p><i>Rules 47(n), 47(o), 66, 66.1, 66.2, 67, 70 To amend and renumber Rules and headings, and to insert new Rules and headings into Division 4 of Part 2, to implement the Labour Mobility Act and Labour Mobility Regulation</i></p> <p><i>Rules 47.1, 48.1, 48.4, 50, 50.3, 51, 51.1, 51.2, 54, 55, 63.1, 64, 64.2, 64.3, 64.4, 64.5, 64.6, 64.7, 64.8, 64.9, 64.10, 65, 65.1, 65.2, 65.3, 65.4, 65.5, 66.3, 69.2, 72.1, 72.2, 72.3, 72.4, 72.5, 72.6, 73, 73.2, 73.3 To amend, renumber, insert and repeal Rules for clarity and to update processes and terminology</i></p> <p><i>Rules 47(e), 47(g), 107.2, 153.1, 159.01 To update terminology and formatting</i></p> </div>



	ITEM
5	<p data-bbox="310 243 1325 279">Active Non-Practising Status for Lawyers on Leave (agenda item 8)</p> <p data-bbox="310 296 1325 365">Documentation for this item was circulated with the materials prior to the meeting.</p> <p data-bbox="310 390 1325 459">Ms. Datta provided an overview of the active non-practising status memo included with the meeting materials.</p> <p data-bbox="310 485 1130 514"><i>Secretary's note: The following motions were considered concurrently.</i></p> <div data-bbox="310 531 1422 1789" style="border: 1px solid black; padding: 10px;"><p data-bbox="326 552 724 583">Motion 1: Petersson/ Váně</p><p data-bbox="326 606 1360 758">That the Benchers approve the amendment to the heading of Rule 115, the amendments to Rule 115, and new Rule 115.1 and the new heading for Rule 115.1, as proposed, with Rule 115.1 and its heading to take effect on February 1, 2024.</p><p data-bbox="326 783 464 814">Motion 2:</p><p data-bbox="326 837 1344 951">That the Benchers approve the annual fee for <i>active non-practising status</i> to be one-half of the annual fee for full active status, with the fee to take effect on February 1, 2024.</p><p data-bbox="326 976 1289 1010">The key Bencher discussion, feedback and staff responses included:</p><ul data-bbox="370 1035 1401 1717" style="list-style-type: none">- Staff confirmed that they considered how current a lawyer's practice is for the proposed expedited reinstatement for lawyers who hold active non-practising status for three years or less.- Staff confirmed that lawyers can and do change their status multiple times over the course of their careers.- Gratitude was expressed for the proposed amendments regarding reinstatement and the fee for lawyers who take a leave from practice for any reason. The importance of addressing leave from practice and status and the benefit in particular, to young female lawyers was recognized.- A question was asking about exploring a refund option for those lawyers who pay the full annual fee and then change their status to a status with a lower fee. Staff noted that implementing a refund schedule would have a significant impact on the organization overall, which would result in an increase in costs which would be subsidized by active lawyers.<p data-bbox="1065 1740 1382 1774" style="text-align: right;">Carried unanimously</p></div>



	ITEM
6	<p>Benchers Vacancy Policy (agenda item 9)</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p> <p>Ms. Freund provided an overview of the proposed Benchers Vacancy Policy amendments.</p> <p><i>Secretary's note: The following motions were considered concurrently.</i></p> <div data-bbox="310 533 1421 1388" style="border: 1px solid black; padding: 10px;"><p>Motion 1: Buick/ Váně</p><p>That the <i>Benchers Vacancy Policy</i> be amended to insert a new paragraph 11, to permit the Nominating Committee to convene in advance of an anticipated vacancy, stating:</p><p style="padding-left: 40px;">When a vacancy is anticipated by the Benchers, the Nominating Committee may convene to implement the vacancy appointment process but no appointment can be made effective until the vacancy occurs, in accordance with section 19 of the <i>Legal Profession Act</i>.</p><p>Motion 2:</p><p>That the <i>Benchers Vacancy Policy</i> be amended to renumber paragraph 27 as paragraph 29 and, within this paragraph, to strike “six” and insert “twelve” in its place following “arising within” and before “months”.</p><p>Motion 3:</p><p>That the <i>Benchers Vacancy Policy</i> be amended to renumber paragraphs, improve wording, remove unnecessary repetition, increase clarity and create consistency, as proposed.</p><p style="text-align: right;">Carried Unanimously</p></div>
7	<p>Rule 33 Amendments (agenda item 10)</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p> <p>Ms. Freund provided an overview of the Rule 33 amendments proposed in the meeting materials.</p> <p><i>Secretary's note: The following motions were considered concurrently.</i></p> <div data-bbox="310 1688 1421 1948" style="border: 1px solid black; padding: 10px;"><p>Motion 1: Lutz/Wasylenko</p><p>That the Benchers amend subrule 33(2), as proposed, to add clarity to clauses (a), (b), (c), (h), (i), and (j); and to insert the proposed new clauses, which will be lettered (n), (o), (p), (q) and (r), to add clarity and transparency to decision making for meetings.</p></div>



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	<p>Motion 2:</p> <p>That the Benchers amend subrule 33(3) to:</p> <ul style="list-style-type: none">- clarify the registration requirement in clause (b);- in clause (l), amend the cross reference to subrule 33(2), clarify the voting requirement, and renumber the clause to be clause (i);- move clauses (i) and (j) to subrule 33(2);- move clause (k) to subrule 33(2) following amendment to add clarity and amend the time limit on debate; and- move clause (m) to subrule 33(2) following amendment to inset additional possible forms of recording and distribution methods to the restrictions listed; <p>and that the clauses in subrules 33(2) and 33(3) be re-lettered, as required, as a consequence of moving the four above noted clauses.</p> <p>Motion 3:</p> <p>That the Benchers strike out subrule 33(4).</p> <p style="text-align: right;">Carried unanimously</p>
8	<p>Bencher Delegations Review and Recommendations (agenda item 11)</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p> <p>Ms. Freund provided an overview of the Bencher delegations review and recommendations.</p> <p>A request was made to amend the proposed wording of motion 1 by striking out the proposed text and substituting with the wording provided in the first paragraph of page seven of the memo for clarity. It was agreed to amend the wording of the proposed motion prior to it being moved.</p> <p><i>Secretary's note: The following motions were considered concurrently. The substituted wording in motion 1 as requested above is reflected in red font.</i></p> <div data-bbox="313 1520 1421 1850"><p>Motion 1: Melnyk/Petersson</p><p>That the following resolution,</p><p><i>The Benchers agreed by consensus to delegate the authority for decisions on future applications under 3(2) to the Executive Director.</i></p><p>adopted at Bencher meeting 471, on April 9 and 10, 2015, be amended to substitute the following wording for the original</p></div>



ITEM

That the Benchers agree to delegate the review of future applications made under subrule 3(2) to the Executive Director for assessment and a recommendation for decision.

Motion 2:

That the following resolution, adopted at Bencher meeting 454 on November 24 and 25, 2011, be rescinded:

That the present requirement for a bond or other security in the amount of \$1 million as a condition of licensing an FLC be eliminated; that a new requirement be substituted to the effect that the Executive Director or his or her delegate may require security in a form and amount as is satisfactory to the Executive Director or delegate, and that this decision be reviewable by or appealable to the Trust Safety Committee or other committee as the Benchers may from time to time establish; that a guideline be developed to guide the exercise of discretion; that the present FLC licensing rules be clarified to provide that an FLC may not hold any trust property in addition to trust funds.

That the Executive Director be authorized to process in a timely way the application in accordance with the motion.

Motion 3:

That the following resolution, adopted at Bencher meeting 412 on June 5, 2002, be rescinded:

THAT, in addition to the delegation of the Executive Director's powers and duties previously made, the powers and duties of the Executive Director under Parts 2 and 8 of the Legal Profession Act; parts 2, 8, 8.1, 9 and Rule 46 of the Rules of the Law Society of Alberta; and Form 1-4 be delegated to the employees holding the positions of "Counsel" and "Counsel, Policy and Programs".

- Part 2 of the Act and the Rules deals with membership.***
- Part 8 of the Act and the Rules deals with professional corporations.***
- Part 8.1 of the Rules deals with limited liability partnerships.***
- Part 9 of the Rules deals with extension of time to return Member Information Update forms.***
- Rule 46 and Form 1-4 deal with Certificates of Standing.***

Motion 4:

That the following resolution, adopted at Bencher meeting 401 on May 31, 2001, be rescinded:



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THAT the delegation of authority by the Benchers to the Credentials and Education Committee, Rule 68, be approved as found in Appendix #2 attached to the original of these minutes.

Motion 5:

That the following resolution, adopted at Bencher meeting 414 on November 27, 2003, be rescinded:

THAT the Benchers delegate to the Director, Lawyer Conduct, an employee of the Law Society of Alberta, the powers and duties of the Executive Director under the Legal Profession Act, such delegation to be effective in circumstances in which it is not reasonably practicable for the Executive Director to discharge those powers and duties.

Motion 6:

That the following resolution, adopted at Bencher meeting 406 on April 11, 2002, be rescinded:

THAT the powers and duties of the Executive Director under part 3 of the Legal Profession Act and part 3 of the Rules of the Law Society are delegated to:

- (i) The President or the President-elect where the member who is the subject of a review under section 53 is a member of the Law Society staff, an agent of the Law Society or a Bencher; and to***
- (ii) The President-elect where the member who is the subject of a review under section 53 is the President or the immediate Past President.***

Motion 7:

That the following resolutions, adopted at Bencher meeting 365 on November 27, 1997, be rescinded:

THAT the Conduct Review Committee may carry on its business under the name and style of the Practice Review Committee;

THAT the Practice Review Committee is authorized to identify members encountering difficulties in their law practice and to take pro-active steps to assist such members in whatever manner the committee sees fit;

THAT in carrying out its functions, the committee may receive referrals from and branch of the Law Society including, without



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restrictions the generality of the foregoing, the Secretary, Conduct, Insurance, Complaints Officers and Audit;

THAT the committee shall be entitled to all information with respect to any member of the Law Society to which the Secretary of the Law Society has Access; and

THAT in the case of non-statutory referrals, a report by way of a copy of the relevant minutes shall be provided by the Practice Review Committee to the referring source if such report is requested by that source.

Motion 8:

That the following resolutions, adopted at Benchers meeting 415 on February 4, 2004, and Benchers meeting 395 on November 23 and 24, 2000, be rescinded:

THAT the Manager, Practice Review, an employee of the Law Society of Alberta, be granted the authority to exercise his/her discretion in reviewing the voluntary case files of members to determine if committee involvement is required, based on the nature of the referral and the information available and that same discretion previously granted to the Director of Practice Review be rescinded and the position eliminated.

THAT the chair of the Practice Review Committee and/or the Director of the Practice Review Department, be granted the authority to exercise their discretion reviewing the voluntary case files of members to determine if committee involvement is required, based on the nature of the referral and the information available.

Motion 9:

That the following resolutions, adopted at Benchers meeting 309 on February 6, 1992, be rescinded:

THAT there be delegated to the Executive Committee authority to enter into an agreement with the Legal Archives Society of Alberta relating to access to the Law Society files.

Motion 10:

That subrule 75(3), in the Rules of the Law Society of Alberta, be amended to strike out “and” at the end of clause (f), to insert a new clause (g) to read “supporting documentation to provide proof of exceptional circumstances where any request is made of the Executive Director for a reduction in the required amounts noted in



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	<p>clauses (e) and (f); and” and to re-letter the original clause (g) to be clause (h).</p> <p style="text-align: right;">Carried unanimously</p>
9	<p>Student Recruitment Rules (agenda item 12)</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p> <p>Ms. Freund provided an overview of the Student Recruitment Rules noting that the Executive Committee discussed the proposed amendment and recommends it to the Benchers.</p> <div style="border: 1px solid black; padding: 10px; margin-top: 10px;"> <p>Motion: Lutz/Louie</p> <p>That the Benchers amend subrule 49.2(1) to add “, graduates of a Canadian law school or internationally trained lawyers who have received their Certificate of Qualification from the National Committee on Accreditation” to clause (c).</p> <p style="text-align: right;">Carried unanimously</p> </div>
10	<p>Audit and Finance Committee Report (agenda item 13)</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p>
11	<p>Equity, Diversity and Inclusion Committee Update (agenda item 14)</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p>
12	<p>Lawyer Competence Committee Update (agenda item 15)</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p> <p>Mr. Cusano provided a CPD Plan (Plan) filing update and reported that 10,642 lawyers have completed the Plan, 176 lawyers have not completed the Plan and 48 lawyers were exempted from having to complete the Plan.</p> <p>Approximately 35 per cent of lawyers who completed the Plan responded to the CPD Plan survey, with 85 per cent providing a positive rating of between four and five out of five stars.</p>
13	<p>Policy and Regulatory Reform Committee Update (agenda item 16)</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p>



	ITEM
14	<p>Bencher Election Update (agenda item 17)</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p> <p>Mr. Brandt presented a Bencher Election progress update and in response to a question confirmed that the complete election results will be released to the profession and published to the public website. Mr. Brandt also noted that communication will be sent out advising that credentials for voting will be generated and issued by email to eligible voters directly from the voting platform on the morning of Nov. 14.</p>
15	<p>CONSENT AGENDA (agenda item 18)</p> <p>Documentation for this item was circulated with the materials prior to the meeting. No requests were made to remove any items from the consent agenda and the items were approved concurrently.</p> <div data-bbox="310 827 1417 1570" style="border: 1px solid black; padding: 10px;"><p>Motion: Anderson/Parmar</p><p>18.1 That the Benchers approve the June 9, 2023 Public Bencher Meeting Minutes.</p><p>18.2 To approve the following 2025 Bencher Meeting dates:</p><ul style="list-style-type: none">Feb. 27 – 28, 2025May 1 – 2, 2025June 4 – 7, 2025 – JasperSep. 25 – 26, 2025Nov. 6, 2025 – Special Bencher Budget review (videoconference from 1 - 4 p.m.)Nov. 27 – 28, 2025<p>All meetings will be held in Calgary unless otherwise indicated, or, if necessary, at such other date and time and place (or means) as the CEO and Executive Director of the Law Society may determine.</p><p style="text-align: right;">Carried unanimously</p></div>
16	<p>EXTERNAL REPORTS (agenda item 19)</p> <p>The following External Agency Reports were circulated with the materials prior to the meeting:</p> <ul style="list-style-type: none">19.1 Alberta Law Reform Institute Report19.2 Alberta Lawyers' Assistance Society Report19.3 Canadian Bar Association Report19.4 Canadian Centre for Professional Legal Education (CPLED) Report19.5 Federation of Law Societies of Canada Report



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	<p>19.6 Legal Education Society of Alberta Report 19.7 Pro Bono Law Alberta Report 19.8 Real Estate Practice Advisory Committee Liaison Report</p> <p>Ms. Osler acknowledged the passing of Dr. Kara Mitchelmore, recognized her significant contributions as Executive Director of CPLED and expressed sincere gratitude for her advancement of CPLED.</p>
17	<p>President-Elect and Executive Committee Election Rule and Policy Amendments (agenda item 22)</p> <p><i>Secretary's note: This item was on the agenda for Thursday, Oct. 5, 2023, and was promoted due to time availability.</i></p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p> <p>Ms. Freund presented the President-Elect and Executive Committee Election Rule and Policy Amendments, illustrating the President-Elect and Executive Committee election options and why the current process is the most suitable to maintain with Rule amendments made for clarity.</p> <p style="text-align: right;"><i>Mr. Ilochonwu joined the meeting at 1:35 p.m.</i></p> <p>The key Bencher discussion, feedback and staff responses included:</p> <ul style="list-style-type: none"> - Ms. Freund clarified that the Law Society's tradition is for the President to resign as Bencher at the end of their presidency whether or not their Bencher term has expired. There is no legislation that compels the President to resign as Bencher. Resignation is necessary to sit on a committee as past-President. - A request was made to amend the proposed wording of Rule 26.1(e) to clarify how the Bencher who is not a public representative or a member of the incoming Executive Committee is appointed to the Nominating Committee. <div style="border: 1px solid black; padding: 10px; margin-top: 10px;"> <p>Motion: Sorokin/Petersson</p> <p>To amend the proposed wording of Rule 26.1(e) to read as follows:</p> <p>26.1(e) one Bencher who is not a Lay Bencher or a member of the incoming Executive Committee, to be appointed by the Benchers following a recommendation by the outgoing Executive Committee.</p> <p><i>Secretary's note: The amended wording for 26.1(e) is reflected above by the addition in red font.</i></p> <p style="text-align: right;">Carried unanimously</p> </div>

ITEM

Secretary's note: The following motions were considered concurrently by consensus.

Motion 1:

That Rule 26 be amended to combine subrules (1) and (2) and amend the wording in clauses (c), (d) and (e) for clarity, as proposed, as well as to renumber subrule (3) to be subrule (2).

Motion 2:

That Rule 26.1 be created and inserted to more formally establish the Nominating Committee and set out its composition and terms of office, as proposed.

Motion 3:

That Rule 27 be amended as follows: that the wording of subrules 27(1) and (2) be amended for clarity, that a new subrule (3) defining the position of immediate past president be created and inserted, and that the original subrule (3) be renumbered as subrule (4) and that its wording be amended as a consequence of the creation of Rule 26.1, as proposed.

Motion 4:

That subrule 28(1) be amended to clarify that that a sole nominee for president-elect will be acclaimed, that subrule 28(2) be amended for clarity and that that subrule (3) be amended to more clearly address the *Act* and Rules regarding any election of President or Acting President, as proposed.

Motion 5:

That Rule 24 be amended to strike out subrule (2) and renumber the subsequent subrules.

Motion 6:

That the *Election Procedures* document be amended for clarity, as proposed.

Carried unanimously

RECESS

The public meeting recessed at 2:10 p.m.



October 5, 2023

In person in Calgary, AB and by videoconference

8:30 a.m.

ATTENDANCE	
Benchers:	<p>Bill Hendsbee, President</p> <p>Deanna Steblyk, President-Elect</p> <p>Sony Ahluwalia (by videoconference)</p> <p>Ryan Anderson</p> <p>Glen Buick</p> <p>Lou Cusano</p> <p>Corie Flett</p> <p>Cal Johnson</p> <p>Levonne Louie</p> <p>Jim Lutz</p> <p>Bud Melnyk</p> <p>Sharilyn Nagina</p> <p>Mary Ellen Neilson (by videoconference)</p> <p>Sanjiv Parmar</p> <p>Sandra Petersson</p> <p>Stacy Petriuk</p> <p>Ron Sorokin</p> <p>Margaret Unsworth</p> <p>Moira Váně</p> <p>Grant Vogeli</p> <p>Louise Wasylenko</p>
Executive Leadership Team:	<p>Elizabeth Osler, CEO and Executive Director</p> <p>Cori Ghitter, Deputy Executive Director and Director, Policy and Education</p> <p>Nadine Meade, Chief Financial Officer</p> <p>Kendall Moholitny, Director, Regulation and Professionalism</p> <p>Andrew Norton, Chief Information Officer and Director, Business Operations</p> <p>David Weyant, CEO & President, Alberta Lawyers Indemnity Association (by videoconference)</p>
Staff:	<p>Susannah Alleyne, Equity, Diversity & Inclusion Counsel and Equity Ombudsperson (in person)</p> <p>Barbra Bailey, Manager, Education (in person)</p> <p>Colin Brandt, Senior Advisor, Communications (in person)</p> <p>Colleen Brown, Manager, Communications & Stakeholder Engagement (in person)</p> <p>Shabnam Datta, Manager, Policy</p>



ATTENDANCE

	Jennifer Freund, Policy & Governance Counsel Julie James, Coordinator, Governance (in person) Andrew McGrath, Business Technology (in person) Noria Neuhart, Policy Counsel Christine Schreuder, Supervisor, Governance (in person) Rebecca Young, Education Counsel
Guests:	Elizabeth Aspinall, Associate General Counsel, Bennett Jones (in person) Sarah Coderre, Secretary, Canadian Bar Association Alberta Hyder Hassan, Executive Director, Pro Bono Law Alberta Carsten Jensen, Law Society of Alberta representative to the Federation of Law Societies of Canada
Regrets:	Ted Feehan, Bencher Kene Ilochonwu, Bencher
Observer:	Ian Burns, Digital Reporter, The Lawyer's Daily

Item

Call to Order

The public meeting reconvened at 8:37 a.m.

- 18 Harassment and Discrimination Code Amendments (agenda item 21)**
Documentation for this item was circulated with the materials prior to the meeting.
- Mr. Hendsbee introduced Ms. Aspinall and invited Ms. Petriuk, Chair, Policy and Regulatory Reform Committee (PRRC) to introduce this item. Ms. Petriuk provided the history and noted that the PRRC has reviewed and discussed the variations of the amendments at a number of meetings. Mr. Buick added that the PRRC members who objected with some of these revisions stated that they could abide with the amendments.
- Ms. Aspinall described the multi-year process, including lengthy consultations, culminating in the proposed amendments to the Law Society of Alberta's Code of Conduct (Code of Conduct). Ms. Aspinall provided an overview of the *ex parte Rules 5.1-2A and 2B*.
- Motion 1: Petriuk/Buick**

That, further to recommendations proposed by the Federation of Law Societies of Canada to insert new Rules 5.1-2B and 5.1-2C into the Code of Conduct, the Benchers:



- **insert the proposed new Rules, headings and associated commentary into the Code of Conduct, as amended by the Policy and Regulatory Reform Committee, with the Rules numbered as 5.1-2A and 5.1-2B, respectively, and**
- **strike commentary paragraph 6 in Rule 5.1-1 of the Code of Conduct, as it is captured in proposed new Rule 5.1-2A.**

Carried Unanimously

Ms. Aspinall provided an overview of the process leading to the proposed amendments to Code of Conduct Discrimination and Harassment Rule 6.3 and associated commentary.

The Benchers fully discussed the proposed amendments with particular focus on the example list of behaviours that constitute discrimination in commentary [7] to Rule 6.3-1 which Ms. Aspinall clarified are based on Canadian human rights legislation.

Motion: Petriuk/Buick

To amend the proposed Code of Conduct amendments to commentary [7] of Rule 6.3-1 as follows:

- **Strike sub c. from the list.**
- **Amend sub l. by adding “*protected by applicable law*” at the end of the paragraph.**
- **Revise the sub paragraph letters accordingly.**

Carried

Motion 2: Petriuk/Buick

That the Benchers approve and adopt the amendments to the Law Society of Alberta's Code of Conduct Rule 6.3 and associated Commentary, as proposed by the Federation of Law Societies of Canada in its Model Code of Conduct as amended by the Benchers.

Carried unanimously

Other Business

There was no other business and the public meeting adjourned at 10:03 a.m.



Memo

Amendments to Code of Conduct: Rules 5.1 and 6.3

To:	Benchers
From:	Elizabeth Aspinall
Date:	September 6, 2023

Summary

After several years of consultation, review, revision and discussion, amendments, at Council in October 2022, the Federation of Law Societies of Canada ("FLSC") amended the Model Code of Professional Conduct ("Model Code"):

1. Adopting new Rules 5.1-2B and 5.1-2C addressing *ex parte* communications and appearances; and,
2. Amending Rule 6.3 addressing discrimination and harassment. [\[Appendix A\]](#)

The Policy and Regulatory Reform Committee ("PRRC") recommends that the Benchers approve the following changes to the Law Society of Alberta's ("LSA") Code of Conduct ("Code of Conduct"):

1. Adopting new Rules 5.1-2A and 5.1-2B with minor changes to the Model Code; and,
2. Adopting Rule 6.3 of the Model Code as amended. [\[Appendix B\]](#)

Proposed Motions

MOTION 1
<p>That, further to recommendations proposed by the Federation of Law Societies of Canada to insert new Rules 5.1-2B and 5.1-2C into the <i>Code of Conduct</i>, the Benchers:</p> <ul style="list-style-type: none"> • insert the proposed new Rules, headings and associated commentary into the <i>Code of Conduct</i>, as amended by the Policy and Regulatory Reform Committee, with the Rules numbered as 5.1-2A and 5.1-2B, respectively, and • strike commentary paragraph 6 in Rule 5.1-1 of the Code of Conduct, as it is captured in proposed new Rule 5.1-2A.



MOTION 2

That the Benchers approve and adopt the amendments to the Law Society of Alberta's Code of Conduct Rule 6.3 and associated Commentary, as proposed by the Federation of Law Societies of Canada in its Model Code of Conduct.

Introduction and Background

The Federation of Law Societies of Canada and the Model Code

The FLSC developed the Model Code to synchronize as much as possible ethical and professional conduct standards for the legal profession across Canada. First implemented by FLSC Council in 2009, the Model Code has been adopted as the basis for their ethical rules in 11 of 14 provincial and territorial law societies, including the Law Society of Alberta ("LSA").

The FLSC established the Standing Committee on the Model Code of Professional Conduct ("Standing Committee") to review the Model Code on an ongoing basis to ensure that it is both responsive to and reflective of current legal practice and ethics. The Standing Committee is mandated by the FLSC to monitor changes in the law of professional responsibility and legal ethics, to receive and consider feedback from law societies and other interested parties regarding the rules of professional conduct, and to make recommendations for amendments to the Model Code. Representatives from Alberta sit on the Standing Committee and the Model Code Liaison Group which liaises with the Standing Committee.

As an FLSC member, LSA's Code of Conduct follows the Model Code with minor deviations in exceptional circumstances.

Model Code Rules 5.1 and 6.3: The Amendment and Consultation History*

This memo traces the history of two sets of amendments to the Model Code. FLSC Council approved and adopted both of these amendments in October 2022. The first set of amendments (Rule 5.1-2A and 5.1-2B and Commentary) addresses *ex parte* communications with tribunals (including courts). The second set of amendments (Rule 6.3 and Commentary) addresses lawyers' obligations to prevent and address discrimination and harassment. Prior to FLSC Council adopting them, both amendments underwent and are the culmination of extensive consultation with law societies and, unusually, the legal profession nationally. The LSA was an active and leading participant in this process.

Within the LSA itself, the review process leading to the proposed amendments was extensive. First, they were provided to the profession through the FLSC's First



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Consultation Report, dated January 29, 2020 ("First Consultation Report") **[Appendix C]**. The LSA received considerable and thoughtful feedback from the profession externally. Internally, the PRRC sought feedback from the Equity, Diversity and Inclusion Committee ("EDIC") and Equity, Diversity and Inclusion Advisory Committee ("EDIAC"). The internal discussions were thoughtful and robust. The PRRC then consolidated the feedback and provided it to the Standing Committee in correspondence from Bill Hendsbee, KC, dated September 17, 2020, along with its own feedback **[Appendix D]**.

When the FLSC then undertook the unusual step of seeking consultation a second time via the Second Consultation Report dated July 13, 2021 ("Second Consultation Report") **[Appendix E]**, it sought feedback from law societies only. Within the process of its own review of the Second Consultation Report, the PRRC consulted the EDIC and EDIAC. The LSA's feedback to the Standing Committee incorporated the results of that internal consultation and was provided via correspondence from Deanna Steblyk, KC, dated September 28, 2021 **[Appendix F]**.

At both stages of consultation, the LSA's feedback was considered by the Standing Committee. Much of it was adopted into the Model Code.

Appendices G and H respectively are charts setting out the changes to Rules 5.1 and 6.3 across the process from the First Consultation to the Model Code as at present following the adoption of these changes to it.

The consultation on these amendments has been considered, considerable, thoughtful and thorough. The degree of consultation reflects the importance of these rules. The next step is adopting and implementing these much-needed changes.

Discussion

Rule 5.1-2

In 2019, after identifying a trend where opposing counsel routinely and increasingly communicate with courts and tribunals in the opposing party's absence, the LSA raised with the FLSC that changes to the Model Code were needed. The identified communications are problematic as they are contrary to the general rule that prohibits them unless the circumstances are exceptional.

Neither the Model Code nor the LSA's Code of Conduct contained clear and direct provisions that expressly affirmed lawyers' obligations respecting *ex parte* communications.



Previously, the Model Code - as reflected in the current version of the LSA's Code of Conduct - only addressed *ex parte* communications in commentary, not in a stand-alone rule:

A lawyer must not communicate with a tribunal respecting a matter unless the other parties to the matter, or their counsel, are present or have had reasonable prior notice, or unless the circumstances are exceptional and are disclosed fully to the court. (Rule 5.1-1, Commentary paragraph 6)

The Standing Committee concluded that the Model Code should be amended to provide greater guidance on both *ex parte* communications and *ex parte* proceedings. The result of that decision and the consultation noted above are new rules under the heading "The Lawyer as Advocate". The new rules are 5.1-2B and 5.1-2C of the Model Code [\[Appendix A\]](#). Due to a divergence in numbering between the Model Code and Alberta's Code of Conduct, the proposed new rules in the LSA's Code of Conduct would be 5.1-2A and 5.1-2B.

The distinction between the commentary and the rules within the Code of Conduct is a material one. Commentary provides practical direction when exercising professional judgment about the rules. The primary purpose of the Code of Conduct is to guide behaviour, not to discipline (for instance, in Alberta, citations issued against lawyers do not cite specific Code of Conduct provisions). This returns to Rule 2.1-2 as establishing the foundational principles:

A lawyer has a duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations and institutions.

In many ways, each rule in the Code of Conduct is a branch of this "tree". In Alberta, the Code of Conduct is aspirational, rather than a complete code (such as, for example, the *Criminal Code of Canada*).

Mr. Hendsbee, KC,'s September 16, 2020, correspondence to the Standing Committee aptly states why these new rules are necessary:

It has been a challenge to raise awareness of counsel's ethical obligations [when communicating with and appearing *ex parte* before tribunals], partly due to the fact that the current guidance is found in commentary following a general advocacy rule. It is difficult to locate and its position in the commentary, rather than in a rule, sends a message that it is of less importance. [\[Appendix D at page 11\]](#)



Mr. Hendsbee, KC, then set out the PRRC's feedback to the proposed new rules:

1. The proposed rules, as currently drafted, do not make a sufficient distinction between *ex parte* communications in a court application and the increasingly common practice, in Alberta, of lawyers communicating directly and unilaterally with courts or tribunals outside of a court process or application.
2. We briefly discussed the feedback that CALE has already provided to the Standing Committee. We have treated this communication as confidential and will not share it beyond this Committee at this time.

The Committee disagreed with CALE's suggestion that we refrain from using the term *ex parte*. We also recognize, however, that the current commentary in the Model Code refers to "matters that proceed without notice" rather than using the Latin phrase.

The Committee also disagreed with CALE's submission that the obligation to make full disclosure is not subject to confidentiality. In *Secure 2013 Group Inc. v Tiger Calcium Services Inc.*, the Alberta Court of Appeal clearly stated that lawyers are obliged to make full disclosure of all non-confidential and non-privileged material facts known to the lawyer [para 46].

3. The commentary following Rule 5.2-1B dilutes the effect of the rule. For example, in paragraph [2] the commentary states that, if a tribunal invites a communication from the lawyer, the lawyer "should" consider whether to inform the opposing party or lawyer. For consistency, the commentary should direct the lawyer to inform the opposing party. The obligation is mandatory.
4. The same reasoning applies to paragraph [3]. A lawyer must notify the opposing party or counsel of administrative communications with the tribunal, even for routine scheduling matters. Where there is no prejudice to a client, a lawyer should not unilaterally communicate with the court and should include opposing parties in any communications with the court or its administrators.

Mr. Hendsbee, KC, also stated:

Alberta has been advocating for enhanced model rules on this issue for some time. Our concern is not related only to the manner in which lawyers conduct *ex parte* applications in court. Our practice advisors and complaint intake staff hear of many incidents involving lawyers communicating directly with judges, often to the detriment of the opposing parties who are given no notice. This is happening outside the context of a court application. Lawyers often contact case management judges, for example, and make extensive submissions with the intent of obtaining an advantage for their client. They do not provide opposing parties or counsel with advance notice of what they intend to submit, and



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sometimes fail to provide the opposing party with a copy of what they have already sent to the judge. More often they do provide a copy of the correspondence after the fact, but the damage is already done. The second counsel must decide whether to respond in kind or adhere to ethical rules. When they seek consent from the first counsel to send their own letter to the judge, the first counsel often refuses to consent and objects to the letter drafted by the second counsel.

The Second Consultation Report responded to feedback the Standing Committee received nationally and, as noted above, sought additional feedback on the rules which the Standing Committee had reworked following the First Consultation Report. It noted that the feedback to the First Consultation Report was "significant, complex and lengthy" ([Appendix D at page 2](#)). The Standing Committee was responsive to the feedback it received:

The responses were generally supportive of the spirit and intent of the proposed amendments. A great deal of the feedback involved minor edits, questions about specific language, and re-wording of the proposed amendments, which the Standing Committee considered in a line by line analysis of the proposed amendments. [[Appendix E at paragraph 17](#)]

The Standing Committee then summarized each jurisdiction's feedback, noting for Alberta:

The Law Society of Alberta welcomed a stand-alone rule on *ex parte* communications, detailing in its submissions the various ethical breaches that the law society has observed amongst its members. However, the law society believed the proposed rules should be even clearer in capturing lawyers' direct and unilateral communications with decision-makers outside of a court process or application (*i.e.*, in anticipation of a case management meeting).

On September 28, 2021, Deanna Steblyk, KC, provided the PRRC's feedback to the Standing Committee on the amendments to these rules in the Second Consultation Report [[Appendix F](#)]. She stated:

The two Rules, 5.2-1A and 5.2-1B, appear to contain a contradiction. Rule 5.2-1A is clearly premised upon the principle that *ex parte* proceedings, while rare, are sometimes required. Rule 5.2-1 B then stipulates that all substantive communications with a tribunal must be on notice to the opposing party or their lawyer. The concern is that an *ex parte* proceeding is a communication with the tribunal. A lawyer may apply, for example, for an Anton Pillar order *ex parte*. Doing so would comply with Rule 5.2-1A, but not 5.2-1B because the application is itself a communication with the tribunal.



The Committee's feedback is that while "communication" appears to refer to something other than an actual appearance, the distinction is too fine and is not clear within the context of the rules. The PRRC believes that additional language clarifying the distinction between an appearance and a communication is required. [\[Appendix F at pages 2-3\]](#)

The Standing Committee considered the feedback, made final changes to the proposed rules and put them to FLSC Council for approval and adoption into the Model Code in October 2022 [\[Appendix I\]](#). The final rules, as adopted by Council are at [Appendix A](#).

The Standing Committee included its response to the feedback to all the Second Consultation Report in those materials:

Alberta, Manitoba, Newfoundland and Labrador, and Saskatchewan all raised concerns about the relationship between the proposed Rule on *ex parte* communications and the proposed Rule on single-party communications with a tribunal. Overall, it was suggested that the draft amendments could benefit from additional clarity on the distinctions between the two Rules and their respective *raison d'être*. Alberta noted the difference between a communication with a tribunal and an appearance in an *ex parte* proceeding. Manitoba recommended providing more certainty with respect to the need to notify other parties of single-party communications. Newfoundland and Labrador similarly suggested that the provisions on single-party communications should recognize those that are expressly permitted by law, including local rules of practice. Saskatchewan commented that the proposed text did not sufficiently capture the validity of single-party communications with a tribunal, such as where they are authorized by law, or when invited by the tribunal to engage in such communication.

The Standing Committee made changes to the amendments to address the concerns raised about the distinction between the proposed Rule on *ex parte* communications and the proposed Rule on single-party communications with a tribunal. The final amendments were shared with the Model Code Liaisons Group for their information. [\[Appendix I at paragraph 44\]](#)

The Standing Committee thus sought to address Alberta's concern. It then describes the proposed final amendments.

Rule 5.1-2B

The proposed new Rule 5.1-2B addresses the duties of counsel in *ex parte* proceedings. It expresses the existing duty to "act with utmost good faith and inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision."



The Commentary to the Rule reminds counsel of the exceptional nature of *ex parte* proceedings and the special obligations which arise as a result. The Commentary provides guidance about two obligations in particular: the duty of candour to the tribunal and the obligation to proceed *ex parte* only when it is justified.

The first paragraph of the Commentary reminds counsel of the special disclosure duties that arise in *ex parte* proceedings: the duty to make "full, fair and candid disclosure." The second paragraph of the Commentary clarifies that this disclosure obligation is subject to the duty of confidentiality.

The third paragraph of the Commentary reminds counsel that they should only initiate *ex parte* proceedings where doing so is permitted by law and justified. The Commentary suggests that if a lawyer's client would not suffer prejudice the lawyer should consider proceeding with notice even when an *ex parte* proceeding is permitted.

Rule 5.1-2C

Rule 5.1-2C sets out the established ethical principle that communicating with a tribunal on a matter of substance in the absence of opposing counsel or parties is not permitted except (1) where authorized by law or the tribunal, (2) where the opposing counsel or party has been made aware of the content of the communications and has consented, or (3) where the opposing counsel or party has appropriate notice. The Commentary that follows the rule provides guidance on the types of single-party communications that are and are not permitted.

The first paragraph reminds legal professionals that it is improper 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). It also makes specific reference to diligence when engaging in single-part communications with a tribunal by electronic means.

The second paragraph highlights the principle that even where a tribunal requests or invites a communication from counsel, counsel should still consider whether to inform the opposing counsel or parties. The general rule remains that the opposing counsel or party should be given notice of a communication or should be copied on the communication.

The third paragraph of the Commentary notes that communications on routine administrative matters are permitted but, suggests that counsel should still consider providing notice.

The fourth paragraph of the Commentary notes that legal professionals should review relevant local authorities when considering whether a single-party communication with a tribunal is authorized by law



FLSC Council approved these amendments, adopting them into the Model Code.

The PRRC remained concerned that the amendments were not, in one respect, stringent enough. It made minor changes, replacing "should" with "must" in Rule 5.1-2B, Commentary paragraph 3. Subject to that change, the PRRC approved the amendments and recommended them to the Benchers for adoption in Alberta's Code of Conduct. The version of the rules which the PRRC approved is [Appendix B](#).

Rule 6.3 Discrimination and Harassment

As early as 2015, the LSA identified the need to amend Rule 6.3 of the Code of Conduct. This Rule contains the provisions addressing discrimination and harassment. The process to amend this Rule began in 2018 with engagement through the Law Societies Equity Network ("LSEN"), a committee of the FLSC. The LSA's work gained momentum in 2019 when the results of the Articling Student Survey established that discrimination and harassment in the profession were an even greater concern than the LSA had perhaps realized.

Since 2019, the LSA's Benchers have worked toward amending the discrimination and harassment provisions of the Code of Conduct. The process was the same as that noted above for Rule 5.1.

The PRRC has put considerable thought and work into the process of these amendments being before the Benchers now. It has engaged in lengthy discussion, multiple rounds of review, and ultimately approved recommending the Model Code provisions to the Benchers for adoption into Alberta's Code of Conduct without further modification.

In short, the PRRC recommends that the Benchers adopt the Model Code Rule 6.3 into the Law Society of Alberta's Code of Conduct ([Appendix B](#)). [Appendix G](#) is a cross reference comparing the changes to Rule 6.3 of the Model Code to Alberta's Code of Conduct through each consultation report.

The First Consultation Reports and the PRRC's Decisions

The First Consultation Report

In respect of its feedback to the First Consultation Report, the PRRC did not reach consensus on the amendments. Nonetheless, it set out its response and concerns in correspondence to the Standing Committee dated September 17, 2020. Its feedback was comprehensive, detailed, and extensive, and, as with Rule 5.1, it incorporated feedback from the EDIC and EDIAC [[Appendix D](#)].



Nationally, the profession's response to the proposed amendments to Rule 6.3 in the First Consultation Report was robust and generally constructive. Key feedback from the First Consultation Report included concerns about the sufficiency of a prohibition on discrimination and harassment, suggestions to incorporate positive obligations into the provisions, and concerns about whether the definition of discrimination adequately captured its contemporary meaning or evolving nature. Concerns also arose about whether the provisions applied both within and outside of a legal professional's office and practice. A comprehensive summary of all feedback received to the First Consultation Report is at pages 4 to 13 of the Second Consultation Report [[Appendix E](#)].

The Second Consultation Report

The Second Consultation Report included amendments intended to clarify provisions in response to specific comments and concerns expressed by law societies and other respondents. For example, additional commentary indicated that lawyers should avoid condoning or being wilfully blind to conduct in their workplaces that constitute sexual harassment.

The Standing Committee rejected calls to include an overarching positive obligation to promote "equality", diversity and inclusion (this likely should have read "equity" not "equality"), but did propose additional language about the obligation to foster respectful and inclusive workplaces and services, and to stay abreast of developments in the law of discrimination.

Recognizing the importance of acknowledging the unique challenges that may be faced by Indigenous people when interacting with the Canadian legal system, the Standing Committee also proposed language reminding legal professionals to take particular care to avoid engaging in, allowing, or being wilfully blind to actions which constitute discrimination or any form of harassment against Indigenous people.

The Standing Committee also proposed language calling on legal counsel to reflect on their complicity in systemic racism and the unconscious or implicit biases that may inform their perspectives.

In Deanna Steblyk KC's September 28, 2021 correspondence [[Appendix F](#)] in addition to providing feedback on the Second Consultation Report, the PRRC emphasized that it was important to take the time necessary to develop these rules rather than focusing on the proposed amendments going to FLSC Council in December 2021. Indeed the amendments did not go the FLSC Council until October 2022.

The PRRC's substantive response to the Second Consultation Report was:

1. Disability should be explicitly referenced as a basis of discrimination. The Standing Committee adopted this recommendation;



2. Rules 6.3-1, Commentary [1] was not consistent with 6.3-2, Commentary [1] because it lacked similar wording that intent of the lawyer engaging in the conduct is not determinative. The Standing Committee accepted this feedback. Both rules now contain statements that the intent of the lawyer engaging in the conduct is not determinative;
3. Rule 6.3-3, Commentary [2]k should be amended to remove “persistent” from the definition of sexual harassment. The Standing Committee accepted this feedback. The Commentary to both rules now reads “unwanted contact or attention, including after the end of a consensual relationship” and is thus consistent with Rule 6.3-3, Commentary [2]i which reads “unsolicited or unwelcome physical contact or touching”. The Commentary to both rules now reflect the principle that a single instance can constitute harassment. [[Appendix F at pages 1- 2](#)]

Set out below is a description of the Model Code rules as amended with an explanation of each rule. As noted above, the rules as adopted by FLSC Council and recommended to the Benchers for approval are at [Appendix B](#).

Rule 6.3-1

Rule 6.3-1 reminds counsel of the obligation not to discriminate. The prohibition on discrimination is the first rule in this section because it is the broadest duty, and as indicated in relevant case law, encompasses the duty not to harass.

The Commentary to Rule 6.3-1 provides guidance on these obligations. As in the current version of the Code of Conduct, the first paragraph of the Commentary addresses the special responsibility of legal professionals to respect the requirements of human rights laws. The amended Commentary also refers to the requirement to respect workplace health and safety laws, reflecting the fact that these laws contain duties relevant to the obligations not to discriminate or harass and to create safe workplaces.

The second paragraph in the Commentary reminds lawyers that discrimination and harassment undermine confidence in our profession and in our legal system. In addition, the Commentary affirms that a professional environment is one that is respectful, accessible, and inclusive. Finally, the Commentary reminds legal professionals to be mindful of the existence and impact of unconscious biases.

The third paragraph draws on the Truth and Reconciliation Commission’s Calls to Action, as well as the Federation’s commitments to reconciliation, by noting that legal professionals should be aware of the ongoing repercussions for Indigenous peoples of Canada’s colonial legacy and advising that they should take particular care to avoid



engaging in, allowing, or being willfully blind to actions which constitute discrimination or any form of harassment against Indigenous peoples.

In keeping with recent case law, the fourth paragraph notes that discrimination includes adverse effect and systemic discrimination and can result from organizational policies, practices, and cultures, and the fifth paragraph defines discrimination.

The fifth paragraph provides a definition of discrimination.

The sixth paragraph notes that the principles of human rights and workplace health and safety laws and related case law apply to the interpretation of this Rule and to Rules 6.3-2 to 6.3-4.

The seventh paragraph provides a non-exhaustive list of behaviours which amount to discrimination. This list is intended to help legal professionals interpret their obligation of non-discrimination. Many of these examples are drawn from Supreme Court of Canada case law or human rights statutes.¹ Other examples have been drawn from the reports of the IBA and law societies.

The eighth paragraph advises that providing ameliorative programs, services or activities is not discrimination. This clarification is drawn from s. 15(2) of the *Canadian Charter of Rights and Freedoms* and human rights legislation.²

The final paragraph of the Commentary reminds lawyers that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice. This is in keeping with Rule 2.1-1, and with jurisprudence affirming that rules of professional conduct can apply to conduct outside of practice.

Rule 6.3-2

Rule 6.3-2 is currently an interpretive provision: it provides that a term used in the Rule that is defined in human rights legislation has the same meaning as in the legislation. The new rules instead define key terms in the Commentary. The new Rule 6.3-2 expresses the prohibition on harassment (replacing current rule 6.3-4) with Commentary providing guidance to this obligation.

¹ Some of the relevant cases include: *Ont. Human Rights Comm. v Simpsons-Sears*, [1985] 2 SCR 536; *British Columbia Human Rights Tribunal v Schrenk*, 2017 SCC 62, [2017] 2 SCR 795; *British Columbia (Public Service Employee Relations Commission) v BCGSEU*, [1999] 3 SCR 3; *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 SCR 868.

² See for example the *Canadian Human Rights Act*, RSC 1985, c H-6, s 16(1).



The first paragraph of the Commentary defines harassment for the purposes of the Model Code. It also expresses the well-established principle of human rights law that intent is not required to establish harassment.³

The second paragraph of the Commentary provides examples of behaviours that constitute harassment. Like the examples used in the Commentary to Rule 6.3-1, these examples are drawn from case law, statutes, and law society reports.

The third paragraph provides a definition and examples of bullying, which is a form of harassment.

The final paragraph of the Commentary reminds lawyers that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice. This is in keeping with Rule 2.1-1, and with jurisprudence affirming that rules of professional conduct can apply to conduct outside of practice.

Rule 6.3-3

The prohibition in Rule 6.3-3 on sexual harassment is consistent with the language in Rules 6.3-1 and 6.3-2. Commentary then defines sexual harassment, acknowledges that it can be directed at someone based on their gender, gender identity or gender expression, and provides a non-exhaustive list of examples of behaviour that amounts to sexual harassment. As in the Commentary to Rule 6.3-2, the Commentary to 6.3-3 clarifies that sexual harassment may be found in the absence of intent on the part of an alleged harasser. The Commentary concludes with a provision identical to the Commentary to Rule 6.3-2 on the scope of the obligation.

Rule 6.3-4

Rule 6.3-4 prohibits reprisals against persons inquiring about their rights or the rights or others, complainants, witnesses, and those assisting in investigations or proceedings related to a complaint of discrimination, harassment or sexual harassment. The Commentary to the new rule contains a non-exhaustive list (drawn from legislation) of behaviours that amount to reprisal.⁴

³ See for example *Ont. Human Rights Comm. v Simpsons-Sears*, [1985] 2 SCR 536.

⁴ A non-exhaustive list of the legislation consulted includes: the *Saskatchewan Human Rights Code*, 2018, SS 2018, c 24.2; *The Human Rights Code*, CCSM c H175; *Human Rights Act*, SNWT 2002, c 18; *Public Service of Ontario Act*, 2006, SO 2006, c 35, Sch A; *Labour Code*, CQLR c C-27; *Adult Protection Act*, SNL 2011, c A-4.01; *Public Service Act*, SNU 2013, c 26 and *Occupational Health and Safety Act*, RSY 2002, c 159.



PRRC Discussion

Over the course of several meetings, the PRRC took a deep-dive into several of these provisions. Their discussions are summarized below.

Rule 6.3-1: The Definition of Discrimination

The definition of discrimination remained a topic of discussion for the PRRC up to the point when it made the determination in July 2023 to recommend the amendments to the Benchers for adoption.

The concern was whether the definition at 6.3-1, Commentary paragraph 5, grounded in *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143 ("Andrews"), was simultaneously current and flexible enough to adapt as the law changes, or whether it applied solely to *Charter* analysis of equality.

The understanding and treatment of discrimination in the law evolves, with new grounds being added within that evolution, along with an evolved understanding of discrimination itself. Since *Andrews*, courts have identified different species of discrimination, including adverse effect discrimination and unconscious bias. That evolution is incorporated into Rule 6.3-1 at, for example, Commentary paragraph 4.

In *R v Turpin*, [1989] 1 SCR 1296, the Supreme Court of Canada notes that discrimination requires consideration of the broader social, political and legal context: it is only by considering these contexts that a finding of discrimination can be made. Ultimately, the inquiry is whether there is differential treatment that results in inequality. The Commentary to Rule 6.3-1 clearly reflects this, raising broader social, political and legal contexts.

In *Andrews*, rather than setting out an ironclad definition of discrimination, the Supreme Court of Canada defined the way in which the right to equality contained in the *Charter* should be considered. That discussion is then cited in subsequent case law not as a definitive treatment of equality, but as an articulation of principles which are relevant to a determination of whether the right to equality has been adversely impacted. *Andrews* establishes principles that adapt to the greater social, political; and legal context, and remains the starting point for section 15 analysis. For example, in *Black v Alberta*, 2023 ABKB 226, the Court started its analysis of discrimination by citing *Andrews*. It then works through the particular issue with other cases that are relevant to the fact pattern raised by that case.

The Model Code commentary articulates those principles, has a solid footing in *Andrews* and goes further. Commentary paragraph 4 works in conjunction with paragraph 5 and together these paragraphs take the analysis beyond a static formulation.



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In response to specific concerns raised by the PRRC about the definition of harassment, the Standing Committee chairs (both the Chair who was sitting during the Consultation Reports and the current Chair) advised the LSA that the Standing Committee engaged in extensive discussion around case law and the current understanding of discrimination. They further advised that they were also mindful of provincial nuances and they thus referenced local legislation in paragraph 6, as well as the obligation for lawyers to remain current.

Knowledge of the Law

At PRRC, a question arose as to whether these provisions, and the examples in particular, have any relevance because lawyers are required to know the law.

Many lawyers who do not practise in employment or human rights would not appreciate nuances in those areas. They would have only a superficial or outdated understanding of the law. For example, by comparison, a family lawyer may have a superficial understanding of corporate commercial law but would be unlikely to understand tax implications of a share sale. The same is true of human rights law; only lawyers practicing in human rights and employment would have concrete understanding of the depth and nuances of discrimination and harassment principles and laws. The examples thus support the Commentary as an interpretative guide.

The same is true with conflict rules and lawyers' understanding about conflicts as reflected in calls to Practice Advisors. In theory, the lawyers who call should know the law of conflicts. The reality is that the law is complex and it is reasonable that they should seek guidance in the myriad situations that arise.

The Code of Conduct stipulates lawyers must know the areas they are competent in and decline to advise on areas they are not. On the one hand, in the present context, the profession needs updated and more comprehensive rules about discrimination and harassment which is still occurring in our profession, by lawyers who are presumed to know the law, but on the other hand lawyers are deemed sufficiently to know the law to the extent that they will appreciate nuances. The examples help to fill the gaps in lawyers' knowledge and work in conjunction with the other paragraphs of the commentary.

Ultimately, the examples are instructive and interpretive aids. The Model Code states that they are not exhaustive. They provide context to assist lawyers who must interpret the Code in their day to day practice.

The Standing Committee Chair advised that some of the Standing Committee members work in the discipline departments of their respective law societies. Their input often informed the drafting-specifically in relation to how lawyers might try to challenge the amendments or argue for self-serving interpretations at discipline hearings. The Standing



Committee was careful to draft language that was succinct and would avoid or discourage interpretation arguments.

Finally students, staff members, and even members of the public consult the Code of Conduct. We know from experience with other provisions that they can and do open the door to discussion, within a firm, with a practice advisor, or with another lawyer, about something that is happening within an organization. The provisions and examples provide guidance and context for those individuals.

The provisions in the Model Code which define discrimination reflect the law as it has moved beyond *Andrews* to incorporate elements of human rights law. The Model Code provisions are current and flexible, incorporating adaptability to changing social, political and legal contexts.

Conduct Outside of Practice

At each stage of the process, the PRRC addressed whether the provisions should apply to conduct outside of practice. While some committee members felt that this should not be an element of these Rules, the majority felt that it should be.

Rule 2.1-1 of the Code of Conduct (the "integrity rule"), encapsulates that conduct outside of practice can be conduct unbecoming and can result in discipline. The Preface to the Code of Conduct is clear that integrity is a clear underpinning to professional responsibility and ethics, and that a lawyer's conduct should be above reproach.

In addition, these rules would not impact the defence bar's ability to represent clients. Defending clients and making decisions on which clients to work with, generally are not matters that would be regulated. Rather, these Rules address an existing problem within the profession about discrimination and harassment. The 2019 Articling Student Report illuminates some of those problems. An identified problem is not defending clients, but lawyer conduct.

Conclusion

After several years of consideration, review and research, the PRRC determined that the new Rules 5.1A and 5.1B along with amendments to Rule 6.3 should be recommended to the Benchers for adoption into Alberta's Code of Conduct.



Proposed Recommendation

The PRRC reviewed the proposed new Rules 5.1-2A and 5.1-2B and associated Commentary, as proposed by the Federation of Law Societies of Canada in its Model Code of Conduct, and recommends that the Benchers approve and adopt them as new Rules 5.1-2B and 5.1-2C and associated Commentary, as amended by the PRRC, in the Law Society of Alberta's Code of Conduct.

The PRRC also reviewed the proposed amendments to the Law Society of Alberta's Code of Conduct Rule 6.3 and associated Commentary, as proposed by the Federation of Law Societies of Canada in its Model Code of Conduct, and recommends that the Benchers approve and adopt them.

Attachments

[Appendix A: Model Code Rules 5.1-2B and 5.1-2C and 6.3](#)

[Appendix B: Proposed Amendments to Law Society of Alberta Code of Conduct, Rules 5.1-2A and 5.1-2B and 6.3](#)

[Appendix C: FLSC First Consultation Report, January 29, 2020](#)

[Appendix D: Correspondence dated September 17, 2020 from LSA to FLSC](#)

[Appendix E: FLSC Second Consultation Report, July 13, 2021](#)

[Appendix F: Correspondence dated September 28, 2021 from LSA to FLSC](#)

[Appendix G: Chart Comparing Changes to Rule 6.3](#)

[Appendix H: Chart Comparing Changes to Rules 5.1-2B and 5.1-2C](#)

[Appendix I: Materials Submitted to Council of the FLSC re Amendments to the Model Code of Professional Conduct, September 30, 2022](#)

Appendix A

FLSC Model Code Effective October 2022

Ex parte proceedings

5.1-2B In an *ex parte* proceeding, a lawyer must act with utmost good faith and inform the 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, 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 Rule 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*.

Single-Party Communications with a Tribunal

5.1-2C Except where authorized by law, and subject to rule 5.1-2B, 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.

6.3 DISCRIMINATION AND HARASSMENT

Discrimination

6.3-1 A lawyer must not directly or indirectly discriminate against a colleague, employee, client or any other person.

Commentary

[1] Lawyers are uniquely placed to advance the administration of justice, requiring lawyers to commit to equal justice for all within an open and impartial system. Lawyers are expected to respect the dignity and worth of all persons and to treat all persons fairly and without discrimination. A lawyer has a special responsibility to respect and uphold the principles and requirements of human rights and workplace health and safety laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in such laws.

[2] In order to reflect and be responsive to the public they serve, a lawyer must refrain from all forms of discrimination and harassment, which undermine confidence in the legal profession and our legal system. A lawyer should foster a professional environment that is respectful, accessible, and inclusive, and should strive to recognize their own internal biases and take particular care to avoid engaging in practices that would reinforce those biases, when offering services to the public and when organizing their workplace.

[3] Indigenous peoples may experience unique challenges in relation to discrimination and harassment as a result of the history of the colonization of Indigenous peoples in Canada, ongoing repercussions of the colonial legacy, systemic factors, and implicit biases. Lawyers should take particular care to avoid engaging in, allowing, or being willfully blind to actions which constitute discrimination or any form of harassment against Indigenous peoples.

[4] Lawyers should be aware that discrimination includes adverse effect and systemic discrimination, which arise from organizational policies, practices and cultures that create, perpetuate, or unintentionally result in unequal treatment of a person or persons. Lawyers should consider the distinct needs and circumstances of their colleagues, employees, and clients, and should be alert to unconscious biases that may inform these relationships and that serve to perpetuate systemic discrimination and harassment. Lawyers should guard against any express or implicit assumption that another person's views, skills, capabilities, and contributions are necessarily shaped or constrained by their gender, race, Indigeneity, disability or other personal characteristic.

[5] Discrimination is a distinction, intentional or not, based on grounds related to actual or perceived personal characteristics of an individual or group, which has the effect of imposing burdens, obligations or disadvantages on the individual 104 or group that are not imposed on others, or which withhold or limit access to opportunities, benefits and

advantages that are available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will typically constitute discrimination. Intersecting grounds of discrimination require consideration of the unique oppressions that result from the interplay of two or more protected grounds in a given context.

[6] The principles of human rights and workplace health and safety laws and related case law apply to the interpretation of this Rule and to Rules 6.3-2 to 6.34. A lawyer has a responsibility to stay apprised of developments in the law pertaining to discrimination and harassment, as what constitutes discrimination, harassment, and protected grounds continue to evolve over time and may vary by jurisdiction.

[7] Examples of behaviour that constitute discrimination include, but are not limited to:

- a. harassment (as described in more detail in the Commentary to Rules 6.3-2 and 6.3-3);
- b. refusing to employ or to continue to employ any person on the basis of any personal characteristic protected by applicable law;
- c. refusing to provide legal services to any person on the basis of any personal characteristic protected by applicable law;
- d. charging higher fees on the basis of any personal characteristic protected by applicable law;
- e. assigning lesser work or paying an employee or staff member less on the basis of any personal characteristic protected by applicable law;
- f. using derogatory racial, gendered, or religious language to describe a person or group of persons;
- g. failing to provide reasonable accommodation to the point of undue hardship;
- h. applying policies regarding leave that are facially neutral (i.e. that apply to all employees equally), but which have the effect of penalizing individuals who take parental leave, in terms of seniority, promotion or partnership;
- i. providing training or mentoring opportunities in a manner which has the effect of excluding any person from such opportunities on the basis of any personal characteristic protected by applicable law;
- j. providing unequal opportunity for advancement by evaluating employees on facially neutral criteria that fail to take into account differential needs and needs requiring accommodation;

k. comments, jokes or innuendos that cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive;

l. instances when any of the above behaviour is directed toward someone because of their association with a group or individual with certain personal characteristics; or

m. any other conduct which constitutes discrimination according to any applicable law.

[8] It is not discrimination to establish or provide special programs, services or activities which have the object of ameliorating conditions of disadvantage for individuals or groups who are disadvantaged for reasons related to any characteristic protected by applicable laws.

[9] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

Harassment

6.3-2 A lawyer must not harass a colleague, employee, client or any other person.

Commentary

[1] Harassment includes an incident or a series of incidents involving physical, verbal or non-verbal conduct (including electronic communications) that might reasonably be expected to cause humiliation, offence or intimidation to the person who is subjected to the conduct. The intent of the lawyer engaging in the conduct is not determinative. It is harassment if the lawyer knew or ought to have known that the conduct would be unwelcome or cause humiliation, offence or intimidation. Harassment may constitute or be linked to discrimination.

[2] Examples of behaviour that constitute harassment include, but are not limited to:

a. objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome, including comments and displays that demean, belittle, intimidate or cause humiliation or embarrassment;

b. behaviour that is degrading, threatening or abusive, whether physically, mentally or emotionally;

c. bullying;

d. verbal abuse;

e. abuse of authority where a lawyer uses the power inherent in their position to endanger, undermine, intimidate, or threaten a person, or otherwise interfere with another person's career;

f. comments, jokes or innuendos that are known or ought reasonably to be known to cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive; or

g. assigning work inequitably.

[3] Bullying, including cyberbullying, is a form of harassment. It may involve physical, verbal or non-verbal conduct. It is characterized by conduct that might reasonably be expected to harm or damage the physical or psychological integrity of another person, their reputation or their property. Bullying includes, but is not limited to:

a. unfair or excessive criticism;

b. ridicule;

c. humiliation;

d. exclusion or isolation;

e. constantly changing or setting unrealistic work targets; or

f. threats or intimidation.

[4] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

Sexual Harassment

6.3-3 A lawyer must not sexually harass a colleague, employee, client or any other person.

Commentary

[1] Sexual harassment is an incident or series of incidents involving unsolicited or unwelcome sexual advances or requests, or other unwelcome physical, verbal, or nonverbal conduct (including electronic communications) of a sexual nature. Sexual harassment can be directed at others based on their gender, gender identity, gender expression, or sexual orientation. The intent of the lawyer engaging in the conduct is not determinative. It is sexual harassment if the lawyer knew or ought to have known that the conduct would be unwelcome. Sexual harassment may occur:

- a. when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the person who is subjected to the conduct;
- b. when submission to such conduct is implicitly or explicitly made a condition for the provision of professional services;
- c. when submission to such conduct is implicitly or explicitly made a condition of employment;
- d. when submission to or rejection of such conduct is used as a basis for any employment decision, including;
 - i. Loss of opportunity;
 - ii. The allocation of work;
 - iii. Promotion or demotion;
 - iv. Remuneration or loss of remuneration; v. Job security; or
 - vi. Benefits affecting the employee;
- e. when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment;
- f. when a position of power is used to import sexual requirements into the workplace and negatively alter the working conditions of employees or colleagues; or
- g. when a sexual solicitation or advance is made by a lawyer who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the lawyer making the solicitation or advance knows or ought reasonably to know that it is unwelcome.

[2] Examples of behaviour that constitute sexual harassment include, but are not limited to:

- a. displaying sexualized or other demeaning or derogatory images;
- b. sexually suggestive or intimidating comments, gestures or threats; c. comments, jokes that cause humiliation, embarrassment or offence, or which by their nature, and in their context, are clearly embarrassing, humiliating or offensive;
- d. innuendoes, leering or comments about a person's dress or appearance;

- e. gender-based insults or sexist remarks;
- f. communications with sexual overtones;
- g. inquiries or comments about a person's sex life;
- h. sexual flirtations, advances, propositions, invitations or requests;
- i. unsolicited or unwelcome physical contact or touching;
- j. sexual violence; or
- k. unwanted contact or attention, including after the end of a consensual relationship.

[3] Lawyers should avoid condoning or being willfully blind to conduct in their workplaces that constitutes sexual harassment.

[4] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

Reprisal 6.3-4 A lawyer must not engage or participate in reprisals against a colleague, employee, client or any other person because that person has:

- a. inquired about their rights or the rights of others;
- b. made or contemplated making a complaint of discrimination, harassment or sexual harassment;
- c. witnessed discrimination, harassment or sexual harassment; or
- d. assisted or contemplated assisting in any investigation or proceeding related to a complaint of discrimination, harassment or sexual harassment.

Commentary

[1] The purpose of this Rule is to enable people to exercise their rights without fear of reprisal. Conduct which is intended to retaliate against a person, or discourage a person from exploring their rights, can constitute reprisal. Examples of such behaviour include, but are not limited to:

- a. refusing to employ or to continue to employ any person;
- b. penalizing any person with respect to that person's employment or changing, in a punitive way, any term, condition or privilege of that person's employment;
- c. intimidating, retaliating against or coercing any person;

- d. imposing a pecuniary or any other penalty, loss or disadvantage on any person;
- e. changing a person's workload in a disadvantageous manner, or withdrawing opportunities from them; or
- f. threatening to do any of the foregoing.

Appendix B

Law Society of Alberta Proposed Code of Conduct Amendments October 2023

Ex parte proceedings

5.1-2A In an *ex parte* proceeding, a lawyer must act with utmost good faith and inform the 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, 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 Rule 3.3).

[3] Before initiating *ex parte* proceedings, a lawyer must ensure that the proceedings are permitted by law and are justified in the circumstances. Where no prejudice would occur, a lawyer must consider giving notice to the opposing party or their lawyer (when they are represented), notwithstanding the ability to proceed *ex parte*.

Single-Party Communications with a Tribunal

5.1-2B Except where authorized by law, and subject to rule 5.1-2A, 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.

6.3 DISCRIMINATION AND HARASSMENT

Discrimination

6.3-1 A lawyer must not directly or indirectly discriminate against a colleague, employee, client or any other person.

Commentary

[1] Lawyers are uniquely placed to advance the administration of justice, requiring lawyers to commit to equal justice for all within an open and impartial system. Lawyers are expected to respect the dignity and worth of all persons and to treat all persons fairly and without discrimination. A lawyer has a special responsibility to respect and uphold the principles and requirements of human rights and workplace health and safety laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in such laws.

[2] In order to reflect and be responsive to the public they serve, a lawyer must refrain from all forms of discrimination and harassment, which undermine confidence in the legal profession and our legal system. A lawyer should foster a professional environment that is respectful, accessible, and inclusive, and should strive to recognize their own internal biases and take particular care to avoid engaging in practices that would reinforce those biases, when offering services to the public and when organizing their workplace.

[3] Indigenous peoples may experience unique challenges in relation to discrimination and harassment as a result of the history of the colonization of Indigenous peoples in Canada, ongoing repercussions of the colonial legacy, systemic factors, and implicit biases. Lawyers should take particular care to avoid engaging in, allowing, or being willfully blind to actions which constitute discrimination or any form of harassment against Indigenous peoples.

[4] Lawyers should be aware that discrimination includes adverse effect and systemic discrimination, which arise from organizational policies, practices and cultures that create, perpetuate, or unintentionally result in unequal treatment of a person or persons. Lawyers should consider the distinct needs and circumstances of their colleagues, employees, and clients, and should be alert to unconscious biases that may inform these relationships and that serve to perpetuate systemic discrimination and harassment. Lawyers should guard against any express or implicit assumption that another person's views, skills, capabilities, and contributions are necessarily shaped or constrained by their gender, race, Indigeneity, disability or other personal characteristic.

[5] Discrimination is a distinction, intentional or not, based on grounds related to actual or perceived personal characteristics of an individual or group, which has the effect of imposing burdens, obligations or disadvantages on the individual 104 or group that are not imposed on others, or which withhold or limit access to opportunities, benefits and

advantages that are available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will typically constitute discrimination. Intersecting grounds of discrimination require consideration of the unique oppressions that result from the interplay of two or more protected grounds in a given context.

[6] The principles of human rights and workplace health and safety laws and related case law apply to the interpretation of this Rule and to Rules 6.3-2 to 6.34. A lawyer has a responsibility to stay apprised of developments in the law pertaining to discrimination and harassment, as what constitutes discrimination, harassment, and protected grounds continue to evolve over time and may vary by jurisdiction.

[7] Examples of behaviour that constitute discrimination include, but are not limited to:

- a. harassment (as described in more detail in the Commentary to Rules 6.3-2 and 6.3-3);
- b. refusing to employ or to continue to employ any person on the basis of any personal characteristic protected by applicable law;
- c. refusing to provide legal services to any person on the basis of any personal characteristic protected by applicable law;
- d. charging higher fees on the basis of any personal characteristic protected by applicable law;
- e. assigning lesser work or paying an employee or staff member less on the basis of any personal characteristic protected by applicable law;
- f. using derogatory racial, gendered, or religious language to describe a person or group of persons;
- g. failing to provide reasonable accommodation to the point of undue hardship;
- h. applying policies regarding leave that are facially neutral (i.e. that apply to all employees equally), but which have the effect of penalizing individuals who take parental leave, in terms of seniority, promotion or partnership;
- i. providing training or mentoring opportunities in a manner which has the effect of excluding any person from such opportunities on the basis of any personal characteristic protected by applicable law;
- j. providing unequal opportunity for advancement by evaluating employees on facially neutral criteria that fail to take into account differential needs and needs requiring accommodation;

k. comments, jokes or innuendos that cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive;

l. instances when any of the above behaviour is directed toward someone because of their association with a group or individual with certain personal characteristics; or

m. any other conduct which constitutes discrimination according to any applicable law.

[8] It is not discrimination to establish or provide special programs, services or activities which have the object of ameliorating conditions of disadvantage for individuals or groups who are disadvantaged for reasons related to any characteristic protected by applicable laws.

[9] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

Harassment

6.3-2 A lawyer must not harass a colleague, employee, client or any other person.

Commentary

[1] Harassment includes an incident or a series of incidents involving physical, verbal or non-verbal conduct (including electronic communications) that might reasonably be expected to cause humiliation, offence or intimidation to the person who is subjected to the conduct. The intent of the lawyer engaging in the conduct is not determinative. It is harassment if the lawyer knew or ought to have known that the conduct would be unwelcome or cause humiliation, offence or intimidation. Harassment may constitute or be linked to discrimination.

[2] Examples of behaviour that constitute harassment include, but are not limited to:

a. objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome, including comments and displays that demean, belittle, intimidate or cause humiliation or embarrassment;

b. behaviour that is degrading, threatening or abusive, whether physically, mentally or emotionally;

c. bullying;

d. verbal abuse;

e. abuse of authority where a lawyer uses the power inherent in their position to endanger, undermine, intimidate, or threaten a person, or otherwise interfere with another person's career;

f. comments, jokes or innuendos that are known or ought reasonably to be known to cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive; or

g. assigning work inequitably.

[3] Bullying, including cyberbullying, is a form of harassment. It may involve physical, verbal or non-verbal conduct. It is characterized by conduct that might reasonably be expected to harm or damage the physical or psychological integrity of another person, their reputation or their property. Bullying includes, but is not limited to:

a. unfair or excessive criticism;

b. ridicule;

c. humiliation;

d. exclusion or isolation;

e. constantly changing or setting unrealistic work targets; or

f. threats or intimidation.

[4] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

Sexual Harassment

6.3-3 A lawyer must not sexually harass a colleague, employee, client or any other person.

Commentary

[1] Sexual harassment is an incident or series of incidents involving unsolicited or unwelcome sexual advances or requests, or other unwelcome physical, verbal, or nonverbal conduct (including electronic communications) of a sexual nature. Sexual harassment can be directed at others based on their gender, gender identity, gender expression, or sexual orientation. The intent of the lawyer engaging in the conduct is not determinative. It is sexual harassment if the lawyer knew or ought to have known that the conduct would be unwelcome. Sexual harassment may occur:

- a. when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the person who is subjected to the conduct;
- b. when submission to such conduct is implicitly or explicitly made a condition for the provision of professional services;
- c. when submission to such conduct is implicitly or explicitly made a condition of employment;
- d. when submission to or rejection of such conduct is used as a basis for any employment decision, including;
 - i. Loss of opportunity;
 - ii. The allocation of work;
 - iii. Promotion or demotion;
 - iv. Remuneration or loss of remuneration; v. Job security; or
 - vi. Benefits affecting the employee;
- e. when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment;
- f. when a position of power is used to import sexual requirements into the workplace and negatively alter the working conditions of employees or colleagues; or
- g. when a sexual solicitation or advance is made by a lawyer who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the lawyer making the solicitation or advance knows or ought reasonably to know that it is unwelcome.

[2] Examples of behaviour that constitute sexual harassment include, but are not limited to:

- a. displaying sexualized or other demeaning or derogatory images;
- b. sexually suggestive or intimidating comments, gestures or threats; c. comments, jokes that cause humiliation, embarrassment or offence, or which by their nature, and in their context, are clearly embarrassing, humiliating or offensive;
- d. innuendoes, leering or comments about a person's dress or appearance;

- e. gender-based insults or sexist remarks;
- f. communications with sexual overtones;
- g. inquiries or comments about a person's sex life;
- h. sexual flirtations, advances, propositions, invitations or requests;
- i. unsolicited or unwelcome physical contact or touching;
- j. sexual violence; or
- k. unwanted contact or attention, including after the end of a consensual relationship.

[3] Lawyers should avoid condoning or being willfully blind to conduct in their workplaces that constitutes sexual harassment.

[4] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

Reprisal 6.3-4 A lawyer must not engage or participate in reprisals against a colleague, employee, client or any other person because that person has:

- a. inquired about their rights or the rights of others;
- b. made or contemplated making a complaint of discrimination, harassment or sexual harassment;
- c. witnessed discrimination, harassment or sexual harassment; or
- d. assisted or contemplated assisting in any investigation or proceeding related to a complaint of discrimination, harassment or sexual harassment.

Commentary

[1] The purpose of this Rule is to enable people to exercise their rights without fear of reprisal. Conduct which is intended to retaliate against a person, or discourage a person from exploring their rights, can constitute reprisal. Examples of such behaviour include, but are not limited to:

- a. refusing to employ or to continue to employ any person;
- b. penalizing any person with respect to that person's employment or changing, in a punitive way, any term, condition or privilege of that person's employment;
- c. intimidating, retaliating against or coercing any person;

- d. imposing a pecuniary or any other penalty, loss or disadvantage on any person;
- e. changing a person's workload in a disadvantageous manner, or withdrawing opportunities from them; or
- f. threatening to do any of the foregoing.

Appendix C - FLSC First Consultation Report January 2020



MODEL CODE OF PROFESSIONAL CONDUCT

CONSULTATION REPORT

JANUARY 29, 2020

INTRODUCTION

1. The Model Code of Professional Conduct (the “Model Code”) was developed by the Federation of Law Societies of Canada (the “Federation”) to synchronize as much as possible the ethical and professional conduct standards for the legal profession across Canada. First adopted by the Council of the Federation in 2009, the Model Code has now been adopted by 13 of the 14 provincial and territorial law societies.
2. The Federation established the Standing Committee on the Model Code of Professional Conduct (the “Standing Committee”) to review the Model Code on an ongoing basis to ensure that it is both responsive to and reflective of current legal practice and ethics. The Standing Committee is mandated by the Federation to monitor changes in the law of professional responsibility and legal ethics, to receive and consider feedback from law societies and other interested parties regarding the rules of professional conduct, and to make recommendations for amendments to the Model Code.
3. In accordance with its mandate, the Standing Committee engages in an extensive process of review, analysis and deliberation before recommending amendments to the Model Code. Consultation with the law societies and other interested stakeholders is an essential component of this process.

REQUEST FOR FEEDBACK

4. The Standing Committee is seeking the feedback of a wide range of stakeholders including Canadian law societies, the Canadian Bar Association, the federal Department of Justice, the legal academy, and the general public on draft amendments to the Model Code.
5. The amendments proposed in this Consultation Report address issues related to the duties related to non-discrimination and harassment and ex parte communications with courts and tribunals. Feedback on any or all of the proposed amendments is welcomed.
6. The Standing Committee will carefully consider the substantive feedback it receives, making further changes to the proposed amendments as appropriate. The deadline for providing feedback is May 29, 2020. Please send your feedback to consultations@flsc.ca.
7. The final amendments will be presented to the Council of the Federation for approval in December 2020 and then submitted to the law societies for adoption and implementation.



I. DISCRIMINATION AND HARASSMENT

8. The Standing Committee is proposing amendments to Model Code Rule 6.3 concerning discrimination and harassment. The draft amendments revise the rule to provide significantly greater guidance on the duties of non-discrimination and non-harassment and to include specific guidance regarding bullying.

Background

9. The Law Societies Equity Network (“LSEN”) provided the initial impetus for the examination of Rule 6.3 on Harassment and Discrimination. The LSEN is a network of law society staff engaged in efforts to prevent discrimination and harassment in Canadian legal workplaces and to promote diversity and inclusion. In June 2019, the LSEN sent a Memorandum to the Standing Committee suggesting that the current Model Code rules were insufficient. The LSEN identified one shortcoming in particular: the rules and commentary may not adequately reflect the importance of preventing discrimination and harassment. The LSEN suggested that the Standing Committee propose revisions to the Model Code directed at clarifying the obligations.
10. The Standing Committee took into account the considerable empirical and anecdotal evidence that discrimination, harassment and bullying remain prevalent in the legal profession.
11. In 2015, the Law Society of Ontario’s (“LSO”) Challenges Faced by Racialized Licensees Working Group issued a Consultation Paper¹ in which it noted that these licensees continue to face barriers to full inclusion in the profession. The Report identified some of the barriers including discriminatory behaviours and assumptions and behaviours that amount to bullying.
12. The LSO’s 2017 articling survey (“Articling Experience Survey”)² revealed that significant numbers of those surveyed reported experiencing discrimination: 21% of respondents who had completed articling had experienced unwelcome comments related to personal characteristics protected under Ontario’s *Human Rights Code*³ and 17% of respondents

¹ Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees:

<https://lawsocietyontario.azureedge.net/media/lsoc/media/legacy/pdf/r/racialized-licensees-consultation-paper.pdf>

² The Law Society of Upper Canada Summary of Articling Experience Survey Results:

<http://www.lawsocietygazette.ca/wp-content/uploads/2018/01/Summary-of-Articling-Experience-Survey-Results.pdf>

³ R.S.O. 1990, c. H.19.

believed that they had experienced differential treatment related to a protected ground. Of respondents who were articling at the time of the survey, 18% reported unwelcome comments and 16% reported differential treatment related to a protected ground.

13. In 2019, the prairie law societies (Law Society of Alberta, Law Society of Saskatchewan and Law Society of Manitoba) conducted surveys of articling students and recent calls in their jurisdictions. The Alberta results⁴ indicated that 32% of respondents reported experiencing discrimination, harassment or both during the recruitment process or articles. In Manitoba, the number was 24%.⁵
14. In 2019, the International Bar Association (“IBA”) released its Report on bullying and harassment in legal workplaces: *Us Too? Bullying and Sexual Harassment in the Legal Profession*.⁶ This global survey of 6,980 respondents revealed alarming levels of bullying, harassment and sexual harassment: 1 in 2 female respondents and 1 in 3 male respondents reported experiencing bullying in their workplace and 1 in 3 female respondents and 1 in 14 male respondents reported being sexually harassed in a work context. Most of those who had experienced bullying or sexual harassment had not reported their experience.
15. The Standing Committee took all this information into account and determined that it was essential to clarify the harassment and discrimination provisions of the Model Code and to include specific guidance on bullying.
16. In clarifying the obligations relating to discrimination, harassment and bullying, the Standing Committee considered the recommendations of the LSEN, the rules of professional conduct of several Canadian law societies which have already expanded their rules and commentary on discrimination and harassment to provide more detailed guidance, and legislation and case law which establish the law and principles applicable to discrimination and harassment in Canada.

Proposed Amendments

17. The Standing Committee is proposing that Rule 6.3 be amended significantly to clarify the relevant obligations. The draft amendments are set out in [Appendix A](#) to this Report.

⁴ See the Articling Program Assessment Research Report and related materials online at <https://www.lawsociety.ab.ca/2019-articling-survey-results/>

⁵ The LSM Articling Research Report can be accessed online at <http://www.lawsociety.mb.ca/for-lawyers/miscellaneous/miscellaneous-pdfs/2019%20LSM%20Articling%20Research%20Report.pdf/view>

⁶ The IBA’s Report is available online at <https://www.ibanet.org/bullying-and-sexual-harassment.aspx>

18. Rule 6.3-1 would remind counsel of the obligation not to discriminate. The Standing Committee is suggesting that the prohibition on discrimination be the first rule in this section because it is the broadest duty, and as indicated in relevant case law, encompasses the duty not to harass.
19. The proposed Commentary to Rule 6.3-1 provides guidance on the obligation not to discriminate. As in the existing version, the first paragraph of the Commentary expresses the special responsibility of lawyers to respect the requirements of human rights laws. The amended Commentary would also refer to the requirement to respect workplace health and safety laws, reflecting the fact that these laws contain duties relevant to the obligations not to discrimination or harass and to create safe work places.
20. The second paragraph in the proposed Commentary largely parallels the existing Model Code Rule 6.3-1: it affirms that the principles of human rights laws, workplace health and safety laws and related case law apply to the interpretation of the Model Code rules on discrimination and harassment.
21. The third, fourth and fifth commentary paragraphs are new. Paragraph 3 draws on the judgment of Justice McIntyre in *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143. In that case, the Supreme Court of Canada defined discrimination; paragraph 3 incorporates that definition. Paragraph 4 provides a non-exhaustive list of behaviours which amount to discrimination. This list is intended to help legal professionals interpret their obligation of non-discrimination. Many of these examples are drawn from Supreme Court of Canada case law or human rights statutes.⁷ Other examples have been drawn from the reports of the IBA and law societies.
22. The final paragraph of the proposed Commentary advises that providing ameliorative programs, services or activities is not discrimination. This clarification is drawn from s. 15(2) of the *Canadian Charter of Rights and Freedoms* and human rights legislation.⁸
23. Rule 6.3-2 is currently an interpretive provision: it provides that a term used in the Rule that is defined in human rights legislation has the same meaning as in the legislation. The Standing Committee is proposing to define key terms in the Commentaries to the rules instead. The new proposed Rule 6.3-2 would express the prohibition on harassment (replacing current rule 6.3-4) with Commentary providing guidance to this obligation.

⁷ Some of the relevant cases include: *Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 S.C.R. 536; *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62, [2017] 2 S.C.R. 795; *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3; *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868.

⁸ See for example the *Canadian Human Rights Act*, RSC 1985, c H-6, s 16(1).



24. The first paragraph of the Commentary defines harassment for the purposes of the Model Code. The second paragraph expresses the well-established principle of human rights law that intent is not required in order to establish harassment.⁹ The third paragraph of the Commentary provides examples of behaviours which constitute harassment. Like the examples used in the Commentary to Rule 6.3-1, these examples are drawn from case law, statutes and law society reports. One of the behaviours the Commentary identifies as constituting harassment is bullying: for greater clarity, Commentary paragraph 4 provides a definition of bullying.
25. The final paragraph of the Commentary reminds counsel that the rule does not apply only to conduct related to or performed in the lawyer's office or legal practice: this is consistent with the Commentary to Rule 2.1-1 (Integrity) which specifies that "[d]ishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice." The Commentary to Rule 2.1-1 makes it clear that law societies may take disciplinary action for acts outside the professional sphere.
26. The Standing Committee is proposing that Rule 6.3-3 prohibition on sexual harassment be revised slightly to ensure its consistency with the proposed changes to the language in Rules 6.3-1 and 6.3-2. Proposed new Commentary defines sexual harassment and provides a non-exhaustive list of examples of behavior which amounts to sexual harassment. As in the Commentary to Rule 6.3-2, the Commentary to 6.3-3 clarifies that sexual harassment may be found even in the absence of intent on the part of an alleged harasser. The Commentary concludes with a provision identical to the Commentary to Rule 6.3-2 on the scope of the obligation.
27. The proposed new Rule 6.3-4 prohibits reprisals against persons inquiring about their rights or the rights of others, complainants, witnesses, and those assisting in investigations or proceedings related to a complaint of discrimination, harassment or sexual harassment. The Commentary to the new rule contains a non-exhaustive list (drawn from legislation) of behaviours which amount to reprisal.¹⁰
28. Rule 6.3-5, currently the prohibition on discrimination, would be deleted.

II. EX PARTE COMMUNICATIONS

⁹ See for example [Ont. Human Rights Comm. v. Simpsons-Sears](#), [1985] 2 S.C.R. 536.

¹⁰ A non-exhaustive list of the legislation consulted includes: the [Saskatchewan Human Rights Code, 2018](#), SS 2018, c 24.2; [The Human Rights Code](#), CCSM c H175; [Human Rights Act](#), SNWT 2002, c 18; [Public Service of Ontario Act](#), 2006, SO 2006, c 35, Sch A; [Labour Code](#), CQLR c C-27; [Adult Protection Act](#), SNL 2011, c A-4.01; [Public Service Act](#), SNU 2013, c 26 and [Occupational Health and Safety Act](#), RSY 2002, c 159.

29. The Standing Committee is proposing the addition of rules and commentary to Chapter 5: Relationship to the Administration of Justice to address the obligations of legal practitioners when communicating *ex parte* with a court or tribunal. The draft amendments are set out in Appendix B to this Report.

Background

30. This issue was first raised with the Standing Committee by the Law Society of Alberta (“LSA”). In correspondence to the committee, the LSA raised concerns about lawyers engaging in *ex parte* communications with courts and tribunals contrary to the general rule against discussing specific cases with judges in the absence of the other party except in exceptional cases.
31. The Supreme Court of Canada has suggested that the obligations that apply in *ex parte* proceedings are both legal and ethical.¹¹ The obligations are clear. Parties should rarely proceed *ex parte*; such proceedings should be reserved for exceptional circumstances.¹² If a party decides it is necessary to proceed *ex parte*, they must make full, frank and fair disclosure of all relevant, non-privileged, non-confidential information to the court or tribunal.¹³ In general a legal practitioner should not discuss specific cases with a court or tribunal unless the other parties to the proceeding have knowledge of the communication and a chance to participate.¹⁴ Currently, the Model Code does not contain provisions which expressly affirm those ethical obligations.
32. The LSA advised that prior to implementation of the Model Code, the Alberta Code of Professional Conduct included provisions enshrining the ethical obligations that apply to legal practitioners engaged in *ex parte* communications or proceedings. In implementing the Model Code, the LSA added Commentary that provides guidance to legal practitioners regarding *ex parte* proceedings and communications. Despite this guidance, it appears that lawyers in some practice areas in Alberta routinely engage in *ex parte* communications with courts and tribunals in circumstances that do not warrant *ex parte* communications. In some situations the communications are of an administrative nature, for example, confirming appointment dates, but in others counsel are seeking substantive remedies.
33. After reviewing the issues, the Standing Committee has concluded that the Model Code should be amended to provide greater guidance on *ex parte* proceedings and

¹¹ [Ruby v. Canada \(Solicitor General\)](#), [2002] 4 S.C.R. 3, 2002 SCC 75 para 27.

¹² Id. The Supreme Court has indicated that exceptional circumstances include (1) situations in which the delay occasioned by giving notice would result in harm or (2) if there were reasons to fear a party would act improperly if notice were provided; Id para 25.

¹³ Id; [Alexander v. Cherry](#), 2007 ABCA 128.

¹⁴ [Canada \(Minister of Citizenship and Immigration\) v. Tobiass](#), [1997] 3 S.C.R. 391 para 74.

communications. In reaching this conclusion the Standing Committee took into consideration the experience in Alberta and the fact that both the LSA and the Law Society of British Columbia have included express language in their rules of professional conduct reaffirming the duties of legal practitioners in respect of *ex parte* communications and proceedings. The Standing Committee also considered the impact of electronic communications, noting that the ease and general informality of electronic communications may contribute, possibly through inadvertence, to breaches of the well-established principles governing communications with courts and tribunals.

Proposed Amendments

34. The proposed new Rule 5.2-1A addresses the duties of counsel in *ex parte* proceedings. It expresses the existing duty to “act with utmost good faith and inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision”.
35. The following commentary reminds counsel of the exceptional nature of *ex parte* proceedings and the special obligations which arise as a result. The commentary provides guidance about two obligations in particular: the duty of candour to the tribunal and the obligation to proceed *ex parte* only when it is justified.
36. The first paragraph of the commentary reminds counsel of the special disclosure duties that arise in *ex parte* proceedings: the duty to make “full, fair and candid disclosure”. The second paragraph of the commentary clarifies that this disclosure obligation is subject to the duty of confidentiality.
37. The third paragraph of the commentary reminds counsel that they should only initiate *ex parte* proceedings where permitted by law and justified. The commentary suggests that if counsel’s client would not suffer prejudice, counsel should consider proceeding with notice even when an *ex parte* proceeding is permitted.
38. Rule 5.2-1B sets out the established ethical principle that communicating with a tribunal in the absence of opposing counsel or parties is not permitted except (1) where authorized by law or the tribunal, (2) where the opposing counsel or party has been made aware of the content of the communications and has consented, or (3) where the opposing counsel or party has appropriate notice. The commentary that follows the rule provides guidance as to what types of *ex parte* communications are and are not permitted.
39. The first paragraph of the commentary addresses communications with a tribunal in the absence of the opposing counsel or parties, reminding counsel not to discuss a matter with the tribunal, make submissions on a matter or attempt to influence the tribunal.



40. The second paragraph highlights the principle that even where a tribunal requests or invites a communication from counsel, counsel should still consider whether to inform the opposing counsel or parties. The general rule remains that the opposing counsel or party should be given notice of a communication or should be copied on the communication.
41. The third paragraph of the commentary notes that communications on routine administrative matters are permitted but, suggests that counsel should still consider providing notice.
42. The final paragraph of the commentary reiterates that, where no prejudice would occur, counsel should still consider providing notice even when *ex parte* communications with a tribunal are permitted.





APPENDIX A

6.3 HARASSMENT AND DISCRIMINATION

6.3-1 ~~The principles of human rights laws and related case law apply to the interpretation of this rule.~~ A lawyer must not discriminate against a colleague, employee, client or any other person.

Commentary

[1] A lawyer has a special responsibility to respect the requirements of human rights **and workplace health and safety** laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in **human rights such** laws.

[2] The principles of human rights and workplace health and safety laws and related case law apply to the interpretation of this rule and to rules 6.3-2 to 6.3-5.

[3] Discrimination is a distinction, intentional or not, based on grounds related to actual or perceived personal characteristics of an individual or group, which has the effect of imposing burdens, obligations or disadvantages on the individual or group that are not imposed on others, or which withhold or limit access to opportunities, benefits and advantages that are available to other members of society. Distinctions based on personal characteristics, attributed to an individual solely on the basis of association with a group will typically constitute discrimination. Distinctions based on an individual's merits and capabilities will rarely be so classified.

[4] Types of behavior that constitute discrimination may include, but are not limited to:

- a. Refusing to employ or to continue to employ any person for reasons related to any personal characteristic protected by applicable law;
- b. Refusing to provide legal services to any person for reasons related to any personal characteristic protected by applicable law;
- c. Charging higher fees for reasons related to any personal characteristic protected by applicable law;
- d. Assigning lesser work or paying an employee or staff member less for reasons related to any personal characteristic protected by applicable law;
- e. Using racial, gender, religious or derogatory language to describe a person or group of persons; or
- f. Failing to provide reasonable accommodation to the point of undue hardship.

[5] It is not discrimination to establish or provide programs, services or activities which have the object of ameliorating conditions of disadvantage for individuals or groups who are disadvantaged for reasons related to any characteristic protected by applicable laws.

6.3-2 A term used in this rule that is defined in human rights legislation has the same meaning as in the legislation. A lawyer must not harass a colleague, employee, client or any other person.

Commentary

[1] In this Code, harassment includes an incident or a series of incidents involving electronic, physical or verbal conduct when such conduct might reasonably be expected to cause humiliation, offence or intimidation to the recipient of the conduct, whether that individual is a colleague, employee, client or any other person. Harassment may constitute or be linked to discrimination.

[2] The intent of the lawyer engaging in the conduct is not determinative. It is the subjective and reasonable experience of the person experiencing the behaviour that is relevant.

[3] Types of behavior that constitute harassment may include, but are not limited to:

- a. Behaviour that is degrading, threatening or abusive, whether physically, mentally or emotionally;
- b. Bullying;
- c. Verbal abuse;
- d. Abuse of authority where a person uses the power inherent in a position to endanger, undermine, threaten or otherwise interfere with another person's career;
- e. Objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome, including comments, displays or jokes, that demean, belittle or cause personal humiliation or embarrassment; or
- f. Any other behaviour which constitutes harassment according to any applicable law.

[4] Bullying, including cyberbullying, is a form of harassment. It may involve physical, verbal or non-verbal conduct. It is characterized by persistent and repeated negative behaviour towards an individual or group of individuals. Bullying includes:

- a. Unfair or excessive criticism;
- b. Ridicule;
- c. Humiliation;
- d. Exclusion or isolation;
- e. Constantly changing or setting unrealistic work targets or assigning seniority inappropriate work; or
- f. Threats or intimidation.

[5] For clarity, this rule is not limited to conduct related to, or performed in, the lawyer's office or in legal practice.

6.3-3 ~~A lawyer must not sexually harass any person.~~ A lawyer must not sexually harass a colleague, employee, client or any other person.

Commentary

[1] In this Code, sexual harassment means an incident or series of incidents involving unsolicited or unwelcome sexual advances or requests, or other unwelcome electronic, verbal, non-verbal or physical conduct of a sexual nature

- a. When such conduct might reasonably be expected to cause insecurity; discomfort, offence, or humiliation to the recipient(s);
- b. When submission to such conduct is made implicitly or explicitly a condition for the provision of professional services;
- c. When submission to such conduct is made implicitly or explicitly a condition of employment;
- d. When submission to or rejection of such conduct is used as a basis for any employment decision including;
 - i. The allocation of files;
 - ii. Promotion;
 - iii. Remuneration;
 - iv. Job security; or
 - v. Benefits affecting the employee;
- e. When such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment;
- f. When the use of a position of power is used to import sexual requirements into the workplace and negatively alter the working conditions of employees; or
- g. A sexual solicitation or advance made by a person who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome.

[2] As with harassment generally, in determining whether conduct or behaviour is sexual harassment, the intent of the lawyer engaging in the conduct is not determinative. It is the subjective and reasonable experience of the person experiencing the behaviour that is relevant.

[3] Types of behaviour that constitute sexual harassment may include, but are not limited to:

- a. Displaying sexualized or other demeaning or derogatory images;
- b. Sexually suggestive, intimidating or obscene, comments, gestures or threats;
- c. Jokes that cause awkwardness, humiliation, embarrassment or offence, or which by their nature are clearly embarrassing, humiliating or offensive;
- d. Innuendoes or leering;
- e. Gender-based insults or sexist remarks;
- f. Communications with sexual overtones;
- g. Inquiries or comments about a person's sex life;
- h. Sexual flirtations, advances, propositions, invitations or requests;
- i. Unsolicited or unwelcome physical contact or touching;
- j. Sexual violence; or
- k. Persistent unwanted contact or attention after the end of a consensual relationship.

[4] For clarity, this rule is not limited to conduct related to, or performed in, the lawyer's office or in legal practice.

Reprisal

~~6.3-4 A lawyer must not engage in any other form of harassment of any person. A lawyer is prohibited from engaging or participating in reprisals against a colleague, employee, client or any other person who has~~

- (a) inquired about their rights or the rights of others,**
- (b) made or contemplated making a complaint of discrimination, harassment or sexual harassment,**
- (c) witnessed discrimination, harassment or sexual harassment, or**
- (d) assisted or contemplated assisting in any investigation of or proceeding related to a complaint of discrimination, harassment or sexual harassment.**

Commentary

[1] Types of behavior that constitute reprisal may include, but are not limited to:

- a. Refusing to employ or continue to employ any person;
- b. Penalizing any person with respect to that person's employment or changing in a punitive way any term, condition or privilege of that person's employment;
- c. Intimidating, retaliating against or coercing any person;
- d. Imposing a pecuniary or any other penalty, loss or disadvantage on any person;
or
- e. Threatening to do any of the foregoing.

~~6.3-5 A lawyer must not discriminate against any person.~~

APPENDIX B**Proposed Rules and Commentary****5.2-1A *Ex Parte* Proceedings**

In an *ex parte* proceeding, a lawyer must act with utmost good faith and inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, even if the information is adverse to the client's interest.

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, 5.1-2).

[2] The obligation to disclose all relevant information and evidence is subject to a lawyer's duty of confidentiality (see Rule 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 (where they are represented), notwithstanding the right to proceed *ex parte*.

5.2-1B Communicating with the Tribunal

Except where permitted by law or the tribunal, a lawyer must not communicate with a tribunal in the absence of the opposing party or their lawyer (where 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] A lawyer should not attempt to influence a tribunal or discuss a matter with or make submissions to a tribunal without the knowledge of the other party or the lawyer for the other party, if they are represented.

[2] When a tribunal invites or requests a communication from a lawyer, the lawyer should consider whether to 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 communication with a tribunal on routine administrative 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] A lawyer may communicate with a tribunal *ex parte* where permitted by law or the tribunal; notwithstanding that right, where no prejudice would occur, a lawyer should consider giving notice to the opposing party or their lawyer.





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September 17, 2020

Federation of Law Societies of Canada
1810 - 45 rue O'Connor Street
Ottawa, Ontario K1P 1A4

Attention: David Swayze,
Chair of Standing Committee on the Model Code

Dear David:

Re: Feedback on Proposed Model Code Amendments

Thank you for the opportunity to provide feedback on the Standing Committee's ongoing work on the Model Code of Professional Conduct. Following is feedback from the Law Society of Alberta's Policy and Regulatory Reform Committee, as well as a summary of feedback we collected from the profession during an online consultation process that closed June 30, 2020. To clarify, we sought feedback from the profession only on the harassment and discrimination rules, and not on the proposed rules governing *ex parte* communications with the courts.

We will first outline the major themes in the feedback we received from Alberta lawyers. We will then identify those issues that our Committee found the most compelling.

The concluding paragraphs of this letter will address the proposed changes to the rules dealing with *ex parte* communications with the court.

HARASSMENT AND DISCRIMINATION RULES

We would like to express our gratitude for the work of the Standing Committee and Law Society Equity Network in developing the discrimination and harassment rules. We are, however, concerned about the extent of discord that we encountered regarding their contents. We encourage the Federation of Law Societies to take an appropriate amount of time to ensure the drafting is clear and that we "get it right." We are aware that, in the typical consultation cycle, we would see a final draft of these rules go to the Federation Council in December. We support the work of the Standing Committee, but want to ensure that we take the time that is necessary to develop rules that are consistent with case law, and that all law societies can comfortably support and implement.

Feedback from the Profession:

We received a wide variety of responses from Alberta lawyers. While many expressed strong support for more detailed rules on discrimination and harassment, others expressed concerns. Many responders presented suggestions for alternative drafting. The feedback is summarized below.

1. Relationship between Code, Human Rights and OH&S:

Many lawyers suggested that the draft Model Code provisions should clearly identify grounds of discrimination, rather than making a general reference to application of the principles of human

rights and workplace health and safety laws. A response from an employment law firm suggested that we should create a list of prohibited grounds of discrimination that includes the grounds from each Canadian jurisdiction's human rights legislation. This would address any concerns about ensuring the Code is consistent with legislation across Canada.

There were also concerns that the Code is dealing with issues that are outside the scope of legal regulation, and which are perhaps more appropriately considered under human rights and health and safety laws. Some lawyers simply did not believe that the Law Society is the appropriate forum to address human rights or employment matters. Introduction of these rules could promote forum shopping for disgruntled staff and associates. There was also a fear that the Law Society may make decisions that are inconsistent with other tribunals, based on the same set of facts.

One responder bluntly stated that these rules are beyond the Law Society's ambit and expertise, and that the regulator is not competent to review discrimination and harassment. Other institutions already do this competently. Furthermore, the rules are so vague that they will be impossible to enforce or apply.

2. What is the role of a legal regulator?:

As noted above, there was support for more detailed rules. The proposed changes were seen as clarification of the existing obligations not to discriminate or harass. The profession largely supported the Law Society's ability to regulate harassment and discrimination in the legal profession as a matter of public interest. Regulation seems necessary to address issues highlighted by recent surveys of the legal profession in Canada and internationally, as well as the work of the Truth and Reconciliation Commission.

Many responders, however, expressed concerns that the new rules were too broad and would extend too far into lawyers' personal and professional lives. Rules prohibiting discrimination, for example, should not fetter free speech or expression of religious beliefs. Responders were split on whether the regulator should be able to examine conduct outside the lawyer's office. Many identified this as "mission creep", and suggested we should more clearly delineate when conduct outside the office will attract the attention of the regulator. Responders felt that the conduct must be sufficiently connected to practice. In the employment context, for example, staff may be fired for off-duty behaviour when there is a connection between their conduct and the efficient operation of the business or when it has an impact on the employer's reputation.

Some responders felt that the proposed rules interfere with their ability to form commercial contracts and to manage client relationships and billings. The commentary that prohibits lawyers from refusing services was challenged, as lawyers felt that they should be able to turn away clients when, for example, their personal beliefs might cause a conflict with their ability to advocate for that client. The ability to refuse work is also associated with a lawyer's work-life balance and mental health.

Other responders supported a prohibition in Rule 6.3-1 to prevent lawyers from providing a lower quality of service to any person for reasons related to any personal characteristic protected by applicable law. This was seen as a far greater problem in the profession than turning clients away due to their ethnic background, for example. Many clients are denied access to justice when they have disabilities, for example, and cannot earn sufficient income to pay for any, or any proper, representation.

A group of criminal law practitioners expressed concern that the proposed changes are an infringement on freedom of speech and expression. The focus of their submission was related to the potential effect of these rules on civility and advocacy, and the potential effects of the rules on their ability to defend clients and to deal with what can often be unsavoury or contentious subject matter. A contrary view was put forward by a separate group of criminal lawyers. They suggested that the commentary could be amended to provide that nothing in the new rules should be interpreted to curtail a lawyer's conduct as an advocate or affect the responsibilities imposed by the advocacy rules in the Code.

3. *Subjective vs. Objective Analysis:*

Rule 6.3-2 and its commentary attracted substantial comment. There was support for focusing on the subjective experience of those who have experienced harassment, and many responders were confident that the Law Society would be able to assess the reasonableness and the context of situations that were brought to its attention.

Some responders stated that the rules were very one-sided and favoured or encouraged potential complainants, some of whom might bring forward frivolous complaints. While many agreed that it is important to consider the subjective experience and perspective of the person experiencing the harassment, others took the position that it is contrary to principles of natural justice to introduce a subjective standard into the Code. Code requirements must be assessed on objective and reasonable grounds. In discipline proceedings, a lawyer's intent is relevant and must be considered within the context of the situation. On a related issue, some responders indicated that the rules were unclear about what was needed to establish a breach had taken place and that it was not clear who bore the onus of proof.

One responder suggested that we should adopt an objective reasonable bystander test from the BC Human Rights Tribunal.¹ The commentary could then be revised to state: "It is whether a reasonable person in the same situation as the person experiencing the behaviour would conclude they had been harassed."

Other suggested wording included:

- Harassment is objectionable or unwelcome conduct where the lawyer engaging in such conduct knows, or ought reasonably to know, it would harm or cause offense, humiliation, degradation, or embarrassment to the person experiencing the behaviour.
- Harassment is conduct that adversely affects the employee's psychological or physical well-being and that the person knows or ought reasonably to know would cause the employee to be humiliated or intimidated.

4. *Drafting Suggestions:*

More than one responder stated that the reference to "personal characteristics," in the commentary following Rule 6.3-1 on discrimination, is too vague or unclear. Personal characteristics may include protected grounds under human rights law, but the wording is not clear and could be interpreted to contemplate other personal characteristics of an individual. Responders also felt the guidance offered in paragraph [3] of the commentary to this Rule was

¹ *Jones v BC Clinical and Support Services Society and another*, 2020 BCHRT 99 (CanLII)

unclear. For example, when will it be acceptable to make a distinction based on an individual's own merits or capabilities?

Paragraph 4 of the commentary to Rule 6.3-1 also attracted some other drafting suggestions:

- (a) Paragraph [4] should include reference to denying a promotion or being selected for a training opportunity.
- (b) Subparagraph [4] d. should make reference instead to "making any employment related decision, such as assigning work, pay, promotions, etc.", or we should combine [4] a. and d.
- (c) Subparagraph [4] e. requires clarification, as it is acceptable in proper cases to describe people by reference to their gender, race or religion. What is intended by the reference to "religious language? " And can we move the word "derogatory" so that it more clearly qualifies "racial, gender or religious? "
- (d) Subparagraph [4] e. could be redrafted to include other groups, as follows: "using derogatory language to describe a person or group of persons, including but not limited to derogatory language about race, gender, religion, physical or mental disability , sexual orientation or age," or "using derogatory language to describe a group of persons or a member of a protected group."
- (e) We should add something to address adverse effect discrimination. For example, firm policies about partnership admission may inadvertently and disproportionately discriminate against women.
- (f) Commentary [5] to Rule 6.3-1 should be clarified to confirm that special programs for disadvantaged groups are in fact discriminatory , but they are permitted "notwithstanding" commentary in paragraph [3]. In addition, others felt that the reference to these programs and to disadvantaged groups or conditions of disadvantage was not sufficiently clear.

Rule 6.3-2 drafting suggestions included the following:

- (a) the definition of harassment should include a statement that reflects the following:
"Reasonable action taken by a manager or supervisor relating to the management and direction of an employee is not discrimination or harassment. For example, behaviours such as holding employees accountable for their performance and imposing justifiable discipline are typically not forms of harassment."
- (b) commentary [1] should include a reference to "visual conduct," to ensure no one is permitted to display offensive photos.
- (c) in paragraph [1], we should highlight that a "single incident" is enough to support a finding of harassment.
- (d) subparagraph [3] d. should include the word "coerce" and possibly "unduly influence."Threatening is not the same as coercion.
- (e) subparagraph [3] d. should use the phrase to "adversely impact" rather than "interfere."

- (f) subparagraph [4] e. should refer to “assigning inappropriate work,” rather than “seniority inappropriate work.” Other responses suggested that we refer to situations where work has been assigned to penalize or shame the person experiencing the harassment.
- (g) subparagraph [4] should refer to behaviour that creates a hostile and disruptive work environment.
- (h) clarify what is meant by “degrading, abusive, bullying, objectionable, offensive, etc.”
- (i) the definition of bullying is too weak. It should be defined to include all forms of communication, as even body language can be threatening. We should also recognize the toxicity of bullying in the workplace.

Drafting suggestions for Rule 6.3-3 included the following:

- (a) In [1] d (i), replace the word “files” with “work.” Lawyers should not be permitted to harass someone by assigning less desirable work, whether it is on a file or not.
- (b) The reference to jokes in paragraph [3] c. is out of place, as it refers to jokes with a negative effect but not necessarily those that are sexual in nature or related to harassment.
- (c) Other suggestions regarding paragraph [3] c. include the comment that the impugned conduct should include written, verbal and practical jokes of a sexual nature that cause discomfort or embarrassment to the person experiencing the conduct. It is otherwise difficult to discipline a lawyer for making an “awkward” joke.
- (d) Rule 6.3-3 [1] d. should be qualified in a manner consistent with the other paragraphs, using the phrase “including, but not limited to.” Readers need to be reminded that this is not an exhaustive list.
- (e) In [3] d., innuendo and leering should be separately listed as they are two distinct behaviours.
- (f) In [3] g., the Code should refer to questions about someone’s personal life and not just their sex life.
- (g) In [3] k., we should redraft this to state that any persistent and unwanted contact or attention amounts to sexual harassment, regardless of whether there has been a former consensual relationship.

Drafting suggestions for Rule 6.3-4 include:

- (a) Consider using the word “retaliation” as opposed to “reprisal,” as retaliation is more familiar concept in human rights law.
- (b) “Discrimination” and “harassment” are not sufficiently defined.
- (c) It is not reasonable to put anyone in a position to allege reprisal when they have merely contemplated making a complaint, without actually initiating one. The reference to contemplation of a complaint should be deleted.

We also received a general comment that we should include more examples of inappropriate behaviours and definitions throughout the draft amendments.

5. *General Feedback:*

Many lawyers expressed concern that the proposed Model Code revisions would encourage staff and associates to allege discrimination or harassment in response to justified performance management. Staff often tend to label unpleasant encounters or criticism as harassment or bullying. Others feared that the rules would lead to frivolous complaints. The suggestion was made that we clarify what is *not* bullying and harassment, and perhaps consider adopting wording from the *Occupational Health and Safety Act*, where it states that harassment excludes reasonable conduct in managing workers. If employers feel unable to provide performance feedback, they may simply terminate staff without giving them the opportunity to address performance issues.

We received additional concerns that some of the commentary about setting unrealistic work targets or assigning inappropriate work are difficult to apply in law firms. For example, work assignments might reflect client demands rather than being examples of discrimination or bullying.

We received questions about whether the new rules would prevent people from expressing faith-based opposition to something like same-sex marriage in a public demonstration, or whether a lawyer would be required to refer to a biological man as a woman if they did not personally believe it was appropriate to do so.

A number of responders identified that the proposed rules fail to deal with discrimination due to disability, sexual orientation or age, and did not believe that we could have intended to overlook these forms of discrimination. Disabilities are often a source of profound discrimination that limits opportunity.

There was support for ensuring that good faith complaints are protected from reprisals, even if later determined to be unfounded. Some responders suggested we failed to consider bad faith complaints, and that complaints made maliciously or in bad faith should be subject to discipline.

Although work on the duty to report is ongoing and there are no provisions regarding the duty to report in the proposed draft, there was support for mandatory reporting, especially in the context of bystanders. Views on mandatory reporting were, however, mixed.

Other responders felt the draft rules and commentary overlooked the value of “self-help” provisions, and should guide readers to confront their harasser, if possible. The Code should also advise lawyers to seek mediation through the Law Society.

Feedback from the Policy and Regulatory Reform Committee:

Our Policy and Regulatory Reform Committee considered the proposed Model Code revisions over the course of two meetings. Following is a summary of the Committee’s feedback and concerns:

1. The definition of discrimination in the commentary following Rule 6.3-1 should be reconsidered. Case law defining discrimination has evolved since the *Andrews* decision², and

² *Andrews v. Law Society of British Columbia*, [1989] CanLII 2 (SCC)

may vary, depending on whether it is being considered as a Charter challenge or under human rights legislation. For example, a recent definition of discrimination in the context of a human rights complaint may be found in the case of *Moore v. British Columbia (Education)*, 2012 SCC 61 (CanLII), at paragraph 33:

As the Tribunal properly recognized, to demonstrate *prima facie* discrimination, complainants are required to show that they have a characteristic protected from discrimination under the Code; that they experienced an adverse impact with respect to the service; and that the protected characteristic was a factor in the adverse impact. Once a *prima facie* case has been established, the burden shifts to the respondent to justify the conduct or practice, within the framework of the exemptions available under human rights statutes. If it cannot be justified, discrimination will be found to occur.

The last sentence in paragraph [3] of commentary adds nothing and should be deleted, as it is not discrimination to consider an individual's particular merits and capabilities.

2. Some members of our Committee felt that we will need to consider our provincial human rights legislation to ensure that our Code of Conduct does not introduce inconsistencies and hold lawyers to a standard that differs from human rights law in our province. In Alberta, we may simply adapt the Model Code wording to reflect Alberta law. Other members of our Committee, however, were comfortable with having our own definitions in our Code, as long as they were substantially similar to Alberta statutes.

3. The Committee raised a related issue about duplication of processes. Complainants may try to shop for the best forum, and there is a risk of inconsistent results. It will be important to ensure we apply definitions and principles that are consistent with other tribunals that may hear matters arising out of the same fact patterns. Some Committee members echoed the concerns of the profession, and were uncertain whether it was necessary or appropriate for law societies to adjudicate human rights disputes. Other tribunals have more extensive expertise, and some Committee members questioned what law societies might be able to do more effectively. We acknowledge, however, that different tribunals have different purposes, offer different remedies, and have different ways to influence behaviour.

On the other hand, it is clear from recent surveys that discrimination and harassment are pervasive in the legal profession. To the extent human rights tribunals are available to deal with these issues, they are not working and lawyers are not submitting complaints to these tribunals. We need to do something to accomplish a culture shift, and adoption of these rules is part of that process. We are trying to encourage safe reporting and increased transparency in conduct processes, and we need to be able to have clear rules in place to demonstrate that we see the regulation of discrimination and harassment as a priority. As a professional regulator, we are able to determine whether someone is entitled to practice and that will have more impact on behaviour than a financial penalty.

Although not related to the drafting issues, our Committee acknowledged that adjudicating these matters will require education for our adjudicative panels, and hearing committees will likely require extensive submissions from counsel to assist them in rendering decisions.

4. The commentary in Rule 6.3-1 [4] b. and c. interferes unnecessarily with a lawyer's ability to choose the clients they will serve and to charge appropriate fees. There are many factors to consider when deciding whether to accept a retainer with a client or determining how much to

charge. It also seems impossible to regulate this, and to determine whether the fees charged were based on discrimination against a client.

5. The commentary to Rule 6.3-1 [4] e. seems to suggest that using any reference to race is an ethical breach. This paragraph should be redrafted as it could be interpreted in a way that was not intended, with absurd results.

6. The Committee reviewed commentary [4] e. in Rule 6.3-2, stating that the behaviour described there is not bullying, but can be related to workplace management. Our Law Society Equity Network representative explained that the reference to assigning inappropriate work had its origins in concerns about firms asking junior lawyers to perform menial tasks, such as picking up dry-cleaning. The wording of this subparagraph does not seem to accurately communicate its intent, and we would recommend that this language be reconsidered.

7. The Committee expressed concerns regarding the wording of paragraph [2] of the commentary to Rule 6.3-2, although the Committee's feedback was divided. Some felt that the language makes harassment an absolute liability offence, against which no one could defend themselves. Other members of the Committee supported the reference to the subjective and reasonable experience of the person experiencing the harassing behaviour, as it demonstrates that the impact of the behaviour on the individual will be considered along with the context of the situation, to determine whether a reasonable person would consider the behaviour to be harassment.

In a recent case from the British Columbia Human Rights Tribunal³, the tribunal commented on the application of the Supreme Court of Canada's test in *Janzen*⁴ when determining whether sexual harassment has occurred:

[174] The test in *Janzen* requires that the conduct be unwelcome. Showing that conduct is unwelcome requires an objective assessment of whether "it is reasonable to conclude that a reasonable person would have recognized the conduct as unwelcome in the circumstances": *Mahmoodi v. University of British Columbia and Dutton*, 1999 BCHRT 56 [*Mahmoodi*], para. 140. In other words, a complainant must establish that the respondent knew or ought to have known that the conduct was unwelcome. The standard is an objective one because what one person may find objectionable may not necessarily be objectionable to another person. A respondent can only be expected to refrain from engaging in conduct which they can reasonably be expected to have known was unwelcome: *Mayes v. RFind Systems and others*, 2012 BCHRT 304, para. 17.

In a recent opinion from the ABA⁵, it considered the wording of Rule 8.4(g) of the ABA Model Code.⁶ The ABA's Model Code provides:

It is professional misconduct for a lawyer to . . . engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This

³ *The Employee v. The University and another (No. 2)*, 2020 BCHRT 12 (CanLII)

⁴ *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252

⁵ https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba-formal-opinion-493.pdf

⁶ https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_4_misconduct/

paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.

The ABA opinion states, at page 5:

The existence of the requisite harm is assessed using a standard of objective reasonableness. In addition, a lawyer need only know or reasonably should know that the conduct in question constitutes discrimination or harassment. Even so, the most common violations will likely involve conduct that is intentionally discriminatory or harassing.

(The opinion also addresses the situation in which the prohibitions in the Code are not identical to those in other civil rights legislation. There will be circumstances where a lawyer's conduct may not breach civil rights laws prohibiting harassment, but may still violate the Model Code. This outcome is seen as acceptable and this aspect of the opinion may address the concerns raised in paragraph 3, above.)

When we consider the foregoing authorities and opinions, as well as the feedback of the profession and our Committee, it appears that more work needs to be done on the wording of paragraph [2] in the commentary to Rule 6.3-2. The intent of the lawyer engaged in the harassing behaviour is clearly not determinative. But, as the tribunal stated in paragraph 248 of the *Employee* case, *supra*: "While subjective feelings [of the complainant] are relevant, they are not determinative. The circumstances and the entire context of the situation must be considered on an objective basis."

The impact of the behaviour on the complainant has to be considered in the bigger context. We need to find a way to provide balance in the wording of the commentary to ensure that we are recognizing all of the factors that must be considered when addressing allegations of harassment. This will become even more important when we consider any proposed mandatory reporting rule in the future, particularly if imposing a duty to report on bystanders.

8. The Committee members had varying views on the application of the proposed Rules to conduct outside a lawyer's office or the lawyer's practice. One of the objections raised by the profession suggested that the rules should not be applied to "flirting in a bar." The Committee did agree, however, that the rules should apply to conduct at social events or interactions outside the office which involved people connected to the lawyer's workplace.

9. The Committee agreed with some of the drafting suggestions that came forward during the consultation with the profession. For example, in the commentary to Rule 6.3-3, we agree that commentary in [1] d. should refer to allocation of "work" and not "files," and that [3] g. should include a reference to comments about a person's "personal life." The Committee also questioned the reference to "awkward jokes" in [3] c., and suggested that we find more appropriate wording. Subparagraph [3] k. should remove the reference to unwanted attention that occurs after the end of a consensual relationship, and should simply refer to persistent unwanted contact and attention. Others questioned the use of the word "leering," seeing it as an antiquated term.

10. The Committee generally supported the prohibition against reprisals in Rule 6.3-4, although we questioned why the rule makes reference to someone who has witnessed an incident of discrimination or harassment. The Committee discussed whether this rule should be considered

alongside a mandatory reporting rule, as the reference to a witness implies the witness has an obligation to report.

The Committee also supported suggestions that there should be consequences for bad faith complaints, but was concerned that it might discourage complainants in some cases.

EX PARTE COMMUNICATION RULES

The proposed Rules 5.2-1A and 5.2-1B were not part of the recent consultation process with the profession. The following feedback is from our Committee:

1. The proposed rules, as currently drafted, do not make a sufficient distinction between *ex parte* communications in a court application and the increasingly common practice, in Alberta, of lawyers communicating directly and unilaterally with courts or tribunals outside of a court process or application.
2. We briefly discussed the feedback that CALE has already provided to the Standing Committee. We have treated this communication as confidential and will not share it beyond this Committee at this time.

The Committee disagreed with CALE's suggestion that we refrain from using the term *ex parte*. We also recognize, however, that the current commentary in the Model Code refers to "matters that proceed without notice" rather than using the Latin phrase.

The Committee also disagreed with CALE's submission that the obligation to make full disclosure is not subject to confidentiality. In *Secure 2013 Group Inc. v Tiger Calcium Services Inc.*⁷, the Alberta Court of Appeal clearly stated that lawyers are obliged to make full disclosure of all non-confidential and non-privileged material facts known to the lawyer [para 46].

3. The commentary following Rule 5.2-1B dilutes the effect of the rule. For example, in paragraph [2] the commentary states that, if a tribunal invites a communication from the lawyer, the lawyer "should" consider whether to inform the opposing party or lawyer. For consistency, the commentary should direct the lawyer to inform the opposing party. The obligation is mandatory.
4. The same reasoning applies to paragraph [3]. A lawyer must notify the opposing party or counsel of administrative communications with the tribunal, even for routine scheduling matters. Where there is no prejudice to a client, a lawyer should not unilaterally communicate with the court and should include opposing parties in any communications with the court or its administrators.

The Committee supports these rules, subject to the comments above. Alberta has been advocating for enhanced model rules on this issue for some time. Our concern is not related only to the manner in which lawyers conduct *ex parte* applications in court. Our practice advisors and complaint intake staff hear of many incidents involving lawyers communicating directly with judges, often to the detriment of the opposing parties who are given no notice. This is happening outside the context of a court application. Lawyers often contact case management judges, for example, and make extensive submissions with the intent of obtaining

⁷ 2017 ABCA 316 (CanLII)

an advantage for their client. They do not provide opposing parties or counsel with advance notice of what they intend to submit, and sometimes fail to provide the opposing party with a copy of what they have already sent to the judge. More often they do provide a copy of the correspondence after the fact, but the damage is already done. The second counsel must decide whether to respond in kind or adhere to ethical rules. When they seek consent from the first counsel to send their own letter to the judge, the first counsel often refuses to consent and objects to the letter drafted by the second counsel.

We advise lawyers that the proper practice is to get approval from opposing counsel regarding any letter they intend to send to the court, before they send it.⁸

It has been a challenge to raise awareness of counsel's ethical obligations, partly due to the fact that the current guidance is found in commentary following a generic advocacy rule. It is difficult to locate and its position in commentary, rather than in a rule, sends a message that it is of less importance. In Alberta's former *Code of Professional Conduct*, the relevant guidance took the form of rules, with related commentary following each rule.

The proposed amendments address the ethical principles in rules rather than commentary, and provide more detailed guidance. We support these rules, and appreciate the work of the Standing Committee in developing them and submitting them for consultation. It will be interesting to hear whether lawyers in other jurisdictions are experiencing similar difficulties.

Thank you for taking the time to consider our response to the Standing Committee's request for feedback. If you would like to discuss any of these suggestions or comments in greater detail, please do not hesitate to contact me.

Sincerely,



Bill Hendsbee, QC
Chair, Policy and Regulatory Reform Committee
Law Society of Alberta

⁸ <https://www.cba-alberta.org/Publications-Resources/Resources/Law-Matters/Law-Matters-Fall-2018/Exceptional-Communications-The-Ethics-of-ex-part#:~:text=If%20your%20situation%20does%20not,and%20respond%20to%20the%20commuication%20;https://www.lawsociety.ab.ca/resource-centre/key-resources/ethics-and-professionalism/communicating-with-the-court/>;

Appendix E FLSC second Consultation Report July 2021

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

MODEL CODE OF PROFESSIONAL CONDUCT

SECOND CONSULTATION REPORT ON DISCRIMINATION, HARASSMENT AND *EX PARTE* PROCEEDINGS

JULY 13, 2021

INTRODUCTION

1. The Model Code of Professional Conduct (the “Model Code”) was developed by the Federation of Law Societies of Canada (the “Federation”) to synchronize as much as possible the ethical and professional conduct standards for the legal profession across Canada. First adopted by the Council of the Federation in 2009, the Model Code has now been adopted by 13 of the 14 provincial and territorial law societies. It is amended from time to time, most recently in 2019.

2. The Federation established the Standing Committee on the Model Code of Professional Conduct (the “Standing Committee”) to review the Model Code on an ongoing basis to ensure that it is both responsive to and reflective of current legal practice and ethics. The Standing Committee is mandated by the Federation to monitor changes in the law of professional responsibility and legal ethics, to receive and consider feedback from law societies and other interested parties regarding the rules of professional conduct, and to make recommendations for amendments to the Model Code.

3. In accordance with its mandate, the Standing Committee engages in an extensive process of review, analysis, consultation and deliberation before recommending amendments to the Model Code.

REQUEST FOR FINAL COMMENT

4. In January of 2020, the Standing Committee issued its [Consultation Report](#) (“the 2020 Consultation Report”) addressing duties related to non-discrimination and harassment and *ex parte* communications with courts and tribunals.

5. It is important to note that in the months following the release of the Standing Committee’s 2020 Consultation Report, the Federation [formally committed to reconciliation](#) with Indigenous peoples and adopted [Guiding Principles for Fostering Reconciliation](#) that inform all aspects of Federation work.

6. The events of the past year have further underscored the need for robust rules and commentary on discrimination and harassment in the legal profession. The death of George Floyd and the demands of the Black Lives Matter movement, continuing violence against First Nations, Inuit, and Métis peoples in Canada, the shadow pandemic of gender-based violence and the disproportionate job losses experienced by women, particularly racialized women, all suggest that justice system stakeholders – including the legal profession - must examine their roles in perpetuating social inequalities.

7. The response to the Standing Committee’s 2020 Consultation Report was significant, complex and lengthy. The Standing Committee took great care in reviewing and understanding all the feedback received and is now recommending further changes to the discrimination, harassment, and proposed *ex parte* language. The proposed amendments are attached as [Appendices A and B](#) to this report.

8. The Standing Committee has decided to do a limited second consultation with law societies. This is an extraordinary step and is meant to display transparency about the Standing Committee's deliberations.

9. The Standing Committee offers here a comprehensive summary of its decision-making about the feedback received. The proposed further amendments resulting from the Standing Committee's consideration of the consultation feedback are appended to this Second Consultation Report.

10. The Standing Committee hopes to present its final amendments to the Council of the Federation for approval in December 2021. The Standing Committee is inviting final comment from law societies on the proposed amendments and requests that they be sent directly to Karin Galldin, Senior Policy Counsel and staff support to the Standing Committee, at kgalldin@flsc.ca by **Friday, October 1, 2021**.

11. It has been challenging to integrate the extensive and important feedback received by the Standing Committee. The Standing Committee is grateful for the thoughtfulness of the law societies in responding to its work and assures law societies and other stakeholders that their feedback will also inform future conversations about responsibilities towards First Nations, Inuit and Métis peoples, systemic barriers in the profession, and professionalism generally.

I. DISCRIMINATION AND HARASSMENT

12. The Standing Committee is proposing further amendments to Model Code Rule 6.3 concerning discrimination and harassment, as set out in [Appendix A](#) to this report. The Standing Committee proceeded with gender-neutral language in the drafting of these proposed further amendments, which it will endorse as a Model Code drafting convention going forward.

Background

13. The Law Societies Equity Network ("LSEN") provided the initial impetus for the examination of Rule 6.3 on Harassment and Discrimination, communicating in June 2019 its belief that the existing rules and commentary may not adequately reflect the importance of preventing discrimination and harassment. Appreciating the considerable empirical and anecdotal evidence that discrimination, harassment and bullying remain prevalent in the legal profession, the Standing Committee determined in 2019 that it was essential to clarify the harassment and discrimination provisions of the Model Code and to include specific guidance on bullying.

The Standing Committee's 2020 Consultation Report

14. In its report issued in January of 2020, the Standing Committee proposed that Rule 6.3 be amended to clarify the relevant obligations. The prohibition on discrimination was moved to Rule 6.3-1, and was followed by commentary that defined discrimination, offered examples of discriminatory conduct, and provided an exception for ameliorative programs. The new proposed Rule 6.3-2 prohibited and defined harassment for the purposes of the Model Code and reiterated that intent is not required to establish harassment. The proposed commentary provided

examples of behaviours which constitute harassment, and also defined bullying. The existing prohibition on sexual harassment in Rule 6.3-3 was revised slightly to ensure its consistency with the proposed changes to the language in Rules 6.3-1 and 6.3-2, and related commentary defined sexual harassment, providing a non-exhaustive list of examples of behavior which amounts to sexual harassment.

15. The final paragraph of the proposed new commentaries for harassment and sexual harassment reminded counsel that the rule does not apply only to conduct related to or performed in the lawyer's office or legal practice. Finally, a proposed new Rule 6.3-4 prohibited reprisals against persons inquiring about their rights or the rights of others, complainants, witnesses, and those assisting in investigations or proceedings related to a complaint of discrimination, harassment or sexual harassment.

Feedback to 2020 Consultation Report

16. The Standing Committee received feedback from eleven (11) law societies (Alberta, Nunavut, Yukon, Northwest Territories, Newfoundland, Saskatchewan, British Columbia, New Brunswick, Nova Scotia and the Barreau du Québec). Other submissions were provided by the Canadian Bar Association (the CBA), the Canadian Association for Legal Ethics (CALE), the Advocates' Society, the Federation of Asian Canadian Lawyers of Ontario, the Canadian Defence Lawyers, the Women's Law Association of Ontario, and the Christian Legal Fellowship. The Standing Committee also spoke with representatives of the Indigenous Bar Association about its members' reactions to the proposed new Rules and Commentary pursuant to discussions held at their 2020 conference.

17. The responses were generally supportive of the spirit and intent of the proposed amendments. A great deal of the feedback involved minor edits, questions about specific language, and re-wording of the proposed amendments, which the Standing Committee considered in a line-by-line analysis of the proposed amendments. This feedback is described in general terms below.

18. However, key issues were also raised: whether a mere prohibition against discrimination and harassment sets a sufficiently high bar for the legal profession; whether the rules in their entirety should extend to out-of-office conduct; whether the proposed definition of discrimination sufficiently captures its contemporary meaning or evolving nature; whether the "subjective and reasonable experience" of the target is too vague and contradictory a concept in determining whether harassment or sexual harassment has occurred; and whether the importation of provincial human rights and workplace health and safety laws has the effect of diluting these protections. This summary explains the Standing Committee's decision-making on these issues.

General Feedback

19. The Law Society of Alberta was generally supportive but argued that the definition of discrimination should be updated; the law society also raised concerns about the proposed standard of knowledge required for a breach.

20. The Law Society of Saskatchewan supported the amendments but also took issue with the “subjective and reasonable” standard and identified a concern with the reference to human rights and workplace health and safety laws.

21. The Barreau du Québec raised an issue with the reference in the amendments to principles established in provincial and territorial health and safety laws. The Barreau suggested that this may limit law societies’ disciplinary powers to the criteria established by such legislation, and thus curtail broader interpretations of professional responsibilities towards harassment and discrimination.

22. The Law Society of Nunavut supported the proposed changes; however, the law society suggested that the new language should not have the intent of imposing a mandatory obligation on members to report to their law societies.

23. The Law Society of Yukon was similarly supportive. Yukon pointed out that the types of behaviours that constitute sexual harassment should include unwanted contact or attention that occurs after the end of a consensual relationship, with which the Standing Committee agreed.

24. Also supportive was the Law Society of NWT. Similar to the LSA, the law society noted that the phrase “subjective and reasonable experience” is unclear and made a number of other drafting suggestions. The LSNWT asked why the Standing Committee included “assigning work inappropriately” as an example of harassment, noting that the particularities of their jurisdiction mean that young lawyers may get assigned more complex matters earlier than peers in other jurisdictions. The Standing Committee intended this to address abuses of authority and assignments of work that are demeaning to someone’s expertise or abilities. In response, the Standing Committee re-drafted this example to “assigning work inequitably.”

25. The Law Society of Newfoundland provided suggestions for consistency in drafting language, and while supportive of the amendments, asked if the proposed commentary should offer clearer examples of offending behaviour against colleagues, and whether the commentary should address behaviour in court. The Standing Committee believes that in-court behaviour is addressed by other relevant Code provisions. However, pursuant to other questions raised by the LSNL about the scope of a lawyer’s responsibilities towards sexual harassment, the Standing Committee added commentary indicating that lawyers should avoid condoning or being wilfully blind to conduct in their workplaces that constitute sexual harassment.

26. While it supported the spirit behind the proposed amendments, the Law Society of New Brunswick suggested the amendments were too extensive. In its view, a simpler approach to discrimination and harassment would allow some elasticity in the interpretation of the rules and would also allow more flexibility to address prospective changes in applicable legislation. The Standing Committee appreciates this feedback but felt that the overwhelming balance of opinion supported even more clarification and guidance within the proposed amendments.

27. The Nova Scotia Barristers’ Society, while being supportive of the Standing Committee’s work, asked whether the proposed definition of harassment was too broad. The Barristers’ Society specifically inquired whether it would withstand a *Charter* challenge, referencing a finding of invalidity of the prohibitions on bullying within provincial cyber-bullying legislation in *Crouch v Snell*, 2015 NSSC 340. The Standing Committee was of the view that the Model Code, whose

purpose is to regulate the conduct of lawyers, can be differentiated from the impugned legislation, which dealt with an offence broadly applicable to the public.

28. The Law Society of British Columbia was generally supportive but asked some thought-provoking questions about the foundations of the responsibilities, wondering if at the end of the day the amendments sufficiently communicate what is needed for lawyers to direct their own conduct. For example, the law society pointed out that the discrimination language does not reference the basic respect that lawyers should demonstrate towards others, and that the harassment and sexual harassment provisions do not reference the power imbalances that underlie these behaviours. More generally, the law society asked the Standing Committee to consider if the examples of offending conduct are too broad and too vague, arguing that once the regulatory authority pushes the expectations beyond the context of a legal practice, there is a responsibility to give clear and adequate guidance. As explained below, the Standing Committee has decided to clarify its proposed language on out-of-office conduct in response to this and other concerns raised.

29. The LSBC also raised issue with the proposed prohibition against reprisal, suggesting it would be difficult for a lawyer to ensure self-compliance. In subsequent correspondence with the Standing Committee, the LSBC's Ethics Committee suggested the provision could include a greater sense of causation, as otherwise the draft reprisal provision might be used as a sword rather than a shield. The Standing Committee is of the view that prohibiting reprisals is an important aspect of the proposed rule and believes that reprisal has an established and well understood meaning in law. However, to clarify why this constitutes a professional responsibility, the Standing Committee added further commentary reiterating the purpose of the proposed rule.

The Proposed Amendments Should Include Positive Obligations

30. A number of representative organisations (i.e. the Federation of Asian Canadian Lawyers of Ontario, the Canadian Defence Lawyers, the Women's Law Association of Ontario, the Advocates Society) expressed their desire for the Model Code to establish higher, aspirational standards for legal professionals.

31. These submissions referenced the deeply entrenched structural and attitudinal barriers faced by members of racialized and equity-seeking communities along with the leadership and integrity that is expected from a self-governing legal profession. Some endorsed a positive requirement for lawyers to promote equality, diversity and inclusion in all interactions. The Standing Committee was of the view that such a positive requirement may result in unintended tensions for lawyers who are defending behaviors that society as a whole may find distasteful; similarly, lawyers working in certain practice areas (i.e. public sector lawyers defending a government body against claims of discrimination) may experience confusion about how to comport with such a rule. The Standing Committee ultimately felt that a positive requirement of this nature would prompt a divided reaction from the profession and would endanger overall passage of the proposed amendments.

32. The LSBC noted that none of the Standing Committee's proposed harassment and discrimination provisions include the word "respect." The law society would prefer a positive opening principle statement about respect and the importance of employing it in relationships with

others. As a result, the Standing Committee added additional opening commentary about lawyers' obligations to foster respectful and inclusive workplaces and services.

33. Rather than a broad over-arching positive duty, the Advocates' Society suggested that more distinct positive obligations for lawyers, i.e. to stay apprised of developments in the law of discrimination, to refrain from all forms of discrimination including direct, adverse effect, and systemic discrimination, to inform themselves of the role of unconscious bias in perpetuating systemic discrimination, and to provide accommodations to the point of undue hardship. The Standing Committee agreed that these are useful ways to frame lawyers' obligations and incorporated these elements into the further proposed amendments.

34. During conversation with representatives from the Indigenous Bar Association, the Standing Committee was asked whether lawyers should have to consider *Gladue*-type principles and/or the historic disadvantages of Indigenous peoples in managing their workplaces. An Indigenous advisory group with the LSEN had previously drafted commentary acknowledging the unique challenges that may be faced by Indigenous peoples. The Standing Committee agreed to incorporate this commentary, which also includes a warning for lawyers to take particular care to avoid engaging in, allowing, or being wilfully blind to actions which constitute discrimination or any form of harassment against Indigenous peoples. This addition is commensurate with the Federation's formal commitment to reconciliation and the Guiding Principles it has adopted to inform the Federation's work.

35. In summary, the Standing Committee was not prepared to explicitly require the promotion of diversity, inclusion and equality. However, the Standing Committee received suggestions about other possible positive obligations which the Standing Committee felt were applicable in the context of knowledge requirements and lawyer competency. The commentary now explains in greater detail why lawyers possess particular responsibilities in this area. It acknowledges the unique histories, realities, and systemic barriers faced by Indigenous peoples. It urges lawyers to approach professional relationships based on the distinct needs and circumstances of colleagues, employees, and clients, and to be alert to unconscious biases that may inform these relationships. Lawyers are also warned against any express or implicit assumption that another person's views, skills, capabilities and contributions are necessarily shaped or constrained by their gender, race, Indigeneity, disability or other personal characteristic.

All Proposed Rules Should Extend to Conduct Outside of Practice

36. Many respondents asked why the prohibition against discrimination did not extend beyond a lawyer's professional activities (whereas the prohibitions against harassment and sexual harassment did). Most respondents, including the Canadian Bar Association, expressed a firm view that that the scope of conduct for all prohibited conduct, including discrimination and reprisals, should extend to a lawyer's conduct outside office or outside legal practice.

37. A nuanced approach to this issue was suggested by CALE. Acknowledging that law society jurisdiction over conduct outside of one's practice already exists within Commentary [3] to Rule 2.1-1 ("Integrity"), CALE wondered if the proposed language should be clarified so as not to attract unnecessary opposition. CALE suggested clarifying this rule such that conduct outside a lawyer's practice or workplace will only attract the attention of law societies where it amounts to

conduct that either “brings into question the lawyer’s professional integrity, impairs a client’s trust in the lawyer, or otherwise undermines the administration of justice.” Newfoundland had also suggested linking this rule to integrity.

38. The Christian Legal Fellowship shared their worry that the broad proposed meanings of discrimination and harassment could be misinterpreted to capture legitimate faith-based expressions that lawyers may publish, either publicly or privately, and similarly recommended the addition of qualifying language.

39. In response to this feedback, the Standing Committee created a proposed new Rule (6.3-5) which provides that Rules 6.3-1 to 6.3-4 are not limited to conduct related to, or performed in, the lawyer’s office or in legal practice. The Standing Committee added commentary stating that the behaviour and conduct prohibited by this proposed Rule compromises a lawyer’s integrity. The proposed commentary indicates that the application of this rule will be triggered by conduct that brings into question the lawyer’s professional integrity, impairs a client’s trust in the lawyer, or otherwise undermines confidence in the legal profession and our legal system.

The Proposed Definition of Discrimination Is Insufficient

40. Some of the feedback challenged the Standing Committee’s characterisation of discrimination, arguing that discrimination is an evolving legal concept requiring the Standing Committee to employ more contemporary concepts than that enunciated in the *Andrews* decision. As example, the Law Society of Alberta noted that caselaw has evolved considerably since the *Andrews* decision.

41. A more complex critique of the *Andrews* decision emerged from the Standing Committee’s discussions with representatives of the Indigenous Bar Association. They pointed out that the concluding sentence in proposed Commentary [3] (“distinctions based on an individual’s merits and capabilities will rarely be (discriminatory)”) is precisely the type of justification that enables discrimination against Indigenous peoples and other racialized communities. Referencing as an example the requirement that a Supreme Court justice be fluent in both French and English, the Indigenous Bar Association’s representatives explained how merits and capabilities are commonly employed in the legal profession to screen out Black, Indigenous and people of color (“BIPOC”) applicants. The Standing Committee agreed with this analysis and removed the mention of merits and capabilities within the proposed rule.

42. Representatives of the Indigenous Bar Association also questioned why the proposed definition failed to reference systemic discrimination, attributing this, in part, to the dated reference to *Andrews*. Finally, they noted that the Standing Committee’s proposed language does not reference intersectionality, which refers to the complex ways in which the effects of multiple forms of discrimination combine, overlap, or intersect.

43. The Advocates’ Society also recommended that the commentary acknowledge the evolving nature of the definition of discrimination and contain a positive obligation on lawyers to stay apprised of developments in the law in this area. The Advocates’ Society suggested that the prohibition on discrimination should extend to all forms, including direct, adverse effect, and systemic discrimination, and that this be explicitly stated in the commentary to ensure lawyers understand the broad scope of their obligation not to discriminate.

44. This feedback resulted in extensive conversation at the Standing Committee. The Model Code describes the responsibilities of individual lawyers, which acts as a challenge to prohibitions on systemic barriers, patterns or attitudes within firms or legal workplaces. Despite this, the Standing Committee felt there is value in asking lawyers to reflect on their complicity in systemic racism and on the unconscious or implicit biases that may inform their perspectives. After further research on legal definitions of systemic discrimination, the Standing Committee agreed to incorporate reference to adverse effect and systemic discrimination in the further proposed commentary.

45. Similarly, the Standing Committee reviewed academic literature and caselaw on intersectionality. The Standing Committee has now included commentary to make lawyers aware of intersectionality and how the interplay of various protected grounds can result in unique experiences of oppression.

46. The Advocates' Society recommended referring to certain grounds of discrimination common within the profession (i.e. addictions, family status, mental health), suggesting such references would be illustrative in a professional context. The Standing Committee felt that setting out some grounds over others might be perceived as exclusive and might mislead the legal profession and/or the public. The Advocates' Society had also suggested examples of behaviours indicative of adverse effect or systemic discrimination. These examples were viewed as useful by the Standing Committee and were adopted in conjunction with other examples suggested by the law societies of Newfoundland and Nova Scotia.

47. The Standing Committee also heard that sexual harassment should include references to gender-based harassment. This resulted in follow-up dialogue with representatives of the Indigenous Bar Association and the Advocates' Society who urged greater inclusivity towards LGBTQIA2s peoples, and who also reiterated the prevalence of gender-based discrimination in the legal profession. The Standing Committee felt that the category of "gender," in its strict legal meaning, is not yet inclusive of sexual orientation, gender identity, and/or perceived gender identity, and that more direct language could help lawyers understand the conduct that is prohibited by the rules. As solution, the Standing Committee decided on additional commentary indicating that sexual harassment can be directed at others based on their gender, gender identity, gender expression, or sexual orientation.

The Subjective and Reasonable Experience Standard Is Contradictory and Vague

48. Some of our law society respondents (Alberta, Newfoundland, Saskatchewan, British Columbia and Northwest Territories) raised concerns about the proposed commentary indicating that harassment and/or sexual harassment will be determined through the subjective and reasonable experience of the person experiencing the behaviours in question. They felt the balance between a subjective analysis and a reasonable analysis was unclear.

49. In its consideration of this feedback, the Standing Committee agreed that the primary purpose behind the commentary is to reiterate that the intent of the lawyer engaging in the problematic conduct is not relevant to any determination of whether harassment occurred. Instead, an emphasis on impact ensures that any inquiry into harassment in the workplace focuses properly on the complainant's experience.

50. The Standing Committee agreed to rework the commentary related to culpability resulting from conduct that the offending party “knew or ought to have known” was unwelcome.

Potential Problems with Importation of Provincial and Territorial Human Rights and Workplace Health and Safety Laws

51. A smaller number of law society respondents were preoccupied with the commentary that acknowledged the application of the principles of human rights and workplace health and safety laws and related case law. They shared their concerns that the importation of provincial human rights and workplace health and safety laws may limit the powers of legal regulators or lead to inconsistent results amongst decision-making bodies with concurrent jurisdiction

52. For example, the Law Society of Saskatchewan was concerned that this language unnecessarily restricts the interpretation of these professional responsibilities since provincial laws make no reference to harassment. Along the same lines, the Barreau du Québec advocated against any reference to health and safety laws as they could also limit the interpretation of professional responsibilities.

53. The Standing Committee discussed this feedback but ultimately decided against making changes as it was of the view that the rules must necessarily be interpreted, as a baseline, in the context of applicable provincial or territorial laws.

II. EX PARTE COMMUNICATIONS

54. The Standing Committee is proposing further changes to the proposed new rules and commentary to Chapter 5: Relationship to the Administration of Justice addressing the obligations of legal practitioners when communicating *ex parte* with a court or tribunal, as set out in [Appendix B](#) to this report.

Background

55. This issue was first raised with the Standing Committee by the Law Society of Alberta, which raised concerns about lawyers engaging in *ex parte* communications with courts and tribunals contrary to the general rule against discussing specific cases with judges in the absence of the other party except in exceptional cases. After reviewing the issues, the Standing Committee concluded that the Model Code should be amended to provide greater guidance on *ex parte* proceedings and communications.

The Standing Committee’s 2020 Consultation Report

56. The proposed new Rule 5.2-1A addresses the duties of counsel in *ex parte* proceedings. The following commentary reminds counsel of the exceptional nature of *ex parte* proceedings and the special obligations which arise as a result.

57. The proposed new Rule 5.2-1B sets out the established ethical principle that communicating with a tribunal in the absence of opposing counsel or parties is not permitted except (1) where authorized by law or the tribunal, (2) where the opposing counsel or party has been made aware of the content of the communications and has consented, or (3) where the opposing counsel or party has appropriate notice. The commentary that follows the rule provides guidance as to what types of *ex parte* communications are and are not permitted.

Feedback to 2020 Consultation Report

58. These proposed amendments attracted much less comment than the proposed changes to the discrimination and harassment provisions. The Law Society of the Northwest Territories asked if these obligations could be incorporated into Rule 5.1-2 (duties as an advocate). The Standing Committee remains of the view that an independent Rule is required since the aggregated prohibitions within Rule 5.1-2 would fail to draw enough attention to this issue.

59. The Law Society of Alberta welcomed a stand-alone rule on *ex parte* communications, detailing in its submissions the various ethical breaches that the law society has observed amongst its members. However, the law society believed the proposed rules should be even clearer in capturing lawyers' direct and unilateral communications with decision-makers outside of a court process or application (i.e. in anticipation of a case management meeting).

60. The Barreau du Québec was supportive of the amendments, noting that its *Code de déontologie des avocats* already addresses some parameters of *ex parte* hearings through, for example, its prohibitions on a lawyer misleading the court, a party, or a party's counsel. Submissions from Jonathan Brosseau, a legal practitioner with a focus on international arbitration, indicated that *ex parte* communications and proceedings are generally prohibited in international arbitration, subject to specific exceptions.¹

61. The CBA supported the proposed rules, suggesting small edits to the Commentary. The CBA asked if the rules should remove references to "client's interests," where applicable, and replace it with the phrase "that party's interest" in acknowledgement of the fact that not all lawyers who conduct *ex parte* proceedings represent a client. The Standing Committee has adopted this recommendation.

62. The Law Society of Yukon was supportive but asked about the context for requiring a member to ensure that the *ex parte* proceeding is permitted by law. In the law society's view, the determination of whether an *ex parte* application is permitted or appropriate may require a decision of the Court based on the facts of the matter before them and is not something that can always be predetermined. The Standing Committee concluded that this is a legal question, not a matter of professional ethics.

63. The Law Society of Newfoundland was similarly supportive but shared its discomfort with the disclosure obligation as it may be in conflict with a client's best interest, using as an example an *ex parte* application for an injunction. The LSBC. raised a similar concern, observing that the assessment of material facts may not always be reasonably clear, thus risking "over-disclosure" by lawyers of facts contrary to their clients' interests. This led the Standing Committee to a

¹ IBA Guidelines on Party Representation in International Arbitration, the International Court of Arbitration's Note to Parties and Arbitral Tribunals on the Conduct of Arbitration under the ICC Rules of Arbitration, the Singapore Institute of Arbitrators Guidelines on Party Representative Ethics and a draft International Code of Ethics for Lawyers Practicing Before International Arbitral Tribunals.

detailed conversation about the nature of *ex parte* proceedings. The Standing Committee remains of the view that when a lawyer initiates an *ex parte* proceeding, they have an obligation to make full disclosure because the court otherwise does not have the benefit of the opposing party's position. If counsel cannot offer full disclosure it is incumbent on them to talk to their client about why an *ex parte* proceeding may not be in their best interests.

64. The LSBC further pointed out that unlike other Model Code rules prohibiting deception, as drafted, the proposed rule would make it a breach to fail to bring material information to the court's attention even if counsel did not know at the time that they were failing to do so, referencing information of which counsel is unaware at the time of the proceeding. The Standing Committee felt that the knowledge threshold was already captured in the proposed rule (i.e. what is already known to the lawyer).

65. The Law Society of Newfoundland recommended that the Supreme Court of Canada position on exceptional circumstances should be included for additional guidance, but the Standing Committee preferred to include a description of ethical responsibilities rather than incorporating substantive law into the Model Code.

66. The Advocates' Society indicated that the references throughout Rule 5.2-1 to the "tribunal" were confusing. The Society recommended instead distinguishing between communications with the court office, and communications with the decision-maker. Like concerns were shared by the LSNL and the LSBC, who inquired about further distinction between tribunals, registries and courts. The Standing Committee noted that the definition of "tribunal" in the Model Code includes courts and decided to maintain the use of "tribunal" for consistency throughout the Model Code. The Standing Committee preferred that lawyers understand their obligations in the context of the nature of their communications (rather than the identity of the receiving body) and revised the commentary to ensure distinction between administrative / procedural communications and substantive communications.

67. While supporting the spirit of the proposed amendments, CALE had concerns about much of the terminology used. Most notably, CALE recommended that the language refer to "proceedings and communications without notice" rather than *ex parte* proceedings and communications. The Standing Committee adopted some of the drafting suggestions made by CALE (i.e. using "ability" instead of "right" to proceed *ex parte*), but was generally reluctant to use different language given its belief that *ex parte* is an established term of art.

68. CALE also took issue with the commentary stating that the obligation to make full and frank disclosure can be subject to lawyer-client confidentiality, arguing instead that the lawyer's obligation of confidentiality to the client must yield to the legal requirements of applicable civil procedure rules. CALE's approach contrasted with that of the Law Society of Alberta and of the Advocates' Society, both of which endorsed making the obligation subject to the lawyer's duty of confidentiality. Indeed, the LSA and the Advocates' Society both suggested that the obligation should be further curtailed by applicable rules of privilege. The Standing Committee agreed that counsel cannot disclose confidential or privileged information without express waiver by their clients. The proposed Commentary was amended accordingly to make disclosure also subject to privilege.

69. Finally, pursuant to feedback from the Law Society of Alberta and CALE, the Standing Committee made some changes to the Commentary to Rule 5.2-1B (“Communicating with the Tribunal”) to ensure its contents are understood as mandatory obligations and to clarify its scope regarding communications on procedural matters.

REQUEST FOR FINAL COMMENT

70. As described in this report, the process by which the Standing Committee engaged with consultation feedback has been meaningful and prolonged. The Standing Committee appreciates that the amendments are of great importance to law societies and other stakeholders and is grateful for the opportunity to consider the feedback received. As indicated earlier, the Standing Committee hopes to present its final amendments to the Council of the Federation for approval in December 2021. The Standing Committee invites final comment from law societies on the proposed amendments and requests that they be sent directly to Karin Galldin, Senior Policy Counsel and staff support to the Standing Committee, at kgalldin@flsc.ca by **Friday, October 1, 2021**.



APPENDIX A

6.3 ~~HARASSMENT AND DISCRIMINATION~~ **AND HARASSMENT**

~~6.3-1 The principles of human rights laws and related case law apply to the interpretation of this rule. A lawyer must not directly or indirectly discriminate against a colleague, employee, client or any other person.~~

Commentary

- [1] Lawyers are uniquely placed to advance the administration of justice, requiring lawyers to commit to equal justice for all within an open and impartial system. Lawyers are expected to respect the dignity and worth of all persons and to treat all persons fairly and without discrimination. A lawyer has a special responsibility to respect the requirements of human rights laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights laws. A lawyer has a special responsibility to respect and uphold the principles and requirements of human rights and workplace health and safety laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights such laws.
- [2] In order to reflect and be responsive to the public they serve, a lawyer must refrain from all forms of discrimination and harassment, which undermine confidence in the legal profession and our legal system. A lawyer should foster a professional environment that is respectful and inclusive, and should avoid being influenced by systemic biases, prejudices, and stereotypes when offering services to the public and when organizing their workplace.
- [3] Indigenous peoples may experience unique challenges in relation to discrimination and harassment as a result of the history of the colonization of Indigenous peoples in Canada, ongoing repercussions of the colonial legacy, systemic factors, and implicit biases. Lawyers should take particular care to avoid engaging in, allowing, or being wilfully blind to actions which constitute discrimination or any form of harassment against Indigenous peoples.
- [4] Lawyers should be aware that discrimination includes adverse effect and systemic discrimination, which arise from organizational policies, practices and cultures that create, perpetuate, or unintentionally result in unequal treatment of a person or persons. Lawyers should consider the distinct needs and circumstances of their colleagues, employees, and clients, and should be alert to unconscious biases that may inform these relationships and that serve to perpetuate systemic discrimination and harassment. Lawyers should guard against any express or implicit assumption that another person's views, skills, capabilities, and contributions are necessarily shaped or constrained by their gender, race, Indigeneity, disability or other personal characteristic.
- [5] Discrimination is a distinction, intentional or not, based on grounds related to actual or perceived personal characteristics of an individual or group, which has the effect of imposing burdens, obligations or disadvantages on the individual or group that are not imposed on others, or which withhold or limit access to opportunities, benefits and advantages that are available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will typically constitute discrimination. Intersecting grounds of discrimination require

consideration of the unique oppressions that result from the interplay of two or more protected grounds in a given context.

- [6]** The principles of human rights and workplace health and safety laws and related case law apply to the interpretation of this Rule and to Rules 6.3-2 to 6.3-4. A lawyer has a responsibility to stay apprised of developments in the law pertaining to discrimination and harassment, as what constitutes discrimination, harassment, and protected grounds continue to evolve over time and may vary by jurisdiction.
- [7]** Examples of behaviour that constitute discrimination include, but are not limited to:
- a. harassment (as described in more detail in the Commentary to Rules 6.3-2 and 6.3-3);
 - b. refusing to employ or to continue to employ any person on the basis of any personal characteristic protected by applicable law;
 - c. refusing to provide legal services to any person on the basis of any personal characteristic protected by applicable law;
 - d. charging higher fees on the basis of any personal characteristic protected by applicable law;
 - e. assigning lesser work or paying an employee or staff member less on the basis of any personal characteristic protected by applicable law;
 - f. using derogatory racial, gendered, or religious language to describe a person or group of persons;
 - g. failing to provide reasonable accommodation to the point of undue hardship;
 - h. applying policies regarding leave that are facially neutral (i.e. that apply to all employees equally), but which have the effect of penalizing individuals who take parental leave, in terms of seniority, promotion or partnership;
 - i. providing training or mentoring opportunities in a manner which has the effect of excluding any person from such opportunities on the basis of any personal characteristic protected by applicable law;
 - j. providing unequal opportunity for advancement by evaluating employees on facially neutral criteria that fail to take into account differential needs and needs requiring accommodation;
 - k. jokes or innuendos that cause humiliation, embarrassment or offence, or that by their nature are clearly embarrassing, humiliating or offensive;
 - l. instances when any of the above behaviour is directed toward someone because of their association with a group or individual with certain personal characteristics; or
 - m. any other conduct which constitutes discrimination according to any applicable law.
- [8]** It is not discrimination to establish or provide special programs, services or activities which have the object of ameliorating conditions of disadvantage for individuals or groups who are disadvantaged for reasons related to any characteristic protected by applicable laws.

6.3-2 ~~A term used in this rule that is defined in human rights legislation has the same meaning as in the legislation.~~ A lawyer must not harass a colleague, employee, client or any other person.

Commentary

[1] Harassment includes an incident or a series of incidents involving physical, verbal or non-verbal conduct (including electronic communications) that might reasonably be expected to cause humiliation, offence or intimidation to the person who is subjected to the conduct. The intent of the lawyer engaging in the conduct is not determinative. It is harassment if the lawyer knew or ought to have known that the conduct would be unwelcome or cause humiliation, offence or intimidation. Harassment may constitute or be linked to discrimination.

[2] Examples of behaviour that constitute harassment include, but are not limited to:

- a. objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome, including comments and displays that demean, belittle, intimidate or cause humiliation or embarrassment;
- b. behaviour that is degrading, threatening or abusive, whether physically, mentally or emotionally;
- c. bullying;
- d. verbal abuse;
- e. abuse of authority where a lawyer uses the power inherent in their position to endanger, undermine, intimidate, or threaten a person, or otherwise interfere with another person's career;
- f. jokes or innuendos that are known or ought reasonably to be known to cause humiliation, embarrassment or offence, or that by their nature are clearly embarrassing, humiliating or offensive; or
- g. assigning work inequitably.

[3] Bullying, including cyberbullying, is a form of harassment. It may involve physical, verbal or non-verbal conduct. It is characterized by conduct that might reasonably be expected to harm or damage the physical or psychological integrity of another person, their reputation or their property. Bullying includes, but is not limited to:

- a. unfair or excessive criticism;
- b. ridicule;
- c. humiliation;
- d. exclusion or isolation;
- e. constantly changing or setting unrealistic work targets; or
- f. threats or intimidation.

6.3-3 A lawyer must not sexually harass ~~any person~~ a colleague, employee, client or any other person.

Commentary

[1] Sexual harassment is an incident or series of incidents involving unsolicited or unwelcome sexual advances or requests, or other unwelcome physical, verbal, or nonverbal conduct (including electronic communications) of a sexual nature. Sexual harassment can be directed at others based on their gender, gender identity, gender expression, or sexual orientation. The intent of the lawyer engaging in the conduct is not determinative. It is sexual harassment if the lawyer knew or ought to have known that the conduct would be unwelcome. Sexual harassment may occur:

- a. when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the person who is subjected to the conduct;
- b. when submission to such conduct is implicitly or explicitly made a condition for the provision of professional services;
- c. when submission to such conduct is implicitly or explicitly made a condition of employment;
- d. when submission to or rejection of such conduct is used as a basis for any employment decision, including:
 - i. Loss of opportunity;
 - ii. The allocation of work;
 - iii. Promotion or demotion;
 - iv. Remuneration or loss of remuneration;
 - v. Job security; or
 - vi. Benefits affecting the employee;
- e. when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment;
- f. when a position of power is used to import sexual requirements into the workplace and negatively alter the working conditions of employees or colleagues; or
- g. when a sexual solicitation or advance is made by a lawyer who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the lawyer making the solicitation or advance knows or ought reasonably to know that it is unwelcome.

[2] Examples of behaviour that constitute sexual harassment include, but are not limited to:

- a. displaying sexualized or other demeaning or derogatory images;
- b. sexually suggestive, intimidating or obscene, comments, gestures or threats;
- c. jokes that cause humiliation, embarrassment or offence, or which by their nature are clearly embarrassing, humiliating or offensive;
- d. innuendoes, leering or comments about a person's dress or appearance;
- e. gender-based insults or sexist remarks;
- f. communications with sexual overtones;
- g. inquiries or comments about a person's sex life;
- h. sexual flirtations, advances, propositions, invitations or requests;
- i. unsolicited or unwelcome physical contact or touching;
- j. sexual violence; or

- k. persistent unwanted contact or attention, including after the end of a consensual relationship.

[3] Lawyers should avoid condoning or being wilfully blind to conduct in their workplaces that constitutes sexual harassment.

Reprisal

6.3-4 ~~A lawyer must not engage in any other form of harassment of any person.~~ is prohibited from engaging or participating in reprisals against a colleague, employee, client or any other person because that person has:

- a. inquired about their rights or the rights of others;
- b. made or contemplated making a complaint of discrimination, harassment or sexual harassment;
- c. witnessed discrimination, harassment or sexual harassment; or
- d. assisted or contemplated assisting in any investigation or proceeding related to a complaint of discrimination, harassment or sexual harassment.

Commentary

[1] The purpose of this Rule is to enable people to exercise their rights without fear of reprisal. Conduct which is intended to retaliate against a person, or discourage a person from exploring their rights, can constitute reprisal. Examples of such behaviour include, but are not limited to:

- a. refusing to employ or to continue to employ any person;
- b. penalizing any person with respect to that person's employment or changing, in a punitive way, any term, condition or privilege of that person's employment;
- c. intimidating, retaliating against or coercing any person;
- d. imposing a pecuniary or any other penalty, loss or disadvantage on any person;
- e. changing a person's workload in a disadvantageous manner, or withdrawing opportunities from them; or
- f. threatening to do any of the foregoing.

6.3-5 ~~A lawyer must not discriminate against any person.~~ Rules 6.3-1 to 6.3-4 are not limited to conduct related to, or performed in, the lawyer's office or in legal practice.

Commentary

[1] A lawyer's integrity is compromised by the behaviour and conduct prohibited by this Rule. The application of this Rule will be triggered by conduct that brings into question the lawyer's professional integrity, impairs a client's trust in the lawyer, or otherwise undermines confidence in the legal profession and our legal system.

APPENDIX B

Ex Parte Proceedings

5.2-1A In an *ex parte* proceeding, a lawyer must act with utmost good faith and inform the 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, 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 Rule 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*.

5.2-1B Communicating with the Tribunal

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).

[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 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.



Appendix F Correspondence from LSA to FLSC

700 333 - 11th Avenue SW Phone: 1.403.229.4700
Calgary, Alberta T2R 1L9 Toll Free: 1.800.661.9003

Sent via email

September 28, 2021

David Swayze
Chair of Standing Committee on the Model Code
Federation of Law Societies of Canada
1810 – 45 rue O'Connor Street
Ottawa, Ontario K1P 1A4

Dear Mr. Swayze,

**Re: Model Code of Professional Conduct: Second Consultation Report On
Discrimination, Harassment and *ex parte* Proceedings**

Thank you for the opportunity to provide feedback on the Standing Committee's ongoing work on the Model Code of Professional Conduct. Below is feedback from the Law Society of Alberta's Policy and Regulatory Reform Committee ("PRRC"). The PRRC heard and incorporated feedback from Alberta's Equity, Diversity and Inclusion Committee ("EDIC"), which in turn considered feedback from Alberta's Equity, Diversity and Inclusion Advisory Committee ("EDIAC"). The EDIAC is comprised of members of the profession. Alberta did not seek wider consultation with the profession on this round of amendments.

We found it encouraging that we received minimal feedback. This is not to say that the feedback is not important or substantive. Rather, few people came forward with any points that they felt required further consideration or adjustment.

Discrimination and Harassment

We would once again like to express our gratitude to the Standing Committee for their work. We appreciate the effort that went in to first reviewing and summarizing so succinctly the feedback which the profession provided on a national scale, and then further revising the amendments to incorporate feedback and explain why particular amendments were adopted while others were not.

We are again aware that in a typical consultation cycle, we would see a final draft of these rules go to the Federation Council in December. We support the work of the Standing Committee but again reiterate that we want to ensure that we take the time that is necessary to develop rules that all law societies can comfortably support and implement.

The feedback we received can be concisely summarized and we have done that below.

Rule 6.3-1, Commentary [4] and [7]

Commentary [4] references that lawyers should guard against making assumptions about a person based on, among other grounds, disability. Building on that reference, the PRRC felt that Commentary [7], which lists examples of discrimination, should include that it is discriminatory not to make a reasonable effort to maintain an office that is accessible to those with physical impairment where it is possible to do so. The PRRC generally agreed that not all office premises lend themselves to accessibility for the physically disabled, so it should be made clear that this is not intended to capture lawyers who simply cannot change the limits of their office space.

Although it is an enumerated ground, the PRRC felt that disability should be explicitly referenced because it is frequently missed or forgotten. Including the example of having accessible offices would serve as an effective reminder that lawyers must make efforts to accommodate people with disability where it is possible.

Rule 6.3-1, Commentary [1]

Rule 6.3-2, Commentary [1] indicates that intent is not determinative of whether a lawyer's conduct is harassment: "The intent of the lawyer engaging in the conduct is not determinative. It is harassment if the lawyer knew or ought to have known that the conduct would be unwelcome or cause humiliation, offence or intimidation."

Similar wording should be added to 6.3-1 to make it clear that, as with harassment, the intent of the lawyer engaging in the conduct is not determinative. In the current draft, Rule 6.3-1, Commentary [5] contains a brief reference to intent, but it is not a focal point. Rules 6.3-1 and 6.3-2 should be consistent in the emphasis that they place on this principle.

Rule 6.3-3, Commentary [2](k)

Rule 6.3-3, Commentary [2](i) states that, "unsolicited or unwelcome physical contact or touching" constitutes sexual harassment. It does not mention duration or repetition of the physical contact or touch. Any unsolicited or unwelcome contact or touching contravenes the rule.

However, Rule 6.3-3, Commentary [2](k) states that "*persistent* unwanted contact or attention, including after the end of a consensual relationship" constitutes sexual harassment.

These two sections may conflict. A more consistent approach is to remove the requirement in Rule 6.3-3, Commentary [2](k) that the contact or attention be "persistent". Even a single instance of unwanted contact or attention, for example, can constitute sexual harassment.

***Ex Parte* Proceedings**

The PRRC did not seek feedback from the EDIC on proposed Rules 5.2-1A and 5.2-1B. The below feedback is from the PRRC.

The two Rules, 5.2-1A and 5.2-1B, appear to contain a contradiction. Rule 5.2-1A is clearly premised upon the principle that *ex parte* proceedings, while rare, are sometimes required. Rule 5.2-1B then stipulates that all substantive communications with a tribunal must be on notice to the opposing party or their lawyer. The concern is that an *ex parte* proceeding is a communication with the tribunal. A lawyer may apply, for example, for an Anton Pillar order *ex parte*. Doing so

would comply with Rule 5.2-1A, but not 5.2-1B because the application is itself a communication with the tribunal.

The Committee's feedback is that while "communication" appears to refer to something other than an actual appearance, the distinction is too fine and is not clear within the context of the rules. The PRRC believes that additional language clarifying the distinction between an appearance and a communication is required.

The PRRC supports these rules subject to the comments above. We appreciate the Standing Committee's work in developing them and submitting them for consultation.

Thank you for taking the time to consider our response to the Standing Committee's request for feedback. If you would like to discuss any of these suggestions or comments in greater detail, please do not hesitate to contact me.

Sincerely,



Deanna Steblyk, QC
Chair, Policy and Regulatory Reform Committee
Law Society of Alberta

Appendix G: Comparison of Changes to Rule 6.3

Rule Number	Current Alberta Code of Conduct	2020 Consultation Report	2021 Consultation Report	Current Model Code (FLSC effective October 2022)
6.3-1	The principles of human rights laws and related case law apply to the interpretation of this rule	A lawyer must not discriminate against a colleague, employee, client or any other person.	A lawyer must not directly or indirectly discriminate against a colleague, employee, client or any other person.	A lawyer must not directly or indirectly discriminate against a colleague, employee, client or any other person.
Commentary	No Commentary	<p>[1] A lawyer has a special responsibility to respect the requirements of human rights and workplace health and safety laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights such laws.</p> <p>[2] The principles of human rights and workplace health and safety laws and related case law apply to the interpretation of this rule and to rules 6.3-2 to 6.3-5.</p> <p>[3] Discrimination is a distinction, intentional or not, based on grounds related to actual or perceived personal characteristics of an individual or group, which has the effect of imposing burdens, obligations or disadvantages on the individual or group that are not imposed on others, or which withhold or limit access to opportunities, benefits and advantages that are available to other members of society. Distinctions based on personal characteristics, attributed to an individual solely on the basis of association with a group will typically constitute discrimination. Distinctions based on an individual's merits and capabilities will rarely be so classified.</p> <p>[4] Types of behavior that constitute discrimination may include, but are not limited to:</p> <p>a. Refusing to employ or to continue to employ any person for reasons related to any personal characteristic protected by applicable law;</p> <p>b. Refusing to provide legal services to any person for reasons related to any personal characteristic protected by applicable law;</p> <p>c. Charging higher fees for reasons related to any personal characteristic protected by applicable law;</p>	<p>[1] Lawyers are uniquely placed to advance the administration of justice, requiring lawyers to commit to equal justice for all within an open and impartial system. Lawyers are expected to respect the dignity and worth of all persons and to treat all persons fairly and without discrimination. A lawyer has a special responsibility to respect the requirements of human rights laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights laws. A lawyer has a special responsibility to respect and uphold the principles and requirements of human rights and workplace health and safety laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in such laws.</p> <p>[2] In order to reflect and be responsive to the public they serve, a lawyer must refrain from all forms of discrimination and harassment, which undermine confidence in the legal profession and our legal system. A lawyer should foster a professional environment that is respectful and inclusive, and should avoid being influenced by systemic biases, prejudices, and stereotypes when offering services to the public and when organizing their workplace.</p> <p>[3] Indigenous peoples may experience unique challenges in relation to discrimination and harassment as a result of the history of the colonization of Indigenous peoples in Canada, ongoing repercussions of the colonial legacy, systemic factors, and implicit biases. Lawyers should take particular care to avoid engaging in, allowing, or being wilfully blind to actions which constitute discrimination or any form of harassment against Indigenous peoples.</p> <p>[4] Lawyers should be aware that discrimination includes adverse effect and systemic discrimination, which arise from organizational policies, practices and cultures that create, perpetuate, or unintentionally result in unequal</p>	<p>[1] Lawyers are uniquely placed to advance the administration of justice, requiring lawyers to commit to equal justice for all within an open and impartial system. Lawyers are expected to respect the dignity and worth of all persons and to treat all persons fairly and without discrimination. A lawyer has a special responsibility to respect the requirements of human rights laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights laws. A lawyer has a special responsibility to respect and uphold the principles and requirements of human rights and workplace health and safety laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in such laws.</p> <p>[2] In order to reflect and be responsive to the public they serve, a lawyer must refrain from all forms of discrimination and harassment, which undermine confidence in the legal profession and our legal system. A lawyer should foster a professional environment that is respectful, <u>accessible</u>, and inclusive, and should <u>avoid being influenced by systemic biases, prejudices, and stereotypes</u> take particular care to avoid engaging in practices that would reinforce those biases, when offering services to the public and when organizing their workplace.</p> <p>[3] Indigenous peoples may experience unique challenges in relation to discrimination and harassment as a result of the history of the colonization of Indigenous peoples in Canada, ongoing repercussions of the colonial legacy, systemic factors, and implicit biases. Lawyers should take particular care to avoid engaging in, allowing, or being <u>wilfully</u> blind to actions which constitute</p>

		<p>d. Assigning lesser work or paying an employee or staff member less for reasons related to any personal characteristic protected by applicable law;</p> <p>e. Using racial, gender, religious or derogatory language to describe a person or group of persons; or</p> <p>f. Failing to provide reasonable accommodation to the point of undue hardship.</p> <p>[5] It is not discrimination to establish or provide programs, services or activities which have the object of ameliorating conditions of disadvantage for individuals or groups who are disadvantaged for reasons related to any characteristic protected by applicable laws.</p>	<p>treatment of a person or persons. Lawyers should consider the distinct needs and circumstances of their colleagues, employees, and clients, and should be alert to unconscious biases that may inform these relationships and that serve to perpetuate systemic discrimination and harassment. Lawyers should guard against any express or implicit assumption that another person's views, skills, capabilities, and contributions are necessarily shaped or constrained by their gender, race, Indigeneity, disability or other personal characteristic.</p> <p>[5] Discrimination is a distinction, intentional or not, based on grounds related to actual or perceived personal characteristics of an individual or group, which has the effect of imposing burdens, obligations or disadvantages on the individual or group that are not imposed on others, or which withhold or limit access to opportunities, benefits and advantages that are available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will typically constitute discrimination. Intersecting grounds of discrimination require consideration of the unique oppressions that result from the interplay of two or more protected grounds in a given context.</p> <p>[6] The principles of human rights and workplace health and safety laws and related case law apply to the interpretation of this Rule and to Rules 6.3-2 to 6.3-4. A lawyer has a responsibility to stay apprised of developments in the law pertaining to discrimination and harassment, as what constitutes discrimination, harassment, and protected grounds continue to evolve over time and may vary by jurisdiction.</p> <p>[7] Examples of behaviour that constitute discrimination include, but are not limited to:</p> <p>a. harassment (as described in more detail in the Commentary to Rules 6.3-2 and 6.3-3);</p> <p>b. refusing to employ or to continue to employ any person on the basis of any personal characteristic protected by applicable law;</p> <p>c. refusing to provide legal services to any person on the basis of any personal characteristic protected by applicable law;</p>	<p>discrimination or any form of harassment against Indigenous peoples.</p> <p>[4] Lawyers should be aware that discrimination includes adverse effect and systemic discrimination, which arise from organizational policies, practices and cultures that create, perpetuate, or unintentionally result in unequal treatment of a person or persons. Lawyers should consider the distinct needs and circumstances of their colleagues, employees, and clients, and should be alert to unconscious biases that may inform these relationships and that serve to perpetuate systemic discrimination and harassment. Lawyers should guard against any express or implicit assumption that another person's views, skills, capabilities, and contributions are necessarily shaped or and contributions are necessarily shaped or constrained by their gender, race, Indigeneity, disability or other personal characteristic.</p> <p>[5] Discrimination is a distinction, intentional or not, based on grounds related to actual or perceived personal characteristics of an individual or group, which has the effect of imposing burdens, obligations or disadvantages on the individual or group that are not imposed on others, or which withhold or limit access to opportunities, benefits and advantages that are available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will typically constitute discrimination. Intersecting grounds of discrimination require consideration of the unique oppressions that result from the interplay of two or more protected grounds in a given context.</p> <p>[6] The principles of human rights and workplace health and safety laws and related case law apply to the interpretation of this Rule and to Rules 6.3-2 to 6.3-4. A lawyer has a responsibility to stay apprised of developments in the law pertaining to discrimination and and harassment, as what constitutes discrimination, harassment, and protected grounds continue to evolve over time and may vary by jurisdiction.</p> <p>[7] Examples of behaviour that constitute discrimination include, but are not limited to:</p>
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				<p>l. instances when any of the above behaviour is directed toward someone because of their association with a group or individual with certain personal <u>characteristics; or characteristics; or</u></p> <p>m. any other conduct which constitutes discrimination according to any applicable law.</p> <p>[8] It is not discrimination to establish or provide special programs, services or activities which have the object of ameliorating conditions of disadvantage for individuals or groups who are disadvantaged for reasons related to any characteristic protected by applicable laws.</p> <p><u>[9] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice</u></p>
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Rule Number	Current Alberta Code of Conduct	First Consultation Report (2021)	Second Consultation Report (2021)	Current Model Code (FLSC effective October 2022)
6.3-2	A term used in this rule that is defined in human rights legislation has the same meaning as in the legislation	A lawyer must not harass a colleague, employee, client or any other person.	A lawyer must not harass a colleague, employee, client or any other person	A lawyer must not harass a colleague, employee, client or any other person
Commentary	No Commentary	<p>[1] In this Code, harassment includes an incident or a series of incidents involving electronic, physical or verbal conduct when such conduct might reasonably be expected to cause humiliation, offence or intimidation to the recipient of the conduct, whether that individual is a colleague, employee, client or any other person. Harassment may constitute or be linked to discrimination.</p> <p>[2] The intent of the lawyer engaging in the conduct is not determinative. It is the subjective and reasonable experience of the person experiencing the behaviour that is relevant.</p> <p>[3] Types of behavior that constitute harassment may include, but are not limited to:</p> <p>a. Behaviour that is degrading, threatening or abusive, whether physically, mentally or emotionally;</p> <p>b. Bullying;</p> <p>c. Verbal abuse;</p> <p>d. Abuse of authority where a person uses the power inherent in a position to endanger, undermine, threaten or otherwise interfere with another person's career;</p> <p>e. Objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome, including comments, displays or jokes, that demean, belittle or cause personal humiliation or embarrassment; or</p> <p>f. Any other behaviour which constitutes harassment according to any applicable law.</p> <p>[4] Bullying, including cyberbullying, is a form of harassment. It may involve physical, verbal or non-verbal conduct. It is characterized by persistent and repeated negative behaviour towards an individual or group of individuals. Bullying includes:</p> <p>a. Unfair or excessive criticism;</p>	<p>[1] Harassment includes an incident or a series of incidents involving physical, verbal or nonverbal conduct (including electronic communications) that might reasonably be expected to cause humiliation, offence or intimidation to the person who is subjected to the conduct. The intent of the lawyer engaging in the conduct is not determinative. It is harassment if the lawyer knew or ought to have known that the conduct would be unwelcome or cause humiliation, offence or intimidation. Harassment may constitute or be linked to discrimination.</p> <p>[2] Examples of behaviour that constitute harassment include, but are not limited to:</p> <p>a. objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome, including comments and displays that demean, belittle, intimidate or cause humiliation or embarrassment;</p> <p>b. behaviour that is degrading, threatening or abusive, whether physically, mentally or emotionally;</p> <p>c. bullying;</p> <p>d. verbal abuse;</p> <p>e. abuse of authority where a lawyer uses the power inherent in their position to endanger, undermine, intimidate, or threaten a person, or otherwise interfere with another person's career;</p> <p>f. jokes or innuendos that are known or ought reasonably to be known to cause humiliation, embarrassment or offence, or that by their nature are clearly embarrassing, humiliating or offensive; or</p> <p>g. assigning work inequitably.</p> <p>[3] Bullying, including cyberbullying, is a form of harassment. It may involve physical, verbal or</p>	<p>[1] Harassment includes an incident or a series of incidents involving physical, verbal or nonverbal<u>non-verbal</u> conduct (including electronic communications) that might reasonably be expected to cause humiliation, offence or intimidation to the person who is subjected to the conduct. The intent of the lawyer engaging in the conduct is not determinative. It is harassment if the lawyer knew or ought to have known that the conduct would be unwelcome or cause humiliation, offence or intimidation. Harassment may constitute or be linked to discrimination.</p> <p>[2] Examples of behaviour that constitute harassment include, but are not limited to:</p> <p>a. objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome, including comments and displays that demean, belittle, intimidate or cause humiliation or embarrassment;</p> <p>b. behaviour that is degrading, threatening or abusive, whether physically, mentally or emotionally;</p> <p>c. bullying;</p> <p>d. verbal abuse;</p> <p>e. abuse of authority where a lawyer uses the power inherent in their position to endanger, undermine, intimidate, or threaten a person, or otherwise interfere with another person's career;</p> <p>f. <u>comments</u>, jokes or innuendos that are known or ought reasonably to be known to cause humiliation, embarrassment or offence, or that by their nature are clearly embarrassing, humiliating or offensive; or, and in their context, are clearly embarrassing, humiliating or offensive; or</p> <p>g. assigning work inequitably.</p>

		<p>b. Ridicule; c. Humiliation; d. Exclusion or isolation; e. Constantly changing or setting unrealistic work targets or assigning seniority inappropriate work; or f. Threats or intimidation.</p> <p>[5] For clarity, this rule is not limited to conduct related to, or performed in, the lawyer's office or in legal practice.</p>	<p>non-verbal conduct. It is characterized by conduct that might reasonably be expected to harm or damage the physical or psychological integrity of another person, their reputation or their property. Bullying includes, but is not limited to:</p> <p>a. unfair or excessive criticism; b. ridicule; c. humiliation; d. exclusion or isolation; e. constantly changing or setting unrealistic work targets; or f. threats or intimidation.</p>	<p>[3] Bullying, including cyberbullying, is a form of harassment. It may involve physical, verbal or <u>non-verbal conduct</u>. <u>It is characterized by conduct that might reasonably be expected to harm or damage the physical or psychological integrity of another person, their reputation or their property.</u> Bullying includes, but is not limited to:</p> <p>a. unfair or excessive criticism; b. ridicule; c. humiliation; d. exclusion or isolation; e. constantly changing or setting unrealistic work targets; or f. threats or intimidation.</p> <p><u>[4] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.</u></p>
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Rule Number	Current Alberta Code of Conduct	First Consultation Report (2021)	Second Consultation Report (2021)	Current Model Code (FLSC effective October 2022)
6.3-3	A lawyer must not sexually harass any person.	A lawyer must not sexually harass a colleague, employee, client or any other person.	A lawyer must not sexually harass a colleague, employee, client or any other person.	A lawyer must not sexually harass a colleague, employee, client or any other person.
Commentary	No Commentary	<p>[1] In this Code, sexual harassment means an incident or series of incidents involving unsolicited or unwelcome sexual advances or requests, or other unwelcome electronic, verbal, non-verbal or physical conduct of a sexual nature</p> <p>a. When such conduct might reasonably be expected to cause insecurity; [sic] discomfort, offence, or humiliation to the recipient(s);</p> <p>b. When submission to such conduct is made implicitly or explicitly a condition for the provision of professional services;</p> <p>c. When submission to such conduct is made implicitly or explicitly a condition of employment;</p> <p>d. When submission to or rejection of such conduct is used as a basis for any employment decision including;</p> <p>i. The allocation of files;</p> <p>ii. Promotion;</p> <p>iii. Remuneration;</p> <p>iv. Job security; or</p> <p>v. Benefits affecting the employee;</p> <p>e. When such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment;</p> <p>f. When the use of a position of power is used to import sexual requirements into the workplace and negatively alter the working conditions of employees; or</p> <p>g. A sexual solicitation or advance made by a person who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome.</p>	<p>[1] Sexual harassment is an incident or series of incidents involving unsolicited or unwelcome sexual advances or requests, or other unwelcome physical, verbal, or nonverbal conduct (including electronic communications) of a sexual nature. Sexual harassment can be directed at others based on their gender, gender identity, gender expression, or sexual orientation. The intent of the lawyer engaging in the conduct is not determinative. It is sexual harassment if the lawyer knew or ought to have known that the conduct would be unwelcome.</p> <p>Sexual harassment may occur:</p> <p>a. when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the person who is subjected to the conduct;</p> <p>b. when submission to such conduct is implicitly or explicitly made a condition for the provision of professional services;</p> <p>c. when submission to such conduct is implicitly or explicitly made a condition of employment;</p> <p>d. when submission to or rejection of such conduct is used as a basis for any employment decision, including;</p> <p>i. Loss of opportunity;</p> <p>ii. The allocation of work;</p> <p>iii. Promotion or demotion;</p> <p>iv. Remuneration or loss of remuneration;</p> <p>v. Job security; or</p> <p>vi. Benefits affecting the employee;</p> <p>e. when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment;</p>	<p>[1] Sexual harassment is an incident or series of incidents involving unsolicited or unwelcome sexual advances or requests, or other unwelcome physical, verbal, or nonverbal conduct (including electronic communications) of a sexual nature. Sexual harassment can be directed at others based on their gender, gender identity, gender expression, or sexual orientation. The intent of the lawyer engaging in the conduct is not determinative. It is sexual harassment if the lawyer knew or ought to have known harassment if the lawyer knew or ought to have known that the conduct would be unwelcome.</p> <p>Sexual harassment may occur:</p> <p>a. when such conduct might reasonably be expected to cause insecurity,</p> <p>discomfort, offence, or humiliation to the person who is subjected to the conduct;</p> <p>b. when submission to such conduct is implicitly or explicitly made a condition for the provision of professional services;</p> <p>c. when submission to such conduct is implicitly or explicitly made a condition of employment;</p> <p>d. when submission to or rejection of such conduct is used as a basis for any employment decision, including;</p> <p>i. Loss of opportunity;</p> <p>ii. The allocation of work;</p> <p>iii. Promotion or demotion;</p> <p>iv. Remuneration or loss of remuneration;</p> <p>v. Job security; or</p> <p>vi. Benefits affecting the employee;</p>

		<p>[2] As with harassment generally, in determining whether conduct or behaviour is sexual harassment, the intent of the lawyer engaging in the conduct is not determinative. It is the subjective and reasonable experience of the person experiencing the behaviour that is relevant.</p> <p>[3] Types of behaviour that constitute sexual harassment may include, but are not limited to:</p> <p>a. Displaying sexualized or other demeaning or derogatory images;</p> <p>b. Sexually suggestive, intimidating or obscene, comments, gestures or threats;</p> <p>c. Jokes that cause awkwardness, humiliation, embarrassment or offence, or which by their nature are clearly embarrassing, humiliating or offensive;</p> <p>d. Innuendoes or leering;</p> <p>e. Gender-based insults or sexist remarks;</p> <p>f. Communications with sexual overtones;</p> <p>g. Inquiries or comments about a person's sex life;</p> <p>h. Sexual flirtations, advances, propositions, invitations or requests;</p> <p>i. Unsolicited or unwelcome physical contact or touching;</p> <p>j. Sexual violence; or</p> <p>k. Persistent unwanted contact or attention after the end of a consensual relationship.</p> <p>[4] For clarity, this rule is not limited to conduct related to, or performed in, the lawyer's office or in legal practice.</p>	<p>f. when a position of power is used to import sexual requirements into the workplace and negatively alter the working conditions of employees or colleagues; or</p> <p>g. when a sexual solicitation or advance is made by a lawyer who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the lawyer making the solicitation or advance knows or ought reasonably to know that it is unwelcome.</p> <p>[2] Examples of behaviour that constitute sexual harassment include, but are not limited to:</p> <p>a. displaying sexualized or other demeaning or derogatory images;</p> <p>b. sexually suggestive, intimidating or obscene, comments, gestures or threats;</p> <p>c. jokes that cause humiliation, embarrassment or offence, or which by their nature are clearly embarrassing, humiliating or offensive;</p> <p>d. innuendoes, leering or comments about a person's dress or appearance;</p> <p>e. gender-based insults or sexist remarks;</p> <p>f. communications with sexual overtones;</p> <p>g. inquiries or comments about a person's sex life;</p> <p>h. sexual flirtations, advances, propositions, invitations or requests;</p> <p>i. unsolicited or unwelcome physical contact or touching;</p> <p>j. sexual violence; or</p> <p>k. persistent unwanted contact or attention, including after the end of a consensual relationship.</p> <p>[3] Lawyers should avoid condoning or being wilfully blind to conduct in their workplaces that constitutes sexual harassment.</p>	<p>e. when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment;</p> <p>f. when a position of power is used to import sexual requirements into the workplace and negatively alter the working conditions of employees or colleagues; or</p> <p>g. when a sexual solicitation or advance is made by a lawyer who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the lawyer making the solicitation or advance knows or ought reasonably to know that it is unwelcome.</p> <p>[2] Examples of behaviour that constitute sexual harassment include, but are not limited to:</p> <p>a. displaying sexualized or other demeaning or derogatory images;</p> <p>b. sexually suggestive, or intimidating or obscene, comments, gestures or threats;</p> <p>c. comments, jokes that cause humiliation, embarrassment or offence, or which by their nature, and in their context, are clearly embarrassing, humiliating or offensive;</p> <p>d. innuendoes, leering or comments about a person's dress or appearance;</p> <p>e. gender-based insults or sexist remarks;</p> <p>f. communications with sexual overtones;</p> <p>g. inquiries or comments about a person's sex life;</p> <p>h. sexual flirtations, advances, propositions, invitations or requests;</p> <p>i. unsolicited or unwelcome physical contact or touching;</p> <p>j. sexual violence; or</p> <p>k. persistent unwanted contact or attention, including after the end of a consensual relationship.</p>
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				<p>[3] Lawyers should avoid condoning or being wilfully<u>willfully</u> blind to conduct in their workplaces that constitutes sexual harassment.</p> <p><u>[4] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.</u></p>
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Rule Number	Current Alberta Code of Conduct	First Consultation Report (2021)	Second Consultation Report (2021)	Current Model Code (FLSC effective October 2022)
6.3-4	A lawyer must not engage in any other form of harassment of any person.	<p>A lawyer is prohibited from engaging or participating in reprisals against a colleague, employee, client or any other person who has</p> <p>(a) inquired about their rights or the rights of others,</p> <p>(b) made or contemplated making a complaint of discrimination, harassment or sexual harassment,</p> <p>(c) witnessed discrimination, harassment or sexual harassment, or</p> <p>(d) assisted or contemplated assisting in any investigation of or proceeding related to a complaint of discrimination, harassment or sexual harassment.</p>	<p>A lawyer is prohibited from engaging or participating in reprisals against a colleague, employee, client or any other person because that person has:</p> <p>a. inquired about their rights or the rights of others;</p> <p>b. made or contemplated making a complaint of discrimination, harassment or sexual harassment;</p> <p>c. witnessed discrimination, harassment or sexual harassment; or</p> <p>d. assisted or contemplated assisting in any investigation or proceeding related to a complaint of discrimination, harassment or sexual harassment.</p>	<p>A lawyer is prohibited from engaging or participating<u>must not engage or participate</u> in reprisals against a colleague, employee, client or any other person because that person has:</p> <p>a. inquired about their rights or the rights of others;</p> <p>b. made or contemplated making a complaint of discrimination, harassment or sexual harassment;</p> <p>c. witnessed discrimination, harassment or sexual harassment; or</p> <p>d. assisted or contemplated assisting in any investigation or proceeding related to a complaint of discrimination, harassment or sexual harassment.</p>
Commentary	None	<p>[1] Types of behavior that constitute reprisal may include, but are not limited to:</p> <p>a. Refusing to employ or continue to employ any person;</p> <p>b. Penalizing any person with respect to that person's employment or changing in a punitive way any term, condition or privilege of that person's employment;</p> <p>c. Intimidating, retaliating against or coercing any person;</p> <p>d. Imposing a pecuniary or any other penalty, loss or disadvantage on any person;</p> <p>or</p> <p>e. Threatening to do any of the foregoing.</p>	<p>[1] The purpose of this Rule is to enable people to exercise their rights without fear of reprisal. Conduct which is intended to retaliate against a person, or discourage a person from exploring their rights, can constitute reprisal. Examples of such behaviour include, but are not limited to:</p> <p>a. refusing to employ or to continue to employ any person;</p> <p>b. penalizing any person with respect to that person's employment or changing, in a punitive way, any term, condition or privilege of that person's employment;</p> <p>c. intimidating, retaliating against or coercing any person;</p> <p>d. imposing a pecuniary or any other penalty, loss or disadvantage on any person;</p> <p>e. changing a person's workload in a disadvantageous manner, or withdrawing opportunities from them; or</p> <p>f. threatening to do any of the foregoing.</p>	<p>[1] The purpose of this Rule is to enable people to exercise their rights without fear of reprisal. Conduct which is intended to retaliate against a person, or discourage a person from exploring their rights, can constitute reprisal. Examples of such behaviour include, but are not limited to:</p> <p>a. refusing to employ or to continue to employ any person;</p> <p>b. penalizing any person with respect to that person's employment or changing, in a punitive way, any term, condition or privilege of that person's employment;</p> <p>c. intimidating, retaliating against or coercing any person;</p> <p>d. imposing a pecuniary or any other penalty, loss or disadvantage on any person;</p> <p>e. changing a person's workload in a disadvantageous manner, or withdrawing opportunities from them; or</p> <p>f. threatening to do any of the foregoing.</p>

Rule Number	Current Alberta Code of Conduct	First Consultation Report (2021)	Second Consultation Report (2021)	Current Model Code (FLSC effective October 2022)
6.3-5	A lawyer must not discriminate against any person.	No Rule 6.3-5	Rules 6.3-1 to 6.3-4 are not limited to conduct related to, or performed in, the lawyer's office or in legal practice.	Rules 6.3-1 to 6.3-4 are not limited to conduct related to, or performed in, the lawyer's office or in legal practice.
Commentary	1] A lawyer has a special responsibility to respect the requirements of human rights laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights laws.	No Commentary	[1] A lawyer's integrity is compromised by the behaviour and conduct prohibited by this Rule. The application of this Rule will be triggered by conduct that brings into question the lawyer's professional integrity, impairs a client's trust in the lawyer, or otherwise undermines confidence in the legal profession and our legal system.	[1] A lawyer's integrity is compromised by the behaviour and conduct prohibited by this Rule. The application of this Rule will be triggered by conduct that brings into question the lawyer's professional integrity, impairs a client's trust in the lawyer, or otherwise undermines confidence in the legal profession and our legal system.

Appendix H: Comparison of Changes to Rule 5.1-2 B and C

Rule Number	Current Alberta Code of Conduct	2020 Consultation Report	2021 Consultation Report	Current Model Code (FLSC effective October 2022)*
5.1-2B Ex Parte Proceedings		In an <i>ex parte</i> proceeding, a lawyer must act with utmost good faith and inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, even if the information is adverse to the client's interest	In an <i>ex parte</i> proceeding, a lawyer must act with utmost good faith and inform the tribunal of all material facts, including adverse facts, known to the lawyer that will enable the tribunal to make an informed decision.	In an <i>ex parte</i> proceeding, a lawyer must act with utmost good faith and inform the tribunal of all material facts, including adverse facts, known to the lawyer that will enable the tribunal to make an informed decision.
Commentary		<p>[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, 5.1-2).</p> <p>[2] The obligation to disclose all relevant information and evidence is subject to a lawyer's duty of confidentiality (see Rule 3.3).</p> <p>[3] Before initiating <i>ex parte</i> 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 (where they are represented), notwithstanding the right to proceed <i>ex parte</i>.</p>	<p>[1] <i>Ex parte</i> 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, 5.1-2).</p> <p>[2] The obligation to disclose all relevant information and evidence is subject to a lawyer's duty to maintain confidentiality and privilege (see Rule 3.3).</p> <p>[3] Before initiating <i>ex parte</i> 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 <i>ex parte</i>.</p>	<p>[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, 5.1-2).</p> <p>[2] The obligation to disclose all relevant information and evidence is subject to a lawyer's duty to maintain confidentiality and privilege (see Rule 3.3).</p> <p>[3] Before initiating <i>ex parte</i> 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 <i>ex parte</i>.</p>
5.1-2C Communicating with the Tribunal		Except where permitted by law or the tribunal, a lawyer must not communicate with a tribunal in the absence of the opposing party or their lawyer (where 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.	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.	A Except where authorized by law, and subject to rule 5.1-2B, 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		<p>[1] A lawyer should not attempt to influence a tribunal or discuss a matter with or make submissions to a tribunal without the knowledge of the other party or the lawyer for the other party, if they are represented.</p> <p>[2] When a tribunal invites or requests a communication from a lawyer, the lawyer should consider whether to 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.</p>	<p>[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).</p> <p>[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.</p>	<p>[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). <u>A lawyer should be particularly diligent to avoid improper single-party communications when engaging with a tribunal by electronic means, such as email correspondence.</u></p> <p>[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</p>

Appendix H: Comparison of Changes to Rule 5.1-2 B and C

		<p>[3] This rule does not prohibit communication with a tribunal on routine administrative 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.</p> <p>[4] A lawyer may communicate with a tribunal <i>ex parte</i> where permitted by law or the tribunal; notwithstanding that right, where no prejudice would occur, a lawyer should consider giving notice to the opposing party or their lawyer</p>	<p>[3] This Rule does not prohibit 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.</p>	<p>lawyer should be copied on communications to the tribunal or given advance notice of the communication.</p> <p>[3] This Rulerule does not prohibit <u>single-party</u> communication with a tribunal on routine administrative or procedural matters, such as scheduling hearing dates or <u>ppearances</u>. <u>A lawyer should consider notifying the other party or their lawyer of administrative</u>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.</p> <p><u>[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.</u></p>
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* The numbering in the Model Code is 5.2-1B and 5.2-1C and the heading to Rule 5.2-1C is "Single-Party Communications with a Tribunal"

Appendix I Materials Submitted to Council of the FLSC re Amendments

TAB 5

Federation of Law Societies
of Canada



Fédération des ordres professionnels
de juristes du Canada

MEMORANDUM

FROM: Federation Executive

TO: Council of the Federation
Law society Presidents and CEOs (for information)

DATE: September 30, 2022

SUBJECT: Amendments to the Model Code of Professional Conduct

AT A GLANCE FOR DECISION

DRAFT MOTION:

WHEREAS when the Model Code of Professional Conduct (the “Model Code”) was adopted by Council of the Federation in 2009 it was recognized that it is a living document that must change over time;

WHEREAS the Standing Committee on the Model Code of Professional Conduct (the “Standing Committee”) was established in September 2010 to monitor changes in the law of legal ethics and professional responsibility and feedback from stakeholders, and to recommend such amendments to the Model Code as it considered appropriate;

WHEREAS the Standing Committee has established a robust process of consultation on all proposed amendments;

WHEREAS as a result of input from stakeholders the Standing Committee has determined that amendments to the Model Code should be made to address issues relating to discrimination, harassment, and *ex parte* communications;

WHEREAS the Standing Committee has provided a detailed description of the proposed amendments in the memorandum attached as [Appendix “A”](#);

RESOLVED THAT Council approve the amendments to the Model Code related to discrimination, harassment, and *ex parte* communications attached as [Appendix A-1](#) and [Appendix A-2](#).

ISSUE

1. The Federation Council is asked to approve revised proposed amendments to the Model Code related to discrimination, harassment, and *ex parte* communications. The background, rationale and language of the amendments are described in the memorandum from Standing Committee Chair Carsten Jensen, KC, attached as [Appendix "A"](#).

BACKGROUND

2. The project to develop the Model Code grew out of the mobility of members of the legal profession. In the mid-2000s, the law societies agreed that with members of the profession able to move freely between jurisdictions the existing patchwork of rules of professional conduct was difficult to justify and posed challenges for mobile lawyers and national law firms. The goal in developing the Model Code, which was approved by the Council of the Federation in 2009, was to synchronize, as much as possible, the rules of professional conduct in effect in the different jurisdictions.

3. The Standing Committee was established in September 2010 in recognition of the fact that the Model Code must evolve over time in response to changes in the law and changes made by individual law societies as they implement the Model Code. The mandate of the Standing Committee is to monitor changes in the law of professional responsibility and legal ethics, to receive and consider feedback from the law societies and other interested parties regarding the Model Code, and to make recommendations to Council with respect to any changes to the Model Code as it considered appropriate.

4. The Standing Committee consults regularly on the work of the committee and implementation of the Model Code by individual law societies with representatives of each law society appointed to act as liaisons to the Standing Committee. Many of the issues considered by the Standing Committee arise from these consultations.

5. The Standing Committee has also established a formal consultation process through which it solicits feedback on proposed amendments to the Model Code from law societies, legal ethics academics, the Canadian Bar Association, other legal system stakeholders and members of the public. In some cases, the consultation on specific rule amendments is preceded by the release of a discussion paper to elicit general input on the underlying issues.

6. To ensure that law societies have time to review final proposed amendments in advance of their consideration by Council, proposed amendments are shared with Council and the law societies several months in advance. In keeping with that practice, the amendments on discrimination and harassment, and *ex parte* communications were circulated to the staff-level Model Code Liaisons Group over the summer. The proposed amendments were then shared, for information, with Council in June of 2022. At that time, the Chair of the Standing Committee took the opportunity discuss the proposed amendments in detail and to address questions from members of Council.

PROPOSED AMENDMENTS ON DISCRIMINATION, HARASSMENT, AND *EX PARTE* COMMUNICATIONS

7. The Standing Committee conducted two rounds of consultations with stakeholders on the proposed amendments. The first consultation report was released in January 2020. The response to the Standing Committee's 2020 Consultation Report was complex and lengthy. Given the considerable feedback to the first consultation report and the extraordinary interest in these proposed amendments, the Standing Committee undertook a limited second consultation with law societies during the summer of 2021. The final amendments reflect a careful review of all feedback received. The Standing Committee's detailed description of the proposed amendments is contained in the memorandum of its Chair, attached as [Appendix "A"](#).

RECOMMENDATION

8. The Executive recommends that the [motion on page 1 of this memorandum](#) be adopted.



APPENDIX A

TAB 6

Federation of Law Societies
of Canada



Fédération des ordres professionnels
de juristes du Canada

MEMORANDUM

FROM: Carsten Jensen, Chair,
Standing Committee on the Model Code of Professional Conduct

TO: Council of the Federation
Law society Presidents, CEOs (for information)

DATE: May 24, 2022

SUBJECT: Model Code of Professional Conduct – Omnibus Amendment Package

AT A GLANCE FOR INFORMATION

- The Standing Committee on the Model Code has prepared a package of amendments to the rules on Harassment and Discrimination and *Ex parte* communications. The proposed amendments are described in detail in this memorandum, and will be put to Council for approval at a later date.

INTRODUCTION

1. The Standing Committee on the Model Code of Professional Conduct (“Standing Committee”) has prepared a package of amendments to the Model Code of Professional Conduct (“Model Code”) for submission to the Council of the Federation and approval at a later date. The package includes proposed revisions to the rules on discrimination and harassment, as well as the creation of new rules addressing *ex parte* and single-party communications with a tribunal. The proposed changes to the Model Code are included as [Appendix “A-1”](#) and [“A-2”](#) to this memorandum.
2. Pursuant to the timetable agreed to with the Law Society Model Code Liaisons Group, the Standing Committee recommends circulating the amendment package well in advance of its consideration by Council to ensure that all law societies have an opportunity to review the proposed amendments prior to Council being asked to approve them.
3. This memorandum sets out background information on the development of the package, together with an overview of the proposed amendments to the Model Code.

BACKGROUND

4. The original impetus for the examination of Rule 6.3 on Harassment and Discrimination came from the Law Societies Equity Network (“LSEN”), a group of law society staff members engaged in issues related to equity and diversity. In June 2019 the LSEN wrote to the Standing Committee suggesting that the existing rules and commentary did not adequately reflect the importance of preventing discrimination and harassment. After canvassing the considerable empirical and anecdotal evidence that discrimination, harassment and bullying remain prevalent in the legal profession, the Standing Committee decided to clarify the harassment and discrimination provisions of the Model Code and to include specific guidance on bullying.

5. In January of 2020, the Standing Committee issued its [Consultation Report](#) (“the 2020 Consultation Report”) addressing duties related to non-discrimination and harassment and *ex parte* communications with courts and tribunals.

6. In the months following the release of the Standing Committee’s 2020 Consultation Report, the Federation formally committed to reconciliation with Indigenous peoples and adopted Guiding Principles for Fostering Reconciliation that inform all aspects of Federation work. The Standing Committee, as with other Federation bodies, is encouraged to be in genuine, transparent, and ongoing dialogue with Indigenous stakeholders about its work.

7. The response to the Standing Committee’s 2020 Consultation Report was complex and lengthy. In addition to law society feedback, the proposed language attracted significant comment from representative organisations within the legal profession. Understanding that the 2020 Consultation Report prompted lively discussions at the Indigenous Bar Association’s fall 2020 annual conference, the Standing Committee also initiated, and has since maintained, open dialogue with representatives from the IBA about the Model Code.

8. Given the considerable feedback to the first consultation report and the extraordinary interest in these proposed amendments, the Standing Committee undertook a limited second consultation with law societies during the summer of 2021. Feedback was accepted until early November 2021, after which the Standing Committee conducted a careful review of comments received and finalized its proposed revisions.

9. The following paragraphs provide an overview of the feedback received from the two consultations and a description of the final proposed amendments. The full amendments to Model Code Rule 6.3 on discrimination and harassment are set out in “[Appendix A-1](#)” to this report. Gender-neutral language has been employed in the drafting of these proposed amendments, which the Standing Committee endorses as a Model Code drafting convention going forward.

I. DISCRIMINATION & HARASSMENT

Feedback from the 2020 Consultation

10. Eleven (11) law societies (Alberta, Nunavut, Yukon, Northwest Territories, Newfoundland, Saskatchewan, British Columbia, New Brunswick, Nova Scotia and the Barreau du Québec) provided submissions in response to the 2020 Consultation. In addition, submissions were provided by the Canadian Bar Association (the CBA), the Canadian Association for Legal Ethics (CALE), the Advocates' Society, the Federation of Asian Canadian Lawyers of Ontario, Canadian Defence Lawyers, the Women's Law Association of Ontario, and the Christian Legal Fellowship. The Standing Committee also consulted representatives of the Indigenous Bar Association about its members' reactions to the proposed new Rules and Commentary pursuant to discussions held at their 2020 conference.

11. Key feedback from the 2020 consultation included questions about the sufficiency of a prohibition on discrimination and harassment, suggestions to incorporate positive obligations into the provisions, and concerns about whether the definition of discrimination adequately captured its contemporary meaning or evolving nature. Some also suggested that the rules be amended to clarify that the provisions apply both within and outside a lawyer's practice. A comprehensive summary of all feedback received can be found in pages 4 to 13 of the second consultation report distributed to law societies in June of 2021 (online [here](#)).

2021 Consultation

12. After considering the feedback, the Standing Committee developed additional amendments to the discrimination and harassment language. In light of the extent of the revisions and the importance to law societies of the harassment and discrimination provisions, the Standing Committee conducted a targeted consultation with the law societies seeking final comment on the revised amendments. An overview of some of the key amendments included in the Standing Committee's Second Consultation Report on Discrimination, Harassment, and *Ex Parte* Proceedings (the "2021 Consultation Report"), issued on July 13, 2021, are included below. The full report can be found online [here](#).

13. The 2021 Consultation included amendments intended to clarify provisions in response to specific comments and concerns expressed by law societies and other respondents, including, for example, additional commentary indicating that lawyers should avoid condoning or being wilfully blind to conduct in their workplaces that constitute sexual harassment.

14. The Standing Committee rejected calls to include an overarching positive obligation to promote equality, diversity and inclusion, but did propose additional language about the obligation to foster respectful and inclusive workplaces and services and to stay abreast of developments in the law of discrimination.

15. Recognizing the importance acknowledging the unique challenges that may be faced by Indigenous people when interacting with the Canadian legal system, the Standing Committee also proposed language reminding legal professionals to take

particular care to avoid engaging in, allowing, or being wilfully blind to actions which constitute discrimination or any form of harassment against Indigenous people.

16. The Standing Committee also proposed language calling on legal counsel to reflect on their complicity in systemic racism and the unconscious or implicit biases that may inform their perspectives.

17. Twelve (12) law societies (Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Ontario, Prince Edward Island, Saskatchewan, Yukon, Nova Scotia and the Barreau du Québec) provided responses to the Standing Committee's second consultation. The feedback received was generally supportive of the proposed amendments.

18. The Law Society of British Columbia was alone in suggesting that it would not be able to support the amendments. While recognizing the significance of the Standing Committee's project of reimagining and expanding the Model Code's provisions to address discrimination, harassment, and sexual harassment, the LSBC feedback expressed concerns that the draft provisions were not sufficiently well developed. The Standing Committee gave serious consideration to the LSBC's concerns, but in light of the general support for the proposed amendments, elected not to make significant changes. The LSBC has advised that it will not oppose the amendments to the Model Code.

19. The Standing Committee did make some amendments to the draft proposals based on the feedback received, including explicitly recognizing disability-based discrimination in Rule 6.3-1. Language suggested by the Law Society of Prince Edward Island to clarify the proposed amendments relating to systemic biases also have been incorporated into the final proposals.

PROPOSED FINAL AMENDMENTS

20. The final proposed amendments address the ongoing problems of harassment and discrimination faced by members of the profession whose personal characteristics are covered by human rights protections. The language recommended by the Standing Committee reflects contemporary understandings of discrimination and harassment law, while also acknowledging that legal professionals must stay abreast of developments in the law, understand the past and ongoing impacts of colonialism on Indigenous members of the profession, and remain aware of their own biases. The proposed amendments have been shared with the members of the Model Code Liaisons Group for their information.

Rule 6.3-1

21. Rule 6.3-1 reminds counsel of the obligation not to discriminate. The Standing Committee is suggesting that the prohibition on discrimination be the first rule in this section because it is the broadest duty, and as indicated in relevant case law, encompasses the duty not to harass.

22. The proposed Commentary to Rule 6.3-1 provides guidance on these obligations. As in the current version of the Model Code, the first paragraph of the Commentary addresses the special responsibility of legal professionals to respect the requirements of human rights laws. The amended Commentary also refers to the requirement to respect workplace health and safety laws, reflecting the fact that these laws contain duties relevant to the obligations not to discriminate or harass and to create safe work places.

23. The second paragraph in the proposed Commentary reminds lawyers that discrimination and harassment undermine confidence in our profession and in our legal system. In addition, the Commentary affirms that a professional environment is one that is respectful, accessible, and inclusive. Finally, the Commentary reminds legal professionals to be mindful of the existence and impact of unconscious biases.

24. The third paragraph draws on the Truth and Reconciliation Commission's Calls to Action, as well as the Federation's commitments to reconciliation, by noting that legal professionals should be aware of the ongoing repercussions for Indigenous peoples of Canada's colonial legacy and advising that they should take particular care to avoid engaging in, allowing, or being willfully blind to actions which constitute discrimination or any form of harassment against Indigenous peoples.

25. In keeping with recent case law, the fourth paragraph notes that discrimination includes adverse effect and systemic discrimination and can result from organizational policies, practices, and cultures, and the fifth paragraph defines discrimination.

26. The fifth paragraph provides a definition of discrimination.

27. The sixth paragraph notes that the principles of human rights and workplace health and safety laws and related case law apply to the interpretation of this Rule and to Rules 6.3-2 to 6.3-4.

28. The seventh paragraph provides a non-exhaustive list of behaviours which amount to discrimination. This list is intended to help legal professionals interpret their obligation of non-discrimination. Many of these examples are drawn from Supreme Court of Canada case law or human rights statutes.¹ Other examples have been drawn from the reports of the IBA and law societies.

29. The eighth paragraph advises that providing ameliorative programs, services or activities is not discrimination. This clarification is drawn from s. 15(2) of the *Canadian Charter of Rights and Freedoms* and human rights legislation.²

30. The final paragraph of the proposed Commentary reminds lawyers that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice. This is in keeping with Rule 2.1-1, and with

¹ Some of the relevant cases include: [Ont. Human Rights Comm. v. Simpsons-Sears](#), [1985] 2 S.C.R. 536; [British Columbia Human Rights Tribunal v. Schrenk](#), 2017 SCC 62, [2017] 2 S.C.R. 795; [British Columbia \(Public Service Employee Relations Commission\) v. BCGSEU](#), [1999] 3 S.C.R. 3; [British Columbia \(Superintendent of Motor Vehicles\) v. British Columbia \(Council of Human Rights\)](#), [1999] 3 S.C.R. 868.

² See for example the [Canadian Human Rights Act](#), RSC 1985, c H-6, s 16(1).

jurisprudence affirming that rules of professional conduct can apply to conduct outside of practice.

Rule 6.3-2

31. Rule 6.3-2 is currently an interpretive provision: it provides that a term used in the Rule that is defined in human rights legislation has the same meaning as in the legislation. The Standing Committee is proposing to define key terms in the Commentary to the rules instead. The new proposed Rule 6.3-2 would express the prohibition on harassment (replacing current rule 6.3-4) with Commentary providing guidance to this obligation.

32. The first paragraph of the Commentary defines harassment for the purposes of the Model Code. It also expresses the well-established principle of human rights law that intent is not required to establish harassment.³

33. The second paragraph of the Commentary provides examples of behaviours that constitute harassment. Like the examples used in the Commentary to Rule 6.3-1, these examples are drawn from case law, statutes, and law society reports.

34. The third paragraph provides a definition and examples of bullying, which is a form of harassment.

35. The final paragraph of the proposed Commentary reminds lawyers that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice. This is in keeping with Rule 2.1-1, and with jurisprudence affirming that rules of professional conduct can apply to conduct outside of practice.

Rule 6.3-3

36. The Standing Committee is proposing that the Rule 6.3-3 prohibition on sexual harassment be revised slightly to ensure its consistency with the proposed changes to the language in Rules 6.3-1 and 6.3-2. Proposed new Commentary defines sexual harassment, acknowledges that it can be directed at someone based on their gender, gender identity or gender expression, and provides a non-exhaustive list of examples of behaviour that amounts to sexual harassment. As in the Commentary to Rule 6.3-2, the Commentary to 6.3-3 clarifies that sexual harassment may be found in the absence of intent on the part of an alleged harasser. The Commentary concludes with a provision identical to the Commentary to Rule 6.3-2 on the scope of the obligation.

Rule 6.3-4

37. The proposed new Rule 6.3-4 prohibits reprisals against persons inquiring about their rights or the rights of others, complainants, witnesses, and those assisting in investigations or proceedings related to a complaint of discrimination, harassment or

³ See for example [Ont. Human Rights Comm. v. Simpsons-Sears](#), [1985] 2 S.C.R. 536.

sexual harassment. The Commentary to the new rule contains a non-exhaustive list (drawn from legislation) of behaviours that amount to reprisal.⁴

II. EX PARTE COMMUNICATIONS

Background

38. This issue was first raised with the Standing Committee by the Law Society of Alberta, which raised concerns about legal professionals engaging in communications with courts and tribunals contrary to the general rule against discussing specific cases with judges in the absence of the other party except in exceptional cases. After reviewing the issues, the Standing Committee proposed the addition of rules and commentary to Chapter 5: Relationship to the Administration of Justice to note the exceptional nature of *ex parte* proceeding and to highlight the care lawyers should take when engaging in routine, single-party correspondence with a tribunal.

Feedback from the 2020 Consultation

39. These proposed amendments attracted much less comment than the proposed changes to the discrimination and harassment provisions. Most of the feedback suggested changes to clarify the proposed rule. Some concerns were expressed about whether the issue should be addressed in a separate rule, or through amendments to existing rules, but there was general support for the Standing Committee's approach.

40. A comprehensive summary of all feedback received to the first consultation report can be found in pages 11 to 13 of the second consultation report distributed to law societies in June of 2021 (online [here](#)).

41. The Standing Committee's review of the feedback received led to some clarification of the proposed amendments and some additional amendments to the *ex parte* language. The revised amendments were shared with the law societies in the 2021 Consultation Report.

Feedback from the 2021 Consultation

42. Eight (8) law societies (Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Ontario, Prince Edward Island, Saskatchewan, Yukon, and the Barreau du Québec) provided feedback to the second consultation report. Most indicated either that they had no comments to provide to the latest proposed language or that they supported the proposed language.

43. Alberta, Manitoba, Newfoundland and Labrador, and Saskatchewan all raised concerns about the relationship between the proposed Rule on *Ex Parte* communications and the proposed Rule on single-party communications with a tribunal. Overall, it was

⁴ A non-exhaustive list of the legislation consulted includes: the [Saskatchewan Human Rights Code, 2018](#), SS 2018, c 24.2; [The Human Rights Code](#), CCSM c H175; [Human Rights Act](#), SNWT 2002, c 18; [Public Service of Ontario Act](#), 2006, SO 2006, c 35, Sch A; [Labour Code](#), CQLR c C-27; [Adult Protection Act](#), SNL 2011, c A-4.01; [Public Service Act](#), SNU 2013, c 26 and [Occupational Health and Safety Act](#), RSY 2002, c 159.

suggested that the draft amendments could benefit from additional clarity on the distinctions between the two Rules and their respective *raison d'être*. Alberta noted the difference between a communication with a tribunal and an appearance in an *ex parte* proceeding. Manitoba recommended providing more certainty with respect to the need to notify other parties of single-party communications. Newfoundland and Labrador similarly suggested that the provisions on single-party communications should recognize those that are expressly permitted by law, including local rules of practice. Saskatchewan commented that the proposed text did not sufficiently capture the validity of single-party communications with a tribunal, such as where they are authorized by law, or when invited by the tribunal to engage in such communication.

44. The Standing Committee made changes to the amendments to address the concerns raised about the distinction between the proposed Rule on *ex parte* communications and the proposed Rule on single-party communications with a tribunal. The final amendments were shared with the Model Code Liaisons Group for their information.

PROPOSED FINAL AMENDMENTS

Rule 5.1-2B

45. The proposed new Rule 5.2-1B addresses the duties of counsel in *ex parte* proceedings. It expresses the existing duty to “act with utmost good faith and inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision.”

46. The Commentary to the Rule reminds counsel of the exceptional nature of *ex parte* proceedings and the special obligations which arise as a result. The Commentary provides guidance about two obligations in particular: the duty of candour to the tribunal and the obligation to proceed *ex parte* only when it is justified.

47. The first paragraph of the Commentary reminds counsel of the special disclosure duties that arise in *ex parte* proceedings: the duty to make “full, fair and candid disclosure.” The second paragraph of the Commentary clarifies that this disclosure obligation is subject to the duty of confidentiality.

48. The third paragraph of the Commentary reminds counsel that they should only initiate *ex parte* proceedings where doing so is permitted by law and justified. The Commentary suggests that if a lawyer’s client would not suffer prejudice the lawyer should consider proceeding with notice even when an *ex parte* proceeding is permitted.

Rule 5.2-1C

49. Rule 5.2-1C sets out the established ethical principle that communicating with a tribunal on a matter of substance in the absence of opposing counsel or parties is not permitted except (1) where authorized by law or the tribunal, (2) where the opposing counsel or party has been made aware of the content of the communications and has consented, or (3) where the opposing counsel or party has appropriate notice. The

Commentary that follows the rule provides guidance on the types of single-party communications that are and are not permitted.

50. The first paragraph reminds legal professionals that it is improper 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). It also makes specific reference to diligence when engaging in single-part communications with a tribunal by electronic means.

51. The second paragraph highlights the principle that even where a tribunal requests or invites a communication from counsel, counsel should still consider whether to inform the opposing counsel or parties. The general rule remains that the opposing counsel or party should be given notice of a communication or should be copied on the communication.

52. The third paragraph of the Commentary notes that communications on routine administrative matters are permitted but, suggests that counsel should still consider providing notice.

53. The fourth paragraph of the Commentary notes that legal professionals should review relevant local authorities when considering whether a single-party communication with a tribunal is authorized by law.

APPENDIX A-1

DISCRIMINATION AND HARASSMENT - TRACKED CHANGES

6.3 ~~HARASSMENT AND~~ DISCRIMINATION AND HARASSMENT

Discrimination

~~6.3-1 The principles of human rights laws and related case law apply to the interpretation of this rule.~~ A lawyer must not directly or indirectly discriminate against a colleague, employee, client or any other person.

Commentary

[1] Lawyers are uniquely placed to advance the administration of justice, requiring lawyers to commit to equal justice for all within an open and impartial system. Lawyers are expected to respect the dignity and worth of all persons and to treat all persons fairly and without discrimination. A lawyer has a special responsibility to respect and uphold the principles and requirements of human rights and workplace health and safety laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in such laws.

[2] In order to reflect and be responsive to the public they serve, a lawyer must refrain from all forms of discrimination and harassment, which undermine confidence in the legal profession and our legal system. A lawyer should foster a professional environment that is respectful, accessible, and inclusive, and should strive to recognize their own internal biases and take particular care to avoid engaging in practices that would reinforce those biases, when offering services to the public and when organizing their workplace.

[3] Indigenous peoples may experience unique challenges in relation to discrimination and harassment as a result of the history of the colonization of Indigenous peoples in Canada, ongoing repercussions of the colonial legacy, systemic factors, and implicit biases. Lawyers should take particular care to avoid engaging in, allowing, or being willfully blind to actions which constitute discrimination or any form of harassment against Indigenous peoples.

[4] Lawyers should be aware that discrimination includes adverse effect and systemic discrimination, which arise from organizational policies, practices and cultures that create, perpetuate, or unintentionally result in unequal treatment of a person or persons. Lawyers should consider the distinct needs and circumstances of their colleagues, employees, and clients, and should be alert to unconscious biases that may inform these relationships and that serve to perpetuate systemic discrimination and harassment. Lawyers should guard against any express or implicit assumption that another person's views, skills, capabilities, and contributions are necessarily shaped or constrained by their gender, race, Indigeneity, disability or other personal characteristic.

[5] Discrimination is a distinction, intentional or not, based on grounds related to actual or perceived personal characteristics of an individual or group, which has the effect of imposing burdens, obligations or disadvantages on the individual or group that are not imposed on others, or which withhold or limit access to opportunities, benefits and advantages that are available to other members of society. Distinctions based on

personal characteristics attributed to an individual solely on the basis of association with a group will typically constitute discrimination. Intersecting grounds of discrimination require consideration of the unique oppressions that result from the interplay of two or more protected grounds in a given context.

[6] The principles of human rights and workplace health and safety laws and related case law apply to the interpretation of this Rule and to Rules 6.3-2 to 6.3-4. A lawyer has a responsibility to stay apprised of developments in the law pertaining to discrimination and harassment, as what constitutes discrimination, harassment, and protected grounds continue to evolve over time and may vary by jurisdiction.

[7] Examples of behaviour that constitute discrimination include, but are not limited to:

- a. harassment (as described in more detail in the Commentary to Rules 6.3-2 and 6.3-3);
- b. refusing to employ or to continue to employ any person on the basis of any personal characteristic protected by applicable law;
- c. refusing to provide legal services to any person on the basis of any personal characteristic protected by applicable law;
- d. charging higher fees on the basis of any personal characteristic protected by applicable law;
- e. assigning lesser work or paying an employee or staff member less on the basis of any personal characteristic protected by applicable law;
- f. using derogatory racial, gendered, or religious language to describe a person or group of persons;
- g. failing to provide reasonable accommodation to the point of undue hardship;
- h. applying policies regarding leave that are facially neutral (i.e. that apply to all employees equally), but which have the effect of penalizing individuals who take parental leave, in terms of seniority, promotion or partnership;
- i. providing training or mentoring opportunities in a manner which has the effect of excluding any person from such opportunities on the basis of any personal characteristic protected by applicable law;
- j. providing unequal opportunity for advancement by evaluating employees on facially neutral criteria that fail to take into account differential needs and needs requiring accommodation;
- k. comments, jokes or innuendos that cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive;
- l. instances when any of the above behaviour is directed toward someone because of their association with a group or individual with certain personal characteristics; or
- m. any other conduct which constitutes discrimination according to any applicable law.

[8] It is not discrimination to establish or provide special programs, services or activities which have the object of ameliorating conditions of disadvantage for individuals or groups who are disadvantaged for reasons related to any characteristic protected by applicable laws.

[9] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

Harassment

~~6.3-2 A term used in this rule that is defined in human rights legislation has the same meaning as in the legislation.~~ A lawyer must not harass a colleague, employee, client or any other person.

Commentary

[1] Harassment includes an incident or a series of incidents involving physical, verbal or non-verbal conduct (including electronic communications) that might reasonably be expected to cause humiliation, offence or intimidation to the person who is subjected to the conduct. The intent of the lawyer engaging in the conduct is not determinative. It is harassment if the lawyer knew or ought to have known that the conduct would be unwelcome or cause humiliation, offence or intimidation. Harassment may constitute or be linked to discrimination.

[2] Examples of behaviour that constitute harassment include, but are not limited to:

- a. objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome, including comments and displays that demean, belittle, intimidate or cause humiliation or embarrassment;
- b. behaviour that is degrading, threatening or abusive, whether physically, mentally or emotionally;
- c. bullying;
- d. verbal abuse;
- e. abuse of authority where a lawyer uses the power inherent in their position to endanger, undermine, intimidate, or threaten a person, or otherwise interfere with another person's career;
- f. comments, jokes or innuendos that are known or ought reasonably to be known to cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive; or
- g. assigning work inequitably.

[3] Bullying, including cyberbullying, is a form of harassment. It may involve physical, verbal or non-verbal conduct. It is characterized by conduct that might reasonably be expected to harm or damage the physical or psychological integrity of another person, their reputation or their property. Bullying includes, but is not limited to:

- a. unfair or excessive criticism;
- b. ridicule;
- c. humiliation;
- d. exclusion or isolation;
- e. constantly changing or setting unrealistic work targets; or
- f. threats or intimidation.

[4] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

Sexual Harassment

6.3-3 A lawyer must not sexually harass a colleague, employee, client or any other person. ~~any person.~~

Commentary

[1] Sexual harassment is an incident or series of incidents involving unsolicited or unwelcome sexual advances or requests, or other unwelcome physical, verbal, or nonverbal conduct (including electronic communications) of a sexual nature. Sexual harassment can be directed at others based on their gender, gender identity, gender expression, or sexual orientation. The intent of the lawyer engaging in the conduct is not determinative. It is sexual harassment if the lawyer knew or ought to have known that the conduct would be unwelcome. Sexual harassment may occur:

- a. when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the person who is subjected to the conduct;
- b. when submission to such conduct is implicitly or explicitly made a condition for the provision of professional services;
- c. when submission to such conduct is implicitly or explicitly made a condition of employment;
- d. when submission to or rejection of such conduct is used as a basis for any employment decision, including:
 - i. Loss of opportunity;
 - ii. The allocation of work;
 - iii. Promotion or demotion;
 - iv. Remuneration or loss of remuneration;
 - v. Job security; or
 - vi. Benefits affecting the employee;
- e. when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment;
- f. when a position of power is used to import sexual requirements into the workplace and negatively alter the working conditions of employees or colleagues; or
- g. when a sexual solicitation or advance is made by a lawyer who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the lawyer making the solicitation or advance knows or ought reasonably to know that it is unwelcome.

[2] Examples of behaviour that constitute sexual harassment include, but are not limited to:

- a. displaying sexualized or other demeaning or derogatory images;

- b. sexually suggestive or intimidating comments, gestures or threats;
- c. comments, jokes that cause humiliation, embarrassment or offence, or which by their nature, and in their context, are clearly embarrassing, humiliating or offensive;
- d. innuendoes, leering or comments about a person's dress or appearance;
- e. gender-based insults or sexist remarks;
- f. communications with sexual overtones;
- g. inquiries or comments about a person's sex life;
- h. sexual flirtations, advances, propositions, invitations or requests;
- i. unsolicited or unwelcome physical contact or touching;
- j. sexual violence; or
- k. unwanted contact or attention, including after the end of a consensual relationship.

[3] Lawyers should avoid condoning or being willfully blind to conduct in their workplaces that constitutes sexual harassment.

[4] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

Reprisal

6.3-4 A lawyer must not engage in any other form of harassment of any person or participate in reprisals against a colleague, employee, client or any other person because that person has:

- a. inquired about their rights or the rights of others;
- b. made or contemplated making a complaint of discrimination, harassment or sexual harassment;
- c. witnessed discrimination, harassment or sexual harassment; or
- d. assisted or contemplated assisting in any investigation or proceeding related to a complaint of discrimination, harassment or sexual harassment.

Commentary

[1] The purpose of this Rule is to enable people to exercise their rights without fear of reprisal. Conduct which is intended to retaliate against a person, or discourage a person from exploring their rights, can constitute reprisal. Examples of such behaviour include, but are not limited to:

- a. refusing to employ or to continue to employ any person;
- b. penalizing any person with respect to that person's employment or changing, in a punitive way, any term, condition or privilege of that person's employment;
- c. intimidating, retaliating against or coercing any person;
- d. imposing a pecuniary or any other penalty, loss or disadvantage on any person;
- e. changing a person's workload in a disadvantageous manner, or withdrawing opportunities from them; or
- f. threatening to do any of the foregoing.

6.3-5 A lawyer must not discriminate against any person.

Commentary

~~[1] A lawyer has a special responsibility to respect the requirements of human rights laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights laws.~~

CLEAN VERSION**6.3 DISCRIMINATION AND HARASSMENT****Discrimination**

6.3-1 A lawyer must not directly or indirectly discriminate against a colleague, employee, client or any other person.

Commentary

[1] Lawyers are uniquely placed to advance the administration of justice, requiring lawyers to commit to equal justice for all within an open and impartial system. Lawyers are expected to respect the dignity and worth of all persons and to treat all persons fairly and without discrimination. A lawyer has a special responsibility to respect and uphold the principles and requirements of human rights and workplace health and safety laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in such laws.

[2] In order to reflect and be responsive to the public they serve, a lawyer must refrain from all forms of discrimination and harassment, which undermine confidence in the legal profession and our legal system. A lawyer should foster a professional environment that is respectful, accessible, and inclusive, and should strive to recognize their own internal biases and take particular care to avoid engaging in practices that would reinforce those biases, when offering services to the public and when organizing their workplace.

[3] Indigenous peoples may experience unique challenges in relation to discrimination and harassment as a result of the history of the colonization of Indigenous peoples in Canada, ongoing repercussions of the colonial legacy, systemic factors, and implicit biases. Lawyers should take particular care to avoid engaging in, allowing, or being willfully blind to actions which constitute discrimination or any form of harassment against Indigenous peoples.

[4] Lawyers should be aware that discrimination includes adverse effect and systemic discrimination, which arise from organizational policies, practices and cultures that create, perpetuate, or unintentionally result in unequal treatment of a person or persons. Lawyers should consider the distinct needs and circumstances of their colleagues, employees, and clients, and should be alert to unconscious biases that may inform these relationships and that serve to perpetuate systemic discrimination and harassment. Lawyers should guard against any express or implicit assumption that another person's views, skills, capabilities, and contributions are necessarily shaped or constrained by their gender, race, Indigeneity, disability or other personal characteristic.

[5] Discrimination is a distinction, intentional or not, based on grounds related to actual or perceived personal characteristics of an individual or group, which has the effect of imposing burdens, obligations or disadvantages on the individual or group that are not imposed on others, or which withhold or limit access to opportunities, benefits and advantages that are available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will typically constitute discrimination. Intersecting grounds of discrimination

require consideration of the unique oppressions that result from the interplay of two or more protected grounds in a given context.

[6] The principles of human rights and workplace health and safety laws and related case law apply to the interpretation of this Rule and to Rules 6.3-2 to 6.3-4. A lawyer has a responsibility to stay apprised of developments in the law pertaining to discrimination and harassment, as what constitutes discrimination, harassment, and protected grounds continue to evolve over time and may vary by jurisdiction.

[7] Examples of behaviour that constitute discrimination include, but are not limited to:

- a. harassment (as described in more detail in the Commentary to Rules 6.3-2 and 6.3-3);
- b. refusing to employ or to continue to employ any person on the basis of any personal characteristic protected by applicable law;
- c. refusing to provide legal services to any person on the basis of any personal characteristic protected by applicable law;
- d. charging higher fees on the basis of any personal characteristic protected by applicable law;
- e. assigning lesser work or paying an employee or staff member less on the basis of any personal characteristic protected by applicable law;
- f. using derogatory racial, gendered, or religious language to describe a person or group of persons;
- g. failing to provide reasonable accommodation to the point of undue hardship;
- h. applying policies regarding leave that are facially neutral (i.e. that apply to all employees equally), but which have the effect of penalizing individuals who take parental leave, in terms of seniority, promotion or partnership;
- i. providing training or mentoring opportunities in a manner which has the effect of excluding any person from such opportunities on the basis of any personal characteristic protected by applicable law;
- j. providing unequal opportunity for advancement by evaluating employees on facially neutral criteria that fail to take into account differential needs and needs requiring accommodation;
- k. comments, jokes or innuendos that cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive;
- l. instances when any of the above behaviour is directed toward someone because of their association with a group or individual with certain personal characteristics; or
- m. any other conduct which constitutes discrimination according to any applicable law.

[8] It is not discrimination to establish or provide special programs, services or activities which have the object of ameliorating conditions of disadvantage for individuals or groups who are disadvantaged for reasons related to any characteristic protected by applicable laws.

[9] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

Harassment

6.3-2 A lawyer must not harass a colleague, employee, client or any other person.

Commentary

[1] Harassment includes an incident or a series of incidents involving physical, verbal or non-verbal conduct (including electronic communications) that might reasonably be expected to cause humiliation, offence or intimidation to the person who is subjected to the conduct. The intent of the lawyer engaging in the conduct is not determinative. It is harassment if the lawyer knew or ought to have known that the conduct would be unwelcome or cause humiliation, offence or intimidation. Harassment may constitute or be linked to discrimination.

[2] Examples of behaviour that constitute harassment include, but are not limited to:

- a. objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome, including comments and displays that demean, belittle, intimidate or cause humiliation or embarrassment;
- b. behaviour that is degrading, threatening or abusive, whether physically, mentally or emotionally;
- c. bullying;
- d. verbal abuse;
- e. abuse of authority where a lawyer uses the power inherent in their position to endanger, undermine, intimidate, or threaten a person, or otherwise interfere with another person's career;
- f. comments, jokes or innuendos that are known or ought reasonably to be known to cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive; or
- g. assigning work inequitably.

[3] Bullying, including cyberbullying, is a form of harassment. It may involve physical, verbal or non-verbal conduct. It is characterized by conduct that might reasonably be expected to harm or damage the physical or psychological integrity of another person, their reputation or their property. Bullying includes, but is not limited to:

- a. unfair or excessive criticism;
- b. ridicule;
- c. humiliation;
- d. exclusion or isolation;
- e. constantly changing or setting unrealistic work targets; or
- f. threats or intimidation.

[4] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

Sexual Harassment

6.3-3 A lawyer must not sexually harass a colleague, employee, client or any other person.

Commentary

[1] Sexual harassment is an incident or series of incidents involving unsolicited or unwelcome sexual advances or requests, or other unwelcome physical, verbal, or nonverbal conduct (including electronic communications) of a sexual nature. Sexual harassment can be directed at others based on their gender, gender identity, gender expression, or sexual orientation. The intent of the lawyer engaging in the conduct is not determinative. It is sexual harassment if the lawyer knew or ought to have known that the conduct would be unwelcome. Sexual harassment may occur:

- a. when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the person who is subjected to the conduct;
- b. when submission to such conduct is implicitly or explicitly made a condition for the provision of professional services;
- c. when submission to such conduct is implicitly or explicitly made a condition of employment;
- d. when submission to or rejection of such conduct is used as a basis for any employment decision, including;
 - i. Loss of opportunity;
 - ii. The allocation of work;
 - iii. Promotion or demotion;
 - iv. Remuneration or loss of remuneration;
 - v. Job security; or
 - vi. Benefits affecting the employee;
- e. when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment;
- f. when a position of power is used to import sexual requirements into the workplace and negatively alter the working conditions of employees or colleagues; or
- g. when a sexual solicitation or advance is made by a lawyer who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the lawyer making the solicitation or advance knows or ought reasonably to know that it is unwelcome.

[2] Examples of behaviour that constitute sexual harassment include, but are not limited to:

- a. displaying sexualized or other demeaning or derogatory images;
- b. sexually suggestive or intimidating comments, gestures or threats;
- c. comments, jokes that cause humiliation, embarrassment or offence, or which by their nature, and in their context, are clearly embarrassing, humiliating or offensive;

- d. innuendoes, leering or comments about a person's dress or appearance;
- e. gender-based insults or sexist remarks;
- f. communications with sexual overtones;
- g. inquiries or comments about a person's sex life;
- h. sexual flirtations, advances, propositions, invitations or requests;
- i. unsolicited or unwelcome physical contact or touching;
- j. sexual violence; or
- k. unwanted contact or attention, including after the end of a consensual relationship.

[3] Lawyers should avoid condoning or being willfully blind to conduct in their workplaces that constitutes sexual harassment.

[4] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

Reprisal

6.3-4 A lawyer must not engage or participate in reprisals against a colleague, employee, client or any other person because that person has:

- a. inquired about their rights or the rights of others;
- b. made or contemplated making a complaint of discrimination, harassment or sexual harassment;
- c. witnessed discrimination, harassment or sexual harassment; or
- d. assisted or contemplated assisting in any investigation or proceeding related to a complaint of discrimination, harassment or sexual harassment.

Commentary

[1] The purpose of this Rule is to enable people to exercise their rights without fear of reprisal. Conduct which is intended to retaliate against a person, or discourage a person from exploring their rights, can constitute reprisal. Examples of such behaviour include, but are not limited to:

- a. refusing to employ or to continue to employ any person;
- b. penalizing any person with respect to that person's employment or changing, in a punitive way, any term, condition or privilege of that person's employment;
- c. intimidating, retaliating against or coercing any person;
- d. imposing a pecuniary or any other penalty, loss or disadvantage on any person;
- e. changing a person's workload in a disadvantageous manner, or withdrawing opportunities from them; or
- f. threatening to do any of the foregoing.

APPENDIX A-2

EX PARTE PROCEEDINGS - TRACKED CHANGES

Ex Parte Proceedings

5.1-2B In an *ex parte* proceeding, a lawyer must act with utmost good faith and inform the 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, 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 Rule 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*.

Single-Party Communications with a Tribunal

5.1-2C Except where authorized by law, and subject to rule 5.1-2B, 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.

CLEAN VERSION

EX PARTE PROCEEDINGSS

5.1-2B In an *ex parte* proceeding, a lawyer must act with utmost good faith and inform the 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, 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 Rule 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*.

Single-Party Communications with a Tribunal

5.1-2C Except where authorized by law, and subject to rule 5.1-2B, 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.

Approved Benchers Public Minutes

Public Minutes of the Five Hundred and Thirteenth Meeting of the Benchers of the Law Society of Alberta (Law Society)

April 27, 2023

Calgary, AB and by videoconference

8:30 a.m.

ATTENDANCE	
Benchers:	<p>Bill Hendsbee, President Deanna Steblyk, President-Elect Sony Ahluwalia Ryan Anderson Glen Buick Lou Cusano Ted Feehan Corie Flett Kene Ilochonwu Cal Johnson Levonnie Louie Jim Lutz Bud Melnyk Sharilyn Nagina Mary Ellen Neilson Sanjiv Parmar Sandra Petersson Stacy Petriuk Erin Runnalls Ron Sorokin Margaret Unsworth Maira Váně Grant Vogeli Louise Wasylenko</p>
Executive Leadership Team (ELT):	<p>Elizabeth Osler, CEO and Executive Director Cori Ghitter, Deputy Executive Director and Director, Policy and Education Nadine Meade, Chief Financial Officer Kendall Moholity, Director, Regulation and Professionalism Andrew Norton, Chief Information Officer and Director, Business Operations</p>

ATTENDANCE

	David Weyant, President and CEO, Alberta Lawyers Indemnity Association (ALIA) (by videoconference)
Staff:	<p>Barbra Bailey, Manager, Education (in person)</p> <p>Reed Bjerkseth, Business Technology (in person)</p> <p>Colin Brandt, Senior Communications Advisor (in person)</p> <p>Colleen Brown, Manager, Communications and Stakeholder Engagement (in person)</p> <p>Shabnam Datta, Manager, Policy</p> <p>Jennifer Freund, Policy and Governance Counsel</p> <p>Julie James, Coordinator, Governance (in person)</p> <p>Andrew McGrath, Business Technology (in person)</p> <p>Noria Neuhart, Policy Counsel</p> <p>Eleanor Platt, Custodianship Counsel</p> <p>Christine Schreuder, Supervisor, Governance (in person)</p> <p>Tera Yates, Manager, Practice Management</p> <p>Rebecca Young, Education Counsel</p>
Guests:	<p>Ian Burns, Digital Reporter, The Lawyer's Daily</p> <p>Loraine Champion, Executive Director, Alberta Lawyers' Assistance Society</p> <p>Carsten Jensen, Law Society of Alberta representative to the Federation of Law Societies of Canada</p> <p>Kyle Kawanami, Treasurer, Canadian Bar Association Alberta</p> <p>Nonye Opara, Executive Director, Pro Bono Law Alberta</p>

Secretary's Note: All Benchers and ELT attendees were in person unless otherwise stated. All staff and guests attended via videoconference unless otherwise stated. The arrival or departure of participants during the meeting are recorded in the body of these minutes.

	Item
	<p>Call to Order</p> <p>Mr. Hendsbee called the meeting to order at 8:35 a.m.</p> <p>Mr. Parmar delivered the Alberta Land Acknowledgement statement.</p>
1	<p>Opening Remarks from the President</p> <p>Mr. Hendsbee welcomed the Benchers and guests.</p>
2	<p>Leadership Report</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p>

	Item
3	<p>Audit and Finance Committee Report and Recommendation</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p> <p>Mr. Anderson reported on the activities at the April Audit and Finance Committee meeting where the audited financial statements were reviewed and are being recommended for approval.</p> <p>Ms. Meade reported that external auditors, PricewaterhouseCoopers (PwC) audited the financial statements for approval. PwC concluded that there were no material misstatements and no internal control deficiencies. Ms. Meade provided a high-level overview of the financial statements highlighting the variances to the budget, surplus, income and expenses. The Law Society is well positioned for long-term financial sustainability due to robust contingency reserves.</p> <div data-bbox="180 722 1500 890" style="border: 1px solid black; padding: 10px;"> <p>Motion: Anderson/Ahluwalia That the Benchers approve the Law Society of Alberta's audited financial statements for the year ended December 31, 2022, as proposed.</p> <p style="text-align: right;">Carried unanimously</p> </div>
4	<p>Board Relations Guideline Amendments</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p> <p>Mr. Hendsbee reported that the Board Relations Guideline amendments for decision reflect discussions at the Board table and at the Executive Committee.</p> <div data-bbox="180 1108 1500 1402" style="border: 1px solid black; padding: 10px;"> <p>Motion: Petriuk/Melnyk That the <i>Board Relations Guideline</i> be amended as proposed.</p> <p>Discussion: In response to a question regarding the meaning of <i>Attendance Norms, b. 'When feasible...'</i>, Mr. Hendsbee responded that the provision is to consider situations such as whether a facilitator will lead the meeting or whether virtual attendance is technologically feasible.</p> <p style="text-align: right;">Carried unanimously</p> </div>
5	<p>Part-time Membership Status</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p> <p>Ms. Datta provided an overview of the part-time membership status pilot program, and summarized the work completed by the Equity, Diversity and Inclusion Committee leading to the proposed part-time membership status eligibility criteria to take force once the pilot ends in December 2023.</p> <div data-bbox="180 1717 1500 1854" style="border: 1px solid black; padding: 10px;"> <p>Motion: Váně/Vogeli That the Benchers approve a part-time membership status option based on the recommended eligibility criteria.</p> </div> <p>The Benchers discussed the part-time membership status eligibility criteria while considering the strategic goals and the purpose of the part-time membership status. The</p>

Item	
	<p>Benchers were mostly in favour, with opposition expressed to the payor criteria due to the following reasons:</p> <ul style="list-style-type: none"> - The payor criteria may be punitive to firms, agencies and bodies who want to expand part-time opportunities for lawyers, particularly those lawyers who are equity seeking. - There is potential for employers to refuse to pay full-time fees for part-time work and the financial burden may shift onto the employees. - Employers may choose to increase the employee's salary by half of the full-time fee so the lawyer may personally pay the part-time fee, which would shift the tax-free benefit to taxable income. - The burden of lawyer fees may disproportionately affect the not-for-profit sector delivering access to justice services. Part-time is part-time no matter who pays the fees. Encourage all employers to pay fees whether full or part-time. - The availability of a part-time membership status is a wellness issue. <p>There was a question whether part-time insurance fees would be possible, and Mr. Weyant responded that insurance companies do not offer part-time insurance. The actuaries would need three to five years of data without the criteria changing to consider how part-time insurance may be offered and at what price.</p> <p>The following subsequent motion was made.</p> <div data-bbox="180 1045 1500 1270" style="border: 1px solid black; padding: 10px;"> <p>Motion: Flett/Váně</p> <p>To remove the payor criteria from the proposed part-time membership status eligibility criteria.</p> <p style="text-align: right;">Carried One opposed</p> </div> <p>The Benchers then returned to the original motion.</p> <div data-bbox="180 1346 1500 1528" style="border: 1px solid black; padding: 10px;"> <p>Motion: Váně/Vogeli</p> <p>That the Benchers approve a part-time membership status option based on the recommended eligibility criteria.</p> <p style="text-align: right;">Carried unanimously</p> </div>
6	<p>Continuing Professional Development (CPD) Rule and Guideline Amendments</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p> <p>Ms. Bailey provided a CPD program update which included the planned launch of a new CPD planning tool in July 2023 and related activities. The launch is dependent on the approval of the Rule amendment and adoption of the <i>Continuing Professional Development Program Guideline</i> (Guideline).</p> <p>Ms. Freund explained that the Rule amendments were made to modernize the language, amend the retention period from five to three years, implement a review process and general housekeeping purposes. The accompanying Guideline sets forth the CPD program's</p>

Item	
	<p>mandatory nature, requirements, and exemption and review processes. The Guideline will be published for transparency that the Law Society's goal is to coach and support lawyers in their learning.</p> <p>In response to a question, Ms. Bailey confirmed that there will be no exemptions for government agencies or firms that have internal employee training requirements. The tool will be useful despite potential duplication of creating CPD plans and the Tool is very easy to use. The Board was complimentary of the Education Department and Lawyer Competence Committee work which led to a CPD program encompassing a balance between accountability, commitment to professional development and self-reflection.</p> <p><i>Secretary's note: The following motions were approved concurrently.</i></p> <div style="border: 1px solid black; padding: 5px;"> <p>Motion 1: Cusano/Melnyk That Rule 67.2 be amended, as proposed, and that subrule 67.3(1) be amended to insert "(1)" after "67.2" and before "(2)"; and</p> <p>Motion 2: That the <i>Continuing Professional Development Program Guideline</i> be adopted.</p> <p style="text-align: right;">Carried unanimously</p> </div>
7	<p>Innovation Sandbox Update</p> <p>Mr. Polsky's Innovation Sandbox update video was presented which included an applications update, jurisdictional scan, 2022 outreach, current limits and next steps.</p> <p>The Benchers discussion included a suggestion that the Law Society re-examine the exclusion of paralegals and more creatively meet unmet needs. The Sandbox provides an opportunity to test-drive ideas and improve access. Further work should be done to determine why some lawyers are hesitant to trust the Sandbox and how to alleviate hesitancy. Ensuring lawyer oversight of technological platforms for things such as electronic signing of documents could help reduce the perceived risk.</p>
8	<p>Equity, Diversity and Inclusion Committee (EDIC) Update</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p> <p>Ms. Wasylenko thanked the former external volunteers of the disbanded Equity, Diversity and Inclusion Advisory Committee for their contributions and recognized the participation and contributions of the three external volunteers who now sit on the EDIC. She reported that the EDIC is considering the launch of an EDI toolkit and is thinking about how it relates to the strategic plan, helps lawyers and is relevant to firms.</p>
9	<p>Lawyer Competence Committee Report</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p> <p>Mr. Cusano reported that the Lawyer Competence Committee's work has centred around the CPD planning tool and early years of practice CPD consultation phase. Staff have met with</p>

Item	
	<p>Alberta Lawyers' Assistance Society, ALIA and the Canadian Bar Association, Alberta regarding the National Well-Being Study and the Law Society's role with regards to well-being. He added that the Law Societies of British Columbia, Saskatchewan, and Manitoba will be working with the Law Society on the Western Canada Competency Profile for Entry to Practice initiative starting in June.</p>
10	<p>Policy and Regulatory Reform Committee Update</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p> <p>Ms. Petriuk expressed thanks to last year's Policy and Regulatory Reform Committee (PRRC) for the Board Relations Guideline. The current PRRC is working on discrimination, harassment and <i>ex parte</i> communications amendments to the Code of Conduct. The PRRC will consider the <i>Labour Mobility Act</i> Rule changes which will be brought to the Benchers at a future date.</p>
11	<p>CONSENT AGENDA</p> <p>Documentation for this item was circulated with the materials prior to the meeting. There were no requests to remove any items from the consent agenda and the items were approved concurrently.</p> <div style="border: 1px solid black; padding: 10px; margin-top: 10px;"> <p>Motion: Ahluwalia/Melnyk</p> <p>11.1 That the Benchers approve the February 23, 2023 Public Bencher Meeting Minutes;</p> <p>11.2 Rules and Guidelines Terminology Amendments – “Provincial Court” to “Alberta Court of Justice”</p> <p>MOTION 1: That the introductory phrase in subrules 53(5), 53(6), 53(7), and 53(8) be amended to strike “Provincial Court” and insert “Alberta Court of Justice” in its place.</p> <p>MOTION 2: That clauses 53(5)(c) and 53(6)(c) be amended to strike out “a Provincial Court” and insert “an Alberta Court of Justice” in its place.</p> <p>MOTION 3: That clause 110(2)(b) be amended to strike “Provincial Court” and insert “Alberta Court of Justice” in its place.</p> <p>MOTION 4: That paragraph 30 of the Publication and Redaction Guideline for Adjudicators be amended to strike “Provincial Court” and insert “Alberta Court of Justice” in its place.</p> <p>MOTION 5: That the Appendix to the Adjudicators Guideline – Resignations be struck out in its entirety.</p> </div>



Item	
	<p>MOTION 6: That clauses 53(3)(h) and 53(7)(e) be amended to strike “Provincial Court Act” and insert “Court of Justice Act”</p> <p>11.3 Rescind Old Guiding Documents to the Profession</p> <p>MOTION: That the Benchers rescind the following four documents:</p> <ol style="list-style-type: none"> 1. Guidelines for Drafting and Implementing Bereavement Leave, Compassionate Leave and Family Responsibility Leave Policies (2003) 2. Guidelines for Drafting and Implementing a Diversity and Equality Policy in Legal Workplaces and the Sample Diversity and Equality Policy (2005) 3. Guidelines for Drafting and Implementing a Workplace Violence Policy (2004) 4. Guidelines for Equality in Employment Interviews (1998, 2012 update) <p style="text-align: right;">Carried unanimously</p>
12	<p>EXTERNAL REPORTS</p> <p>The following External Agency Reports were circulated with the materials prior to the meeting:</p> <ol style="list-style-type: none"> 12.1 Alberta Law Foundation (ALF): Ms. Váně reported that Deborah Duncan will be retiring as Executive Director and encouraged attendance at ALF’s 50 Anniversary party in May. 12.2 Alberta Law Reform Institute Report 12.3 Alberta Lawyers’ Assistance Society Report 12.4 Canadian Bar Association Report 12.5 Canadian Centre for Professional Legal Education Report 12.6 Federation of Law Societies of Canada Report 12.7 Legal Education Society of Alberta Report 12.8 Real Estate Practice Advisory Committee Liaison Report
	<p>Other Business</p> <p>There being no further business, the public meeting was adjourned at 11:20 a.m.</p>



Memo

CPD Guideline and Rule Amendments

To	Benchers
From	Jennifer Freund, Policy & Governance Counsel, and Barbra Bailey, Manager, Education
Date	April 27, 2023

Proposed Motions

MOTION 1: That Rule 67.2 be amended, as proposed, and that subrule 67.3(1) be amended to insert "(1)" after "67.2" and before "(2)".
MOTION 2: That the <i>Continuing Professional Development Program Guideline</i> be adopted.

Introduction

Following discussions at the September Bencher Meeting, about the key elements of the new CPD Program, the Lawyer Competence Committee (LCC) began review of the implementation requirements. This includes both Rule amendments and the development of a new Guideline. These have been developed in accordance with the feedback received from the LCC and the Benchers at their September meetings.

LCC committee members were introduced to the draft CPD Guideline and Rule amendments in December, with the ability to provide additional feedback at the February LCC meeting. The feedback received was used to finalize the Rules and Guideline and they are now before the Benchers for adoption, as recommended by the LCC.

As stated in previous discussions, the new approach to the Law Society's Continuing Professional Development (CPD) program continues to evolve as the CPD Tool



reaches completion, along with resource development to support the new Professional Development Profile.

The CPD Guideline

The CPD Guideline follows the three areas of development for the CPD program described in the September update. The Guideline begins with a description of the nature of the CPD program and then moves into the three areas with descriptions of: the mandatory nature of the program followed by the requirements of the planning tool; the review process; and exemptions. It concludes with information about how the program will be assessed over time.

The proposed [CPD Guideline](#) is provided as a separate attachment to this document.

The CPD Rules

The CPD Rules are found in Rules 67.1 through 67.4. Rule 67.4 provides for learning requirements outside the CPD program and is not relevant for the current discussion.

Rule 67.1 defines CPD. It provides guidance to lawyers seeking to determine whether a learning activity counts as CPD. Rule 67.3 sets out the administrative suspension process for those who fail to submit a CPD plan by the deadline. These two Rules do not require amendment, other than a small tweak to a subrule reference in Rule 67.3.

Rule 67.2 requires minor amendments for the new CPD program. This is due to the addition of the review process to the CPD program, as well as a change to reduce the retention period from five to three years, in accordance with analysis completed by the Law Society regarding optimal retention periods and data storage. The CPD Tool itself will have a three year retention period so the Rule will align with the tool.

The proposed amendments can be found in [Appendix A](#).

Rules 67.2 and 67.3 were previously suspended but will automatically be reactivated in May. The adoption of the proposed amendments will allow the Rules to come back in force with the necessary amendments for the new CPD Program.

Conclusion and Recommendation

The Education Department has made great progress towards the return of CPD requirements late this spring and the launch of the CPD planning tool in July. The CPD Guideline and Rule amendments are among the final steps to support this work.

Communications around the new program have been ongoing, with the launch of the Professional Development Profile last year and a CPD e-bulletin released on April 13 of this year reminding lawyers that the CPD program will return this summer. The Law Society would like to have the new Guideline and Rule amendments in place now in



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order to communicate about the new CPD program in its entirety before the CPD Tool launches in July.

These documents have been reviewed a number of times by the LCC and have been recommended by the Committee to the Benchers. It is recommended that the Benchers adopt the proposed Rule amendments and the new *Continuing Professional Development Guideline*.

Attachments

[Appendix A: Comparison Table Of Current Rules And Proposed Amendments](#)

Under Separate Cover: [Continuing Professional Development Guideline](#)



Appendix A - Comparison Table Of Current Rules And Proposed Amendments

Current Language	Proposed Amendment
<p>67.1(1) “Continuing professional development” is any learning activity that is:</p> <ul style="list-style-type: none"> (a) relevant to the professional needs of a lawyer; (b) pertinent to long-term career interests as a lawyer; (c) in the interests of the employer of a lawyer or (d) related to the professional ethics and responsibilities of lawyers. <p>(2) Continuing professional development must contain significant substantive, technical, practical or intellectual content.</p> <p>(3) It is each lawyer’s responsibility to determine whether a learning activity meets these criteria and therefore qualifies as continuing professional development.</p>	<p><i>No Change</i></p>
<p>67.2 Every active member shall, in a form acceptable to the Executive Director:</p> <ul style="list-style-type: none"> (a) prepare and make a record of a plan for his or her continuing professional development during the twelve month period commencing 	<p>67.2 (1) Every active member shall, in a form acceptable to the Executive Director:</p> <ul style="list-style-type: none"> (a) prepare and make a record of a plan for his or her their continuing professional development during the twelve month period commencing



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<p>October 1 of each year;</p> <p>(b) make a declaration, no later than September 30 of each year, confirming compliance with (a) above;</p> <p>(c) maintain a record of the plan for five years from the date of declaration; and</p> <p>(d) produce a copy of the record of the plan to the Executive Director on request.</p>	<p>October 1 of each year; and</p> <p>(b) make a declaration, no later than September 30 submit the plan to the Society by October 1 of each year; confirming compliance with (a) above;</p> <p>(2) Once the plan in subrule (1) has been prepared and submitted, every active member must</p> <p>(ea) maintain a record copy of the plan for five three years from the date of declaration submission; and</p> <p>(eb) produce a copy of the record of the plan to the Executive Director on request for review by the Society, on request; and</p> <p>(c) participate in any review of the plan by the Society.</p>
<p>(1) Every active member who does not comply with Rule 67.2(b) in a year shall stand automatically suspended as of the day immediately following the deadline.</p> <p>(2) Rule 165.1 shall apply to any suspension under (1).</p>	<p>67.3(1) Every active member who does not comply with Rule 67.2(1)(b) in a year shall stand automatically suspended as of the day immediately following the deadline.</p> <p>(2) Rule 165.1 shall apply to any suspension under (1).</p>



Continuing Professional Development Program Guideline

April 27, 2023



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Continuing Professional Development Program Guideline

Introduction & Purpose

1. The Law Society of Alberta (Law Society) established a mandatory continuing professional development (CPD) program and developed Rules for the implementation and administration of the program. The ability of Canadian Law Societies to establish such programs and administer them through Rules was confirmed by the Supreme Court of Canada in *Green v. Law Society of Manitoba*, 2017 SCC 20, [2017] 1 SCR 360.
2. The Law Society defines CPD, in Rule 67.1, as:
 - 67.1 (1) “Continuing professional development” is any learning activity that is:
 - (a) relevant to the professional needs of a lawyer;
 - (b) pertinent to long-term career interests as a lawyer;
 - (c) in the interests of the employer of a lawyer or
 - (d) related to the professional ethics and responsibilities of lawyers.
 - (2) Continuing professional development must contain significant substantive, technical, practical or intellectual content.
 - (3) It is each lawyer’s responsibility to determine whether a learning activity meets these criteria and therefore qualifies as continuing professional development.
3. The Continuing Professional Development Program Guideline (Guideline) provides information about the CPD program, its requirements and its administration.
4. Specific mandatory CPD requirements, in addition to those of the CPD program, may be prescribed by the Benchers, as set out in Rule 67.4. Those CPD requirements do not form part of the CPD program to which this Guideline refers and are not subject to this Guideline.



5. Nothing in this Guideline should be taken as superseding or replacing any provisions of the *Legal Profession Act* (Act) or *The Rules of the Law Society of Alberta* (Rules).
6. Access to the CPD components described in this Guideline, including a lawyer's CPD plan, the review process and the contents of any application for exemption, is restricted to specific Law Society staff. A privacy policy outlining access to the CPD plan will be maintained within the CPD Tool.

The CPD Program

7. The Law Society's mandatory CPD program applies only to lawyers with an active status, however, the program is available for all lawyers to use.
8. The CPD program is a self-assessment and self-reflection-based program, in which lawyers develop a personalized learning plan for the CPD program year.
9. Lawyers are required to reflect on their learning needs, proficiency levels and priorities and then create a plan to achieve them. They are required to submit their plans to the Law Society by October 1 of each year. Lawyers are then encouraged to implement that plan. They may adjust their plan throughout the year, if necessary, and reflect on whether their plan met their learning needs and priorities before developing the next year's plan.
10. The Law Society has developed tools to assist lawyers with both planning and reflection.

The Mandatory Nature of the CPD Program

11. Participation in the CPD program is mandatory for all active lawyers. Rule 67.2 establishes the requirements to prepare and submit a CPD plan by the deadline and to maintain a copy of the plan for three years.
12. CPD plans must be prepared and submitted using the CPD Tool accessed through the Lawyer Portal.
13. A failure by an active lawyer to submit a plan will result in an administrative suspension, as set out in Rule 67.3.



The Professional Development Profile for Alberta Lawyers

14. In February 2020, the Benchers passed a motion to:

...create a new competence framework for the whole life of a lawyer for the Law Society of Alberta that is proportionate, effective and dynamic and includes wellness as part of that framework.

15. As an outcome from that motion, the Law Society developed new tools to provide more guidance for lawyers about what it considers to be important areas of focus for professional development. One of these tools is the *Professional Development Profile for Alberta Lawyers* (Profile).

16. The Profile sets out the competencies that the Law Society believes to be important to maintain a safe, effective and sustainable legal practice in Alberta today. It is designed to provide guidance to all lawyers, regardless of experience or practice area.

17. The Profile is not intended to be a checklist and lawyers are not required to demonstrate competency in every area of the Profile each year.

18. The Profile includes a proficiency scale to help lawyers assess their proficiency in a competency, set priorities and measure progress as they complete learning activities.

CPD Planning

19. For each year's CPD plan, lawyers are required to select a minimum of two competencies, from any of the domains contained within the Profile, on which to focus in developing their learning plan. As CPD plans are personal to each lawyer, their practice and their learning needs, lawyers may select more than two competencies from the Profile.

20. Each competency has a set of accompanying performance indicators to help lawyers assess their proficiency in that competency.



21. Lawyers may also add competencies to their plan that are not included in the Profile, such as those relating to specific practice areas, once they have selected the minimum two competences from the Profile.
22. Lawyers are required to rate their proficiency level on each of their chosen competencies and enter at least one learning activity for each of their chosen competencies, along with accompanying notes. These accompanying notes allow lawyers to provide more details or goals for each competency and learning activity.
23. There is no requirement for a minimum number of hours of CPD and lawyers can choose any appropriate learning activity, style or format to meet their learning needs, whether formal courses and conferences or informal learning activities, as long as the learning activity complies with the Law Society's definition of CPD contained in Rule 67.1.
24. Within their CPD plans, lawyers are required to include their:
- a. selected competencies;
 - b. proficiency ratings;
 - c. desired learning activities; and
 - d. learning activity details
- and are encouraged to include their:
- e. progress in improving their proficiency in their chosen competencies, measured using the Law Society's proficiency scale; and
 - f. self-reflection on the effectiveness of their CPD plan.
25. Lawyers can modify or update all of the above items throughout the year.
26. Lawyers are encouraged to select a variety of learning activities and to modify and change their learning activities not only throughout the year but for each subsequent CPD year, as their learning progresses and they develop in their practice.



27. Lawyers will not be able to submit a CPD plan that does not meet the minimum planning requirements, as detailed in the instructions contained within the CPD Tool on how to complete the CPD plan.
28. Lawyers will be able to edit their CPD plan, as well as track their progress in implementing their plan and completing their selected learning activities, until September 30 of the CPD year.
29. Lawyers will be encouraged to complete the Final Reflection activity in the CPD Tool to assess their CPD learning activities and the overall effectiveness of their plans, once they have completed all learning activities they planned to undertake for the year. These self-reflections will not be accessible to the Law Society.

CPD Plan Review

30. Rule 67.2 requires lawyers to maintain a copy of their CPD plan, as well as to produce a copy of their CPD plan on request and participate in the review process.
31. While also serving as an accountability measure, the primary goal of the review process is to support lawyers in working toward completion of their planned learning activities for the year and making progress on their professional development priorities.

Lawyer / CPD Plan Selection

32. Each month, a number of lawyers will be randomly chosen to have their CPD plan reviewed by the Law Society's Education Department.
33. Education Counsel will contact those lawyers to let them know their CPD plan has been randomly selected for review, when the review will take place, and that Education Counsel will view their plan components directly within the CPD Tool.
34. This contact will provide lawyers with advance notice of the review and permit them to track or update any progress they have made on their plans to date, if they have not already done so. They may also edit their plan if they have determined changes to their original plan are necessary. This will facilitate the review process and aid Education Counsel in providing supports, if needed.



Information To Review

35. The Education Department's CPD plan review will be conducted by Education Counsel and will include a review of:

- a. the chosen competencies,
- b. the lawyer's priorities,
- c. the selected learning activities, and
- d. any progress made in completing the learning activities.

36. This information can be accessed by the Education Department directly through the CPD Tool, without the need for a lawyer to produce a copy of their plan. As noted above, lawyers will be notified of this when contacted to let them know their CPD plan has been selected for review.

37. Information contained within the CPD Tool outside of that noted above, such as self-reflections or self-assessments completed using the proficiency scale, is not accessible to the Education Department.

38. During a review, Education Counsel may ask if the lawyer would like to share additional information, including any self-reflections or self-assessments, as part of the review process. Sharing additional information is voluntary.

Purpose of Review and Additional Support

39. The CPD plan and any additional information provided by the lawyer will be reviewed both to determine:

- a. if the CPD plan meets the minimum requirements,
- b. if the lawyer is working towards completion of their planned learning activities for the year, and
- c. if the lawyer is making progress on their professional development priorities,



and with a view to providing coaching and support to the lawyer in progressing through their plan and priorities.

40. If, during or following a review, a lawyer wants to further discuss their CPD plan or to receive ongoing coaching or other assistance from the Law Society to assist in implementing or making progress through their CPD plan, these supports will be available. This support is optional and the lawyer will not be required to further engage with the Society about their CPD plan once a review is complete.

Conclusion of Review

41. Not every step of the CPD plan review process outlined in this section will be applicable to every lawyer. A review concludes, for a lawyer, at the stage of the process when the Education Department is satisfied that the lawyer has fulfilled the minimum requirements and the lawyer does not want any further support.

Failure to Comply with Rule 67.2

42. A lawyer who

- a. fails to respond to a request to produce their CPD plan;
- b. produces an obviously inadequate or incomplete plan; or
- c. fails to participate in the review process

may be referred to another Law Society department, including Early Intervention or Conduct if the matter cannot be resolved by Education Counsel. The extent of the lawyer's failure to respond to the Law Society, to cooperate with the Law Society, and to participate in the review process, as well as the nature of the response to the request to produce their plan, will determine the department to which the lawyer will be referred.



Request to Produce CPD Plan Pursuant to Rule 67.2

43. The CPD Tool permits lawyers to download both a “simplified” and a “full” version of their CPD plan. The simplified version contains their selected competencies, priorities and learning activities. The full plan contains all of a lawyer’s CPD plan information, including their self-reflections and self-assessments.
44. If requested to produce a copy of their plan by a Law Society department, a lawyer is only required to produce the simplified version of the lawyer’s CPD plan.
45. Other information a lawyer includes in the CPD Tool, such as self-reflections and self-assessments using the proficiency scale, and shown in the full version of their plan, are not considered part of the CPD plan for the purpose of Rule 67.2. This information may be provided at the lawyer’s discretion but disclosure of this additional information is not required.

Exemption from Developing a CPD Plan

46. A lawyer may apply for and receive an exemption from developing a CPD plan for a CPD year. The following are the available exemptions:
- a. Maternity/Paternity/Parental Leave – This leave is available to lawyers who are expecting to become parents shortly before or during the CPD year and includes pregnancy, birth, surrogacy and adoption.
 - b. Medical Leave – This leave is available to lawyers who have a medical condition that prevents them from participating in the CPD program during the CPD year.
 - c. Other – This exemption is available to lawyers who have another circumstance that prevents them from participating in the CPD program during the CPD year.
47. Lawyers will be required to request an exemption through the Lawyer Portal in advance of and for each CPD year for which their circumstances prevent them from participating in the CPD program.
48. The Education Department will evaluate and decide upon any request for an exemption from the CPD program. This decision is final.



49. As the CPD Tool becomes active and available to lawyers on July 1 each year, the following will be given an automatic exemption:

- a. A student-at-law or a lawyer transferring from another Canadian jurisdiction who is enrolled as a member of the Law Society after July 1 in a year will not be required to develop and submit a CPD plan that year but will be encouraged to do so.
- b. An inactive lawyer who becomes active after July 1 in a year will not be required to develop and submit a CPD plan that year but will be encouraged to do so.
- c. Lawyers with an active non-practising status as of July 1 will not be required to develop and submit a CPD plan, as they are not entitled to provide legal services, though any lawyer with an active non-practising status who returns to an active practising status after July 1 in a year will be encouraged to do so.

50. An active lawyer who becomes inactive prior to October 1 in a year will not be required to develop and submit a CPD plan.

CPD Program Assessment

Data Collection from CPD Plan Review and CPD Tool

51. The Education Department will collect feedback and data that it obtains during the CPD plan review process.

52. Aggregate information about the competencies and learning activities that lawyers are selecting, identification of competencies that are consistently assigned top priority, information about whether the profession, as a whole, is showing progress on the proficiency scale through their self-assessments, and feedback about the CPD Tool and the self-assessment and planning process will be collected by the Education Department through the CPD Tool.



CPD Program Review

53. Information collected during the CPD plan review process and through the CPD Tool will be used by the Education Department to enhance the review process and inform decision-making about future compliance activities, as well as to assess any trends and inform decision-making to enhance the CPD program and supporting resources.
54. The Profile and related CPD program documentation are intended to evolve and change as the demands on lawyers evolve and change.
55. The Education Department will continuously review and assess the CPD program and monitor its effectiveness, as well as make recommendations for changes and improvements to the CPD program.

Benchers Public Minutes

Public Minutes of the Five Hundred and Tenth Meeting of the Benchers of the Law Society of Alberta (the “Law Society”)

September 29, 2022

In person in Calgary, AB and by videoconference

8:30 am

ATTENDANCE – In-person unless otherwise indicated

Benchers:

Ken Warren, President
Bill Hendsbee, President-Elect
Sony Ahluwalia
Ryan Anderson
Glen Buick
Lou Cusano (videoconference)
Ted Feehan
Kene Ilochonwu
Cal Johnson
Levonnie Louie
Jim Lutz
Bud Melnyk
Mary Ellen Neilson
Sanjiv Parmar
Sandra Petersson
Stacy Petriuk
Ron Sorokin
Deanna Steblyk
Margaret Unsworth
Maira Váně
Grant Vogeli
Salimah Walji-Shivji
Louise Wasylenko

Executive Leadership Team (ELT):

Elizabeth Osler, CEO and Executive Director
Cori Ghitter, Deputy Executive Director and Director, Policy and Education
Nadine Meade, Chief Financial Officer
Andrew Norton, Chief Information Officer and Director, Business Operations
David Weyant, CEO, ALIA (videoconference)

ATTENDANCE – By videoconference unless otherwise indicated

Staff:	<p>Barbra Bailey, Manager, Education</p> <p>Nancy Bains, Tribunal Counsel and Privacy Officer (In-person)</p> <p>Reed Bjerkseth, Support Staff, Business Technology (In-person)</p> <p>Jessica Buffalo, Indigenous Initiatives Counsel (In-person)</p> <p>John Eamon, General Counsel and Senior Manager, Risk (ALIA)</p> <p>Jennifer Freund, Policy & Governance Counsel</p> <p>Andrew McGrath, Support Staff, Business Technology (In-person)</p> <p>Laura Scheuerman, Coordinator, Governance (In-person)</p> <p>Christine Schreuder, Supervisor, Governance (In-person)</p>
Guests:	<p>Barbara Billingsley, Dean, University of Alberta</p> <p>Loraine Champion, Executive Director, Alberta Lawyers' Assistance Society</p> <p>Carsten Jensen, Law Society of Alberta representative to the Federation of Law Societies of Canada</p> <p>Indra Maharaj, Vice-President, Canadian Bar Association Alberta</p> <p>Nonye Opara, Executive Director, PBLA</p> <p>Robert Philp, Liaison, Indigenous Advisory Committee</p> <p>Steve Raby, Chair, ALIA</p> <p>Kathleen Ryan, Chair, Lawyer Competence and Equity, Diversity and Inclusion Advisory Committees</p> <p>Christine Sanderman, Executive Director, Legal Education Society of Alberta</p>
Regrets:	Corie Flett

Mr. Warren called the meeting to order at 8:30 am.

	Item
1	<p>Opening Remarks from the President</p> <p>Mr. Warren welcomed and introduced the new Lay Benchers Glen Buick, Levonne Louie and Mary Ellen Neilson to their first Bencher meeting since their appointment. Quorum was confirmed.</p> <p>Jessica Buffalo was welcomed and introduced in her new role as Indigenous Initiatives Counsel.</p> <p>Ms. Buffalo delivered the territorial Indigenous land acknowledgement statement.</p>
2	<p>Leadership Report</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p> <p>Ms. Osler encouraged those who did not attend the Jasper Retreat in June to review the Jasper Retreat Summary in the materials. She provided a warm welcome to new and returning Lay Benchers. An update was provided on the Path completion rate, and everyone was encouraged to attend the upcoming Well-Being in Practice Summit.</p>
3	<p>CPD Program Requirements and Review Process – Agenda item 4</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p>

Item	
	<p>Ms. Bailey provided an update on the implementation of the new approach to the Continuing Professional Development (CPD) program.</p> <p>Ms. Freund explained the timeline to draft a CPD process guideline including rule amendments to ensure that appropriate authority to conduct reviews is established in the Rules.</p> <p>Highlights and discussion included:</p> <ul style="list-style-type: none"> - The CPD competencies will not be mandatory and will be changed if needed. - The approach to CPD in early years of practice will be more prescriptive than later years. - Consider clear communication that lawyers have an ethical obligation to remain current. Deliver reminders that applicable training opportunities are available through the Canadian Bar Association (CBA), Alberta and the Legal Education Society of Alberta (LESA). - The new approach is intended to encourage participation and not policing. Lawyers will be accountable for their individual learning. There will be random reviews as an opportunity for coaching and a means to check on how the lawyer is doing, whether there is need for support and to solicit feedback on how the system is working with follow-up at their request. Those who will not comply with the review will be referred to Early Intervention. - The CPD rollout will be in July 2023 to allow three months to file the CPD plan by September 30 annually. - Consider reframing the word 'review' to touchpoint or check-in. - Continue Lawyer Competence Committee discussions regarding whether there should be big firm exemptions for those with inhouse CPD programs. - The CPD self-reflection, personal accountability approach is preferable to rigorous oversight and enforcement.
4	<p>Articling Terms - Agenda item 3</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p> <p>Ms. Freund provided a historical overview of the articling terms and reasons for the proposed reversion of Rule 56 to the pre-April 2020 Rule which was amended due to COVID-19.</p> <div style="border: 1px solid black; padding: 10px; margin-top: 10px;"> <p>Motion: Steblyk/Petriuk That the Benchers amend Rule 56 to substitute the previous version of the Rule for the current version, to come into effect on January 1, 2023.</p> <p>Further discussion included the affordability for Internationally trained lawyers who may be caught in longer articles and are not being paid, which may also affect the public who would like to be represented by lawyers who are from their same country of origin.</p> <p style="text-align: right;">Carried Two opposed</p> </div>
5	<p>Impact of Abrametz Decision</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p>

Item	
	<p>Ms. Bains provided an overview of the impact of the Abrametz decision and the effect of delays. The Benchers were reminded of the importance of completing well-documented, adequate reasons for decisions quickly.</p>
6	<p>Audit and Finance Committee Update</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p>
7	<p>Equity, Diversity and Inclusion Committee Update</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p> <p>It was clarified that part-time status is intended for practicing lawyers who are delivering services to the public.</p>
8	<p>Lawyer Competence Committee Update</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p>
9	<p>CONSENT AGENDA</p> <p>Documentation for this item was circulated with the materials prior to the meeting. There were no requests to remove any items from the consent agenda and the items were approved concurrently.</p>
	<p>Motion: Ahluwalia/Melnyk</p> <p>9.1 To approve the June 3, 2022 Public Bencher Meeting Minutes as circulated.</p> <p>9.2 To approve the following 2024 Bencher meeting dates:</p> <p>February 29 – March 1, 2024</p> <p>April 25 – 26, 2024</p> <p>June 5 – 8, 2024 – Jasper</p> <p>September 26 – 27, 2024</p> <p>November 7, 2024 – Budget review (videoconference from 1 - 4 pm)</p> <p>November 28 – 29, 2024</p> <p>All meetings will be held in Calgary unless otherwise indicated, or, if necessary, at such other date and time and place (or means) as the CEO and Executive Director of the Law Society may determine.</p> <p>9.3 Rules and Guidelines Terminology Amendments</p> <p>MOTION 1:</p> <p>That Rules 16.1, 53, 67 and 110 be amended to strike “Queen” and insert “King” in its place.</p> <p>MOTION 2:</p> <p>That subrule 159(4) be amended to strike “Q.C.” and insert “KC” in its place.</p>

Item**MOTION 3:**

That subrule 159(4) be amended to strike “Q.C.” and insert “KC” in its place.

MOTION 4:

That Rules 53 and 68 be amended to strike “a masters in chambers” and insert “an applications judge” in its place.

MOTION 5:

That subrule 115(2) be amended to strike “a Masters in Chambers” and insert “an applications judge” in its place.

MOTION 6:

That Rule 110 be amended to strike “Masters in” and insert “Applications Judges” in its place.

MOTION 7:

That subrule 115(6) be amended to strike “Masters in Chambers” and insert “applications judge” in its place.

MOTION 8:

That Rule 117 be amended to strike “masters in chambers” and insert “applications judge” in its place.

MOTION 9:

That the heading to Rule 117 be amended to strike “Masters in Chambers” and insert “Applications Judges” in its place.

MOTION 10:

That the Pre-Hearing and Hearing Guideline, paragraph 83, and Publication and Redaction Guideline, paragraph 30, be amended to strike “Queen” and insert “King” in its place.

MOTION 11:

That the Publication and Redaction Guideline, paragraph 30, be amended to strike “Masters in” and insert “Applications Judges” in its place.

MOTION 12:

That the Publication and Redaction Guideline, paragraph 53, be amended to

Item	
	<p>strike “masters in chambers” and insert “applications judges” in its place.</p> <p>9.4 ALIA Rule Amendments – Housekeeping</p> <p>MOTION 1:</p> <p>To amend Rule 145.2, to enhance the clarity of the Rule, by striking out “(c)” and the wording of subrule (c) in its entirety, and to amend the lettering of the subrules that follow by striking out “(d)” and inserting “(c)” in its place and striking out “(e)” and inserting “(d)” in its place</p> <p>MOTION 2:</p> <p>To amend subrule 114(2), to include payments to ALIA as an item to be provided to the Executive Director, by inserting “or ALIA” after “Society” in clause (e).</p> <p style="text-align: right;">Carried unanimously</p>
10	<p>EXTERNAL REPORTS</p> <p>The following External Agency Reports were circulated with the materials prior to the meeting unless otherwise noted:</p> <ul style="list-style-type: none"> 10.1 Alberta Law Foundation Report - Ms. Váně provided an oral report. 10.2 Alberta Lawyers’ Assistance Society Report 10.3 Alberta Law Reform Institute Report 10.4 Canadian Bar Association Report 10.5 Canadian Centre for Professional Legal Education Report 10.6 Federation of Law Societies of Canada Report 10.7 Legal Education Society of Alberta Report 10.8 Real Estate Practice Advisory Committee Liaison Report
	<p>Other Business</p> <p>Mr. Warren publicly acknowledged the contribution, involvement and continued service of former Lay Benchers Barb McKinley, during and after her term expired until the recent Government appointments were made.</p> <p>There being no further business, the public meeting was adjourned at 11:10 am.</p>



Memo

CPD Program Requirements and Review Process – Update

To	Benchers
From	Jennifer Freund, Policy & Governance Counsel, and Barbra Bailey, Manger, Education
Date	September 29, 2022

Introduction

The new approach to the Law Society's Continuing Professional Development (CPD) program continues to evolve, with resource development to support the new Professional Development Profile, and the process to design a new CPD planning tool, underway. As part of that work, this update is being provided to the Benchers to ensure their comfort with the general direction being proposed so that work can continue. The update includes information about the proposed direction of the work and next steps.

The proposed direction outlined in this update will inform a guideline and Rule amendments, which will come forward at a future Bencher meeting.

Oversight by Lawyer Competence Committee

The approach proposed in this update was informed by discussions of the Lawyer Competence Committee (LCC). Most recently, the proposal contained in this update was discussed at the August 2022 meeting where the proposed direction was confirmed.

The Proposed Approach to CPD

There are three areas of development, for the CPD program, set out in this update. Work is progressing as anticipated and as discussed at the LCC meetings. These three areas are mandatory CPD requirements, the accountability review process and exemptions from the CPD program.

The descriptions set out below reflect the proposed approach but may need to be adjusted as work progresses, depending on the abilities or constraints of the CPD planning tool that is being developed for lawyers to use.



Mandatory CPD Plan Components

The new CPD program will be mandatory for active lawyers, similar to the past program. It requires active lawyers to develop a learning plan and declare that a plan has been developed. Additionally, lawyers will be expected to implement their plan and make progress on their learning goals throughout the year, between planning cycles.

Deadline

The Rules currently have September 30 as the deadline by which lawyers must prepare and declare a CPD plan. This deadline for certifying that a plan has been developed is being reviewed internally to determine the best option. The current deadline falls on National Truth and Reconciliation Day, observed as a holiday by the Law Society, so this may not be an appropriate deadline. Additionally, the Law Society is considering aligning the CPD deadline with the deadlines for other Law Society requirements that result in administrative suspensions to streamline internal administrative processes.

Competencies

With the development of the new Professional Development Profile (Profile), there are new competencies for consideration, set out within nine domains. These have been well developed with corresponding performance indicators and a proficiency scale against which lawyers can assess their development.

The LCC has discussed and confirmed its agreement with the proposed approach of having the CPD planning tool and guideline, once fully developed, contain a requirement that lawyers select two competencies from within those set out in the nine domains. These will serve as the learning outcomes on which lawyers will focus in the development of their learning plan. This doesn't prevent lawyers from selecting more than two competencies or from including learning activities and outcomes beyond the domains and competencies contained in the Profile. It merely mandates that they select at least two from within the Profile to include in their learning plan.

As with the previous program, lawyers can choose how to meet their learning and development needs by planning to complete any type of learning activities they believe will further their learning outcomes. Lawyers will also be required to enter at least one learning activity under each of their chosen competencies. It will be made clear that a wide range of activities would be eligible under this requirement, such as reading about the topic, receiving mentoring, attending a conference or taking a course, and everything in between. Lawyers will be required to enter something to show they have made a plan for the year, but this requirement recognizes that one activity, such as attending a multi-day conference, may be sufficient for developing a chosen competency for the year.



The requirement to focus on two competencies may be evaluated as the program develops to see if it is appropriate or needs adjustment to better meet the needs of the CPD program.

There will also be a greater focus on encouraging lawyers to self-reflect about their learning needs at the outset of the planning process, and about the effectiveness of their chosen learning activities and their progress at the close of the annual cycle. The Law Society is developing resources to assist lawyers with this process.

Accountability Reviews

One of the concerns raised with the previous CPD program was the lack of accountability. The new program addresses this in two ways. One way is to require lawyers to implement their learning plans and to check in on their progress throughout the year. The other is to review the work lawyers are doing to plan, implement and reflect on their learning. This will be done to ensure that plans meet the minimum requirements and to provide an opportunity for the Law Society to offer support to lawyers in executing their plans.

In the past, CPD plans were only reviewed through the conduct, early intervention or practice management processes when a concern was raised about a lawyer. The proposed approach is for the new program to have a randomized review process built in. It is anticipated that a requirement to respond to a request for review by the Law Society will be included in amendments to the CPD Rules.

Frequency of Reviews and Reviewers

The proposed approach, which has been discussed and confirmed by the LCC, is for reviews to be conducted monthly, with lawyer's learning plans randomly selected for review. The review will be conducted by the Education Department. Initially the reviews will be conducted by Education Counsel, and as such, the number of lawyers will be quite low to start out with. This may be revisited if necessary to address workload issues or as other staff in the department are trained in conducting the reviews.

What Will be Reviewed

As part of the proposed review process, a randomly selected lawyer's learning plan will be reviewed, as well as any information the lawyer has included in their plan, such as desired learning activities, desired learning outcomes, completion of learning activities and achievement of learning outcomes. The proposed approach has these components being visible to the Law Society reviewer. If the planning tool allows, there will be the possibility for lawyers to voluntarily share their self-reflections with the Law Society during a review, but this will not be required.

The review will assess the lawyer's compliance with the minimum requirements for their CPD plans, as detailed above and in the instructions for the CPD planning tool. If



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enough information is available, the review will also assess the lawyer's progress through the plan, to identify any areas of support or assistance that may be of benefit to them. The review will not include requiring the lawyer to change their learning activities, as this will be left up to the lawyer. It will, however, include a discussion with the lawyer about whether their learning activities have been effective, and if not, could include suggestions for other activities the lawyer could try. Lawyers will be able to make adjustments to their plan throughout the year, as long as they continue to meet the minimum requirements.

Required Participation

If the reviewer is able to see the lawyer's learning plan and progress, lawyers may not have to actively participate in the review process. However, they do have to respond to requests and initial questions about their plan.

Lawyers will not be required to participate in follow-ups with the reviewer in the early days of the new CPD program, but will be invited to do so.

Accountability

Lawyers who fail to develop a learning plan that meets the minimum requirements or fail to respond to requests or initial questions may be referred to another Law Society Department, such as Early Intervention or Conduct.

Initially, however, the proposal is that the entire review process will be delivered with a light touch and will be complemented by a lot of supports for lawyers. These supports will aid in such areas as plan development, selection of desired learning activities and outcomes, how to implement a learning plan and best practices for self-reflection. In the first year, it is anticipated that the reviews will be focused heavily on getting accustomed to using the new planning tool.

Exemptions

In the past, the CPD planning and declaration process provided for exemptions for active lawyers from the development and declaration of a CPD plan, in certain circumstances. As discussed and confirmed by the LCC, the proposed approach, for the new CPD program, will also provide for exemptions from the planning process in certain circumstances.

Exemptions Under Consideration

The following are the current exemptions under consideration for the new CPD program:

- a. Maternity/Paternity/Parental Leave – This leave is available to lawyers who are expecting to become parents shortly before or during the annual CPD period and includes pregnancy, birth, surrogacy and adoption.



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- b. Medical Leave – This leave is available to lawyers who have a medical condition that prevents them from participating in the CPD program during the annual CPD period, whether physical or mental health related.
- c. Other – As not all circumstances can be anticipated, this leave is available to lawyers who have another circumstance that may impact their ability to participate in the CPD program during the annual CPD period.

Lawyers will be asked to provide minimal details of the reason for their request. The information required will merely provide the reason for the request. The lawyer will not be asked but may wish to provide additional information including start and end dates for their current or anticipated leave, if known. In the past, lawyers have been quite open about the reason for their exemption requests but specific information is not requested, nor required.

The Education Department will evaluate and approve any request for an exemption from the CPD program.

Annual Requirement

Active lawyers will be required to request an exemption for each annual CPD period for which their circumstances prevent them from participating in the CPD program.

Additional Considerations

It is anticipated that the CPD planning tool will become active and available to lawyers on June 30 each year. This occurs automatically through system programming for all lawyers who are active in the system on that date. As mentioned earlier, this date may change but planning is being done based on the current CPD dates.

Though the CPD tool is still being developed, based on past experience, it is anticipated that anyone added to the system following the June 30 date will need to have the ability to complete a CPD plan turned on manually in the system. Because of this, and to mirror what was done in the past, consideration is also being given to the following automatic exemptions:

- a. A student-at-law or a lawyer transferring from another Canadian jurisdiction called to the Alberta bar after June 30 in a year will not be required to develop and declare a CPD plan that year but will be encouraged to identify and complete learning activities.

Rationale: Though a student-at-law or new transfer may be called to the bar in July and August, the Law Society may not receive the paperwork necessary to change their status in the system to “active” until very shortly before or after the CPD deadline. Operationally, new calls cannot complete a CPD plan in the system until they have an active status. Though all new calls are encouraged to



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develop CPD plans on their own, their ability to do so formally within the reporting system may not exist prior to the deadline.

- b. An inactive lawyer who returns to active status after August 31 in a year will not be required to develop and declare a CPD plan that year but will be encouraged to identify and complete learning activities.

Rationale: Following feedback from the LCC committee, this exemption cut-off is suggested at one month prior to the deadline to develop and declare a CPD plan. While these lawyers don't face the same operational impediment to becoming "active" in the system as the students, they do require sufficient time to develop a proper CPD plan. Given the new requirements to review the Profile, select two competencies and fully develop a learning plan with activities and goals, less than one month to develop a good quality plan may not be feasible. Additionally, Membership will need to manually turn on the CPD function for these lawyers. As there may be unanticipated delays that prevent a lawyer from being "active" in the system in a timely manner, provisions for this should be made. It is not anticipated that many lawyers will be impacted by this proposed approach.

Additionally, an active lawyer who becomes inactive after the June 30 planning start date but prior to October 1 in a year will not be required to develop and declare a CPD plan.

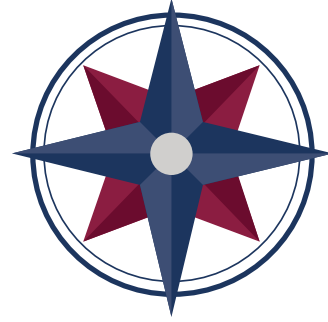
At times, as a condition of reinstatement, suspended lawyers who were not active during the planning timeline are required to, during their suspension or upon reinstatement, complete a CPD plan. It is anticipated that the planning tool will have the ability, throughout the year, to be activated in these instances.

Conclusion

While the implementation of the new CPD program continues to develop, the Education Department felt it important to provide the Benchers with an update on the discussions with the LCC, as well as an opportunity to provide feedback on the proposed approach for the development of the CPD planning tool.

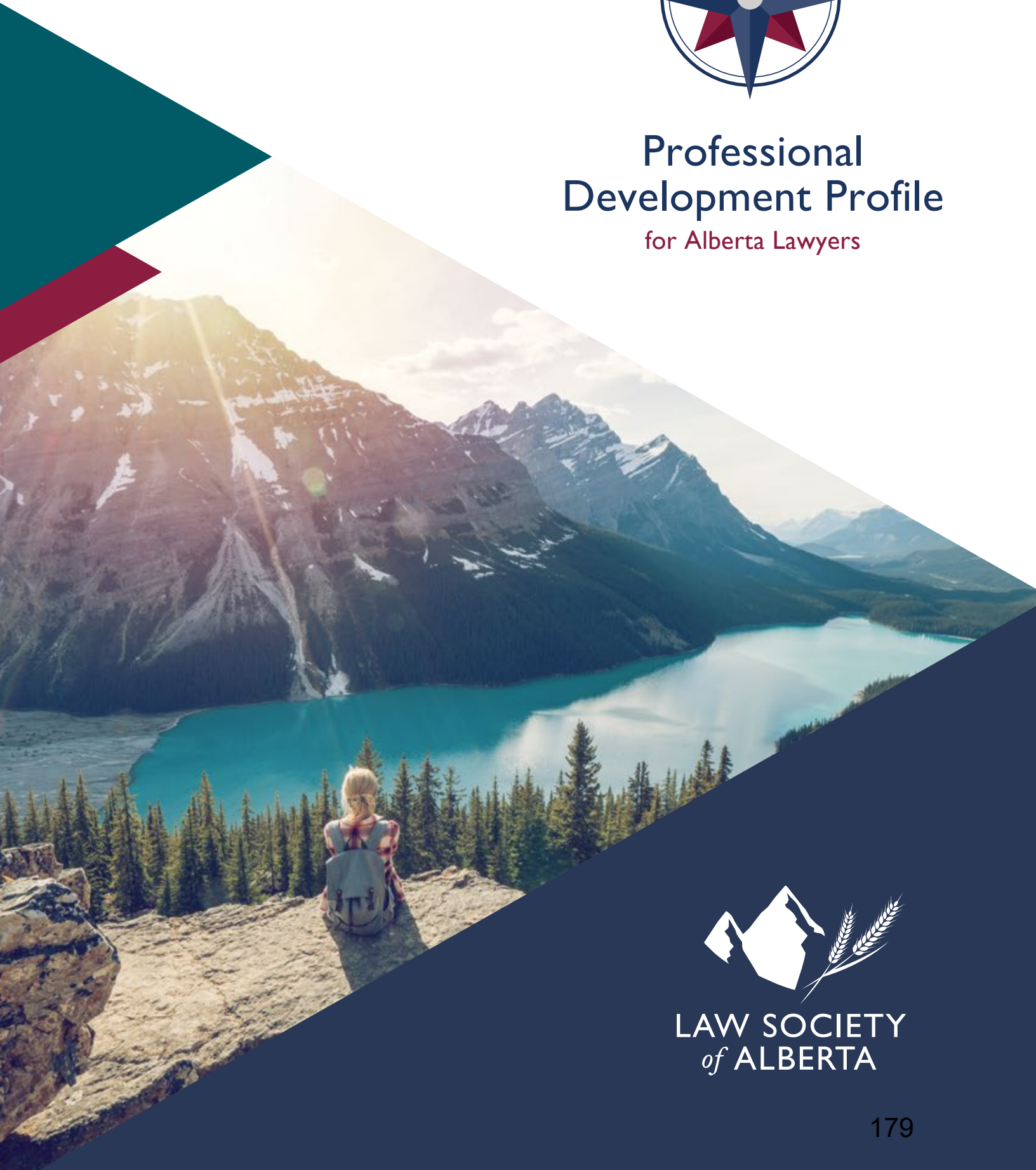
The next step will be to draft a guideline setting out the process around both CPD requirements and the review process. This will help inform the development of the CPD planning tool. The abilities and constraints of the tool may also inform the process, to some degree, so the guideline will be finalized as tool development is finalized.

The final step will be to draft Rule amendments to ensure that appropriate authority to conduct reviews is established in the Rules. Staff expect the guideline to be reviewed by the LCC in late 2022, with any necessary the Rule amendments going to the LCC in late 2022 or early 2023. It is anticipated that both the Rule amendments and guideline will be brought to the Benchers for approval in early 2023.



Professional Development Profile

for Alberta Lawyers



LAW SOCIETY
of ALBERTA



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Foreword

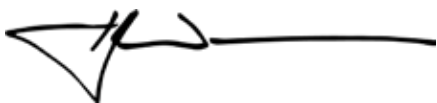
We are excited and proud to introduce the Law Society of Alberta's Professional Development Profile for Alberta Lawyers. The publication of the Profile is an achievement that reflects the vision and leadership of the Law Society of Alberta and members of the Alberta legal community. The Profile is intended to apply to lawyers after being admitted to the bar, regardless of experience or practice area. It sets out the competencies that are important to maintain a safe, effective and sustainable legal practice in Alberta today.

In 2020, the Benchers of the Law Society of Alberta set out to enhance its approach to continuing professional development (CPD). One key goal is to make the annual CPD planning process more meaningful and engaging for Alberta lawyers, by providing guidance on what the Law Society sees as important areas of focus. To achieve this, the Benchers determined a new competency framework was an integral part of the work to enhance lawyer competence and CPD. This Profile is the result.

The Profile represents a unique approach to CPD amongst Canadian legal regulators. It aims to enhance the elements of Alberta's approach to CPD that have always worked well, which includes a focus on self-reflection, self-assessment and learning outcomes. The Profile is meant to foster a holistic and innovative approach to lawyer competence for legal practice in Alberta today and in the future. It is intended to serve as a source of inspiration and aspiration for Alberta lawyers and will be the foundation for the Law Society's new approach to lawyer competence and CPD going forward.

The Profile does not include substantive areas of law, but broad areas of knowledge and skills that lawyers practising in all areas might look to develop or expand. As has always been the case, Alberta lawyers are encouraged to pursue CPD specific to their practice areas in addition to areas set out in the Profile.

The Profile is the first step in the Law Society's enhanced approach to CPD. The Law Society will continue to develop guidance and resources to support lawyers in creating meaningful and effective CPD plans. The next step is to create an interactive tool, which is currently in development, to help lawyers with this process. In the meantime, we hope lawyers will use the Profile to guide and enhance their CPD activities.



Ken Warren, QC
Law Society of Alberta President
and Project Steering Committee Chair



Elizabeth J. Osler, QC
Chief Executive Officer and Executive
Director of the Law Society of Alberta

June 2022

Purpose of the Profile

The Profile is intended for use by Alberta lawyers. All references to lawyers in this document refer to Alberta lawyers.

The purpose of the Profile is to:

- Guide lawyers in understanding what competencies are associated with safe, effective and sustainable legal practice.
- Support the CPD of lawyers through ongoing self-assessment and learning.
- Support lawyers in developing their professional identity throughout their career.
- Provide a definition of competence to offer guidance for other regulatory and educational purposes that support competency development.
- Assist employers and articling principals to develop work experiences and practices that support competency development.
- Inform continuing legal education providers about the competencies that are important to legal practice today to assist in future content development for lawyers.
- Support the Law Society's development of a professional development program for lawyers.

The Profile is not intended to:

- Be a checklist of requirements.
- Duplicate entry to practice competencies developed by other organizations.
- Address substantive legal knowledge and procedures specific to different areas of legal practice.
- Include every competency that lawyers practising law in Alberta might need.
- Create a legal standard to be used in professional negligence claims.
- Set threshold standards for purposes of discipline.

The Profile and related documentation are intended to be living documents; they are expected to evolve and change as the demands on lawyers evolve and change. This version reflects the current understanding of the demands on lawyers who have been admitted to the practice of law in Alberta.

Profile Elements

Domains: The Profile outlines nine domains or areas of competency that are important for Alberta lawyers. The domains set out the suggested areas in which professional development might be undertaken.

Domain Statements: Each domain has an introductory statement that conveys the overall scope and intent of the domain. The statements are not intended to be exhaustive and, like the rest of the Profile, are intended to be sources of inspiration and aspiration for Alberta lawyers.

Competencies: Each domain contains a number of competencies, which are areas in which a lawyer might seek to develop professionally within that domain. While these competencies have been identified as being important for safe, effective and sustainable legal practice and for continuing competence, they should be thought of as a menu of options for lawyers to pursue when creating CPD plans, rather than as a checklist of requirements. Competencies are numbered and located in the left column of the Profile.

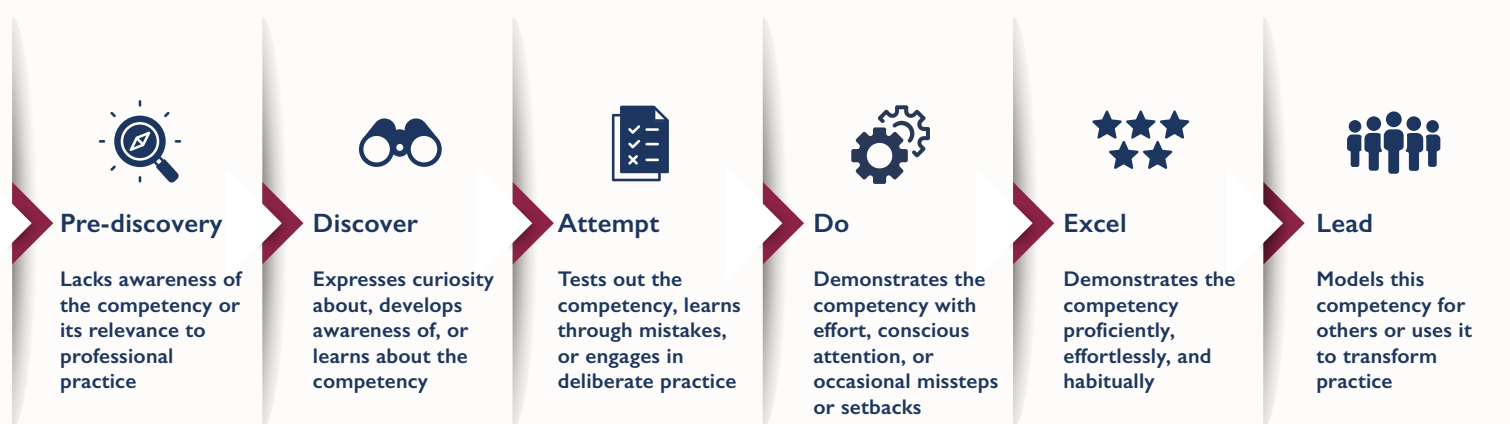
Performance Indicators: Performance indicators illustrate observable or readily inferable behaviours in the area outlined by each competency. The performance indicators provide examples of different aspects of the competency that a lawyer can develop. Performance indicators are listed in the right column of the Profile.

Glossary: A glossary of terms is provided at the end of the Profile, with glossary terms highlighted in burgundy text wherever they are used.

Graphic: The graphic representation of the domains found on page 3 of the Profile depicts a compass, which is consistent with the purpose of the Profile to offer guidance to Alberta lawyers on their professional development journeys. As the Legal Practice domain represents the core legal elements of a lawyer's role, it is in the centre of the compass and is the first domain in the Profile. However, all the domains are interconnected and equal in importance to safe, effective and sustainable legal practice in Alberta today. To indicate this, the rest of the domains are listed in alphabetical order, both in the graphic and in the Profile. The graphic represents the Law Society's holistic and innovative approach to lawyer competence.

Proficiency Scale

A proficiency scale clarifies a level of progress towards a standard or expectation. For any given competency, different levels of proficiency are expected at various career stages and in various practice areas and contexts. The Law Society has adopted the proficiency scale below, developed by Principia Assessments, Ltd., to be used with the Profile.



Professional Foundations Proficiency Scale by Principia Assessments Ltd. is licensed under [CC BY-NC-ND 4.0](#)

The scale is intended to be used by Alberta lawyers to both self-assess current level of proficiency in a given competency and to set goals for the desired levels of proficiency in that competency. The scale may be applied to any competency in the Profile to assist Alberta lawyers in identifying professional development goals and creating annual CPD plans. There is no expectation that levels of proficiency move in lockstep across or within domains. For instance, a lawyer may be proficient at one competency (the Excel level) and just beginning to test out another competency (the Attempt level).

While the Law Society can offer guidance and suggestions, it will be up to each lawyer to determine how to best improve their proficiency in their chosen areas of professional development, depending on their level of experience, practice context and goals.

Some examples for using the Proficiency Scale in relation to the Profile include:



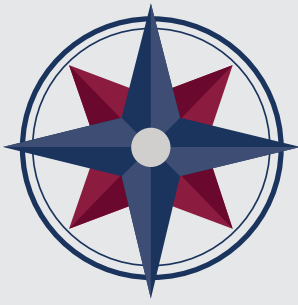
A lawyer in a large firm who has been called to the bar for six years is starting to draw in more of their own clients, and decides they want to start placing more focus on Lawyer-Client Relationships, specifically on fostering collaborative and trusting lawyer-client relationships. Using the Proficiency Scale, the lawyer might judge themselves at the Attempt stage but would like to be performing in accordance with the description of the Excel stage. This might help the lawyer decide to focus on improving on this competency.



A lawyer who serves as in-house counsel may assess themselves as being at the Pre-discovery stage with respect to Truth and Reconciliation. Because this is a newer concept for this lawyer, they may decide to place a great deal of focus on improving their knowledge in this domain, based on the guidance set out in the corresponding competencies and performance indicators.



A partner in a medium-sized law firm who has taken on some management duties may determine they want to place greater focus on supports for well-being in their firm. They determine that they are at the Discover stage of the Proficiency Scale for this competency and want to Lead in this area. Because they want to move up four stages on the Proficiency Scale, they might decide to work on all performance indicators listed for that competency and seek resources to put supports in place for all those areas.



Professional Development Profile for Alberta Lawyers

I Legal Practice

Lawyers can accurately identify legal issues. Lawyers employ research, analytical and problem-solving skills to formulate clear and appropriate legal strategies. Lawyers are effective communicators and advance their clients' interests within their practice-specific contexts.

Competency

Performance Indicators

I.1 Critically evaluate a matter

- Use appropriate and current substantive and procedural law applicable to one's own practice area(s)
- Accurately identify relevant facts, legal issues and informational gaps or discrepancies
- Gather with due diligence all relevant information
- Research, interpret and correctly apply common law, statutes, regulations, rules, procedure, policy and theory to a legal issue
- Seek relevant expertise on a matter when needed
- Prudently assess possible courses of action, by considering the range of potential outcomes and weighing the risks of each
- Create legal strategy appropriate and proportionate to client needs and means

I.2 Communicate effectively

- Express concepts clearly, precisely, logically, accurately and concisely
- Use plain language where appropriate
- Adapt communications appropriately to different contexts, purposes and audiences (courts, clients, lawyers, **enumerated groups**, other individuals)

I.3 Advance client interests

- Present well-prepared, accurate and appropriate legal argument and analysis
- Use persuasive communication
- Adapt legal strategy or approach and pivot as circumstances change
- Take steps to protect client interests

2 Continuous Improvement

Lawyers are committed to continuous improvement of legal service delivery and to lifelong learning, with the goal of providing the highest quality legal services.

Competency

Performance Indicators

2.1 Commit to continuous improvement in the provision of services

- Proactively seek feedback and input from clients and others to identify aspects of service that could be enhanced
- Demonstrate adaptability and openness to new ideas
- Foster innovation and development of best practices
- Develop solutions to overcome obstacles to implementation of best practices

2.2 Cultivate a **growth mindset**

- Engage in intentional self-reflection, goal setting, and professional development planning
- Continuously identify opportunities for professional development and improvement
- Engage in work or training that will expand skills, knowledge or responsibilities
- Encourage and support colleagues in undertaking new learning and development

3 Cultural Competence, Equity, Diversity and Inclusion

Lawyers have an awareness of the unique experiences of the **enumerated groups** set out in the *Alberta Human Rights Act*. They implement strategies to meet the specific needs of individuals from these groups to achieve culturally or community-appropriate services and outcomes. Lawyers treat all people with dignity and respect and take active steps to support and advocate for members of **enumerated groups**.

Competency	Performance Indicators
3.1 Build intelligence related to cultural competence, equity, diversity and inclusion	<ul style="list-style-type: none"> • Develop understanding of enumerated groups as set out by the Alberta Human Rights Act • Develop self-awareness of how one's own conscious and unconscious biases affect perspectives and actions • Reduce one's own biases through continual education, self-reflection and inquiry • Recognize how systemic inequalities and barriers affect individuals and groups • Develop an awareness of the effects of individual and systemic trauma • Consider how multiple points of discrimination interact to create barriers for individuals
3.2 Incorporate equity, diversity and inclusion in practice	<ul style="list-style-type: none"> • Practise anti-discrimination and anti-racism • Ensure that services are accessible to all • Develop and promote a deeper understanding of sexual orientation and gender identity • Take action to accommodate visible and invisible disabilities • Implement strategies to mitigate trauma • Take action to dismantle systemic inequalities and barriers
3.3 Champion enumerated groups in professional activities	<ul style="list-style-type: none"> • Advance inclusion through intentional, positive and conscious efforts • Respect the diverse cultures, perspectives, backgrounds, interests and goals of clients, co-workers and colleagues • Adapt communication for enumerated groups as applicable • Advocate for those facing systemic barriers to accessing what they need or deserve • Advocate for hiring, promotion and retention in a manner consistent with enhancing diversity, equity and inclusion • Promote a healthy, safe and inclusive workplace • Increase awareness of qualifications of internationally trained lawyers

4 Lawyer-Client Relationships

Lawyers assess lawyer-client relationships, both internal and external, for suitability and clearly establish the scope of the relationships. Lawyers communicate effectively with their clients and connect with them in a professionally appropriate manner. Lawyers are mindful of and attentive to the entirety of their clients' circumstances and support clients in pursuing their goals, priorities and broader interests.

Competency	Performance Indicators
4.1 Determine suitability of lawyer-client relationships	<ul style="list-style-type: none"> • Accurately assess and reassess risks associated with potential and existing client relationships • Evaluate if personal considerations might impact lawyer-client relationships • Provide appropriate referrals when it is in the client's best interests
4.2 Establish lawyer-client relationships	<ul style="list-style-type: none"> • Clarify when providing general legal information versus legal advice which would trigger a client relationship • Listen actively to understand client expectations, build trust and foster exchange of information • Accurately identify who is authorized to give instructions and receive information • Obtain, clarify and document client instructions and confirm course of action • Clearly communicate the terms and limits of the lawyer's scope of work/retainer for the client, including fees, and act accordingly
4.3 Engage in ongoing communication with clients	<ul style="list-style-type: none"> • Proactively and regularly communicate to keep clients informed • Respond to client communications in a timely manner • Manage client expectations • Communicate respectfully and empathetically
4.4 Foster collaborative and trusting lawyer-client relationships	<ul style="list-style-type: none"> • Candidly and thoroughly inform clients of their options and potential outcomes • Ensure clients understand information and advice provided • Empower clients to act on own behalf or seek out resources when appropriate • Consider the entirety of each client's circumstances in all aspects of a matter

5 Practice Management

Lawyers employ a range of strategies and skills to support the delivery of efficient and effective legal services and internal processes. Lawyers manage and mitigate risks to their practice and use technology and innovation to improve legal services.

Competency	Performance Indicators
5.1 Use effective time management and organization skills	<ul style="list-style-type: none"> • Anticipate and prioritize case, project and workload needs • Verify that new assignments are within one's own capacity • Perform all work in a timely and cost-effective manner • Fully utilise practice management tools and software (e.g., checklists, diary, conflict check system) • Delegate tasks that can appropriately and efficiently be performed by others
5.2 Manage files effectively and securely	<ul style="list-style-type: none"> • Secure files to prevent unauthorized access • Use file management systems that support efficient file tracking, retrieval, retention and destruction • Adhere to privacy and confidentiality requirements • Ensure matters are thoroughly and clearly documented
5.3 Use effective accounting and billing procedures	<ul style="list-style-type: none"> • Ensure timely and regular billing practices in accordance with retainer agreements or other applicable billing guidelines • Implement practices and procedures to ensure compliance with Law Society reporting and accounting requirements applicable to practice • Access available resources related to billing and accounting when clarification or advice needed
5.4 Supervise and manage effectively	<ul style="list-style-type: none"> • Provide required information and relevant instructions for efficient delegation • Ensure quality of work produced by others • Provide necessary and useful support and direction to others through training and constructive feedback • Manage conflict between individuals and groups in practice and model appropriate conflict resolution behaviours • Seek and apply tools to build and enhance management skills
5.5 Assess and manage practice risks	<ul style="list-style-type: none"> • Implement processes for regular, thorough and honest assessment of practice risks • Create plans and strategies to mitigate identified practice risks • Engage in business continuity and succession planning
5.6 Demonstrate technological competence	<ul style="list-style-type: none"> • Evaluate risks and benefits of potential technological innovations to clients and to one's own practice • Advocate for the timely and appropriate adoption of technology to increase efficiency and effectiveness of legal practice • Use technology, the internet and digital platforms responsibly

6 Professional Conduct

Lawyers are honest, trustworthy and act with integrity. Lawyers execute good judgment and adhere to high standards of behaviour and accountability – to their clients, co-workers, colleagues, members of the legal profession, the courts, tribunals and the Law Society.

Competency	Performance Indicators
6.1 Act ethically	<ul style="list-style-type: none"> • Accurately recognize, anticipate and resolve ethical issues that arise in legal practice • Consistently and decisively make informed and reasoned decisions about ethical issues • Implement practices and procedures that ensure individual and organizational compliance with requirements related to ethical and indemnity obligations, including case law, statutory requirements, the Code of Conduct and Rules of the Law Society of Alberta • Promptly consult with others (e.g., Practice Advisors, colleagues) when it is unclear how to act ethically in a given situation
6.2 Demonstrate good character	<ul style="list-style-type: none"> • Continuously demonstrate integrity, honesty and trustworthiness • Consistently practise civility and respect in interactions with others • Act on a good-faith basis when dealing with clients, co-workers, colleagues, the legal profession and the public
6.3 Use sound judgement	<ul style="list-style-type: none"> • Make logical decisions based on all available information and potential outcomes • Seek out additional information when there are gaps in knowledge • Promptly recognize when tasks or matters fall outside one's own competence and access appropriate sources when assistance or referral is required

7 Professional Contributions

Lawyers foster professional relationships with their colleagues, opposing counsel, courts and tribunals, the Law Society, other professional groups, pro bono organizations, and generally support the administration of justice and enhancements to the legal system. Lawyers strive to strengthen the profession and, where possible, promote and improve access to legal services and access to justice.

Competency	Performance Indicators
7.1 Foster collegiality and civility in the legal profession	<ul style="list-style-type: none"> • Demonstrate professional courtesy, honesty, candour, respect and civility in dealings with clients, colleagues, the courts, tribunals and others • Work constructively with others to resolve issues in a timely and cost-effective manner when appropriate • Acknowledge and consider other viewpoints, and express any disagreement thoughtfully and respectfully • Work collaboratively with colleagues within the lawyer's work environment • Mentor peers and/or junior colleagues
7.2 Enhance the administration of justice	<ul style="list-style-type: none"> • Actively volunteer with or otherwise support professional associations and community organizations • Promote a clear and accurate understanding of the legal profession to others (e.g., the media, the public) • Foster dialogue between lawyers and the judiciary
7.3 Advance access to legal services and access to justice	<ul style="list-style-type: none"> • Recognize how access to justice issues impact the justice system • Enhance access to legal services for everyone • Provide pro bono services and support pro bono organizations • Ensure matters proceed effectively and efficiently • Collaborate with others to make systemic improvements to increase access to justice

8 Truth and Reconciliation

Lawyers are integral to the development, interpretation and application of laws. Alberta lawyers understand the historical and current impacts that Canadian law has on Indigenous Peoples (First Nations, Inuit and Métis) in Canada and participate in reconciliation.

Competency	Performance Indicators
8.1 Strengthen understanding of the truth regarding the experience of Indigenous Peoples in Alberta and Canada	<ul style="list-style-type: none"> • Recognize the history and diversity of various Indigenous communities of Alberta and Canada • Understand the terminology used to describe Indigenous Peoples and its significance at law • Acknowledge the impacts of colonization and systemic discrimination • Respect the differences among traditional lands, Treaty territories and Métis Settlements in Alberta • Acknowledge the discriminatory practices that have been applied to Indigenous Peoples in Canada • Understand the history of Indian Residential Schools and day schools and their impact on the well-being of Indigenous Peoples • Recognize the historical and ongoing impacts of Canadian and Alberta law on Indigenous Peoples
8.2 Demonstrate support for reconciliation with the Indigenous Peoples of Canada	<ul style="list-style-type: none"> • Apply Calls for Action and Calls for Justice applicable to Indigenous Peoples • Acknowledge and respect the traditional Indigenous territory in which the lawyer practises or lives • Incorporate Indigenous principles, laws, culture and perspectives when developing strategies for representing Indigenous clients • Recognize that Indigenous Peoples have their own restorative justice systems and use them where appropriate • Enhance access to restorative justice initiatives and options available in communities

9 Well-being

Lawyers make their own physical, mental and emotional well-being a priority in order to ensure their capacity to practise competently. They manage the stresses of practice in the ways that are effective for their individual circumstances in order to provide high-quality legal services and promote healthy workplaces. Lawyers support and foster others' well-being.

Competency	Performance Indicators
9.1 Build resilience	<ul style="list-style-type: none"> • Develop flexibility and adaptability in the face of adversity or stress • Mitigate effects of stress and trauma, accessing supports as needed • Approach challenges as opportunities to learn, grow and improve, where appropriate
9.2 Maintain personal health	<ul style="list-style-type: none"> • Practise physical, mental, and emotional self-care and health management • Strive to consistently use healthy coping skills • Identify and seek out resources for support for personal problems that might interfere with one's own ability to practise
9.3 Demonstrate self-awareness	<ul style="list-style-type: none"> • Recognize one's own stressors and how they manifest • Recognize impact of one's own behaviours on others' well-being • Take concrete steps to ensure work-life challenges do not have an adverse impact personally and professionally
9.4 Support well-being of others	<ul style="list-style-type: none"> • Encourage adoption of healthy coping skills and stress management practices • Demonstrate empathy toward others in professional settings • Strive to foster optimal health and well-being of others in professional settings • Recognize signs of distress/struggle in others • Assist others in obtaining supports for their well-being

Glossary

Access to legal services: While access to justice is a commonly used phrase, it applies primarily to access to the court system. Access to legal services includes access to all types of services a lawyer might provide, some of which do not involve the courts. Access refers to more than affordability; it includes considerations relating to geographic location, language, and health, among others.

Business continuity planning: The process of creating systems of prevention and recovery to deal with potential threats to a company. In addition to prevention, the goal is to enable ongoing operations before and during execution of disaster recovery.

Enumerated groups: Groups of people who share identities based on the characteristics set out in the [*Alberta Human Rights Act*](#), which states that all persons are equal in: dignity, rights and responsibilities without regard to race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation.

Growth mindset: The belief that one's talents can be developed through hard work, good strategies, and input from others. Individuals who adopt more of a growth mindset are more likely to embrace lifelong learning, put in more effort to learn, view feedback as an opportunity to learn, believe failures are just temporary setbacks, willingly embrace challenges and view others' success as a source of inspiration.

Healthy coping skills: Constructive or positive ways we manage internal and external stress, and which are associated with good mental health. Some examples may include seeking out social support, establishing boundaries, practising gratitude, engaging in a hobby, getting enough sleep, exercising, spending time outdoors and journaling.

Practice risks: Threats that impact a lawyer's reputation, opportunity, operating costs or ability to carry on business. Examples of risks in legal practice may include but are not limited to ethical complaints, insurance claims, cyber-attacks, fraud, theft, staffing issues, unexpected life events and disasters.

Resilience: The process of adapting well in the face of adversity, trauma, tragedy, threats, or significant sources of stress, such as family and relationship problems, serious health problems, or workplace and financial stressors.

Development of the Profile

The Law Society retained ACT, Inc. (“ACT”) to facilitate the development of the Profile. ACT is a mission-driven not-for-profit organization based in the United States. ACT’s Credentialing and Career Services group provides advisory and consulting services to organizations that educate, license and certify individuals in a range of professions.

The Law Society’s 2021-2022 Benchers Lawyer Competence Committee served as the project Steering Committee and provided guidance and oversight throughout. ACT led the project and ensured that all activities conformed to best practices. ACT consulted with the Steering Committee at key decision points to verify that all processes and work products aligned with the purpose of the Profile.

The Profile was created using an iterative process that involved input from over 65 individuals at different points in the development process. Drafting of the Profile was undertaken primarily by a volunteer Task Force of Alberta lawyers, with outside input and feedback collected and incorporated at several points in the development process.

The Law Society selected the Task Force members from among the volunteers who responded to a province-wide call for participation. Appointments to the Task Force were made to balance practice setting, role, location, gender and representation of equity-deserving groups among other considerations.

Drafting of the Profile elements took place across three sets of meetings. In creating its first draft, the Task Force drew upon its own expertise as well as the competencies developed by other entities including the Canadian Centre for Professional Legal Education, the Law Society of New Brunswick, the Royal College of Physicians and Surgeons of Canada and the Institute for the Advancement of the American Legal System.

The Task Force delineated competencies and performance indicators within a preliminary set of professional development domains. The domain structure took into consideration guidance from the Steering Committee, the Law Society’s strategic plan and recommendations provided by outside consultants. See the section titled Profile Elements for further description of the Profile elements.

Steering Committee and Task Force members and internal Law Society staff stakeholders reviewed and commented on the first draft of the Profile. At its second set of meetings, the Task Force incorporated feedback from the reviewers into a second draft of the Profile.

Peer consultation was subsequently undertaken via a series of facilitated focus group sessions to obtain feedback regarding the second draft. The focus groups include the Law Society’s Indigenous Advisory Committee, Lawyer Competence Advisory Committee and Equity, Diversity and Inclusion Advisory Committee, as well as an external focus group assembled from among respondents to the initial call for participation. The focus groups were asked for general feedback, as well as targeted feedback applicable to their subject matter expertise.

At its third set of meetings, the Task Force made its final revisions to the Profile, considering all comments from the focus groups. The draft Profile consisted of nine professional development domains, 30 competencies and 131 performance indicators associated with the competencies. The Steering Committee approved the Task Force's final draft with only a limited number of revisions to improve clarity and readability.

ACT administered a survey to Alberta lawyers to collect validation evidence for all the elements of the Profile. Participants rated the importance of each domain and competency to effective legal practice in Alberta today and evaluated the usefulness of the performance indicators as a means of describing potential areas for professional development. The ratings made by the survey respondents validated all of the elements of the Profile. After reviewing the survey results with ACT, the Steering Committee endorsed the profile, which was subsequently approved by the Benchers of the Law Society.





Acknowledgments

Creation of the Profile was made possible through the combined efforts of numerous contributors. The Law Society's 2021–2022 Benchers' Lawyer Competence Committee served as the project Steering Committee and provided guidance and oversight throughout the effort. The 11-member project Task Force worked tirelessly and thoughtfully across numerous sessions to draft and refine the Profile. Members of the Law Society staff and over 45 additional practitioners and other subject matter experts participated in focus groups and provided crucial feedback on an interim draft. All contributors to these efforts are listed on the next page. This work was completed on a short timeline, during the sometimes-challenging circumstances of the Covid-19 Pandemic. We are deeply appreciative of the time and thoughtful contributions these individuals dedicated to the development of the Profile.

We also want to thank the lawyers who completed the survey to validate the Profile elements, including those who volunteered to pilot test the survey.

Thank you to Jordan Furlong at Law21, and to Jennifer Flynn of Principia Assessments Ltd., for their guidance leading up to and throughout this project.

Finally, we are grateful to our project development partners at ACT, Inc. – Patricia Muenzen, PhD and Carla Caro, MA – for leading the project, and to Barbra Bailey, Rebecca Young and Maggie Thaxter at the Law Society for providing administrative support.

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Approved Benchers Public Minutes

Public Minutes of the Five Hundred and Eighth Meeting of the Benchers of the Law Society of Alberta (the “Law Society”)

April 21, 2022

In person in Calgary, AB, and by videoconference

8:30 am

ATTENDANCE	
Benchers:	<p>Ken Warren, President Bill Hendsbee, President-Elect Sony Ahluwalia Ryan Anderson Lou Cusano Ted Feehan Kene Ilochonwu Cal Johnson Barb McKinley Bud Melnyk Sandra Petersson (by videoconference) Sanjiv Parmar Stacy Petriuk Ron Sorokin Deanna Steblyk Margaret Unsworth Moirá Váně Louise Wasylenko</p>
Executive Leadership Team:	<p>Elizabeth Osler, CEO and Executive Director Cori Ghitler, Deputy Executive Director and Director, Policy and Education Nadine Meade, Chief Financial Officer (by videoconference) Andrew Norton, Chief Information Officer and Director, Business Operations David Weyant, President and CEO, Alberta Lawyers Indemnity Association (by videoconference)</p>
Staff:	<p>Susannah Alleyne, Equity, Diversity & Inclusion Counsel Barbra Bailey, Manager, Education Nancy Bains, Tribunal Counsel and Privacy Officer Denise Bjerkseth, Business Technology (by videoconference) Colleen Brown, Manager, Communications and Stakeholder Engagement</p>

ATTENDANCE

	<p>Ruth Corbett, Governance Administrator Shabnam Datta, Manager, Policy (by videoconference) Jennifer Freund, Policy & Governance Counsel (by videoconference) Nicholas Maggisano, Manager, Conduct (by videoconference) Amanda Miller, Policy Counsel Kendall Moholity, Senior Manager, Professionalism (by videoconference) Stephen Ong, Business Technology Christine Schreuder, Governance Coordinator Rebecca Young, Education Counsel (by videoconference)</p>
Guests: (all guests attended via videoconference)	<p>Carla Caro, Program Director, ACT Loraine Champion, Executive Director, Alberta Lawyers' Assistance Society Amanda Lindberg, Vice-President, Canadian Bar Association Alberta Patricia Muenzen, Director, ACT Nonye Opara, Executive Director, Pro Bono Law Alberta Robert Philp, Indigenous Advisory Committee Bencher Liaison Kathleen Ryan, Chair, Equity Diversity and Inclusion and Lawyer Competence Advisory Committees Christine Sanderman, Executive Director, Legal Education Society of Alberta</p>
Regrets:	<p>Corie Flett Jim Lutz Grant Vogeli Salimah Walji-Shivji</p>

Secretary's Note: All attendees were in person unless otherwise stated. The arrival and/or departure of participants during the meeting are recorded in the body of these minutes.

Item	
Call to Order	<p>Mr. Warren called the meeting to order at 8:35 a.m. and welcomed everyone to the first in-person Bencher meeting since February 20, 2020. He congratulated Mr. Sorokin on his appointment as a Bencher. Mr. Hendsbee delivered the Indigenous land acknowledgement statement for Alberta.</p>
1	<p>Opening Remarks from the President Mr. Warren commented on how much the Law Society has accomplished over last two years during the pandemic environment. He added congratulations to Nancy Carruthers on her Judicial appointment.</p>
2	<p>Leadership Report Documentation for this item was circulated with the materials prior to the meeting. Ms. Osler added the following updates:</p> <ul style="list-style-type: none"> - The theme of the Jasper Retreat is "<i>Spotlight on the Public Interest</i>". Ms. Osler provided an overview of the retreat program.

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	<ul style="list-style-type: none"> - The official return to office date is May 2, 2022. Staff will be required to return at least one day per week until June, when two days per week will be mandatory until September. The voluntary hybrid pilot will then be reviewed. - The Law Society initiated the summer student program for 2022. - Ms. Osler publicly recognized Nancy Carruthers' Judicial appointment and acknowledged her distinguished career, both in private practice and at the Law Society. On behalf of all her friends and colleagues at the Law Society, Ms. Osler thanked Ms. Carruthers and wished her good luck in her new role.
3	<p>Professional Development Profile</p> <p>Documentation for this item was circulated with the materials prior to the meeting. Ms. Steblyk, Chair, Lawyer Competence Committee (LCC), provided introductory remarks, highlighting the LCC's in-depth work to direct the development of the proposed Professional Development Profile (the "Profile").</p> <p>Ms. Bailey provided a high-level overview of the purpose of the Profile and, if approved, next steps. Ms. Bailey introduced ACT representatives Patricia Muenzen and Carla Caro, who then made a detailed presentation on the development process, including: the roles of the LCC, the Internal Stakeholder Group, and the Task Force; surveys and consultations; the development of the proposed domains, competencies, and performance indicators based on the survey results; ratings; emerging themes; and the purpose and approach to validating the Profile.</p> <p>The Benchers discussed the following:</p> <ul style="list-style-type: none"> - The importance of having visual representation of the different elements of the Profile was noted and ACT confirmed this work is underway. The overall final representation, including the messaging, educational resources, and overview of the rollout plan will be presented to the Benchers once finalized. This representation and messaging are critical to ensure lawyers understand the aspirational nature of the Profile. The Continuing Professional Development (CPD) planning tool is scheduled to launch in 2023. - Challenges associated with rolling out the Profile before educational resources and the CPD planning tool are launched were discussed. However, support was expressed for proceeding as planned, since many lawyers are now waiting for this new program. - The Benchers requested that the "Competency Framework Glossary" be renamed the "Professional Development Profile Glossary". - The suggestion to reference substantive legal knowledge as an important aspect of development, where possible, was an issue that the LCC also debated. Ms. Bailey explained that the LCC ultimately determined that the Profile should approach legal practice skills and knowledge more broadly, and that the messaging and CPD planning tool will provide guidance on this and that lawyers are still encouraged to pursue CPD in their practice areas as well. - The Law Society's intention is to support lawyers throughout their chosen development programs, not to discipline or overwhelm. The Benchers recognized that the Profile is an



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	<p>aspirational guide and that the purpose of the messaging, educational resources and CPD planning tool is to assist lawyers to self-direct their own professional development.</p> <div data-bbox="180 352 1507 485"><p>Motion: Steblyk/Ilochonwu That the Benchers approve the Professional Development Profile, as written. Carried unanimously</p></div> <p>Ms. Muenzen and Ms. Caro left the meeting at 10:07 a.m.</p>
4	<p>Audit and Finance Committee Report and Recommendations</p> <p>Documentation for this item was circulated with the materials prior to the meeting. Ms. Steblyk, Vice-Chair, Audit and Finance Committee (AFC), provided introductory remarks and confirmed that the AFC was satisfied that the financial statements properly reflect the Law Society's financial position for the 2021 fiscal year.</p> <p>Ms. Meade provided a high-level overview of the financial statements, highlighting the variances to budget, the surplus, income, and expenses. In summary, the Law Society is in a healthy financial position and positioned for long-term sustainability. Ms. Meade responded to questions from Benchers about accounts receivable, external funding, and pension costs.</p> <div data-bbox="180 1045 1507 1220"><p>Motion: Steblyk/Melnyk That the Benchers approve the Law Society of Alberta's audited financial statements for the year ended December 31, 2021, as circulated. Carried unanimously</p></div>
5	<p>Bencher Election Rules</p> <p>Documentation for this item was circulated with the materials prior to the meeting. Ms. Miller provided an overview of the history of the election process and the work of the Bencher Election Task Force and Bencher Election Working Group to review the 2020 election business processes and inform improvements for the next election. Ms. Miller highlighted the issues in the current rules and the rationale for the proposed new rules. She confirmed that all feedback and comments from the Policy and Regulatory Reform Committee were incorporated.</p> <p>In response to Benchers' questions and comments, Ms. Miller clarified the following:</p> <ul style="list-style-type: none">- The proposed specified timeline for the nomination period (proposed Rule 10.1 (1)) would provide time for the Law Society to check the nominations. Ms. Miller confirmed that candidates are not permitted to campaign until after the nomination period closes.- It was suggested that, in future, the Law Society might consider areas where the Rules might have discriminatory perceptions. For example, temporary status changes which exclude some lawyers from participating and voting in an election might be reviewed.- It was noted that the election results are of interest to the profession and public and will continue to be published. Ms. Miller clarified that the language in 16 (2) regarding



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	<p>notification of the results is intended to cover candidates who are acclaimed, not only the number of votes cast.</p> <ul style="list-style-type: none">- The proposed shortening of the voting period was discussed, it was noted that most voting occurs during the first and last days of the voting period, and whenever the Law Society sends out a reminder. A scan of other law societies indicated an average of 10 days for paper-based elections. Therefore, the rationale was that a shorter voting period would make sense for an online election. Additionally, the specificity of the voting period timeline in the Rules is intended to enable the Law Society and candidates to prepare and plan.- The District Rule uses municipal boundaries. The proposed Rule for Eligibility was discussed, particularly with respect to the location of a member's residence. However, the Benchers determined no changes were required. <div>Motion: Wasylenko/Ahluwalia That Rules 7 through 17 of the <i>Rules of the Law Society of Alberta</i> and their headings be struck out and replaced with the proposed headings and proposed Rules 7 through 17. Carried unanimously</div>
6	<p>Benchers Vacancy Policy and Rule 27 Amendments</p> <p>Documentation for this item was circulated with the materials prior to the meeting. Mr. Warren presented the proposed amendments. The Benchers expressed their appreciation for the work that went into the proposed revisions to the Benchers Vacancy Policy to respond to concerns expressed by some Benchers about the process.</p> <div>Motion 1: McKinley/Unsworth That the Benchers approve the amendment of the Rule 17 Benchers Vacancy Policy (February 2021) as set out in the Benchers Vacancy Policy (April 2022) as proposed in Appendix B of the meeting materials. Carried unanimously</div> <div>Motion 2: Wasylenko/Feehan That the Benchers approve the amendment of Rule 27(1) as proposed in Appendix A of the meeting materials. Carried unanimously</div>
7	<p>Appeal from Complaint Dismissal Guideline Amendments</p> <p>Documentation for this item was circulated with the materials prior to the meeting. Ms. Miller and Ms. Bains presented the proposal for amendments to the Guideline to clarify and more accurately reflect current practice.</p> <div>Motion: Wasylenko/Johnson</div>



Item	
	<p>That the Benchers approve the amended Appeal from Complaint Dismissals Guideline, as proposed.</p> <p style="text-align: right;">Carried unanimously</p>
8	<p>Acknowledgment of Systemic Discrimination</p> <p>Documentation for this item was circulated with the materials prior to the meeting. Ms. Alleyne presented the proposed Acknowledgment of Systemic Discrimination (the “Acknowledgement”), providing background information and highlighting the goal of the Acknowledgement to respond to learnings from the “My Experience” Project. Ms. Alleyne outlined: the survey results; the drafting and review process, including the roles of the Equity, Diversity and Inclusion Committee (EDIC), the Equity, Diversity and Inclusion Advisory Committee (EDIAC) and the Indigenous Advisory Committee (IAC); and the communications plan. Ms. Alleyne added the following recent updates since the meeting materials were circulated:</p> <ul style="list-style-type: none"> - The draft Acknowledgment was shared with the Courts and positive feedback was received from the Court of Appeal and the Court of Queen’s Bench. - The EDIC and EDIAC provided feedback on the list of supporting resources and, as a result, this list will be shortened on the supporting sections of the website when the Acknowledgment goes live. <p>The Benchers’ comments and discussion focused on the way that the Acknowledgment is presented. The Benchers directed that the text be appropriately highlighted to clarify that the first paragraph leads into the formal Acknowledgment, which starts at the second paragraph.</p> <p>Ms. Osler commended Ms. Alleyne for her work and thanked the members of EDIC, EDIAC, IAC, and the Benchers for their input. Ms. Osler noted that it was important to take time to do the work to ensure the result will meaningfully benefit the organization and the profession.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Amended Motion: Johnson/Wasylenko</p> <p>That the Benchers approve the <i>Law Society of Alberta’s Acknowledgment of Systemic Discrimination</i>, as proposed <i>in the first six paragraphs on pages 127 and 128 of the Diligent Board meeting materials, with the first sentence of paragraph two appropriately highlighted</i> Appendix A.</p> <p style="text-align: right;">Carried unanimously</p> </div> <p><i>The amendment to the above motion is reflected in italics and strikethrough.</i></p>
9	<p>Equity, Diversity and Inclusion Committee Update</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p>
10	<p>Lawyer Competence Committee Update</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p>

	Item
11	<p>CONSENT AGENDA</p> <p>Documentation for this item was circulated with the materials prior to the meeting. There were no requests to remove any items from the consent agenda and the items were approved concurrently.</p> <div style="border: 1px solid black; padding: 10px;"> <p>Motion: Ahluwalia/Petriuk</p> <p>11.1 To approve the February 24, 2022 Public Benchers Meeting Minutes;</p> <p>11.2 That the Benchers approve the amendments to Rules 47(e), 107.2, 153.1 and 159.01, as proposed in Appendix A of the meeting materials; and</p> <p>11.3 That subrule 53(7) and subrule 53(8) be amended as proposed in the meeting materials.</p> <p style="text-align: right;">Carried</p> </div>
12	<p>AGENCY REPORTS</p> <p>The following Agency reports were circulated with the materials prior to the meeting:</p> <ul style="list-style-type: none"> 12.1 Alberta Law Foundation Report 12.2 Alberta Law Reform Institute Report 12.3 Alberta Lawyers' Assistance Society Report 12.4 Canadian Bar Association Report 12.5 Federation of Law Societies of Canada Report 12.6 Legal Education Society of Alberta Report 12.7 Real Estate Practice Advisory Liaison Report
	<p>Other Business</p> <p>There being no further business, the public meeting was adjourned at 12:12 pm.</p>



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Memo

Draft Professional Development Profile for Alberta Lawyers

To	Benchers
From	Barbra Bailey, Manager, Education
Date	April 21, 2022

Proposed Motion

Motion:
That the Benchers approve the Professional Development Profile, as written.

Background

In February 2020, the Benchers of the Law Society of Alberta (the “Law Society”) suspended the mandatory Continuing Professional Development (“CPD”) filing requirement for the profession for the years 2020 and 2021. While the CPD planning tool has remained available for those who want to continue using it, it is not mandatory and no administrative suspensions are taking place during this period. The motion to suspend the filing requirement was supported by a Rule change at the May 14, 2020 Bench meeting that suspended Rules 67.2 and 67.3 (the “CPD Filing Requirement”) for a period of two years.

The suspension of the CPD Filing Requirement was taken in recognition that the Law Society’s CPD program was due for a review and an upgrade. This was, in part, revealed by the results of a survey of recently called lawyers and lawyers who act as mentors and principals conducted in 2019 about the articling experience in Alberta. Among other things, the survey revealed that 51% of responding lawyers in the first 5 years of practice felt only somewhat prepared or unprepared for practice coming out of their articles. There was also a recognition that the old process did not incorporate any accountability or follow up on the plans that were filed. The Benchers determined that there were improvements that could be made, and to do this, the Law Society should build an entirely new approach.

To facilitate the review process, the Law Society engaged consultant Jordan Furlong to undertake a review of the Law Society’s current approach to lawyer competence, including interviews with stakeholders, as well as a review of approaches taken in other jurisdictions. Jordan’s work took place over the late spring and early summer of 2020 and in October 2020, he delivered a report to the Lawyer Competence Committee (“LCC”),



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titled, “Lawyer Licensing and Competence in Alberta” (the “Furlong Report”), setting out a series of recommendations to guide the Law Society’s work in this area. The LCC adopted the recommendations and developed its own recommendations regarding prioritization of the items contained in the Furlong Report, including possible timelines for implementation, taking into account the resources, collaborations and further consultations with the profession that would be required.

In December of 2020, the Benchers approved the recommendations set out in the Furlong Report, along with the LCC’s proposal for prioritization, as set out in a memo to the Benchers from Cori Ghitter dated December 3, 2020.

In adopting the Furlong Report and the proposed plan for prioritization and implementation in December 2020, the Benchers agreed that a new competency framework, one that sets out the desired level of competency in several areas for lawyers at various stages of their career, should form part of the overall work to enhance the Law Society’s approach to CPD. In fact, much of the work contemplated in the Furlong Report would be guided by the foundation laid by a new competency framework for lawyers in Alberta. In recognition of this, the Benchers extended the suspension of the CPD Filing Requirement for an additional year in October 2021, to provide sufficient time to develop the competency framework. The CPD Filing Requirement will be reinstated in 2023, with the first filing deadline taking effect on September 30, 2023.

The process to develop the draft Professional Development Profile for Alberta lawyers (the “Profile”) has spanned the better part of a year, with several steps overseen along the way by the LCC. This memo provides an overview for the Benchers about the project and the Profile, as well as intended uses of the Profile and how it fits into the bigger picture of the Law Society’s CPD program.

Intended Purposes of the Profile

From the outset of this project, the Law Society has followed a number of guiding principles for the Profile, stemming from the Furlong Report, discussions with the LCC and advice from consultants. This section sets out those high-level principles for the intended purpose of the Profile. Further details on intended purposes, as established by the LCC, are set out below in the section titled, “[Concept Specification](#).”

Aspirational Guide

The primary guiding principle for the purpose of the Profile is that it will be used as an aspirational guide for lawyers to help them assess their proficiency in the professional development areas set out in the Profile and to plan their CPD goals and activities accordingly. The Profile is not intended to be used as a checklist of requirements, nor will it be used by the Law Society to assess the competence or proficiency of lawyers in order to maintain licensure or in the disciplinary process.



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The Profile represents the areas of professional development that the Law Society believes are relevant for modern lawyers. It will be up to each lawyer to determine which areas to focus on at various stages of their careers. While the Profile has been drafted with the intention that the contents should be applicable to all lawyers to some degree, they will not all apply equally to all lawyers. Some lawyers will want to pay more attention to some areas than others, depending on their practice context and career stage and some lawyers may never pursue development in certain areas of the Profile. For those areas that they do choose to develop in, the Profile sets out some guidance for what to focus on within that area.

The guidance takes the form of competencies and performance indicators, which illustrate potential areas for professional development in each domain (for further detail, see the section titled, “[Components of the Profile](#),” below). The Profile highlights *what* areas a lawyer might choose to focus their professional development efforts in but does not tell lawyers *how* to improve in those areas; suggestions will be made through the new CPD self-assessment and planning tool, but ultimately the *how* will be left up to each lawyer. Lawyers are invited to assess their own progress in these areas, rather than being assessed by the Law Society.

Beyond Entry Level

The Profile has been developed in recognition that the early years of practice are more focused on entry-level competencies, and that we already have clear sets of entry-level competencies through both the Canadian Centre for Professional Legal Education (CPLED) and the National Committee on Accreditation (NCA). While this Profile can serve as inspiration for lawyers in their early years of practice, it has been developed with the intention of going beyond entry-level competencies.

In keeping with the guiding principles that the Profile should be beyond entry level and aspirational, the Profile does not include baseline requirements for lawyers that are set out in the Code of Conduct. The Profile focuses on the manner in which lawyers set themselves up for success in those areas, rather than focusing on straight compliance with Code requirements, which are requirements for all lawyers once they have been called to the bar and not aspirational.

Progressive Proficiency

The Profile is also intended to acknowledge that each lawyer’s professional development needs and goals will vary as their career progresses and as their practice context changes over time. A proficiency scale will accompany the final Profile to assist lawyers in benchmarking their proficiency in each of the competency areas as they advance through their careers. It will help lawyers measure their current proficiency and prioritize areas they want to work on based on their own circumstances and practice needs.



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Substantive Law

The Profile does not cover substantive law. Rather, the Profile establishes a foundation and identifies competencies that are broadly applicable to lawyers across practice areas. The Law Society has discussed the possibility of developing supplemental guidance for specific, high-criticality areas of law in the future and this may be considered in a future phase of the CPD program. The Profile includes competencies that focus on staying up to date in the lawyer's chosen practice area(s), but generally speaking, the competencies take a broader approach to legal practice skills and knowledge that cuts across practice areas.

Foundation for CPD Program

If approved, the Profile will serve as the foundation for the self-assessment and planning tool the Law Society is developing to enhance the experience of creating a CPD plan. The tool will be structured around the Profile, helping lawyers to focus in on areas of interest and connecting them with learning activities to develop those competencies. The Profile will also guide the development of future CPD programming developed by the Law Society, such as programs aimed at early career-stage lawyers. It will provide guidance to lawyers in general about the areas the Law Society sees as being relevant to effective legal practice in Alberta today.

Components of the Profile

This section explains the various components of the Profile to promote a better understanding of the construction and use of the Profile, as well as the development and validation processes, outlined below.

Title

At the outset of the project, the framework was referred to as a "Competency Profile for Alberta Lawyers." Throughout the course of the project, the Law Society observed that this title caused confusion about the purpose of the document. To reflect the aspirational, guiding nature of the document, the title was changed to "Professional Development Profile for Alberta Lawyers."

Domains

Domains represent the highest level of the structure of the Profile. The domains set out the broad areas in which professional development might be undertaken by lawyers. A reminder here, that the Profile does not include substantive areas of law, but broad areas of knowledge and skill that lawyers practicing in all areas might look to improve.

The Profile contains nine domains, as follows:

1. Legal Practice
2. Professional Conduct



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3. Well-being
4. Lawyer-Client Relationships
5. Professional Contributions
6. Cultural Competence, Equity, Diversity and Inclusion
7. Truth and Reconciliation
8. Practice Management
9. Continuous Improvement

Several different suggestions about how the domains should be sequenced were considered. There was no clear consensus regarding the ideal linear sequencing of the domains, and they appear in the current draft in no particular order. The final, published version of the Profile will include a graphic representation of the domains.

Introductory Domain Statements

These statements, which appear in each domain before the competencies and performance indicators, convey the overall scope and intent of the domain. They are not intended to be exhaustive and, like the rest of the Profile, are intended to be inspirational statements of aspirations for lawyers to work towards.

Competencies

Competencies are areas in which a lawyer might seek to develop professionally within each domain. They are numbered and located in the column on the left in the Profile. The Profile contains 30 distinct competencies, with two to six for each domain. Competencies should be thought of as a menu of options for lawyers to pursue, rather than a checklist.

Performance Indicators

Performance indicators illustrate observable or readily inferable behaviours in the area outlined by the competency. They appear in bulleted lists in the column on the right in the Profile. Together, the performance indicators capture different aspects of the competency and contribute to its full description. There are a total of 129 performance indicators in the Profile, ranging from three to seven for each competency.

Glossary

In drafting the Profile, efforts were made to use plain language wherever possible, to ensure the Profile would be as accessible as possible to a wide array of users. The goals of clarity and accessibility were balanced with the need for current and proper terminology and in some cases, glossary terms were included. The glossary appears at the end of the Profile, with glossary terms highlighted in blue text wherever they are used.



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Overview of Project to Date

Concept Specification

In June 2021, the LCC approved a concept specification for the competency framework, prepared by Principia Assessments, Ltd. (“Principia”), a Calgary-based company. A concept specification is a basic outline for the framework and includes key terminology, purposes and primary use cases for the Profile, major competency elements, and presentation format or style. While it was expected that some perspectives may shift over the course of the project, it was important to achieve working clarity on those high-level items.

In approving the concept specification at the outset of the project, the LCC established a set of guidelines for the project, as follows:

- The intended purposes of the Profile are to:
 - Guide employers and articling principals in developing experiences and practices that support competency development
 - Guide Alberta lawyers in understanding what competencies are associated with safe, effective, and sustainable practice
 - Support Alberta lawyers in their ongoing self-assessment and learning (in the context of continuing professional development)
 - Support development of a professional development program for lawyers in Alberta
 - Articulate a definition of competence to offer guidance for other regulatory and educational purposes
 - Inform legal educators about priorities for learning
 - Support lawyers in developing their professional identity throughout their career
- In addition, the Profile will:
 - Be holistic
 - Demonstrate leadership and innovation
 - Set out the competencies that all lawyers should be able to demonstrate in order to have a safe, effective and sustainable practice after the benefit of a few years of experience
 - Be consistent with (yet not duplicative of) the competency profiles developed by CPLED, the NCA and the Law Society of New Brunswick
 - Align with the Law Society of Alberta’s strategic plan
 - Primarily offer guidance and be a source of inspiration and aspiration for Alberta lawyers
 - Be a “living document” that is expected to evolve and change as the demands of lawyers in Alberta evolve and change



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- The Profile is not intended to:
 - Duplicate entry to practice competencies promulgated by other organizations (i.e., Federation, CPLED)
 - Address knowledge and procedures specific to different areas of legal practice
 - Include every competency that lawyers practising law in Alberta might need
 - Create any obligations or requirements of lawyers practising law in Alberta with respect to any third party
 - Set threshold standards for purposes of discipline

Principia was unable to work on the remainder of the competency framework project and the Law Society sought other consultants to complete the project.

Development Process

In July 2021, the Law Society engaged ACT, Inc. ("ACT") to facilitate the development of a competency profile for Alberta lawyers. ACT is a mission-driven not-for-profit organization based in the U.S. Their Credentialing and Career Services group provides advisory and consulting services to organizations that educate, license and certify individuals in a range of professions. ACT has worked with a number of other organizations in the professional regulation space, including the Federation of Law Societies of Canada, the Canadian Council of Registered Nurse Regulators and the Canadian Council of Veterinary Registrars.

The LCC provided strategic direction in its role as Steering Committee for the project. As such, the LCC was consulted at key decision points in the development process and kept abreast of developments in the process. ACT's work was guided by the parameters set out in the concept specification, as approved by the LCC. In addition, the LCC was tasked with reviewing interim drafts of the Profile, providing direction with respect to the format and contents of a survey of the profession to validate the draft Profile and reviewing the outputs from the validation process in order to sign off on a final draft of the Profile.

ACT's role was to ensure the structure and content of the Profile addressed stakeholder needs and that the development process adhered to best practices of the measurement community. ACT conducted all research and development activities, including facilitating the Task Force process, conducting focus group sessions and designing and implementing the validation survey and analyzing the results.

ACT's methodology included using a volunteer Task Force as the primary drafters of the framework. The Law Society recruited volunteers for this purpose and assembled a Task Force made up of a representative cross section of members of the profession, with regard to practice setting, location, gender and representation of equity-deserving groups among other considerations. Kene Ilochonwu served as a member of the Task Force, as well as a liaison between the Lawyer Competence Committee and the Task Force. Barbra



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Bailey and Rebecca Young participated in the Task Force working sessions to answer questions and offer contributions from the Law Society's point of view.

At its August 2021 meeting, ACT had an initial meeting with the LCC to confirm some assumptions based on the guidelines established in the concept specification and provide an overview of the development process.

ACT and Law Society staff created an initial draft set of domains, taking into consideration the guidance of the LCC, the Law Society's strategic plan and the competency areas recommended in the Furlong Report. Finally, the draft was informed by other frameworks identified in the concept specification as being good models for our work, including those of the Institute for the Advancement of the American Legal System ("IAALS") and the Royal College of Physicians and Surgeons of Canada ("CanMEDS"). The domains were drafted to include issues that have becoming increasingly prominent in the profession and in society, such as well-being, innovation and intercultural competency. They were also drafted to be broad enough so that they could conceivably apply to lawyers in all types of practices settings in some manner.

In September 2021, the LCC approved the draft domains that served as a framework for the Task Force as they began the process of drafting competencies and performance indicators for each domain. The Task Force held its first set of working sessions on September 13 and 17. Those sessions resulted in a rough first draft that was provided to the individual Task Force Members, the LCC and internal LSA staff stakeholders for review and initial comment. The Task Force then held working sessions on October 5, 6 and 13 to incorporate feedback from the reviewers into the document and otherwise make further enhancements to the draft.

At its October 2021 meeting, the LCC reviewed the latest draft of the Profile and provided feedback on elements of the draft that could be clarified. The LCC also approved ACT's plan for peer consultation via a series of facilitated focus group sessions.

Next, ACT facilitated four two-hour focus group sessions for the project, between October 26 and November 4. The focus groups include the Indigenous Advisory Committee, the Lawyer Competence Advisory Committee, the Equity, Diversity and Inclusion Advisory Committee, and an external focus group assembled for the purpose of this project through a call for interest to the profession. The focus groups were asked for general feedback, as well as some targeted feedback as applicable to their subject matter expertise.

The Task Force concluded its work on November 24, after holding its final working sessions to consider the feedback from the focus groups. The Task Force considered all comments from the focus groups, as well as additional feedback sought from subject matter experts in areas where the Task Force felt it could benefit from additional feedback. These included representatives of the Alberta Lawyers' Assistance Society (including a mental health professional), who focused on the well-being domain, and Jennifer Flynn of Principia, to ensure the draft had stayed true to the concept specification. As with the previous review of comments from the LCC and internal stakeholders, many of the



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comments were incorporated into the Profile. Overall, there was a high level of consensus among the Task Force members around the content and organization of the document.

Law Society staff completed a final comparison of the Profile against complaints and claims data that had been provided by the Law Society and ALIA to ensure it addressed areas of high risk.

In December 2021, the LCC reviewed the Task Force's final draft. They suggested a few small revisions to improve the readability and clarity of the document but overall, they approved of the work of the Task Force. At this meeting, the LCC also approved ACT's plan for a validation survey of the Profile, to affirm the relevancy of all aspects of the Profile to Alberta lawyers.

Validation Process

Best practice in survey research is to pilot test the survey instrument and process prior to launch of the survey. The Law Society had recruited 25 volunteers for the pilot test group at the time the Task Force and the external focus group were recruited. Pilot testing took place between January 5 and 16, 2022. The pilot testers took the survey and provided feedback about the clarity of the instructions, rating scales and Profile elements, and commented on the user experience. They were also given the opportunity to provide suggestions on improving the survey. As a result of this feedback, some adjustments were made to improve the clarity and precision of survey questions, as well as the communication around the intended purpose of the Profile.

The survey questions were drafted so as to accurately frame the purpose of the Profile – as an aspirational guide rather than a tool for assessing competency. Respondents were asked to rate each element of the Profile; for domains and competencies, they were asked to rate their importance/relevance to effective legal practice in Alberta today. For performance indicators, they were asked whether they were good examples of how the competency might be demonstrated by Alberta lawyers. The survey also asked about areas of the Profile in which lawyers are most interested in pursuing professional development in the future, which will assist the Law Society in prioritizing resources and other supports for the Profile and the eventual CPD self-assessment and planning tool.

The survey asked questions about respondents' demographic and professional background to enrich the analysis by (1) permitting subgroup analysis of the ratings based on factors such as years of experience and practice setting, and (2) permitting evaluation of the extent to which the respondents' characteristics align with those of the profession as a whole. Finally, respondents were asked about the completeness of the Profile, and to provide any additional comments.

ACT built and hosted the survey on the Qualtrics platform and an invitation to participate was distributed by the Law Society through Constant Contact, its regular eBulletin platform. Two versions of the survey were created (one for competencies, one for performance indicators), and respondents were randomly directed to one version in order



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to reduce the time it took to complete. Both groups saw the full content of the Profile but only rated half of it. To further maximize response rate, LESA and the Law Society donated a free LESA seminar and a draw was done for all those who took the survey.

The final survey was open to the profession from January 24 to February 13. Both active and inactive lawyers were eligible to take the survey but lawyers who had not worked in a legal role within the last five years were asked to opt out, in order to maximize the relevancy of the responses to current practice in Alberta. In accordance with industry practices, ACT completed a power analysis to determine the minimum targeted sample size for the survey, which was 350 responses. There were 370 completed responses when the survey closed.

Law Society staff reviewed the open-ended comments and, in response, made some small adjustments to the language in some parts of the Profile, to clarify their meaning.

The LCC reviewed the survey results at its March 2022 meeting, as well recommendations from ACT about how to interpret the results according to industry practices. After ACT's presentation, the LCC determined that no adjustments to the Profile were necessary and agreed to recommend that the Benchers approve it at the April Bencher meeting.

A full timeline of the steps taken with respect to ACT's methodology is attached as Appendix A. ACT will also make a presentation to the Benchers to describe the development and validation process and the survey findings at the Bencher meeting.

Recommendation

The Profile presented for approval by the Benchers represents the product of a robust development methodology, including eight full days of Task Force meetings, and an iterative development process that included thoughtful consideration of input from internal and external stakeholders. These stakeholders include focus group participants with subject matter expertise in various areas of the Profile, and reviewers with knowledge of the needs and goals of the Law Society (the members of the LCC and key Law Society and ALIA staff).

The 11-member Task Force and the focus groups were selected from the pool of applicants to be as representative of the profession as possible. There were 35 focus group participants in total and a total of 63 subject matter experts were consulted during the process. Finally, the Profile has been validated through a survey of the profession.

As the Steering Committee for the project, the LCC has provided direction throughout the project and has recommended that the Benchers approve the Profile, as written.



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Next Steps

If the Benchers approve the Profile at this meeting, the Law Society will continue to work with ACT to finalize a published version of the Profile that will include a graphic representation of the domains, as well as a proficiency scale to be used in conjunction with the Profile. The proficiency scale can be used by lawyers to measure their proficiency level for each competency and set professional development goals. The scale was developed by Principia for this purpose.

The Law Society will also finalize the rollout plan for the Profile, including the communications plan and educational materials to assist lawyers in using the Profile. Work has begun to develop education and guidance for lawyers on how to engage in reflective practice and self-assess areas that may benefit from further professional development, using the Profile as a guide.

A final package, including all of the above and incorporating Benchers feedback from discussion at the April meeting, will be presented to the Benchers at their meeting in June.

The Profile will be used to inform the development of the CPD self-assessment and planning tool that must be ready to launch July 1, 2023, to assist lawyers in filing their CPD plans by September 30, 2023, when the CPD Filing Requirement will be reinstated. In order to meet that timeline, development of the tool must begin by the fall of 2022.

The Profile will also serve as a foundation to future CPD programming developed by the Law Society, including programs recommended in the Furlong Report for development in the short-term.

Attachments

[Appendix A - Timeline of ACT Project Activities](#)

[Appendix B – Draft Professional Development Profile for Alberta Lawyers](#)



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Appendix A – Timeline of ACT Project Activities

Activity	Date
Internal Stakeholder Focus Group <ul style="list-style-type: none"> 2-hour meeting with Law Society staff to surface perspectives and assumptions 	August 4, 2021
Steering Committee Meeting 1 <ul style="list-style-type: none"> 2-hour meeting to (a) discuss assumptions, (b) review project scope and activities, and (c) obtain feedback and guidance regarding competency profile structure 	August 18, 2021
Task Force Orientation <ul style="list-style-type: none"> 2-hour meeting to overview the project purpose, scope, assumptions, timeline, and competency profile structure 	August 31, 2021
Steering Committee Meeting 2 <ul style="list-style-type: none"> 1-hour meeting to obtain direction regarding competency profile structure 	September 8, 2021
Task Force Meetings 1 and 2 <ul style="list-style-type: none"> Four, 2.5-hour meetings (two meeting per day) to develop initial draft of competency profile including competency statements and performance indicators 	September 13 & 17, 2021
Post-meeting Review <ul style="list-style-type: none"> Email based review and comment by individual Task Force, Steering Committee and Internal Stakeholder Focus Group members and compilation of results by ACT 	September 22 - 29, 2021
Task Force Meeting 3 <ul style="list-style-type: none"> Four, 2.5-hour meetings to revise initial draft of competency profile 	October 5, 6 & 13, 2021
Steering Committee Meeting 3 <ul style="list-style-type: none"> 2-hour meeting to obtain feedback on revised competency profile and review plans for conducting focus groups 	October 20, 2021
Focus Group Meetings Stakeholder consultation re: competency profile form & content <ul style="list-style-type: none"> Equity, Diversity and Inclusion Advisory Committee Lawyer Competence Advisory Committee Indigenous Advisory Committee Competency Development Focus Group 	October 26 – November 5, 2021



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Task Force Meeting 4 <ul style="list-style-type: none"> Four, 2.5-hour meetings to refine the revised competency profile based on Focus Group feedback 	November 19, 22 & 24, 2021
Steering Committee Meeting 4 <ul style="list-style-type: none"> 90-minute meeting to approve competency profile elements and plans for survey to validate profile 	December 8, 2021
Develop Validation Survey <ul style="list-style-type: none"> Lay out survey on delivery platform 	December 13 - 20, 2021
Pilot Test Validation Survey <ul style="list-style-type: none"> 25 lawyers complete & comment on survey (Jan 5-16) Review pilot results and finalize survey (Jan 17-21) 	January 5 - 21, 2022
Survey Administration <ul style="list-style-type: none"> Implement survey with Alberta lawyers 	January 24 - February 13, 2022
Perform Survey Data Analysis <ul style="list-style-type: none"> Perform data cleaning and quantitative and qualitative data analysis 	February 13 - March 11, 2022
Steering Committee Meeting 5 <ul style="list-style-type: none"> 2.5-hour meeting to discuss survey results, explore validation thresholds, and recommend final form and content of profile 	March 16, 2022
Benchers Meeting <ul style="list-style-type: none"> Profile presented and discussed at meeting 	April 21, 2022
Prepare Technical Report <ul style="list-style-type: none"> ACT prepares report to document process and outcomes of project 	April - May 2022
Prepare and Format Profile <ul style="list-style-type: none"> Law Society prepares profile for publication 	April - May 2022
Benchers Meeting <ul style="list-style-type: none"> Published Final Draft of Profile and plan for accompanying resources presented at meeting 	June 3, 2022



Appendix B – Draft Professional Development Profile for Alberta Lawyers

1 Legal Practice	
Lawyers can accurately identify legal issues. Lawyers employ research, analytical and problem-solving skills to formulate clear and appropriate legal strategies. Lawyers are effective communicators and advance their clients' interests within their practice-specific contexts.	
Competency	Performance Indicators
1.1 Critically evaluate a matter	<ul style="list-style-type: none"> • Use appropriate and current substantive and procedural law applicable to one's own practice area(s) • Accurately identify relevant facts, legal issues and informational gaps or discrepancies • Gather with due diligence all relevant information • Research, interpret and correctly apply common law, statutes, regulations, rules, procedure, policy and theory to a legal issue • Seek relevant expertise on a matter when needed • Prudently assess possible courses of action, by considering the range of potential outcomes and weighing the risks of each • Create legal strategy appropriate and proportionate to client needs and means
1.2 Communicate effectively	<ul style="list-style-type: none"> • Express concepts clearly, precisely, logically, accurately and concisely • Use plain language where appropriate • Adapt communications appropriately to different contexts, purposes and audiences (courts, clients, lawyers, enumerated groups, other individuals)
1.3 Advance client interests	<ul style="list-style-type: none"> • Present well-prepared, accurate and appropriate legal argument and analysis • Use persuasive communication • Adapt legal strategy or approach and pivot as circumstances change • Take steps to protect client interests



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2 Professional Conduct

Lawyers are honest, trustworthy and act with integrity. Lawyers execute good judgement and adhere to high standards of behaviour and accountability – to their clients, co-workers, colleagues, members of the legal profession, the courts, tribunals and the Law Society.

Competency	Performance Indicators
2.1 Act ethically	<ul style="list-style-type: none"> • Accurately recognize, anticipate and resolve ethical issues that arise in legal practice • Consistently and decisively make informed and reasoned decisions about ethical issues • Implement practices and procedures that ensure individual and organizational compliance with requirements related to ethical and indemnity obligations, including case law, statutory requirements, the Code of Conduct and Rules of the Law Society of Alberta • Promptly consult with others (e.g., Practice Advisors, colleagues) when it is unclear how to act ethically in a given situation
2.2 Demonstrate good character	<ul style="list-style-type: none"> • Continuously demonstrate integrity, honesty and trustworthiness • Consistently practice civility and respect in interactions with others • Act on a good-faith basis when dealing with clients, co-workers, colleagues, the legal profession and the public
2.3 Use sound judgement	<ul style="list-style-type: none"> • Make logical decisions based on all available information and potential outcomes • Seek out additional information when there are gaps in knowledge • Promptly recognize when tasks or matters fall outside one's own competence and access appropriate sources when assistance or referral is required



3 Well-being

Lawyers make their own physical, mental and emotional well-being a priority in order to ensure their capacity to practice competently. They manage the stresses of practice in the ways that are effective for their individual circumstances in order to provide high-quality legal services and promote healthy workplaces. Lawyers support and foster others' well-being.

Competency	Performance Indicators
3.1 Build resilience	<ul style="list-style-type: none"> • Develop flexibility and adaptability in the face of adversity or stress • Mitigate effects of stress and trauma, accessing supports as needed • Approach challenges as opportunities to learn, grow and improve, where appropriate
3.2 Maintain personal health	<ul style="list-style-type: none"> • Practice physical, mental, and emotional self-care and health management • Strive to consistently use healthy coping skills • Identify and seek out resources for support for personal problems that might interfere with one's own ability to practice
3.3 Demonstrate self-awareness	<ul style="list-style-type: none"> • Recognize one's own stressors and how they manifest • Recognize impact of one's own behaviours on others' well-being • Take concrete steps to ensure work-life challenges do not have an adverse impact personally and professionally
3.4 Support well-being of others	<ul style="list-style-type: none"> • Encourage adoption of healthy coping skills and stress management practices • Demonstrate empathy toward others in professional settings • Strive to foster optimal health and well-being of others in professional settings • Recognize signs of distress/struggle in others • Assist others in obtaining supports for their well-being



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4 Lawyer-Client Relationships

Lawyers assess lawyer-client relationships, both internal and external, for suitability and clearly establish the scope of the relationships. Lawyers communicate effectively with their clients and connect with them in a professionally appropriate manner. Lawyers are mindful of and attentive to the entirety of their clients' circumstances and support clients in pursuing their goals, priorities and broader interests.

Competency	Performance Indicators
4.1 Determine suitability of lawyer-client relationships	<ul style="list-style-type: none"> • Accurately assess and reassess risks associated with potential and existing client relationships • Evaluate if personal considerations might impact lawyer-client relationships • Provide appropriate referrals when it is in the client's best interests
4.2 Establish lawyer-client relationships	<ul style="list-style-type: none"> • Clarify when providing general legal information versus legal advice which would trigger a client relationship • Listen actively to understand client expectations, build trust and foster exchange of information • Accurately identify who is authorized to give instructions and receive information • Obtain, clarify and document client instructions and confirm course of action • Clearly communicate the terms and limits of the lawyer's scope of work/retainer for the client, including fees, and act accordingly
4.3 Engage in ongoing communication with clients	<ul style="list-style-type: none"> • Proactively and regularly communicate to keep clients informed • Respond to client communications in a timely manner • Manage client expectations • Communicate respectfully and empathetically
4.4 Foster collaborative and trusting lawyer-client relationships	<ul style="list-style-type: none"> • Candidly and thoroughly inform clients of their options and potential outcomes • Ensure clients understand information and advice provided • Empower clients to act on own behalf or seek out resources when appropriate • Consider the entirety of each client's circumstances in all aspects of a matter



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5 Professional Contributions

Lawyers foster professional relationships with their colleagues, opposing counsel, courts and tribunals, the Law Society, other professional groups, pro bono organizations, and generally support the administration of justice and enhancements to the legal system. Lawyers strive to strengthen the profession and, where possible, promote and improve access to legal services and access to justice.

Competency	Performance Indicators
5.1 Foster collegiality and civility in the legal profession	<ul style="list-style-type: none"> • Demonstrate professional courtesy, honesty, candour, respect and civility in dealings with clients, colleagues, the courts, tribunals and others • Work constructively with others to resolve issues in a timely and cost-effective manner when appropriate • Acknowledge and consider other viewpoints, and express any disagreement thoughtfully and respectfully • Work collaboratively with colleagues within the lawyer's work environment • Mentor peers and/or junior colleagues
5.2 Enhance the administration of justice	<ul style="list-style-type: none"> • Actively volunteer with or otherwise support professional associations and community organizations • Promote a clear and accurate understanding of the legal profession to others (e.g., the media, the public) • Foster dialogue between lawyers and the judiciary
5.3 Advance access to legal services and access to justice	<ul style="list-style-type: none"> • Recognize how access to justice issues impact the justice system • Enhance access to legal services for everyone • Provide pro bono services and support pro bono organizations • Ensure matters proceed effectively and efficiently • Collaborate with others to make systemic improvements to increase access to justice



6 Cultural Competence, Equity, Diversity and Inclusion

Lawyers have an awareness of the unique experiences of the [enumerated groups](#) set out in the [Alberta Human Rights Act](#). They implement strategies to meet the specific needs of individuals from these groups to achieve culturally or community-appropriate services and outcomes. Lawyers treat all people with dignity and respect and take active steps to support and advocate for members of [enumerated groups](#).

Competency	Performance Indicators
6.1 Build intelligence related to cultural competence, equity, diversity and inclusion	<ul style="list-style-type: none"> • Develop understanding of enumerated groups as set out by the Alberta Human Rights Act • Develop self-awareness of how one's own conscious and unconscious biases affect perspectives and actions • Reduce one's own biases through continual education, self-reflection and inquiry • Recognize how systemic inequalities and barriers affect individuals and groups • Develop an awareness of the effects of individual and systemic trauma • Consider how multiple points of discrimination interact to create barriers for individuals
6.2 Incorporate equity, diversity and inclusion in practice	<ul style="list-style-type: none"> • Practise anti-discrimination and anti-racism • Ensure that services are accessible to all • Develop and promote a deeper understanding of sexual orientation and gender identity • Take action to accommodate visible and invisible disabilities • Implement strategies to mitigate trauma • Take action to dismantle systemic inequalities and barriers
6.3 Champion enumerated groups in professional activities	<ul style="list-style-type: none"> • Advance inclusion through intentional, positive and conscious efforts • Respect the diverse cultures, perspectives, backgrounds, interests and goals of clients, co-workers and colleagues • Adapt communication for enumerated groups as applicable • Advocate for those facing systemic barriers to accessing what they need or deserve • Advocate for hiring, promotion and retention in a manner consistent with enhancing diversity, equity and inclusion • Promote a healthy, safe and inclusive workplace • Increase awareness of qualifications of internationally trained lawyers



7 Truth and Reconciliation

Lawyers are integral to the development, interpretation, and application of laws. Alberta lawyers understand the historical and current impacts that Canadian law has on Indigenous Peoples (First Nations, Inuit and Métis) in Canada and participate in reconciliation.

Competency	Performance Indicators
7.1 Strengthen understanding of the truth regarding the experience of Indigenous Peoples in Alberta and Canada	<ul style="list-style-type: none"> • Recognize the history and diversity of various Indigenous communities of Alberta and Canada • Understand the terminology used to describe Indigenous Peoples and its significance at law • Acknowledge the impacts of colonization and systemic discrimination • Respect the differences among traditional lands, Treaty territories and Métis Settlements in Alberta • Acknowledge the discriminatory practices that have been applied to Indigenous Peoples in Canada • Understand the history of Indian Residential Schools and day schools and their impact on the well-being of Indigenous Peoples • Recognize the historical and ongoing impacts of Canadian and Alberta law on Indigenous Peoples
7.2 Demonstrate support for reconciliation with the Indigenous Peoples of Canada	<ul style="list-style-type: none"> • Apply Calls for Action and Calls for Justice applicable to Indigenous Peoples • Acknowledge and respect the traditional Indigenous territory in which the lawyer practises or lives • Incorporate Indigenous principles, laws, culture and perspectives when developing strategies for representing Indigenous clients • Recognize that Indigenous Peoples have their own restorative justice systems and use them where appropriate • Enhance access to restorative justice initiatives and options available in communities



8 Practice Management

Lawyers employ a range of strategies and skills to support the delivery of efficient and effective legal services and internal processes. Lawyers manage and mitigate risks to their practice and use technology and innovation to improve legal services.

Competency	Performance Indicators
8.1 Use effective time management and organization skills	<ul style="list-style-type: none"> • Anticipate and prioritize case, project and workload needs • Verify that new assignments are within one's own capacity • Perform all work in a timely and cost-effective manner • Fully utilise practice management tools and software (e.g., checklists, diary, conflict check system) • Delegate tasks that can appropriately and efficiently be performed by others
8.2 Manage files effectively and securely	<ul style="list-style-type: none"> • Secure files to prevent unauthorized access • Use file management systems that support efficient file tracking, retrieval, retention and destruction • Adhere to privacy and confidentiality requirements • Ensure matters are thoroughly and clearly documented
8.3 Use effective accounting and billing procedures	<ul style="list-style-type: none"> • Ensure timely and regular billing practices in accordance with retainer agreements or other applicable billing guidelines • Implement practices and procedures to ensure compliance with Law Society reporting and accounting requirements applicable to practice • Access available resources related to billing and accounting when clarification or advice needed
8.4 Supervise and manage effectively	<ul style="list-style-type: none"> • Provide required information and relevant instructions for efficient delegation • Ensure quality of work produced by others • Provide necessary and useful support and direction to others through training and constructive feedback • Manage conflict between individuals and groups in practice and model appropriate conflict resolution behaviours • Seek and apply tools to build and enhance management skills



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8.5 Assess and manage practice risks	<ul style="list-style-type: none"> Implement processes for regular, thorough and honest assessment of practice risks Create plans and strategies to mitigate identified practice risks Engage in business continuity and succession planning
8.6 Demonstrate technological competence	<ul style="list-style-type: none"> Evaluate risks and benefits of potential technological innovations to clients and to one's own practice Advocate for the timely and appropriate adoption of technology to increase efficiency and effectiveness of legal practice Use technology, the internet and digital platforms responsibly

9 Continuous Improvement	
Lawyers are committed to continuous improvement of legal service delivery and to life-long learning, with the goal of providing the highest quality legal services.	
Competency	Performance Indicators
9.1 Commit to continuous improvement in the provision of services	<ul style="list-style-type: none"> Proactively seek feedback and input from clients and others to identify aspects of service that could be enhanced Demonstrate adaptability and openness to new ideas Foster innovation and development of best practices Develop solutions to overcome obstacles to implementation of best practices
9.2 Cultivate a growth mindset	<ul style="list-style-type: none"> Engage in intentional self-reflection, goal setting, and professional development planning Continuously identify opportunities for professional development and improvement Engage in work or training that will expand skills, knowledge or responsibilities Encourage and support colleagues in undertaking new learning and development



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Competency Framework Glossary

Access to legal services: While access to justice is a commonly used phrase, it applies primarily to access to the court system. Access to legal services includes access to all types of services a lawyer might provide, some of which do not involve the courts. Access refers to more than affordability; it includes considerations relating to geographic location, language, and health, among others.

Business continuity planning: The process of creating systems of prevention and recovery to deal with potential threats to a company. In addition to prevention, the goal is to enable ongoing operations before and during execution of disaster recovery.

Enumerated groups: Groups of people who share identities based on the characteristics set out in the *Alberta Human Rights Act*, which states that all persons are equal in: dignity, rights and responsibilities without regard to race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation.

Growth mindset: The belief that one's talents can be developed through hard work, good strategies, and input from others. Individuals who adopt more of a growth mindset are more likely to embrace lifelong learning, put in more effort to learn, view feedback as an opportunity to learn, believe failures are just temporary setbacks, willingly embrace challenges and view others' success as a source of inspiration.

Healthy coping skills: Constructive or positive ways we manage internal and external stress, and which are associated with good mental health. Some examples may include seeking out social support, establishing boundaries, practising gratitude, engaging in a hobby, getting enough sleep, exercising, spending time outdoors and journaling.

Practice risks: Threats that impact a lawyer's reputation, opportunity, operating costs or ability to carry on business. Examples of risks in legal practice may include but are not limited to ethical complaints, insurance claims, cyber-attacks, fraud, theft, staffing issues, unexpected life events and disasters.

Resilience: The process of adapting well in the face of adversity, trauma, tragedy, threats, or significant sources of stress, such as family and relationship problems, serious health problems, or workplace and financial stressors.



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Memo

Proposed Acknowledgment of Systemic Discrimination

To	Benchers
From	Susannah S. Alleyne, Equity, Diversity & Inclusion Counsel and Equity Ombudsperson
Date	April 21, 2022

Proposed Motions

MOTION 1: That the Benchers approve the *Law Society of Alberta's Acknowledgment of Systemic Discrimination*, as proposed in [Appendix A](#).

Background/Introduction

In September 2020, the Law Society of Alberta launched the "My Experience" Project. This Project acknowledged that issues of systemic racism and discrimination affecting BIPOC communities had been highlighted in Canada and around the world in recent months. The Project invited Alberta lawyers, internationally trained lawyers (including those not yet called to the bar), articling students and law students ("lawyers and students") to submit stories about their own experiences where [racial discrimination or stereotyping impacted their legal career](#).

After the wrap-up of the ["My Experience" Project](#) in summer 2021, an analysis of the submissions was completed. That analysis identified three main areas barriers faced by BIPOC lawyers and students [discriminatory culture, biased employment practices and poor representation and distribution of Black, Indigenous and People of Colour \(BIPOC\) within the profession](#).

In November 2021, the Equity, Diversity and Inclusion Committee (EDIC) met to discuss potential responses to what we learned from the Project. The EDIC decided to draft an Acknowledgment of Systemic Discrimination ("Acknowledgment") within the profession. The intention is that this Acknowledgment would be distributed to the profession and live on the Law Society's website along with:

- a high-level overview of some of the Law Society's equity, diversity and inclusion (EDI) work;
- resources on systemic discrimination;
- a dedicated email address for further inquiries (diversity@lawsociety.ab.ca);
- contact information for the Equity Ombudsperson and for ASSIST; and



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- contact for members of the media with inquiries about the Acknowledgment.

During the discussions about drafting an Acknowledgment, the EDIC indicated a few important points that should be considered in the drafting stages:

- that the Acknowledgment have an overall positive tone and highlight some of the work the Law Society has already done in addressing EDI issues;
- that the Acknowledgment does not make any promises about specific future steps that will be taken, while reiterating the Law Society's commitment to EDI work; and
- that the Acknowledgment not read as an apology or statement of regret.

Several drafts of the Acknowledgment were circulated between the EDIC, the EDIAC and the IAC for review between January and March 2022. The final version of the Acknowledgment incorporates all of this feedback. The timeline of review is detailed further below.

What Problem are we Trying to Solve?

While other projects such as the Exit Surveys and the Articling Program Assessment Surveys have also informed our work on advancing EDI, the "My Experience" Project was unique in highlighting individual and collective experiences of BIPOC lawyers and students as well others who wrote in about other forms of discrimination and stereotyping that they faced within the profession. The impact of this project was the initial catalyst for this Acknowledgment.

The Law Society believes that informing the profession of our work in direct response to the "My Experience" Project increases our credibility that we are tackling issues of racial discrimination and stereotyping within the profession, and it keeps us accountable for acting after we have listened and learned. In some of the submissions, participants expressed skepticism around whether sharing their stories would result in any change. The development and release of such an Acknowledgment is one of several tangible action items that evidences the Law Society's commitment to its EDI work, and it serves to signal those who bravely shared their stories with their peers that they have been heard. Taking such action is consistent with the Law Society's listen, learn and act approach in addressing barriers such as discrimination and stereotyping within the profession.



Review of Drafts by the Equity, Diversity and Inclusion Committee (EDIC), the Equity, Diversity and Inclusion Advisory Committee (EDIAC) and the Indigenous Advisory Committee (IAC)

The Equity, Diversity and Inclusion Committee (EDIC) reviewed an initial draft (draft #1) of the Acknowledgment on January 12, 2022. They offered several suggestions to improve the tone and content of the Acknowledgment.

The EDIC's suggested changes were incorporated into a draft (draft #2). Draft #2 was reviewed by the Equity, Diversity and Inclusion Advisory Committee (EDIAC) on February 2, 2022. Overall, the EDIAC thought the draft was well-crafted and they offered several points for the EDIC's consideration.

On February 10, 2022, the EDIC reviewed a red-lined version (draft #3) of the Acknowledgment showing what the document would look like if most of the EDIAC's suggestions were incorporated. The EDIC provided a lot of helpful feedback on the red-lined Acknowledgment and thought that the previous versions with some minor changes would capture the intended message and retain the desired tone.

The EDIC's feedback from the February 10th meeting was incorporated into the draft Acknowledgment that the Indigenous Advisory Committee (IAC) reviewed (draft #4) on March 14, 2022. The IAC provided valuable feedback on the hopefulness of the Acknowledgment and the validation it provided to the individuals who made submissions. They also provided further feedback on tone and ensuring the visibility of the unique Indigenous experiences in Canada within the resources that would accompany the Acknowledgment.

All of the feedback above was incorporated into the final draft (draft #5) of the Acknowledgment which was reviewed by the EDIC on March 31, 2022. At that meeting the EDIC unanimously passed a motion to recommend that the Benchers approve the Acknowledgment of Systemic Discrimination.

A final draft of the Acknowledgment is attached at [Appendix A](#). Since the EDIC's decision to recommend that the Benchers approve the Acknowledgment only the following technical corrections have been made:

- the word "profession" or the phrase "our profession" was replaced with **legal profession** for consistency; and
- at paragraph 2, sentence #2 previously began with "The Law Society's core purpose is an ..." and it now reads "**The Law Society views its core purpose as an ...**" to ensure that it mirrors the language used in our [Regulatory Objectives](#) (page 1, paragraph 2 of Regulatory Objectives).

Also included at Appendix A are the [supporting sections](#) that would accompany the Acknowledgment on the webpage. These sections are provided for context only and the



final titles and language of the sections, as well as the final list of resources will be determined by our Communications department. The *Moving Forward* section is the high-level overview of our ongoing and future work to tackle barriers within the Law Society, the profession and the justice system created by systemic discrimination. The *Resources* section includes various resources on systemic discrimination and its impacts on a variety of equity-deserving groups represented within our profession. The *Questions* sections provides contact information for those with inquiries about our EDI or those who may need further supports (i.e., contact information for the Equity and ASSIST). The *Media* section directs members of the media who may have questions about our release of the Acknowledgment to our Communications department. Since the March 31st EDIC meeting the only change that has been made to the supporting sections is the updating of the Resources on Systemic Discrimination.

Discussion

1. Purpose of the Acknowledgment

The purpose of this document is to acknowledge the existence and impact of systemic discrimination within our organization, within the legal profession and within the broader justice system and to reiterate our commitment to working to build a more diverse, equitable and inclusive profession. Tone and wording are important, in order to convey the message of the Acknowledgment effectively and with sincerity.

This is not an apology or statement of regret – although we realize that this does not mean that some lawyers may not feel regret about the existence and perpetuation of inequity within the profession.

This is not a promise to eradicate discrimination, but rather, a commitment to work remove the barriers created by discrimination such as racism and bias.

2. Specific language within the Acknowledgment

The Acknowledgment recognizes the existence and the impact of systemic discrimination within the justice system. For the purposes of this document, the term justice system is used broadly, and it is meant to include the Law Society and the legal profession. The justice system also includes the Courts and other facets of the justice system (i.e., Tribunals, law enforcement, etc.). While the Law Society is not an arm of the justice system in the traditional sense, like the Courts for example, we are the organization that serves as the gatekeeper to the legal profession and we regulate those operating as lawyers within that system. Our work as a regulatory body directly impacts the function of that system as it relates to the provision of legal services. Where the terms *Law Society* or *legal profession* are used alone or in addition to the term justice system, they are still meant to be read as part of the broader justice system. Where the term *justice system* is used alone or in conjunction with the terms *Law Society* or *legal profession*, it is still meant to encompass the Law Society and the legal profession as well as other parts of the justice system.



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Within the Acknowledgment the term systemic discrimination is defined broadly. While the “My Experience” Project focused on racial discrimination and stereotyping, we wanted this Acknowledgment to be as inclusive as possible and to speak to the systemic barriers faced by those from all equity-deserving groups represented within the legal profession.

3. Communications Plan & Key Messaging for Benchers

If the Acknowledgment is approved, our Communications department has prepared a communications plan that will include key messaging for the Benchers in anticipation of feedback and questions that members of the Board may receive directly.

The supporting sections for the webpage below have been provided for context only. Our Communications department may make further changes to the wording of those supporting sections as well as to the final list of resources that is included in the initial launch.

Conclusion

The goal of this Acknowledgment is to directly respond to what the Law Society learned from the “My Experience” Project. We asked lawyers and students to share their experiences of racial discrimination and stereotyping with us. We listened and shared their experiences with the profession and made them accessible to the public. Now, we need to demonstrate to the profession that we are taking action to address [the discriminatory culture, the biased employment practices and the poor representation and distribution of Black, Indigenous and People of Colour \(BIPOC\) within the profession](#) revealed through those shared experiences and that our organization is committed to continuing its important EDI work.

Respectfully submitted,

Susannah S. Alleyne

EDI Counsel and Equity Ombudsperson, Law Society of Alberta



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Appendix A – Acknowledgment & [Supporting Sections for Webpage](#)

The Law Society of Alberta's Acknowledgment of Systemic Discrimination

In the Fall of 2020, the Law Society of Alberta invited lawyers, articling students, law students and internationally trained lawyers (including those not yet called to the bar) to share their experiences of racial discrimination and stereotyping with us. Those who bravely shared their stories were also a voice for some who could not speak. Each submission impacted our organization and the legal profession more broadly.

The Law Society of Alberta acknowledges the existence and impact of systemic discrimination within the justice system, including within the Law Society and the legal profession. The Law Society views its core purpose as an active obligation and duty to uphold and protect the public interest in the delivery of legal services. We do this through our regulatory objectives, one of which is to [promote equity, diversity and inclusion in the legal profession and in the delivery of legal services](#).

When we use the term systemic discrimination, we mean policies, procedures and practices within systems and institutions that result in disproportionate opportunities or disadvantages for people with a common set of characteristics such as age, culture, disability, gender, race, religion, sexual orientation, and/or socio-economic status. Systemic discrimination functions due to some of the inequitable principles historically embedded in our systems and institutions. Even if no individual members of the justice system engage in intentional discriminatory behaviour, the inequity embedded within the system still exists and results in disproportionate harmful impacts to those who are marginalized.

We recognize that systemic discrimination goes against principles of fairness that the legal profession values and upholds. Acknowledging that systemic discrimination exists within the Law Society, the legal profession and the justice system is a step towards improving how we protect the public interest and fulfill our regulatory objectives. Acknowledging the impact of systemic discrimination allows us to meaningfully continue the work of making the legal profession more equitable, increasing diversity and promoting inclusion. Where systemic discrimination manifests in policies, procedures and other work of the Law Society, we will identify this and address it.

The Law Society has made efforts to address issues in the legal profession and the justice system arising from historical, deep-rooted inequities. We know that many lawyers are committed to equity, diversity and inclusion in the legal profession and are taking active steps to promote those ideals. However, through initiatives such as our Exit Surveys (2005 – 2010), the [Articling Program Assessment Survey](#) (2019), and the ["My Experience" Project](#) (2020-2021), we have heard the voices of those in the legal profession suffering from the disproportionate harmful impacts of systemic discrimination. We recognize and accept the need to take [further steps](#) to address systemic discrimination within the Law Society, the legal profession and the justice system.



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The Law Society remains committed to reducing barriers created by racism, bias, and discrimination, in order to affect long-term systems changes within our legal culture. We are committed to continuing our efforts to learn, to listen, to act and to lead Alberta's legal profession by example. In collaboration with the legal profession, stakeholders, and justice system partners, the Law Society will continue to work diligently towards building a more diverse, equitable and inclusive legal profession for all.

Supporting Sections for the Webpage

Moving Forward

As part of our commitment to take further steps to address systemic discrimination, the Law Society will be leading by example. We have already started this work by ensuring that our Benchers participated in training focused on unconscious bias and centering equity in their governance and decision-making roles; and, by mandating that lawyers complete Indigenous Cultural Competence training through The Path.

Throughout 2022, Law Society, CPLED and ALIA executive leaders and staff will also participate in similar training that will be tailored to incorporate department-specific material. The Law Society will continue to offer education and resources on systemic discrimination internally and we will continue to update this page with new projects and [resources](#).

The Law Society will continue to work on a variety of projects around gathering equity, diversity and inclusion data, supporting vulnerable members of the profession, making our conduct proceedings more inclusive and collaborating with stakeholders to tackle systemic barriers to inclusion and respond to the [Truth and Reconciliation Commission's Call for law societies](#). The Law Society will also continue to offer complimentary workshops on discrete issues, such as cultural competence, to the profession. Through ongoing actionable work in this area, [the Law Society will continue to lead a profession that is representative of the public it serves](#).

Resources on Systemic Discrimination

Below are resources on understanding systemic discrimination, its various forms, its impact on different communities and how lawyers can combat its harmful impacts. This page will be updated periodically.

The information in these materials is believed to be reliable; however, the Law Society of Alberta does not guarantee the quality, accuracy, or completeness of the information provided. Views and opinions expressed in these materials are those of the author(s). These materials are provided as a reference point only and should not be relied upon as being inclusive of the law. Law Society is not responsible for any direct, indirect, special, incidental or consequential damage or any other damages whatsoever and howsoever



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caused, arising out of or in connection with the reliance upon the information provided in these materials.

We invite our members to share resources that they have found helpful with us by sending them to diversity@lawsociety.ab.ca.

Indigenous Experiences

[“But I Was Wearing a Suit” Mini Documentary](#)

[Indigenous Cultural Competency Education – Law Society of Alberta](#)

[National Inquiry into Missing and Murdered Indigenous Women and Girls](#)

[Royal Commission on Aboriginal Peoples](#)

[Truth and Reconciliation Commission of Canada](#)

[Why Is Indigenous Specific Training on Anti-Racism and Unconscious Bias Important?](#)

Women’s Experiences

[Canadian Women's Foundations The Facts: Gender Equality and Gender Justice](#)

[The Power Gap](#)

[Walking out the Door - The Facts, Figures and Future of Experienced Women Lawyers in Private Practice](#)

[Women in Law \(Quick Take\)](#)

[Women in the Workplace 2021](#)

Systemic Racism

["But I Look Like a Lawyer" Documentary](#)

[CBA National - In their shoes](#)

[From Discrimination to Systemic Racism: Understanding Societal Construction](#)

[What systemic racism in Canada looks like](#)

2SLGBTQ+

[Egale Research Hub](#)

[History of Canadian Pride](#)

[Lesbian, Gay, Bisexual, Trans & Queer identified People and Mental Health](#)



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Disability

[Disability in Canada: Facts and Figures](#)

[Disability Rights Movement in Canada](#)

[Invisible Disabilities in the Workplace](#)

Guides and Toolkits

[AHRC Duty to Accommodate Human Rights Guide](#)

[Anti-Racism Education for Legal Professionals \(On-Demand\)¹](#)

[Disability Rights - Online Training](#)

[Guide for Lawyers Working with Indigenous Peoples](#)

[Guide to Accessibility Planning for Law Firms](#)

[Harvard Implicit Association Test](#)

[How Lawyers Can Be Good Allies: The Principles of Allyship](#)

[How to mitigate systemic discrimination in law firms](#)

[Increasing your IQ \(Indigenous Quotient\)](#)

[Respectful Workplace Model Policy – Law Society of Alberta](#)

[Truth and Reconciliation Toolkit for Firms](#)

Questions?

If you have questions about our work in this area, please contact
diversity@lawsociety.ab.ca.

If you are a lawyer, articling student, law student or legal staff and you have questions about discrimination and harassment in the workplace, please contact
EquityOmbudsperson@lawsociety.ab.ca.

If you require counselling or support, please contact [ASSIST](#).

Media contact:

communications@lawsociety.ab.ca

¹ A LESA account is required but, the course is complimentary.

Approved Benchers Public Minutes

Public Minutes of the Five Hundred and Fifth Meeting of the Benchers of the Law Society of Alberta (the “Law Society”)

October 1, 2021

Videoconference

8:30 am

ATTENDANCE	
Benchers:	<p>Darlene Scott, President Ken Warren, President-Elect Sony Ahluwalia Ryan Anderson Lou Cusano Ted Feehan Corie Flett Elizabeth Hak Bill Hendsbee Kene Ilochonwu Cal Johnson Jim Lutz Barb McKinley Bud Melnyk Sandra Petersson Stacy Petriuk Deanna Steblyk Margaret Unsworth Moirá Váně Grant Vogeli Cora Voyageur Louise Wasylenko</p>
Executive Leadership Team:	<p>Elizabeth Osler, CEO and Executive Director Cori Ghitler, Deputy Executive Director and Director, Policy and Education Nancy Carruthers, General Counsel and Director, Regulation Nadine Meade, Chief Financial Officer Andrew Norton, Chief Information Officer and Director, Business Operations</p>



ATTENDANCE

	David Weyant, President and CEO, Alberta Lawyers Indemnity Association ("ALIA")
Staff:	<p>Sharon Allard, Executive Assistant to the Deputy Executive Director and Director, Policy and Education</p> <p>Susannah Alleyne, Equity, Diversity & Inclusion Counsel</p> <p>Barbra Bailey, Manager, Education</p> <p>Nancy Bains, Tribunal Counsel and Privacy Officer</p> <p>Catherine Bennett, Executive Assistant to the Executive Director</p> <p>Colin Brandt, Senior Communications Advisor</p> <p>Colleen Brown, Manager, Communications</p> <p>Bernadette Charan, Manager, Trust Safety, Finance</p> <p>Ruth Corbett, Governance Administrator</p> <p>Shabnam Datta, Manager, Policy</p> <p>Kate Fiori, Governance Assistant</p> <p>Jennifer Freund, Policy & Governance Counsel</p> <p>Sharon Heine, Senior Manager, Regulation</p> <p>Tina McKay, Senior Manager, Business Operations</p> <p>Amanda Miller, Policy Counsel</p> <p>Stephen Ong, Business Technology</p> <p>Christine Schreuder, Governance Coordinator</p> <p>Chioma Ufodike, Senior Manager, Trust Safety and Compliance, Finance</p> <p>Rebecca Young, Education Counsel</p>
Guests:	<p>Loraine Champion, Executive Director, Alberta Lawyers' Assistance Society</p> <p>Carsten Jensen, Law Society of Alberta representative to the Federation of Law Societies of Canada</p> <p>Amanda Lindberg, Vice-President, Canadian Bar Association Alberta</p> <p>Nonye Opara, Executive Director, PBLA</p> <p>Bob Philp, Indigenous Advisory Committee Bencher Liaison</p> <p>Kathleen Ryan, Chair, Equity Diversity and Inclusion Advisory Committee and Lawyer Competence Advisory Committee</p>
Regrets:	Salimah Walji-Shivji

Secretary's Note: The arrival and/or departure of participants during the meeting are recorded in the body of these minutes.

	Item
1	<p>Opening Remarks from the President</p> <p>Ms. Scott called the meeting to order at 8:32 am. Ms. Voyageur delivered the land acknowledgement statement for Alberta.</p> <p>Ms. Scott's opening remarks included:</p>

- The Law Society was honoured to host guest speaker Eugene J. Creighton, QC, and over 380 attendees for a virtual event to commemorate National Day for Truth and Reconciliation.
- Congratulations went to Kene Ilochonwu for being named one of Canada's Top 25 most Influential Lawyers and to Cori Ghitter for receiving a Women in Law Leadership Award for Leadership in the Profession (Broader Roles).

2 Leadership Report

Documentation for this item was circulated with the materials prior to the meeting. Ms. Osler highlighted the Jasper Retreat summary and thanked the Communications staff for creating an interactive format.

3 Articling Placement Program

Documentation for this item was circulated with the materials prior to the meeting. Ms. Ghitter provided introductory remarks and Ms. Datta presented the recommendation from the Equity, Diversity and Inclusion Committee (EDIC).

The Benchers' discussion included the following:

- In response to a suggestion that there could be a risk of reputational damage to principals, Ms. Scott advised that the EDIC discussed and concluded that the default position should be presumptive belief because often there is no other evidence. Ms. Datta added that the eligibility criteria provide parameters.
- Ms. Ghitter clarified that the draft amendments to the Model Code Provisions in Appendix A of the materials only provide context for the Articling Placement Program and cannot be approved by the Benchers. Amendments to the Model Code will be debated by the Benchers in the future as part of the Federation of Law Societies of Canada's process. However, the Benchers are approving the inclusion of Appendix A in the Articling Placement Program.
- It was suggested that the language in the eligibility criteria for Roster Firms could be stronger with respect to principal behaviour/failure to protect. It was also suggested that the website definition of confidentiality might be more appropriate in the document.

Motion: Wasylenko/Johnson

That the Benchers approve the Articling Placement Program.

Carried

One Bencher voted against the motion.

Ms. Váně joined the meeting at 9:30.

4 Innovation Sandbox

Documentation for this item was circulated with the materials prior to the meeting. Ms. Datta presented the proposal for the establishment of an Innovation Sandbox and corresponding eligibility criteria, as recommended by the Policy and Regulatory Reform Committee (“PRRC”). Ms. Datta’s presentation covered background on the work; the rationale for and benefits of an Innovation Sandbox; the proposed eligibility criteria; framework; risk management; and the status of innovation in other jurisdictions.

The Benchers’ discussion included the following:

- In response to questions about the application process, Ms. Datta advised that the number and types of applications can’t be predicted and there is no plan to limit the number of applications of the same type of service; however, the applications will be reviewed to monitor and evaluate the implementation of all delivery models during the pilots.
- The purpose to support the strategic goal to promote access was discussed, particularly whether the criteria might be too broad to advance access effectively. Ms. Datta advised that the PRRC also debated this issue and concluded that the focus of the Innovation Sandbox should be broad and that new delivery models that benefit the public will facilitate access to justice.
- Aspects of the program such as insurance needs, required Rule changes, and the application process, will evolve over time and return to the Benchers for approval as required.
- Ms. Datta clarified that the framework is an operational document to provide guidance to the application process and is for information for the Benchers at this time.

Motion: Hendsbee/Melnyk

That the Benchers approve the establishment of an Innovation Sandbox, and the eligibility criteria in Appendix A of the meeting materials.

Carried unanimously

5 Trust Safety Rule Amendments

Documentation for this item was circulated with the materials prior to the meeting. Ms. Ufodike and Ms. Charan introduced the proposed Trust Safety Rule Amendments as recommended by the PRRC, highlighting the mandate of the Trust Safety Department and the key components and overall purpose of the proposed amendments. Ms. Freund then provided a detailed overview of the changes and Mr. Brandt summarized the communications plan.

Ms. Freund, Ms. Ufodike and Ms. Charan provided clarification in response to a question about the Rule amendment for cheque authorization. The Benchers agreed to vote on the four motions concurrently.

Steblyk/ Ahluwalia

Motion 1:

That the Trust Accounting Rules 119 through 119.16; 119.18 through 119.25; 119.27 through 119.37; and 119.40 through 119.46 and all headings in Part 5 of the Rules of the Law Society of Alberta be struck out and replaced with the proposed headings and proposed Rules 119 through 119.18; 119.20 through 119.43; and 119.59 through 119.63, with these amendments taking effect on January 1, 2022.

Motion 2:

That the Rules related to Client Identification and Verification, as well as Cash Transactions, Representative Capacity and Prohibition on the Use of Trust Accounts, be amended, as detailed, so that:

- (a) Rules 118.1 through 118.11: i. are renumbered as Rules 119.45 through 119.55, ii. are amended as proposed, and iii. have “- National Rule” added to each of their headings;**
- (b) Rule 119.17 is renumbered as Rule 119.19 and has “- National Rule” added to its heading;**
- (c) Rule 119.26 is renumbered as Rule 119.44 and amended as proposed;**
- (d) Rule 119.38: i. is divided into two Rules, separating subrule (1) from subrules (2), (3), (4) and (5), and renumbered as Rules 119.56 and 119.57, ii. is amended as proposed, and iii. has “- National Rule” added to each of the headings; and**
- (e) Rule 119.39 is renumbered as Rule 119.58 and amended as proposed, with these amendments taking effect on January 1, 2022.**

Motion 3:

That Rules 2,42, 69 and 92 be amended, as proposed, with immediate effect.

Motion 4:

That subrules 1(1), 75(3), 115(1), 115(1.3), 138(3), 149.7(6), 165.1(1), and 167(1) be amended, as proposed, with these amendments taking effect on January 1, 2022.

Carried unanimously

6 Continuing Professional Development (CPD) Filing Requirement Suspension

Documentation for this item was circulated with the materials prior to the meeting. Ms. Bailey presented the proposal to extend the current two-year suspension of the CPD filing requirement

for an additional one-year period, ending May 2023, on the recommendation of the Lawyer Competence Committee (the “LCC”). Ms. Bailey explained that since the Benchers’ February 2020 decision to suspend the CPD filing requirement, it has become clear that it would not be possible to meet the targeted completion date of February 2022, due to time required to complete the foundational work of the competency profile.

In response to a concern about the continued delay in implementing a new CPD program, Mr. Warren, LCC Chair, advised Benchers that the LCC discussed the same concerns; however, concluded that it is important that the work is done well to ensure that the new program serves the profession and the public in today’s environment. Ms. Bailey added that there are many ongoing development opportunities within law firms currently and within the profession at large, and the evidence shows that lawyers are seeking out learning opportunities. The Law Society will continue to emphasize the importance of CPD in its communications with the profession and any lawyers who wish to continue using the ‘old’ CPD tool are welcome to do so.

Motion: Warren/Petersson

That the Benchers extend the current two-year suspension of the operation of Rules 67.2 and 67.3, pursuant to Rule 3, for an additional one-year period, ending May 2023.

Carried

One Bencher voted against the motion.

7 Access to Justice Update

Documentation for this item was circulated with the materials prior to the meeting.

8 Audit and Finance Committee Update

Documentation for this item was circulated with the materials prior to the meeting.

9 Equity, Diversity and Inclusion Committee Update

Documentation for this item was circulated with the materials prior to the meeting.

10 Indigenous Initiatives Liaison Update

Documentation for this item was circulated with the materials prior to the meeting.

11 Lawyer Competence Committee Update

Documentation for this item was circulated with the materials prior to the meeting.

12 Tribunal Office Update

Documentation for this item was circulated with the materials prior to the meeting.

13 CONSENT AGENDA

Documentation for this item was circulated with the materials prior to the meeting. There were no requests to remove any items from the consent agenda and the items were approved concurrently.

Motion: Melnyk/Sony

13.1 To approve the June 2, 2021 Public Bencher Meeting Minutes.

13.2 To approve the following Bencher meeting dates:

February 23 - 24, 2023

April 27 - 28, 2023

June 7 - 11, 2023 – Jasper

October 5 - 6, 2023

November 9, 2023 – Budget review via videoconference (1 - 4 pm)

November 30 - December 1, 2023

All meetings will be held in Calgary unless otherwise indicated, or, if necessary, such other date and time and place (or means) as the CEO and Executive Director of the Law Society may determine.

13.3 That paragraph 233 of the Pre-Hearing and Hearing Guideline be amended to replace “76(8)” with “78(6)”.

Carried unanimously

14 AGENCY REPORTS

14.1 Alberta Law Foundation Report

14.2 Alberta Lawyers' Assistance Society Report

14.3 Canadian Bar Association Report

14.4 Federation of Law Societies of Canada Report

14.5 Legal Education Society of Alberta Report

14.6 Pro Bono Law Alberta Report

Other Business

There being no further business, the public meeting was adjourned at 11:50 a.m.

Approved Benchers Public Minutes

Public Minutes of the Five Hundred and First Meeting of the Benchers of the Law Society of Alberta (the “Law Society”)

December 3, 2020

Videoconference

8:30 am

Benchers present	<p>Kent Teskey, President Darlene Scott, President-Elect Ryan Anderson Arman Chak Corie Flett Elizabeth Hak Bill Hendsbee Cal Johnson Linda Long Jim Lutz Barb McKinley Bud Melnyk Walter Pavlic Lou Pesta Corinne Petersen Stacy Petriuk Robert Philp Kathleen Ryan Deanna Steblyk Margaret Unsworth Ken Warren Louise Wasylenko</p>
Regrets	<p>Cora Voyageur</p>
Executive Leadership Team members present	<p>Elizabeth Osler, Chief Executive Officer and Executive Director Cori Gitter, Deputy Executive Director and Director, Policy and Education Nancy Carruthers, General Counsel and Director, Regulation Nadine Meade, Chief Financial Officer Andrew Norton, Chief Information Officer and Director, Business Operations David Weyant, President and Chief Executive Officer, Alberta Lawyers Indemnity Association</p>



Staff present	<p>Barbra Bailey, Policy Counsel Nancy Bains, Tribunal Counsel and Privacy Officer Colleen Brown, Manager, Communications Ruth Corbett, Governance Administrator Shabnam Datta, Manager, Policy John Eamon, General Counsel and Senior Manager, Risk, Alberta Lawyers Indemnity Association Jennifer Freund, Policy Counsel Sharon Heine, Senior Manager, Regulation Tina McKay, Senior Manager, Business Operations Andrea Menard, Indigenous Initiatives Liaison Kendall Moholitny, Senior Manager, Professionalism Stephen Ong, Business Technology Len Polsky, Manager, Legal Technology and Mentorship Laura Scheuerman, Governance Assistant Christine Schreuder, Governance Coordinator</p>
Guests present	<p>Barbara Billingsley, Dean, University of Alberta Loraine Champion, Executive Director, Alberta Lawyers' Assistance Society Jordan Furlong, Consultant Carsten Jensen, Federation of Law Societies of Canada Bianca Kratt, Vice-President, Canadian Bar Association Alberta Nonye Opara, Executive Director, Pro Bono Law Alberta Sandra Petersson, Executive Director, Alberta Law Reform Institute Christine Sanderman, Executive Director, Legal Education Society of Alberta</p>

Secretary's Note: The arrival and/or departure of participants during the meeting are recorded in the body of these minutes.

	Item
1	<p>Opening Remarks from the President Mr. Teskey called the public meeting to order at 8:40 a.m. and delivered the Indigenous land territorial acknowledgement statement for Alberta.</p> <p>Mr. Teskey recognized that the Benchers three-year term of office ends at the February 2021 meeting. He acknowledged this as the last meeting for Walter Pavlic, Corinne Peterson, Kathleen Ryan, Arman Chak, Lou Pesta, Linda Long and Bob Philp and thanked them for their significant contributions and thoughtful advice over the terms of their service to the Law Society.</p>
2	<p>Leadership Report The Leadership Report included a report on the Law Society's accomplishments over the past year and the timelines for Big Issues and Engagement.</p>



Ms. Osler thanked Mr. Teskey for his leadership, acknowledging that his trusted opinion and commitment to taking a long view of the issues have led to thoughtful decision-making. She recognized his care for the organization and its mandate to protect the public interest.

Ms. Osler thanked departing Benchers for contributing meaningfully to advancing the Law Society's strategic work through their service, commitment, diversity of thought, and engagement. Ms. Osler thanked all the Benchers and staff for their consistent support.

Ms. Osler provided a summary of the 2020 year, highlighting the Law Society's innovative and forward-looking Strategic Plan and its efficient and effective response to the pandemic.

3 Election of the President-Elect and the Executive Committee

Documentation circulated for this item included the Statements of Intention, approved election procedures, and the applicable Rules of the Law Society (the "Rules"). Mr. Teskey advised the Benchers that Mr. Warren put his name forward for President-Elect. Mr. Teskey called for nominations from the floor in accordance with Rule 27(1) and there were none.

Motion: Melnyk/Johnson

To close the nominations for President-Elect.

Carried unanimously

Mr. Warren was acclaimed as the President-Elect pursuant to Rules 27(1)(b) and 28(2)(a).

Mr. Teskey confirmed that the nominees for the Executive Committee were Bill Hendsbee, Cal Johnson, Deanna Steblyk, and Stacy Petriuk. He outlined the procedures for the election of the Executive Committee and called for nominations from the floor. There were no new nominations.

Motion: Anderson/Melnyk

To close the nominations for the Executive Committee.

Carried unanimously

In accordance with Rule 26(2), Bill Hendsbee, Cal Johnson, Deanna Steblyk, and Stacy Petriuk were acclaimed as the four elected Benchers on the Executive Committee.

Ms. Unsworth joined the meeting.

Mr. Warren was invited to address the Benchers. In his remarks he emphasized the effect of the pandemic on the work of the Law Society and the need to continue advancing the Strategic Plan. He expressed his confidence in the Executive Leadership Team ("ELT") and Law Society staff. Mr. Warren expressed thanks to the Benchers for all he has learned from them and for placing their trust in him.



Mr. Teskey advised that the Lay Benchers appointed Barbara McKinley to the Executive Committee for one year to replace Louise Wasylenko.

4 Appointment of the Benchers-at-Large to the Nominating Committee

Documentation for this item was circulated with the meeting materials.

Motion: Hendsbee/Lutz

That the Benchers appoint Louise Wasylenko to the Nominating Committee, effective immediately.

Carried unanimously

5 2021 Business Plan and Budget

Documentation for this item was circulated with the meeting materials. Mr. Warren, Chair of the Audit and Finance Committee (AFC), advised the Benchers that there have been no changes to the draft Budget since the special Benchers budget meeting on November 5, 2020. Mr. Teskey credited AFC and ELT for preparing a strong and ambitious Budget in such challenging times.

Motion: Philp/Steblyk

To approve the 2021 Law Society of Alberta Business Plan and Budget as presented and to set the 2021 Practice Fee at \$2,340.

Carried unanimously

Ms. Flett joined the meeting.

6 Membership Fee Rule Amendments

Documentation for this item was circulated with the meeting materials. Ms. Freund presented the proposal.

The Benchers questions focused on the proposed change to Rule 165.1 (1) (4); specifically, the rationale for reducing the timeframe for seeking reinstatement from an administrative rules suspension from three months to fifteen days. Ms. Freund explained that the amendment is proposed for practical reasons, on the assumption that members intending to practise will reinstate immediately. It was suggested that this Rule change could engage possible mandatory professional development in some situations and Ms. Freund advised that staff would keep this in mind going forward.

Motion: Long/Philp

That the Benchers adopt amendments to Rules 1, 75, 79, 147, 149.2, 161, 163, 164, 164.1, 165, 165.1, as proposed.

Carried unanimously



7 Alberta Lawyers Indemnity Association (ALIA) Civil Litigation Filing Levy (CLFL) Rule Changes

Documentation for this item was circulated with the meeting materials. Ms. Freund presented the proposal for new Rules required for the implementation of the CLFL which was approved by the ALIA Board on November 2, 2020.

The Benchers' questions were mainly around the administration of the program, how to ensure compliance, and comparisons with practices followed in other jurisdictions for similar programs. Ms. Freund noted that sanctions will not be applied during the pilot program. With respect to auditing, Ms. Freund advised that ALIA or the Law Society's Trust Safety department could undertake this work. Mr. Weyant and Mr. Eamon provided details about ALIA's planned processes for the CLFL.

Motion: Philp/Steblyk

That the Benchers adopt the new Rules 149.5, 149.6 and 149.7 and the consequential amendments to Rules 119.33, 160, 162, 164, 165, 165.1, 168, as proposed.

Carried unanimously

8 ALIA Articles Amendment for Board Meeting Notice Period

Documentation for this item was circulated with the meeting materials. Ms. Freund presented the rationale for the proposed amendments to the ALIA Articles. The three motions were presented and passed concurrently.

Motion 1: Philp/Steblyk

That article 7.1 of the Articles of Association of the Alberta Lawyers Indemnity Association be amended by inserting "or held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other as determined by the Board" after the second instance of "Board" in the first sentence of the article.

Motion 2: That article 7.2 of the Articles of Association of the Alberta Lawyers Indemnity Association be amended by striking out "seven (7) business days" and inserting "72 hours" in its place.

Motion 3: That article 7.5.2 of the Articles of Association of the Alberta Lawyers Indemnity Association be amended by inserting "a meeting of the Board may be held or" before the words "any Director may participate".

Carried unanimously

Mr. Eamon left the meeting.



9 **Lawyer Licensing and Lawyer Formation – Implementation Proposal**

Documentation for this item was circulated with the meeting materials. Mr. Warren, Chair of the Lawyer Competence Committee (LCC), introduced the proposal for Lawyer Licensing and Lawyer Formation. Mr. Warren advised the Benchers that Mr. Furlong's report had not changed since it was presented and discussed at the October 1 Bencher meeting; however, the results of a focused survey were added to the package of materials for this item. Mr. Warren highlighted the concerns raised in the survey; however, noted there was nothing raised in the survey that the LCC had not considered. Some of the recommendations in Mr. Furlong's report were recognized as ambitious and challenging.

Mr. Furlong provided an overview of the report and recommendations. Ms. Ghitter then presented the Implementation Proposal memo, outlining the short, medium, and long-term priorities.

Christine Sanderman joined the meeting.

The Benchers' discussion and questions focused on the communications aspects of the mandatory training requirements and the importance of clear communications to ensure the membership is fully informed.

Motion: Warren/Petriuk

That the Benchers adopt the recommendations, framework, and timeline for implementation of the recommendations, as set out in Jordan Furlong's Report on Lawyer Licensing and Competence in Alberta and in the implementation proposal memorandum.

Carried unanimously

Mr. Furlong left the meeting at 10:00 a.m.

10 **Rule Amendment to Mandate Indigenous Cultural Competency Education**

Documentation for this item was circulated with the meeting materials.

10.1 Exemptions

Mr. Warren, LCC Chair, introduced the proposal for parameters and exemptions to the Indigenous Cultural Competency Education, highlighting the Benchers' October 1, 2020 decision in favour of mandatory training. The Benchers then discussed each proposed parameter separately.

During the Benchers' discussion, a Bencher commented that some members believe that the Law Society is not prepared to implement the mandatory training and that there is a lack of clarity regarding how to and who will determine exemptions. Ms. Ryan, Chair of the LCC Advisory Committee, advised that similar concerns were voiced by some members of the LCC and the LCC Advisory Committee and that these concerns were addressed in the meeting



materials. The LCC's recommendation was intended to balance the Truth and Reconciliation Commission's calls to action with the desire to enable lawyers to undertake their own path to achieve a base level of competency.

Mr. Jensen added that the Federation of Law Societies of Canada's Standing Committee on the Model Code of Professional Conduct is actively considering adding an ethical obligation to the Model Code with respect to Indigenous cultural competency. Any proposed revisions will be done with full consultation to ensure clarity with respect to any new requirements.

Motion: Scott/Warren

That the Benchers accept the recommendations of the Lawyer Competence Committee and adopt the proposed 7 parameters for mandatory Indigenous Cultural Competency Education, as follows:

Parameter 1: that the timeline for completion of ICCE for active lawyers be 18 months from the date the program is made available

Parameter 2: that the 18 month timeline apply to lawyers who become active after January 2021, effective the date they become active, so that all lawyers have an equal timeframe to complete the education program

Parameter 3: that inactive lawyers or suspended lawyers who take The PATH while inactive meet the requirements of the mandatory education upon reinstating to active

Parameter 4: that the cost for inactive lawyers to take The PATH be covered by the Law Society while the cost for suspended lawyers to take The PATH not be covered by the Law Society

Parameter 5: that lawyers who have already completed The PATH through the CBA or other organization will not be reimbursed for the cost of the program

Parameter 6: that lawyers who have completed The PATH through the CBA or another organization or who have completed Indigenous Canada at the University of Alberta be considered to have completed the mandatory education requirement and be exempt from taking The PATH through the Law Society but they will be encouraged to complete the Law Society's version of The PATH due to its Alberta specific content

Parameter 7: that in addition to the exemption provided for completion of The PATH through the Law Society of Alberta through the previous completion of The PATH through the CBA or another organization or completion of Indigenous Canada at the University of Alberta that an exemption be provided to lawyers who certify that they have previous education or knowledge equivalent to The PATH and sufficient to address Call to Action 27 through education on or knowledge about:



- a) the history and legacy of residential schools;
- b) the United Nations Declaration on the Rights of Indigenous Peoples;
- c) Treaties and Aboriginal rights;
- d) Indigenous law [Indigenous legal traditions]; and
- e) Aboriginal–Crown relations

and that includes training in intercultural competency, conflict resolution, human rights, and anti-racism

and that an audit program be established to review and assess such certifications.

Carried

10.2 Rule Changes

Ms. Freund presented the proposal for the adoption of a new Rule to provide the authority to mandate education for lawyers.

Motion: Long/Hendsbee

That the Benchers adopt Rule 67.4, as proposed.

Carried unanimously

11 Adjudicator Appointment Guideline Amendments

Documentation for this item was circulated with the meeting materials. Ms. Freund presented the proposal and rationale for amendments to the *Adjudicative Panel Appointment Guideline* and the renaming of the guideline to the *Adjudicator Roster and Adjudicative Panel Appointment Guideline*. The Benchers discussed appointment terms and the role of Benchers and past Benchers on panels.

Motion: Scott/Melnyk

That the Benchers approve the amendments to the Adjudicative Panel Appointment Guideline, renamed Adjudicator Roster and Adjudicative Panel Appointment Guideline, as proposed.

Carried unanimously

Secretary's note: items 13 through 16 were dealt with at this point in the proceedings. Item 12, "New Hearing and Related Rule Amendments", was dealt with following item 16; however, is recorded here to provide consistency in the order of business in the minutes.

12 New Hearing and Related Rule Amendments

Documentation for this item was circulated with the meeting materials. Mr. Hendsbee, Chair of the Policy and Regulatory Reform Committee (PRRC), introduced the proposal and advised the Benchers that the materials are the result of the PRCC's work throughout the summer and the fall. He encouraged Benchers to ask questions at any point throughout the presentation. Ms.



Bailey then presented each piece of the proposal separately as outlined in the memo and paused for questions on each. Ms. Bailey provided clarification on the new Rules with respect to the disclosure of documents, witnesses, exhibits and authorities, and the Hearing Committee. The proposed motion sought Benchers approval in principle. The following corrections/changes were suggested, to be incorporated into the final version that will be before the Benchers for approval at the February 25, 2021 Benchers meeting:

- The definition of “pre-hearing conference chair” is not used in all references – the term should be consistent throughout; and
- The term “lawyer” should be changed to “member” to be consistent with the rest of the rule amendments.

Motion: Hendsbee/Lutz

That the Benchers approve, in principle, the proposed:

- (a) amendments to Rules 2.4, 49, 86, 90, 90.1, 96, 97, 100.2, 103, 104, 119.15, and 142.1;
- (b) new Rules 2.5, 90.2, 90.3, 90.4, 90.5, 90.6, 90.7 and 90.8; and
- (c) repeal of Rules 48.5, 91, 94 and 95.

Carried unanimously

13 Equity, Diversity and Inclusion Committee Update

Documentation for this item was circulated with the meeting materials.

14 Indigenous Initiatives Liaison Update

Documentation for this item was circulated with the meeting materials.

15 Tribunal Office Update

Documentation for this item was circulated with the meeting materials. Ms. Bains highlighted the increased rigor in the process for public attendance at hearings.

16 Consent Agenda

The consent agenda items were circulated with the materials and approved concurrently.

Motion: Hendsbee/Melnyk

16.1 That the Benchers approve the October 1, 2020 Public Benchers Meeting Minutes; and

16.2 That the Benchers repeal the Governance Policy for the Law Society of Alberta Pension Plan for Executive Leadership Team Employees, dated December 2015, and replace it with the Governance Policy for the Law Society of Alberta Pension Plan for Executive Leadership Team Employees, dated September 2020.

Carried unanimously

17 Reports for Information

- 17.1 Alberta Law Foundation report
- 17.2 Alberta Law Reform Institute report
- 17.3 Alberta Lawyers' Assistance Society report
- 17.4 Canadian Bar Association report
- 17.5 Federation of Law Societies of Canada Report
- 17.6 Legal Education Society of Alberta report
- 17.7 Pro Bono Law Alberta report

18 Other Business

There being no further business the public meeting was adjourned at 1:15 p.m.



Memo

Rule 67.4 – Mandatory Education

To	Benchers of the Law Society of Alberta
From	Jennifer Freund, Policy Counsel
Date	December 3, 2020

Proposed Motion

MOTION: That the Benchers adopt Rule 67.4, as proposed.

Introduction

At the October 2020 Bencher meeting, the Benchers adopted a motion to implement mandatory Indigenous Cultural Competency Education.

To implement this decision, the *Rules of the Law Society of Alberta* (Rules) require an amendment to provide for mandatory education.

What Problem Are We Trying To Solve?

To provide the authority to mandate education for lawyers, a new Rule needs to be adopted.

Continuing Professional Development in Alberta

In 2008, the Law Society of Alberta implemented mandatory Continuing Professional Development (CPD) requirements. The CPD program provided lawyers with the freedom to develop their own learning plans and select their own education, activities and training, in accordance with the definition of CPD adopted by the Law Society and set out in Rule 67.1.



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In accordance with Rule 67.2, lawyers must develop and declare a learning plan. In accordance with Rule 67.3, should a lawyer fail to meet the requirements set out in Rule 67.2, by the deadline established, the lawyer will be administratively suspended. Rules 67.2 and 67.3 are currently suspended with a suspension end date of May 2022.

These three Rules set out the complete CPD framework of the Law Society and apply to all active lawyers.

To date, the Law Society has not mandated any specific education, activities or training requirements and, therefore, has no Rule that provides the authority to do so.

Proposed Rule

It is proposed that the following Rule be adopted to provide the authority for the Law Society to mandate specific education, activities or training requirements for lawyers

- 67.4** (1) Independent of Rules 67.1 through 67.3, the Benchers may, from time to time, prescribe specific continuing professional development requirements to be completed by members, in a form and manner, as well as time frame, acceptable to the Benchers.
- (2) The continuing professional development requirements of subrule (1) may apply to all members or a group of members, as determined by the Benchers.
- (3) Every active member required to complete requirements under subrule (1) who does not comply within the specified time frame shall stand automatically suspended as of the day immediately following the deadline.
- (4) Rule 165.1 shall apply to any suspension under subrule (3).

Rationale

The Rule has been drafted broadly to take into account the ongoing work of the Lawyer Competence Committee.

Rather than draft a Rule specific to the Indigenous component of mandatory education, this Rule provides for the possibility of further mandated education, such as additional education in the first few years of practice, education specific to articling Principals, education for small firm or solo practitioners, or other forms of education, activities or training required for all members or specific groups of members.



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The Rule requires consultation with the Benchers and then permits the Executive Director to implement specific courses, activities or hourly requirements in specific areas for some or all lawyers.

It provides a broad scope for implementation so that parameters, such as the category of lawyers to which the education applies, deadlines and other requirements can be crafted specific to any mandatory CPD requirement that may come out of the work of the Lawyer Competence Committee.

Conclusion and Recommendation

It is believed that this Rule will provide the authority to mandate education for lawyers, while also providing a broad scope for the implementation of any such education in accordance with any parameters decided upon if and when new education requirements develop.

The Lawyer Competence Committee has reviewed the proposed Rule and recommends that the Benchers adopt Rule 67.4.



Memo

Indigenous Cultural Competency Education – Parameters and Exemptions

To	Benchers of the Law Society of Alberta
From	Jennifer Freund, Policy Counsel
Date	December 3, 2020

Proposed Motion

That the Benchers accept the recommendations of the Lawyer Competence Committee and adopt the proposed 7 parameters for mandatory Indigenous Cultural Competency Education, as follows:

Parameter 1: that the timeline for completion of ICCE for active lawyers be 18 months from the date the program is made available

Parameter 2: that the 18 month timeline apply to lawyers who become active after January 2021, effective the date they become active, so that all lawyers have an equal timeframe to complete the education program

Parameter 3: that inactive lawyers or suspended lawyers who take The PATH while inactive meet the requirements of the mandatory education upon reinstating to active

Parameter 4: that the cost for inactive lawyers to take The PATH be covered by the Law Society while the cost for suspended lawyers to take The PATH not be covered by the Law Society

Parameter 5: that lawyers who have already completed The PATH through the CBA or other organization will not be reimbursed for the cost of the program

Parameter 6: that lawyers who have completed The PATH through the CBA or another organization or who have completed



Indigenous Canada at the University of Alberta be considered to have completed the mandatory education requirement and be exempt from taking The PATH through the Law Society but they will be encouraged to complete the Law Society's version of The PATH due to its Alberta specific content

Parameter 7: that in addition to the exemption provided for completion of The PATH through the Law Society of Alberta through the previous completion of The PATH through the CBA or another organization or completion of Indigenous Canada at the University of Alberta that an exemption be provided to lawyers who certify that they have previous education or knowledge equivalent to The PATH and sufficient to address Call to Action 27 through education on or knowledge about:

- a) the history and legacy of residential schools;
- b) the United Nations Declaration on the Rights of Indigenous Peoples;
- c) Treaties and Aboriginal rights;
- d) Indigenous law [Indigenous legal traditions]; and
- e) Aboriginal–Crown relations

and that includes training in intercultural competency, conflict resolution, human rights, and anti-racism

and that an audit program be established to review and assess such certifications.

Introduction

At the October 2020 Benchers meeting, the Benchers adopted a motion to implement mandatory Indigenous Cultural Competency Education.

To implement this decision, a number of parameters need to be established around the program.

What Problem Are We Trying To Solve?

To provide the specific parameters setting out the requirements for the implementation of the mandatory Indigenous Cultural Competency Education by the Law Society of Alberta.



Indigenous Cultural Competency Education in Alberta

As noted, the Benchers mandated Indigenous Cultural Competency Education (ICCE) for active lawyers in Alberta.

The Benchers have chosen The PATH as the required course.

Questions remain about the specifics of implementation.

Timeline

Though not specifically decided, 18 months has been discussed as the timeline for which lawyers will have to complete the education program.

This assumes an implementation timeline where The PATH will be available in January 2021. Active lawyers (covering all forms of active status including active for pro bono and active not practicing) will then be required to complete The PATH by the end of June 2022.

This aligns with the current suspension of mandatory annual CPD planning until May 2022. By that time, it is expected that the Law Society will have begun implementing a revised CPD program based on the current work of the Lawyer Competence Committee.

Recommendation 1: that the timeline for completion of ICCE for active lawyers be 18 months from the date the program is made available

What about lawyers who become active following the implementation of the program? Will they have a full 18 months to complete The PATH or will they be expected to complete The PATH by the end of June 2022 regardless of when they become an active lawyer?

While the program is not onerous, being 6 hours of online education that can be taken in chunks at the convenience of each lawyer, all lawyers should have an equal amount of time to complete the program. This includes new lawyers, inactive lawyers who reinstate and suspended lawyers who reinstate.

Recommendation 2: that the 18 month timeline apply to lawyers who become active after January 2021, effective the date they become active, so that all lawyers have an equal timeframe to complete the education program



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An active lawyer who then goes inactive prior to completion of The PATH will be required to complete the course upon reinstating as active. The total timeline for completion remains at 18 months. Active lawyers going inactive should be encouraged to complete the program so that they do not have this as an outstanding requirement upon reinstating.

Application of Mandatory Education to a Status of Lawyers

The Benchers motion called for ICCE for all active lawyers in Alberta.

Questions have come up about inactive lawyers. Some inactive lawyers are expected to want to take The PATH and, in fact, have reached out asking to take the education program. This should be encouraged as the Calls to Action apply to all lawyers, not only those with an active status with their Law Society.

Inactive lawyers who request to change their status to active should be required to complete The PATH within 18 months of reinstating as active, regardless of when they reinstate. There should be no cut-off by which a lawyer must be active to take The PATH. All incoming active lawyers should be required to complete the program.

Should these inactive and new lawyers have already completed The PATH while inactive or prior to becoming active, they will have met the requirement upon reinstating to active. This also applies to suspended lawyers.

The question then comes down to cost for the program. As active lawyers will receive the programming at no additional cost, should inactive lawyers also receive the program at no additional cost. On one hand, cost should not be a barrier to them completing the program prior to reinstating as active, should they be planning to do so.

Alternatively, the Law Society can decide that inactive and suspended lawyers can choose to wait until they reinstate to active status prior to taking The PATH, thereby having the program provided at no additional cost, or choose to take The PATH at their own cost while inactive or suspended. No reimbursement would be given if they pay for the program while inactive and then reinstate to active. (See recommendation 5 for more on reimbursement.)

If a suspended lawyer is directed to take The Path while suspended, as part of conditions placed upon them, the Law Society may wish to cover the cost in that instance as it then becomes mandated education.

As of August 2020, the Law Society has 4,194 inactive lawyers. Of these, there are 2,226 inactive lawyers who pay the inactive fee and 1,928 who do not and are considered inactive/retired.



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It is not expected that many inactive lawyers will complete the program, as the program is only mandated for active lawyers. Those who do plan to reinstate as active or who wish to take the education program regardless of status should not face the barrier of cost to do so.

It is expected that suspended lawyers who wish to reinstate will want to take The PATH while suspended so that they meet this requirement upon reinstatement to active status.

Discussion around three potential options occurred:

1. the cost for inactive lawyers and suspended lawyers to take The PATH be covered by the Law Society
2. that the cost for inactive lawyers and suspended lawyers to take The PATH, while they maintain an inactive status, be covered by the lawyer
3. the cost for inactive lawyers to take The PATH be covered by the Law Society while the cost for suspended lawyers to take The PATH not be covered by the Law Society

Members of the Lawyer Competence Committee acknowledged that Call to Action 27 speaks of all lawyers, not only active lawyers. They agreed that inactive and suspended lawyers should be encouraged to complete The PATH.

Different views were expressed over who should cover the cost for the program for lawyers who are not active.

The general sense was that there would not be many inactive lawyers seeking to take The PATH if not intending to return to practice. For those wishing to return to practice, the Committee felt that encouraging completion of The PATH prior to reinstating to active status was beneficial. For this reason, the recommendation below includes the cost of The PATH for these lawyers be covered by the Law Society.

For suspended lawyers, the recommendation was different. There are few lawyers suspended for disciplinary reasons at any given time. While it was felt that encouraging completion of The PATH prior to reinstating to active status was beneficial for these lawyers, it was also felt that, as they have been suspended for conduct deserving of sanction, they should be responsible for the cost of the program if they wish to complete The PATH prior to return to active practice.

Discussion was had about the belief that the Law Society will likely be able to negotiate a reduced fee for The PATH for these lawyers.

Recommendation 3: that inactive lawyers or suspended lawyers who take The PATH while inactive meet the requirements of the mandatory education upon reinstating to active



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Recommendation 4: that the cost for inactive lawyers to take The PATH be covered by the Law Society while the cost for suspended lawyers to take The PATH not be covered by the Law Society

Reimbursements

The Canadian Bar Association (CBA) began offering The PATH in April 2020 in both English and French. The CBA offered 500 free registrations to members. Once the free memberships were used up, all others were required to pay for the program at a cost of \$95 plus applicable tax. For an Alberta lawyer, this includes \$4.75 in GST for a total cost of \$99.75.

Questions have been raised about whether the Law Society of Alberta will reimburse lawyers who took the program as a member of the CBA and paid for it.

At the time the CBA began to offer the program, there had been no consideration by the Law Society of the program. It was only once individuals began to take the program that its value was seen by the LSA as an education program the LSA may want to offer.

The version that will be offered by the Law Society will include an additional hour of Alberta-specific education and lawyers who have already completed The PATH will be encouraged to take it again to receive the Alberta-specific education, at a cost to the Law Society.

The cost for the program is not onerous, at \$99.75, so is not expected to cause hardship for those lawyers who already chose to take the program.

Recommendation 5: that lawyers who have already completed The PATH through the CBA or other organization will not be reimbursed for the cost of the program

Exemptions

The topic of exemptions has come up repeatedly.

It is generally agreed upon that individuals who have taken The PATH should be exempt from repeating it. As mentioned above, they will be encouraged to take the version offered by the Law Society due to Alberta-Specific content but should not be required to do so.



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It is also generally agreed that individuals who have taken Indigenous Canada from the University of Alberta, a more extensive and in-depth 12-week course that meets the requirements of Call to Action 27, should be exempt from taking The PATH.

There will be an administrative component involved with this so that lawyers can indicate or provide proof of completion in some way. It is not expected that there will be a large number of lawyers who have completed one or both of these programs to date.

Recommendation 6: that lawyers who have completed The PATH through the CBA or another organization or who have completed Indigenous Canada at the University of Alberta be considered to have completed the mandatory education requirement and be exempt from taking The PATH through the Law Society but they will be encouraged to complete the Law Society's version of The PATH due to its Alberta specific content

Additional considerations must be discussed in further decision making around exemptions from the requirement to take The PATH through the Law Society.

Basis for ICCE

The Law Society of Alberta has actively been working to respond to the Reports and *Calls to Action* released by the *Truth and Reconciliation Commission of Canada*. The Law Society has publicly stated that:

The Law Society of Alberta is committed to respond to the Truth and Reconciliation Commission's Call to Action #27 in a thoughtful and collaborative way that builds and strengthens relationships with Indigenous peoples and communities.

As part of this work, the Law Society is mandating ICCE, specifically through the requirement that lawyers complete The PATH.

The Law Society, at its October 2020 meeting, stated that it is important for all lawyers to have a common baseline understanding from which to work and to build upon.

The PATH is a six-hour program and is being provided at no additional cost to Alberta's lawyers in order to meet the requirement that all active lawyers receive ICCE.

The PATH meets the requirements set out in the Calls To Action from the Truth and Reconciliation Commission.



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Call to Action 27 states:

We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

The PATH works to respond directly to this Call to Action and provides education on:

- the history and legacy of residential schools;
- the *United Nations Declaration on the Rights of Indigenous Peoples*;
- Treaties and Aboriginal rights;
- Indigenous law; and
- Aboriginal-Crown relations.

The curriculum includes:

- cultural and historical differences between First Nations, Inuit, and Métis;
- the evolution of the relationship between Canada and Indigenous people from pre-contact to yesterday's headlines;
- stories of social and economic success, reconciliation and resilience;
- understanding intercultural communication in the workplace; and
- Inuit, First Nations and Métis stories from coast to coast to coast.

The curriculum of Indigenous Canada, offered by the University of Alberta, also meets the requirements established in Call To Action 27.

Exemptions Beyond Previous Completion of The PATH or Indigenous Canada

The Law Society of Alberta wants to ensure that all lawyers have a baseline knowledge that responds appropriately to Call to Action 27.

An effective way to ensure this baseline ICCE is to have all lawyers complete the same program, with no exemptions. As The PATH is six hours and incurs no additional cost, with 18 months provided for completion, this is not unreasonable nor burdensome and is fair to all lawyers.

While this may be repetitive for some lawyers, for the majority, a lot of the information in The PATH will be new. Additionally, The PATH contains Alberta specific information that will be beneficial to lawyers in the province.



The Lawyer Competence Committee discussed many of the arguments for and against providing exemptions beyond those set out above.

The Law Society has already heard from lawyers about various education programs, both formal and informal, that they have undertaken and wish to have assessed as equivalent to The PATH. These include participation in Blanket Exercises, Medicine Wheel training, and a variety of ceremonies such as sweats and pipe ceremonies, as well as watching various video series. It is expected that lawyers will come forward with courses offered by various universities and other learning institutions, as well as experiences with Aboriginal Law and Indigenous Law (Indigenous Legal Traditions). Cultural experiences and Indigenous status and ancestry are also expected to be raised. In addition, many government and in-house legal departments have developed required internal training.

The variety of ways in which a lawyers could receive Indigenous education raises questions of whether a lawyer could receive an exemption based only on one complete course or program or if they could compile a number of courses and activities that combine into the equivalent of The PATH to receive an exemption. This adds complexity to the process.

The Law Society is not equipped to make an assessment about any external programming or life or work experiences to determine the quality of knowledge of a lawyer or the learning provided, nor whether it addresses Call to Action 27 in a meaningful way, touching on the key elements set out, and would be the equivalent of the baseline knowledge provided by The PATH.

The Law Society's CPD program specifically does not accredit providers or programs. To develop a program to now do the equivalent for ICCE will be burdensome and costly. There will likely be a significant list of types and variety of learning and programming that would need to be assessed upon request by lawyers seeking an exemption. A cost benefit analysis would be unlikely to find value in such a process.

Currently, the Law Society does permit lawyers to self-assess their CPD programming and activities against the Law Society's definition of CPD to ensure that it

is any learning activity that is:

- (a) relevant to the professional needs of a lawyer;
- (b) pertinent to long-term career interests as a lawyer;
- (c) in the interests of the employer of a lawyer or
- (d) related to the professional ethics and responsibilities of lawyers; and

contain[s] significant substantive, technical, practical or intellectual content.



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It was proposed that lawyers could also self-assess against criteria to determine if a course or program they have or will undertake or the knowledge base they have through lived experience adequately addresses Call to Action 27 and provides education on or includes knowledge about:

- a) the history and legacy of residential schools;
- b) the *United Nations Declaration on the Rights of Indigenous Peoples*;
- c) Treaties and Aboriginal rights;
- d) Indigenous law [Indigenous legal traditions]; and
- e) Aboriginal–Crown relations

and that this education has been or is provided or this knowledge has been or is gained through skills-based training that includes training in intercultural competency, conflict resolution, human rights, and anti-racism.

There will be an administrative burden resulting from this recommendation in setting up, monitoring and administering the certification process.

The LCC was aware of the difficulties in adopting a certification process. They were also cognizant of the fact that providing these types of exemptions could dilute the mandatory nature of the program, result in less confidence that all lawyers have a common baseline knowledge that appropriately addresses Call to Action 27 and its requirements, and devalue the addition of Alberta specific content in The PATH curriculum.

Given that this is the first time the Law Society has ventured into this type of mandatory training, the LCC felt it was important to provide the flexibility of the exemption certification at this time. To provide additional accountability around this process the LCC is also recommending a random audit process for those lawyers that certify they are exempt from taking the program.

The development of an audit process may be beneficial as a pilot of a potential audit process resulting from the on-going work of the Lawyer Competence Committee related to future educational and revised CPD programs.

Recommendation 7: that in addition to the exemption provided for completion of The PATH through the Law Society of Alberta through the previous completion of The PATH through the CBA or another organization or completion of Indigenous Canada at the University of Alberta that an exemption be provided to lawyers who certify that they have previous education or knowledge equivalent to The PATH and sufficient to address Call to Action 27 through education on or knowledge about:



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- a) the history and legacy of residential schools;**
- b) the United Nations Declaration on the Rights of Indigenous Peoples;**
- c) Treaties and Aboriginal rights;**
- d) Indigenous law [Indigenous legal traditions]; and**
- e) Aboriginal–Crown relations**

and that includes training in intercultural competency, conflict resolution, human rights, and anti-racism

and that an audit program be established to review and assess such certifications.

Conclusion and Recommendation

Establishing the above noted parameters for ICCE will provide clarity and guidance to lawyers in meeting their mandatory ICCE requirements.

It is recommended that the Benchers accept the recommendations of the Lawyer Competence Committee and adopt the proposed 7 parameters for mandatory Indigenous Cultural Competency Education.

Approved Benchers Public Minutes

Public Minutes of the Five Hundredth Meeting of the Benchers of the Law Society of Alberta (the “Law Society”)

October 1, 2020

Videoconference

8:30 am

Benchers present	<p>Kent Teskey, President Darlene Scott, President-Elect Ryan Anderson Corie Flett Elizabeth Hak Bill Hendsbee Cal Johnson Linda Long Jim Lutz Barb McKinley Bud Melnyk Walter Pavlic Lou Pesta Corinne Petersen Stacy Petriuk Robert Philp Kathleen Ryan Deanna Steblyk Margaret Unsworth Ken Warren Louise Wasylenko</p>
Regrets	<p>Arman Chak Cora Voyageur</p>
Executive Leadership Team members present	<p>Elizabeth Osler, CEO and Executive Director Cori Gitter, Deputy Executive Director and Director, Policy and Education Nancy Carruthers, General Counsel and Director, Regulations Nadine Meade, Chief Financial Officer Andrew Norton, Chief Information Officer and Director, Business Operations David Weyant, President and CEO, Alberta Lawyers Indemnity Association</p>



Staff present	<p>Barbra Bailey, Policy Counsel Nancy Bains, Tribunal Counsel & Privacy Officer Colleen Brown, Manager, Communications Ruth Corbett, Governance Administrator Shabnam Datta, Policy Counsel Jennifer Freund, Policy Counsel Tina McKay, Senior Manager, Business Operations, Membership Andrea Menard, Indigenous Initiatives Liaison Kara Mitchelmore, CEO, Canadian Centre for Professional Legal Education Stephen Ong, Business Technology Len Polsky, Manager, Legal Technology and Mentorship Katie Shea, Membership Counsel Christine Schreuder, Governance Coordinator</p>
Guests present	<p>Loraine Champion, Executive Director, Alberta Lawyers' Assistance Society Jordan Furlong, Consultant Bianca Kratt, Vice-President, Canadian Bar Association Alberta Nonye Opara, Executive Director, Pro Bono Law Alberta Sandra Petersson, Executive Director, Alberta Law Reform Institute Christine Sanderman, Executive Director, Legal Education Society of Alberta</p>

Secretary's Note: The arrival and/or departure of participants during the meeting are recorded in the body of these minutes.

	Item
1	<p>Opening Remarks from the President</p> <p>Mr. Teskey called the public meeting to order at 8:35 a.m. and delivered the Indigenous land territorial acknowledgement statement for Alberta. Mr. Teskey welcomed guests Jordan Furlong and Bianca Kratt to the meeting.</p> <p>Mr. Ong left the meeting.</p>
2	<p>Leadership Report</p> <p>The Leadership Report included a memo on the Law Society's COVID-19 pandemic response, Big Issues and Engagement timelines, an updated Law Society organizational chart, and a Membership Statistics Update Memo. Ms. Osler thanked Benchers for their support of the Law Society as it pivoted in response to the pandemic to keep the strategic work moving forward. Ms. Osler thanked staff for their commitment to advancing the operational and strategic work in the face of additional pandemic-related work, in particular, members of the Executive Leadership Team (ELT) and Dr. Kara Mitchelmore for stepping up in countless ways over the last six months. Ms. Osler highlighted the following items from the Leadership Report:</p> <ul style="list-style-type: none"> - Organizational changes: ELT has been looking ahead to identify the challenges and opportunities and the resources required to meet the Law Society's strategic goals and objectives in the next few years. The resulting reorganization demonstrates the Law



Society's commitment to excellence and strength within the leadership groups. Ms. Osler outlined the updated organizational changes, in particular introducing and welcoming Ms. Carruthers to her new role as General Counsel and Director of Regulation. The following changes were announced:

- A new Education division has been formed under the Policy department to support the strategic goal of competence and wellness. Accordingly, Ms. Ghitter's title has changed to Deputy Executive Director and Director, Policy and Education. Len Polsky has assumed the new role of Manager, Legal Technology and Mentorship in the Policy and Education department. Newly created positions to be filled are for a Manager, Education and Manager, Policy.
- The reorganization in the Regulation department reflects the Law Society's commitment to proactive regulatory reform. The newly-titled Professionalism and Practice Advisors division comes under the direction of General Counsel and Director, Regulation. Ms. Osler thanked Sharon Heine for stepping in as acting General Counsel. Ms. Heine will continue as Senior Manager, Regulation. Kendall Moholity will assume the role of Senior Manager, Professionalism.
- The Practice Advisors will join the Regulation group and will report directly to Ms. Carruthers.
- In the Finance and Accounting department, Chioma Ufodike has accepted the new role of Senior Manager, Risk and Compliance. Ms. Ufodike has been tasked with a special project to review and enhance the billings process in response to the increasing complexity of the risk and compliance work. Ms. Ufodike will report to the CFO with a dotted line to General Counsel and Director, Regulation. The new Manager, Trust Safety will be Bernadette Charan, previously Supervisor, Trust Safety.
- Membership Statistics Memo from Tina McKay, Senior Manager, Membership: steps are being taken to address the impact of the cancellation of the National Committee on Accreditation exams on internationally trained lawyers.
- Return to Office: the Law Society continues to be guided by the Alberta government's updates on COVID-19.

Ms. Osler advised the Benchers that her goal for the Law Society is to show resilience as it moves forward with its strategic work during these unprecedented times.

3 Lawyer Competence Committee ("LCC")

Documentation for the following two items was circulated with the meeting materials.

3.1 Lawyer Licensing and Competence in Alberta Report

Mr. Warren, LCC Chair, introduced Mr. Furlong's report, noting that it will provide the Law Society with an opportunity to lead in this area. Mr. Furlong then presented preliminary observations, the categories of lawyer licensing, new lawyer development, and continuing lawyer learning, and finally a series of recommendations for the Law Society's discussion.

Summary of the Benchers' discussion:

- In response to a concern expressed about the diminishing supply of articling positions and decreasing demand for legal services, Mr. Furlong advised that in his conversations with law school Deans, there was recognition that not everyone with a law degree will become a licenced lawyer. The report is intended not only to help the Law Society begin to deal with significant issues of imminent importance, but also to consider how to approach the licensing of lawyers, including an understanding of what a lawyer is.
- The significant cost of some of the proposals contained in the report was discussed, particularly the "Possibilities of a Teaching Law Firm", although this was recognized as an aspirational target.
- The Benchers discussed how to prioritize the recommendations. The report suggested that the recommendation that the Law Society develop new pathways into the profession is a top priority. Mr. Furlong advised that although implementation is not an immediate requirement, the Law Society should begin working on this as soon as possible to plan for the challenging times ahead.
- As well as the consideration of alternatives to articling, it will be important to improve the current articling system and the Law Society's budget will provide for this work to begin. The need to create opportunities in a fair and equitable manner will be important to the public, students, and the government.
- The recommendation that the Law Society require solo practitioners to submit a business continuity plan was discussed, particularly audit and compliance, and how to ensure resources are provided to the profession in a non-discriminatory manner. Ms. Ghitter advised that the Law Society's intention would be assistive not punitive, and that providing resources and requiring compliance would start in a small way.
- Discussions at the LCC Advisory Committee revealed a variety of different experiences and priorities that were helpful and informed the final report.
- It was suggested that the Law Society is well-positioned to begin work on short term projects immediately. Longer-term initiatives would be shaped by regular Benchers' conversations.
- The Benchers commended Mr. Furlong on his report and the LCC on the work done. The opportunity for the Law Society to begin addressing these issues was recognized and there was broad support for continuing with the next phase of the work.

Mr. Furlong left the meeting.

3.2 Indigenous Cultural Competence Training

Mr. Warren introduced the proposal for Indigenous Cultural Competence Training through NVision's online video-based course, "The Path". He advised that the discussions at LCC and the LCC Advisory Committee revealed strongly held views on both sides of the question of whether the course should be mandatory. The ensuing discussion at the Benchers' table revealed a similar divergence of views.



Ms. Bains joined the meeting.

Summary of Benchers' perspectives:

- Some Benchers members of the LCC found that their thinking evolved as they participated in the discussions and the training. They found the course engaging, informative and easy to complete. Moreover, there was a substantial amount of information they hadn't been aware of which informed their final view on the matter.
- It was suggested that legal aspects of the course would need to be relevant in Alberta.
- Some Benchers felt that forcing the membership to take the course could be contentious and they questioned the view that some lawyers wouldn't take the course voluntarily. It was suggested that the course should be promoted as a choice and that a variety of resources could be utilized to inform members of its importance and encourage participation.
- The February 21, 2020 Benchers resolution to create competence programs on Indigenous issues to meaningfully address the Law Society's obligation arising from the Calls to Action in the Truth and Reconciliation Reports was suggested to be an important consideration in support of making the course mandatory.
- Regardless of whether the course is mandatory or not, Benchers recognized that communications would be key to ensuring the membership understands the importance of the training.

Mr. Teskey advised the Benchers that the vote would normally require a simple majority if taken at an in-person meeting; however, the 2/3 rule was adopted for votes at meetings by virtual means.

Motion: Warren/Ryan

That the Benchers mandate Indigenous cultural competency training for all Active Alberta lawyers.

Carried by a 2/3 majority

Ms. Sanderman, Ms. Menard and Ms. Shea left the meeting.

4 ALIA Civil Litigation Filing Levy

Documentation for this item was circulated with the meeting materials. Mr. Weyant presented ALIA's initiative to pilot a levy for civil litigation files. He advised the Benchers that consultation meetings with key stakeholders have been productive so far, with overall support for the initiative and helpful suggestions for its implementation.

The Benchers' comments and questions mirrored those at the consultation meetings, namely on issues of disbursement; areas of exclusion/inclusion; the anticipated impact on the base levy; whether the revenue can be counted before the levy is collected; how compliance will be



	handled; and that clear communications will be key to successful implementation of the pilot project.
5	Access to Justice Update Documentation for this item was circulated with the meeting materials.
6	CPLED Update Documentation for this item was circulated with the meeting materials.
7	Equity, Diversity and Inclusion Committee Report Documentation for this item was circulated with the meeting materials.
8	Indigenous Initiatives Liaison Report Documentation for this item was circulated with the meeting materials.
9	Tribunal Office Update Documentation for this item was circulated with the meeting materials.
10	Consent Agenda The consent agenda items were circulated with the materials. There were no requests to remove any items from the consent agenda. <div style="border: 1px solid black; padding: 10px; margin-top: 10px;"> Motion: Warren/Scott 10.1 To approve the June 26, 2020 Public Bencher Meeting Minutes; and 10.2 To approve the 2022 Bencher Meeting Dates. <div style="text-align: right;">Carried</div> </div>
11	Reports for Information 11.1 Alberta Law Foundation report 11.2 Alberta Law Reform Institute report 11.3 Alberta Lawyers' Assistance Society report 11.4 Canadian Bar Association report 11.5 Legal Education Society of Alberta report 11.6 Pro Bono Law Alberta report
12	Other Business There being no further business the public meeting was adjourned at 1:00 pm.



Memo to Benchers

LSA Indigenous Training

From	Jennifer Freund, Policy Counsel
Date	October 1, 2020

Introduction

The Law Society of Alberta is planning to introduce an Indigenous training program as part of its Indigenous Initiatives work and the Continuing Professional Development Program redevelopment. This program, The [PATH](#), will be introduced in early 2021 to Alberta's lawyers.

An outstanding question with regards to this program is whether the program should be mandatory for all current and incoming Active Alberta lawyers or whether it should be voluntary.

The Law Society of Alberta has actively been working to respond to the Reports and *Calls to Action* released by the *Truth and Reconciliation Commission of Canada*. The Law Society has publicly stated that:

The Law Society of Alberta is committed to respond to the Truth and Reconciliation Commission's Call to Action #27 in a thoughtful and collaborative way that builds and strengthens relationships with Indigenous peoples and communities.¹

One of the ways in which the Law Society of Alberta can meet this commitment is to develop meaningful and effective training on Indigenous cultural competence. While developing this training is difficult and complex and will require ongoing work, the current goal is not perfection but to get started in undertaking the development of quality programming. In other words, the programming discussed below is intended to provide a baseline of knowledge to Alberta lawyers. This knowledge base would need to be expanded over time.

This memo looks at the impetus for the implementation of this training program and potential considerations in decision-making regarding the mandatory/optional nature of the program. It also engages questions about the role of the regulator in identifying core

¹ <https://www.lawsociety.ab.ca/about-us/key-initiatives/indigenous-initiatives/>



competencies for lawyers and what steps the regulator can or should take in ensuring lawyers have the opportunity to build those core competencies.

Should the Benchers wish that the [PATH](#) be a mandatory program for Alberta lawyers, the recommended motion would be as follows:

That the Benchers mandate Indigenous cultural competency training for all Active Alberta lawyers.

Background

Truth and Reconciliation Commission of Canada

As part of the *Indian Residential Schools Settlement Agreement*, the Government of Canada created the *Truth and Reconciliation Commission of Canada* which

spent six years travelling to all parts of Canada to hear from the Aboriginal people who had been taken from their families as children, forcibly if necessary, and placed for much of their childhoods in residential schools

...

The Commission heard from more than 6,000 witnesses, most of whom survived the experience of living in the schools as students. ...Children were abused, physically and sexually, and they died in the schools in numbers that would not have been tolerated in any school system anywhere in the country, or in the world. (p. V).

The Summary of the Final Report of the Truth and Reconciliation Commission of Canada (Summary) notes that the purpose of the Commission was to determine the truth of what happened so that a foundation could be laid for reconciliation.

The Summary states that:

Reconciliation requires that a new vision, based on a commitment to mutual respect, be developed. It also requires an understanding that the most harmful impacts of residential schools have been the loss of pride and self-respect of Aboriginal people, and the lack of respect that non-Aboriginal people have been raised to have for their Aboriginal neighbours. Reconciliation is not an Aboriginal problem; it is a Canadian one. Virtually all aspects of Canadian society may need to be reconsidered. (p. VI)

As a result of the Commission's work, during 2015 and 2016, six volumes of Final Reports were created, along with six Indices to support them. In addition, in 2015 the



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Commission also released the Summary report, a report titled The Survivors Speak, and one titled Principles of Truth and Reconciliation.²

As an outcome of the work and reports, in 2015 a number of “*Calls to Action*” were developed and published.³ These were intentionally named *Calls to Action*, and not recommendations, to spur individuals and organizations into action to actively participate in reconciliation.

There are 94 *Calls to Action* identified in 22 categories under the broad titles of either *Legacy* or *Reconciliation*. While the *Calls to Action* are intended to spur all Canadians into action, they are directed to specific groups or organizations to facilitate this process. A number of the *Calls to Action* apply to the work of lawyers in a variety of practice areas, the education of lawyers and reforms to justice.

Call to Action 27, under the title *Legacy* and the category of *Justice* specifically addresses action to be taken by Law Societies:

We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

Call to Action 28 makes a similar statement regarding law schools:

We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism

There are a number of educational topics listed in this *Call to Action* for inclusion in any course(s) or program(s) that lawyers may take that would permit the Federation and its member Law Societies to ensure that lawyers receive appropriate training.

The Law Society of Alberta's Response

² <http://nctr.ca/reports.php>

³ http://nctr.ca/assets/reports/Calls_to_Action_English2.pdf



In addition to the statement supporting the Truth and Reconciliation Commission of Canada's *Call to Action* 27, the Law Society has been working on a number of Indigenous initiatives. These include:

- Indigenous Land Acknowledgements, which includes basic land acknowledgements, pronunciations and tips for those wishing to make land acknowledgements;
- Indigenous Law Student Summer Employment Program, which facilitates job searches for Indigenous students looking for summer work and employers who wish to develop relationships with Indigenous students;
- Indigenous Advisory Committee, which provides feedback and input on Law Society Indigenous Initiatives;
- Indigenous Initiatives Liaison, who works with the Law Society to develop and implement Indigenous Initiatives and works closely with the Indigenous Advisory Committee;
- Hosting two-day Indigenous conferences in both Calgary and Edmonton;
- Providing education to both Benchers and Law Society staff; and
- Supporting Indigenous programming with various stakeholders, including the University of Edmonton Faculty of Law and the University of Calgary Faculty of Law.

Further to these initiatives, at the February 2020 Benchers Meeting, the Benchers passed the following resolution:

That the Benchers Lawyer Competence Committee and Indigenous Advisory Committee work with staff to create competence programs for 2020 and 2021 on Indigenous issues to meaningfully address our obligation arising from the Calls to Action in the Truth and Reconciliation Report.

Since that time, the Lawyer Competence Committee and the Indigenous Advisory Committee have identified a program for Indigenous education for lawyers to provide a foundation in the topics listed in *Call to Action* 27. This program is called The Path. The Indigenous Initiatives Liaison along with the Indigenous Advisory Committee have been working with the developers of The Path to create Alberta specific content to include in the program, with the intention of offering an educational tool specifically for Alberta Lawyers.

For information on the importance of Alberta specific content, please see [Appendix A](#), Alberta's Indigenous Context.

Federation of Law Societies of Canada Response



The Federation of Law Societies of Canada (FLSC) established a Truth and Reconciliation Commission Calls to Action Advisory Committee, immediately after the Truth and Reconciliation Commission of Canada released its report. This FLSC Committee released a recommendations document to the FLSC Executive in May 2020. This document makes a number of recommendations for responses to the work of the *Truth and Reconciliation Committee of Canada* and its *Calls to Action*.

The recommendations were adopted in full in mid-August by the FLSC Executive.

These recommendations address both *Call to Action* 27 and 28. As discussed above, 27 addresses the FLSC and Law Societies.

The FLSC Committee notes, at paragraph 5 of the recommendations document, that:

While the language of Call to Action 27 specifically references the Federation, it is understood that individual law societies are directly responsible for training and education of future legal professionals.

The Federation Committee notes the importance of reconciliation and the role of lawyers in this process. The Committee identifies the following rationale for its work:

The Advisory Committee recommends a path to reconciliation that emphasizes enhancing knowledge, sharing information, encouraging ongoing dialogue and relationship-building, and promoting reflection on individual and institutional levels. The Advisory Committee recognizes that cultivating an understanding of the fact that Canada is a multi-juridical country in which Indigenous legal orders, the common law and the civil law all have an important place is integral to transforming the relationship between the legal profession and Indigenous peoples in Canada.

The Committee comments on the important role that law societies play in educating lawyers to assist in the reconciliation process. Through its work, the Committee developed recommendations not only for the Federation but also for Law Societies.

The first of these recommendations is:

That the Federation urge all law societies to make a formal commitment to reconciliation and develop a framework or steps for putting that commitment into action.

Using the Law Society of Alberta's statement as an example of a Law Society that has already done work in this area, the Federation implores "law societies to provide ongoing opportunities for competency and awareness training for law society leadership and staff".



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The Federation Committee goes on to address education and explicitly recommends mandatory Indigenous cultural competency training.

This recommendation is as follows:

That the Federation urge law societies to

- Consider mandatory Indigenous cultural competency training.
- Ensure that legal professionals in their jurisdictions are provided with access to educational opportunities to enhance their knowledge and understanding of Indigenous peoples, the legacy of colonization and the existence of Indigenous legal orders.
- Ensure the availability of a continuum of educational opportunities and resources to recognize the diversity of legal practices and Indigenous peoples and legal orders within a given jurisdiction.
- Collaborate with Indigenous organizations in the development and delivery of cultural competency training or rely on training already developed by such organizations.

The Federation Committee provides a number of statements in discussion of their recommendation for mandatory training. While noting that recent graduates may have the benefit of increased Indigenous focused learning in law school, in response to *Call to Action 28*, those who graduated before may not have had access to such learning and that law societies should work to address this gap. The Committee states that:

The Advisory Committee is of the view that, at a minimum, members of the legal profession in every jurisdiction should be encouraged to undertake training that will enhance their knowledge and understanding of Indigenous peoples and legal orders.

The Committee acknowledges that a one-size-fits-all approach may not meet the needs of all lawyers, however “all members of the legal profession need a baseline knowledge of the issues outlined in *Call to Action 27*, including the existence of Indigenous legal orders”.

This would allow for a primary course for all lawyers, followed by opportunities to expand their knowledge as appropriate for their practice area and location. The Committee states that “Adopting an approach to Indigenous cultural competency that recognizes a continuum of knowledge would be consistent with the ethical obligations of legal professionals.”



The Committee does note the importance of interpreting *Call to Action 27* broadly and acknowledging that “it is generally recognized that competence requires more than a single course or workshop. Some observers suggest that approaching reconciliation in this way could undermine its importance and lead to a perception of legal professionals “ticking a checkbox”.

As noted above, that checkbox ticking exercise can be avoided with a baseline program for all lawyers, followed by expanded programming opportunities that lawyers can include in their learnings to address their needs.

Perspectives on Mandatory Training

Since the *Calls to Action* were released, a number of debates have occurred in various industries, sectors and spaces, including the legal profession, over whether training called for by the Truth and Reconciliation Commission of Canada should be mandatory.

Voices Within the LSA

The LSA’s Indigenous Advisory Committee, Indigenous Initiatives Liaison and Lawyer Competence Advisory Committee have all spoken up in favour of mandatory training.

In a letter to the Lawyer Competence Committee dated July 13, 2020, the Indigenous Advisory Committee clarified its position on mandatory training explaining that:

While the IAC was concerned about the implications of imposing new obligations on Alberta Lawyers in the midst of a pandemic, they were always of the view that compulsory Indigenous training was preferable. This view was confirmed in April 2020 when the IAC met again and voted unanimously to recommend compulsory Indigenous CPD training for Alberta lawyers.

The question of whether Indigenous Cultural Competence training should be mandatory was also put to the Lawyer Competence Advisory Committee at their May 4th meeting. This group almost unanimously favoured making Indigenous Cultural Competence training mandatory..

Since the spring of 2020, and given the ever-evolving sentiments about systemic racism in North America that have been developing throughout the summer of 2020, providing a greater voice to those impacted by systemic racism, the Indigenous Advisory Committee has reiterated its position and believes Indigenous training should be mandatory/compulsory.

The Indigenous Initiatives Liaison noted that Indigenous cultural competency programs, in these days and times, are essential for a lawyer’s practice, stating “I am sure every



firm deals with an Indigenous client (whether it be a big firm or small)...they just don't know it." She notes specifically the disproportioned numbers of Indigenous individuals with legal issues related to residential schools and the '60s Scoop, as well as interactions with the child welfare and criminal justice systems.

She notes that many of Alberta's lawyers were not taught about the history of residential schools or Indigenous history or perspectives in school and this has led to

lawyers [who] don't know how to understand their client because Indigenous peoples come from a different culture with different verbal and non-verbal communication cues (and a different language), [and because of this] they miss out on vital arguments that can be made in court. They also miss out on Indigenous legal arguments that can be made.

Indigenous cultural competency training can help improve on this situation and close knowledge gaps.

The Law Society of British Columbia

The debate about whether Indigenous training should be mandatory or optional has already occurred at the Law Society of British Columbia (LSBC). Many items that will likely be of concern in Alberta have already been discussed by the LSBC.

As a result of its discussions, the LSBC is currently developing mandatory training and considers a baseline of knowledge vital for all lawyers. In making this decision, the Law Society of British Columbia (LSBC) notes that *Call to Action 27* speaks of "all lawyers" in its call for Indigenous training.

Training was recommended to the LSBC Benchers to be mandatory as it was felt that "the objectives of intercultural competence education, including reconciliation, cannot be fully achieved unless all lawyers have a baseline understanding of the skills and topics identified in *Call to Action 27*."

Many arguments were put forward both for and against mandatory training. In the end, the LSBC determined that anything other than mandatory training would fall short of its obligations to the *Calls to Action* and the public.

Excerpts of these points, from the *Indigenous intercultural competence education for BC Lawyers: Joint Recommendation Report of the Truth and Reconciliation Advisory Committee and the Lawyer Education Advisory Committee*, presented to the Benchers of the LSBC on October 10, 2019, follow.

In the following excerpts, "Option 1" refers to mandatory training, while "Options 2" refers to optional training

- Although many lawyers do not practice in areas of law with high Indigenous usage rates, all lawyers should be aware of the possibility that Indigenous



issues may affect legal matters in a broad range of areas of law, including but not limited to: human rights, administrative law, Aboriginal and treaty rights, lands and resources, real estate, commercial law, taxation, family (including child welfare) law, wills and estates, intellectual property, civil litigation, immigration law and criminal law. Even in areas of practice where Indigenous issues rarely arise, it is important for all lawyers to be capable of identifying when an Indigenous issue may be relevant to a legal matter and responding appropriately.

- [I]n the first phase of the educational program, the focus would be on establishing baseline knowledge for all lawyers in respect of the topics and skills identified in Call to Action 27... Although many lawyers may already have some exposure to some matters identified in Call to Action 27 (e.g. through their practice areas, or as recent graduates of the Professional Legal Training Course of law school), the Course is intended to ensure that a baseline of information will be conveyed to all lawyers in the province.
- Those in support of Option 1 are strongly of the view that the Law Society's efforts toward reconciliation will be less effective if only those lawyers who "opt in" participate in intercultural competence training, and are concerned that an optional approach may only engage those practitioners who already have an interest in, or awareness of, Indigenous issues.
- The Committee considered whether the educational requirement should only apply to lawyers who practice certain areas of law or in particular geographic areas. The Committee members in support of Option 1 rejected these approaches in favour of a universally applicable mandatory requirement that avoids any real or perceived inequities that may arise from introducing a requirement that only applies to a subset of the membership. There was some concern that an approach in which only some lawyers are required to completed intercultural competence training may disproportionately affect certain groups or create disincentives to work in certain practice areas or locations, with unintended negative outcomes for Indigenous people.
- It may also be met with resistance by some lawyers who are of the view that Call to Action 27, and reconciliation more generally, are not directly, or even indirectly, relevant to their legal practice. Others may suggest that an Indigenous course is too narrow, and that the requirement should be expanded to intercultural competency more broadly, given the diverse and multicultural client base of many lawyers. The Committees have some concern that this opposition may shift the discussion away from reconciliation and toward controversy about what some lawyers may regard as an overly prescriptive educational requirement.



- To address this concern, a communications campaign would be required to clearly articulate to the membership why Indigenous Cultural competence training, specifically, is relevant to all lawyers. The communications must show the link between lawyers, as key participants in the legal system, competency and the process of reconciliation.
- Option 2 is responsive to the concern that requiring all lawyers in the province to complete Indigenous cultural competency education is overcasting the net because many lawyers have no Indigenous clients, and do not come across Indigenous issues in their practice areas. Mandating a program that has little or no perceived value to them in their practices may cause a reaction that could undermine the Law Society's efforts toward reconciliation. Some concerns have been raised that although some lawyers will greatly benefit from participating in Indigenous intercultural competence training, others will be of the view that the topics and skills addressed in Call to Action 27 have no direct or indirect connection to their delivery of legal services.
- Option 2 may, however, generate criticism on a number of fronts. Adopting an intercultural competence option, rather than a requirement, may be challenged on the basis that it fails to align with the Law Society's TRC Action Plan, which refers to "mandating" Indigenous intercultural competence training for all lawyers, and Call to Action 27, which calls upon law societies to "ensure" lawyers receive intercultural competence training. Both of these provisions are grounded in the moral imperative for lawyers to advance reconciliation, and the need for the Law Society to protect the public interest. Optional training may be perceived as falling short of these responsibilities.

The LSBC is the first Law Society in Canada to mandate training.

Please see [Appendix B](#) for information regarding training offered by Canada's Law Societies and whether it is optional or not. Please note that not all Law Societies responded prior to publication of this memo and therefore some information may not be accurate.

A Legal Academic Perspective

An excellent piece of academic writing in this area comes from Pooja Parmar, Assistant Professor at the University of Victoria Faculty of Law. She has written an article titled "Reconciliation and Ethical Lawyering: Some Thoughts on Cultural Competence" published in *La Revue Du Barreau Canadien* Vol.97, 2019, pp.526-557.



In the article, she notes that this is a complex area and that there is a lot of think about in developing, delivering and assessing the value and effectiveness of educational programs in cultural competence. However, through her discussion, she does not advocate for perfection and waiting until the perfect program exists but to start the learning process and grow from there to build up the complexity and various facets that need to be addressed. Building from common ground and common knowledge will enable work to continue and develop.

The abstract summarizes the article, in part, to state:

I suggest that an uncritical embrace of cultural competence, as currently understood, is inadequate and might even prove to be counterproductive despite best intentions. While acknowledging that the focus on cultural competence is often driven by genuine commitments to reconciliation within the legal profession in Canada, I outline concerns which show that a limited and deficient conception of cultural competence is unlikely to assist lawyers in representing Indigenous clients better or change Indigenous peoples' experience with the legal system more broadly. I suggest that the TRC Calls to Action demand a response that centres accountability, and that the legal profession must recognize Calls 27 and 28 as a unique opportunity to innovate and lead by rethinking legal education, competence, and ethical lawyering in a multi-juridical space such as Canada.

Professor Parmar describes her intention as not to block the current development of programming but to expand the scope of how and why programming is being developed to include additional aspects of critical thinking that relate to accountability and ethical lawyering:

The purpose of this critique is not to discourage new or ongoing initiatives that focus on cultural competence training for lawyers or law students, especially where the goal is to initiate broader conversations within the profession about legal representation and access to justice for Indigenous peoples. Instead, my goal is to introduce a note of caution and indicate why an uncritical embrace of cultural competence is not an adequate response to the TRC Calls 27 and 28.

In noting that lawyers frequently have difficulty representing the perspectives of their clients, particularly Indigenous clients, Professor Parmar states that "In a legal system that relies on counsel being able to represent clients fully and competently, a lawyer's inability to hear, comprehend or re-present the client's interests and claims in a meaningful manner is a serious problem."

She continues on to say:

A commitment to reconciliation places an obligation on the legal profession to acknowledge and address the issue of inadequate or incompetent representation. It is therefore imperative that educators, regulators, and others



concerned about this, join the conversation about how lawyers meet their obligations towards those whose encounters with the law and legal processes have been marked by the violence of colonialism.

In looking at cultural competence, Professor Parmar states that:

calls for cultural competency training for lawyers are broadly based on the idea that a culturally competent professional will have the skills to work more effectively with a diverse range of clients, especially with clients that are perceived to be culturally different than the professional. As a general aspirational goal, provision of appropriate professional legal services oriented to specific needs of differently situated clients is a positive development.

She notes that:

Treating cultural competence as a critical skill requires lawyers to have a deeper understanding of culture and difference and an ability to recognize the consequences of being seen as culturally different for many.

She cautions that basic courses can only be a starting place and there are many complex arenas that must be explored in ongoing training of lawyers, including ensuring that ethical lawyering and professional responsibility are viewed from an Indigenous perspective. She also encourages education on Indigenous laws and legal orders and “the plurality of legal orders in Canada”.

Professor Parmar highlights some of the critiques of cultural competence training and cautions that it cannot be viewed as a substitute for systemic change.

Along with its emergence as a “professional imperative”, cultural competency has also been subjected to numerous critiques. The essence of critiques within social work and health professions is that mandating cultural competence does not help address structural issues. The reasons offered encompass a range of problems: the fact that cultural competence does not increase accountability, focuses on individual action and autonomy (both of professionals and clients), does not enable professionals to pursue a “transformative agenda”, can lead to patronizing behaviour, and is often treated as an unproblematic add-on to professional education, or even worse, simply as a “slogan” or “flag of convenience”. One of the biggest criticisms of cultural competency is that it reinforces stereotypes.

In response to this, Professor Parmar notes that:

Scholars point out that treating culture as a separate module, or cultural competence as a technical skill that can be learned in a short time, is an oversight. A commitment to cultural competence requires fundamental changes in ways of thinking and interacting. This relates to my earlier point about the



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importance of lawyers learning to think critically about culture and difference in ways that enable them to understand and serve Indigenous peoples better.

Professor Parmar's article provides many thoughts on where to go to develop a program past the initial training stage to become a meaningful and impactful program for lawyers: one that can enhance accountability and ethical practice while providing lawyers with a better understanding of and ability to represent clients.

Summary of Positions

The LSBC discussion highlighted positions both for and against mandatory Indigenous competency training. As noted above, similar discussions have been seen in other spheres, as well.

Building on Professor Parmar's approach, one commentator, writing from the perspective of a university student, points out that:

The Truth and Reconciliation Commission of Canada asks in seven separate calls to action for education to be provided to medical students, nursing students, law students, journalism students, management and staff in Canada's businesses, public servants, teachers, and social workers. It is clear that the next generation of leaders and professionals needs to be competent and aware of the history and culture of Indigenous peoples in our country.

Shape our future doctors, nurses, journalists, social workers, and teachers; but don't stop there. Educate our future engineers, politicians, pilots, accountants, professors, pharmacists, bankers, entrepreneurs - teach all graduates that in order to contribute positively to our country's future, we must first understand its past. Like the commission says: **education must remedy the gaps in historical knowledge that perpetuate ignorance and racism.** (*emphasis in original*)

The student author closes by advocating for mandatory training, noting that through this "We will emerge a more empathetic and understanding generation for your commitment to reconciliation."⁴

While this argument is made in the context of university education, it is important to remember that many Alberta lawyers, who were trained in an earlier time or outside of Canada, may have had little or no exposure to Canadian Indigenous history. It can be argued, therefore, that, in order to ensure that the Law Society meets its obligation to provide Indigenous training to lawyers, the arguments articulated by this student and others writing from a different sphere of reference are still relevant to the Law Society.

⁴ <https://www.ousa.ca/blog/its-time-for-canadian-wide-indigenous-course-requirements>



Supporters of mandatory training reflect on the wording of the *Calls to Action* themselves, as the LSBC has done. The LSBC interpreted the wording to require baseline training for all lawyers. Additionally, comments in the educational sphere, from First Nations leaders, have noted that “Learning about the colonial history of this country should not be optional”⁵, which reflects the LSBC perspective. There is a concern, as noted in the LSBC report, that optional training will only attract those who already have an interest in and knowledge of Indigenous issues, leaving those who don’t without the key baseline knowledge that the *Calls for Action* demand.

On the other side of the discussion, critiques of mandatory Indigenous training focus on several key points. Many of these are highlighted in the LSBC discussion, set out above, and in Professor Parmar’s work but are further summarized as follows:

- providing a basic course is insufficient, amounts to a box-ticking exercise and does not represent the complexity of the issues⁶;
- mandatory courses can lead to resistance to what is being taught⁷;
- not all lawyers encounter Indigenous clients or legal issues so this training is not relevant to all lawyers⁸;
- mandatory Indigenous training is a slippery slope that can lead to other marginalized groups demanding mandatory training for their culture, history or issues⁹;
- mandatory training raises the question of why we favour Indigenous cultural competence over cultural competence training for other marginalized groups in our society¹⁰; and
- this type of “coercion” to learn a particular cultural perspective can cause resentment and backfire¹¹.

A concern raised by lawyers, in another context, is that of compelled speech and compelled thinking. There is a risk that lawyers will be unreceptive to mandatory training, believing it to force another’s views and perspectives on their own. Rather than fostering a broader perspective and critical thinking, some may see it is narrowing the acceptable worldview.

These are the types of arguments that arose in Ontario in the debate over the Statement of Principles. The Statement of Principles was a statement to be produced by every licensee in Ontario, where each licensee was to acknowledge their obligation

⁵ <https://www.cbc.ca/news/canada/toronto/indigenous-courses-ontario-curriculum-mandatory-1.5145751>

⁶ <https://rabble.ca/blogs/bloggers/campus-notes/2016/03/mandatory-indigenous-studies-courses-arent-reconciliation-theyre>

⁷ <https://www.fastcompany.com/90537483/avoid-these-8-common-mistakes-when-creating-a-di-policy>

⁸ See LSBC discussion

⁹ <https://www.macleans.ca/education/uniandcollege/why-indigenous-studies-shouldnt-be-mandatory/>

¹⁰ Ibid.

¹¹ Ibid.



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to promote equality, diversity and inclusion generally, and in their behaviour towards colleagues, employees, clients and the public. This caused tremendous debate and rancour in Ontario and was eventually repealed.¹²

The analogy between the “compelled speech” that was the subject of debate in Ontario and the question here around mandatory Indigenous education is not a strong one. Distinct from requiring an individual commitment to equality, diversity and inclusion, the point of mandatory education is to ensure that Alberta lawyers have training in an area that has been determined by the regulator to be a core competency.

There are many arguments for and against mandatory Indigenous cultural competency training. In the context of the Law Society’s response to the Truth and Reconciliation Commission of Canada’s *Calls to Action*, it is important to assess these varying perspectives while keeping in mind the catalyst for and the goal of this work.

[The Path: Your Journey Through Indigenous Canada](#)

The LSA has undertaken beginning steps to develop an initial starting point for training for Alberta’s lawyers. It has reached out to NVision Insight Group Inc., an Indigenous consulting firm that is majority Indigenous-owned with First Nations, Inuit and Métis shareholders and staff, It is the developer of The Path. With NVision, the Law Society is working on creating relevant Alberta content to supplement the existing course.

There are three offerings in The Path program, with the primary offering being considered for adoption by the Law Society of Alberta.

In their own words, NVision describes the first offering as follows:

The Path: Your Journey Through Indigenous CanadaTM is a series of five online modules... Topics include:

- the cultural and historical differences between First Nations, Inuit, and Métis;
- the evolution of the relationship between Canada and Indigenous people from pre-contact to yesterday’s headlines;
- stories of social and economic success, reconciliation and resilience;
- understanding intercultural communication in the workplace;
- and much more.

With videos, quizzes, music and animation, ***The Path*** is lively, entertaining, and engaging.

¹² <https://www.thelawyersdaily.ca/articles/15116>



This program was brought to the attention of the Law Society through the Canadian Bar Association. In the spring of 2020, the CBA announced this program as part of its course offerings, providing the first 500 lawyers to register with complimentary admission.

The Law Society has been working with NVision to provide this course to its lawyers through the five online modules version of the program. This provides flexibility to lawyers to proceed through the course at their own pace, fitting this into their busy lives and providing time for reflection on new, upsetting or illuminating information and content. The content can be reviewed over one day or the course of several sittings. There are quizzes at the end of each section, ensuring engagement and learning prior to moving on to subsequent modules.

As noted above, the *Truth and Reconciliation Commission of Canada* requested in *Call to Action 27* that lawyers learn about “the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples* [(UNDRIP)], Treaties and Aboriginal rights [(Aboriginal Law)], Indigenous law [(Indigenous Legal Principles)], and Aboriginal-Crown relations.” These topics are included in The Path.

Members of both the Lawyer Competence Committee and the Indigenous Advisory Committee have taken the course and found it appropriate to recommend as the next step in the development of the Law Society’s Indigenous Initiatives programming and response to *Call to Action 27*.

Call to Action 27 also includes a notation that learning will required “skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism”. As learning should be a continuous process, these skills are recommended for development in future LSA programming that can build upon the learning provided by The Path.

If mandatory, it is currently proposed that lawyers will have 18 months to complete The Path, commencing in January 2021. The program will take Alberta lawyers about 5 hours to complete and it can be done in chunks, allowing lawyers to set their own pace in working through the material.

COST

The cost of course work, especially that mandated by the regulator, is always a concern for lawyers. Many legal courses and conferences are prohibitively expensive for certain sectors of lawyers, including junior lawyers and some solo and small firm practitioners.

The LSA Executive Leadership Team is proposing that the LSA cover the cost of The Path course for Alberta’s lawyers, removing any financial barrier for lawyers and the complexity of administering course fees and collection for the LSA.



The basic program has already been designed and developed, with the LSA requesting additional Alberta-specific content be developed and incorporated into the existing program.

This pre-existing content reduces the cost of development for the LSA.

Course delivery costs depend on the number of student “seats” purchased.

If the course is mandatory, the LSA will purchase 10,000 seats upfront. If the course is optional, the LSA expects to purchase a minimum of 5,000 seats upfront.

The Chief Financial Officer of the LSA has assessed the cost and believes that the LSA can absorb the costs associated with The Path without charging lawyers directly to complete the course.

The consideration is that the 2020 operating costs are tracking slightly lower than anticipated in the Spring when presented to the Benchers. It is anticipated that the Alberta content costs (\$33,000) will be absorbed within the 2020 budget and the costs per seat, (ranging from \$36,670 for 2500 seats to \$81,670 for 10000 seats) can be included within the 2021 budget while ensuring that the parameters of the contingency reserve and 2021 practice fee are adhered to as previously established by the Benchers.

Considerations for Exemptions

In delivering The Path to lawyers, the LSA may wish to consider exemptions for certain classes of lawyers who request an exemption.

The primary exemption that is recommended is:

1. Lawyers who have already completed The Path or Indigenous Canada (*a 12 week program developed by the University of Alberta’s Faculty of Native Studies “that explores Indigenous histories and contemporary issues in Canada.”*)

While it may be tempting to consider exemptions for the following categories of lawyers, thought must be put into why a lawyer would be exempt from The Path:

1. Lawyers who have an undergraduate or graduate degree in Indigenous Studies or similar program
2. Lawyers who have a certain number of years at the bar practicing Aboriginal Law (Treaties, Aboriginal Rights, Indian Act, etc) or Indigenous Law (Indigenous Legal Traditions)
3. Lawyers who are First Nations, Inuit or Métis



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The arguments put forward by the LSBC, noted above, would recommend against any exemptions. Specifically, avoiding exemptions would allow the LSA to meet the explicit wording in *Call to Action 27*, that the Law Society “ensure” that all lawyers receive training and that all lawyers have the same baseline knowledge upon completion of the course.

Exemptions would not permit the LSA to ensure that all lawyers have the same baseline training, even where some lawyers would start that process with more knowledge than others.

As noted above, the LSBC Committees recommended that training be mandatory as it was felt that “the objectives of intercultural competence education, including reconciliation, cannot be fully achieved unless all lawyers have a baseline understanding of the skills and topics identified in *Call to Action 27*.” The Benchers of the LSBC adopted the recommendation and mandated training for all lawyers.

Conclusion

The implementation by the LSA of responses to the *Truth and Reconciliation Commission of Canada’s Calls to Action* do not require perfection. What they require is a willingness to engage in the process and to start somewhere and build from there.

The LSA has started this process with its Indigenous Initiatives. The implementation of Indigenous cultural competency training through *The Path* is a great starting point for the development of an educational component for lawyers.

The question remains whether this program will be mandatory/compulsory or optional/voluntary.



Appendix A – Alberta’s Indigenous Context

Alberta has a large indigenous population. As noted by Indigenous and Northern Affairs Canada (soon to become Crown-Indigenous Relations and Northern Affairs, as well as Indigenous Services Canada):

In Alberta there are:

- 45 First Nations in three treaty areas [Treaties 6, 7 and 8]
- 140 reserves
- Approximately 812,771 hectares of reserve land¹³

Alberta contains the largest reservation in Canada:

The Kainai reserve Blood 148 [the Blood Tribe Reserve] is currently the largest in Canada with 4,570 inhabitants on 1,414.03 km² and is located approximately 200 kilometres south of Calgary.¹⁴

Additionally, Alberta is the only province to have acknowledged and established Métis Settlements. As noted on the Government of Alberta website:

In 1985, the Alberta Legislature unanimously endorsed a resolution to transfer lands to the Metis Settlements and establish new legislation which provided Métis Settlements with greater local autonomy.¹⁵

Edmonton is home to the second largest urban indigenous population in Canada, following Winnipeg.

Winnipeg has the largest Indigenous population of any major city in Canada, according to the latest census data.

The Statistics Canada numbers, based on the 2016 census, show Winnipeg's census metropolitan area (CMA) with 92,810 people identifying as Indigenous — First Nations, Métis and Inuit.

Edmonton (76,205), Vancouver (61,460) and Toronto (46,315) round out the top four.¹⁶

¹³ <https://www.aadnc-aandc.gc.ca/eng/1100100020670/1100100020675>

¹⁴ https://en.wikipedia.org/wiki/Kainai_Nation#:~:text=The%20Kainai%20reserve%20Blood%20148,200%20kilometres%20south%20of%20Calgary.

¹⁵ <https://www.alberta.ca/about-metis-settlements.aspx>

¹⁶ <https://www.cbc.ca/news/canada/manitoba/aboriginal-population-statistics-canada-1.4371222#:~:text=Winnipeg%20has%20the%20largest%20Indigenous,First%20Nations%2C%20M%C3%A9tis%20and%20Inuit.>



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While Calgary may not be in the top four cities with an urban indigenous population, it directly abuts the Tsuut'ina Nation, while a short drive to the west finds the Stoney Nakoda Nation and a short drive to the east finds the Siksika Nation. Many of the members of these Nations find themselves in Calgary regularly seeking services for a variety of needs, including legal services.

Other cities and towns in Alberta find themselves equally close to First Nations and Métis Settlements and have First Nations and Métis residents.

More broadly, Canada's indigenous population is the fastest growing segment of the Canadian population, overall:

A high fertility rate and a growing sense of self are fuelling an explosion in the ranks of Indigenous Peoples, according to fresh census numbers that lay bare the demographic challenges facing one of the most vulnerable and poverty-stricken segments in Canada.

Nearly 1.7 million people identified as Aboriginal in the 2016 census, Statistics Canada says – a 4.9 per cent share of the total population and a breathtaking 42.5 per cent increase since 2006, a growth rate more than four times that of their non-Indigenous counterparts.¹⁷

Alberta's lawyers have many opportunities for interaction with Alberta's Indigenous population, both at work and in their everyday lives.

¹⁷ <https://globalnews.ca/news/3823772/canadas-growing-indigenous-population/#:~:text=Nearly%201.7%20million%20people%20identified,of%20their%20non%2DIndigenous%20counterparts.>



Appendix B – Law Society Comparison

Indigenous Training - Canadian Law Societies

<u>Province</u>	<u>Training Offered</u>	<u>Mandatory or Optional</u>
BC	<p>In December 2019, the LSBC Benchers adopted the following resolution:</p> <p><i>The Law Society develop, in consultation with subject-matter experts, an online Course composed of a series of modules that cover the Topics identified in this joint recommendation report. The modules will be provided to lawyers at no cost, and must be completed by all full and part time practising lawyers in BC, within two years of the Course being made available. This new requirement will be established outside of the CPD program, however CPD credit hours will be provided for time spent completing the Course.</i></p> <p>Phase I course proposal for Benchers consideration would develop a free six hour, online modularized course relating to TRC#27. The Phase I course would be mandatory for all lawyers beginning in 2021, and lawyers would be required to complete it within two years. Subject to Benchers approval of the Phase I course, the two committees will begin considering a Phase II course(s) requirement. The two committees have not yet focused in any depth on the MMIWG Report, but will presumably do so when considering the Phase II course.</p>	<p>Mandatory</p> <p>We are aiming to introduce the course to the profession in early 2021.</p> <p>Training was recommended to be mandatory for all lawyers regardless of year of call and full- or part-time practice, as it was felt that “the objectives of intercultural competence education, including reconciliation, cannot be fully achieved unless all lawyers have a baseline understanding of the skills and topics identified in Call to Action 27.”</p>
SK	<p>We offer stand-alone TRC CPD programs, and we also try to incorporate TRC topics into larger CPD programs.</p>	<p>Optional</p> <p>Our Competency Committee directed that we incentivize all TRC training (discounted price or free) as a first step. Although the Committee’s discussion was not intended to be conclusive on the mandatory/optional question, I can advise that one concern they raised was the idea that when you force it on someone it may trigger</p>



		<p>resentment and/or less engagement related to that particular topic.</p> <p>At the time of the Competency Committee discussion, a TRC Advisory Group was being established so the intention was to get further direction from that group once it was fully functioning. Unfortunately, we have not been able to move work through that group as quickly as we had envisioned, so this matter has not been further considered in any comprehensive manner to date.</p>
MB	<p>We have offered various CPDs in response to the TRC's Calls to Action, including two full day programs on Indigenous law which were held at a traditional teaching lodge on Sagkeeng First Nation and a five part series of programs that covered treaties, urban reserves and other topics. Our CPD department tries to integrate content that helps increase cultural competency in all CPD programs where possible. We are currently working on some additional programming which we hope to have available for the coming year. Our staff and benchers have participated in the CAIROS blanket ceremony.</p>	<p>It isn't mandatory at this time. Our Benchers considered this issue some time ago and decided to make it optional. It's possible that the Benchers may re-consider this issue.</p>
ON	<p><i>Based on a Sept 2019 Update:</i></p> <p>LSO's CPD continues to offer specific programming on Indigenous Law issues, with 2 half-day programs per calendar year on public and private law topics. Currently, each half day program is offered in a different season – one in Spring, one in Fall. These programs address diverse topics relating to Indigenous Law, including tax, estates, incorporating traditional laws into the Canadian legal system, family law, and consultation issues. Matters relating to the National Inquiry into Murdered and Missing Indigenous Women and Girls has been addressed in previous years' CPD programming, including the Indigenous Law annual programs, and will be featured again in future programs, as appropriate.</p>	<p><i>(response not received at time of publication, believed to be optional)</i></p>
QU	<p>From our past initiatives, our 3-hour online course on cultural competency is still available.</p>	<p>Optional</p>



	<p>This online course qualifies for Québec's new Ethics and Professionalism CPD requirement.</p> <p>Since the Fall session of 2018, the same online course on cultural competency is a mandatory component of the bar admission program at the Ecole du Barreau. This mandatory component was adopted as a way to respond to TRC and also various Québec based studies that the Barreau conducted.</p> <p>We are also currently working on the first edition of an annual indigenous law conference that will be held in April 2021.</p>	
NB	<p>We don't normally offer CPD programs. However, following TRC recommendations, the LSNB hosts 2 blanket exercise sessions per year. However, the exercises have been put on hold due to COVID-19</p>	<p>Optional</p> <p>We can't make the exercises mandatory because they are not offered in French – everything we make mandatory has to be offered in the two official languages. Also, we do not have enough resources to hold enough blanket exercise for all our membership.</p>
NS	<p>We have TRC training in PREP and we also do a cultural competence workshop for all new admittees that is mandatory.</p>	<p>Our council is currently looking at making cultural competence training mandatory for all lawyers.</p>
PEI	<p>We have training as part of our Bar Admission Course each year for the articling clerks and we have also had annual cultural competency training for our members, including most recently with Senator Murray Sinclair.</p>	<p>The sessions for the members are not mandatory, although we have strongly encouraged members to attend and have tried to make them very affordable.</p>
NL	<p>Our Indigenous Education and Action Committee has organized several CPD seminars in response to TRC and MMIWG. These seminars have, thus far, been optional.</p> <p>We developed indigenous training content for our Bar Admission Course a few years back. This year we are engaging with the local indigenous groups to elaborate on the existing content and to develop new material. This course is mandatory for all articling students.</p>	<p>Optional</p>



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	We are also exploring the possibility of offering the (relatively) new program developed by the CBA – “The Path” - to our students free of charge.	
NU	<p><i>Based on a Sept 2019 Update:</i></p> <p>LSN has secured significant funds to deliver a project in partnership with Pauktuutit Inuit Women of Canada on Family Violence Prevention in Nunavut: A Research Project and Awareness Campaign. The Advisory Committee is composed of Inuit organizations, Inuk law student, Government of Nunavut Departments, YWCA AGVVIK Society (which runs the women's shelter in Iqaluit), NU Status of Women and LSN Members. The project will allow the identification of what is and is not working re: legal responses to family violence in the territory and to identify how to respond to unmet legal needs. The fruits of this project may lead into future CPD programmes for members.</p> <p>LSN Members continued to benefit from the Indigenous Cultural Competency (ICC) workshop offered by the Quality of Life Secretariat (GN). This opportunity, at no cost to the LSN and its Members, was made possible by former Quality of Life Secretariat ADM Karen Kabloona. The LSN has taken steps to begin the work of developing its own ICC training with the assistance from Pirurvik Center based in Iqaluit. The training will include an on-line component to make this training accessible to all of its membership.</p> <p>The LSN will now be organizing the speaker series and continue to inform the Members of the Committee to ensure the events are planned and delivered in a manner that is aligned with the Committee's vision.</p> <p>The Committee has provided a list of readings that should be included as part of the mandatory reading list when lawyers apply to be called to the LSN. In addition, the Committee has suggested supplemental readings that would focus on Inuit history and Inuit culture. These suggested readings could be considered as part of the accompanying materials related to the Indigenous Cultural Competency training project (Pirurvik Center).</p> <p>Developing Inuktitut language skills is an important part of recognizing the cultural component when practising in Nunavut. Accordingly, the LSN will evaluate the feasibility</p>	<i>(response not received at time of publication, some training is mandatory)</i>



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	and cost recovery scheme to develop an online module with the Piruvik Center. The current compulsory professional development (PD) policy already recognizes language training as a PD activity. It hopes to be able to offer an online learning opportunity to all of its membership in the future.	
NT	We offer occasional CPD events on indigenous law topics.	Optional Our Executive is meeting in September to discuss whether there should be something more intentional for indigenous training/cultural competency, as opposed to ad hoc CPD sessions. Whether training should be mandatory will come up as part of that conversation.
YK	The Law Society of Yukon provides CPD programming to its members, including a First Nations 101 course which focuses on Yukon First Nations. The program was created by Yukon University and the Law Society of Yukon offers an in-person course to its members each year and will subsidize part of the cost. In addition, the CPD Committee seeks out other opportunities to offer programming on Indigenous Training and recently hosted a CPD on Residential School in Yukon.	The training is strongly encouraged, but at this time it is not mandatory. We have been discussing whether to make Indigenous training mandatory and if so, what it should look like. It is still an ongoing discussion and will likely be getting more attention as the Law Society works to implement the recommendations of the TRC Advisory Committee.

Sent on behalf of Ken Warren, QC, Chair, Lawyer Competence Committee

Dear Benchers,

As you know we will be discussing Indigenous Cultural Competence training at the Benchers meeting next week. We thought it might be helpful to provide you with access to the course that we are proposing to offer to Alberta lawyers. Please note that we are working on additional Alberta specific content to add to this version of the course. Please do not consider this mandatory viewing, nor is it necessary to complete the whole course prior to the Benchers meeting. It may assist the discussion if you have the opportunity to view a module or two to see the tone and general approach of the course.

Our partner in this work, NVision, has provided sign-in information below:

1. Click on, or copy and paste this URL into your Web browser: <https://nvisionthepath.ca>
2. Click on **Log in** (top right corner)
3. Choose **Create new account**. On completion, an email will be sent to the address used to create the account. If not, check your Spam or Junkmail.
4. Once an account has been created, click on THE PATH text or image. Choose the version that says The Path—Demonstration version. You will be asked for an Enrollment key: **TPdemo!#**
5. Attached is a **Quick Start Guide** that will help with navigation.
6. Note: The next time you login, The Path will appear in your profile. There is no more need to use the Enrollment key.

If you have any issues accessing the course, please don't hesitate to email our technician directly at technicalhelp@nvisionthepath.ca.

Thank you and I look forward to the discussion.

Ken

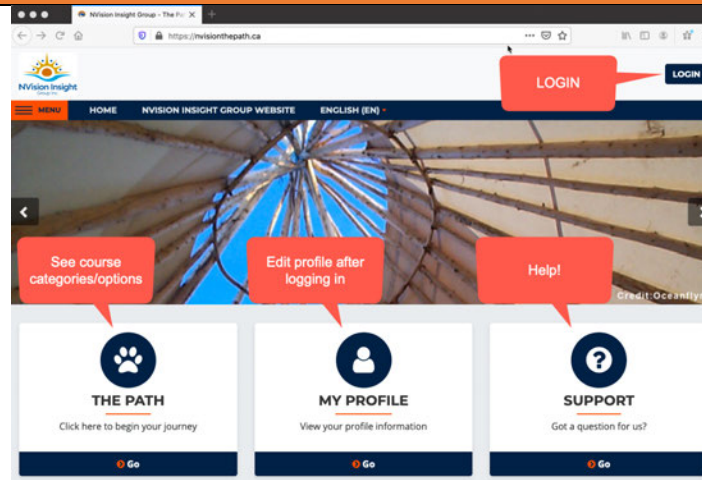


Quick Start Guide

Demonstration Enrolment Key Option

Open your Web browser and enter the address: <https://nvisionthepath.ca/>

1. Click **Login** or **THE PATH**.
2. **Login** – will ask you to login or create a new account
THE PATH – will show the course. Clicking on the course title will re-direct to LOGIN to create a new account





Quick Start Guide

Demonstration Enrolment Key Option

1. Create new account

Login or reset password.

NVision Insight Group - The Path

Username

Forgotten your username or password?

Password

Cookies must be enabled in your browser

☐ Remember username

Log in

Is this your first time here?

Welcome!

Individuals or Small Groups: Choose The Path - Purchase Seats and pay by credit card.

Large Groups or Custom Development: Please contact Jennifer David: thepath@nvisiongroup.ca.

Prepaid Groups: Create new account, and receive an enrolment key from your organization

All users:

1. To **Create new account**, click on the button below.
2. A confirmation email will be automatically sent to your email address (check junkmail)
3. Read your email, and click on the web link within.
4. Your account will be confirmed and you will be logged in.
5. Select the course you want to participate in.
6. If you are prompted for an "enrolment key" - use the one given you. This will "enrol" you in the course.
7. You may need to be enrolled by an administrator if you are taking this course through an organization.
8. You can now access the full course. From now on you will only need to enter your personal username and password to log in and access any course in which you are enrolled.

Create new account



Quick Start Guide

Demonstration Enrolment Key Option

2. Enter the information as directed.

If you do not have an e-mail address, from the Web browser, enter **mail.google.com** and create a free account, then return to **nvisionlearning.ca**

Write down your password on a piece of paper and keep it in a safe place.

NVision Insight Group - The Path

New account

Choose your username and password

Username

The password must have at least 8 characters, at least 1 digit(s), at least 1 lower case letter(s), at least 1 upper case letter(s), at least 1 non-alphanumeric character(s) such as *, -, or #

Password

More details

Email address

Email (again)

First name

Surname

City/town

Country

There are required fields in this form marked *

Create a password on paper using the rules above, then enter here.

This address is where you will receive the account confirmation email.

If you do not receive a confirmation email within minutes, check your Spam folder. The email might also be filtered out by your corporate spam filter or firewall. If so, you may need to use a different email address to create an account. You may also contact technicalhelp@nvisionthepath.ca and we can manually confirm your account.

When all the fields have been completed, choose Create my new account.

3. A confirmation message will be sent to the e-mail address provided.

If you have any issues logging in, contact the site administrator:

technicalhelp@nvisionthepath.ca

Home ► Confirm your account

An email should have been sent to your address at **jane2@gmail.com**

It contains easy instructions to complete your registration.

If you continue to have difficulty, contact the site administrator.

Continue, then check your e-mail account. Accept registration as directed.



Quick Start Guide

Demonstration Enrolment Key Option

- After accepting registration from the confirmation e-mail, you will be directed to your profile page. Check the information is correct, then scroll to the very bottom and add Province/Territory and Postal Code under Other fields, then choose Update profile.

Other fields

Province/Territory*

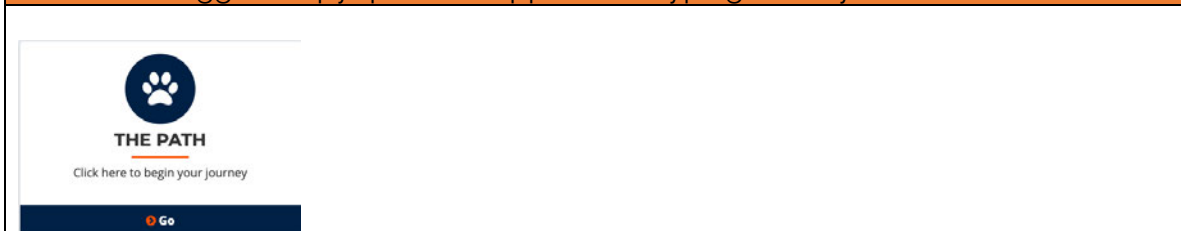
Postal Code*

Address 2

[Update profile](#)

- On first logging in, you are presented with your dashboard. To exit the dashboard, click on **HOME**.

- Choose **THE PATH**, then click on the **name of the demonstration course**, then enter the **Enrolment key** that was provided to you. We suggest copy/paste as opposed to typing the key.



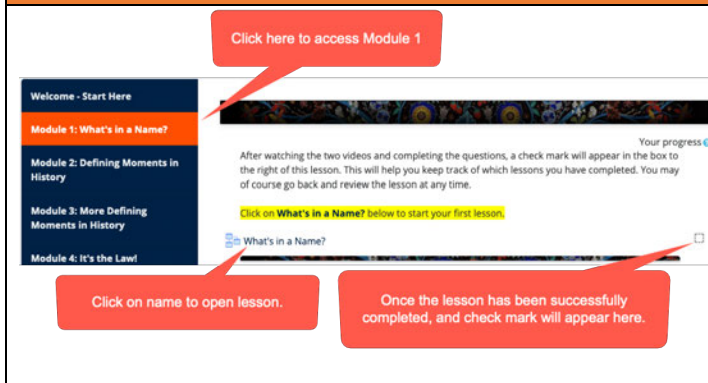


Quick Start Guide

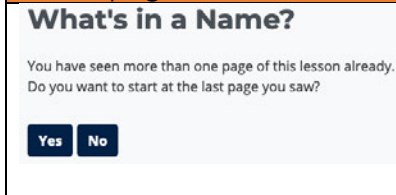
Demonstration Enrolment Key Option



- You will be greeted with a WELCOME page. After reading the information, click on the MODULE 1 link on the left side of the screen.



- Once a lesson has been completed, you may review it as many times as you wish. A choice box will be presented. Choose Yes to continue from the last page, or No to start from the beginning.

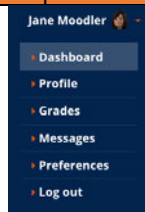




Quick Start Guide

Demonstration Enrolment Key Option

9. The little orange arrow next to your name has a number of sub-menus. Explore each. When finished, choose Log out.



10. The next time you return to **nvisionthepath.ca** and login, there will be no need to use the enrolment key. Click on the course name and continue.

11. In WRAP UP – when you have finished all five modules with 100%...
- There is a Completion Survey. We value your feedback.
 - The Certificate of Achievement will be available. Click and download your certificate.
 - You will also automatically receive a digital badge via e-mail.

THE PATH



INFORMATION SHEET

This 6-hour online video-based course, *The Path: Your Journey through Indigenous Canada*, is intended to meet the Truth and Reconciliation Commission (TRC) Calls to Action #27¹ for members of the Law Society of Alberta to receive baseline Indigenous cultural competency training.

Law Society of Alberta partnered with NVision Insight Group, a majority Indigenous-owned consulting company to provide this training.

About The Path

The Path has been developed with input from adult learning experts and curriculum developers. NVision has had First Nations, Inuit and Métis advisors and Indigenous lawyer reviewers in the preparation of this course. NVision partnered with the Law Society of Alberta to develop several Alberta-specific elements which have been integrated into this version of **The Path**.

The Path presents pre-contact societies and cultures and the defining moments that have helped to shape the history of Indigenous peoples in this country we now call Canada, particularly their relationships with European settlers, the British Crown and the Dominion of Canada. The course covers topics such as residential schools, forced Inuit relocations, the 60s Scoop, disease epidemics and the treatment of Indigenous peoples in the Canadian justice system. The course will demystify some of the legal issues regarding the *Indian Act*, historical and modern treaties, Aboriginal law and the Canadian court system in the context of asserting Indigenous rights. Finally, this course will provide some context to better understand the importance of cultural traditions and values of First Nations, Inuit and Métis, and ways to strengthen relationships with Indigenous peoples.

Online Course Overview

- The course is hosted on NVision's online Learning Management System (LMS) www.nvisionthepath.ca. On this LMS, there are videos, quizzes, pre- and post-course survey questions, and a Learner Guide with additional information and resources.
- Participants register for the course on the LMS and are provided with an enrolment key.
- The Path is an entirely video-based course consisting of five modules. Each module features two or three videos, each covering a topic. Each video will be accompanied by a short quiz with approximately 10 questions (a blend of True or False and Multiple-Choice questions). Each topic video is between 20 and 30 minutes in length.
- The course is self-directed and participants move through the modules at their own pace; learners can leave and re-enter the course at any time.
- A certificate is provided upon successful completion.

¹ "We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal– Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism." Truth and Reconciliation Commission of Canada: Calls to Action, 2015.



The Path
Your Journey through
Indigenous Canada

Module Descriptions

Module 1: What's in a Name?

Topic 1: Indians, Inuit and Métis

Your journey begins with an introduction to First Nations and Inuit, Canada's original inhabitants. For thousands of years they have explored and settled this hemisphere; hunted, fished and farmed; created trade and political networks; and created a rich mosaic of distinct cultures. You will also learn how the Métis Nation emerged with the birth of the fur trade in this country. Indigenous communities today are found right across Canada, and their national organizations play an important part in our national dialogue.

Topic 2: Name Calling

This topic will help you to demystify the use of such terms as "Indian," "Native," "Aboriginal," "Indigenous," "First Nation," "Eskimo," "Inuit," and "Métis", and come to an understanding of which terms to use when identifying various groups in different contexts. You'll also review and debunk some of the stereotypes and myths propagated in media and popular culture regarding Indigenous peoples.

Module 2: Defining Moments in History

Topic 1: History: Pre-Contact to the mid Nineteenth Century

All cultures have their own stories of how the world was created, how humans came to walk the earth, and how their own people came to be. This topic will introduce you to several creation and origin stories of First Nations and Inuit. The lesson also explores some of the current theories regarding the migrations of paleo-Indigenous peoples to the Americas and presents an overview of different Indigenous groups that populated Canada prior to European contact.

Topic 2: Inuit across the North

This topic will introduce pre-contact Inuit culture, the major milestones that have impacted Inuit since the arrival of Europeans, and how each unique Inuit region came to be shaped and defined through the land claim process.

Topic 3: A Colonial History of Alberta

This video is about the early history of the fur trade in Alberta and the significance of treaties 6, 7, and 8 as well as the impacts that colonial practices such as Indian Hospitals, Residential Schools and the **Indian Act** had and continues to have on Indigenous peoples in Alberta.

Module 3: More Defining Moments in History

Topic 1: A Colonial History

This topic will address some of the defining moments that have shaped the realities faced by Indigenous peoples. These include: the colonial relationship established by the *Indian Act*; the tragic legacy of residential schools; Métis resistances, Métis scrip, the hardships imposed by the Inuit relocations; the fostering out and

The Path: Your Journey Through Indigenous Canada

adoption of Indigenous children during the “Sixties Scoop”; and the underlying causes and events that fueled the Oka Crisis.

Topic 2: Milestones Along the Path

Although relationships between Indigenous peoples and Canada have been marked by conflict, there is progress. This section highlights the resilience demonstrated by First Nations, Inuit and Métis peoples through four decades as they seek a renewed relationship with Canada. Topics include the birth of social movements like Idle No More, the creation of the Truth and Reconciliation Commission and the Inquiry into Missing and Murdered Indigenous Women. Finally, this section will introduce you to some successful Indigenous artists and public figures.

Module 4: It's the Law!

Topic 1: Understanding Historical Treaties and Métis Assertion of Rights

In the previous modules, you learned about Canada's historic relationship with First Nations, Inuit and Métis. In this topic, you will learn about the historical and legal framework that underlies Canada's current legal and constitutional relationship with Indigenous peoples. Historic and modern-day treaties help to define that relationship; increasingly, Canada's Indigenous peoples are using them as a basis for asserting rights.

Topic 2: Understanding Aboriginal and Métis Rights, Title and Modern Treaties

This topic discusses the resurgence of Indigenous rights spurred by the Federal government's “White Paper” which ironically sought to eliminate them. It distinguishes between modern-day treaties and historic and “numbered” treaties, clarifies and discusses self-government, and explains how the courts and International law are evolving to a recognition of rights approach.

Module 5: Relationship-building with Indigenous Peoples

Topic 1: Cultural Values and Traditions

This topic discusses some of the cultural values and traditions of Canada's Indigenous peoples, and describes how these shape Indigenous perspectives and views of contemporary Canadian society.

Topic 2: Relationship-Building

In the previous topic, you learned about the role that culture, language, tradition and spirituality play in the lives and perspectives of many Indigenous peoples. These cultural traditions, as well as the history of the relationship between Europeans and Indigenous peoples, also affect their behaviours. This section presents some suggestions on how to work and communicate with Indigenous colleagues and partners and strengthen your relationships with Indigenous peoples.

Topic 3: Reconciliation and The Way Forward

This video is directed to LSA members and provides information and context on Alberta-specific legal initiatives and issues including the Calgary Indigenous Court, Calgary Legal Guidance, Restorative Justice, Bill C-92, as well as the importance of cultural awareness and the way forward in reconciliation.



The Path
Your Journey through
Indigenous Canada

Module Descriptions and Learning Objectives

We welcome you on this path of learning to increase your cultural awareness of Indigenous Peoples across Canada.

This course will introduce you to First Nations, Inuit and Métis — the three Indigenous peoples recognized in the Canadian constitution. You will learn where they came from and where they live today.

This learning partially meets the Truth and Reconciliation Commission's Call to Action for Canadians to receive 'cultural competency training.'

The online modules will present the defining moments that have helped to shape the history of Indigenous peoples and their relationship with European settlers, the British Crown and the Dominion of Canada. We will demystify some of the legal issues regarding the *Indian Act*, historical and modern treaties, recent rulings by the Supreme Court of Canada and what they mean in practical terms. Finally, this course will provide some context to better understand the importance of cultural traditions and values of Indigenous peoples and ways to strengthen relationships with Indigenous peoples.

The course consists of five modules, each module is approximately 30 minutes in length and features two videos, each covering a topic. Each video will be accompanied by a short quiz with 10 questions (a blend of True or False and Multiple-Choice questions).

Offered by NVision Insight Group Inc. www.nvisiongroup.ca

Module 1: What's in a Name?

Topic 1: Indians, Inuit and Métis

Description

Your journey begins with an introduction to First Nations and Inuit, the original peoples in this land. For thousands of years they have explored and settled this hemisphere; hunted, fished and farmed; created trade and political networks; and created a rich mosaic of distinct cultures. You will also learn how the Métis Nation emerged with the birth of the fur trade in this country, how these three people groups are represented by national organizations today.

Learning Objectives

Upon completion of this topic you will be able to:

- Identify the three Indigenous groups named in the Canadian Constitution.
- Describe the origins and basic history of Indigenous peoples - First Nations, Métis and Inuit.
- Describe the historical distinction between “Status” Indians and “Non-Status” Indians.
- Identify the organizations representing and advocating on behalf of First Nations, Inuit and Métis.

Topic 2: Name Calling

Description

This module will help you to demystify the use of such terms as “Indian,” “Native,” “Aboriginal,” “Indigenous,” “First Nation,” “Eskimo,” “Inuit,” and “Métis”, and come to an understanding of which terms to use when identifying various groups in different contexts. You’ll also review and debunk some of the stereotypes and myths propagated in media and popular culture regarding Indigenous peoples.

Learning Objectives

Upon completion of this topic you will be able to:

- Explain common and enduring stereotypes about First Nations, Inuit and Métis in Canada, and how to debunk them.
- Summarize the history and use of the various terms used to describe Indigenous peoples.
- Understand what those words mean today, and knowing which terms to use



Module 2: Defining Moments in History

Topic 1: History: Pre-Contact to the mid Nineteenth Century

Description

All cultures have their own stories of how the world was created, how humans came to walk the earth, and how their own people came to be. This section will introduce you to the several creation and origin stories of First Nations and Inuit peoples. The lesson also explores some of the current theories regarding the migrations of paleo-Indigenous peoples to the Americas and presents an overview of different Indigenous groups that populated Canada prior to European contact. The video also describes the First Nations who lived in what is now called Alberta as well as important Indigenous legal, ceremonial and hunting practices which include hunting for buffalo; as well as the Sun Dance.

Learning Objectives

Upon completion of this topic you will be able to:

- Recognize Indigenous creation and origin stories;
- Summarize scientific theories of how and when Indigenous people came to settle in Canada;
- Describe the regions inhabited by major Indigenous groups across the country at the time of contact;
- List the Nations that lived in what is now called Alberta, prior to European arrival; and
- Describe Indigenous legal, hunting, and ceremonial practices in Alberta significant to the First Nations peoples prior to European contact.

Topic 2: Inuit across the North

Description

This topic will introduce pre-contact Inuit culture, the major milestones that have impacted Inuit since the arrival of Europeans, and how each unique Inuit region came to be shaped and defined through the land claim process.

Learning Objectives

Upon completion of this topic you will be able to:

- Describe major milestones in Inuit history.
- Understand the nature and basis for land claims across the North; and



- Summarize the history and defining moments in the creation of the modern Nunavut, Nunavik, Nunatsiavut and the Inuvialuit regions.

Module 3: More Defining Moments in History

Topic 1: A Colonial History

Description

This topic will address some of the defining moments that have shaped the realities faced by Indigenous peoples. These include: the colonial relationship established by the *Indian Act*; the tragic legacy of residential schools; Métis resistances, Métis scrip, the hardships imposed by forced Inuit relocations; the tuberculosis epidemic and Indian hospitals, the fostering out and adoption of Indigenous children during the “Sixties Scoop”; and the underlying causes and events that fueled the Oka Crisis.

Learning Objectives

Upon completion of this topic you will be able to:

- Understand the history, background and scope of the *Indian Act*.
- Appreciate the legacy and long-term impact of Residential Schools.
- Understand Métis scrip.
- Describe the events and impact of the Inuit Relocations.
- Recognize the individual and social impact of the “Sixties Scoop”.
- Summarize the circumstances and historical events that led to the Oka Crisis; and
- Highlight the failure of the Canadian justice system towards Indigenous peoples.

Topic 2: Indigenous History of Alberta

Description

The fur trade brought an influx of European and other First Nation voyageurs, traders, and entrepreneurs to what is now Alberta. In this section, you will learn about how the Métis became instrumental as interpreters, guides, and traders. You will also learn about the hardships of the Métis in Alberta, caused by policies such as Métis scrip and the oppression that occurred after the Northwest Resistance of 1885. This video also explains the importance of Treaties 6, 7 and 8 and includes some Alberta-specific stories of the impacts of colonialism described in Topic 1.

Learning Objectives

Upon completion of this topic you will be able to:

- Summarize the early history of the fur trade in Alberta;
- Understand some key moments in Métis history in Alberta, including the establishment of the Métis Settlements;
- Understand the history of Treaties 6, 7 and 8 that were signed in Alberta; and
- Describe the impact of colonial practices such as Indian Hospitals, Residential Schools, and the Indian Act on Indigenous peoples in Alberta.

Topic 3: Milestones Along the Path

Description

Although relationships between Indigenous peoples and Canada have been marked by conflict, there is progress. This video highlights the resilience demonstrated by First Nations, Inuit and Métis peoples through four decades as they seek a renewed relationship with Canada. Topics include the birth of social movements like Idle No More, the creation of the Truth and Reconciliation Commission and the Inquiry into Missing and Murdered Indigenous Women. Finally, this section will introduce you to some successful Indigenous artists and public figures.

Learning Objectives

Upon completion of this topic you will be able to:

- Describe positive social trends and advancements made by Indigenous peoples in the past 40 years.
- Summarize the Royal Commission on Aboriginal Peoples, Idle No More movement and other social initiatives.
- Explain the need for and work of the Truth and Reconciliation Commission.
- Understand the roots and the mandate of the National Inquiry into Missing and Murdered Indigenous Women and Girls
- Point to some movement to improve Canada's Justice System
- Recognize some famous Indigenous people in Canada.

Module 4: It's the Law!

Topic 1: Understanding Historical Treaties and Métis Assertion of Rights

Description

In the previous modules, you learned about Canada's historic relationship with First Nations, Inuit and Métis. In this topic, you will learn about the historical and legal framework that underlies Canada's current legal and constitutional relationship with Indigenous peoples. Historic treaties helped to define that relationship. You will also learn about the various ways that the Métis Nation has and continues to assert rights.

Learning Objectives

Upon completion of this topic you will be able to:

- Recognize the historical and legal nature of a treaty.
- Summarize the different types of historical treaties that have shaped Canada's relationship with Indigenous peoples.
- Understand Métis assertion of rights in the 19th and early 20th century

Topic 2: Understanding Aboriginal and Métis Rights, Aboriginal Title and Modern Treaties

Description

The previous topic discussed the historic treaties, and the measures undertaken by the First Nations, Inuit, and Métis, to assert their rights. This topic discusses the resurgence of Indigenous rights spurred by the Federal government's "White Paper." It distinguishes between modern-day treaties and historic and "numbered" treaties and explains how the courts and international law have helped Indigenous people to assert their rights. This section also describes land claims and self-government agreements in Alberta.

Learning Objectives

Upon completion of this topic you will be able to:

- Describe the role of the "White Paper" of 1969 in the resurgence of the Indigenous rights movement;
- Understand how modern treaties differ from historical treaties;
- Identify the major Supreme Court of Canada rulings regarding Aboriginal Title and the Duty to Consult and Accommodate;
- Discuss the significance of the United Nations Declaration on the Rights of Indigenous People;
- Understand Treaty 8 land claims and self-government agreements that were recently signed in Alberta; and
- Understand the purpose and importance of land acknowledgements.

Module 5: Relationship-building with Indigenous Peoples

Topic 1: Cultural Values and Traditions

Description

This topic discusses some of the cultural values and traditions of Indigenous peoples from different regions of Canada, and describes how these shape Indigenous perspectives and views today.

Learning Objectives

Upon completion of this topic you will be able to:

- Recognize distinctive cultural values and traditional beliefs of First Nations, Inuit and Métis peoples in Canada.
- Describe the ways in which cultural and traditional beliefs about the land, family, culture, language and spirituality continue to shape Indigenous perspectives and attitudes today.

Topic 2: Relationship-Building

Description

In the previous topic, you learned about the role that culture, language, tradition and spirituality play in the lives and perspectives of many Indigenous peoples. These cultural traditions, as well as the history of the relationship between Europeans and Indigenous peoples, also affect their behaviours. This section presents some suggestions on how to work and communicate with Indigenous colleagues and partners and strengthen your relationships with Indigenous peoples and outlines the importance of becoming culturally aware and pursuing truth and reconciliation.

Learning Objectives

Upon completion of this topic you will be able to:

- Describe protocols for working with First Nations, Métis and Inuit communities and Elders.
- Describe some common verbal and non-verbal styles of communication among First Nations, Inuit and Métis.
- Discuss ways of managing multiple cultures and communication styles in the workplace.
- Explain ways in which embracing cultural differences can lead to successful partnerships and practices; and

- Understand the importance of becoming culturally aware.

Topic 3: “Reconciliation and the Way Forward”

Description

This final video wraps up the course with a focus on Alberta-specific legal initiatives that, in the spirit of reconciliation, are responding to the TRC’s Calls to Action and are relevant to those in the legal profession. This includes an understanding of some Indigenous restorative justice practices and where they are located, Indigenous courts, UNDRIP and Bill C-15, implementation of Bill C-92 (An Act respecting First Nations, Inuit and Métis children, youth and families), trauma-informed lawyering, and the difference between Indigenous and Aboriginal law.

The topic wraps up with some suggested actions that lawyers can practice professionally or personally to restore relationships with Indigenous clients and First Nations, as well as some Indigenous organizations lawyers can familiarize themselves with. All of this can assist lawyers in advancing the broader societal goal of reconciliation.

Learning Objectives

Upon completion of this topic you will be able to:

- Understand the importance and implementation of R v. Gladue in bail and sentencing proceedings;
- Demonstrate awareness of urban and rural Indigenous courts in Alberta and understand what restorative justice practices they can offer to an Indigenous individual as an alternative to incarceration;
- Explain how Indigenous communities in Alberta are implementing Indigenous Restorative Justice programs for Indigenous clients;
- Explain how UNDRIP presently helps Indigenous peoples in Canada regarding human rights and what Bill C-15 might mean to Indigenous peoples and all Canadians if it is implemented;
- Understand how An Act respecting First Nations, Inuit and Métis children, youth and families functions when implemented regarding the best interests of the Indigenous child;
- Understand what trauma-informed lawyering means;
- Explain the difference between Indigenous Law and Aboriginal Law; and
- Articulate ways to advance reconciliation as a lawyer in Alberta.

Approved Benchers Public Minutes

Public Minutes of the Four Hundred and Ninety-Eighth Meeting of the Benchers of the Law Society of Alberta (the “Law Society”)

May 14, 2020

Videoconference

9:00 am

Benchers present	<p>Kent Teskey, President Darlene Scott, President-Elect Ryan Anderson Arman Chak Corie Flett Elizabeth Hak Bill Hendsbee Cal Johnson Linda Long Jim Lutz Barb McKinley Bud Melnyk Walter Pavlic Lou Pesta Corinne Petersen Stacy Petriuk Robert Philp Kathleen Ryan Deanna Steblyk Margaret Unsworth Cora Voyageur Ken Warren Louise Wasylenko</p>
Executive Leadership Team members present	<p>Elizabeth Osler, CEO and Executive Director Cori Ghitler, Deputy Executive Director and Director, Professionalism and Policy Paule Armeneau, Director, Regulation, and General Counsel Nadine Meade, Chief Financial Officer</p>



	Andrew Norton, Director, Business Technology David Weyant, President and CEO, Alberta Lawyers Indemnity Association
Staff present	Barbra Bailey, Policy Counsel Nancy Bains, Associate General Counsel Colleen Brown, Manager, Communications Nancy Carruthers, Manager, Professionalism and Ethics Ruth Corbett, Governance Administrator Shabnam Datta, Policy Counsel Stephen Ong, Business Technology Christine Schreuder, Governance Coordinator
Guest present:	Carsten Jensen, Federation of Law Societies of Canada

Secretary's Note: The arrival and/or departure of participants during the meeting are recorded in the body of these minutes.

	Item
1	<p>Opening Remarks from the Chair</p> <p>Mr. Teskey called the public meeting to order at 9:10 am. Mr. Teskey commended the Law Society's Communications department and Nancy Carruthers, Senior Manager for their responsiveness to the profession and the public in the face of the challenges created by the COVID-19 pandemic.</p> <p>Mr. Teskey outlined the meeting procedures and noted that a 2/3 majority is required for all votes taken at meetings held remotely.</p>
2	<p>Big Issues and Engagement Timelines</p> <p>Documentation for this item was circulated with the meeting materials. Ms. Osler advised the Benchers that the timelines were updated to reflect changes since the Law Society's office closure. The transition to remote operations went smoothly and business is continuing uninterrupted.</p>
3	<p>2020 Bencher Election Date</p> <p>Documentation for this item was circulated with the meeting materials. Ms. Osler provided the rationale for a November 16, 2020 election date.</p> <div style="border: 1px solid black; padding: 10px; margin-top: 10px;"> <p>Motion: Petriuk/Scott</p> <p>That the Benchers set the Bencher Election date as November 16, 2020</p> <p style="text-align: right;">Carried unanimously</p> </div>



Mr. Ong left the meeting.

4 Rule Amendments for Ex Gratia Payments

Documentation for this item was circulated with the meeting materials. Ms. Freund presented the proposal for Rule changes to clarify the Rules for ex gratia payments, which was requested by the ALIA Board in response to a claim that is not barred by the indemnity program.

The Benchers discussed the types of situations in which ex gratia payments would be considered. Mr. Weyant provided examples of scenarios and clarified that ex gratia payments are allowed within the program; however, are outside ALIA's Group Policy.

Motion: Hendsbee/Melnyk

That the Benchers amend Rule 150(2)(a) to strike out the words "group policy" and insert the words "indemnity program" in their place; and

That the Benchers amend Rule 145.1, to insert the words "indemnity or" prior to "insurance".

Carried unanimously

5 Continuing Professional Development (CPD) Rule Suspension

Documentation for this item was circulated with the meeting materials. Ms. Freund introduced the proposal for the suspension of two Rules to operationalize the Benchers' February 20, 2020 decision to suspend the mandatory CPD filing requirement for 2020 and 2021. Ms. Freund confirmed that the CPD program will continue to be available for lawyers who want to complete their plans.

Motion: Philp/Wasylenko

That the Benchers suspend the operation of Rules 67.2 and 67.3 for a period of two years.

Carried unanimously

6 Alberta Lawyers Indemnity Association (ALIA) Board Appointments

Documentation for this item was circulated with the meeting materials. Ms. Osler presented the proposal for reappointments to the ALIA Board recommended by the ALIA Executive Committee.

Motion: Long/Philp

RESOLVED AS A RESOLUTION OF THE BENCHERS OF THE LAW SOCIETY OF ALBERTA:

1. The following persons are re-appointed to the **ALIA Board** and the **ALIEX Advisory Board** effective June 11, 2020 for terms as indicated, or their sooner resignation or removal from office:
 - Diane Brickner – 1 year, expiring June 12, 2021;**
 - Linda Vennard – 2 years, expiring June 13, 2022;**
 - Rob Armstrong – 3 years, expiring June 14, 2023; and**
 - Michael Thompson – 3 years, expiring June 14, 2023.**
2. This resolution shall be effective only if passed by the affirmative votes of at least 2/3 of the Benchers so voting and the Benchers so voting constitute a majority of the Benchers.

Carried unanimously

Ms. Osler highlighted the accompanying report on ALIA activities submitted by Mr. Raby, ALIA Board Chair. Ms. Osler acknowledged Mr. Weyant's leadership and swift response to the Law Society's request that ALIA consider changes to the levy payment options in light of the pandemic. The resulting change was significant and had a meaningful impact on the profession.

Mr. Weyant commended the ALIA Board members for their expertise in dealing with the restructuring of the indemnity program over the past year; and, on April 22, 2020, approving a material reduction in the levy for 2020/2021, including a special reduction due to the pandemic.

7 Audit and Finance Committee ("AFC") Report and Recommendation - Law Society Audited Financial Statements for the Year Ended December 31, 2019

Mr. Warren, AFC Chair, presented the AFC's recommendation for approval of the annual financial statements. Mr. Warren advised the Benchers that AFC met with the auditors with and without staff present. The auditors expressed their opinion that the financial statements fairly represent the Law Society's financial position and complimented staff for their cooperation during the audit.

Motion: Wasylenko/Philp

That the Benchers approve the Law Society of Alberta's audited financial statements for the year ended December 31, 2019.

Carried unanimously

8 Rule Changes for the Legacy Canadian Centre for Professional Legal Education (CPLED) Program and the Practice Readiness Education Program (PREP)

Documentation for this item was circulated with the meeting materials. Ms. Datta presented the proposal, reviewed and recommended by the Policy and Regulatory Reform Committee,



for Rule changes for the legacy CPLED Program and the new PREP program. Highlights and discussion included the following:

- Despite the participating provinces' law societies each having different rules, policies and procedures in place regarding requirements for the bar admission course, the law societies collaborated to find a consistent and uniform process and policy for PREP.
- Rule changes are required to remove references to appeals in the legacy CPLED Program because the PREP program will have its own internal appeals process. The Law Society will maintain oversight and jurisdiction over admission and enrolment matters.
- Rule changes are also required to accommodate students caught in the transition phase between CPLED and PREP. The Benchers discussed the possible scenarios and Ms. McKay confirmed that students who are currently enrolled in and successfully complete the requirements of the legacy CPLED program are deemed to have successfully completed PREP for the purposes of enrolment with the Law Society. Ms. McKay also confirmed that the students who begin articling after commencing PREP and finishing the modules will not have to repeat the foundational modules.
- CPLED may use the Law Society's adjudicator training program for training the PREP adjudicators.
- The appointment of lawyers from each jurisdiction to the PREP Appeal Committee was discussed and it was noted that it is not yet confirmed if the member appointed to the Appeal Panel from the appellant's home jurisdiction will be a Benchers.
- The proposed motions include the rescission of the Law Society's guideline for CPLED appeals as it is no longer relevant or applicable.

Motion: Melnyk/Warren

That the Benchers approve the amendments to the Rules as proposed in Appendix A of the meeting materials; and

That the Benchers rescind the Appeal Guidelines for the CPLED Program, Transfer Examinations and Reinstatement Examinations, in Appendix B.

Carried unanimously

9 Leadership Report

Documentation for this item consisted of the Leadership Report and a Report on the Law Society's COVID-19 Pandemic Response. Ms. Osler highlighted the following:

- Ms. Osler commended the Communications team and the Policy group for their work in preparing and publishing the significant amount of information for the public and the profession since the beginning of the pandemic.
- Ms. Osler commended all staff for their commitment to their jobs and the work of the Law Society, which enabled the Law Society to transition to remote operations in less than a week.

- Since the decision was made to close the office and operate remotely, the Law Society's work has focused on budget, stakeholder engagement, and assessing organizational capacity.
- The collaboration and sharing of information among law societies and other regulators continues to be of positive mutual benefit.
- On March 5, 2020 a Law Society email account was subjected to a phishing attack. Mr. Norton and his team successfully dealt with the situation and applied enhanced security measures to the email service.

A Bencher commented that in his discussions with lawyers, there is a clear sense of satisfaction with the Law Society's response to the present circumstances.

10 Access to Justice – Lawyer Referral Service

Documentation for this item was circulated with the meeting materials. Ms. Ghitter advised the Benchers that the Law Society's Customer Service Team, with help from Business Technology and Communications, successfully launched the Lawyer Referral Service on schedule on March 30, despite the transition to remote operations on March 16. Ms. Ghitter confirmed that there are plans to evaluate the program and identify gaps. In the meantime, the team has observed that there is a renewed interest in the program from the membership.

11 Bencher Election Task Force (“BETF”) Report

A Communications Implementation Timeline was circulated with the meeting materials. Ms. Petriuk noted that the election timeline was minimally impacted by the pandemic. Ms. Petriuk provided an oral report on recent activities, including a review and status report on the BETF's mandate. Highlights and the Benchers' discussion included the following:

- Increasing the diversity of candidates continues to be a primary focus; however, is a complicated issue that requires a multi-pronged solution. The BETF is using materials from the Law Society of Saskatchewan's media campaign, which was effective in increasing candidate diversity.
- The Communications Plan includes strategies for increasing voter engagement and turnout and Bencher candidate education and orientation.
- The BETF reviewed a mock-up of the campaign website. Ms. Petriuk clarified that there will be parameters around campaign materials and all content will be vetted.
- The Benchers suggested that issues and questions around special interest groups might be worthwhile for the BETF to address.

12 Equity, Diversity and Inclusion (“EDI”) Committee Report

Documentation for this item was circulated with the meeting materials. Ms. Wasylenko, Chair of the EDI Committee, added that she and Mr. Johnson, Vice-Chair, were invited to the first

EDI Advisory Committee (“EDIAC”) meeting. The feedback and broad range of perspectives from this group of engaged lawyers will be valuable to the EDI Committee’s work.

13 Lawyer Competence Committee (“LCC”) Report

Documentation for this item was circulated with the meeting materials. Mr. Warren, Chair, LCC, added background on the LCC’s recommendation that the indigenous training should not be mandatory. Subsequently, Mr. Warren met with the Lawyer Competence Advisory Committee (“LCAC”) whose members presented a different view. This issue will be discussed further by the LCC; however, in the meantime, the Benchers were asked to approve the revised mandate to remove the mandatory requirement.

Motion: Warren/Petriuk

That the Benchers adopt the amended mandate of the Lawyer Competence Committee, as proposed.

Carried unanimously

Mr. Warren then provided his report on the LCC’s activities, noting that the pandemic has provided an opportunity for the LCC to look at articling, lawyer formation, competence, wellness and principal training. Jordan Furlong has been retained to work with the LCC on these issues.

Benchers comments and questions were mainly around the importance of indigenous cultural competency training and when and how this will be addressed. Ms. Ghitter advised that a training course is currently being developed and more information will be available in the fall. The Benchers can also expect a report from the Indigenous Advisory Committee in the fall.

14 Advisory Committees Report

Documentation for this item was circulated with the meeting materials. Ms. Ryan provided highlights from first meetings of the LCAC and EDIAC. For LCAC, the question of indigenous cultural competency training and the concept of subject matter expert advisors are priorities. EDIAC’s first meeting focused on the safe reporting process and the Federation of Law Societies of Canada’s Model Code of Professional Conduct consultation. The high level of engagement, knowledge and expertise on the advisory committees was noted and Ms. Ryan commended the Law Society for engaging the profession in this way.

15 Consent Agenda

The consent agenda items were circulated with the materials and approved concurrently.



Motion: Philp/Scott

15.1 To approve the February 20, 2020 Public Bencher Meeting Minutes;

15.2 To approve the April 6, 2020 Public Bencher Meeting Minutes;

15.3 To Disband the Pension Committee, effective immediately;

15.4 To approve the Law Society of Alberta Board and Regulatory Committees Terms of Reference, as circulated; and

15.5 To appoint Walter Pavlic, QC, to the Legal Education Society of Alberta Board of Directors, to fill the vacancy due to Cori Ghitter's resignation. The appointment is effective immediately and expires in September 2021.

Carried unanimously

16 Reports for Information

16.1 Alberta Law Foundation report

16.2 Alberta Law Reform Institute report

16.3 Alberta Lawyers' Assistance Society report

16.4 Canadian Bar Association report

16.5 Federation of Law Societies of Canada report

16.6 Legal Education Society of Alberta report

16.7 Pro Bono Law Alberta report

17 Other Business

Mr. Johnson provided an oral update on the work of the Corporate Commercial Liaison to address an issue concerning a resident Canadian Director requirement for Limited Liability Companies incorporated in Alberta and the competitive disadvantage that creates for those types of incorporation in Alberta. Mr. Johnson reported a preliminary communication from a representative from the Corporate Registry which suggests that the Government may be favourably disposed to including an amendment to the Alberta legislation (by way of some miscellaneous statute amendments) that may come forward in the next sitting of the Legislature.

There being no further business the public meeting was adjourned at 11:40 am.



Benchers Public Minutes

Approved Public Minutes of the Four Hundred and Ninety-Seventh Meeting of the Benchers of the Law Society of Alberta (the “Law Society”)

February 20, 2020

Offices of the Law Society, Calgary, Alberta

9:00 am

Benchers present	Rob Armstrong, outgoing President Kent Teskey, President Darlene Scott, President-Elect Arman Chak Elizabeth Hak Bill Hendsbee Cal Johnson Linda Long Jim Lutz Barb McKinley Bud Melnyk Walter Pavlic Lou Pesta, incoming Bencher Corinne Petersen Stacy Petriuk Robert Philp Kathleen Ryan Deanna Steblyk Margaret Unsworth Cora Voyageur Ken Warren Louise Wasylenko Nate Whitling
Regrets	Ryan Anderson Corie Flett
Executive Leadership Team members present	Elizabeth Osler, Executive Director and Chief Executive Officer Cori Ghitler, Deputy Executive Director and Director, Professionalism and Policy Paule Armeneau, Director, Regulation, and General Counsel Nadine Meade, Chief Financial Officer



	<p>Andrew Norton, Chief Information Officer and Director, Business Operations</p> <p>David Weyant, President and Chief Executive Officer, Alberta Lawyers Indemnity Association</p>
Staff present	<p>Barbra Bailey, Policy Counsel</p> <p>Colleen Brown, Manager, Communications</p> <p>Nancy Carruthers, Manager, Professionalism and Ethics</p> <p>Ruth Corbett, Governance Administrator</p> <p>Shabnam Datta, Policy Counsel</p> <p>Jennifer Freund, Policy Counsel</p> <p>Andrea Menard, Indigenous Initiatives Liaison</p> <p>Stephen Ong, Business Technology</p> <p>Christine Schreuder, Governance Coordinator</p>
Guests and observers present	<p>Glen Buick, former Bencher</p> <p>Loraine Champion, Executive Director, Alberta Lawyers' Assistance Society</p> <p>Kene Ilochonwu, member, Bencher Election Task Force</p> <p>Carsten Jensen, Federation of Law Societies of Canada</p> <p>Bianca Kratt, Treasurer, Canadian Bar Association, Alberta</p> <p>Nonye Opara, Executive Director, Pro Bono Law Alberta</p> <p>Sandra Petersson, Executive Director, Alberta Law Reform Institute</p> <p>Christine Sanderman, Executive Director, Legal Education Society of Alberta</p>

Secretary's Note: The arrival and/or departure of participants during the meeting are recorded in the body of these minutes.

The meeting was called to order at 9:00 a.m.

	Item
I	<p>Remarks from the Outgoing President</p> <p>Mr. Armstrong called the meeting to order at 9:00 am, beginning with the Indigenous territorial acknowledgement of the Treaty 7 tribes.</p> <p>Lou Pesta, incoming Bencher to fill the Bencher vacancy left by Mr. Armstrong's resignation, was welcomed to his first Bencher meeting. Other first-time guests welcomed were Carsten Jensen, Bianca Kratt, Kene Ilochonwu, and Andrea Menard.</p> <p>Mr. Armstrong addressed the Benchers with his final remarks as President. He reflected on his years at the Bencher table, particularly over the past year as President, and thanked</p>



the Benchers for having confidence in him. Mr. Armstrong talked about the significance of the changes and transitions that have taken place during his Presidency, particularly Ms. Osler's appointment as the new CEO and Executive Director, the new leadership team, and the office move. Mr. Armstrong encouraged the Benchers to continue their commitment to strategic discussions and to strive to make decisions by consensus and speak with one voice, and to lead courageously to move the Law Society forward. Mr. Armstrong received a standing ovation as he left the meeting.

2 Remarks from the new President

Mr. Teskey provided his opening remarks, expressing his honour to take the Chair as President and acknowledging the work of past presidents. Mr. Teskey highlighted the exciting and important work to be done over the next year, that will impact the public and the profession. Mr. Teskey expressed his hope that the Benchers commit to the pursuit of principled change and progress, to take actions, be accountable, to change course if necessary, and to chart an agenda that is befitting of the organization and the needs of the profession.

3 Big Issues and Engagements Timelines

The Big Issues and Engagements Timelines were circulated with the meeting materials. Ms. Osler provided background information on the purpose of the timelines and noted that the format has been updated. The timelines will be updated as the year progresses.

4 Board Relations Guideline (BRG) Annual Review

The BRG was circulated with the meeting materials. Ms. Scott outlined the process that was followed in the development of the BRG's Board Norms.

In response to a suggestion that the norm for in-camera sessions is not clear, Ms. Scott directed staff to review the language in the BRG and the In-Camera Guideline to ensure alignment and clarity and, if necessary, bring forward a recommendation for changes.

5 Videoconferencing Policy

A memo from the President was circulated with the meeting materials. Mr. Teskey invited Bencher feedback on the proposal for a commitment to videoconferencing as the default for remote participation in committee and task force meetings. Mr. Teskey outlined the difficulties that the current model for hybrid in-person/conference call meetings creates.

The Benchers supported the suggestion that the default would be participation in-person or by video; however, requested that participation by phone, when appropriate, would not be excluded. The Board requested an amendment to part I) of the motion to require

individual Chairs to canvass consensus to adopt video where possible. The amendments to the motion are reflected in italics.

Amended Motion

- 1) The Benchers agree to make best efforts to participate in *committee and task force* meetings by video, rather than by teleconference. *Chairs of the committees and task forces will canvass consensus to adopt video where possible.*
- 2) Attendees agree to participate in meetings with the camera active.
- 3) The Organization commits to provide the necessary ongoing support to eliminate barriers to video participation through training, support and where necessary, technology upgrades.
- 4) That the Benchers commit to removing the teleconference meeting option except in exceptional circumstances by June 1, 2020.

**Seconded
Carried unanimously**

Mr. Pavlic joined the meeting.

6 Continuing Professional Development (CPD) proposal

A memo from the President was circulated with the meeting materials. Mr. Teskey presented the proposal for immediate changes to the Law Society's CPD program. The Benchers' discussion included consideration of suspending the filing requirement, the benefit of keeping the CPD portal 'live' while it is being redeveloped; and discussions on required programs regarding Indigenous issues.

Motion:

- 1) That the Benchers immediately suspend the mandatory CPD filing requirement for the profession for the years 2020 and 2021. While the CPD planning tool would remain available for those who want it, it would not be mandatory and no administrative suspensions would take place.
- 2) That the Bencher Lawyer Competence Committee and Indigenous Advisory Committee work with staff to create competence programs for 2020 and 2021 on Indigenous issues to meaningfully address our obligation arising from the Calls to Action in the Truth and Reconciliation Report.
- 3) That the Bencher Lawyer Competence Committee, the Lawyer Competence Advisory Committee and the Benchers consult with the profession, the public and other stakeholders to create a new competence framework for the whole life of a lawyer for the Law Society



of Alberta that is proportionate, effective and dynamic and includes wellness as part of that framework.

**Seconded
Carried unanimously**

7 Access to Justice Staff Initiatives

Documentation for this item was circulated with the meeting materials. Ms. Ghitter provided a brief outline of the initiatives underway or being planned, highlighting the Law Society's decision to bring the Lawyer Referral Service in-house to work on ways to improve the efficiency and effectiveness of the program.

8 Bencher Election Task Force (BETF) Recommendation

Documentation for this item was circulated with the meeting materials. Ms. Petriuk, Chair of the BETF, presented the proposal, highlighting the process that the BETF followed. Following Ms. Petriuk's presentation of the BETF's process, key considerations, and arguments for and against the proposal, Mr. Ilochonwu was invited to the table to share his perspectives. The Benchers then held an extensive discussion of the issues. Benchers' comments and questions revealed further diversity of views. Of those who did not support the recommendation, some preferred that the BETF explore other ways to increase candidate diversity, while others thought the additional category didn't go far enough to address diversity or respond to the TRC Calls to Action. Those in support recognized the recommendation as an initial step in a long and complex process; however, concerns were also expressed that the BETF was not unanimous in its recommendation.

Motion:

That the Benchers approve the creation of a New Lawyer Bencher category, as proposed by the Bencher Election Task Force.

**Seconded
Defeated**

Mr. Chak, Ms. Datta, Ms. Opara, and Mr. Ilochonwu left the meeting.

9 Contingency Reserves Policy (the "Policy")

Documentation for this item was circulated with the meeting materials. Ms. Ryan, Chair of the Audit and Finance Committee (AFC), presented the draft Policy, highlighting its purpose to safeguard against unexpected costs and promote financial stability. Ms. Meade detailed the process that was followed to formalize practice into the Policy, which included an environmental scan of other law societies and the engagement of external consultants including the actuary, auditor and investment manager. The AFC and the Executive Committee provided comments which were incorporated into the final draft.



Motion:

That the Benchers approve the Contingency Reserves Policy, as presented.

**Seconded
Carried unanimously**

10 Pension Committee

Documentation for this item was circulated with the meeting materials. Mr. Teskey explained the rationale for the proposed changes to the oversight of the Law Society's pension plans. Mr. Teskey advised that the Executive Committee has the authority to oversee the pension plans and approved the recommendations on February 12, 2020.

Motion:

That the Benchers approve the following regarding oversight of the Law Society's Pension Plans:

- 1) The Group RRSP Plan, which is not subject to regulation and is provided to all employees, excluding ELT, is administered by the Executive Leadership Team.**
- 2) The Defined Contribution Plan, which is subject to regulation and provided to ELT members, is administered by the Audit and Finance Committee, with reporting obligations to the Executive Committee**
- 3) The Defined Benefit Plan, which is subject to regulation, is administered by the Audit and Finance Committee, with reporting obligations to the Executive Committee**

**Seconded
Carried unanimously**

11 Law Society Committee Mandates

Documentation for this item was circulated with the meeting materials.

Motion:

That the Benchers approve the Law Society of Alberta Committee Mandates, as circulated.

**Seconded
Carried unanimously**

12 2020 Committees, Task Forces, and Liaisons

The 2020 Committees, Task Forces, and Liaisons list was circulated with the meeting materials and Mr. Teskey noted that the proposed assignments were circulated to the Benchers on February 6 for advance review and comment before being finalized.



Motion:

- 1) To appoint the 2020 committees, task forces, liaisons and representatives to “other bodies” as set out in the 2020 Committees, Task Forces, Liaisons and Other Bodies list; and
- 2) To continue the term of appointment for any person on a 2019 committee involved in any ongoing adjudicative matter until such time as a report or decision is rendered on the matter in which they are involved.

**Seconded
Carried unanimously**

13 Publication and Redaction Guideline for Adjudicators (the “Guideline”)

Documentation for this item was circulated with the meeting materials. Ms. Carruthers presented the Guideline, providing background information on the process for amendments intended to align with recent Rule changes governing the publication of disciplinary outcomes. Ms. Carruthers noted that Benchers feedback and direction provided at the December 5, 2019 Benchers meeting for further work to be done on the Guideline was completed, reviewed and recommended by the Policy Committee.

Motion:

That the Benchers approve the amendments to the *Publication and Redaction Guideline for Adjudicators*, as set forth in Appendix “A” of the meeting materials.

**Seconded
Carried unanimously**

14 Code of Conduct Amendment on Technological Competence

Documentation for this item was circulated with the meeting materials. Ms. Carruthers presented the proposal for a change to the Law Society Code of Conduct to be consistent with recent amendments to the Federation of Law Societies of Canada’s Model Code of Professional Responsibility with respect to technological competence.

Motion:

That the Benchers approve the amendment of the Commentary to Rule 3.1-2 of the *Code of Conduct*, as set forth in Appendix “A” of the meeting materials.

**Seconded
Carried unanimously**



15 Leadership Report

The Leadership Report was circulated with the meeting materials along with a link to a podcast. Ms. Osler added the following updates:

- Ms. Armeneau will retire from the Law Society at the end of June 2020. Ms. Osler publicly acknowledged the significant contributions of Ms. Armeneau, QC, noting that Ms. Armeneau has been instrumental in positive process changes that have had a significant effect on the organization over the last five years.
- A proposal to transfer management of the process for student appeals from the Benchers to the Canadian Centre for Professional Legal Education will be brought to the Benchers for decision in April. Policy work is underway.
- The theme for the Jasper Retreat is Lawyer Competence. Jordan Furlong, a leading analyst of the global legal market, has been engaged as the keynote speaker. The podcast provides a flavour of what's to come in Jasper this year.

16 CONSENT AGENDA

The consent agenda items were circulated with the materials and approved concurrently. There were no requests to remove any items from the consent agenda.

Motion:

- 16.1 To schedule the 2020 Annual General Meeting of the Law Society of Alberta at 4:00 pm on April 23, 2020 in Edmonton;**
- 16.2 To re-appoint PricewaterhouseCoopers as auditors for the Law Society of Alberta for the fiscal year ending December 31, 2020; and**
- 16.3 To approve the December 5, 2019 Public Bencher meeting minutes.**

**Seconded
Carried**

17 Reports for Information

- 17.1 Alberta Law Foundation report (oral report)
- 17.2 Alberta Law Reform Institute report
- 17.3 Alberta Lawyers' Assistance Society report
- 17.4 Audit and Finance Committee report
- 17.5 Canadian Bar Association report
- 17.6 Federation of Law Societies of Canada report
- 17.7 Legal Education Society of Alberta report
- 17.8 Pro Bono Law Alberta report

18 Other Business

There was no other business. The public meeting was adjourned at 1:45 pm.



A Path Forward on Competence

February 11, 2020

From:	Kent Teskey, President
Re:	Competence Benchers Motions

Introduction

During the development of the strategic plan, it became clear that a 21st century modern regulator would create the most impact on the profession and the public interest by prioritizing competence initiatives.

In many ways, the key control that the regulator has over the effectiveness, wellness and ethics of the profession is our power to drive competence. Simply put, a competent lawyer is more likely to be happy, profitable, ethical and effective.

We have been committed to the goal of proactive regulation over the last five years. The Law Society of Alberta believes that the best solution to a regulatory problems is to address it before it becomes a formal conduct matter. My belief is that the next step in the process is to become a competence-centered regulator.

The Challenges

1. The most rigorous competence initiative that the Law Society currently engages is the Articling program which is restricted to one year and relies heavily on informal mentoring. The survey told us that the program creates issues of competence and harassment that we are compelled to act on.
2. Outside of articling, our main competence initiative is our CPD program. While it has been praised for understanding the nature of adult learning, it has some key structural problems. First, it treats all practitioners the same no matter their experience, level of practice or access to firm-based competence programming. Second, while we collect substantial amounts of information, we do not do anything material with it, outside of considering it if a lawyer is in our regulatory stream. The risk is that this could create a substantial credibility gap within the profession.



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3. The shift to a competence-centred model will likely require solutions that look very different from our existing programs.
4. The necessary changes to Articling and CPD will likely require multiple years to transition to and will require substantial consultation.

Call to Action

The Benchers will be asked to pass 3 key disruptive motions to signal our commitment to become competence-centered regulator.

1. The Benchers immediately suspend the mandatory CPD filing requirement for the profession for the years 2020 and 2021. While the CPD planning tool would remain available for those who want it, it would not be mandatory and no administrative suspensions would take place.
2. The Benchers Lawyer Competence Committee and Indigenous Advisory Committee work with staff to create competence programs for 2020 and 2021 on Indigenous issues to meaningfully address our obligation arising from the Calls to Action in the Truth and Reconciliation Report.
3. The Benchers Lawyer Competence Committee, the Lawyer Competence Advisory Committee and the Benchers consult with the profession, the public and other stakeholders to create a new competence framework for the whole life of a lawyer for the Law Society of Alberta that is proportionate, effective and dynamic and includes wellness as part of that framework.

Risks

In taking this bold step, the Benchers would be accepting certain risks. At its basic level, we would be creating a vacuum in our existing competence regime that we would be obliged to fill. While I recognize that concern, I am convinced that the risk of attempting to iterate within our existing regime is greater. The beginning of solutions to this issue require not only time but the blank slate to come up with a regime that support all lawyers through all stages of practice.

Vision

In taking this step, I am hopeful that with our shared vision, good will and hard work that we can look back 3 years from now and say that we have built a system that accomplishes the following:

1. A competence model that supports practitioners at all points of practice proportionately and responsively, and takes into account wellness as part of the competence framework.



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2. That the Law Society of Alberta become a model for protecting the public interest by raising competence across the profession by not only encouraging competence but providing lawyer competence educational programming, where appropriate.
3. That through a young lawyer competence program covering the first five years that our reliance on the current articling model is substantially reduced.

In thinking about plan, I looked back on my election speech for President in 2017,

My vision for the Law Society of Alberta as a proactive regulator is that we not settle for ensuring competence, but rather that we recognize our role in empowering and equipping lawyers to be great.

We have no greater regulatory influence on the ultimate success of practitioner than the articling year. The lessons that a student learns in that formative year will likely shape how the core of that lawyer will practice for the next 30 years.

And yet, articling is one of the most unstructured aspects of our regulatory scheme.

Our theory, largely untested, is that by osmosis an articling student will be able to transition a largely theoretical education into practitioner who can manage a business and serve clients in a practical and ethical manner all in 12 months. With respect we know that isn't true for a great number of students.

A significant number of students receive an article which does not provide the foundations for a successful legal career. It may be lacking in substantive training. It may be lacking in providing a foundation of practice management. And on the other hand, some lawyers receive great articles that do all of those things.

The outcomes are completely inconsistent and yet our regulatory model assumes that all of our students are getting the training they need to compete and to serve the Alberta public.

There is also a power imbalance in articling. It is market-driven and a student would be hard-pressed to challenge their principal to ensure they are receiving the training they require and that their regulator assumes they are getting.

Beyond that, we have few resources to ensure that articling process is safe and equitable. When was the last time that a hearing committee dealt with an issue of harassment involving an articling student? Is it because it doesn't happen.



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I highly doubt it. Given this backdrop we must assume that a significant number of our colleagues, mostly racialized lawyers and female practitioner are being trained in disrespectful and frankly unsafe environments. There are few options for these members to seek redress with the Law Society.

These are our failures and we must own them.

We must critically look at the articling process. It must start by forging meaningful partnerships with the law schools to create better learning outcomes for our young lawyers. We must talk to young practitioner to understand the strengths and failings of articling regime. We must create a regime that is committed to the broad success of our young practitioner. And lastly, we must create a meaningful ability for young lawyers to seek redress for unsafe or abusive articles in a way that doesn't prejudice to move through the registration process.

And I challenge us to confront the distinct possibility that a modern and dynamic student registration process may look fundamentally different from what articling looks like today. This is an opportunity for the whole Benchers table with obvious potentials that we should embrace

Beyond the articling year, an alarming number of lawyers leave the profession after less than five years in practice. Ambitious, intelligent, and deeply passionate people from all walks of life are unable to find a satisfying and meaningful place in our profession – despite having invested years of their lives and tens of thousands of dollars in a legal education. These are some of the best and the brightest young people in Alberta who we cannot afford to lose to other fields.

I am asking the Benchers to own this issue and lead.

Onward!

Kent.

Approved Minutes

Policy and Regulatory Reform Committee (Committee) meeting

May 17, 2023

Videoconference

1:00 p.m.

ATTENDANCE	
Committee Members	Stacy Petriuk, Chair Glen Buick, Vice-Chair Sony Ahluwalia Ron Sorokin Moirá Váně
Ex-officio	Bill Hendsbee, President Deanna Steblyk, President-Elect
Staff	Elizabeth Osler, CEO & Executive Director Elizabeth Aspinall, Practice Advisor Nancy Bains, Tribunal Counsel & Privacy Officer Shabnam Datta, Manager, Policy Tina McKay, Senior Manager, Business Operations Kendall Moholity, Director, Regulation and Professionalism Noria Neuhart, Policy Counsel Erica Pridham, Membership Counsel Laura Scheuerman, Governance Coordinator
Regrets	Ted Feehan Jim Lutz Mary Ellen Neilson Margaret Unsworth

Item	
1. Call to Order and Approval of the Agenda	Ms. Petriuk called the meeting to order at 1:05 p.m. <div style="background-color: black; height: 20px; width: 100%;"></div>

	Item
	The agenda was circulated with the materials prior to the meeting and once quorum was met, adopted by consensus.
	[REDACTED]
	[REDACTED]
4.	<p>Model Code Amendments – Harassment and Discrimination</p> <p>Documentation for this agenda item was circulated with the materials prior to the meeting. Ms. Petriuk provided the Committee with feedback from absent Committee members and suggested dealing with motion 2 prior to motion 1.</p> <p>Committee discussion for motion 2 included changing both instances of “should” to “must” in Rule 5.1-2B Commentary 3.</p> <p>Ms. Aspinall acknowledged Committee comments regarding Rule 6.3-1 Commentary 5, 7 and 9. She reported that Carsten Jensen and David Swayze, members of the Federation of Law Societies of Canada (FLSC) Model Code Standing Committee provided the following insight as to why the specific Commentary was included:</p> <ul style="list-style-type: none"> - Rule 6.3-1 Commentary 5 <ul style="list-style-type: none"> o Acknowledges the definition and what constitutes discrimination continues to evolve and is drawn from <i>Andrews v. Law Society of British Columbia</i>, 1989 CanLII 2 (SCC), [1989] 1 SCR 143. The Court didn’t define discrimination but considered it within the second stage of the test for infringement of section 15 of the Charter (the equality provisions). That test remains the starting point in cases where discrimination is raised. Alberta had provided feedback on the definition of discrimination which the Standing Committee considered when drafting the current Rule and Commentary. - Rule 6.3-1 Commentary 7 <ul style="list-style-type: none"> o Examples are listed under this Commentary to provide guidance and support the Rule. - Rule 6.3-1 Commentary 9

Item	
	<ul style="list-style-type: none"> ○ This is not the only Rule that speaks to conduct outside of practice and is appropriate to incorporate. <p>Some members of the Committee raised issues regarding the Commentary but were of the view that the issues did not stand in the way of the motion.</p> <div style="border: 1px solid black; padding: 10px;"> <p>Motion 2: Ahluwalia</p> <p>That the Policy and Regulatory Reform Committee recommend to the Benchers that they adopt the proposed new Rules 5.1-2A and 5.1-2B and associated Commentary in the Code of Conduct, as proposed by the Federation of Law Societies of Canada in their Model Code, as new Rules 5.1-2B and 5.1-2C and associated Commentary, and amended by the Committee.</p> <p style="text-align: right;">Carried</p> <p>Motion 1: Buick</p> <p>That the Policy and Regulatory Reform Committee recommend to the Benchers that they adopt the amendments to the Code of Conduct Rule 6.3 and associated Commentary, as proposed by the Federation of Law Societies of Canada in their Model Code.</p> <p style="text-align: right;">Carried</p> </div>
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Approved Minutes

Policy and Regulatory Reform Committee (Committee) Videoconference meeting

April 13, 2023

Zoom videoconference

10:30 am

ATTENDANCE	
Committee Members	Stacy Petriuk, Chair Glen Buick, Vice-Chair Sony Ahluwalia Jim Lutz Mary Ellen Neilson Ron Sorokin Margaret Unsworth Maira Váně
Ex-officio	Bill Hendsbee, President
Staff	Elizabeth Osler, CEO & Executive Director Cori Gitter, Deputy Executive Director & Director, Policy and Education Elizabeth Aspinall, Practice Advisor Shabnam Datta, Manager, Policy Jennifer Freund, Policy and Governance Counsel Kendall Moholity, Director, Regulation and Professionalism Noria Neuhart, Policy Counsel Erica Pridham, Membership Counsel Laura Scheuerman, Governance Coordinator
Regrets	Ted Feehan

Item	
1. Call to Order and Approval of the Agenda	Ms. Petriuk called the meeting to order at 10:32 am. The agenda was circulated with the materials prior to the meeting and adopted by consensus.

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Item	
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6.	<p>Model Code Amendments – Harassment and Discrimination</p> <p>Documentation for this agenda item was circulated with the materials prior to the meeting. Ms. Aspinall highlighted the two proposed changes to the Federation of Law Societies of Canada (FLSC) Model Code of Conduct.</p> <p style="text-align: right;"><i>Ms. Váně joined the meeting at 11:12 am.</i></p> <p>The amendment process began in 2018 when the Model Code Standing Committee consulted with Canadian Law Societies twice. Feedback from the Policy and Regulatory Reform Committee, the Equity, Diversity and Inclusion Committee and the Equity, Diversity and Inclusion Advisory Committee was considered. Ms. Aspinall explained that during both consultation stages the feedback from Alberta was considered and largely incorporated. The question for the Committee is whether the changes should now be adopted into Alberta’s Code of Conduct.</p> <p style="text-align: right;"><i>Mr. Ahluwalia left the meeting at 11:30 am.</i></p> <p>The Committee’s key discussion and recommendations included:</p> <ul style="list-style-type: none"> - The Committee questioned whether to revisit the two outstanding items that weren’t accepted from Mr. Hendsbee’s September 17, 2020 report. - The Committee preferred splitting the motion into two separate motions. - Rule 6.3-1 Commentary 5

Item	
	<ul style="list-style-type: none"> ○ Some Committee members expressed concern with defining the term “discrimination” as the evolution of the word is ongoing and recommended eliminating this commentary. - Rule 6.3-1 Commentary 7 <ul style="list-style-type: none"> ○ A Committee member suggested eliminating this commentary. - Rule 6.3-1 Commentary 9 <ul style="list-style-type: none"> ○ The Committee discussed whether a lawyer’s actions outside the office should be included or if this commentary should be eliminated. - Rule 5.1-2C Commentary 3 <ul style="list-style-type: none"> ○ “ppearances” should be corrected to “appearances”. <p>The Committee will continue to discuss this item at the next meeting.</p> <div style="border: 1px solid black; padding: 5px;"> <p>Motion:</p> <p>To recommend to the Benchers that they approve the amendments to the Code of Conduct Rule 6.3 and Commentary, and to adopt Model Code Rules 5.1-2B and 5.1-2C and Commentary as Rules 5.1-2A and 5.1-2B and Commentary in the Code of Conduct, as proposed.</p> <p style="text-align: right;">Tabled</p> </div>
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Approved Minutes

Lawyer Competence (LCC) Committee (Committee) meeting

April 12, 2023

Law Society of Alberta (Law Society)

Zoom videoconference

8:30 am

ATTENDANCE	
Committee Members	Lou Cusano, Chair Bud Melnyk, Vice-Chair Glen Buick Corie Flett Cal Johnson Mandy Kinzel Kelsey Meyer Sharilyn Nagina Sanjiv Parmar Grant Vogeli
Ex-Officio	Bill Hendsbee
Staff	Elizabeth Osler, CEO & Executive Director Cori Ghitter, Deputy Executive Director, and Director, Policy and Education Barbra Bailey, Manager, Education Colleen Brown, Manager, Communications and Stakeholder Engagement Jennifer Freund, Policy & Governance Counsel Julie James, Governance Coordinator Rebecca Young, Education Counsel, Education
Regrets	Lisa Silver

Item	
1	<p>Call to Order and Approval of the Agenda</p> <p>Mr. Cusano called the meeting to order at 8:30 am. The agenda was circulated with the materials prior to the meeting and approved by consensus.</p>
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3	<p>Continuing Professional Development Guideline and Rule Amendments</p> <p>Documentation for this item was circulated with the materials prior to the meeting.</p> <p>Ms. Freund outlined the proposed amendments to the Continuing Professional Development Guideline (Guideline) and Rules.</p> <p>The Committee's discussion included the following:</p> <ul style="list-style-type: none"> • 'Record' will change to 'copy' throughout. • Staff clarified that the language is broad as plans could be reviewed involuntarily if referred to practice management via the conduct process. • Ms. Bailey noted that staff will review about 10 plans each month and the process will start no earlier than next year after communicating to the profession. • The Committee asked why the language changed from 'Executive Director' to 'Society', staff explained that the goal is to increase transparency as any department (delegated by the Executive Director) could ask to review a plan. • The Committee asked if parental leave is not included in exemptions, staff explained the goal is to give flexibility when lawyers are at work on modified duties, not when fully away. Exemptions requested mid-year will be dealt with on a case-by-case basis and a robust FAQ will be provided for the exemption section. • Staff confirmed authority for exemptions is not in the Rules and is dealt with in the Guideline. • Staff confirmed there is no appeal mechanism.



Item	
	<p>Motion: Melnyk / Johnson</p> <p>That the Lawyer Competence Committee recommend to the Benchers that Rule 67.2 be amended, as proposed, and that subrule 67.3(1) be amended to insert “(1)” after “67.2” and before “(2)”.</p> <p>That the Lawyer Competence Committee recommend to the Benchers that the <i>Continuing Professional Development Program Guideline</i> be adopted.</p> <p style="text-align: right;">Carried unanimously</p>
█	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>█ [REDACTED]</p> <p>█ [REDACTED]</p> <p>█ [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
█	<p>[REDACTED]</p> <p>[REDACTED]</p>
█	<p>[REDACTED]</p> <p>[REDACTED]</p>
█	<p>[REDACTED]</p> <p>[REDACTED]</p>

Approved Minutes

Policy and Regulatory Reform Committee (Committee) Videoconference meeting

March 15, 2023

Zoom videoconference

1:00 pm

ATTENDANCE	
Committee Members	Stacy Petriuk, Chair Glen Buick, Vice-Chair Ted Feehan Jim Lutz Mary Ellen Neilson Ron Sorokin Margaret Unsworth Moira Váně
Staff	Cori Gitter, Deputy Executive Director & Director, Policy and Education Elizabeth Aspinall, Practice Advisor Shabnam Datta, Manager, Policy Jennifer Freund, Policy and Governance Counsel Tina McKay, Senior Manager, Business Operations Kendall Moholity, Director, Regulation and Professionalism Noria Neuhart, Policy Counsel Laura Scheuerman, Governance Coordinator
Regrets	Sony Ahluwalia

Item	
1. Call to Order and Approval of the Agenda	Ms. Petriuk called the meeting to order at 1:02 pm. The agenda was circulated with the materials prior to the meeting and adopted by consensus.



Item	
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

Item	
6.	<p>Model Code Amendments – Harassment and Discrimination</p> <p>Documentation for this agenda item was circulated with the materials prior to the meeting. Ms. Aspinall provided an overview of the proposed amendments to Rules 6.3 and 5.21. She explained that in 2015 the Law Society identified the need to change the Rules due to the FLSC’s Model Code adopted in 2010. The Law Society began working on potential amendments in 2018 and the 2019 Articling Survey results highlighted the importance of the changes. Consultation has been conducted with the profession followed by the Equity, Diversity and Inclusion Benchers and Advisory Committees.</p> <p>The Committee requested this item be tabled to provide the Committee with adequate time to review the materials.</p> <div data-bbox="228 930 1482 1150"> <p>Motion:</p> <p>That the Policy and Regulatory Reform Committee recommend to the Benchers that Rules 6.3 and 5.21 of the Law Society of Alberta's Code of Conduct be amended, as proposed.</p> <p style="text-align: right;">Tabled</p> </div>
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	<div data-bbox="180 1297 797 1390"> <div></div> <div></div> </div>

Approved 2023 Special Meeting Minutes

Special Meeting of the Law Society of Alberta (“Law Society”)

February 6, 2023

Zoom Webinar

11:00 a.m.

1 Call to Order

Mr. Ken Warren, Chair, called the Special Meeting (Meeting) to order at 11:00 a.m.

The Chair reported that the Meeting was called in accordance with clause 28(1)(b) of the *Legal Profession Act* (Act) in response to a petition received by the Executive Director on Friday January 13, 2023.

On January 26, 2023, the notice of the Meeting was sent to active members with the proposed agenda and the petition providing notice of a resolution that Rule 67.4 be repealed.

2 Confirmation of Quorum

There were 3748 active members present for the Meeting, as well as the Law Society’s four Lay Benchers attending as guests to observe, but not participate in the Meeting.

The Chair stated that section 27 of the Act stipulates that 20 active members constitutes a quorum at a Special Meeting and therefore quorum was met.

3 Review of Meeting Special Rules and Etiquette

As is the Benchers’ tradition, and as an act of reconciliation, the Chair delivered a Provincial Land Acknowledgment.

The Chair provided an overview of the meeting procedures, technology use and the Meeting Special Rules and etiquette.

4 Adoption of the Agenda

It was moved, by Ms. Margaret Unsworth, and seconded **that the proposed agenda be adopted.**

During debate the following points of order were raised:

- To request a recorded rather than anonymous vote for public interest.

The Chair responded that the technology was set to anonymous, could not be changed and that taking a roll call vote for decisions such as these is not common.

- To object to the constitution of the panel and appointment of the Chair due to bias for reasons of having pre-determined the issue and being strongly in support of one side.

The Chair ruled that the point of order was not well taken in that the objection was an allegation of impropriety by the Chair, not a point of order raising a breach of the rules. As a point of information, he advised that the Chair and Benchers were not sitting in any adjudicative capacity. The Chair was committed to fulfilling his obligation to the assembly as an impartial facilitator of the meeting including following the order of business, recognizing members who were entitled to seek the floor, to state and put to vote all questions that legitimately come before the assembly, to promote balanced debate, enforce the rules, and expedite business. The Chair does not participate in debate and assists members in completing the business of the assembly to have a balanced debate and get to a vote on the resolution.

- To request that Mr. Song's letter of January 30, 2023, in support of the motion, be circulated using the chat function.

The Chair ruled that the point of order was not well taken as it did not pertain to a breach of the rules and no additional materials would be circulated. He added that Mr. Song would have preference to speak.

It was moved, by Sebastian Anderson, and seconded **to call the previous question** on the adoption of the agenda. Voting on the motion was conducted via anonymous Zoom poll. The tellers' committee report was given by Nadine Meade as follows:

The number of votes cast 3564

The number of votes necessary for adoption (2/3) 2376

Votes for motion 2869



10:10

Votes against motion 695

The Chair announced that the motion was adopted.

Voting on the motion **that the proposed agenda be adopted** was conducted via anonymous Zoom poll. The tellers' committee report was given by Nadine Meade as follows:

The number of votes cast 3606

The number of votes necessary for adoption (majority) 1804

Votes for motion 3531

Votes against motion 75

The Chair announced that the agenda was adopted.

5 Consideration of the Proposed Resolution

The Chair confirmed that the proposed resolution **that Rule 67.4 be repealed** was moved by Mr. Yue (Roger) Song, as the submitter of the petition, and that the signatories of the petition were collectively seen as seconding the resolution.

Debate on the proposed resolution began at 11:41 a.m. and lasted until 12:41 p.m., when the 60-minute time limit for debate expired.

The Chair recognized Mr. Song as entitled to preference in speaking in debate. Debate then alternated between those speaking against and those speaking for the resolution.

Points made in debate for the resolution included:

- Mandated education is a form of indoctrination.
- Questions were raised regarding the Benchers authority to mandate education.
- Concern was expressed about potential future mandated political, cultural, social, and/or historical education.
- The petition is not about race or The Path.
- The Law Society should regulate for competence and ethics. The Path is not connected to a lawyer's practice.
- The Truth and Reconciliation call to action has been fulfilled and Rule 67.4 should be repealed.
- Education should be encouraged not imposed.



- Mandating education is an authority overreach by the Law Society.
- Suspending lawyers' livelihoods should be for serious offences and not for non-compliance of completing an education requirement.
- The rule should be replaced with one that is narrower and more balanced.

Points made in debate against the resolution included:

- Support for regulators imposing required Continuing Professional Development to protect the public by ensuring a high standard of competence.
- Self-regulation is a privilege in return for ethical and competent service as lawyers and as Benchers are elected to govern in the public interest, there must be the power to impose standards of competence and in unique circumstances to mandate the particular nature of the competence such as Indigenous Cultural Competency.
- A Law Society strategic goal is equity, diversity and inclusion and the Law Society has taken a moral approach to see, acknowledge and understand history.
- The Supreme Court decision, *R. v. Gladue*, indicates that it is incumbent on the Law Society to ensure that lawyers understand Indigenous history.
- Rule 67.4 has been used in the public interest for Trust Safety, Responsible Lawyer Training, Principal Training as a result of the Articling Survey Results and Indigenous Cultural Competency training in response to the Truth and Reconciliation Commission's Calls to Action.
- Section 7(1) of the *Act* gives the Benchers broad rule making authority for numerous purposes including how the Law Society is to fulfill the duties that are imposed on it as a self-governing profession.
- The Supreme Court of Canada decision, *Green v. Law Society of Manitoba*, provides Law Societies with independence and authority that can be broadly interpreted.
- Rule 67.4 does not refer to political, cultural or ideological education.
- If the resolution passes, self-regulation is at risk and as the legal profession is often called upon to challenge the authority of the state and protect the rights of individuals, it is incumbent on the regulator to ensure lawyers are educated and competent.



- The Path content was vetted by Indigenous advisors and implemented by the Law Society in good faith to strengthen cultural competence in the province.

During debate the following points of order were raised:

- The speaker is impugning the motives of the mover as being racist and is out of order.

The Chair ruled the point of order well taken; the remarks of the speaker were not in accordance with the meeting decorum and were regarded as being disrespectful of other lawyers.

- The use of the word Indians is offensive language and a request was made that the speaker refrain from referring to Indigenous peoples as Indians.

The Chair acknowledged that the use of the term Indian referenced in the Indian Act is appropriate, otherwise, ruled the point of order well taken with respect to other uses of the term.

- Comparing top-down approaches from the Law Society to lawyers as compared to the British or Canadian Government to Indigenous people is not a fair comparison.
- The Chair ruled the point of order not well taken because it does not relate to a procedural item. The Chair reminded the speakers of the assembly to be respectful and use appropriate language.

Voting on the resolution **that Rule 67.4 be repealed** was conducted via anonymous Zoom poll. The tellers' committee report was given by Nadine Meade as follows:

The number of votes cast 3473

The number of votes necessary for adoption (majority) 1737

Votes for resolution 864

Votes against resolution 2609

The Chair announced that the resolution was defeated.

In response to a request for information asking how secure was the vote, the Chair advised that voting was conducted in accordance with the approved technology.



6 Adjournment


It was moved, by Lindsay Amantea and seconded **to adjourn**. As there was no further business, a vote was not required and the Chair declared the meeting adjourned.

The Meeting adjourned at 12:52 p.m.

Approved by Minutes Approval Committee:

February 23, 2023

Minutes Approval Committee Chair:



Cal Johnson

Secretary:



Christine Schreuder

**PETITION FOR A SPECIAL MEETING
OF THE MEMBERS OF THE LAW SOCIETY OF ALBERTA**

Pursuant to s. 28(1) of the Legal Profession Act

To Our Learned Friend, Elizabeth J. Osler, Executive Director of the Law Society of Alberta,

WE THE UNDERSIGNED DO HEREBY PETITION that you call a Special Meeting of the Society within 30 days of receiving this written petition of no less than 50 active members. The business to be conducted at the special meeting is to present, debate and vote on the following resolution:

WHEREAS Rule 67.4 of the Rules of the Law Society of Alberta authorizes the Benchers to prescribe and mandate specific Continuing Professional Development (CPD) including cultural, political, or ideological education on Members as a condition of practice;

AND WHEREAS Rule 67.4 unnecessarily diminishes and hinders professional autonomy in the area of CPD to the detriment of the profession and the public;

AND WHEREAS the Legal Profession Act only authorizes the Benchers to establish and prescribe an education course called the "bar course" for persons required to pass a bar admission and does not authorize the Benchers to prescribe and mandate any specific CPD including any specific cultural, political, or ideological education on Alberta lawyers;

AND WHEREAS under Rule 67.1(3) each lawyer possesses both the freedom and the responsibility to determine whether a learning activity meets the criteria of Rule 67.1 (2) and therefore qualifies as CPD;

THEREFORE, IT IS HEREBY RESOLVED THAT Rule 67.4 be repealed.

Respectfully,

Petitioners (signatures on file, all petitioners are the active members of LSA based on LSA's website):

1. ✓ Yue (Roger) Song (Calgary), LSA Member since 2014
2. ✓ Benjamin J. Ferland (Edmonton/St.Albert), LSA Member since 2018
3. ✓ Brian W. Conway (Calgary) LSA Member since 1988
4. ✓ Ian Carruthers (Calgary), LSA Member since 2016
5. ✓ Marty Moore (Calgary), LSA Member since 2015
6. ✓ Richard E. Harrison (Calgary), LSA Member since 2014
7. ✓ Lani L. Rouillard (Sylvan Lake), LSA Member since 2006
8. ✓ Katherine Kowalchuk (Calgary), LSA Member since 2003
9. ✓ Alan G. Warnock (Airdrie), LSA Member since 1990
10. ✓ Daniel Harder (Didsbury), LSA Member since 1994

11. ✓ Louis M H Belzil, KC, (Edmonton), LSA Member since 1990
12. ✓ Doris Reimer (Calgary), LSA Member since 2001
13. ✓ Leighton Grey, KC, (Cold Lake), LSA Member since 1993
14. ✓ James Kitchen (Airdrie), LSA Member since 2017
15. ✓ Matthew Kaup (St. Albert), LSA Member since 2019
16. ✓ Martin Kaup (St. Albert), LSA Member since 1991
17. ✓ Carol Crosson (Airdrie), LSA Member since 2013
18. ✓ Cynthia Murphy (Calgary), LSA Member since 2000
19. ✓ Daniel Mol (Edmonton), LSA Member since 2006
20. ✓ David Cavilla (Lethbridge), LSA Member since 1992
21. ✓ Francoise Belzil (Edmonton), LSA Member since 1991
22. ✓ Matthew A. Pruski (Edmonton), LSA Member since 2005
23. ✓ Keith D. Pridgen (Edmonton), LSA Member since 2020
24. ✓ Ashley Garbe (Airdrie), LSA Member since 2014
25. ✓ Spencer P. Morrison (Edmonton), LSA Member since 2019
26. ✓ Patrick M. Smith (Edmonton), LSA Member since 2018
27. ✓ Dylan Morrison (Edmonton), LSA Member since 2019
28. ✓ Derek From (Airdrie), LSA Member since 2011
29. ✓ Adam Parsons (Jasper), LSA Member since 2021
30. ✓ Richard Finlay (Edmonton), LSA Member since 2000
31. ✓ Natalie Johnson (Edmonton), LSA Member since 2000
32. ✓ Steven Osmond (Lethbridge), LSA Member since 2018
33. ✓ Shawn Leclerc (Lethbridge), LSA Member since 2017
34. ✓ Kevin R Baker KC (Calgary), LSA Member since 1972
35. ✓ Chad Williamson (Calgary), LSA Member since 2017
36. ✓ Hart Spencer (Cold Lake), LSA Member since 2011
37. ✓ Chad Graham (Edmonton), LSA Member since 2020
38. ✓ Darren L Richards (Edmonton), LSA Member since 1993
39. ✓ Gleb Malinovsky (Calgary), LSA Member since 2015
40. ✓ Walter Kubitz, KC (Calgary), LSA Member since 1988
41. ✓ Peng Gong (Calgary), LSA Member since 2017
42. ✓ Lisa D. Statt Foy (Calgary), LSA Member since 2005
43. ✓ John W. Veldkamp (Edmonton), LSA Member since 1998
44. ✓ Glenn Blackett (Calgary), LSA Member since 2003
45. ✓ Imran Bhutta (Sylvan Lake), LSA Member since 2016
46. ✓ Dong Jun (June) Lee (Edmonton), LSA Member since 2014

47. ✓ Rick H. Hemmingson (Lacombe), LSA Member since 1989
48. ✓ W. K. Horwitz (Edmonton), LSA Member since 1982
49. ✓ R. M. Simpson (Edmonton), LSA Member since 1980
50. ✓ Richard A. Low (Lethbridge), LSA Member since 1981
51. ✓ Donna C. Purcell KC (Red Deer), LSA Member since 1989

****Signatures are on file. Note:** Correction, Daniel Clarence Harder retired, effective January 1, 2023.

Approved Minutes

Lawyer Competence Committee (the “Committee”) meeting

April 27, 2022

Law Society of Alberta (the “Law Society”)

Videoconference

9:00 a.m.

ATTENDANCE	
Committee Members	Deanna Steblyk, Chair Bud Melnyk, Vice-Chair Ted Feehan Corie Flett Jim Lutz Sanjiv Parmar Stacy Petriuk Ron Sorokin
Bencher Liaison	Kathleen Ryan
Staff and Guests	Barbra Bailey, Manager, Education Colleen Brown, Manager, Communications and Stakeholder Engagement Ruth Corbett, Governance Administrator Jennifer Freund, Policy & Governance Counsel Kate Shea, Membership Counsel Rebecca Young, Education Counsel, Education
Regrets	Ken Warren Bill Hendsbee Kene Ilochonwu Cori Ghitter, Deputy Executive Director, and Director, Policy and Education Tina McKay, Senior Manager, Business Operations

Tab	Item
1.	Call to Order and Approval of the Agenda The meeting was called to order at 9:03 a.m. The agenda was circulated with the materials prior to the meeting and approved by consensus.



Tab	Item
	<div>[REDACTED]</div> <div>[REDACTED]</div>
	<div>[REDACTED]</div> <div>[REDACTED]</div>
	<div>[REDACTED]</div> <div>[REDACTED]</div>
4.	<p>Continuing Professional Development Review Process Parameters</p> <p>Documentation for this agenda item was circulated with the meeting materials. Ms. Bailey advised that the purpose of today's discussion was to get feedback and direction from the Committee on the recommendations in the Furlong Report for the new Continuing Professional Development (CPD) program. Specifically, the Committee discussed the following:</p> <p>What should the minimum requirements be for CPD plans?</p> <p>Mr. Lutz provided his comments and then left the meeting at 9:35 a.m. Summary of the Committee's discussion and feedback follows:</p> <ul style="list-style-type: none">- It was suggested that lawyers could voluntarily self-audit by completing a spreadsheet as they go along. However, if the Law Society's intention for reviews is to dialogue with lawyers about their self-reflection, would a requirement to complete a spreadsheet suggest a more formal assessment process? It was noted that large firms already require this type of professional development review. It was suggested that it might be beneficial to explore ways to coordinate firms' CPD programs with the Law Society's.- The Committee recognized that the CPD tool will provide lawyers with many different options. The importance of the effectiveness of the tool and how it is rolled out was noted.



Tab Item

- It was suggested that Benchers could play a role in reviewing their peers. This was also noted as potentially helping to address some of the resourcing issues related to conducting the reviews.
- There was broad support for no requirement for minimum hours and not mandating compliance for the first year or two; however, to re-visit these questions after evaluation of the program.
- There was broad support for a reasonable and tangible minimum requirement, without making it mandatory; specifically, for a minimum requirement of one domain and no requirement to change domains annually, since some lawyers might want more continuous learning in their chosen area.
- The intended emphasis on learning outcomes was noted as important and there was support for requiring at least two competencies, but that they should not necessarily have to be in the same domain.

Should the Law Society monitor lawyers' CPD plans or monitor execution of lawyers' CPD plans, or both?

- There was broad support for monitoring lawyers' learning outcomes and self-reflections, not the plans themselves.
- The Committee supported spot checks and for the Law Society to have the discretion to refer to Early Intervention (EI) or Conduct, if necessary. The potential for coordination with EI and Practice Review was noted. It was suggested that a roster of senior lawyers could be enlisted to assist with spot checks and staff will explore this option.
- There was a suggestion that perhaps we could approach CPD from an organizational perspective, whether through light-touch entity regulation, or by encouraging organizations to incorporate the PDP into their professional development requirements for their lawyers.

Should the Law Society phase in greater accountability by focusing on coaching to start?

- Based on the Committee's discussion of the first two questions, there was broad support for a phased-in approach to accountability with a focus on coaching during the early days of the program (the first year or two were discussed).

Ms. Bailey thanked the Committee for their direction and summarized next steps, noting that if Rule changes are found to be required, they will be brought back to a future meeting.

5. Update on Proficiency Scale for Professional Development Profile

Documentation for this agenda item was circulated with the meeting materials. Ms. Bailey presented the Principia Assessments Professional Foundations Proficiency Scale, which will be integrated with the CPD tool to guide lawyers' self-reflection. The



Tab	Item
	proficiency scale is not intended to be used to formally assess competencies; however, it will inform enhancements to the CPD tool over time.
6.	Update on Resources to Accompany Professional Development Profile (PDP) Ms. Bailey provided an oral update and noted that the Work Plan agenda item included discussion about resources. Staff are working on a suite of resources that will provide an initial foundation for the CPD program, to support the use of the PDP. Ms. Bailey confirmed that other resources and tools accessible on the web are also being reviewed for possible use in the new CPD planning tool.
	[REDACTED]
	[REDACTED]

Approved Minutes

Equity, Diversity and Inclusion (EDI) Committee (the “Committee”) meeting

















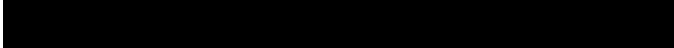










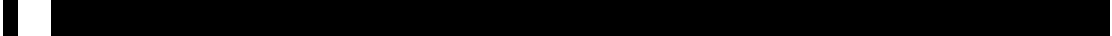
March 31, 2022

Law Society of Alberta (the ‘Law Society’) Zoom videoconference

2:30 pm

ATTENDANCE	
Committee Members:	Corie Flett, Chair Cal Johnson, Vice-Chair Barb McKinley Sanjiv Parmar Maira Váně
Ex-officio:	Ken Warren, President Bill Hendsbee, President-Elect
Bencher Liaison:	Kathleen Ryan
Staff:	Elizabeth Osler, CEO & Executive Director Cori Ghitter, Deputy Executive Director, & Director, Policy and Education Susannah Alleyne, EDI Counsel, and Equity, Diversity & Inclusion Counsel and Equity Ombudsperson Barbra Bailey, Manager, Education Shabnam Datta, Manager, Policy Kate Fiori, Governance Assistant Avery Stodalka, Senior Communications Advisor
Regrets:	Sony Ahluwalia Grant Vogeli Salimah Walji-Shivji



Item	
1.	<p>Call to order and approval of the agenda</p> <p>Ms. Flett called the meeting to order at 2:30 pm and provided the Indigenous Land Acknowledgment statement for Alberta.</p> <p>Ms. Flett introduced herself as the new chair of the Committee, as well as Susannah Alleyne, EDI Counsel, as the main point of contact for the Committee.</p> <p>Mr. Johnson joined for quorum at 2:34 pm.</p> <p>The agenda was circulated with the materials prior to the meeting and approved by consensus.</p>
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	<div data-bbox="315 1010 1468 1157">  </div>
	<div data-bbox="315 1220 1468 1409">   </div>
	<div data-bbox="315 1484 1468 1808">      </div> <div data-bbox="363 1808 1468 1934">  </div>



Item	
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
6.	<p>Acknowledgment of Systemic Discrimination</p> <p>Documentation for this item were circulated with the materials prior to the meeting. Ms. Alleyne provided an overview of the Acknowledgement and its evolution through the involvement and feedback of various Committees.</p> <div><p>Motion: Johnson/McKinley</p><p>That the Equity, Diversity and Inclusion Committee recommend that the Benchers approve the Acknowledgment of Systemic Discrimination, along with the supporting sections for the webpage.</p><p>Carried unanimously</p></div>
	<p>[REDACTED]</p> <p>[REDACTED]</p>
	<p>[REDACTED]</p> <p>[REDACTED]</p>

Approved Minutes

Lawyer Competence Committee (the “Committee”) meeting

March 16, 2022

Law Society of Alberta (the “Law Society”)

Videoconference

8:00 a.m.

ATTENDANCE	
Committee Members	Deanna Steblyk, Chair Bud Melnyk, Vice-Chair Ted Feehan Corie Flett Kene Ilochonwu Jim Lutz Sanjiv Parmar Stacy Petriuk Ron Sorokin
Bencher Liaison	Kathleen Ryan
Ex Officio	Ken Warren, President Bill Hendsbee, President-Elect
Guests	Carla Caro, Program Director, ACT Patricia Muenzen, Director, ACT
Staff and Guests	Cori Ghitler, Deputy Executive Director, and Director, Policy and Education Barbra Bailey, Manager, Education Colleen Brown, Manager, Communications and Stakeholder Engagement Ruth Corbett, Governance Administrator Tina McKay, Senior Manager, Business Operations Rebecca Young, Education Counsel, Education

Tab	Item
1.	Call to Order and Approval of the Agenda The meeting was called to order at 8:00 am. The agenda was circulated with the materials prior to the meeting and approved by consensus.



Tab Item

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4.	<p>Professional Development Profile for Alberta Lawyers Update</p> <p>ACT's report on the Validation Survey Results was circulated with the meeting materials and the January 5, 2022 version of the Professional Development Profile (the "Profile") was emailed to the Committee during the meeting. Ms. Bailey provided background information on the process for the development of the Profile and Ms. Muenzen presented the Validation Survey Results.</p> <p>The Committee discussed the survey results; specifically, the demographics of respondents, the collection of ratings for each element of the profile, the validation criteria and how to use the results to finalize the Profile. Summary of discussion points:</p> <p>Domains:</p> <p>The Committee's discussion of the responses collected on the Domains focused on the data for the lowest-ranking Domains: <i>Truth and Reconciliation</i> ("TRC") and <i>Cultural Competence, Equity, Diversity and Inclusion</i>. Of the respondents, newer lawyers rated the TRC Domain as important while respondents with more experience rated it less important. However, the more experienced lawyers made up the majority of respondents. The Committee discussed the results from different perspectives: should lower ranked Domains or those not meeting the validation threshold be removed or combined? Or, given the respondent demographics, should the lower ranked Domains stand alone and development in those areas be actively encouraged? It was noted that raising awareness in these areas aligns with other Law Society work in the equity space to address systemic issues, including the mandatory completion of The Path training. The Committee recognized that the Profile is aspirational and voluntary. Overall, there was broad support among the Committee for maintaining the two Domains in question, despite the fact that they were rated lower than the other Domains.</p> <p>Competencies:</p> <p>The discussion of Competencies mirrored that of the Domains. The Committee discussed communications and Ms. Ghitter confirmed that reporting back to the profession is a priority but that it would likely be in the form of an Executive Summary of the survey results.</p> <p>Ms. Flett left the meeting at 9:45.</p>
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Tab	Item
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Performance Indicators:

The Committee discussed the two Performance Indicators that fell slightly below the validation threshold: *Implement Strategies to Mitigate Trauma* and *Increase Awareness of Qualifications of Internationally Trained Lawyers*. It was recognized that these Performance Indicators are not easy to understand as they are niche areas. Ms. Bailey advised that tools will be made available to assist people who are interested in learning more about certain areas.

Mr. Lutz and Mr. Melnyk left the meeting at 10:00 a.m.

The Committee also discussed the draft Profile, dated January 5, 2022, particularly the preamble to #2 – *Professional Conduct* – regarding accountability and the specified groups. Following discussion, in which it was recognized that the Profile is aspirational and would not be used for conduct matters, the Committee was satisfied that the wording in #2.2 was sufficient.

Motion: Melnyk/Ilochonwu

That the Lawyer Competence Committee recommend that the Benchers approve the Professional Development Profile, as circulated.

Carried unanimously

Meeting Minutes

Indigenous Advisory Committee (“IAC”) Meeting

March 14, 2022

Law Society of Alberta - ZOOM Meeting

12:30 pm to 2:30 pm

Committee Members in Attendance	Josh Jackson Eugene Creighton, QC Lynda Levesque Harold Robinson Katelyn Lucas Sarah Sinclair Robert Philp, QC
Guests and LSA Staff in Attendance	Cori Gitter Barbra Bailey Susannah Alleyne Raj Atkar
Regrets	Sandra Christensen-Moore Katelynn Cave Kane Richards

	Discussion Items
	Land Acknowledgment Bob commenced the meeting with a land acknowledgement.
I	Call to Order and Approval of Agenda Cori called the meeting to order at 12:34pm. The agenda was circulated with the meeting materials prior to the meeting. A motion to approve the agenda was made by Bob Philp and seconded by Josh Jackson. <div style="text-align: right;">Carried unanimously</div>
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Discussion Items	
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5	<p>Acknowledgment of Systemic Discrimination</p> <p>The Proposed Acknowledgment of Systemic Discrimination document was circulated to the IAC with the meeting materials. Susannah presented an overview to the IAC regarding the feedback the Law Society is seeking. She indicated that this report was prepared from the “My Experience Project” that was launched in September 2020, where Alberta lawyers and students were asked to share their own experiences of racial discrimination and stereotyping that has impacted them and their legal careers. In</p>



Discussion Items	
	<p>November 2021, the Equity, Diversity and Inclusion Committee made a decision to draft an acknowledgment of systemic discrimination. She indicated that if this acknowledgment is approved by the Benchers, it would be put on the Law Society's website along with resources on systemic discrimination and an email address for further inquiries for members.</p> <p>She referred the IAC to the four questions in the document for their discussion and provided some parameters to help frame their discussion.</p> <p>Some of the key points from the discussions were that more discussion was needed around next steps to address this issue, to set the Indigenous experience apart from other experiences, and that efforts should be taken to make the acknowledgment more empathetic and "heart forward."</p> <p>The next step will be to take the IAC's feedback to the EDI Committee.</p>
I	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
I	<p>[REDACTED]</p>
I	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

Action Items	Who	Due by
[REDACTED]	[REDACTED]	[REDACTED]

Approved Minutes

Equity, Diversity and Inclusion (EDI) Committee (the “Committee”) meeting

February 10, 2022

Law Society of Alberta (the ‘Law Society’) Zoom videoconference

12:00 pm

ATTENDANCE	
Committee Members:	Stacy Petriuk, Vice-Chair Sony Ahluwalia Cal Johnson Maira Váně Grant Vogeli Salimah Walji-Shivji
Ex-officio:	Ken Warren, President-Elect
Bencher Liaison:	Kathleen Ryan
Staff:	Elizabeth Osler, CEO & Executive Director Cori Ghitter, Deputy Executive Director, & Director, Policy and Education Susannah Alleyne, EDI Counsel, Education Barbra Bailey, Manager, Education Shabnam Datta, Manager, Policy Kate Fiori, Governance Assistant Avery Stodalka, Senior Communications Advisor
Regrets:	Louise Wasylenko, Chair Darlene Scott, President

Item	
1.	Call to order and approval of the agenda Ms. Petriuk called the meeting to order at 12:00 pm and provided the Indigenous Land Acknowledgment statement for Alberta. The agenda was circulated with the materials prior to the meeting and approved by consensus.



Item	
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3.	<p>Equity, Diversity and Inclusion Advisory Committee Report on Acknowledgment of Systemic Discrimination</p> <p>Ms. Ryan gave an oral update on the February 2, 2022 Equity, Diversity and Inclusion Advisory Committee (EDIAC) meeting. The EDIAC was invited to feedback on the Acknowledgement of Systemic Discrimination (the “Acknowledgement”), specifically:</p> <ul style="list-style-type: none">- Initial reaction after reading Acknowledgement?- Any Concerns?- Anything missing?- If anything should be removed? <p>Initially, the reaction was overwhelmingly positive, and comments were made that overall tone and messaging was appropriate. Ms. Alleyne provided an overview of the proposed amendments incorporated into the current draft Acknowledgement based on the EDIAC's feedback.</p>
4.	<p>Review of Draft Law Society of Alberta Acknowledgment of Systemic Discrimination</p> <p>The memo and draft Acknowledgment for this item were circulated with the materials prior to the meeting.</p> <p>Ms. Alleyne gave a brief description of memo and the Committee responded with feedback regarding EDIAC's feedback and the amendments in Appendix A:</p> <ul style="list-style-type: none">- There was consistent mention made of the length. Although hard to keep concise, the Committee felt strongly to keep the wording precise.- The Committee discussed whether the "Justice System" should remain in the Acknowledgement and whether the Courts should be informed as a courtesy.

	Item
	<ul style="list-style-type: none"> - The Committee suggested that the language be reviewed to ensure that the document is concise, factual, relevant, and emphasizes the purpose to educate. - Mention was made to potentially hyperlink a definition of systemic discrimination, however, also being considerate as to where we are placing the authority of the definition and where it comes from. <p>Next steps are for the Acknowledgement to be reviewed by the Indigenous Advisory Committee and then back to the Committee for further feedback before going to Benchers with a full report and recommendation.</p>
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Approved Minutes

Equity, Diversity and Inclusion (EDI) Committee (the “Committee”) meeting

January 12, 2022

Law Society of Alberta (the ‘Law Society’) Zoom videoconference

12:00 pm

ATTENDANCE	
Committee Members:	Louise Wasylenko, Chair Stacy Petriuk, Vice-Chair Sony Ahluwalia Cal Johnson Moirá Váně Grant Vogeli Salimah Walji-Shivji
Ex-officio:	Darlene Scott, President Ken Warren, President-Elect
Bencher Liaison:	Kathleen Ryan
Staff:	Elizabeth Osler, CEO & Executive Director Cori Gitter, Deputy Executive Director, & Director, Policy and Education Susannah Alleyne, EDI Counsel, Education, and Equity Ombudsperson Barbra Bailey, Manager, Education Colleen Brown, Manager, Communications and Stakeholder Engagement Shabnam Datta, Manager, Policy Kate Fiori, Governance Assistant

Item	
1.	Call to order and approval of the agenda Ms. Wasylenko called the meeting to order at 12:00 pm. The agenda was circulated with the materials prior to the meeting and approved by consensus.



Item	
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	<div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div>
5.	<p>Review of Draft Law Society of Alberta Acknowledgment of Systemic Discrimination (the “Acknowledgment”) (for discussion)</p> <p>The document for this item was circulated with the materials prior to the meeting.</p> <p>Ms. Alleyne provided a brief overview of the Acknowledgment and invited the Committee to provide feedback.</p> <p>The Committee’s key discussion and feedback included:</p>

Item	
	<ul style="list-style-type: none"> • Overall, the Committee felt the importance of the Law Society's recognition of systemic discrimination within the organization. This is a voice that is valued within the greater system. It is important that the Acknowledgment have consistent language, that the Law Society embrace the Acknowledgment which would then filter down to the legal profession and justice system. • It was recommended that "accommodate those impacted" be removed from the fourth paragraph. • Consider adding a sentence describing how the Law Society's behaviour will change. Clearly and intentionally communicate what are the next steps and how there will be long-term sustainable change. Continuous education was suggested as an example of next steps. • Consider adding "age" to the set of characteristics in paragraph three. • It was recommended that there be consistency in linking throughout the Acknowledgment, e.g. provide links to all surveys. <p>Ms. Wasylenko stated that the EDI Advisory Committee ("EDIAC") will discuss the draft of the Acknowledgement on February 2, and the Committee will receive an EDIAC report on their discussion.</p>
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Consider the recommended edits to update the Acknowledgment.	5	Susannah Alleyne	Immediately
Seek feedback on the Acknowledgement from the EDIAC	5	Susannah Alleyne	February 2, 2022

Approved Minutes

Policy and Regulatory Reform Committee (the “Committee”) Videoconference meeting

September 14, 2021
Zoom videoconference
8:00 am

ATTENDANCE	
Committee Members in Attendance	Deanna Steblyk, Chair Cal Johnson, Vice-Chair Ryan Anderson Lou Cusano Jim Lutz Sandra Petersson Louise Wasylenko
Ex-officio	Ken Warren, President-Elect
Guests and Staff in Attendance	Cori Ghitler, Deputy Executive Director & Director, Policy and Education Elizabeth Aspinall, Practice Advisor Shabnam Datta, Manager, Policy Jennifer Freund, Policy & Governance Counsel Tina McKay, Senior Manager, Business Operations Amanda Miller, Policy Counsel Christine Schreuder, Governance Coordinator
Regrets	Elizabeth Osler, CEO & Executive Director Darlene Scott, President

Item	
1. Call to Order and Approval of the Agenda	Ms. Steblyk called the meeting to order at 8:00 am. The agenda was circulated with the materials prior to the meeting and approved by consensus.



Item

3. Model Code Amendments

The documents for this agenda item were circulated with the materials prior to the meeting.

Ms. Aspinall provided an overview of the Federation of Law Societies of Canada (“FLSC”) Model Code (the “Code”) Amendments Consultation respecting Rule 6.3 Discrimination and Harassment and *ex parte* proceedings. She noted that it is unusual for the FLSC to issue a second consultation and that the Committee is responsible for providing consultation feedback to the FLSC.

The Committee’s key discussion and suggestions included:

- Rule 6.3 respecting Discrimination and Harassment may be over-reaching.
- Rule 5.2-1 B - recommend amending to except (forbid) applications made without notifying all affected parties (Anton Piller applications). The distinction between “appearing” before the tribunal in 5.2-1A and “communication with” the tribunal in 5.2-1 B is not clear. “Communication” may include appearance thereby creating conflict between the two rules.
- Make the conditions of confidentiality and privilege clear in the Code.
- Consider providing *ex parte* education.
- With respect to section 27 of the memo, Equity, Diversity and Inclusion Committee and Advisory Committee feedback, “... physical impairments preventing clients or potential employees from getting into a firm.” Consider clarifying what getting into a firm means.
- Include a note that not considering physical impairments is discrimination.



Item	
	The Committee reached consensus on the Code amendments and directed Ms. Aspinall to draft a letter of response from Ms. Steblyk and circulate to Ms. Steblyk then the Committee for final review before issuing to the FLSC Chair of the Standing Committee on the Model Code.
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Approved Minutes

Lawyer Competence Committee (the “Committee”) meeting

October 30, 2020

Law Society of Alberta Zoom meeting

9:00 am

Committee Members in Attendance	Ken Warren, Chair Stacy Petriuk, Vice-Chair Ryan Anderson Elizabeth Hak Linda Long Bud Melnyk Kathleen Ryan
Ex-officio	Darlene Scott Kent Teskey
Guests and Staff in Attendance	Elizabeth Osler, CEO & Executive Director Cori Ghitter, Deputy Executive Director, and Director, Professionalism and Education Colleen Brown, Manager, Communications Jennifer Freund, Policy Counsel Jordan Furlong, Consultant Tina McKay, Senior Manager, Business Operations Andrea Menard, Indigenous Initiatives Liaison Rachel Piers, Communications Advisor Laura Scheuerman, Governance Assistant
Regrets	Bob Philp

Item	
1.	Call to order and approval of the agenda The agenda was circulated with the materials prior to the meeting and approved by consensus. The meeting was called to order at 9:05 a.m.

387

Item	
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
4.	<p>Indigenous Cultural Competence Education</p> <p>The documents for this agenda item were circulated with the materials prior to the meeting.</p> <p>Rule 67.4 – Mandatory Education</p> <p>Ms. Freund introduced this item and explained that the new Rule would back up the new mandatory requirements to the CPD program. The Committee’s key discussion points and suggestions included:</p> <ul style="list-style-type: none"> - Whether the discretion to mandate specific education, activities or training requirements for lawyers should rest with the Benchers or the Executive Director.

Item

- The Committee discussed that the decision is strategic and belongs at the Benchers table. Mandatory education will be brought to the Benchers while the Executive Director will handle exemptions.
- Ms. Freund will amend the proposed Rule to reflect the Committee's suggestions.
- Mr. Warren noted that the terminology has been amended from training to education.

Motion: Melnyk/Ryan

That the Lawyer Competence Committee recommend that the Benchers adopt Rule 67.4, as amended.

Carried unanimously

Parameters and potential exemptions

This item was introduced and the seven proposed parameters for the Indigenous Cultural Competence Education were considered one at a time.

During the course of the discussions and particularly in reference to parameters 3 and 4, Ms. Freund explained that there have been inactive lawyers contacting the Law Society to ask whether the program will be available to them.

The Chair asked for feedback from the Committee on the recommendations in the memo. The Committee was satisfied with recommendations 1-3, and 5-6. The Committee's key discussion and suggestions included:

Recommendation 4:

Option 1 that the cost for inactive lawyers and suspended lawyers to take The PATH be covered by the Law Society

Comments included:

- Want to stay consistent with other Law Society resources and the access that suspended and inactive lawyers have.
- Some members proposed that if the lawyer is planning to become an active member they should have access to the program while if a lawyer has no intention of changing their inactive or suspended status they should not have access.

Option 2 that the cost for inactive lawyers and suspended lawyers to take The PATH, while they maintain an inactive status, be covered by the lawyer

Comments included:

- Some Committee members expressed concern for subsidizing the program for suspended lawyers who may never reinstate. The other view was that once a



Item

suspended lawyer reinstates, they would have to take the program anyways.

Option 3 suggested by the Committee

Comments included:

- Overall, while some Committee members preferred Options 1 and 2 most of the Committee supported covering the cost for inactive lawyers and the cost for suspended lawyers would be covered by the lawyer.

The Committee supported the new Recommendation 4: Option 3.

Recommendation 7:

Option 1 that there be no exemptions from completion of The PATH through the Law Society of Alberta beyond previous completion of The PATH through the CBA or another organization or completion of Indigenous Canada at the University of Alberta

Comments included:

- The Calls to Action are for everyone and it would be beneficial for every lawyer to have the same baseline.
- The Law Society will be offering Alberta specific content that other organizations will not, therefore, lawyers should be required to take The PATH through the Law Society.
- Even if you are an expert you can still learn things from the course.

Option 2 that in addition to the exemption provided for completion of The PATH through the Law Society of Alberta through the previous completion of The PATH through the CBA or another organization or completion of Indigenous Canada at the University of Alberta that an exemption be provided to lawyers who certify that they have previous education or knowledge equivalent to The PATH and sufficient to address Call to Action 27 through education on or knowledge about:

- a) the history and legacy of residential schools;***
- b) the United Nations Declaration on the Rights of Indigenous Peoples;***
- c) Treaties and Aboriginal rights;***
- d) Indigenous law; and***
- e) Aboriginal–Crown relations***

and that this education has been or is provided or this knowledge has been or is gained through skills-based training that includes training in intercultural competency, conflict resolution, human rights, and anti-racism.

Comments included:

- Recognize that there may be people for whom The PATH adds little to their



Item	
	<p>knowledge base.</p> <ul style="list-style-type: none"> - It is time intensive for staff to assess credibility of activities so option 2 provides framework for lawyers to self-assess. - Build an audit program along with lawyers self-certifying. <ul style="list-style-type: none"> o An audit program could be a huge administrative piece that would need to be built out. It could be built off the CPD audit program as a pilot program. - Recognize and reward people who have done this on their own initiative. - Hesitation was expressed around requiring Indigenous lawyers to take the course. - May allow smoother implementation and show the Law Society's willingness to be open and understanding. <p>Most of the Committee was in favour of Option 2 with removing the "skills-based training" part. The Chair concluded that the audit portion can be looked at in the future as part of this recommendation.</p> <p><i>Ms. Ryan left the meeting at 11:15 a.m.</i></p> <div style="border: 1px solid black; padding: 5px;"> <p>Motion: Long/Melnyk That the Lawyer Competence Committee recommend that the Benchers adopt the proposed 7 recommended parameters for mandatory Indigenous Cultural Competency Education, as amended.</p> <p style="text-align: right;">Carried unanimously</p> </div>
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Action Items	Item #	Who	Due by
■	■	■	■
■	■	■	■
Amend the proposed Rule 67.4	4	Ms. Freund	Immediately

Approved Minutes

Policy and Regulatory Reform Committee (the “Committee”) Videoconference meeting

September 17, 2020

Zoom videoconference meeting

8:00 am

Committee Members in Attendance	Bill Hendsbee, Chair Deanna Steblyk, Vice-Chair Elizabeth Hak Jim Lutz Barb McKinley Lou Pesta Margaret Unsworth
Guests and Staff in Attendance	Darlene Scott, <i>ex-officio</i> Kent Teskey, <i>ex-officio</i> Elizabeth Osler, CEO & Executive Director Cori Ghitter, Deputy Executive Director & Director, Professionalism and Policy Barbra Bailey, Policy Counsel Nancy Bains, Tribunal Counsel Nancy Carruthers, Senior Manager, Policy and Ethics Shabnam Datta, Policy Counsel Jennifer Freund, Policy Counsel Sharon Heine, Senior Manager, Regulation Tina McKay, Senior Manager, Business Operations Christine Schreuder, Governance Coordinator
Regrets	Beth Aspinall, Practice Advisor and Equity Ombudsperson

Item	
1.	Call to Order and Approval of the Agenda Mr. Hendsbee called the meeting to order at 8:04 am. The agenda was circulated with the materials prior to the meeting and approved by consensus.



Item

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3.	<p>FLSC Model Code Consultation letter to the Standing Committee</p> <p>The document for this item was circulated prior to the meeting with the materials.</p> <p>Ms. Carruthers invited the Committee to provide feedback on the Federation of Law Societies of Canada ("FLSC") Model Code Consultation letter ("the Letter") to the Standing Committee.</p> <p>Mr. Hendsbee noted that he is comfortable with the level of detail and the timing of the Letter.</p> <p>The key Committee discussion points and suggestions included:</p> <ul style="list-style-type: none">- Consider beginning the letter stating the Committee's philosophical issues and include the rest of the information in the Letter as backup.- Ms. Carruthers confirmed that the format of the Letter which included feedback from the profession and the Committee is typical and that the Standing Committee will review thoroughly.- The Committee has not reached a consensus on the proposed Model Code amendments and the Letter reflects that. Preference expressed to communicate at a high level was achieved in the Letter.- It was explained that the Committee is representative of the Board with expertise to deliberate policy issues and make recommendations to the Benchers. <p>Mr. Teskey left the meeting at 8:32 am.</p> <p>Mr. Hendsbee thanked Ms. Carruthers for her work on the Letter.</p>
■	<div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div>



Item

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Item	
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Action Items	Agenda item	Who	Due by
Revise the FLSC Model Code Consultation letter to the Standing Committee, send to Mr. Hendsbee for review and then send to the Standing Committee.	3	Ms. Carruthers	Immediately
[REDACTED]	■	[REDACTED]	[REDACTED]
[REDACTED]	■	[REDACTED]	[REDACTED]

Approved Minutes

Lawyer Competence Committee (the “Committee”) meeting

September 11, 2020

Law Society of Alberta (the “Law Society”)

Videoconference

9:00 am

Committee Members in Attendance	Ken Warren, Chair Stacy Petriuk, Vice-Chair Ryan Anderson Elizabeth Hak Linda Long Bob Philp Kathleen Ryan
Ex-officio	Darlene Scott Kent Teskey
Guests and Staff in Attendance	Elizabeth Osler, CEO & Executive Director Cori Ghitler, Deputy Executive Director, and Director, Professionalism and Policy Jennifer Freund, Policy Counsel Jordan Furlong, Consultant Andrea Menard, Indigenous Initiatives Liaison Rachel Piers, Communications Advisor Laura Scheuerman, Governance Assistant
Regrets	Bud Melnyk Colleen Brown, Manager, Communications

Item	
1.	<p>Call to order and approval of the agenda</p> <p>The agenda was circulated with the materials prior to the meeting and approved by consensus.</p> <p>The meeting was called to order at 9:05 am.</p>

Item

■

[REDACTED]

[REDACTED]

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3. Recommendation on Indigenous Cultural Competence course “The Path”

- Policy discussion and development of recommendations to the Benchers

The documents for this agenda item were circulated with the materials prior to the meeting.

The Chair welcomed Committee feedback. Ms. Ghitter provided a brief introduction and reminded the Committee that when the Benchers suspended continuing professional development (“CPD”) a commitment was made to determine an alternate program. Ms. Ghitter highlighted the following points to consider when deciding if The Path should be mandatory:

- Concerns were expressed around imposing obligations on lawyers amid the pandemic. Ms. Ghitter confirmed that the course can be offered at no cost to lawyers.
- A time commitment of 6 hours is required, and lawyers would be given at least 18 months to complete the course.
- The Path will likely be the only mandated CPD requirement during that time.

The Committee supported The Path as a starting point for Indigenous training. The Committee was unable to agree whether the course should be mandated as a core competency for all lawyers or optional with significant encouragement from the Law Society. Key discussion points included:

- It is important for all lawyers to be aware of Indigenous issues.
- The Law Society has an obligation to demonstrate a meaningful response to the Truth and Reconciliation Commission, consistent with its earlier commitment.
- The Law Society can lead by making the course mandatory.
- Mandatory Indigenous cultural competence training is a positive way for lawyers to show leadership in the community.
- Indigenous issues may continue to be ignored if training is not mandatory.
- The mandate says the Committee is to ensure cultural competence training. The Committee acknowledged that there could be other cultural competencies that have not been addressed and that other groups may seek similar treatment.

400

Action Items	Item #	Who	Due by
Report to the Benchers on Indigenous Cultural Competence Training and the decision required on whether the course ought to be mandatory.	3	Mr. Warren/ Ms. Ghitter	October 1, 2020
[REDACTED]	1	[REDACTED]	[REDACTED]

Approved Minutes

Policy and Regulatory Reform Committee (the “Committee”) Videoconference meeting

August 13, 2020

Zoom videoconference meeting

8:00 am

Committee Members in Attendance	<p>Bill Hendsbee, Chair Deanna Steblyk, Vice-Chair Elizabeth Hak Jim Lutz Barb McKinley Lou Pesta Margaret Unsworth</p>
Guests and Staff in Attendance	<p>Darlene Scott Cori Ghitter, Deputy Executive Director & Director, Professionalism and Policy Beth Aspinall, Practice Advisor and Equity Ombudsperson Barbra Bailey, Policy Counsel Nancy Carruthers, Senior Manager, Policy and Ethics Shabnam Datta, Policy Counsel Sharon Heine, Senior Manager, Regulation Christine Schreuder, Governance Coordinator</p>
Regrets	<p>Kent Teskey Elizabeth Osler, CEO & Executive Director Jennifer Freund, Policy Counsel Tina McKay, Senior Manager, Business Operations</p>

Item	
1.	<p>Call to Order and Approval of the Agenda</p> <p>Mr. Hendsbee called the meeting to order at 8:12 am.</p> <p>The agenda was circulated with the materials prior to the meeting and approved by consensus.</p>

Item

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3. FLSC Model Code Consultation Feedback

The documents for this item were circulated prior to the meeting with the materials.

Ms. Carruthers explained that it is possible for individual law societies to decline the proposed amendments. However, the Model Code is intended to be adopted consistently by all law societies, to the greatest extent possible. The FLSC tries to reach consensus and historically, if law societies do not agree, the changes are not passed and the FLSC may continue to work on the amendments. Mr. Carsten Jensen is the LSA FLSC representative and is directed how to vote on the LSA's behalf.

Ms. Carruthers introduced the Model Code *ex parte* rule amendments and summarized the feedback from the Canadian Association for Legal Ethics (CALE) which was included in the materials.

The key Committee discussion points and suggestions included:

- Non-disclosure should follow Alberta jurisprudence. Consider adding, "in Alberta" to the Rule 5.2-1A[2]commentary.
- The letter from CALE favours the use of simpler language rather than the Latin term '*ex parte*'. The Committee stated that '*ex parte*' is well-understood term within the legal profession and should remain.
- Appendix B, Commentary - Use direct language and remove the word 'consider' from the commentary at 5.2-1A [3], 5.2-1B [2], [3] and [4].
- The Committee agreed with the proposed Model Code *ex parte* Rule amendments as amended.

Ms. Carruthers noted that there was late feedback on the proposed Model Code Harassment and Discrimination Rules, which was summarized to maintain anonymity in the memo included with the meeting materials.



Item

The key Committee discussion points and suggestions included:

- Is it necessary for the law societies to have their own rules to deal with harassment and discrimination issues when there are other bodies in place to deal with these complaints?
- Concern was expressed with including both of the terms '*subjective*' and '*reasonable*' together when referring to the "*experience of the person experiencing the behaviour*". It is difficult to prove both and it is especially difficult to prove subjectivity. A two-part test is unmanageable because someone could lose on one of the two grounds.
- Agreement was expressed with the national firm's suggestion to add objectivity to the test for harassment and discrimination and some ramifications for frivolous/malicious reporting. It was noted that frivolous/malicious reporting is a concern for all LSA complaints.
- The feedback reflects overall lack of consensus which may suggest that the proposed amendments are not yet right.
- What can the law societies do that is better than the Human Rights or Labour Relations bodies?
- Reconsider using the terms 'bullying' and 'harassment' because there are inconsistent ideas of what these terms mean.
- Human Rights and Labour Relations bodies have not been dealing with harassment and discrimination effectively. There is a need to shift the culture within the profession and the regulator should deal with harassment and discrimination complaints within the profession. If the LSA decides not to adopt the proposed Model Code amendments, it would be equivalent to deciding to let other bodies deal with these issues.
- The LSA has the unique ability to deal with someone who is in an extreme situation of harassment. The regulator can require that lawyers be accountable for harassment and discrimination, which would provide the best opportunity to change the culture within the profession. The survey results demonstrate why the regulator needs to respond.
- There was a feeling of conflict expressed regarding regulating conduct outside of the office and some concern about where the regulator's authority ends.
- Concern was expressed with being found guilty of harassment for the use of offensive language, specifically, which commonly occurs while conducting a case in criminal practice.
- The American Bar has not passed this model. It is important to have a cohesive, thoughtful and instructive definition of harassment that members would stand behind. There was Committee consensus to not rush.



Item	
	<p>Ms. Carruthers summarized the next steps:</p> <ul style="list-style-type: none">- Ms. Carruthers will draft a letter to the FLSC Standing Committee on the Model Code (the “Standing Committee”) and will include a section that summarizes this Committee’s feedback, and another section will summarize the consultation feedback.- Ms. Carruthers will send the draft letter to Mr. Hendsbee for review by email.- The Committee will review the letter at the next meeting. If further revisions are required, they will be made and circulated to the Committee for review by email.- Submit the letter to the Standing Committee by September 30 deadline.
	<p>[REDACTED]</p>
	<p>[REDACTED]</p>
	<p>[REDACTED]</p>
	<p>[REDACTED]</p>

Action Items	Agenda item	Who	Due by
Draft a letter to the FLSC Model Code Standing Committee and send to Mr. Hendsbee to review.	3	Ms. Carruthers	Next meeting
Extend the September 17 meeting to 1.5 hours	3	Ms. Schreuder	Immediately

Approved Minutes

Policy and Regulatory Reform Committee (the “Committee”) Videoconference meeting

July 15, 2020

Teams videoconference meeting

8:00 am

Committee Members in Attendance	Bill Hendsbee, Chair Deanna Steblyk, Vice-Chair Elizabeth Hak Jim Lutz Barb McKinley Lou Pesta Margaret Unsworth
Guests and Staff in Attendance	Kent Teskey Darlene Scott Elizabeth Osler, CEO & Executive Director Cori Ghitter, Deputy Executive Director & Director, Professionalism and Policy Beth Aspinall, Practice Advisor and Equity Ombudsperson Barbra Bailey, Policy Counsel Nancy Carruthers, Senior Manager, Policy and Ethics Shabnam Datta, Policy Counsel Jennifer Freund, Policy Counsel Tina McKay, Senior Manager, Business Operations Christine Schreuder, Governance Coordinator

Item	
1.	<p>Call to Order and Approval of the Agenda</p> <p>Mr. Hendsbee called the meeting to order at 8:05 am.</p> <p>The agenda was circulated with the materials prior to the meeting.</p> <div style="border: 1px solid black; padding: 5px;"> <p>Motion: Lutz/Scott</p> <p>To approve the July 15, 2020 Policy and Regulatory Reform Committee meeting agenda as circulated.</p> <p style="text-align: right;">Carried unanimously</p> </div>



Item

[REDACTED]	
[REDACTED]	
[REDACTED]	[REDACTED]
[REDACTED]	
[REDACTED]	
[REDACTED]	

3. FLSC Model Code Consultation Feedback

The documents for this item were circulated prior to the meeting with the materials.

Ms. Carruthers introduced this item and requested that the Committee provide both supporting and dissenting feedback on the proposed Model Code discrimination and harassment Rule changes. Ms. Carruthers noted that the Benchers will not be provided with Model Code feedback which is consistent with past practice. The Committee Chair provides feedback to the FLSC Standing Committee on the Model Code annually.

Highlights and Committee discussion included:

- Management of Rule 6.3-3 enforcement, investigations, and hearings may be discussion items for the Equity, Diversity and Inclusion Committee (EDIC).
- Harassment and discrimination education will be necessary when the Law Society adopts new Model Code Rules.
- Consider how the Law Society will deal with harassment and discrimination issues.
- The Executive Committee will instruct Carsten Jensen, the Law Society's FLSC representative, on how to vote on the proposed Model Code rule changes, when they are finalized by the Standing Committee on the Model Code and when they are submitted to Federation Council for approval.

Rule 6.3-1

- Rule 6.3-1[1] refers to the requirement to respect provincial human rights laws and the definition of discrimination in 6.3-1[3] is not consistent with human rights legislation. It was suggested to provide a clear, uniform definition of discrimination by removing 6.3-1[3] and use the provincial human rights legislation discrimination definition.
- Rule 6.3-1 would remain the same in all jurisdictions. To maintain national consistency, include a placeholder in the commentary for each jurisdiction to insert their own statutory language on human rights legislation.



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- If discrimination in the Model Code differs from human rights legislation, there is an opportunity for complainants to 'forum shop' where they will lodge their complaint.
- Consider inserting a comment that the legislation takes precedence when there is a conflict between the provincial human rights law and the Model Code.
- 6.3-1 [3] - consider removing or revising the last sentence.
- 6.3-1 [4]b – The Code of Conduct says that lawyers do not have to take files and there is concern that a discrimination complaint could arise when a lawyer refuses to provide legal services. The Committee expressed that the Law Society may be overreaching and that lawyers cannot be forced to take files without fees. They questioned how lawyers would protect against a potential accusation of discrimination in relation to taking the file and what the fee would be.
- Human rights legislation addresses the refusal to provide services based on personal characteristics. 6.3-1 [4]b considered this with respect to the legal profession and included it because the Law Society's remedies may include discipline. Concern was expressed with duplicating the Human Rights Commission discrimination complaint process and complainants coming to the Law Society for a second opinion or because it has the broadest reach. It was further noted that complaints entered in more than one forum may subject lawyers to different rules and definitions of discrimination and may result in different remedies.
- 6.3-1 [4]e - is overreaching when forbidding lawyers to use racial, gender, religious language to describe a person or group of persons.
- 6.3-1 [4]f - clarify what is reasonable accommodation. What is undue hardship and to whom?

Rule 6.3-2

- 6.3-2 [2] - the Committee was divided on this commentary. Some questioned whether both 'subjective' and 'reasonable' are required because both would need to be proven. Some recommended removing the word 'subjective' and change to 'reasonable under the circumstances'. Other Committee members supported keeping both 'subjective and reasonable' in the commentary.
- 6.3-2 [4]e - consider rewording to address workplace management issues.
- 6.3-2 [5] - one Committee member expressed a concern with rules of conduct extending to outside the lawyer's office and that it is not the Law Society's mandate to exercise total control over lawyers' lives. Another Committee member expressed that a lot of discrimination and harassment happens outside the office and that this provision should remain.



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Rule 6.3-3

- 6.3-3 [1]d(i) - replace word 'files' with 'work'.
- 6.3-3 [3]c - consider removing reference to 'awkward jokes'.
- 6.3-3 [3]g - consider removing the word 'sex'.
- 6.3-3 [3]d - consider replacing the word 'leering' with updated language. How would this rule be enforced?
- 6.3-3 [3]g - consider ending the sentence at the word 'attention', remove 'after the end of a consensual relationship'.

Rule 6.3-4

- If an alleged victim does not feel like they were harassed or discriminated against, how do you impose on a bystander to report? How would the Law Society enforce a bystander standard?
- Bystander reporting may hurt the victim.
- This rule was intended to relieve fears of reprisal for bystander reporting of discrimination or harassment.

Mr. Hendsbee expressed gratitude for the work on this project.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Approved Minutes

Policy and Regulatory Reform Committee (the “Committee”) videoconference meeting

March 11, 2020

The Law Society of Alberta (the “Law Society”) - Room 7.09 “Métis Nation Homeland”

8:00 am

Committee Members in Attendance	Bill Hendsbee, Chair (phone) Elizabeth Hak (phone) Jim Lutz (phone) Margaret Unsworth (video)
Guests and Staff in Attendance	Cori Ghitter, Deputy Executive Director & Director, Professionalism and Policy (Calgary) Barbra Bailey, Policy Counsel (Calgary) Nancy Carruthers, Manager, Policy and Ethics (Calgary) Shabnam Datta, Policy Counsel (Calgary) Jennifer Freund, Policy Counsel (phone) Tina McKay, Senior Manager, Business Operations (Calgary) Christine Schreuder, Governance Coordinator (Calgary)
Regrets	Barb McKinley Deanna Steblyk Lou Pesta Darlene Scott, <i>ex officio</i> Kent Teskey, <i>ex officio</i> Elizabeth Osler, Chief Executive Officer & Executive Director Paule Armeneau, Director, Regulation & General Counsel

Item	
1	<p>Call to Order and Approval of the Agenda</p> <p>Mr. Hendsbee called the meeting to order at 8:00 am.</p> <p>The agenda was circulated with the materials prior to the meeting. A Committee orientation was added to the agenda.</p> <p>The agenda was approved by consent.</p>



Item

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[REDACTED]

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[REDACTED]

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Item	
	<p>harassment, and to provide more complete guidance with regard to <i>ex parte</i> communications with the Court. The Law Society will consult with the profession. The Committee will then discuss the outcomes of the consultation and provide comprehensive feedback to the Standing Committee by May 29, 2020. Ms. Carruthers invited the Committee to consider whether they would recommend that the Benchers adopt the rule amendments into the Law Society Code of Conduct before the FLSC Council potentially implements the amendments in late 2020. She invited the Committee to provide feedback to her directly or bring to the next meeting.</p> <p><i>Ms. Bailey left the meeting at 9:05 am.</i></p> <p>The Committee's key discussion points were:</p> <ul style="list-style-type: none"> - Recommendation to train adjudicators on harassment and discrimination. - Recommendation that the Standing Committee revise the <i>ex parte</i> communication rules to clarify the distinction between the two rules.
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
	<p>[REDACTED]</p> <p>[REDACTED]</p>

Action Items	Agenda item	Who	Due by
[REDACTED]	[REDACTED]	[REDACTED]	