



AGENDA

Benchers

Date: Thursday, May 19, 2022

Time: 12:30 p.m.

Location: Law Society Offices, 200 - 260 St. Mary Avenue, Winnipeg, Manitoba
and Via Videoconference

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1.0 PRESIDENT'S WELCOME AND TREATY ACKNOWLEDGEMENT					
	The President will welcome newly elected benchers, Sharyne Hamm, Leah Klassen, Mathieu Lafreniere, Blair Filyk and Kameron Hutchinson, and guests and staff to the meeting.				
2.0 IN MEMORIAM					
	Charles Jerome Phelan, Q.C. , who passed away on March 15, 2022 at the age of 80. Mr. Phelan received his call to the Bar on June 2, 1967. After serving as a crown attorney for the Department of Justice for one year, Mr. Phelan joined Monk Goodwin LLP where he practised for 44 years, retiring in 2012. Mr. Phelan was appointed Queen's Counsel in 1988.				

Robert Lorne Zaparniuk, who passed away on March 19, 2022 at the age of 64. Mr. Zaparniuk received his call to the Bar on June 23, 1983. He practised with Campbell Marr for 18 years and then with Deeley Fabbri Sellen LLP for an additional 17 years.

Martin Searle Corne, Q.C., who passed away on March 22, 2022 at the age of 88. Mr. Corne received his call to the Bar on September 22, 1958. He practised with Corne & Corne (known today as Bennet Waugh Corne) for 54 years, retiring in 2012. Mr. Corne was appointed Queen's Counsel in 1977 and in 2009 was recognized by the Law Society for having practised law for 50 years.

The Honourable Alan Reed Philp, who passed away on April 12, 2022 at the age of 91. Mr. Philp received his call to the Bar on September 12, 1955. He practised with Fillmore Riley LLP for 18 years. In 1973 Mr. Philp was appointed Chief Judge of the County Courts of Manitoba and in 1983 he was appointed a judge of the Manitoba Court of Appeal. Mr. Philp served in this position until his retirement in 2005.

Richard Ira Good, who passed away on April 19, 2022 at the age of 78. Mr. Good received his call to the Bar on June 29, 1970. He practised with Fillmore Riley LLP for 51 years and then, in January of 2022, joined BD Oakes Jardine Kaneski UnRuh LLP where he practised up to the date of his death.

Melville Neuman, Q.C., who passed away on April 26, 2022 at the age of 97. Mr. Neuman received his call to the Bar on May 16, 1963. He practised with Neuman MacLean for 28 years and then with the firm known today as Taylor McCaffrey LLP for 17 years, retiring in 2008. Mr. Neuman was appointed Queen's Counsel in 1968.

George Ernest Ulyatt, who passed away on April 30, 2022 at the age of 73. Mr. Ulyatt received his call to the Bar on June 25, 1976. He practised with Monk Goodwin for 12 years and then joined the firm known today as Tapper Cuddy LLP where he practised for 30 years, retiring in 2018.

Dennis Michael Troniak, who passed away on May 2, 2022 at the age of 71. Mr. Troniak received his call to the Bar on June 30, 1977. He practised as an associate and partner with several Winnipeg law firms but primarily practised as a sole practitioner. Mr. Troniak retired in 2019 after 41 years of active practice.

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
3.0 CONSENT AGENDA					
The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or Chief Executive Officer prior to the meeting.					
3.1	Minutes of March 24, 2022 Meeting	5		Attached	Approval
3.2	Complaints Investigation Committee Report			Attached	Information
3.3	Discipline Committee Report			Attached	Information
4.0 EXECUTIVE REPORTS					
4.1	President's Report	5	Grant Driedger	Attached	Briefing
4.2	CEO Report	10	Leah Kosokowsky	Attached	Briefing
4.3	Strategic Plan Progress Report - May 2022	10	Leah Kosokowsky	Attached	Briefing
5.0 NOMINATING COMMITTEE REPORT					
5.1	Appointment of Officer-at-Large Position	5	Lynda Troup	Attached	Discussion/ Decision
5.2	Awarding of Life Bencher Status to Grant Driedger and Ashley Joyce	10	Sacha Paul		Discussion/ Decision
5.3	Thank You to Past President Lynda Troup	10	Sacha Paul		

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
6.0 DISCUSSION/DECISION					
6.1	Admissions and Education Committee - Good Character Requirement	10	Leah Kosokowsky	Attached	Discussion/ Decision
6.2	Rule Amendments - Diversion Program	10	Rennie Stonyk	Attached	Discussion/ Decision
6.3	Access to Justice - Forgivable Loan Program	20	Leah Kosokowsky	Attached	Discussion/ Decision
7.0 COMMITTEE REPORTS					
7.1	Access to Justice Steering Committee	10	Gerri Wiebe		Briefing
7.2	President's Special Committee on Health and Wellness	10	Gerri Wiebe	Attached	Briefing
8.0 MONITORING REPORTS					
8.1	Professional Liability Claims Fund	10	Leah Kosokowsky Tana Christianson	Attached	Briefing
9.0 MISCELLANEOUS BUSINESS					
9.1	National Discipline Standards - Pre-Hearing Procedure	10	Leah Kosokowsky	Attached	Discussion/ Decision
9.2	Marketing of Professional Services - Qualitative Superiority	5	Leah Kosokowsky	Attached	Discussion/ Decision

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
10.0 FOR INFORMATION					
10.1	2022 Bencher Election Results			Attached	Information
10.2	Reimbursement Fund Claims Committee Report			Attached	Information
10.3	FLSC E-Briefing - April 2022			Attached	Information
10.4	Media Reports			Attached	Information

The Law Society of Manitoba Strategic Plan 2022 – 2025

May 2022



Mission Statement

The aim of the Law Society is a public well-served by a competent, honourable and independent legal profession.

Competence	Access to Justice
<p>Regulate proactively to protect the public interest by ensuring that legal services are delivered by competent and ethical lawyers.</p> <ul style="list-style-type: none"> Proactively support lawyers and law firms to mitigate risk Proactively ensure that lawyers are fit to practice by addressing capacity and well-being Proactively support, assess and address the competence of lawyers at stages of practice when it is most needed Proactively engage with articling students to provide support and resources as appropriate 	<p>Advance, promote and facilitate increased access to justice for all Manitobans.</p> <ul style="list-style-type: none"> Engage with Manitobans in northern and rural communities, members of Indigenous communities and others who are members of vulnerable and historically disadvantaged groups about unmet legal needs and opportunities to address those needs Explore opportunities to remove regulatory barriers to the delivery of legal services in new ways Promote and facilitate collaboration about access issues with the courts and other justice system stakeholders to increase access to justice Explore opportunities for the Law Society to increase the number of lawyers who practice law in remote/rural communities and improve retention
<p>Progress:</p> <p><i>Practice management resources completed and posted on website related to file closing, withdrawal of legal services, absences and contingency planning; billing disbursements, retainers, retirement trust accounting (spring 2022)</i></p> <p><i>Practice area fundamentals revised, updated and posted on website related to criminal law, civil procedure (partial), corporate commercial, real estate wills and estates (spring 2022)</i></p> <p><i>Health Recovery Program framework, and consent form and agreement templates completed (March 2022)</i></p> <p><i>Health Recovery Program rule amendments presented to benchers for approval (May 2022)</i></p> <p><i>Peer Support Program - Law(yer) Strong - established with ongoing awareness initiatives (2021 – 2022)</i></p>	<p>Progress:</p> <p><i>Conduct engagement sessions with community organizations (February 2022)</i></p> <p><i>Review, analyze and summarize consultations (April 2022)</i></p> <p><i>Follow-up communications and surveys delivered to organizations (May 2022)</i></p> <p><i>Public survey distributed (May 2022)</i></p> <p><i>Amendments to the Legal Profession Act allowing for the regulation of limited practitioners proclaimed (April 2022)</i></p> <p><i>Benchers approve of proposed structure for “regulatory sandbox” (April 2022)</i></p> <p><i>Benchers review Forgivable Loan Program (May 2022)</i></p>

Equity, Diversity and Inclusion	Stakeholder Confidence
<p><i>Promote and improve equity, diversity and inclusion within the legal profession, in the regulation of the legal profession and in the delivery of legal services.</i></p> <ul style="list-style-type: none"> • Engage and inspire Indigenous youth in Manitoba to become lawyers • Remove inequitable barriers to admission into the legal profession for Indigenous people and other equity-seeking individuals • Consider imposing mandatory continuing legal education relating to cultural competency as a regulatory requirement for lawyers • Promote, support and facilitate equity, diversity and inclusion within law firms 	<p><i>Build public and stakeholder confidence in the Law society as the regulator of the legal profession.</i></p> <ul style="list-style-type: none"> • Engage with members of the public who are from vulnerable and historically disadvantaged groups • Increase and improve engagement of the Law Society with members of the Northern Bar and members practising in other rural communities • Build members' confidence and competence by connecting them to Law Society resources and supports
<p>Progress:</p> <p><i>Post inclusivity statement on website regarding the admissions process and the good character requirements (January 2022)</i></p> <p><i>Benchers resolve to require all Manitoba practising lawyers to complete one-time Indigenous intercultural awareness and competency training (March 2022)</i></p>	<p>Progress:</p> <p><i>Engage with access to justice coordinator to identify organizations and leaders (spring 2022)</i></p>



REPORT

To: Benchers

From: Nominating Committee

Date: May 3, 2022

Re: Appointment of Officer-at-Large

OFFICER-AT-LARGE APPOINTMENT

Law Society Rule 2-57 requires the Nominating Committee to recommend, in each even numbered year, the name of a lay bencher to sit as the officer-at-large on the Executive Committee. The term of this appointment is two years.

The Nominating Committee recommends that the benchers appoint Miriam Browne to sit as the officer-at-large for a two year term from May 2022 to May 2024.

NEXT STEPS

The Nominating Committee will next meet on May 13, 2022 to consider the applications received for the three remaining appointed practising lawyer positions and the six lay bencher positions. In doing so, the committee will take into account the composition of the newly elected bencher table, the skills matrices approved by benchers, and the appointed bencher policies. Interviews will be conducted on May 17 and 18, 2022 by a subcommittee.

Following the bencher meeting on May 19, 2022, the committee will meet again to receive the recommendations of the subcommittee and identify the candidates to be recommended for appointment as practising benchers and lay benchers. The committee will also populate the membership of all Law Society standing and special committees, and select candidates to be appointed to represent the Society on various external boards and committees. As you are aware, a special meeting of the benchers has been set for May 31, 2022 at 12:00 pm, at which time the Nominating Committee will provide its recommendations to the benchers for consideration and approval on all of these matters.



MEMORANDUM

To: Benchers

From: Admissions and Education Committee

Date: May 3, 2022

Re: Good Character Requirement

INTRODUCTION

In October 2021 you discussed whether the Law Society should conduct a thorough review of our “good character” assessment process in response to the request made by the Canadian Civil Liberties Association and, if so, whether it should be a priority or if it should be deferred until after the Federation of Law Societies of Canada had completed its efforts to achieve consistency among the law societies. Before making a decision, it was determined that the Admissions and Education Committee should review the good character assessment practices of other Canadian law societies and consider what, if any, measures the Law Society would need to take to ensure our assessment processes are transparent, fair, effective and non-discriminatory.

ADMISSIONS AND EDUCATION COMMITTEE REVIEW

At a meeting held on April 5, 2022, the committee examined the good character requirement and assessment processes in Manitoba, including the Society’s rules and established guidelines for assessing the character of applicants. Committee members were also advised of the number of disclosures that are made annually (approximately 10% to 15% of applicants) and the even smaller number of applicants who are denied admission in Manitoba or withdraw their application in the wake of an investigation being commenced (three applicants within a four year period).

Additionally, the committee considered the previous work conducted by the Federation of Law Societies of Canada at the national level as well as a review of the good character requirement across all the jurisdictions in Canada. That review revealed that, although there are some differences, the approach in Manitoba is quite similar to and consistent with our colleagues across the country.

Lastly, the committee considered steps that the Society has taken to improve communication about the good character requirement, such as the posting of the following statement on the Society's website and similar communications being delivered to the students at Robson Hall:

The Law Society of Manitoba is committed to the principles of equity and diversity and working toward reconciliation with Indigenous peoples. The Law Society recognizes that there is a need for greater diversity within the legal profession and encourages Indigenous applicants and others from racialized and marginalized groups to seek admission to the legal profession. The Law Society wishes all potential applicants to be aware that there is no absolute bar to admission and that when assessing whether an applicant meets the good character requirement the Law Society considers the historical and social factors that have affected an applicant.

If you have any questions or concerns about the good character requirement you are encouraged to contact the Law Society. For more information or to discuss your particular circumstances contact:

OPTIONS CONSIDERED

The following four options were presented to the committee:

Option 1:

Hold consideration of the issue in abeyance pending the Federation's further work and instead turn our attention to improving our communication about the good character requirement and the assessment process.

Option 2:

Proactively examine whether Manitoba should eliminate the good character requirement and if the requirement is to be retained, examine the assessment criteria and the related required disclosures.

Option 3:

Explore the possibility of reviewing the good character assessment criteria in conjunction with the other CPLED jurisdictions.

Option 4:

Adopt the assessment criteria that were recommended by the Federation working group as part of their earlier consultation work.

RECOMMENDATION

The committee resolved to recommend that the benchers pursue option no. 1:

Hold consideration of the issue in abeyance pending the Federation's further work and instead turn our attention to improving our communication about the good character requirement and the assessment process.

The reasons of the committee are several:

First, the committee determined that it is preferable to adopt a national approach to the good character assessment to achieve consistency across the jurisdictions, particularly in light of the fact that applications are received from outside of Canada and because of mobility among the provinces and territories.

Furthermore, a significant amount of work was completed at the Federation level and it would be beneficial to allow the working group an opportunity to complete this work as we are advised that re-invigorating this work is among the Federation's priorities.

Secondly, given that there has been, and is likely to be, a concerted national effort to create a common good character assessment, the Law Society ought to deploy its limited resources to other equity and diversity priorities that have been identified in the strategic plan.

Thirdly, it was noted that there are many other barriers to participation in the practice of law that should be addressed in priority to the good character assessment process, such as law school admission and therefore any immediate changes to the good character process ought to be careful and deliberate rather than embarking on wholesale reform.

Finally, committee members noted that increased data and communication regarding the application of the good character criteria could address the concern raised by the Canadian Civil Liberties Association that some individuals may choose not to go to law school because of the chilling effect of these criteria. The collecting and posting of data regarding the numbers of applicants, disclosures and denials of admission would serve to counteract the potential perception. Where possible, the Society might also disclose the nature of the conduct that has resulted in denials of admission. For added clarity for applicants, the Society might also include in the good character assessment questions and/or guidelines some commentary as to why certain questions are being asked.

The committee concluded that the Society ought to focus on improving communications and data regarding the good character assessment while monitoring the progress of the national project. If

there were extended delays at the national level, the issue could be returned to the benchers for reconsideration.

Recommendation:

That the benchers hold consideration of the good character requirement issue in abeyance pending the Federation's further work, and direct Society staff to take steps to improve communication about the good character requirement and assessment process.



MEMORANDUM

To: Benchers

From: Rennie Stonyk

Date: May 3, 2022

**Re: Rule Amendments – Diversion Program
Part 5 – Division 6 – Complaints Investigation
Part 5 – Division 7 – Complaints Investigation Committee**

At the May 28, 2020 bencher meeting, benchers received a report from the President's Special Committee on Health and Wellness (the "Committee") that included recommendations regarding the development of a diversion program for members. In its report, the committee recommended the following key objectives for the program:

- (1) Early identification and referral/treatment for a member who has a health issue that has the potential to adversely affect the member's ability to practice law safely;
- (2) Adoption of a remedial approach for dealing with a member who has health issues where the member is cooperative in the process, has insight into the member's own health status and is compliant with treatment and rehabilitation; and
- (3) Collaboration with a member who has health issues and the member's caregivers with the goal of creating an environment in which the member can practice law safely.

After discussion, the benchers approved the recommendations made within the committee report and directed Society staff to create the infrastructure to implement a formal diversion program for members, based on the above-described objectives.

At subsequent bencher meetings (December 2020 and February 2021), the benchers considered detailed plans for the diversion program, and approved the Society to retain Miriam Browne to assist in operationalizing the program.

Since that time, the operational elements of the diversion program have been in development by Miriam Browne together with Society staff. It was identified that Rule amendments would be needed prior to launching the program.

Rule 5-66 describes the possible actions the chief executive officer may take after the investigation of a complaint against a member. Likewise, **Rule 5-74(1)** describes the possible actions the Complaints Investigation Committee (“CIC”) may take after considering a complaint which was referred to it. It is recommended that both of these rules be amended to allow the chief executive officer, or the CIC, as the case may be, to recommend that the member obtain “healthcare treatment”. The suggested language additions are purposefully broad to allow for a fluid diversion program, in both name and process, that can be adjusted as needed over time.

Currently, if a complaint against a member is found to have no merit or if a complaint is addressed by the Society in a manner that does not result in referring the complaint to CIC, the complainant is given the opportunity to request the Complaints Review Commissioner (“CRC”) to review the decision. However, if a member is ultimately referred to the diversion program, it is anticipated that the complainant will simply be notified that the member is receiving healthcare treatment and that there is no further opportunity to have this decision reviewed.¹ If the complainant was then permitted to appeal that decision to the CRC, this would be contrary to the purpose of the remedial and non-adversarial aspect of the diversion program. To address this issue, changes to **Rule 5-63(3)** have been drafted, which provide that the CRC cannot review a decision where the chief executive officer recommended that the member obtain healthcare treatment.

Attached as **Appendix A** you will find the rule amendments that have been drafted to reflect the recommendations outlined above. If these amendments meet with your approval, we will have the amendments translated into French and return them to you for final approval.

ATC.

¹ As a condition to participating in the diversion program, the member must provide written consent allowing the Society to disclose to the complainant that the member is receiving healthcare treatment.

Division 6 - Complaints Investigation

Role of the complaints review commissioner

5-63(3) Subject to subsection (4), the complaints review commissioner may only review the following:

- (a) a determination by the chief executive officer under rule 5-62 not to investigate a complaint because it is of no merit; and
- (b) a decision by the chief executive officer under rule 5-66 not to refer a complaint to the complaints investigation committee for its consideration, except decisions under paragraphs (a)(iii), (e), and (f) and (g) of rule 5-66.

(ENACTED 09/10) (AM. 06/11)

Action after investigation

5-66 After investigating a complaint, the chief executive officer may:

- (a) take no further action if he or she is satisfied that;
 - (i) the complaint is without substance or its substance cannot be proved;
 - (ii) the member has provided a satisfactory explanation; or
 - (iii) the complaint has been satisfactorily resolved through informal means;
- (b) send a letter to the member reminding the member of his or her obligations under the Act, rules or code;
- (c) send a letter to the member recommending that a certain course of action be taken;
- (d) refer the complaint to the complaints investigation committee for its consideration;
- (e) direct that a charge be laid against the member when the member has:
 - (i) failed to respond to communication from the society or provide a full and substantive response to questions raised in the communication; or
 - (ii) breached any condition or restriction imposed on the member by the society or any undertaking given to the society;
- (f) require the member to appear personally before the complaints investigation committee to further the investigation of a complaint when the member has:
 - (i) failed to respond to communication from the society or provide a full and substantive response to questions raised in the communication; or

- (ii) breached any condition or restriction imposed on the member by the society or any undertaking given to the society;

(g) recommend that a member obtain healthcare treatment.

(AM. 06/11)

Division 7 - Complaints Investigation Committee

Action on complaints

5-74(1) After considering a complaint under rule 5-71, the committee may:

- (a) decide to take no further action;
- (b) send a letter to the member reminding the member of his or her obligations under the Act, rules or code;
- (c) send a letter to the member recommending that a certain course of action be taken;
- (d) make recommendations to the member under rule 5-83, which, if carried out, will improve the member's practice of law;
- (e) decide to hold consideration of the complaint in abeyance until any related proceedings are concluded or until such time as the committee decides to resume consideration of the complaint;
- (f) issue a formal caution to the member under rule 5-77;
- (g) direct that a charge be laid against the member under rule 5-78(1);
- (h) accept a written undertaking from the member under rule 5-79;
- (i) impose restrictions on the member's practice of law or suspend him or her under subsection 68(c)(i) of the Act;
- (j) order a practice review of the member's practice under rule 5-82(1);
- (k) decide to hold disposition of the complaint in abeyance until the member has completed any action plan recommended under rule 5-83;
- (l) suspend or impose restrictions on the permit of a member's law corporation under subsection 37(1) of the Act;

(m) recommend that the member obtain healthcare treatment.



MEMORANDUM

To: Benchers

From: Leah Kosokowsky

Date: April 30, 2022

Re: Access to Justice – Forgivable Loan Program

INTRODUCTION

In the 2022 – 2025 Strategic Plan, one of the strategies that you identified to increase access to justice for Manitobans was to explore opportunities for the Law Society to increase the number of lawyers who practise law in remote and rural communities and to improve the retention of lawyers within those communities. The primary activity identified to further that strategy is to review the effectiveness of the Law Society's Forgivable Loan Program.

In this memorandum, we intend to provide you with the history of the program, some of the challenges that have been experienced and some options and questions for your consideration.

HISTORY

In 2007, the benchers noted that there was not only a shortage of lawyers outside of Winnipeg, but they were an aging demographic as well. At the time, there also was a high demand for lawyers elsewhere in Canada, a robust provincial economy and an emergence of more stringent conflict of interest jurisprudence, all leading toward a potentially serious access issue for Manitobans residing outside of the City of Winnipeg. This led the benchers of the day to consider how young lawyers could be attracted to practice outside of Winnipeg and how they could be encouraged to stay long enough to fully appreciate the qualities of the communities in which they practised.

An observation of how other professions addressed the issue showed that the most effective solutions were those that attracted students from outside of Winnipeg to the professional school, offered them good quality summer employment in their communities and incentives to return there to practice. This led to the development of a concept whereby the Society would collaborate with Robson Hall and the Manitoba Bar Association to establish a program in which:

- Generous interest-free loans would be offered to students from outside of Winnipeg to support their living expenses while they attended law school;
- The Faculty would establish designated spaces for such students (e.g. four a year);
- Undertakings would be obtained from government, Legal Aid and private firms to employ the students over the summer months while they attended law school; and
- The students would have to repay the loans when they graduated but if they went into practice in a targeted community, the loan would be forgiven at a rate of 20% for each year they stayed in the community.

The benchers and Faculty Council endorsed the idea and the Manitoba Bar Association readily agreed to participate by recruiting firms in the target communities to offer summer employment to the students.

With this progress, the foundation was laid to apply to the Manitoba Law Foundation (which was flush with cash at the time) to fund the program. The MLF's ensuing consultation took a long time, during which the economy turned downward and interest rates dropped dramatically. The Foundation was no longer able to fund the proposal.

As a result, in 2010, the benchers agreed to a scaled down initiative to be funded by the Law Society. In September 2011, the first student entered the Faculty of Law, supported by a \$25,000 forgivable loan from the Law Society.

In 2012, the benchers were asked if they wished to continue with the initiative, noting that it provided good media for the Society, the program was working well so far and even small numbers could make a difference to a community. Also noted, however, was the cost of the program to the profession and that, even without the program, there were 20 students articling outside of Winnipeg in the 2011-2012 year, a significant increase at the time. Evidently, the local bar in the communities outside of the perimeter also shared their concern that adding too many lawyers would make their practices less viable. The benchers elected to carry on with the program on a limited basis, offering funding for one additional law student.

Over time, it was noted that there had not been significant uptake by students in rural communities and it was recognized that it may have been due to the program criteria that were originally established. The Access to Justice Steering Committee surveyed rural law firms and concluded that there remained a need for the program. In 2017, they recommended to the benchers that the criteria be expanded to allow for students in second or third year law to apply, to remove the requirement that the students had to come from an underserved community, and to reduce the commitment to practice in a community to three years rather than five years.

For the next two years, the program continued with those criteria. However, the Society has stopped taking in new applications for the last two years. While students who had already received funds could apply for additional loans, no new applications were being accepted to allow for this program to be reviewed and a determination made on how to move forward.

STUDENT PARTICIPATION

Eight individuals have participated in the program, six of whom have been called to the Bar. Of the six individuals who have been called to the Bar, three are living in and working in an underserved community, although we have just learned that one of those lawyers is moving to Alberta. More specifically:

- one is no longer in practice, having experienced some significant issues and now under an indefinite suspension;
- one is practising in Brandon which does not qualify as an underserved community;
- another cannot find a position after being called and feels too inexperienced to set up a solo practice;
- one is working as a first-year lawyer in The Pas at a private firm; and
- two left the province to gain experience before returning to work for Legal Aid in northern Manitoba – one of whom is moving to Alberta in the near future.

We have also observed that those participants who have been unable to secure work in an underserved area, experience some considerable stress associated with their debt load and their uncertain future.

Of the two participants who have not yet been called to the Bar, one is articling in Dauphin and the other is articling with Legal Aid in Thompson.

WHAT HAS THIS COST US?

Over the life of the program, the Society issued loans of \$281,914 to the eight participants of which \$93,027.55 has been forgiven and \$3,169.78 has been repaid. It has yet to be determined whether the remaining balance of \$166,216.67 will be repaid or forgiven.

HOW DO YOU MEASURE SUCCESS?

As noted above, there has been modest success in that three (soon to be two) of the program participants are working in northern Manitoba where it can be very difficult to attract lawyers. Two of those lawyers left the province and returned to the north to fulfill their requirements, after having

gained additional experience. How does this experience compare to the number of lawyers who have elected to practise in regions outside of Winnipeg without the incentive of the Forgivable Loan Program?

Back in 2007, the research showed that the number of lawyers practising in regions outside of Winnipeg accounted for 11% of the profession practising in Manitoba. As noted, the concern was that while the number of practising lawyers was slowly increasing over time, the numbers outside of Winnipeg were remaining static and the regional Bar was aging. The benchers were advised at the time that 45 of the lawyers in the four regions outside Winnipeg had been practising for more than 30 years and each district had a whole host of others who had been at it for 25 plus years. A failure to replenish the pool would result in a significant shortage in the future.

We did report an increase in articling students outside of Winnipeg in the 2011-2012 year and in the last few years, we have also seen about 10% of the articling class in positions outside of Winnipeg.

	Total Students	Articling outside Winnipeg
2017-2018	102	8
2018 - 2019	103	9
2019-2020	95	17
June 2021 Call	96	10

The question is whether those students remained in those communities to pursue their legal careers. Further research shows that the lawyers practising outside of Winnipeg at the current time account for approximately 12% of those practising in the province. Those numbers, compared to 2007, break down as follows:

Practising Lawyers	2007	2022
MANITOBA	1831	2208
Winnipeg	1631 (89%)	1950 (88%)
Manitoba Regions	200 (11%)	258 (12%)
NORTHERN DISTRICT	42	38
Thompson	19	24
The Pas	12	10
Flin Flon	7	3
Opaskwayak Cree Nation	1	0
Berens river	1	0
Grand Rapids	1	0
Oxford House	1	1

DAUPHIN CENTRAL DISTRICT	48	68
Dauphin	15	21
Swan River	4	5
Riverton	1	0
Roblin	1	0
Portage la Prairie	10	15
Carman	4	7
Morden	4	4
Winkler	3	11
Crystal City	2	2
Treherne	2	1
Manitou	1	0
Oakville	0	1
Pine River	0	1
WESTERN DISTRICT	65	81
Brandon	49	64
Neepawa	3	3
Minnedosa	3	3
Virden	3	3
Killarney	2	1
Melita	1	1
Souris	1	1
Russell	1	1
Deloraine	1	0
Birtle	1	1
Boissevain	1	1
Erickson	0	1
EASTERN DISTRICT	45	71
Steinbach	19	22
Selkirk	5	8
Beausejour	4	3
Altona	2	1
Stonewall	2	1
Fisher Branch	2	1
Dugald	1	0
Gimli	1	3

Stuartburn	1	0
Peguis	1	3
Oak Hammock	1	0
Morris	1	3
Mulvihill	1	0
Ashern	1	1
St. Andrews	1	0
Oakbank	1	1
Teulon	1	1
East St. Paul	0	2
Headingley	0	8
Lac du Bonnet	0	1
La Broquerie	0	4
Niverville	0	1
Landmark	0	1
Traverse Bay	0	1
Oak Bluff	0	1
Navin	0	1
Iles des Chenes	0	2
Sioux Lookout	0	1

While it appears that the prediction that there would be a huge shortage of regional lawyers has not come to fruition, closer examination shows that the numbers are less encouraging than at first glance as they demonstrate that even within the regions, lawyers are moving to the larger centres, particularly Dauphin, Brandon, Portage la Prairie, Winkler and Steinbach.

The north has seen a reduction overall, especially in Flin Flon and smaller communities. Also, in the north one will observe a reduction in individuals engaged in private practice as compared to those practising with Public Prosecutions and Legal Aid. Of course, this may reflect the fact that the Thompson Provincial Court is the busiest court in Manitoba.

The Dauphin/Central area has seen a pretty significant increase in private practice positions over the last 15 years, mostly in Dauphin, Portage la Prairie and Winkler. While we observe a hefty increase in lawyers in the Western district as well, all of the positions are in Brandon firms.

The Eastern District covers a wide expanse of the province. It has similarly seen a pretty good increase in numbers (about 25). However, eight of those positions are in Headingley with First Nations lawyers electing to practise on the Swan Lake First Nation, four are in La Broquerie (all of

which are in house positions with the same employer) and Steinbach and Selkirk firms each saw an increase of three private practice positions.

On a more positive note, there has been a real shift in the age demographic, with 43% of the lawyers practising in regions outside Winnipeg having been called in the last ten years.

Year of Call	Northern	Dauphin-Central	Western	Eastern
≤ 1992	8	16	21	21
1993 - 2002	2	6	9	14
2003 - 2012	5	17	17	12
2013 - 2022	23	29	34	24

CURRENT CONSIDERATIONS

Two other matters may have an impact on the future need for the program: one relates to regional law firms and the other relates to the pandemic.

Regional Law Firms

Over the last several years, at least two Winnipeg law firms, a Brandon law firm and a Dauphin law firm have established regional offices as part of their business plan. For example, Thompson Dorfman Sweatman LLP now has offices in Boissevain, Brandon, Gladstone, MacGregor, Morden, Neepawa, Portage la Prairie, Steinbach and Winkler. While these offices are staffed by lawyers who are also located in other offices, they have established brick and mortar offices in these communities.

PKF Lawyers has offices in Morden, Carman, Winkler and Selkirk. They appear to offer services in Lac du Bonnet and Steinbach as well but without dedicated office space.

Meighen Haddad of Brandon has established offices in Killarney, Melita, Souris, Baldur, Cypress River, Deloraine, Glenboro, Reston, Virden, Wawanesa and Neepawa. Johnston & Company, which has its head office in Dauphin, maintains offices in Grandview, Roblin, Gilbert Plains, Ste. Rose du Lac and McCreary.

If this is reflective of a trend, we may continue to see an increase in young lawyers practising in underserved communities, with the infrastructure of a well-established firm behind them. With that said, none of the firms appear to have been expanding into the northern district.

COVID-19

It is trite to say that what we have learned from the pandemic is that we can accomplish much remotely. We have no data on the extent to which the pandemic will assist with the delivery of services to regional or remote communities where access to remote legal services will depend upon internet availability.

OPTIONS

In light of the research data, the benchers may want to consider whether there remains a shortage of lawyers practising outside of Winnipeg generally or whether the problem persists only in smaller, more remote communities. The benchers may also want to ponder whether the Forgivable Loan Program is fulfilling its intended purpose. For example, one of the program participants is prepared to work in an underserved community but has been unable to secure work with a law firm and feels unprepared to open a practice on his own.

If the benchers determine that there remains a shortage of lawyers practising in regional areas of the province and that the Law Society has a role in addressing the issue, you may wish to refer the issue to a Law Society committee to examine whether the Forgivable Loan Program could be restructured to attract applicants to identified communities with the prospect of gainful employment or whether they would propose an entirely different initiative to increase the number of lawyers practising in underserved communities.

On the other hand, the benchers may determine that the landscape has changed due to the increase in regional law firms and that the need for brick and mortar offices has been lessened due to the widespread practise of working remotely.

The benchers may also be mindful that you have settled upon another strategic objective, within the area of Equity, Diversity and Inclusion, to increase the number of Indigenous lawyers in Manitoba. While there are activities planned to advance this objective, the benchers may want to consider whether to tie some iteration of the forgivable loan program to that specific demographic.

QUESTIONS:

1. Are there underserved communities in Manitoba for which meaningful legal services are inaccessible?
2. As part of the Law Society's commitment to increase access to justice for Manitobans, is it within the Society's mandate to develop a program to increase the number of lawyers practising in underserved communities?

3. Should a Law Society committee be tasked with conducting a survey and developing proposals and recommendations for the benchers to consider to increase the number of lawyers practising in underserved communities?
4. Should the Law Society devote its resources to exploring possible initiatives to increase the number of Indigenous lawyers in Manitoba?



MEMORANDUM

To: Benchers
From: Leah Kosokowsky
Date: May 4, 2022
Re: **National Discipline Standards
- Pre-Hearing Conference Procedures**

INTRODUCTION

As most of you will know, all 14 Canadian law societies have agreed to a set of aspirational discipline standards for the conduct of complaints investigations and discipline hearings. In these standards, measurables are established relating to timeliness, public participation, transparency, accessibility and the qualification and training of adjudicators and volunteers. Standard 23 requires each law society to report annually to its governing body on the status of the standards. In accordance with Standard 23, I am attaching a copy of the Society's report for the 2021 calendar year.

PERFORMANCE

The Society's performance as against the standards has remained consistent over the years. In 2021, we met 18 of 22 standards (82%) with one standard not applicable. While we have yet to receive a summary of the nation-wide reports for this year, historically a performance of 82% has exceeded the national average.

Two areas continue to present some challenges for the Society, one in the complaints area and the other in relation to discipline matters.

Contact with Complainant/Member

As you will note, standard no. 4 requires that 80% of complaints be resolved or referred to the Complaints Investigation Committee within 12 months and that 90% of complaints be addressed within 18 months. This standard is not only met but is exceeded in Manitoba in that 95% of complaints matters are concluded within 12 months and 98% of matters are closed within 18 months.

As a result, a smaller number of matters remain open for a longer period of time. In those cases, standards 5 and 6 require that there be contact with the complainant and the lawyer

at least once every 90 days in 90% of open matters. In the absence of a document management system, it is challenging to track this information. To the extent that we were able to track the information, contact was made at least every 90 days in 78% of the open matters.

The Society is in the process of procuring a document management system which will have the capability to send notifications of inactivity on files to generate communication. This will not only enable us to track these matters but also ensure better compliance with the standard.

Timeliness – Citations and Hearings

Standard 8 requires that 75% of citations be served upon the member within 60 days of the authorization of charges and that 95% of citations be served within 90 days of the authorization of charges. Standard 9 requires that 75% of all hearings commence within nine months of the authorization of charges and that 90% of all hearings commence within 12 months of authorization. Both of these standards continue to present challenges for the Society for a number of reasons.

Bencher who have served on the Complaints Investigation Committee will have observed that members who are the subject of investigations and charges may have a series of matters before the committee over the course of the year. Such an approach is consistent with a progressive discipline approach where the member is referred to the committee because previous efforts to remediate the member have failed. Where one member is the subject of multiple investigations and charges, hearing counsel will be informed and are likely to hold the matter in abeyance to issue a single citation, rather than issuing multiple citations over time and subsequently amending them and consolidating them into one citation. Proceeding in this fashion is fair to the member and a better use of resources and although it results in some delay, it reflects a principled approach to complex proceedings. As a result, the standard will not be met in those circumstances.

Secondly, given that standard no. 9 is also measured from the date that charges are authorized, any delay in the issuance of a citation will result in a delay in the start of a discipline hearing.

Thirdly, once the citation issues and the matter is on the set-down list (essentially a docket), Law Society hearing counsel have been generous to members seeking adjournments of their matters for a variety of reasons. Those reasons may relate to the availability of counsel, the member may be rehabilitating before hearing or they may be awaiting a medical or other expert report. On some occasions, however, the member is content to not have the matter

move forward in a timely fashion. As a result, Law Society hearing counsel have prepared a Pre-Hearing Procedure proposal whereby matters will be set for hearing in a timely fashion, unless otherwise directed by the Chair of the Discipline Committee.

According to the procedure, if matters are not set for hearing by the third appearance on the set-down list, counsel for the Society and for the member will be required to complete a Pre-Hearing Checklist and appear before the Chair of the Committee to address the matter. Both the procedure and the checklist have been reviewed and approved of by the Independent Chair and the Vice-Chair of Discipline. They will be implemented in accordance with their discretion under Law Society Rule 5-93(9)(e).

Copies of the Pre-Hearing Procedure and the Pre-Hearing Checklist are attached for your information.

ATC.

National Discipline Standards

Status Update: January to December 2021

(Submission deadline: March 1, 2022)

Law Society of Manitoba

STANDARD	CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD	ACTIONS TAKEN OR PLANNED (where standard is not met)	IMPACT(S) OF COVID-19 ON STATUS OF STANDARD (if applicable)
Timeliness				
1.	<i>Telephone inquiries:</i> 75% of telephone inquiries are acknowledged within one business day.	MET	97%	
	100% of telephone inquiries are acknowledged within two business days.	NOT MET	99% One voicemail message was returned within 5 business days.	

STANDARD		CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD	ACTIONS TAKEN OR PLANNED (where standard is not met)	IMPACT(S) OF COVID-19 ON STATUS OF STANDARD (if applicable)
2.	<p><i>Written complaints:</i></p> <p>95% of written complaints are acknowledged in writing within three business days.</p>	MET	97%		
3.	<p><i>Early Resolution:</i></p> <p>There is a system in place for early resolution of appropriate complaints.</p>	MET			
4A.	<p><i>Timeline to resolve or refer complaint:</i></p> <p>80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months.</p>	MET	95%		
	<p>90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.</p>	MET	98%		

STANDARD		CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD	ACTIONS TAKEN OR PLANNED (where standard is not met)	IMPACT(S) OF COVID-19 ON STATUS OF STANDARD (if applicable)
4B.	Where a complaint is resolved and the complainant initiates an internal review or internal appeal process: 80% of all internal reviews or internal appeals are decided within 90 days.	MET	100%		
	90% of all internal reviews or internal appeals are decided within 120 days.	MET	100%		
4C.	Where a complaint has been referred back to the investigation stage from an internal review or internal appeal process: 80% of those matters are resolved or referred for a disciplinary or remedial response within a further 12 months.	MET	100%		

	STANDARD	CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD	ACTIONS TAKEN OR PLANNED (where standard is not met)	IMPACT(S) OF COVID-19 ON STATUS OF STANDARD (if applicable)
	90% of those matters are resolved or referred for a disciplinary or remedial response within a further 18 months.	MET	100%		
5.	<i>Contact with complainant:</i> For 90% of open complaints there is contact with the complainant at least once every 90 days during the investigation stage.	NOT MET	We do not have a way of tracking this information. When looking at the number of files with long periods of inactivity, we are at 78% met.	We are in the process of getting a Document Management System which will have capability to send notifications when a file does not have activity for a certain number of days.	
6.	<i>Contact with lawyer or Québec notary:</i> For 90% of open complaints there is contact with the lawyer or Québec notary at least once every 90 days during the investigation stage.	NOT MET	See above.	See above.	

STANDARD		CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD	ACTIONS TAKEN OR PLANNED (where standard is not met)	IMPACT(S) OF COVID-19 ON STATUS OF STANDARD (if applicable)
7.	<p><i>Interim Measures:</i></p> <p>There is an authority and a process for the law society to obtain an interlocutory or interim suspension, restrictions or conditions on a member's practice of law, as the public interest may require.</p>	MET			
Hearings					
8.	75% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 60 days of authorization.	NOT MET	44% - 7 OF 16 SERVED		
	95% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 90 days of authorization.	NOT MET	81% - 13 OF 16 SERVED		

STANDARD		CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD	ACTIONS TAKEN OR PLANNED (where standard is not met)	IMPACT(S) OF COVID-19 ON STATUS OF STANDARD (if applicable)
9.	75% of all hearings commence within 9 months of authorization.	NOT MET	50% - 6 OF 12	The Society is establishing a framework which will require counsel to appear at a Pre-Hearing Conference if a matter is not ready to be set down within 3 months of its first appearance on the Set Down List. In advance of the PHC, counsel will fill out a Pre-Hearing Checklist to assist the Discipline Chair (or his designate) in identifying issues for trial, admissions and agreements, and witness lists / time required for hearing.	
	90% of all hearings commence within 12 months of authorization.	NOT MET	66.7% - 8 OF 12		
10.	Reasons for 90% of all decisions are rendered within 90 days from the	NOT MET	84.6% - 11 OF 13		

STANDARD		CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD	ACTIONS TAKEN OR PLANNED (where standard is not met)	IMPACT(S) OF COVID-19 ON STATUS OF STANDARD (if applicable)
	last date the panel receives submissions.				
Public Participation					
11.	There is public participation at every stage of discipline; e.g. on all hearing panels of three or more; at least one public representative; on the charging committee, at least one public representative.	MET			
12.	There is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee.	MET			
Transparency					
13.	Hearings are open to the public.	MET			With virtual hearings, we ask members of the public to register in advance and we send the zoom link on

STANDARD		CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD	ACTIONS TAKEN OR PLANNED (where standard is not met)	IMPACT(S) OF COVID-19 ON STATUS OF STANDARD (if applicable)
					the morning of the hearing.
14.	Reasons are provided for any decision to close hearings.	N/A			
15.	Notices of charge or citation are published promptly after a date for the hearing has been set.	MET			

STANDARD		CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD	ACTIONS TAKEN OR PLANNED (where standard is not met)	IMPACT(S) OF COVID-19 ON STATUS OF STANDARD (if applicable)
16.	Notices of hearing dates are published at least 60 days prior to the hearing, or such shorter time as the pre-hearing process allows.	MET			
17.	A law society can share information about a lawyer or Québec notary, either upon request or at its own initiative, with any other law society, or can require a lawyer or Québec notary to disclose such information to all law societies to which they are a member. All information must be shared in a manner that protects solicitor-client privilege.	MET			
18.	There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.	MET			
Accessibility					
19.	A complaint help form is available to complainants.	MET			

STANDARD	CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD	ACTIONS TAKEN OR PLANNED (where standard is not met)	IMPACT(S) OF COVID-19 ON STATUS OF STANDARD (if applicable)
20. There is a directory available with status information on each lawyer or Québec notary, including easily accessible information on discipline history.	MET			
Qualification of Adjudicators and Volunteers				
21. There is ongoing mandatory training for all adjudicators with refresher training no less often than once a year, and the curriculum for mandatory training will comply with the national curriculum.	MET			
22. There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.	MET			

STANDARD	CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD	ACTIONS TAKEN OR PLANNED (where standard is not met)	IMPACT(S) OF COVID-19 ON STATUS OF STANDARD (if applicable)
Reporting on Standards				
23.	Each law society will report annually to its governing body on the status of the standards.	MET		

IMPACTS OF COVID-19

Please note any general impacts that COVID-19 had on your complaints/discipline processes in 2021. For example:

1. *How did the pandemic impact your reporting on the standards this year?*
2. *How has the pandemic impacted/changed your complaints and discipline process?*
3. *If you had to make changes, are those changes temporary or permanent?*
4. *Any other learning lessons you would like to share?*

Complaints Process: The changes we implemented in 2020 to our processes and procedures have continued and been refined to permit us to maintain paperless files and to work remotely. In 2021, we moved to an entirely electronic intake process and started using a shared mailbox for all general inquiries regarding lawyer conduct and for the receipt of complaints. We continue to use Google Meet and Zoom for video meetings, softphones and the Google Chat function to achieve efficient communications with other department and staff members and with the public.

Discipline Hearing Process: Since the onset of the pandemic, we have conducted all of our hearings by zoom. This has presented some challenges with older members/older counsel, but we have managed. We have written guidelines (and provided training) regarding conducting hearings remotely. To ensure that our hearings remain open to the public, we post notices on our website and ask those who wish to attend a hearing to register in advance. Prior to providing an observer with the link to the hearing, we provide the person with the rules (no camera, no participation) and seek their agreement to abide by the rules. Aside from initial delays in the spring of 2020, the pandemic did not affect our performance under the national discipline standards.

The Law Society of Manitoba

Discipline Committee

Pre-Hearing Procedure

1. A discipline matter may be adjourned on the Set Down List no more than 2 times following the first appearance.
2. A hearing date should be fixed no later than the 3rd appearance on the Set Down List.
3. If the parties are not able to set a hearing date by the 3rd appearance, they will be directed to appear at a Pre-Hearing Conference before the Chair of the Discipline Committee, or his designate, which will proceed no later than the date of the next following Set Down meeting (the 4th appearance).
4. Prior to a Pre-Hearing Conference, the parties will complete the Pre- Hearing Checklist document, providing a copy to each other, as well as to the assistant to the Discipline Committee, no later than 24 hours before the Pre-Hearing Conference.
5. The Parties should attend the Pre-Hearing Conference knowledgeable about the availabilities of their respective clients and key witnesses in anticipation that a hearing date will be set at the Pre-Hearing Conference. In addition, filing deadlines for any required materials should be set.
6. Permission to adjourn a Pre-Hearing Conference without a hearing date being set may be granted by the Chair of the Discipline Committee, or his designate only in exceptional circumstances.

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

MEMBER NAME,

- and -

THE LEGAL PROFESSION ACT

PRE-HEARING CHECKLIST
Date of Pre-Hearing Conference:

NAME AND CONTACT INFORMATION
of party preparing document

THE LAW SOCIETY OF MANITOBA

MEMBER NAME

- The Law Society of Manitoba's Report, prepared by _____
- Member's Report, prepared by _____

Charges:

1. Chronology

- a. Date of Charge Authorization by CIC: [Click here to enter a date.](#)
- b. Date of Citation: [Click here to enter a date.](#)

2. Interim Measures

- a. Is the member suspended or bound by an Undertaking or Restriction on these charges?
Yes No
- b. If Yes, details:

DISCLOSURE

3. **Disclosure:** Complete: Yes No

a. Outstanding Issues:

b. When will outstanding disclosure be provided to the member?

PRELIMINARY MATTERS

4. Preliminary Motions

a. Sever charges in Citation Yes No

b. Amendment(s) Yes No

c. Challenge to Legislation or common law provision:

Specifics of challenge:

d. Application for stay of proceedings:

Grounds:

e. Other:

f. Has motion material been served

g. Time estimate for hearing of application:

5. Expert Witnesses – The Society

a. Does the Society intend to call expert witnesses or tender expert reports?

Yes No Name of expert:

b. Field(s) of expertise:

c. Issues upon which the evidence will be introduced:

d. Does the member contest the admissibility of the expert evidence?

Yes No

e. Does the member contest the expertise of the witness? Yes No

6. Expert Witnesses – The Member

a. Does the member intend to call expert witnesses or tender expert reports?

Yes No Name of expert:

b. Field of expertise:

- c. Issues upon which the evidence will be introduced?
- d. Does the Society contest the admissibility of the expert evidence?
Yes No
- e. Does the Society contest the expertise of the witness? Yes No

7. Other issues that may require pre-hearing rulings:

ISSUES FOR HEARING

8. Are any of the following issues admitted by the member:

- Identity of the member
- Jurisdiction and membership with the Society
- Membership in the legal profession of any other jurisdiction, if applicable

9. Other factual, evidentiary or legal admissions sought by the Society, or the member and/or conceded by the Society, or the member:

- a.
Does the member agree? Yes No
- b.
Does the member agree? Yes No
- c.
Does the member agree? Yes No

10. **Other issues counsel anticipate may arise during the hearing:**

11. **Time Estimates**

a. Anticipated Witness List for the Society:

b. Time estimate for the Society's case:

c. Anticipated Witness List for the member:

d. Time estimate for the member's case:

12. Resolution

The parties should set out their respective positions as it relates to settlement.

Dated: [Click here to enter a date.](#)

Signed: _____
On Behalf of The Law Society of Manitoba

Signed: _____
On Behalf of the Member

The Society's copy of the report must be accompanied by a brief synopsis of the allegations and the theory of the Society's case.

BRIEF SYNOPSIS OF THE ALLEGATIONS:



MEMORANDUM

To: Benchers

From: Leah Kosokowsky

Date: May 2, 2022

Re: Marketing of Professional Services – Qualitative Superiority

INTRODUCTION

A Winnipeg lawyer has raised concerns with the Law Society regarding a specific kind of marketing that is employed by some Winnipeg firms. He argues that the marketing in question violates the *Code of Professional Conduct* provisions that prohibit lawyers from claiming qualitative superiority to other lawyers or from advertising that they are experts in a particular field of law. The lawyer asserts that the Society either should be taking action against these firms to stop the practice or relax the restrictions on marketing.

After having reviewed the matter with the executive committee, we plan to inquire with the Federation of Law Societies Model Code Liaison Committee as to whether the issue of third party marketing has been raised in other jurisdictions and if there is any appetite to review the advertising provisions.

In addition, some years ago the benchers examined at some length the issue of granting specialist or expert status to lawyers for their work in a particular field of law. Although they ultimately decided against pursuing a specialist designation initiative at the time, the executive has asked that the Society review the materials and decisions that were made by the benchers of the day and based upon that review, perhaps ask the Practice and Ethics Committee to reconsider the matter and make recommendations to the benchers.

BACKGROUND

Third party recognitions/awards

Organizations such as Lexpert Magazine, Benchmark Litigation, Best Lawyers and Canadian Lawyer Magazine issue annual awards to lawyers and law firms throughout Canada which indicate that a lawyer has been named “Best Lawyer” or “Leading Lawyer” (for example) in a particular area of law. Law firms routinely post these recognitions on their websites.

Law firms that post these designations do not indicate directly that their lawyers are “the best” or “experts” in a field. Rather, they post that a third party has awarded that status or designation to the firm or the lawyer. For example:

Lawyer A

Named “Lawyer of the Year” by Best Lawyers for:

- *Tax Law, Winnipeg (2022)*

Recognized in The Best Lawyers in Canada for work in:

- *Tax Law*

Direct Claims of Expertise

Although most lawyers and firms attempt to abide by the advertising restrictions in the *Code of Professional Conduct* and the Law Society Rules, a quick scan of Manitoba law firms’ websites shows that there are also more direct claims of expertise and qualitative superiority by Manitoba lawyers and law firms, such as the following:

Firm D

Creating Solutions with our expertise.

Firm D is one of Manitoba’s leading law firms. Our driving focus is to provide exceptional legal advice. Drawing upon our recognized expertise and extensive experience, our team works collaboratively to create solutions that are comprehensive, innovative and effective.

DISCUSSION

It is not the role of the Society to level the advertising playing field for the legal profession. Our role is to protect the public interest in the delivery of legal services. With one exception, the Society rarely receives complaints from members of the public regarding the advertising or marketing

tactics employed by lawyers and law firms. Rather, complaints are usually generated by other lawyers or law firms and even these are rare. The exceptional matters arise from situations where solo practitioners sharing space advertise that they have a “team” of lawyers to address a variety of legal issues. These claims may give rise to complaints of conflict of interest where two of those practitioners are acting on opposite sides of a legal matter. The Society is active in addressing complaints of that nature.

In the absence of complaints from the public and given that the Complaints Resolution Department has plenty of matters on its plate, it may not be the best use of law society resources to be poring through law firm websites to determine if there has been strict compliance with the advertising rules. Furthermore, given that the granting of awards by magazines is done on a national scale, the advertising issue might be better examined at the national level.

With all of that said, it may be time to revisit the issue of specialist designations for Manitoba lawyers and we intend to examine the issue further from this perspective. Benchers will be updated as our work continues.