



**The Law Society  
of Manitoba**

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# AGENDA

## Benchers

Date: Thursday, October 28, 2021

Time: 12:30 p.m.

Location: Law Society Classroom, 3<sup>rd</sup> Floor - 260 St. Mary Avenue, Winnipeg, Manitoba  
and Via Videoconference

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
<b>1.0 PRESIDENT'S WELCOME AND TREATY ACKNOWLEDGEMENT</b>					
	The President will welcome newly elected student bencher, Tyler Koshowski, to the meeting.				
<b>2.0 IN MEMORIAM</b>					
	<b>Norman Marvin Tatelman</b> , who passed away on January 12, 2021 at the age of 89. Mr. Tatelman received his call to the Bar on May 27, 1958. He was a practising member of the Law Society for three years.				

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
<b>3.0 CONSENT AGENDA</b>					
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 September 9, 2021 Meeting	5		Attached	Approval
3.2	Rule Amendments - Complaints Investigation and Discipline			Attached	Approval
3.3	Rule Amendments - Admissions and Membership			Attached	Approval
3.4	Complaints Investigation Committee Report			Attached	Information
3.5	Discipline Committee Reports			Attached	Information
3.6	Reimbursement Claims Fund Committee - Hesse Payments			Attached	Information
ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
<b>4.0 EXECUTIVE REPORTS</b>					
4.1	President's Report	5	Grant Driedger	Attached	Briefing
4.2	CEO Report	10	Leah Kosokowsky	Attached	Briefing
4.3	Strategic Planning - Report and Next Steps	20	Leah Kosokowsky	Attached	Discussion

**5.0 DISCUSSION/DECISION**

5.1	Membership Admission Issues: Good Character and Language Testing	15	Leah Kosokowsky and Rennie Stonyk	Attached	Discussion/ Decision
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**6.0 MONITORING REPORTS**

6.1	Audit Department	15	Leah Kosokowsky	Attached	Discussion/ Decision
6.2	Cyber Security Measures	5	Sean Rivera	Attached	Briefing

**7.0 COMMITTEE REPORTS**

7.1	Access to Justice Steering and Stakeholders Committees	10	Gerri Wiebe and Brian McLeod		Briefing
7.2	Indigenous Advisory Committee	10	Jessica Saunders		Briefing
7.3	President's Special Committee on Health and Wellness	10	Gerri Wiebe		Briefing

**8.0 MISCELLANEOUS BUSINESS**

8.1	Federation Council Report	10	Lynda Troup	Attached	Briefing
8.2	<i>Fair Registration in Regulated Professions Act</i> - Office of the Fairness Commissioner	10	Leah Kosokowsky	Attached	Briefing

**9.0 FOR INFORMATION**

9.1	FLSC E-Briefing - October 2021			Attached	Information
9.2	Media Reports			Attached	Information



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# MEMORANDUM

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**TO:** Benchers

**FROM:** Rennie Stonyk

**DATE:** October 21, 2021

**RE:** **Rule Amendments – Part 2 – Division 8 – Members**  
**Part 5 – Division 8 – Discipline Proceedings**

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At the September 9<sup>th</sup>, 2021 benchers meeting, you reviewed and approved draft rule amendments resulting from the May 2021 benchers meeting, related to:

- granting authority to the chief executive officer to receive and relieve members of undertakings related to bankruptcy matters; and
- continuation of a discipline hearing panel with two panel members if the third panel member is unable to continue, and general amendments to the rules related to discipline proceedings to better articulate the responsibilities of the Independent Chair and the Discipline Committee.

The rule amendments have been translated into French and are attached for your final approval.

RLS

**DIVISION 7 – COMMITTEES**

- 2-63(1) Appointment
- 2-63(2) Delegation to committees and chief executive officer
- 2-63(3) Standing committees
- 2-64 Other committees
- 2-65 Committee composition
- 2-66 Appointment of chairperson
- 2-67 Vacancies
- 2-68 Ex-officio members
- 2-69 Quorum
- 2-70 Member of standing committee must not be counsel
- 2-70(1) Repealed
- 2-70(2) Repealed

**DIVISION 8 – MEMBERS**

- 2-71(1) Categories of membership
- 2-71(2) Member in good standing
- 2-72 Non-practising members
- 2-73 Inactive members
- 2-74(1) Withdrawal from practise
- 2-74(2) Notice to society
- 2-74(3) Extension of time
- 2-74(4) Non-application of rule
- 2-74(5) Power to recover expenses
- 2-75(1) Business name, address
- 2-75(2) Changes
- 2-75(3) Supervision of law office
- 2-76 Notice of membership in another jurisdiction
- 2-77(1) Designated persons
- 2-78(1) Notice of bankruptcy
- 2-78(2) Approval of signatory
- 2-78(3) Notice of discharge
- 2-78(4) Discharge of undertaking
- 2-78(5) Waiver of undertaking
- 2-78(6) Appearance before committee
- 2-79(1) Notice of Judgment
- 2-79(2) Appearance before committee

- 5-81(1) Publication of suspension
- 5-81(2) Notice of suspension
- 5-81(3) Publication of restrictions
- 5-81(4) Publication of restrictions to refrain from practising certain areas of law
- 5-81(5) Notice of restrictions to refrain from practising certain areas of law
- 5-82(1) Practice review
- 5-82(2) Conduct of review
- 5-82(3) Scope of review
- 5-82(4) Obligation to co-operate
- 5-82(5) Report to the committee
- 5-83 Action on practice review report
- 5-84 Remedial program
- 5-85(1) Completion dates
- 5-85(2) Extensions
- 5-86 Notice to member
- 5-87 Member refusal to accept recommendations or failure to complete
- 5-88 Member acceptance of recommendations
- 5-89 Future access to report by committee
- 5-90 Future use of report and recommendation
- 5-91 Notice to complainant
- 5-92 Costs

#### **DIVISION 8 - DISCIPLINE PROCEEDINGS**

- 5-93(1) to 5-93(4) Re-numbered and restated
- 5-93(1) Definitions
- 5-93(2) Appointment of committee members
- 5-93(3) Duties of the committee
- 5-93(4) Appointment of chairperson
- 5-93(5) General duties of the chairperson
- 5-93(6) Selection of panel members
- 5-93(7) Composition of panels
- 5-93(8) Exception to panel committee
- 5-93(9) Administration of hearings
- 5-93(10) Panel required to hear and determine certain matters
- 5-94(1) Repealed
- 5-94(2) Repealed
- 5-95 Disqualification
- 5-96(1) Repealed
- 5-96(2) Right to counsel
- 5-96(3) Law society counsel
- 5-96(4) Setting and serving notice of a hearing date
- 5-96(4.1) Method of service
- 5-96(5) Resolution of panel

<u>5-96(6)</u>	<u>Dismissal of charge</u>
<u>5-96(7)</u>	<u>Consequences</u>
<u>5-96(8)</u>	<u>Costs</u>
<u>5-96(9)</u>	<u>Public access to record of hearing</u>
<u>5-96(10)</u>	<u>Record of hearing</u>
<u>5-97</u>	<u>Service of decision on member</u>
<u>5-98</u>	<u>Report to complaints investigation committee</u>
<u>5-99</u>	<u>Report to benchers</u>
<u>5-100(1)</u>	<u>Publication of disbarment, suspension, resignation, restrictions on practice</u>
<u>5-100(2)</u>	<u>Notice when member found guilty</u>
<u>5-100(3)</u>	<u>Notice when member found not guilty</u>
<u>5-101</u>	<u>Further investigation</u>
<u>5-101.1(1)</u>	<u>Application for a pardon</u>
<u>5-101.1(2)</u>	<u>Definition of pardon</u>
<u>5-101.1(3)</u>	<u>Application criteria</u>
<u>5-101.1(4)</u>	<u>Convening a hearing</u>
<u>5-101.1(5)</u>	<u>Role of panel</u>
<u>5-101.1(6)</u>	<u>Service of decision on applicant</u>
<u>5-101.1(7)</u>	<u>Disclosure of pardoned censure or conviction</u>

### **Notice of bankruptcy**

**2-78(1)** A member or law corporation must notify the chief executive officer immediately upon:

- (a) making a proposal,
- (b) making a voluntary assignment in bankruptcy, or
- (c) being petitioned into bankruptcy,

under the Bankruptcy and Insolvency Act (Canada) and must provide the chief executive officer with:

- (d) copies of all material filed in connection with the proceeding;
- (e) a written undertaking in a form acceptable to the chief executive officer, that the member will not sign cheques drawn on any trust bank account; and
- (f) a written undertaking in a form acceptable to the chief executive officer, that no director, officer, shareholder or employee of the law corporation will sign trust cheques drawn on any trust bank account.

### **Approval of signatory**

**2-78(2)** Upon receipt of an undertaking referred to in subsections (1)(e) and (1)(f), the chief executive officer may approve another practising lawyer as signatory for a trust bank account pursuant to rule 5-44(1)(d). (AM. 12/18)

### **Notice of discharge**

**2-78(3)** The member or law corporation must notify the chief executive officer immediately upon receiving an absolute order of discharge under the Bankruptcy and Insolvency Act (Canada) and provide the chief executive officer with a copy of the order.

### **Discharge of undertaking**

**2-78(4)** Upon receipt of the absolute order of discharge, the chief executive officer must discharge the undertaking given in subsection (1).

### **Waiver of undertaking**

**2-78(5)** A member or law corporation may make written application to the chief executive officer for waiver of the requirement to provide the undertaking in subsection (1) and the chief executive officer may waive the undertaking if he or she concludes that its imposition would create an undue hardship for the member or law corporation.

### **Appearance before committee**

**2-78(6)** Following notification to the chief executive officer under subsection (1), the chief executive officer may refer the matter to the complaints investigation committee, which may request the member or a voting shareholder of the law corporation to appear before the committee to discuss the proposal, voluntary assignment in bankruptcy or petition into bankruptcy, and such other matters as the committee considers appropriate. Failure to



appear in answer to the request of the committee, without reasonable excuse, may constitute professional misconduct.

**Notice of judgment**

**2-79(1)** A member or law corporation must notify the chief executive officer immediately upon a judgment becoming outstanding against the member or the law corporation and remaining unsatisfied for a period of 30 days, whether or not an appeal is entered.

**Appearance before committee**

**2-79(2)** Following notification to the chief executive officer under subsection (1), the chief executive officer may refer the matter to the complaints investigation committee, which may request the member or a voting shareholder of the law corporation to appear before the committee to discuss the judgment, the financial resources and ability of the member or law corporation to satisfy the judgment, and such other matters as the committee considers appropriate. Failure to appear in answer to the request of the committee, without reasonable excuse, may constitute professional misconduct.

## Division 8 - Discipline Proceedings

### **5-93(1) – 5-93(4) Re-numbered and Restated**

#### **Definitions**

**5-93(1)** In this division,

**“committee”** means the discipline committee.

#### **Appointment of committee members**

**5-93(2)** The benchers must appoint not less than six benchers to serve as members of the committee, and may appoint non-members to serve as members of the committee.

#### **Duties of the committee**

**5-93(3)** The duties of the committee are to:

- (a) hold hearings into charges against members;
- (b) set dates for a hearing or the continuation of a hearing;
- (c) determine preliminary motions;
- (d) order of conduct pre-hearing conferences;
- (e) hear reinstatement applications
- (f) hear pardon applications; and
- (g) transact such other business as may come before them.

(ENACTED 01/15)

#### **Appointment of chairperson**

**5-93(4)** The benchers:

- (a) shall appoint a chairperson of the committee who must be a member of the society and who is not a bencher, officer or employee of the society;
- (b) may appoint a vice-chairperson who must be a member of the society and who is a bencher;

(AM. 03/05)(01/15)

#### **General duties of the chairperson**

**5-93(5)** The chairperson shall be responsible for the function and administration of the committee. When the chairperson is not available, the vice-chairperson may perform any function otherwise reserved to the chairperson.

#### **Selection of panel members**

**5-93(6)** The chairperson shall select members of the committee to a panel to conduct a hearing into the charges against a member.

**Composition of panels**

**5-93(7)** Each panel shall consist of three members of the committee where:

- (a) one of the panel members must be a public representative; and
- (b) two panel members must be members of the Society.

**Exception to panel committee**

**5-93(8)** If a member of a panel appointed under Rule 5-93(7) who has participated in a hearing becomes unable, for any reason, to complete the hearing:

- (a) the remaining two panels members may complete the hearing, as if fully constituted; or
- (b) all parties to the matter may consent to a new panel being convened.

**Administration of hearings**

**5-93(9)** The chairperson, a panel of the committee, or a single member of the committee designated by the chairperson, may:

- (a) set a schedule for a hearing or continuation of a hearing;
- (b) adjourn a hearing;
- (c) order a pre-hearing conference;
- (d) conduct a pre-hearing conference;
- (e) give such directions and impose such terms as may facilitate the just disposition of a disciplinary proceeding;
- (f) make an order for substitutional service;
- (g) hear and determine preliminary motions;

and for any such purposes hold a hearing in such form as the chairperson, designated member, or panel may direct.

**Panel required to hear and determine certain matters**

**5-93(10)** Only a panel of the committee may hear and determine the substance of:

- (a) the charges against a member;
- (b) an application for reinstatement; or
- (c) a pardon application;

and such panel need not be the same panel as a panel appointed for the purposes set out in Rule 5-93(9).

**Composition of discipline panels**

**5-94(1)** Repealed

**Exception**

**5-94(2)** Repealed 01/15

**Disqualification**

**5-95** A member of the committee must not sit as a member of a panel where:

- (a) the committee member or any other member of his or her law firm:
  - (i) is the complainant or has advised the complainant in connection with the matter that is the subject of the hearing;
  - (ii) will be a witness;
  - (iii) conducted the pre-hearing conference in the matter that is the subject of the hearing unless the parties consent to the member sitting as a member of the panel; or
- (b) a member of his or her firm:
  - (i) is the member whose conduct or competence is the subject of the hearing;
  - (ii) is appearing as counsel; or
  - (iii) the committee member sat as a member of the complaints investigation committee when it considered the matter that is the subject of the hearing.

**Chairperson to appoint panel**

**5-96(1)** Repealed

**Right to counsel**

**5-96(2)** A member whose conduct or competence is the subject of a hearing is entitled to be represented by counsel.

**Law society counsel**

**5-96(3)** The chief executive officer may appoint counsel employed by the society or retain other counsel to draft and prosecute a charge.

**Setting and serving notice of a hearing date**

**5-96(4)** The date, time and place for a hearing must be set by agreement between counsel for the society and the member or his or her counsel or failing agreement, by the chairperson. Notice of the date, time and place of the hearing must be served on the member or his or her counsel. (AM. 09/13)

**Method of service**

**5-96(4.1)** Service of the notice under subsection (4) may be effected in accordance with rules 5-78(3) and 5-78(4). (ENACTED 09/13)

**Resolution of panel**

**5-96(5)** After hearing and considering the evidence and representations made, a panel must make and record a resolution stating:

- (a) which, if any, of the acts or omissions stated in the charge have been proved to the satisfaction of the panel; and
- (b) whether or not, by the acts or omissions so proved, the member is guilty of professional misconduct or conduct unbecoming a lawyer or student, or incompetence.

**Dismissal of charge**

**5-96(6)** When a panel finds that a member is not guilty of professional misconduct or conduct unbecoming a lawyer or student, or incompetence, it must dismiss the charge.

**Consequences**

**5-96(7)** When a panel finds that a member is guilty of professional misconduct or of conduct unbecoming a lawyer or student or incompetence, it may impose one or more of the consequences set out under sections 72 and 73 of the Act.

**Costs**

**5-96(8)** When a panel finds that a member is guilty of professional misconduct or of conduct unbecoming a lawyer or student, or incompetence, it may, pursuant to section 72 of the Act, order the member to pay all or any part of the costs incurred by the society in connection with any investigation or proceedings relating to the matter in respect of which the member was found guilty including, but not limited to, the following items:

- (a) all reasonable disbursements incurred by the society in investigating and proceeding to the hearing;
- (b) audit fees for time spent by auditors/investigators employed by the society in investigating and proceeding to the hearing, at rates set from time to time by the chief executive officer. These rates must reflect the actual costs connected with the investigation and hearing;
- (c) counsel fees for time spent by lawyers in investigating and preparing for proceeding to the hearing, but excluding the time spent at the hearing of the matter, at rates set from time to time by the chief executive officer. These rates must reflect the actual costs connected with the investigation and hearing;
- (d) \$500 for each one-half day of hearing, including the hearing of motions, arguments and other proceedings; and

- (e) honoraria paid to members of the panel who sit on a hearing, including the hearing of motions, arguments, and other proceedings.

**Public access to record of hearing**

**5-96(9)** The chief executive officer may disclose the record of the hearing to the members of the society and to the public, except for any parts of the record pertaining to proceedings held in camera.

**Record of hearing**

**5-96(10)** For the purposes of rule 5-96(9), the record of the hearing includes, but is not limited to:

- (a) the citation of the charges laid under rule 5-78(1);
- (b) the exhibits submitted in evidence at the hearing;
- (c) the transcript of the hearing; and
- (d) the written reasons of the panel or the transcript of the panel's oral reasons.

**Service of decision on member**

**5-97** Following a hearing, the chief executive officer must serve a copy of the written reasons of the panel on the member or his or her counsel. When a member has been found guilty of professional misconduct or of conduct unbecoming a lawyer or student, or incompetence, the chief executive officer must also notify the member or his or her counsel of the member's right to appeal the decision under section 76 of the Act.

**Report to complaints investigation committee**

**5-98** Following a hearing, the chief executive officer must provide a report, to include a copy of the written reasons of the panel, to the chairperson of the complaints investigation committee.

**Report to benchers**

**5-99** The panel must report its findings and disposition to the benchers at the first bencher meeting following the hearing.

**Notice when member found guilty**

**5-100(2)** When a member is found guilty of professional misconduct, or conduct unbecoming a lawyer or student, or incompetence, the chief executive officer must give notice of the finding to the members of the society, to any party whose complaint gave rise to the charge against the member, to each other governing body of the legal profession in Canada of which the member is a member and the chief executive office may disclose the conviction in any database of membership information operating to facilitate the mobility of lawyers in Canada. The notice must include:

- (a) the name of the member;
- (b) the name of the member's law corporation, if the member is the sole voting

shareholder;

- (c) the nature of the charge pursuant to which the member was found guilty, including brief particulars;
- (d) the penalty imposed, including any restrictions; and
- (e) any costs imposed.

The panel may direct the chief executive officer to publish to the public such information concerning its findings as it considers appropriate in the circumstances in such manner and by such means as it may determine.

**Notice when member found not guilty**

**5-100(3)** When a member is found not guilty of professional misconduct, or conduct unbecoming a lawyer or student or incompetence, the chief executive officer must:

- (a) give notice of the decision to any party whose complaint gave rise to the charge; and
- (b) give notice of the finding to the members of the society. This notice must include the nature of the charge but must not disclose the name of the member or the name of the member's law corporation without the member's consent.

The panel may direct the chief executive officer to publish to the public such additional information concerning its findings as it considers appropriate in the circumstances in such manner and by such means as it may determine. (AM. 02/13)

**Further investigation**

**5-101** When, in the course of a hearing, a matter concerning the conduct or competence of a member comes to the attention of the panel, and it is of the opinion that the conduct or competence requires investigation, the panel may refer the matter to the chief executive officer for investigation under division 6 of this Part.

**Application for a pardon**

**5-101.1(1)** Subject to subsection (2), in circumstances where:

- (a) a member's conduct was censured by the Complaints Investigation Committee and the member accepted a formal caution; or
- (b) a panel found a member guilty of professional misconduct or conduct unbecoming a lawyer or student or incompetence and imposed a reprimand or fine, with or without an order of costs, and no other order, action or penalty was imposed on the member by the panel as a result of that conviction,

the member may apply to the committee for a pardon. (ENACTED 03/05)

**Application criteria**

**5-101.1(3)** At the time a member makes an application under subsection (1), the following criteria must be satisfied:

- (a) ten years have passed since the date of the censure or conviction;
- (b) since the date of the censure or conviction the member has not accepted any other formal cautions and has not been found guilty of any other charges of professional misconduct, conduct unbecoming a lawyer or student or incompetence;
- (c) there are no charges pending against the member;
- (d) there are no complaints about the member under investigation;
- (e) the member has paid the society all money owing by the member to the society; and
- (f) a panel has not granted any previous application by the member under this rule.

(ENACTED 03/05)

**Convening a hearing**

**5-101.1(4)** Where the chairperson of the committee is satisfied that the applicant has met the criteria set out in subsection (3), the chairperson must establish a panel to hear the application and make a determination. A hearing date must be set and notice provided to the applicant in accordance with rule 5-96(4). (ENACTED 03/05)

**Role of panel**

**5-101.1(5)** A panel may grant a pardon if it determines that:

- (a) the member has met all the criteria set out in subsection (3); and
- (b) under all the circumstances, a pardon is appropriate.

(ENACTED 03/05)

**Service of decision on applicant**

**5-101.1(6)** Following a hearing, the chief executive officer must serve a copy of the written decision of the panel on the member or his or her counsel in accordance with rules 5-78(3) and 5-78(4). (ENACTED 03/05)

**Disclosure of pardoned censure or conviction**

**5-101.1(7)** A determination by a panel to grant a pardon does not set aside the censure or conviction or relieve the society of any obligation to disclose the censure or conviction under the Act or these rules. Any disclosure of a censure or conviction that has been pardoned must also disclose that the member has received a pardon and that the Society no longer considers the censure or conviction to reflect adversely on the member's character. (ENACTED 03/05)



## **SECTION 8 – MEMBRES**

- 2-76 Avis d'appartenance à un autre ordre professionnel de juristes
- 2-77(1) Représentants désignés
- 2-78(1) Avis de faillite
- 2-78(2) Approbation d'un signataire substitut
- 2-78(3) Avis de libération
- 2-78(4) Caducité de l'engagement
- 2-78(5) Dispense de fournir l'engagement
- 2-78(6) Comparution devant le comité
- 2-79(1) Avis de jugement
- 2-79(2) Comparution devant le comité
- 2-80(1) Avis d'accusation
- 2-80(2) Comparution devant le comité
- 2-81(1) Réponse dans un délai de 14 jours
- 2-81(2) Défaut de répondre

## **SECTION 8 – PROCÉDURE DISCIPLINAIRE**

- 5-93(1) – 5-93(4) Renuméroté et reformulé
- 5-93(1) Définitions
- 5-93(2) Nomination des membres du comité
- 5-93(3) Mandat du comité
- 5-93(4) Nomination à la présidence
- 5-93(5) Attributions générales de la présidence
- 5-93(6) Sélection des membres du sous-comité
- 5-93(7) Composition du sous comité
- 5-93(8) Options en cas d'absence
- 5-93(9) Gestion des auditions
- 5-93(10) Obligation d'entendre et de trancher certaines affaires
- 5-94(1) Abrogé
- 5-94(2) Abrogé
- 5-95 Inhabilité
- 5-96(1) Abrogé
- 5-96(2) Droit aux services d'un avocat
- 5-96(3) Avocat de la Société
- 5-96(4) Date d'audition et signification de l'avis
- 5-96(4.1) Mode de signification
- 5-96(5) Résolution du comité
- 5-96(6) Rejet de l'accusation
- 5-96(7) Sanctions

<u>5-96(8)</u>	<u>Frais et dépens</u>
5-96(9)	Accès du public au dossier d'enquête
<u>5-96(10)</u>	<u>Dossier d'enquête</u>
<u>5-97</u>	<u>Signification de la décision au membre</u>
<u>5-98</u>	<u>Rapport au comité d'enquête sur les plaintes</u>
<u>5-99</u>	<u>Rapport aux conseillers</u>
5-100(1)	Avis de radiation, de suspension, de démission ou de limitation du droit d'exercice
<u>5-100(2)</u>	<u>Avis en cas de déclaration de culpabilité</u>
<u>5-100(3)</u>	<u>Avis en cas d'acquittement d'un membre</u>
<u>5-101</u>	<u>Supplément d'enquête</u>
<u>5-101.1(1)</u>	<u>Demande de réhabilitation</u>
5-101.1(2)	Définition de réhabilitation
<u>5-101.1(3)</u>	<u>Critères</u>
<u>5-101.1(4)</u>	<u>Audition</u>
5-101.1(5)	Mandat du sous-comité
<u>5-101.1(6)</u>	<u>Signification de la décision au demandeur</u>
<u>5-101.1(7)</u>	<u>Communication du blâme ou de la déclaration de culpabilité visés par la réhabilitation</u>

### **Avis de faillite**

**2-78(1)** Le membre ou le cabinet d'avocats à responsabilité limitée qui prend l'une quelconque des mesures suivantes ou qui en fait l'objet, sous le régime de la Loi sur la faillite et l'insolvabilité (Canada), doit en aviser sans délai le directeur général:

- (a) il soumet une proposition concordataire;
- (b) il procède à la cession volontaire de ses biens;
- (c) il fait l'objet d'une requête de mise en faillite.

De plus, le membre ou le cabinet d'avocats à responsabilité limitée doit en pareil cas fournir au directeur général les documents suivants:

- (d) copie de tout document déposé dans le cadre de l'instance;
- (e) l'engagement écrit du membre de ne plus signer de chèques tirés sur un compte bancaire en fiducie, engagement sous une forme approuvée par le directeur général;
- (f) l'engagement écrit du cabinet d'avocats à responsabilité limitée que ses administrateurs, dirigeants, actionnaires et employés ne signeront plus de chèques tirés sur un compte bancaire en fiducie, engagement sous une forme approuvée par le directeur général.

### **Approbation d'un signataire substitut**

**2-78(2)** À la réception de l'engagement visé aux alinéas (1)e) ou (1)f), le directeur général peut autoriser un autre avocat en exercice à agir comme signataire d'un compte bancaire en fiducie aux termes de l'alinéa 5-44(1)d). (MOD. 12/18)

### **Avis de libération**

**2-78(3)** Dès qu'une ordonnance de libération absolue est rendue en sa faveur sous le régime de la Loi sur la faillite et l'insolvabilité (Canada), le membre ou le cabinet d'avocats à responsabilité limitée doit en aviser le directeur général et lui fournir copie de l'ordonnance en question.

### **Caducité de l'engagement**

**2-78(4)** Sur réception de l'ordonnance de libération absolue, le directeur général est tenu de déclarer caduc l'engagement fourni en application du paragraphe (1).

### **Dispense de fournir l'engagement**

**2-78(5)** Le directeur général peut, sur demande écrite en ce sens, dispenser un membre ou un cabinet d'avocats à responsabilité limitée de fournir l'engagement visé au paragraphe (1), s'il estime qu'un tel engagement occasionnerait des difficultés excessives au membre ou au cabinet en cause.

**Comparution devant le comité**

**2-78(6)** Lorsqu'un membre ou un cabinet d'avocats à responsabilité limitée transmet un avis au directeur général en application du paragraphe (1), le directeur général peut renvoyer l'affaire au comité d'enquête sur les plaintes, qui peut demander au membre ou à un actionnaire avec droit de vote du cabinet de comparaître devant lui pour discuter de la proposition concordataire, de la cession volontaire de biens ou de la requête de mise en faillite, selon le cas, et de toute autre question qu'il estime indiquée. Est susceptible de constituer une faute professionnelle le défaut de comparaître devant le comité à sa demande, sans excuse légitime de la part du membre ou du cabinet d'avocats à responsabilité limitée.

**2-79(1)** Lorsqu'un jugement rendu contre un membre ou un cabinet d'avocats à responsabilité limitée demeure inexécuté après 30 jours, le membre ou le cabinet d'avocats en avise immédiatement le directeur général, qu'un appel ait été interjeté ou non.

**Comparution devant le comité**

**2-79(2)** Lorsqu'un membre ou un cabinet d'avocats à responsabilité limitée transmet un avis au directeur général en application du paragraphe (1), le directeur général peut renvoyer l'affaire au comité d'enquête sur les plaintes, qui peut demander au membre ou à un actionnaire avec droit de vote du cabinet de comparaître devant lui pour discuter du jugement, des ressources financières du membre ou du cabinet, de sa capacité de satisfaire au jugement, ainsi que de toute autre question qu'il estime indiquée. Est susceptible de constituer une faute professionnelle le défaut de comparaître devant le comité à sa demande, sans excuse légitime de la part du membre ou du cabinet d'avocats à responsabilité limitée.

## Section 8 Procédure disciplinaire

### **5-93(1) - 5-93(4) Renuméroté et reformulé**

#### **Définitions**

**5-93(1)** Dans la présente section,  
«comité» s'entend du comité de discipline.

#### **Nomination des membres du comité**

**5-93(2)** Les conseillers nomment au moins six conseillers comme membres du comité et ils peuvent nommer des non membres pour siéger au comité.

#### **Mandat du comité**

**5-93(3)** Les attributions du comité consistent à :

- a) tenir les enquêtes relatives aux accusations portées contre les membres;
- b) fixer la date des enquêtes ou de leur continuation;
- c) trancher les requêtes préliminaires;
- d) ordonner la tenue de conférences préparatoires à l'enquête ou tenir ces conférences;
- e) entendre les demandes de réintégration;
- f) entendre les demandes de réhabilitation;
- g) connaître de toute autre question dont il est saisi.

#### **Nomination à la présidence**

**5-93(4)** Les conseillers :

- a) nomment à la présidence du comité un membre de la Société qui n'est pas conseiller, ni administrateur ou employé de la Société;
- b) peuvent nommer à la vice-présidence un membre de la Société qui est conseiller.

#### **Attributions générales de la présidence**

**5-93(5)** Le bon fonctionnement et l'administration du comité incombe à la présidence. Le vice-président peut s'acquitter des fonctions autrement attribuées à la présidence lorsque le président ou la présidente est indisponible.

#### **Sélection des membres du sous-comité**

**5-93(6)** Le président ou la présidente sélectionne des membres du comité pour former un sous-comité chargé d'entendre l'affaire se rapportant à des accusations portées contre un membre.

### **Composition du sous-comité**

**5-93(7)** Chaque sous-comité est composé de trois membres du comité. En outre:

- a) un des membres du sous-comité doit être un représentant du public;
- b) deux membres du sous-comité doivent être membres de la Société.

### **Options en cas d'absence**

**5-93(8)** Si l'un des membres d'un sous-comité nommé en application du paragraphe 5-93(7) se voit, pour quelque motif que ce soit, dans l'impossibilité de mener à terme une audition à laquelle il a pris part :

- a) les deux autres membres du sous-comité peuvent mener l'audition à terme comme si la formation était complète;
- b) toutes les parties à l'affaire peuvent consentir à la formation d'un nouveau sous-comité.

### **Gestion des auditions**

**5-93(9)** Le président, le sous-comité ou un membre du sous-comité désigné par la présidence peut :

- a) fixer un calendrier pour l'audition ou la reprise de l'audition d'une affaire;
- b) ajourner une audience;
- c) ordonner la tenue de conférences préparatoires;
- d) tenir des conférences préparatoires;
- e) donner les directives et imposer les conditions de nature à faciliter l'issue équitable d'une procédure disciplinaire;
- f) autoriser un autre mode de signification;
- g) entendre et trancher des requêtes préliminaires,

et par ailleurs, à ces fins, tenir une audience dans la forme qu'il ordonne.

### **Obligation d'entendre et de trancher certaines affaires**

**5-93(10)** Seul un sous-comité du comité est habilité à entendre et à trancher sur le fond les cas :

- a) d'accusations portées contre un membre;
- b) de demandes de réintégration;
- c) de demandes de réhabilitation;

Ce sous-comité n'est pas nécessairement le même que celui nommé aux fins visées au paragraphe 5- 93(9).

### **Composition du sous-comité disciplinaire**

**5-94(1)** Abrogé

### **Exception**

**5-94(2)** Abrogé 01/15

### **Inhabilité**

**5-95** Un membre du comité ne peut entendre une affaire dans l'un ou l'autre des cas suivants :

- (a) Le membre du comité ou un membre de son cabinet :
  - (i) est le plaignant ou a donné au plaignant des conseils concernant l'objet de la plainte;
  - (ii) sera appelé comme témoin;
  - (iii) a dirigé une conférence en préparation de l'audition de l'affaire à moins que les parties consentent à ce qu'il siége au comité;
- (b) Un membre de son cabinet :
  - (i) est la personne dont la conduite ou la compétence fait l'objet d'une enquête;
  - (ii) comparaît à titre d'avocat dans l'affaire;
  - (iii) le membre du comité siégeait au comité d'enquête sur les plaintes qui a renvoyé l'affaire au comité de discipline.

### **Constitution du sous-comité**

**5-96(1)** Abrogé

### **Droit aux services d'un avocat**

**5-96(2)** Le membre qui fait l'objet d'une poursuite disciplinaire a droit aux services d'un avocat.

### **Avocat de la Société**

**5-96(3)** Le directeur général peut charger un avocat au service de la Société ou tout autre avocat d'intenter une poursuite disciplinaire.

### **Date d'audition et signification de l'avis**

**5-96(4)** La date, l'heure et le lieu d'une audience en matière disciplinaire sont fixés de consentement par l'avocat de la Société et le membre ou son avocat, ou, à défaut d'entente, par le président du comité. Un avis de la date, de l'heure et du lieu de l'audience est signifié au membre ou à son avocat. (MOD. 09/13)

**Mode de signification**

**5-96(4.1)** La signification de l'avis mentionné au paragraphe (4) peut se faire en conformité avec les paragraphes 5-78(3) et (4). (ADOPTÉ 09/13)

**Résolution du comité**

**5-96(5)** Après audition de la preuve et des observations des parties, le sous-comité consigne au procès-verbal:

- (a) les faits qui, parmi les actes ou omissions reprochés dans l'acte d'accusation, ont été prouvés;
- (b) sa conclusion quant à savoir si les faits ainsi prouvés établissent que le membre est coupable d'une faute professionnelle, d'une conduite répréhensible ou d'incompétence.

**Rejet de l'accusation**

**5-96(6)** Le sous-comité rejette l'accusation, lorsqu'il conclut que le membre n'est ni incompétent ni coupable d'une faute professionnelle ou d'une conduite répréhensible.

**Sanctions**

**5-96(7)** Le sous-comité qui déclare un membre coupable des accusations portées contre lui peut imposer l'une ou plusieurs des sanctions prévues aux articles 72 et 73 de la Loi.

**Frais et dépens**

**5-96(8)** Le sous-comité peut, en vertu de l'article 72 de la Loi, ordonner au membre qu'il déclare coupable des accusations portées contre lui de payer tout ou partie des frais engagés par la Société à l'occasion de toute enquête, procédure ou instance relative à l'affaire ayant donné lieu à la déclaration de culpabilité, notamment:

- (a) les frais raisonnables d'enquête engagés par la Société et les frais de la tenue de l'audience;
- (b) les frais de vérification qui se rapportent au temps que les vérificateurs et les enquêteurs employés par la Société ont consacré à l'enquête et à l'audience, déterminés selon le tarif fixé par le directeur général. Ce tarif doit faire état des coûts véritables occasionnés par l'enquête et l'audience;
- (c) les honoraires qui se rapportent au temps que les avocats ont passé à monter le dossier et à se préparer à l'audience, à l'exclusion du temps passé à l'audience même, déterminés selon le tarif fixé par le directeur général. Ce tarif doit faire état des coûts véritables occasionnés par l'enquête et l'audience;
- (d) la somme forfaitaire de 500 \$ par demi-journée d'audience, y compris les motions, plaidoiries et autres actes d'instance;
- (e) les honoraires versés aux membres du sous-comité qui ont entendu l'affaire,



notamment les motions, plaidoiries et autres actes d'instance.

### **Accès du public au dossier d'enquête**

**5-96(9)** Le directeur général met le dossier d'enquête à la disposition des membres de la Société et du public, à l'exception des parties du dossier qui se rapportent aux étapes de l'instance s'étant déroulées à huis clos.

### **Dossier d'enquête**

**5-96(10)** Pour l'application du paragraphe 5-96(9), le dossier d'enquête comporte au minimum les éléments suivants:

- (a) l'acte d'accusation visé au paragraphe 5-78(1);
- (b) les pièces produites en preuve au cours de l'enquête;
- (c) la transcription de l'enquête;
- (d) les motifs écrits du sous-comité disciplinaire ou la transcription de ses motifs oraux.

### **Signification de la décision au membre**

**5-97** Après la tenue d'une enquête, le directeur général fait signifier au membre ou à son avocat les motifs écrits du sous-comité. Il avise en outre le membre reconnu coupable des accusations portées contre lui, ou son avocat, de son droit d'interjeter appel en vertu de l'article 76 de la Loi.

### **Rapport au comité d'enquête sur les plaintes**

**5-98** Après la tenue d'une enquête, le directeur général fournit au président du comité d'enquête sur les plaintes un rapport comprenant une copie des motifs écrits du sous-comité.

### **Rapport aux conseillers**

**5-99** Le sous-comité fait rapport aux conseillers, à leur première réunion suivant la tenue de l'enquête, de ses conclusions et des mesures qu'il a prises à l'issue d'une poursuite disciplinaire.

### **Avis en cas de déclaration de culpabilité**

**5-100(2)** Lorsqu'un membre est déclaré coupable d'une faute professionnelle, d'une conduite répréhensible ou d'incompétence, le directeur général donne avis de la déclaration de culpabilité aux membres de la Société, à toute personne dont la plainte est à l'origine de l'accusation portée contre le membre et à tout autre ordre professionnel de juristes au Canada auquel le membre appartient. Le directeur général peut donner avis de la condamnation aux responsables de toute base de données sur les membres, visant à favoriser la mobilité des avocats au Canada. L'avis contient les renseignements suivants:

- (a) le nom du membre;
- (b) la dénomination du cabinet d'avocats à responsabilité limitée du membre, s'il en est le seul actionnaire avec droit de vote;
- (c) la nature des infractions dont le membre a été déclaré coupable et de brèves précisions;
- (d) la peine et toute condition imposées;
- (e) les dépens adjugés.

En outre, le sous-comité peut ordonner au directeur général de publier, à l'intention du public, toute information concernant sa décision qu'il considère appropriée dans les circonstances, de la manière qui lui semble indiquée.

### **Avis en cas d'acquiescement d'un membre**

**5-100(3)** Lorsqu'un membre de la Société est acquitté d'une accusation de faute professionnelle, de conduite répréhensible ou d'incompétence, le directeur général donne avis de la décision en cause aux personnes suivantes:

- (a) toute personne dont la plainte est à l'origine de l'accusation portée contre le membre;
- (b) les membres de la Société. L'avis indique la nature des accusations, mais ne doit pas, sauf si le membre y consent, faire état du nom du membre ou de son cabinet d'avocats à responsabilité limitée.

En outre, le sous-comité peut ordonner au directeur général de publier, à l'intention du public, toute information supplémentaire concernant sa décision qu'il considère appropriée dans les circonstances, de la manière qui lui semble indiquée. (MOD. 02/13)

### **Supplément d'enquête**

**5-101** Lorsque au cours d'une enquête, le sous-comité prend connaissance de faits, à propos de la conduite ou de la compétence d'un membre, qui à son avis devraient faire l'objet d'une enquête plus approfondie, il peut demander au directeur général de mener une enquête au titre de la section 6 de la présente partie.

### **Demande de réhabilitation**

**5-101.1(1)** Sous réserve du paragraphe (2), un membre peut demander sa réhabilitation au comité de discipline dans les cas suivants:

- (a) sa conduite a été blâmée par le comité d'enquête sur les plaintes et le membre a accepté un avertissement formel;
- (b) un sous-comité a déclaré le membre coupable d'une faute professionnelle, d'une conduite répréhensible ou d'incompétence et lui a infligé une réprimande ou une amende, accompagnée ou non d'une ordonnance de

paiement des frais, sans rendre une autre ordonnance, prendre une autre mesure ou infliger une autre peine à l'égard de cette déclaration de culpabilité.

(ADOPTÉ 03/05)

### **Critères**

**5-101.1(3)** Les conditions qui suivent doivent être réunies au moment où un membre présente sa demande de réhabilitation:

- (a) dix ans se sont écoulés depuis le blâme ou la déclaration de culpabilité;
- (b) depuis le blâme ou la déclaration de culpabilité, aucun autre avertissement formel n'a été prononcé contre le membre, ni aucune autre déclaration de culpabilité n'a été rendue contre lui pour faute professionnelle, conduite répréhensible ou incompétence.
- (c) aucune accusation n'est en instance contre lui;
- (d) aucune plainte ne fait l'objet d'une enquête contre lui;
- (e) il a payé à la Société toutes les sommes qu'il lui doit;
- (f) un comité ne lui a pas déjà accordé une réhabilitation en vertu du présent article.

(ADOPTÉ 03/05)

### **Audition**

**5-101.1(4)** Le président du comité constitue un sous-comité chargé d'entendre la demande s'il estime que le demandeur satisfait aux conditions énumérées au paragraphe (3). La date d'audition est fixée et un avis est envoyé au demandeur, en conformité avec l'article 5-96(4). (ADOPTÉ 03/05)

### **Signification de la décision au demandeur**

**5-101.1(6)** Une fois l'audition terminée, le directeur général fait signifier une copie de la décision du sous-comité au demandeur ou à son avocat en conformité avec les paragraphes 5-78(3) et (4). (ADOPTÉ 03/05)

### **Communication du blâme ou de la déclaration de culpabilité visés par la réhabilitation**

**5-101.1(7)** La décision par un sous-comité d'accorder une réhabilitation n'annule pas le blâme ou la déclaration de culpabilité, ni ne libère la Société de l'obligation de communiquer leur existence en conformité avec la loi ou avec les présentes règles. Toutefois, lorsqu'elle les communique, elle est tenue de préciser qu'ils ont fait l'objet d'une réhabilitation et qu'elle ne considère plus qu'ils portent atteinte à la réputation du membre en cause. (ADOPTÉ 03/05)



Centre de traduction et de documentation juridiques  
Centre for Legal Translation and Documentation

### CERTIFICATE OF TRANSLATION ACCURACY

I, Lyne Jolette, being a member of the Ordre des traducteurs, terminologues et interprètes agréés du Québec (OTTIAQ) hereby certify that I am fluent in the English and the French languages and that the translations showing in the here-attached documents named *Appendix A Part 2 -Sept 2021 – MembersBitext.pdf, Appendix A Part 5 Sept 2021- AdmissionsBitext.pdf, Appendix B - Part 5 -Sept 2021 - Discipline Proceedings - revised Sept 2 21Bitext.pdf* and *Appendix B Part 2 Sept 2021-Prof Dev\_Fees and Assess\_Susp\_Bitext.pdf* are accurate.

A handwritten signature in blue ink, appearing to read 'Lyne Jolette', is written over a horizontal line.

Lyne Jolette  
Certified translator  
Translator-Editor

*October 8 2021*  
Date



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# MEMORANDUM

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**TO:** Benchers

**FROM:** Rennie Stonyk

**DATE:** October 21, 2021

**RE:** **Rule Amendments – Part 5 – Division 1 – Admissions**  
**Part 2 – Division 8.1 – Professional Development**  
**Part 2 – Division 9 – Fees and Assessments**  
**Part 2 – Division 10 – Suspensions for Failure to Pay**

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At the September 9<sup>th</sup>, 2021 benchers meeting, you reviewed and approved draft rule amendments resulting from the April 2021 benchers meeting, related to:

- extending the period within which students must complete both the bar admission program and their articling term from two years to three years, with discretion for the chief executive officer to extend the period further in exceptional circumstances;
- requiring individuals who have been administratively suspended for a period exceeding 30 days (for failure to complete mandatory continuing professional development or for failure to pay practising fees or contribute to the professional liability claims fund) to apply to resume active practise;
- repealing the outdated rule requiring members to participate in Code of Professional Conduct training by April 1, 2012; and
- changing the word “mail” to “sent” within the rule requiring the Society to mail fee notices to members.

The rule amendments have been translated into French and are attached for your final approval.

RLS

5-4.3	Repealed
5-4.4	Repealed
5-4.5	Repealed
<u>5-5(1)</u>	<u>Articling and bar admission program</u>
5-5(2)	Credit for articles in another Canadian jurisdiction
5-5(3)	Exemption for students who have completed the bar admission course in another Canadian jurisdiction
5-5(4)	Practice experience in a foreign jurisdiction
5-5(5)	Authority of chief executive officer
5-6(1)	Eligibility to act as principal
5-6(2)	Approval of principal
5-6(3)	Approved principal or delegate must offer articling position
5-6(3.3)	Limit on number of students
5-6(4)	Termination before call
5-6.1(1)	Application
5-6.1(2)	Recruitment of articling students in Winnipeg
5-6.2	Permission to withdraw from agreement to article in Manitoba
5-7	Temporary assignment of student
5-7.1	Practice by articling students
5-7.2	Responsibility of principal
5-8	Designation of articling student
5-9(1)	Mandatory student participation
5-9(2)	Principal to allow participation
5-10(1)	Repealed
5-10(1.1)	Repealed
5-10(1.2)	Discipline for breaches of integrity
5-10(1.3)	Termination of articles for expelled students
5-10(2)	Repealed
5-10(3)	Repealed
5-10(4)	Repealed
5-10(5)	Repealed
5-11(1)	Appeal
5-11(1.1)	Stay of Proceedings
5-11(1.2)	Reasonable dispatch required
5-11(2)	Hearings

#### **TRANSITION RULES – CPLED LEGACY PROGRAM**

5-11(3)	Definitions
5-11(3.1)	Application of Rules
5-11(3.2)	Grades
5-11(3.3)	Academic Misconduct
5-11(3.4)	Additional Sanctions

**DIVISION 8.1 – PROFESSIONAL DEVELOPMENT**

- 2-81.1(1) Definitions
- 2-81.1(2) Professional Development
- 2-81.1(3) Requirement to report continuing professional development activities
- 2-81.1(4) Repealed
- 2-81.1(5) Repealed
- 2-82.1(6) Extension of time for completion of training or reporting
- 2-81.1(7) Failure to comply
- 2-81.1(8) Mandatory continuing professional development
- 2-81.1(9) Carry over permitted only in exceptional circumstances
- 2-81.1(10) Exemption in year of call
- 2-81.1(11) Auditing compliance
- 2-81.1(12) Failure to complete continuing professional development activities
- 2-81.1(13) Referral to complaints investigation committee

**DIVISION 8.2 – ANNUAL MEMBER REPORT**

- 2-81.2(1) Annual member report
- 2-81.2(2) Extension of time for filing annual report
- 2-81.2(3) Failure to file

**DIVISION 9 – FEES AND ASSESSMENTS**

- 2-82 Definition
- 2-83 Annual practising certificate
- 2-84 Proportionate payment
- 2-85 Special fees, levies and assessments
- 2-86(1) Notice from society – practicing fees
- 2-86(2) Notice from society – contribution to claims fund
- 2-87(1) Late payment penalty
- 2-87(2) Waiver of penalty
- 2-88 Suspension for non-payment of annual fee, penalties
- 2-89 Reinstatement fee
- 2-90 Refund during practising year

**DIVISION 10 – SUSPENSIONS FOR FAILURE TO PAY**

- 2-91 Automatic suspension
- 2-92 Reinstatement fee
- 2-93 Suspension may be rescinded

**Failure to file articling agreement education plan by deadline**

**5-4.4** Repealed 05/20

**Exception: when common law degree required by NCA**

**5-4.5** Repealed 05/20

**Articling and bar admission program**

**5-5(1)** Subject to subsection (4), every articling student must:

- (a) successfully complete the bar admission program and the term of articles within 2 years from the date of commencement of either the bar admission program or the student's articles, whichever is commenced earlier. The chief executive officer may extend the completion time for the bar admission program and the term of articles beyond 3 years in exceptional circumstances.
- (b) serve, unless abridged by the chief executive officer, at least 52 weeks of full-time articles, or part-time articles which are equivalent to 52 weeks of full-time articles, as approved by the chief executive officer. Abridgments of more than four weeks may only be granted in exceptional circumstances.

(AM. 04/04; 05/07; 10/08; 05/11; 06/15; 05/20)

**Credit for articles in another Canadian jurisdiction**

**5-5(2)** In determining the period of time that a student has served articles in Manitoba, the student may be credited, to a maximum of six months, for all the time served by the student articling or clerking in another Canadian jurisdiction.

(AM. 05/07; 10/08; 05/11)

**Exemption for students who have completed the bar admission program in another Canadian jurisdiction**

**5-5(3)** The chief executive officer may allow an articling student who has completed the bar admission program of another Canadian jurisdiction to complete qualification assessments or examinations in lieu of completing all or a portion of the bar admission program in Manitoba. (AM. 04/04; 05/07; 10/07; 10/08; 05/11)

**Practice experience in a foreign jurisdiction**

**5-5(4)** An articling student or applicant for admission who has practising experience as a member of the legal profession in a foreign jurisdiction may apply to the chief executive officer for an exemption from completing all or a portion of the term of articles set out in subsection (1) by filing the required application and furnishing all documentation required by the chief executive officer. (ENACTED 05/11) (AM. 05/20)

**Authority of chief executive officer**

**5-5(5)** In considering a request under subsection (4), the chief executive officer may refuse the exemption or allow it in full or in part, with or without conditions or restrictions. (ENACTED 05/11)



**Requirement to report continuing professional development activities**

**2-81.1(3)** On or before April 1<sup>st</sup> in each year, all members who maintained active practising status during the preceding calendar year or for any part of that year must file a report with the chief executive officer with respect to their continuing professional development activities during the preceding calendar year. The report must be in the form prescribed by the chief executive officer. (ENACTED 10/07) (AM. 02/11; 05/11)

**Mandatory Code of Professional Conduct training**

**2-81.1(4)** **Repealed**

**Mandatory Code of Professional Conduct training for other members**

**2-81.1(5)** **Repealed**

**Extension of time for completion of training or reporting**

**2-81.1(6)** The chief executive officer may extend the time for completion of the requirements set out in subsections (3). (ENACTED 02/11) (AM. 05/11)

**Failure to comply**

**2-81.1(7)** Failure to complete the requirements set out in subsections (3) and (11), without reasonable excuse, may constitute professional misconduct. (ENACTED 02/11) (AM 05/11)

**Mandatory continuing professional development**

**2-81.1(8)** Subject to subsection (10), a practising lawyer must complete one hour of eligible activities for each month or part of a month in a calendar year during which the lawyer maintained active practising status. Where the lawyer maintained active practising status for three or more months in the calendar year, one and a half hours of the total eligible hours must relate to ethics, professional responsibility or practice management. (ENACTED 05/11)

**Carry over permitted only in exceptional circumstances**

**2-81.1(9)** In exceptional circumstances, the chief executive officer may permit the carry over of not more than 12 hours of eligible activities to the next calendar year. (ENACTED 05/11)

**Exemption in year of call**

**2-81.1(10)** A practising lawyer is exempt from complying with subsection (8) in the calendar year in which the lawyer is called to the bar in Manitoba, but must comply with the requirement to report set out in subsection (3). (ENACTED 05/11)

**Auditing compliance**

**2-81.1(11)** In order to demonstrate compliance with subsection (8), a member must:

- (a) keep all documents substantiating the completion of the eligible activities set out in the member's annual reporting until December 31 of the year following the year in which the activities were reported; and

- (b) provide the documents set out in paragraph (a) to the chief executive officer on request, together with such further information as may be reasonably required by the chief executive officer for purposes of auditing the member's compliance with the rules.

(ENACTED 05/11)

**Failure to complete continuing professional development activities**

**2-81.1(12)**

- (a) Where a practising lawyer fails to comply with subsection (8), the chief executive officer may send a letter to the lawyer advising that he or she must comply with the requirements within 60 days from the date the letter is sent. A member who fails to comply within 60 days is automatically suspended from practising law until such time as the requirements have been met and a reinstatement fee paid.
- (b) Where a member is suspended under subsection (a) for a period of 30 days or less, the member must be reinstated on the date of payment, provided the requirements under rule 2.81.1(8) have been met.
- (c) Where a member is suspended under subsection (a) for a period exceeding 30 days, then in addition to meeting the requirements under rule 2.81.1(8) and paying the reinstatement fee, the member must apply to resume active practice under rule 5-28.2.

(ENACTED 05/11) (AM. 09/13)

**Proportionate payment**

**2-84** A member must only pay a proportional part of the annual fee for the practising year in which he or she is called or admitted or in which he or she resumes practise under rule 5-24, except no proportionate payment will apply to a surcharge or deductible payable under rules 5-31 and 5-32. The chief executive officer may require the proportionate part of the annual fee to be paid in full or in instalments.

**Special fees, levies and assessments**

**2-85** The benchers may set any special fee, levy or assessment necessary for the society to pursue its purpose and carry out its duties.

**Notice from society - practising fees**

**2-86(1)** The chief executive officer must send to each practising lawyer and non-practising member written notice of:

- (a) the amount of the annual practising and non-practising fees and the amount of the contributions to the reimbursement and education funds. The notice must be sent on or before March 1st in each year;

- (b) the amount of any special fee, levy or assessments under rule 2-85;
- (c) the due date for payment, in full and by instalments, of any fee, contribution, levy or assessment.

(AM. 02/04; 10/07)

**Notice from society – contribution to claims fund**

**2-86(2)** The chief executive officer must send to each practising lawyer written notice of the amount of the contribution to the professional liability claims fund. The notice must be sent on or before June 1st in each year and include the due dates for payment in full and by instalments. (ENACTED 10/07)

**Late payment penalty**

**2-87(1)** A practising lawyer who fails to pay any part of the annual fee set out in rule 2-83 must pay a penalty of \$10 per day until the fee is paid, to a maximum penalty of \$300.

**Waiver of penalty**

**2-87(2)** The chief executive officer may waive or reduce a penalty assessed under subsection (1).

**Suspension for non-payment of annual fee, penalties**

**2-88** A member who fails to pay any part of the annual fee set out under rule 2-83 or a penalty assessed under rule 2-87 within 30 days of its due date is automatically suspended from practising law.

**Reinstatement fee**

**2-89(1)** A member who is suspended from practising law under rule 2-88 must pay a reinstatement fee in addition to any fee or penalty owing in order to be reinstated to practice. The member must be reinstated on the date of payment.

**2-89(2)** If the member is suspended under rule 2-88 for a period of 30 days or less, the member must be reinstated on the date of payment.

**2-89(3)** If the member is suspended under rule 2-88 for a period exceeding 30 days, then in addition to paying a reinstatement fee and any other fees or penalties owing the member must apply to resume active practice under rule 5-28.2.

**Refund during practising year**

**2-90** A member who has paid the annual fee for a practising year and ceases to practise for any reason other than suspension or who becomes exempt from the professional liability claims fund assessment by operation of subsection 19(3) of the Act or rule 5-30(3) during that year, is entitled to a refund of a portion of the fee in an amount determined by the chief executive officer. (AM. 10/07)

**Reinstatement fee**

**2-92(1)** A member who is suspended from practising law under rule 2-91 must pay a

reinstatement fee in addition to the fees, costs, fines or expenses owing in order to be reinstated to practice.

**2-92(2)** If a member is suspended under rule 2-91 for a period of 30 days or less, the member must be reinstated on the date of payment.

**2-92(3)** If a member is suspended under rule 2-91 for a period exceeding 30 days, then in addition to paying a reinstatement fee and any other fees, costs, fines or expenses owing, the member must apply to resume active practice under rule 5-28.2

- 4-13 Exemption de pénalité
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## **PARTIE 5**

### **PROTECTION DU PUBLIC**

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- 5-2 Fonctions du comité
- 5-3 Participation du doyen
- 5-3.1.1 Renuméroté
- 5-4(1) Demande d'admission à titre de stagiaire
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- 5-4.4 Abrogé
- 5-4.5 Abrogé
- ~~5-5(1) Stage et programme de formation professionnelle~~
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- 5-5(3) Exemption du programme de formation professionnelle pour les étudiants qui ont réussi un tel programme ailleurs au Canada
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- 2-81.1(1) Définitions
- 2-81.1(2) Perfectionnement professionnel
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- 2-81.1(8) Perfectionnement professionnel permanent obligatoire
- 2-81.1(9) Report possible dans des circonstances exceptionnelles
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- 2-81.1(11) Vérification de l'observation
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- 2-81.2(1) Rapport annuel obligatoire
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**SECTION 9 – DROITS ET COTISATIONS**

- 2-82 Définition
- 2-83 Certificat d'exercice annuel
- 2-84 Paiement proportionnel
- 2-85 Cotisations spéciales
- 2-86(1) Avis transmis par la Société – droit d'exercice
- 2-86(2) Avis transmis par la Société – cotisation au fonds d'indemnisation
- 2-87(1) Pénalité pour paiement en retard
- 2-87(2) Exemption de pénalité
- 2-88 Suspension du droit d'exercice
- 2-89 Droit de réinscription
- 2-90 Remboursement durant une année d'exercice

**SECTION 10 – SUSPENSION POUR DÉFAUT DE PAIEMENT**

- 2-91 Suspension automatique
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**Défaut de déposer à temps les documents nécessaires**

**5-4.2** Abrogé 05/20

**Dépôt du contrat de stage : responsabilité conjointe du stagiaire et du directeur de stage**

**5-4.3** Abrogé 05/20

**Défaut de déposer à temps le contrat de stage**

**5-4.4** Abrogé 05/20

**Exception: diplôme canadien de common law exigé par le CNE**

**5-4.5** Abrogé 05/20

**Stage et programme de formation professionnelle**

**5-5(1)** Sous réserve du paragraphe (4), le stagiaire doit:

- (a) réussir le programme de formation professionnelle et avoir terminé le stage avant l'expiration d'une période de trois ans à compter soit du début du programme, soit du début du stage, s'il le commence avant le programme. Le directeur général peut dans des circonstances exceptionnelles proroger ce délai au-delà de trois ans;
- (b) effectuer un stage qui dure, à moins d'abrégement par le directeur général, au moins 52 semaines à temps plein ou l'équivalent à temps partiel de 52 semaines à temps plein, selon la formule approuvée par le directeur général. Un abrégement d'une durée supérieure à quatre semaines ne peut être accordé que dans des circonstances exceptionnelles. (MOD. 04/04; 05/07; 10/08; 05/11; 06/15; 05/20)

**Équivalence pour stage effectué ailleurs au Canada**

**5-5(2)** La personne ayant effectué un stage ou ayant exercé les fonctions d'auxiliaire juridique ailleurs au Canada peut se voir accorder une équivalence d'au plus six mois aux fins du stage au Manitoba. (MOD. 05/07; 10/08)

**Exemption du programme de formation professionnelle pour les étudiants qui ont réussi un tel programme ailleurs au Canada**

**5-5(3)** Le directeur général peut permettre à un stagiaire qui a réussi un programme de formation professionnelle ailleurs au Canada de se présenter à des examens ou des évaluations de transfert plutôt que de suivre le programme de formation professionnelle du barreau du Manitoba. (MOD. 05/07; 10/07; 10/08; 05/11)

**Formation obligatoire – Code de déontologie**

**2-81.1(4)** Abrogé

**Formation obligatoire pour les autres membres**

**2-81.1(5)** Abrogé

**Prorogation**

**2-81.1(6)** Le directeur général peut proroger le délai pour se conformer aux obligations prévues aux paragraphes (3). (ADOPTÉ 02/11) (MOD. 05/11)

**Défaut**

**2-81.1(7)** Est susceptible de constituer une faute professionnelle, le fait de ne pas se conformer aux obligations prévues aux paragraphes (3) et (11) sans excuse légitime. (ADOPTÉ 02/11) (MOD. 05/11)

**Perfectionnement professionnel permanent obligatoire**

**2-81.1(8)** Sous réserve du paragraphe (10), les avocats en exercice sont tenus d'effectuer une heure d'activités admissibles par mois ou partie de mois de l'année civile au cours de laquelle ils exercent activement le droit. Les avocats qui exercent le droit pendant au moins trois mois au cours de l'année sont tenus de consacrer au moins une heure et demie de leurs activités admissibles totales à la déontologie, à la responsabilité professionnelle et à la gestion de l'exercice de la profession. (ADOPTÉ 05/11)

**Report possible dans des circonstances exceptionnelles**

**2-81.1(9)** Dans des circonstances exceptionnelles, le directeur général peut autoriser le report à l'année civile suivante d'au plus 12 heures d'activités admissibles. (ADOPTÉ 05/11)

**Exemption – première année d'exercice**

**2-81.1(10)** L'avocat en exercice est exempté de l'application du paragraphe (8) pour l'année civile au cours de laquelle il est admis au Barreau du Manitoba; il est toutefois tenu de se conformer aux exigences de rapport obligatoire prévues au paragraphe (3). (ADOPTÉ 05/11)

**Vérification de l'observation**

**2-81.1(11)** Pour pouvoir prouver qu'il a observé le paragraphe (8), le membre doit:

- (a) conserver tous les documents faisant état des activités admissibles qu'il a effectuées et qu'il mentionne dans son rapport annuel jusqu'au 31 décembre de l'année qui suit celle du rapport;
- (b) fournir ces documents au directeur général sur demande, accompagnés de tous les renseignements que celui-ci peut lui demander pour lui permettre de vérifier si le membre s'est conformé aux règles. (ADOPTÉ 05/11)



**Défaut**

**2-81.1(12)**

- a) Le directeur général peut aviser par écrit l'avocat en exercice qui ne s'est pas conformé au paragraphe (8) qu'il est tenu de le faire avant l'expiration d'un délai de 60 jours à compter de l'envoi de l'avis. L'avocat qui ne se conforme pas à ce paragraphe avant l'expiration du délai est automatiquement suspendu et ne peut exercer le droit avant de s'être conformé à ce paragraphe et d'avoir versé les droits de réinscription. (ADOPTÉ 05/11) (MOD. 09/13)
- b) Le member don't le droit d'exercice a été suspend en application de l'alinéa a) pour une période de 30 jours ou moins doit être réinscrit à la date de paiement, pourvu que les exigences prévues au paragraphe 2.81.1(8) ont été remplies.
- c) Le member don't le droit d'exercice a été suspend en application de l'alinéa a) pour une période de plus de 30 jours doit, pour reprendre l'exercice du droit, présenter une demande prévue à l'article 5-28.2 en vue de reprendre l'exercice du droit, en plus de devoir satisfaire aux exigences prévues au paragraphe 2.81.1(8) et d'acquitter les frais de réinscription.

## Section 9 Droits et cotisations

**Définition**

**2-82** Dans la présente section, le mot « membre » exclut un étudiant, sauf indication contraire du contexte.

**Certificat d'exercice annuel**

**2-83** Afin d'obtenir un certificat d'exercice, le membre paie à la Société une cotisation annuelle comprenant:

- (a) un droit d'exercice et des cotisations au fonds d'éducation et au fonds de remboursement, sauf s'il en est exempté sous le régime de l'article 5-37.1, payables chaque année au choix :
  - (i) en un seul versement, au plus tard le 1er avril,
  - (ii) en plusieurs versements, le montant et la date d'échéance de chaque versement étant déterminés par le directeur général;
- (b) une cotisation au fonds d'indemnisation, à moins d'en être exempté en vertu du paragraphe 19(3) de la Loi ou des paragraphes 5-30(3) ou (4), payable chaque année au choix :
  - (i) en un seul versement, au plus tard le 1er juillet,

- (ii) en plusieurs versements, le montant et la date d'échéance de chaque versement étant déterminés par le directeur général.
- (c) les autres droits ou cotisations imposés aux avocats en exercice en vertu du paragraphe 2-85.

(MOD. 02/04; 10/07; 10/10)

### **Paiement proportionnel**

**2-84** Le membre qui est inscrit à la Société, admis au barreau ou qui reprend l'exercice de la profession aux termes de l'article 5-24 pendant une année d'exercice n'est tenu de payer qu'une part proportionnelle de la cotisation annuelle, sauf pour ce qui est d'une surcharge ou d'une franchise exigibles en vertu des articles 5-31 et 5-32. Le membre règle la part proportionnelle de la cotisation en un seul versement ou en versements échelonnés autorisés par le directeur général.

### **Cotisations spéciales**

**2-85** Les conseillers peuvent imposer une cotisation spéciale en vue de favoriser la poursuite de l'objet et l'exercice des fonctions de la Société.

### **Avis transmis par la Société – droit d'exercice**

**2-86(1)** Le directeur général transmet à chaque avocat en exercice et à chaque membre non praticien un avis écrit qui indique:

- (a) le montant annuel du droit d'exercice et du droit de non praticien, et celui des cotisations à verser au fonds de remboursement et au fonds d'éducation. L'avis est transmis au plus tard le 1er mars de chaque année;
- (b) le montant de toute cotisation spéciale imposée en vertu de l'article 2-85;
- (c) la date d'échéance du versement unique ou de chaque versement des droits et cotisations. (MOD. 02/04; 10/07)

### **Avis transmis par la Société – cotisation au fonds d'indemnisation**

**2-86(2)** Le directeur général transmet à chaque avocat en exercice un avis écrit qui indique le montant de la cotisation à verser au fonds d'indemnisation. L'avis est transmis au plus tard le 1er juin de chaque année et indique la date d'échéance du versement unique ou de chaque versement. (ADOPTÉ 10/07)

### **Pénalité pour paiement en retard**

**2-87(1)** Le membre en exercice qui fait défaut de payer intégralement toute partie de la cotisation annuelle visée à l'article 2-83 se voit imposer une amende de 10 \$ par jour de retard, jusqu'à concurrence de 300 \$.

### **Exemption de pénalité**

**2-87(2)** Le directeur général peut annuler ou réduire une amende imposée en vertu du paragraphe (1).

### **Suspension du droit d'exercice**

**2-88** Le droit d'exercice d'un membre qui ne paie pas toute partie de la cotisation annuelle visée à l'article 2-83 ou une amende imposée en vertu de l'article 2-87 dans les 30 jours suivant leur date d'exigibilité est auto-matiquement suspendu.

### **Droit de réinscription**

**2-89(1)** Le membre dont le droit d'exercice a été suspendu en application de l'article 2-88 peut demander sa réinscription en acquittant les frais prévus, en sus des sommes ou amendes exigibles.

**2-89(2)** Le membre dont le droit d'exercice a été suspendu en application de l'article 2-88 pour une période de 30 jours ou moins est réintégré à la date du paiement.

**2-89(3)** Le membre dont le droit d'exercice a été suspendu en application de l'article 2-88 pour une période de plus de 30 jours doit, pour reprendre l'exercice du droit, présenter une demande prévue à l'article 5-28.2, en plus de devoir acquitter les frais de réinscription et autres droits, frais, débours ou amendes exigibles.

## **Section 10 Suspension pour défaut de paiement**

### **Suspension automatique**

**2-91** Le droit d'exercice d'un membre est automatiquement suspendu lorsque, dans les 30 jours de la date d'exigibilité, ou dans les 30 jours suivant une date d'exigibilité prorogée à sa demande par le directeur général:

- (a) le membre fait défaut de payer à la Société une amende ou les frais auxquels il a été condamné par un sous-comité disciplinaire en vertu des paragraphes 72(1) et 72(2) de la Loi;
- (b) le membre fait défaut de rembourser les frais de l'inspection de ses comptes et dossiers imputés en application du paragraphe 5-47(9);
- (c) le membre fait défaut de payer une franchise exigible au titre d'un contrat d'assurance collective conclu en vertu du paragraphe 45(5) de la Loi;
- (d) le membre fait défaut de rembourser à la Société les frais qu'elle a engagés en application d'une ordonnance de garde obtenue en vertu du paragraphe 57(1) de la Loi ou afin de liquider le cabinet du membre en vertu de l'article 2-74.

### **Droit de réinscription**

**2-92(1)** Le membre dont le droit d'exercice a été suspendu en application de l'article 2-91 peut demander sa réinscription en acquittant les frais prévus, en sus des droits, frais, débours ou amendes exigibles.

**2-92(2)** Le membre dont le droit d'exercice a été suspendu en application de l'article 2-91 pour une période de 30 jours ou moins est réintégré à la date du paiement.

**2-92(3)** Le member don't le droit d'exercice a été suspendu en application de l'article 2-91 pour une période de plus de 30 jours doit, pour reprendre l'exercice du droit, présenter une demande prévue à l'article 5-28.2, en plus de devoir acquitter les frais de réinscription et autres droits, frais, débours ou amendes exigibles.



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Centre for Legal Translation and Documentation

### CERTIFICATE OF TRANSLATION ACCURACY

I, Lyne Jolette, being a member of the Ordre des traducteurs, terminologues et interprètes agréés du Québec (OTTIAQ) hereby certify that I am fluent in the English and the French languages and that the translations showing in the here-attached documents named *Appendix A Part 2 -Sept 2021 – MembersBitext.pdf, Appendix A Part 5 Sept 2021- AdmissionsBitext.pdf, Appendix B - Part 5 -Sept 2021 - Discipline Proceedings - revised Sept 2 21Bitext.pdf* and *Appendix B Part 2 Sept 2021-Prof Dev\_Fees and Assess\_Susp\_Bitext.pdf* are accurate.

A handwritten signature in blue ink, appearing to read 'Lyne Jolette', is written over a horizontal line.

Lyne Jolette  
Certified translator  
Translator-Editor

*October 8 2021*  
Date



## MEMORANDUM

To: Benchers

From: Leah Kosokowsky

Date: October 20, 2021

**Re: Reimbursement Claims Fund Committee**

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The Reimbursement Claims Fund Committee met on October 12, 2021 to consider three separate claims for compensation arising out of the Paul Hesse matters. Two of the claims were denied because the funds advanced were used for their intended purpose and were not misappropriated as contemplated by the reimbursement fund guidelines. A third claim was allowed in part, in the amount of \$200,100.00.

Accordingly, the approved claims total is \$3,178,870.00 and relates to 18 claimants.

The committee is scheduled to meet again on October 25, 2021 to consider three additional claims. I will report on those once the committee renders its decisions.



## MEMORANDUM

To: Benchers

From: Leah Kosokowsky

Date: October 21, 2021

**Re: Strategic Planning - Report and Next Steps**

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### INTRODUCTION

Attached you will find the final report of our facilitator, Scott Ferguson.

As you will note, the report first sets out ten conclusions drawn from the retreat itself, followed by a detailed description of the strategic planning process and the Society's mission, values and strategic ends. Finally, the report speaks to preparing for the future and sharpening our focus given the challenging fiscally restrictive times.

The 1½ days devoted to strategic discussions by the benchers and senior staff served to confirm what is important to the Law Society in 2021, namely competence, access to justice, equity, diversity and inclusion, as well as stakeholder confidence. As we enter into the next phase of strategic planning, we will want to delineate that which is important from the areas in which we want to focus our strategic energies. For example, ensuring lawyer competence is at the heart of what the Society does. We strive to ensure lawyer competence by setting standards for admission, delivering a robust pre-call education and articling program, offering CPD programs that are relevant to 2021 practice, creating and maintaining resource materials in core areas of practice and mandating a minimum number of continuing professional development hours annually. The question for the benchers is whether there is a particular area under the rubric of "competence" where the Society should be focusing its energies in the next strategic planning period. As Mr. Ferguson noted, more work needs to be done to provide you with the necessary information to make those decisions and to decide on where we ought to be focusing our time, attention, effort and other resources.

Another important conclusion drawn from the retreat is that you need better information regarding the cost and the impact of various initiatives so as to better determine where the Society should focus its resources.

Accordingly, we propose to proceed on the following basis. First, we will ask that you consider the first six “conclusions” of the strategic plan and determine if they are accurate and a sound foundation on which to proceed.

Secondly, we propose that a small working group develop a proposal for your consideration which would contain a range of strategic options under each of the four objectives to help you decide upon the immediate and long term priorities for the Society.

To properly frame that work, the working group will analyze the status of works in progress under the current strategic plan and the relative costs of moving those initiatives forward. Consideration of further strategic priorities will also factor in the relative cost and anticipated impact.

### ADOPTING SIX CONCLUSIONS FROM THE RETREAT

Mr. Ferguson has suggested that the following conclusions can be drawn from the surveys you have completed over the last 1½ years as well as our discussions in early September:

1. Overall, the Law Society serves the public interest well and continues to fulfill its aim that the public is served by a competent, honourable and independent legal profession.
2. The Law Society must continue to be vigilant to protect self-regulation.
3. The Law Society’s mission continues to be relevant: “The aim of the Law Society of Manitoba is a public well served by a competent, honourable and independent legal profession.”
4. The Law Society’s stated values should be expanded to include a statement that reflects the fact that the Law Society values Canada’s Indigenous history, the contribution of Indigenous Manitobans and truth and reconciliation.

The Society should consult with the Equity Committee and the Indigenous Advisory Committee regarding the inclusion of a stated value related to reconciliation and how that might be phrased.

5. Two of the Law Society’s eight ends should be revised.
  - a. Revise end #6 from “legal services are reasonably available to the public at a reasonable cost” by removing “at a reasonable cost.”



The basis for the proposed change is to clarify that the Law Society does not set the market rates for legal services but is committed to furthering access to justice for Manitobans.

- b. Revise end #8 by replacing “all persons may fully participate in the legal profession” with “the legal profession will reflect the diversity of Manitoba.”

Revised wording would more clearly articulate that equity, diversity and inclusion within the legal profession in Manitoba requires that every Manitoban can see themselves in the profession.

6. The four strategic objectives continue to be relevant.
- Lawyer competence
  - Stakeholder confidence
  - Access to justice
  - Equity, diversity and inclusion.

**Question no. 1:**

**Do you agree that each of the six conclusions noted above are an accurate reflection of the discussions and conclusions reached at the strategic planning retreat?**

**Question no. 2:**

**Are there important conclusions that were missed in the facilitator’s report that ought to be considered as we formulate our strategic priorities?**

**STRATEGIC PLANNING WORKING GROUP**

The 2017-2020 strategic plan was very ambitious and while many goals and objectives have been accomplished, much of that work remains underway. Accordingly, while that work progresses over the next several months, it is proposed that the working group (consisting of Grant Driedger, Sacha Paul, Lynda Troup, Susan Boulter, Rennie Stonyk, Darcia Senft and me) conduct the analysis that is required to move the new strategic plan forward.

Given that the strategic planning process is unfolding during the pandemic, Mr. Ferguson has recommended that the benchers give consideration to the length of the strategic plan and whether it ought to be revisited in two years to assess the impact that the pandemic may have on our strategic focus. We propose that the working group make a recommendation to you regarding the length of the plan as well.

**Question no. 3:**

**Do you agree that a small working group should return to you with a proposal containing a range of strategic options for your consideration?**

Atc.

## “FUTURE” AND “FOCUS”

### 2021 STRATEGIC PLANNING – LAW SOCIETY OF MANITOBA

#### FACILITATOR’S REPORT



Scott Ferguson FCPA FCA CMC CPF PCC  
FACILITATOR AND BUSINESS IMPROVEMENT COACH

October 13, 2021



## ***“FUTURE” AND “FOCUS”***

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## ***“FUTURE” AND “FOCUS”***

### **TEN CONCLUSIONS FROM THE RETREAT**

#### **1. OVERALL, LAW SOCIETY SERVES PUBLIC INTEREST WELL**

The Law Society of Manitoba is fulfilling its Mission/Aim.

#### **2. THE LAW SOCIETY MUST CONTINUE TO BE VIGILANT TO PROTECT SELF-REGULATION**

Self-regulation is a privilege that a provincial government bestows upon the profession so as to provide society with regulation that is steeped in a deep and practical understanding of the professional activities it is overseeing. It is a privilege for which the regulator must always prove worthy.

In some jurisdictions, there are signs of growing public skepticism of a profession’s ability to objectively regulate itself, which is leading to regulatory reform in some parts of Canada and abroad. Similarly, legislation that, for example, alters or weakens solicitor-client privilege, undermines the independence of the Law Society whenever such legislative changes are not the policy of the regulator. It is important to keep benchers up-to-date on all of these developments.

Recall that one of the Law Society’s stated Values is **the legal profession is independent of government in a manner which best preserves and promotes the rule of law**. The Law Society’s Strategic Objective, to **Build stakeholder confidence in the Law Society as the regulator of the legal profession**, is more important than ever.

#### **3. THE LAW SOCIETY’S MISSION/AIM CONTINUES TO BE RELEVANT**

**The aim of the Law Society of Manitoba is a public well served by a competent, honorable and independent legal profession.**

#### **4. THE LAW SOCIETY’S STATED VALUES SHOULD BE EXPANDED**

The stated Values of: Integrity; Competency; Accountability; Fairness; Equity, Diversity and Inclusion; and Collaboration continue to be relevant, to which the Law Society should add a Value to reflect how the Law Society values Canada’s Indigenous history, the contribution of Indigenous Manitobans and Truth and Reconciliation.

The retreat directed management to consult with the Indigenous Advisory Committee and Equity Committee and appropriate others and return to benchers with a specific proposal.

## 5. THE LAW SOCIETY'S STRATEGIC ENDS SHOULD BE REVISED

The eight Strategic Ends continue to be relevant, with two exceptions:

- Replace *All persons may fully participate in the legal profession* with **The legal profession will reflect the diversity of Manitoba**, and
- retain **Legal services are reasonably available to the public** but delete the phrase **at a reasonable cost**.

## 6. THE FOUR STRATEGIC OBJECTIVES CONTINUE TO BE IMPORTANT

Lawyer competence, stakeholder confidence, access to justice and equity, diversity and inclusion continue to be important Strategic Objectives.

## 7. TWO STRATEGIC OBJECTIVES HAVE NOT PROGRESSED AS WELL AS THE OTHERS

There is a sense that the Law Society has not made as much progress on Access to Justice and Equity, Diversity and Inclusion as compared to Lawyer Competence and Stakeholder Confidence.

This is not to take away from the amount of progress that has been made to date amid challenges such as:

- the complexity of these two issues
- the recency of society's awareness of, sensitivity to and interest in these two issues (relative to the other two strategic objectives – stakeholder confidence in regulation and lawyer competence), and
- the fact that these are broad societal issues, not issues specific to the legal profession.

Another commonality of these two issues is that many people and organizations are trying to address them. It can be tempting for the Law Society to keep searching for ways to "do more". A challenge for the Law Society is to identify its optimal role and potential contribution in order to:

- make the best use of its resources, and
- not inadvertently underinvest strategic attention in Lawyer Competence and Stakeholder Confidence.

## 8. PREPARE FOR THE FUTURE

For many sectors, the pandemic and the technological advances it has brought have greatly accelerated change. Among benchers, there are varied views as to what extent accelerating change applies to the Law Society. Also, some express a view that lawyers tend to be slow to change, pointing to reticence by some lawyers and by the court system to take advantage of technological tools that are readily available today.

Nonetheless, the Law Society should prepare for the future. For example:

- Work with law societies across Canada to develop a more robust national registry of lawyers so that, in this age of remote work, the public can understand which lawyers are qualified to practise where, which bodies regulate which lawyers and that a lawyer is in good standing with the relevant regulator

- Provide tools and services to lawyers who work alone (ie: virtually) to support both lawyer competence and health and wellbeing
- Investigate and address the apparently growing gap between technology haves and have nots – both amid the public and among lawyers – to support lawyer competence and access to justice
- Pursue alternative business structures to enhance access to legal services
- Provide education to equip the public to be discerning users of electronic direct-to-consumer legal services
- Take steps to promote healthy lifestyles and reduce the stigma and career risk of health problems, particularly regarding mental health.

## 9. IT IS IMPORTANT THAT THE LAW SOCIETY DETERMINE WHERE AND HOW TO FOCUS

Even without the factor of Change (previous point), the Law Society does not have the resources to “do more” across the board. A retreat that concludes “do more of everything” would be unsuccessful. The next Strategic Plan should provide guidance to Benchers and Management on where to focus time, attention, effort and other resources.

The issues that face regulators are increasingly complex. Also, the Law Society of Manitoba has a mandate to manage the exact same issues as other law societies that are many times larger and far more deeply resourced.

To fulfil the Mission/Aim of the Law Society of Manitoba, it is important to:

- focus strategic and operational time and attention on where they are needed most, and
- apply innovative means to meet challenging strategic objectives despite a relatively modest resource base, such as through the types of innovative collaborations and partnerships that the Law Society has been leveraging in recent years.

During the retreat, some benchers reported that they did not feel knowledgeable about the order of magnitude of the cost and impact of various Law Society activities or of the Law Society’s need to focus its resources. There appears to be an opportunity for benchers to develop more knowledge of these matters such as in the Law Society’s budget process.

To make optimal use of limited resources, participants suggest that the Law Society focus especially on:

- providing education to benchers, lawyers, judges and the public by such means as mentoring and practice tools for lawyers and public education about cultural awareness and about the Law Society and how the public can benefit from its services
- trust-building personalized outreach to the most vulnerable communities
- promoting law as a career among under-served groups in society
- taking action so that members across diverse communities can engage with and “see themselves” among the profession’s leaders
- identifying the many organizations that pursue access to justice and equity, diversity and inclusion and focus Law Society efforts on those activities that are most supportive of the Law Society’s Mission/Aim
- seeking and acting on guidance from the Indigenous Advisory Committee and Equity Committee as to which Law Society potential actions will likely provide the greatest benefit in the community.

Also, to make optimal use of limited resources, participants suggest that the Law Society de-emphasize:

- big CPD events and “in-person” formats for events
- potential overlap with other organizations, such as in Access to Justice and in Equity, Diversity and Inclusion, as explained above
- “go it alone” programs and services, thus, creating programs and solutions that can be more efficiently developed in collaboration with several law societies or by appropriately relying on solutions that are being developed by other organizations; this includes developing less CPD in favour of referring learners to or by curating professional development that has been developed by other organizations
- The Law Society’s subsidization of legal education.

When asked to rate and rank the four Strategic Objectives and the rapidly evolving issue of Digital Transformation, the pattern of responses was generally that Lawyer Competence rates and ranks highest, Digital Transformation is lowest, and the others are “about the same”. Management may have a need to request that benchers consider this question further in the interests of optimal resource allocation.

## 10. SUGGESTED NEXT STEPS

1. Provide the final version of this report to all invitees to the Strategic Planning Retreat.
2. Management work with Executive to recommend formal bencher endorsement of Conclusions 1 through 6 above, subject to obtaining advice (explained above) for Conclusion 4.
3. Over a reasonable period of time, management develop, for benchers’ consideration, its recommended action plans and budgets for the activities listed in Conclusions 8 and 9, taking into account Conclusion 7.
4. Regarding Conclusion 9, if management requires clearer guidance on where to concentrate the Law Society’s strategic focus and other resources, it can make a proposal of relative priorities for benchers’ formal consideration.
5. This strategic planning process took place during extraordinary times – amid a 100 year pandemic and a series of disturbing and troubling societal events that have heightened the urgency of issues such as Reconciliation and Equity, Diversity and Inclusion. Many of the suggested actions in this report may be actionable in just a few years, which may shorten the utility of this overall report.

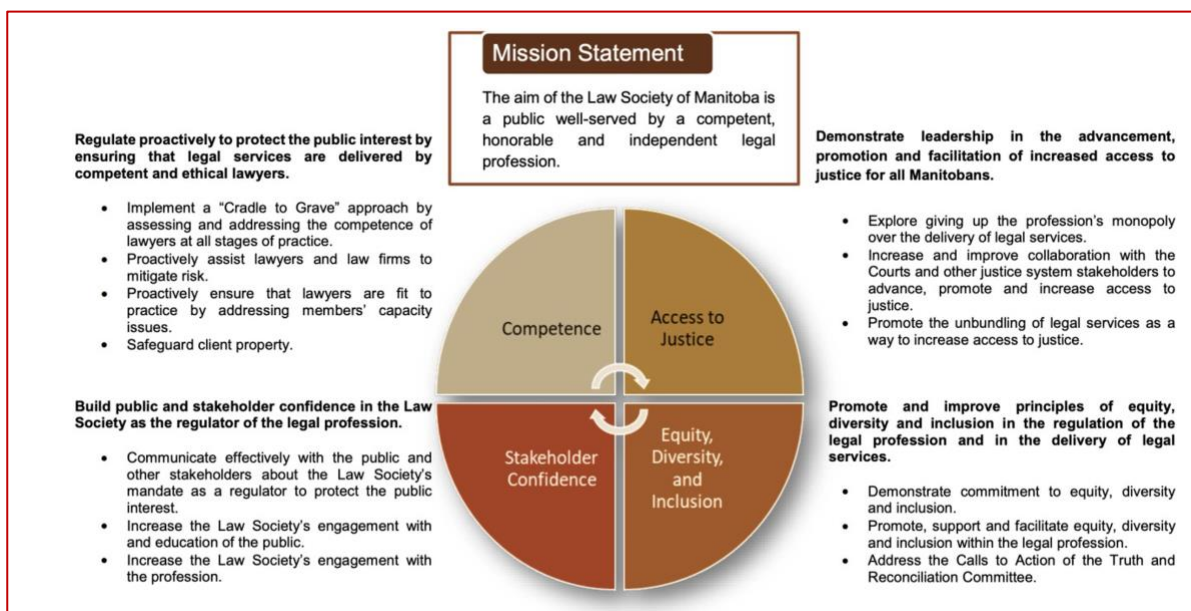
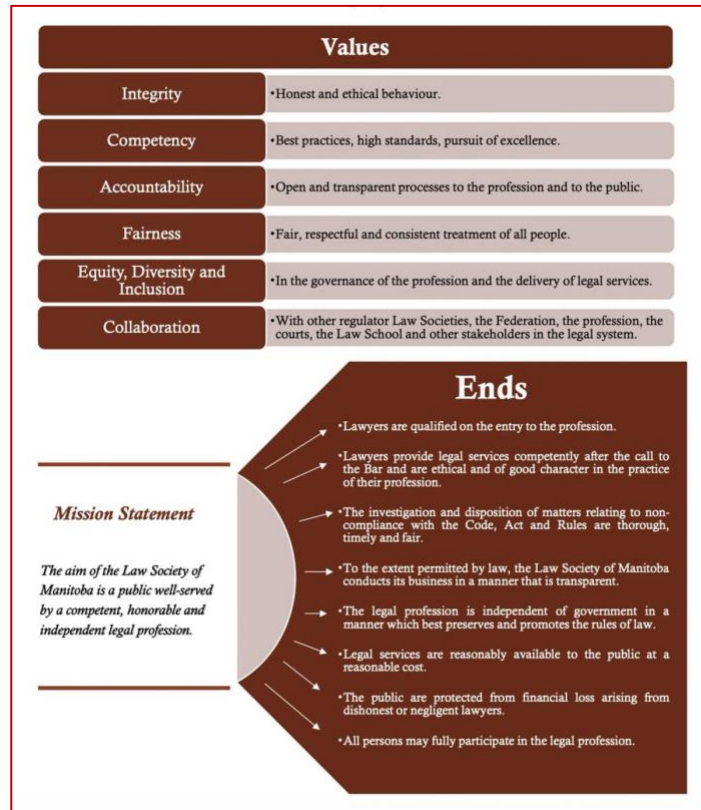
In approximately two years, hopefully with a pandemic behind us and considerable improvements on Reconciliation, Access to Justice and Equity, Diversity and Inclusion, consider a revisit of the Strategic Plan to take stock of progress and to take advantage of a better sense of what to expect in the changing strategic environment in the years beyond.



## OVERVIEW OF THE STRATEGIC PLANNING PROCESS

### UPDATING THE EXISTING STRATEGIC PLAN

In 2020, the Law Society embarked on a Strategic Planning process to update or revise the existing Strategic Plan that was developed in 2017, which was as follows:



## TWO ROUNDS OF ENVIRONMENTAL SCANNING

The current process began by developing a [2020 Environmental Scan](#) to inform a Strategic Planning in-person retreat of benchers and senior management planned for September of that year. The scan explored 12 topics:

1. Public/Government confidence in regulation of lawyers
2. Scope of regulation
3. Trends in legal services provided by lawyers
4. Trends in regulation of lawyers
5. Competence and ethics of lawyers
6. Lawyers' wellbeing and mental health
7. Impact of technology
8. Access to justice (A2J)
9. Equity, diversity and inclusion (EDI)
10. Truth and reconciliation (TRC)
11. Governance of the Law Society
12. Impact of the pandemic.

Due to the COVID-19 pandemic, the retreat was postponed until 2021.

Benchers and management considered whether there were any pressing strategic issues that could not be deferred for discussion a year later and concluded that there were none.

The Strategic Planning process was continued in the spring of 2021 with the publishing and consideration of the Law Society's [2021 Environmental Scan Update](#). The update confirmed the 2020 scan and introduced three additional considerations:

13. The pandemic is lasting longer than had been expected a year ago
14. There are impacts of the pandemic that will be permanent, and
15. Due to the pandemic and other factors, technology is now advancing more rapidly than in 2020.

## 2021 RETREAT

The retreat, planned for an in-person format, was unfortunately converted to a virtual format due to the pandemic's fourth wave and Delta variant. Participants prepared for the retreat by submitting prework.

## RESULTS OF THE RETREAT

The process was designed and facilitated by an independent facilitator, Scott Ferguson, who has extensive experience in working with Canadian regulators and very relevant experience working with the legal profession specifically.

This document is the Facilitator's Report on results of the Law Society's 2021 Strategic Planning retreat.

## MISSION, VALUES AND STRATEGIC ENDS

Except for the following, the current Mission, Values and Strategic Ends will continue to be relevant and important.

### VALUES: ADD A VALUE ABOUT RECONCILIATION

Indigenous people have a unique place in our history and in our laws, including in the Canadian constitution. Given Canada's journey in Truth and Reconciliation, this seems to be the right time to recognize Reconciliation in the Law Society's stated Values.

Add a Value to reflect how the Law Society values Canada's Indigenous history, the contribution of Indigenous Manitobans and Truth and Reconciliation, something to the effect of **Reconciliation: Recognize the specific role that indigenous Manitobans have in our society.**

The retreat directed management to consult with the Indigenous Advisory Committee and Equity Committee and appropriate others and return to benchers with a specific proposal.

### STRATEGIC ENDS: ADD DIVERSITY

Equity, diversity and inclusion and access to justice are not fully recognized until all Manitobans can appropriately see themselves in the legal profession. Add **the legal profession will reflect the diversity of Manitoba.**

A related issue is whether to designate a seat among Benchers for Indigenous representation. This should be explored.

### STRATEGIC ENDS: DELETE REFERENCE TO COST

Retain **Legal services are reasonably available to the public** but delete the phrase **at a reasonable cost** for the following reasons:

- This phrase is subject to potential misinterpretation that the Law Society has a responsibility to interfere in the pricing of legal services in the marketplace, which was not the original intent
- The Law Society does believe that it has a role to intervene when a member has imposed an unjustifiable amount of fees upon a client, a role that it has long carried out; this role can be inferred by this strategic end without that phrase
- The Law Society also believes that it has a role to address access to justice by encouraging and facilitating lower-cost forms of legal services; this role can be inferred without that phrase.

## PREPARE FOR THE FUTURE

Of the many issues raised in two rounds of environmental scanning, participants believe that the following 44 probable changes will be particularly important for the Law Society to prepare for and respond to. The 19 in **bright font** are the *most* important.

<b>DEMAND FOR LEGAL SERVICES</b>	
1	Increases in generational wealth for younger people (who will need legal advice)
2	Increased demand for more legal services
<b>WHO PROVIDES WHICH LEGAL SERVICES</b>	
3	Increased centralization of legal work to larger firms
4	Local legal work will be limited to wills, criminal, family, real estate and small business advice
5	More legal work will be done through intermediaries
6	More solo and small firms
<b>EDUCATION</b>	
7	Fewer articling positions
<b>HEALTH</b>	
8	Expectation for protecting and supporting meaningful health and wellness
9	Lawyers expecting more work/life balance which may encourage more women to stay in practice
<b>SELF-REGULATION</b>	
10	Greater government intrusion, weakened self-regulation
11	It will be more difficult to engage people in the regulatory process
12	The system will adapt to growing self-representation
13	Increased public participation in regulation
14	Need for greater transparency and accountability for lawyers who do not serve the public interest
15	Increased complexity of complaints to regulator
<b>REMOTE WORK</b>	
16	Manitoba lawyers providing services remotely where they don't reside (Palm Springs?)
17	Remote meetings (courts, with lawyers) and legal services provided online, electronic document exchange, use of technology in knowledge management and education, consumers/lawyers embrace opportunity for more efficient legal services
18	Regulation will require coordination among multiple Law Societies
19	Increased remote work and flexible work arrangements (people working more independently) increases training and competence risk
<b>TECHNOLOGY</b>	
20	Increased use of and reliance on technology
21	AI providing basic legal advice
22	People using forums (Reddit, Quora) to get legal advice
23	Lawyers will have to adapt to and be more competent in use of technology
24	More electronic processing of documents
25	Technology will change the legal and regulatory landscape
26	Tech-ready regulation and rules
27	More electronic processing of documents
28	Technology will play a bigger role in court operations (eg: electronic transfer of documents)
29	Electronic banking will require change in regulation of trust accounts

ACCESS TO JUSTICE	
30	More alternative service providers (other providers of legal services)
31	Alternative business structures such as Law/Accounting firm
32	Increased regulation of other providers of legal services
33	Increasingly, only the rich and poor will use legal services
34	Improvements to Access to Justice
35	Increased demand for more affordable legal services
36	Have/Have Not gap because of broadband will grow
EQUITY, DIVERSITY AND INCLUSION	
37	Greater diversity of lawyers and more youthful
38	Some progress in EDI reflective of societal shifts
39	Law Societies will have to adapt to dealing with more diverse participants in the regulatory process (eg: lawyers, complainants)
40	Increased diversity among decision-makers (firms, regulators, courts, universities, etc.)
41	Wider range of cultural competencies for lawyers/law firms
42	Increased diversity in Manitoba general population
43	Diversity will become more of an imperative
44	Diversity brings broader perspectives such as younger lawyers' more holistic view of balance in their lives

The next page lists 25 significant impacts of **technological change** that the participants believe the Law Society should prepare for and respond to. The 10 in **bright font** are the *most* important.

<b>DEMAND FOR LAWYERS</b>	
1	Less demand for new lawyers
2	The emergence and application of AI which could render lawyers and even paralegals less relevant
<b>EDUCATION</b>	
3	Lawyers lacking in tech skills and resources will become marginalized and have problems.
<b>REMOTE WORK</b>	
4	Ensuring public is properly served by profession increasingly doing everything virtually
5	Technology = isolation + alienation for lawyers. How do you mentor and regulate through a screen?
6	The ease for non-MB lawyers to regularly practice in MB (and how we regulate them) and the risk of a MB lawyer who will practice MB law but never be located in MB where the LSM – or any Canadian Law Society - can "reach" them
<b>VOLUME OF WORK</b>	
7	LSM Responding to all the demands within appropriate timelines given the staff resources.
8	Lawyers balancing client demands that come at all hours of the day.
<b>REGULATORY CHANGES</b>	
9	Regulating the practice of law without hindering or stifling lawyers from utilizing technology that's available
10	Cost to implement and maintain regulation and education programming and ensuring practicing and new lawyers are competent to deal and operate with the technological changes.
11	Having the technological capacity to regulate lawyers and legal service providers who have adapted to the technological changes. The way we regulate (including Legislation, rules, etc.) will have to undergo significant change.
12	Regulation of legal services provided through AI
13	Regulating lawyers when their practices integrate AI and more technology. What are practical and ethical implications? We're already late adopters re technology so need to leapfrog ahead on this.
14	Rules re maintaining client matters in a confidential matter with so much going on in the cyber world; security risks around remote work
<b>DIRECT-TO-CONSUMER LEGAL SERVICES</b>	
15	Apps and websites that provide legal services with little or no involvement of lawyers.
16	Whether to regulate the automated delivery of legal services directly to consumers of those services.
<b>ACCESS TO JUSTICE</b>	
17	Increased disparity between the haves and have nots.
18	The gap between who has access to technology and who doesn't; this will include demographics, geography, members of historically disadvantaged groups and youth.
19	Keeping the clients involved. The system and the lawyers can have all the technology they want but if the clients can't use and understand it, it's counter-productive.
<b>NEED FOR FOCUS</b>	
20	Focus and consensus on which projects to use limited resources.
<b>WILLINGNESS AND ABILITY TO CHANGE</b>	
21	Lawyers have been slower than most to accept tech and to recognize the value/ acceptability of digital equivalents (e.g., E-signatures are still not widely used). Training /education/ specialized development to catch up to consumer expectations will be a challenge.
22	Keeping ahead of those trying to take advantage of our clients and us.
23	Is the legal profession open to change and willing to keep pace with client expectations?
24	Courts continuing to remain in the dark ages while the rest of the legal community adapts.
25	Resistance to the reliance on technology for a variety of activities (engagement, access to justice, access to resources)

Participants then proposed the highest impact actions that the Law Society could take in six areas to prepare for and respond to change.

### **REMOTE LEGAL WORK: REGULATING MANITOBA LAWYERS PRACTISING FROM ELSEWHERE <sup>1</sup>**

The following are potentially high-impact actions that the Law Society could take:

- a. In collaboration with other Canadian law societies, develop a national approach to addressing this issue
- b. In collaboration with other Canadian law societies, develop a more comprehensive one-stop national registry to track the locations from which Canadian lawyers are practising, so the public can be aware of who is licensed to practice and to which regulating bodies to go to make a complaint or seek a remedy
- c. In collaboration with other Canadian law societies, review whether the inter-provincial harmonization protocols need to be modernized to reflect issues of remote work
- d. Require that Manitoba lawyers maintain a physical anchor in Manitoba such as location of records, trust accounts, etc.
- e. Develop electronic infrastructure to conduct practice audits remotely and to facilitate the transfer of legal services such as in the event of the death of a sole practitioner who practices in Manitoba from elsewhere.

### **REMOTE LEGAL WORK: LAWYERS WORKING ALONE**

Working alone raises isolation (mental health), lesser quality experience (lawyer competence), a mentoring challenge (also lawyer competence) and overall, not experiencing everything being a lawyer has to offer. While isolation can have effects on lawyers at all stages of their careers, factors regarding competence impact newer lawyers especially.

The following are potentially high-impact actions that the Law Society could take:

- a. Possibly in collaboration with the Manitoba Bar Association, create a mentorship program between students/junior lawyers and senior lawyers to better “learn the ropes” of being a highly competent lawyer and to reduce the risk of isolation. The Law Society should have a role in the selection of mentors (not everyone is appropriate for the mentor role) and to teach the nature and skills of effective mentoring.
- b. Host in-person networking CPD events both in urban and rural areas. Leverage technology to expand the reach of these activities into and among rural areas.
- c. Promote health and wellness programs through a holistic and attention-getting campaign that informs lawyers what the programs are about, how they practically work and how to access them. For example, many lawyers may not be knowledgeable about the Blue Cross EAP program, the upcoming peer support program and the upcoming diversion program.

<sup>1</sup> This discussion is beyond the 100 hour rule that is shared among provincial law societies

**LEGAL SERVICE DELIVERY/ALTERNATIVE BUSINESS STRUCTURES**

Participants looked at two aspects of this issue.

One is to enhance access to justice by becoming experimental about permitting other providers of legal services such as paralegals to provide specified services.

The other is the comingling of different types of professionals (lawyers, accountants, psychologists, social workers, etc.), within a one-stop shop. An example of a complication is that these different professions are overseen by separate regulators and that may have conflicting rules such as about referral fees.

A potentially high-impact action that the Law Society could take would be engagement with stakeholders such as other law societies, the public, lawyers, service providers, NGOs and Indigenous nations to identify legal services (eg: aspects of family law, immigration, child welfare, EIA, EI, etc.) that could safely be provided by appropriately regulated other providers of legal services such as is the case with regulated paralegals and civil society organizations (NGOs) in some jurisdictions or could be provided in a non-regulated setting safely.

When considering solutions of other jurisdictions, consider how best to adapt them to the peculiarities of Manitoba such as Manitoba's highly bifurcated urban/rural population and relatively large indigenous population.

The overall approach to permitting alternative business structures should be prudently incremental.



### **LAWYERS' USE OF AI and DIRECT-TO-CONSUMER LEGAL SERVICES**

There is an important distinction to make between lawyers' use of AI and direct-to-consumer legal services. The former is a tool in a lawyer's toolbox. The lawyer's use of AI is subject to due diligence, such as guarding against imbedded bias, which is captured in the regulation of lawyer competence. The latter represents legal services provided outside of the regulated practice of law.

Regarding direct-to-consumer services, the following are potentially high-impact actions that the Law Society could take:

- a. Focus on educating the public, not trying to regulate such services
- b. Educate the public about risks and limitations of such services. This could be done in conjunction with law societies in other jurisdictions across Canada and beyond.
- c. Work with the Federation to develop a national approach.
- d. Develop criteria for a consumer to vet platforms and services, such as what to look for to evaluate a tool before relying upon it.

### **GROWING GAP BETWEEN TECHNOLOGY HAVES AND HAVE NOTES**

The nature of such gaps includes:

- Access by members of the public to technology, including access to broadband internet
- Lawyers' proficiency in using quickly emerging technologies
- Lawyers' mastery and management of data security
- Time constraints of lawyers to become more technologically savvy
- Extent to which lawyers want or need help or realize that they need help.

Technological competency is in the Code and law schools are mandated to graduate technically competent students. Nonetheless, the nature of information technology is changing rapidly, perhaps exponentially.

The following are potentially high-impact actions that the Law Society could take:

- a. Consult with lawyers and members of the public to deepen and broaden the Law Society's understanding of these gaps; consider the research conducted in other jurisdictions and confirm how patterns elsewhere apply to our unique Manitoba environment.
- b. Advocate for better and broader access to broadband internet throughout Manitoba.
- c. Nudge firms, encourage firms and then set standards such as for data management.

## HEALTH AND WELLNESS

In addition to promoting healthy lifestyles, an important objective is to reduce both the stigma and career risk of health problems, particularly regarding mental health, and promote the notion that “It’s OK to say you’re not OK”.

The following are potentially high-impact actions that the Law Society could take:

- a. Add CPD topics on Health and Wellness such as regarding depression
- b. Mandate CPD health and wellness hours (eg: at least 2 hours annually)
- c. Add health and wellness as a topic at Law School
- d. Provide a service to advise lawyers on health and wellness, similar to and linked to practice advice (eg: triage whether the person’s need is primarily to do with the practice of law or health and wellness)
- e. Provide a forum for lawyers, especially solo practitioners, to meet in a psychologically safe environment to explore health and wellness issues
- f. Encourage firms to assign a properly trained and qualified point person (similar to a firm’s trust account supervisor) to oversee the firm’s policies and support of health and wellness; such policies can include reasonable and healthy expectations of firms regarding the workloads of young lawyers.

## SHARPEN THE FOCUS

The previous section explored how the Law Society should best address the rapidly evolving changes in its environment.

Even without the factor of Change, the Law Society does not have the resources to “do more” across the board. A retreat that concludes “do more of everything” would be unsuccessful. The next Strategic Plan should provide guidance to Benchers and Management on where to focus time, attention, effort and other resources.

Hence, the theme of this section is Focus.

### ACTIVITIES, RESULTS AND THE PARETO PRINCIPLE

Activities produce results. Activities consume resources. Results do not.

The Law Society’s mandate is results, not activities. Therefore, focus the most time, attention and other resources on the fewest activities that will produce the greatest results.

A proven approach is to apply the Pareto Principle that stipulates that 20% of activities often generate 80% of results. The opportunity is to focus more on “that 20%”.

### INVEST IN ACTIVITIES THAT WILL HAVE THE GREATEST IMPACT

Within the structure of the existing Strategic Plan, participants were asked to identify those activities that would likely provide the greatest contribution to meet each of the four Strategic Objectives and that the Law Society should focus on most.

To do so, participants were encouraged to apply the Pareto Principle. The following is the result of their discussion.

### COMPETENCE OF LAWYERS

#### EMPHASIZE MORE:

- a. Mentoring both for new calls and for experienced lawyers
- b. Proactively provide law practice tools to small firms and solos
- c. Focus professional development, guided by issues that commonly arise in discipline activities and insurance claims, and also cultural awareness training
- d. Educate lawyers on the significance of health and wellness and its link to lawyer competence.

#### EMPHASIZE LESS:

- e. Big CPD events such as Pitblado and/or consider less costly formats for such events; take into account the direct investment of staff time and effort as an event cost
- f. In-person format for training (ie: make better use of technology)
- g. Extent of Law Society's subsidy of PREP costs

### STAKEHOLDER CONFIDENCE IN THE LEGAL PROFESSION AND REGULATION

#### EMPHASIZE MORE:

- a. Promote public awareness of the Law Society's work and contribution, especially with in-person/face-to-face communication
- b. Provide trust-building outreach to the most vulnerable communities
- c. Establish committees or working groups that each focus on nurturing the Law Society's relationship with a particular stakeholder constituency.
- d. Pursue a balance of both regulating lawyers and providing lawyers with services to help them succeed competently.

#### EMPHASIZE LESS:

- e. 50 year celebrations, which might be viewed as self-congratulatory rather than an enhancement of stakeholder confidence in the legal profession
- f. CPD programs created and provided by the Law Society (eg: refer lawyers to and/or curate existing PD created by other organizations)

### ACCESS TO JUSTICE

#### EMPHASIZE MORE:

- a. Enhance public awareness of the different entities that are working on access to justice (eg: Library Hub, Legal Help Centre and University of Manitoba Law Centre) and how to benefit from their efforts.
- b. Pursue representation of historically disadvantaged groups on the LSM board and on other boards, advisory committees or working groups
- c. Address the particular challenges of access to justice experienced by remote, indigenous and historically disadvantaged groups.

#### EMPHASIZE LESS:

- h. Potential overlap with other organizations (ie: identify where the Law Society's role and efforts overlap with those of other organizations and focus Law Society effort on activities that mostly clearly support its Mission/Aim)

### EQUITY, DIVERSITY AND INCLUSION

#### EMPHASIZE MORE:

- a. Enhance training of benchers, lawyers and judges on Reconciliation, equity, diversity, inclusion and human rights
- b. Promote greater diversity in Law Society leadership positions so that people across Manitoba's diverse population can "see themselves" in and better identify with such roles
- c. Boldly promote the practice of law to youth of all backgrounds
- d. Seek and act on guidance from the Indigenous Advisory Committee and Equity Committee as to which activities would likely have the greatest impact, including how to support marginalized members of the profession.

#### EMPHASIZE LESS:

- i. Trying to meet all populations' EDI needs simultaneously, which is not sustainable; Sequence [focus on one population at a time] or prioritize EDI needs for the Law Society to address.

## THIS WAS A CHALLENGING EXERCISE

As shown, participants identified more activities to emphasize than to deemphasize.

## APPLY THE PRINCIPLE OF LEVERAGE IN POLICY-MAKING

During this exercise, some benchers reported that they were not aware of or appreciate a significant need for the Law Society to apply leverage – that is to focus its resources on where they would have the greatest impact. This introduces a risk of “do more” decision-making at a time when Law Society resources are limited and are already stretched.

At the bencher table, regularly apply the principle of leverage to avoid “do more” decision-making and to pursue the optimal use of limited resources to have the greatest impact.

## ENHANCE KNOWLEDGE OF MATERIAL IMPACTS AND COSTS

Some benchers reported that they did not feel knowledgeable about the order of magnitude of the costs and impacts of various Law Society programs and services. This appears to be especially so where a program’s direct use of staff members’ time and effort can be easily perceived as general administration (overhead) when, in fact, it is a program cost.

Enhancing knowledge of the impact and cost of programs and services appears to be an area for improvement.

In doing so, consider a caution. Costing out programs is an exercise in analysis (the opposite of synthesis) that can open up a vortex of a pursuit of greater and greater detail that quickly generates diminishing returns. Ironically, an analysis that is intended to support the optimal use of resources can itself become a poor use of time and effort.

To guard against this phenomenon, apply the accounting concept of **materiality** where it is deemed that **an inaccuracy would not affect decision-making**. For example, there may be a program where an order-of-magnitude, back-of-the-envelope estimate is all that is needed to competently decide whether to launch, continue or discontinue an activity and where any additional analysis or accuracy would therefore be **immaterial** to the decision.

## AREAS OF PRIORITY

Participants engaged in two activities to explore relative priorities across the four strategic objectives and pervasively evolving digital transformation.

In the first activity, 7 discussion groups sought a consensus on a distribution of 100 points across the five areas that would indicate the relative priority of each for the next few years.

In the second activity, individual participants ranked the five areas one pair at a time until they had addressed every combination.

The results were as follows:

Rating:

STRATEGIC AREA	ACTIVITY 1	ACTIVITY 2
Lawyer competence	28	33
Equity, diversity and inclusion	23	20
Access to justice	19	19
Stakeholder confidence	19	15
Digital transformation	16	13
<b>TOTAL</b>	<b>100</b>	<b>100</b>

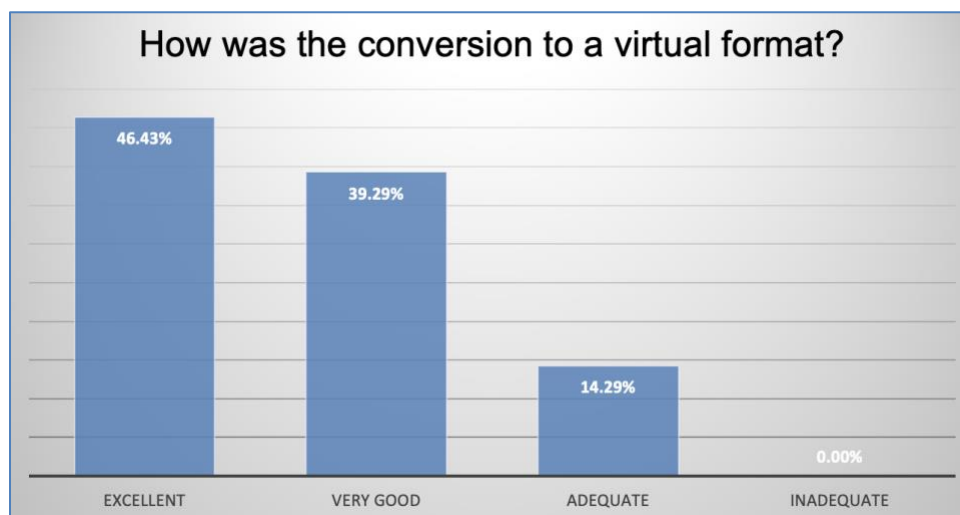
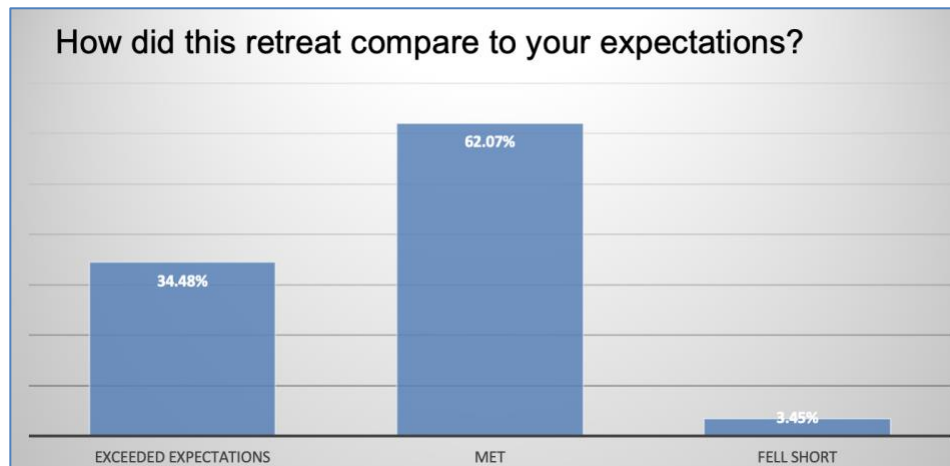
When the scores, above, are viewed as an indication of ranking (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, etc.) the results are as follows:

STRATEGIC AREA	ACTIVITY 1	ACTIVITY 2
Lawyer competence	1st	1st
Equity, diversity and inclusion	2nd	2nd
Access to justice	3rd	3rd
Stakeholder confidence	4th	4th
Digital transformation	5th	5th

#### VARIOUS POSSIBLE INTERPRETATIONS OF THESE RESULTS

REF	POSSIBLE INTERPRETATION	IMPLICATIONS
a	Lawyer Competence is the highest priority. Digital transformation is the lowest. Others are “about equal”	<p>Interpretation “a” provides some direction for the application of strategic focus and resources. The other two interpretations provide little or none.</p> <p>If management concludes that the Law Society needs more focus in order to make optimal and most effective use of resources, it can pursue one or both of the following:</p> <ul style="list-style-type: none"> <li>Further prioritize <b>across</b> strategic areas: create, for benchers’ consideration, a recommended rating and ranking of these five strategic areas that management believes will best serve the Law Society’s Aim/Mission (ie: the exercise reflected in the two charts, above)</li> <li>Further prioritize <b>within</b> strategic areas: taking account the results shown on pages 16 and 17, create and recommend an alternate version of those two pages that management believes will best serve the Law Society’s Aim/Mission.</li> </ul>
b	Lawyer Competence is the highest priority. Others are “about equal”	
c	All are pretty much “about equal”.	

## RESULTS OF PARTICIPANTS' EVALUATIONS





## RESULTS OF PARTICIPANTS' EVALUATIONS

“√” Indicates submission of the same comment by multiple respondents

### WHAT CONTRIBUTED TO THE SUCCESS OF THIS RETREAT?

The difficult decision to meet virtually (as much as an in person experience would have been great, it would have been reckless)

A very respectful and collegial atmosphere √√

Participants were very engaged √

Participants were enthusiastic

Participants were prompt, respectful of each other's time

Collection and summaries of prework

The streamlining of issues to address

Small breakout rooms with specific handouts and tasks √√√√√

Assigning leadership roles within breakout groups

Breakout rooms allowed for focused conversation that I did not expect in a virtual format

The opportunity to get to know one another in breakout group settings √

Discussion and reflection

The technology helped

Facilitator's efforts to learn about us and about our organization

A very organized facilitator √√√

Facilitator's Zoom leadership skills √

Facilitator “keeping it rolling”

Facilitator kept us on track; providing leadership √√√

Facilitator's flexibility that enabled us to add Values and Ends to the agenda

Facilitator's encouragement

Facilitator was helpful

His ability to facilitate such a large group and virtually

Ending the retreat right on time – both days!

Great facilitator √

**WHAT WOULD HAVE MADE THIS RETREAT MORE SUCCESSFUL?**

Holding this event in person, particularly to socialize ✓✓✓✓✓✓✓✓

I would have preferred this event in person; however, the quality did not suffer by holding it virtually ✓

Shorter sessions spread over two weeks

Not tacking on a bencher meeting

Clearer information distributed before the retreat to help us anticipate and interpret the exercises

Reeling in some of the longer discussions, such as Values and Ends ✓

Going deeper on some topics

A staff person in every breakout group

Discussion 6 (about priorities) should not have gone forward when it became evident that we did not have the information (an understanding of the order of magnitude of the relative costs and impacts of various LSM programs and activities)

More time for discussion between small group meetings

More clarification about assumptions

More time to discuss resource allocation based on priorities

Some of the prework responses were not good quality; the facilitator was transparent in giving us back our own words, but could have used his expertise to raise the quality of the material to work with ✓

Felt a bit rushed at times; this may be mitigated by the consistency of our responses

Facilitator's WIFI cut out at times

Explanation of acronyms such as RH, FLAC

Not sure – discussions were thought provoking

Nothing – It was a success.



## MEMORANDUM

To: Benchers

From: Leah Kosokowsky and Rennie Stonyk

Date: October 21, 2021

Re: **Membership Admission Issues:  
Good Character Process and Language Testing**

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### INTRODUCTION

Two issues have arisen in the context of the Society's admission process which bear consideration by the benchers at a preliminary stage. That is, the questions for you today are whether these issues ought to be a priority for the Society in light of other considerations and if so, which Law Society committee ought to be directing the policy development and making recommendations to the benchers.

The two issues in question are whether the Society should:

- (1) conduct a thorough review and consider revising its "good character" assessment process; and
- (2) explore the possibility of requiring NCA candidates to pass an English or French language test in order to be admitted as an articling student in Manitoba.

For the purposes of today's meeting, we will provide a brief overview of the issues, recognizing that a thorough examination and research of the issues would be necessary if you decide that these are matters of priority for the Society.

### GOOD CHARACTER PROCESS

Pursuant to Law Society Rules 5-4, 5-24(2), 5-28.1 and 5-28.2 (collectively referred to as the "good character rules"), the Society has established guidelines for assessing the good character of

applicants to determine their character and fitness to practice law in Manitoba. Applicants are required to disclose a broad variety of matters to the Society, including:

- *all convictions for crimes or other offenses under any statute, regulation or law, except convictions under The Highway Traffic Act, The Liquor Control Act, or municipal by-law, unless there are four or more violations or a term of incarceration;*
- *any conviction or finding of liability as a result of a breach of trust, fraud, perjury, immorality, dishonourable conduct, misrepresentation, dishonesty or undue influence in any civil, criminal or administrative proceeding;*
- *any order made against the candidate regarding institution of vexatious proceedings or vexatious conduct of a proceeding, pursuant to s. 73(1) of The Court of Queen's Bench Act, or such similar legislation as may be in effect in any other Canadian jurisdiction;*
- *any suspension, disqualification, censure or disciplinary action imposed as a member of any profession or organization; and*
- *denial or revocation of any licence requirement, the procurement of which required proof of good character.*<sup>1</sup>

The guidelines further state that the Society may consider other information which, though not strictly fitting within the above categories, might constitute behaviour coming under the good character rules such as conduct which demonstrates or indicates an attitude of disrespect or abusiveness of the court and its processes.

The purpose of the good character rules and accompanying guidelines is to help the Society assess whether an applicant is of good character, and thus suitable to be admitted as a member of the Society.

As you will recall, in March 2021, the Canadian Civil Liberties Association (CCLA) raised concerns about the good character process for membership applicants in Manitoba. In their brief, the CCLA stated that the "*process currently in place creates unnecessary barriers to the legal profession that disproportionately harm individuals from Indigenous, Black and other marginalized groups due to over-policing, profiling, systemic discrimination, and colonialism*".<sup>2</sup> As such, the CCLA has requested that the Society conduct a thorough review of its good character process, make immediate changes to the most obvious gaps, and to do so in consultation with Indigenous lawyers and communities, and lawyers and communities from other marginalized and racialized groups.

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<sup>1</sup> The Law Society of Manitoba Good Character and Fitness to Practice Guidelines For Applications Under Rules 5-4, 5024(2), 5-28.1 and 5-28.2.

<sup>2</sup> Letter from the Canadian Civil Liberties Association to the Law Society of Manitoba, dated March 16, 2021.

While all law societies in Canada have good character assessments, they are not consistent. Some law societies have already made adjustments to their assessments and processes, while others are at different stages of reviewing the merits of their disclosure requirements. In fact, the Federation of Law Societies of Canada has made it a priority in the next year to examine whether some consistency can be achieved in the law societies' various good character assessments.

While Richard Porcher and his staff in the admissions department have completed a preliminary review of our processes and the results of articling student applications over the last five years, a more fulsome review and analysis would need to be undertaken (including an environmental scan) in order to make any recommendations to the benchers.

In determining whether this work ought to be a priority over the coming year, you will want to consider the fact that an attempt to harmonize the good character assessment at the national level could require subsequent changes. Accordingly, you may elect to wait to see what happens at the national level and follow suit. However, you might also consider that the Law Society of Manitoba could be a leader in this area and make a meaningful contribution to the national discussion which, by its nature, will unfold at a slower pace.

You might also wish to consider that we are in the process of setting priorities for the Society's next strategic plan. However, it will likely take a few more months for the benchers to make final decisions on those priorities and this work could be undertaken in the interim and could be factored into those decisions.

### Questions:

- 1. Is the review and analysis of the "good character" process a priority for the benchers in this upcoming year?**
- 2. If the answer to the question above is "yes", is it appropriate for the review and analysis, and any resulting recommendations, to be conducted through the Equity Committee (with some contribution from the Indigenous Advisory Committee) or is it better suited to the Admissions and Education Committee which can seek input from the other committees as needed?**

### LANGUAGE TESTING

Over the last decade, Manitoba (like most other provinces) has seen an exponential increase in the number of foreign trained lawyers seeking to practice their profession in Canada. In order to begin

the process, the individual must have their legal education and professional experience assessed by the National Committee on Accreditation (NCA) of the Federation of Law Societies of Canada.

NCA candidates also are required to demonstrate proficiency in communicating in at least English or French. To demonstrate proficiency, a candidate must either:

- (1) have completed a law degree in English or French from a country where English or French is an official language; or
- (2) take and pass an English or French language exam.

With respect to the language exam, the NCA only requires candidates to take and pass a “general” level exam, which is the same level that is applied to individuals seeking admission to Canada. They are not required to pass the “academic” level exam, which is required by some other professions. Accordingly, many NCA candidates who did not complete their law degree in English or French, are only required to pass a basic-level language exam in order to proceed through the NCA process. That said, those same candidates are required to successfully complete exams in one of Canada’s official languages to receive their Certificate of Qualification – the equivalent of a Canadian common law degree.

Over the last several years, courts in Manitoba have communicated concerns to the Society, both formally and informally, regarding the inability of newly called lawyers to communicate in English at a professional level. As a result, the Society has some concern with those lawyers’ ability to competently represent their clients if they are struggling to communicate with the courts, opposing counsel and possibly with their own clients. The lawyers who are struggling are, for the most part, foreign trained lawyers who have come through the National Committee on Accreditation.

It also has become apparent that some NCA candidates are struggling in the new PREP program and the reason that the majority of NCA candidates are unsuccessful is due to a language barrier. While the new PREP program may resolve the issue before the courts, those unsuccessful candidates will have invested time and money into PREP, only to fail due to their inability to understand and communicate in English at an academic level.

To address this issue, the Society could consider implementing its own process for enhanced language testing of NCA candidates. Before any clear recommendations can be made to the benchers on the question of additional language testing, more research and analysis would be needed. If you consider it to be a priority, the matter will be brought to the Admissions and Education Committee to make proposals and recommendations to the benchers in due course.

**Questions:**

- 3. In light of the impact that PREP is having on NCA candidates with language barriers, does there remain a need to review and analyze the option of implementing additional language testing of NCA candidates before they invest in PREP? Is this review a priority for the benchers in this upcoming year?**



# MONITORING REPORT

To: Benchers

From: Leah Kosokowsky and Kathy Levacque

Date: October 20, 2021

**Re: Audit Department**

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## INTRODUCTION

The Law Society audit program was established in 1961. It is designed to ensure that clients' trust funds are safely and effectively handled by lawyers and law firms. This is the thirteenth monitoring report to the benchers under our current governance process, with the last report having been considered in February 2017.

In addition to generally providing you with a knowledge base that will be helpful to your work as benchers, the purpose of the monitoring report is to assist you to:

- (a) Judge if we are meeting the ends that you have established;
- (b) Consider whether the ends need modification;



- (c) Judge if we are complying with the executive limitations and whether they need modification.

Following the delivery of the last monitoring report, the Society established a Trust Safety Program, which represents a substantial shift in how we regulate the handling of clients' trust funds. The program became operational in April 2019 and we now have sufficient experience to report on its operations in a meaningful way.

In addition, the Audit Department's work was the aspect of the Law Society's operations that was most significantly affected by the pandemic and its attendant restrictions. A summary of those effects will be included in this report as well.

### WHO IS THE AUDIT DEPARTMENT?

The Audit Department is often referred to as the face of the Law Society. Many lawyers who otherwise do not interact with Law Society staff on a regular basis or who rarely attend at the Law Society premises, will have contact with an auditor if their practice involves a trust account. Before the COVID-19 pandemic, auditors would travel from office to office, showing up largely unannounced to review records and ask questions.

The department consists of four professionally designated accountants and one administrative professional who supports the auditors' work. Kathy Levacque is our Director of Audit. She not only oversees the work of Sandra Alleyne, Deborah Metcalfe and Jing Feng, she has also become a significant decision maker as a result of the Trust Safety Program. Kelly Southall supports the work of the department and also provides support to the Admissions and Membership Department. Deborah Metcalfe has announced her intention to retire at the end of December 2021 and the Society is currently conducting a search for her replacement.

### WHAT DOES THE AUDIT DEPARTMENT DO?

It is the role of the Audit Department to help ensure that the Law Society meets the following three ends established by the benchers that are relevant to the audit/reimbursement program:

- End 2* – Lawyers provide legal services competently after the call to the bar and are ethical and of good moral character in the practice of their profession.
- End 3* – The investigation and disposition of matters relating to non-compliance with the *Code, Act* and Rules are thorough, timely and fair.

*End 7* – The public are protected from financial loss arising from dishonest or negligent lawyers.

Historically, the Audit Department has met these ends by monitoring the operation of trust accounts through four major categories of programs – spot audit, annual trust account report, early monitoring and ongoing monitoring.

### ***Spot Audit Program***

The spot audit program provides the opportunity for the most in-depth look at a law firm. Within the spot audit umbrella, auditors see firms on one of three basis schedules:

- (1) New firms – audited generally within the first year of opening a new firm;
- (2) Regular rotation – the goal is to audit all firms with sufficient trust activity every four years;
- (3) Priority – for various reasons, some firms need to be audited more frequently than every four years, and therefore are visited on a priority basis.

In addition, based on a member's or a firm's risk profile, the Audit Department will, where appropriate, conduct a closing audit when a member retires or closes their trust account.

### ***Annual Trust Account Report***

Every firm with a trust account must complete and submit an annual report. With the advent of the Trust Safety Program, the questionnaire has been shortened considerably and is incorporated into the Trust Account Supervisor's annual member report.

### ***Checkup Program***

The introduction of checkups is an adjunct of the Trust Safety Program. These are designed to be very brief touch points with firms in which they are required to demonstrate that they are current with their record keeping.

### ***Early Monitoring Program***

In the early monitoring program, an auditor will make early contact with a new firm, often within the first three months of the trust account's operation. It is an opportunity to provide education and direction to support the lawyers in addition to allowing for an early review of accounting records.

### ***Ongoing Monitoring Program***

In the ongoing monitoring program, firms that have been found to have deficient record keeping or have not kept current in their monthly trust reconciliations, will be followed by the auditor over a period of time to assist the member with ongoing compliance.

### ***Investigations and Custodianships***

The Audit Department also assists with investigations for the Complaints Resolution Department and provides accounting support when the Society takes custody of a member's practice.

### **PANDEMIC ACTIVITIES**

In the last monitoring report, we were pleased to report that the Audit Department had met its goal of auditing firms with sufficient trust activity at least every four years. We anticipated that with the resources required to implement the Trust Safety Program, the ability to meet that target would be affected. We did not anticipate that a global pandemic would also have a negative impact on the rotation schedule. With that said, the auditors, like most of us, were flexible and made some significant adjustments in their work.

The rotation for firms is currently at once every five years and if it were not for the continuing pandemic, combined with further advances in the Trust Safety Program, among other matters (more on this below), we would hope to return to a four year rotation within the next year. However, without an influx of additional resources, this appears to be unlikely.

The spot audit program was paused on March 18, 2020 and resumed on June 11, 2020 as desk audits. When they resumed their work, rather than auditors visiting law firms, firms were asked to submit their records electronically. While this removed the surprise element, some of the audits nevertheless revealed that the firm's records were not current. As an audit also requires a review of selected client files, the auditors continue to offer a curbside pickup service for the exchange of client files. To date, the profession has been very cooperative for the most part.

### **Spot Audits**

Since June of 2020, the following audits were completed.

<b>Audits (by type):</b>		
New Firm	16	17%
Regular	62	68%
Priority	4	4%
Closing	10	11%
<b>Total</b>	<b>92</b>	<b>100%</b>

***Audit Results:***

Generally complying with requirements	92%
Many or serious accounting deficiencies	8%
<b>Total</b>	<b>100%</b>

**Checkups**

The checkup program was paused on March 18, 2020 and resumed on April 30, 2020. Checkups completed during the period were as follows:

<b>Checkups (by type):</b>		
New Firm	2	<1%
Regular	269	95%
Priority	11	4%
<b>Total</b>	<b>282</b>	<b>100%</b>

***Check Up Results:***

Generally complying with requirements	98%
Many or serious accounting deficiencies	<2%
<b>Total</b>	<b>100%</b>

**Monitoring** (including closings)

The auditors completed 28 early monitorings during the period, with results as follows:

Generally complying with requirements	89%
Many or serious accounting deficiencies	11%
<b>Total</b>	<b>100%</b>

In the past, you could have expected that a member who was found to have many or serious accounting deficiencies would be referred to the Complaints Resolution Department for further investigation and possible prosecution. However, much has changed.

**TRUST SAFETY PROGRAM**

Historically, any lawyer or law firm in Manitoba could open a trust account to handle clients' monies. The rules required that the lawyer inform the Law Society of the account's opening within 30 days

and thereafter, the lawyer or law firm was expected to manage those monies and keep their accounting records in compliance with the trust accounting rules. Resources were provided to the firm to assist with record keeping.

Where a Law Society auditor would discover that a member was non-compliant with the trust accounting rules, the auditor would provide further education and attempt to remediate the member. If the issues were more significant or persistent, the Audit Department would refer the concerns to the Complaints Resolution Department, an investigation would be undertaken, following which a remedial approach was the preferred regulatory response. However, in some cases the matter would be referred to the discipline stream where the member would face a discipline hearing. Throughout the audit, investigation and prosecution, the member would continue to operate the trust account, at some risk to the clients. One need only look at the discipline cases on the Law Society's website to observe the ongoing challenges experienced with repeat, non-compliant members.

The Trust Safety Program was established as a result of the work of the President's Special Committee on Trust Safety, wherein the benchers directed the Society to establish a robust trust compliance program based on the fundamental concept that the ability to operate a trust account is a privilege and not a right.

The program became operational on April 1, 2019 and has the following components:

1. Qualification – every trust account in Manitoba must have an approved trust account supervisor. To become a trust account supervisor, a member must be approved, based primarily upon the member's audit and discipline history.
2. Education – once approved, the trust account supervisor must successfully complete an on-line education program.
3. Revocation – trust account supervisors are responsible for the controls and oversight of the trust account's operation. Failure to comply could result in the trust account supervisor's status being revoked. In some instances, conditional approval for a limited period of six months may be appropriate at the end of which the member would be re-assessed and either approved or denied/revoked.
4. Appeal Process – individuals who have been denied approval, approved with conditions or revoked have a right to appeal that decision to the Trust Safety Appeals Committee.
5. Firms/members may have a designated trust account supervisor (from outside of the firm), provided that matters of conflicts and confidentiality are addressed.

Following a fairly significant communication plan rollout, the Law Society rule amendments were approved by the benchers and we were ready to roll.

### ***Transition – Existing Trust Accounts***

When the program became operational, the 329 firms with active trust accounts were required to submit the name of a proposed trust account supervisor by April 1, 2019. Approximately 30 firms closed their trust accounts during that period. The transition went quite smoothly, although significant resources were required to complete the initial assessments. Within the transitioning group, 317 applications were approved, eight applicants were approved with conditions and four were denied. For three applicants who were denied, they either had both historical and ongoing compliance issues or a new issue of significance. The fourth applicant was denied because he refused to complete the education program.

The eight applicants that received conditional approval were followed by the Audit Department during the six month trial period, most at their own expense, and were then re-assessed. Within that group four were approved and one was denied at the end of six months. Two of the trust accounts were closed and the final member's status was held pending receipt of additional information.

One appeal was filed but was not pursued as the trust account ultimately was closed.

### ***Ongoing Operations***

Following the initial transition period, the Society has received 87 new applications for approval as a trust account supervisor. This is consistent with our historical experience of 20 to 30 new trust accounts being opened annually. Of those 87 applications, 86 were approved and one was approved with conditions.

### ***Re-Assessment and Revocation***

Of more significance is the effect that serious non-compliance of members has had on the utilization of resources both within the Audit Department and the Complaints Resolution Department. That is, while the complaints department still receives referrals of member-specific issues that are discovered through an audit, the broader "trust safety" issues are resolved through a re-assessment of the trust account supervisor's status and a possible revocation of their status. While this has reduced the matters that would otherwise have been investigated, it has proven to be very time consuming for the Director of Audit who has, in effect, become a decision-maker and a decision-writer.

Since the program's inception, 15 re-assessments have been conducted, following which nine were approved to continue, one was approved with conditions, one was denied and four trust account supervisors had their status revoked. A number of further re-assessments are underway.

### ***Revocation Effect***

When a trust account supervisor's status is revoked, the firm must either have a replacement trust account supervisor approved and educated within 60 days or close the trust account. Much audit time is spent following the firm to ensure that one or the other outcome is achieved.

### ***Assessment of Program***

Unfortunately, despite all of our efforts to qualify and train trust account supervisors prior to their approval, we have not observed a significant decline in the number of new firms that demonstrate serious and persistent deficiencies in their record keeping. However, as we now have the tool of revocation in our toolbox, those members are no longer referred to the Complaints Resolution Department but can be dealt with administratively by revoking their privilege of operating a trust account.

The further consequence of the program, however, is the substantial shift in the Director's responsibilities and the associated drain on her time. We are actively exploring the redeployment of internal resources to support the Director in this work.

## **OTHER PROJECTS**

### ***The Property Registry***

When the last monitoring report was delivered to you in 2017, we advised you that another significant project that was on the horizon was the creation of a restricted trust account to facilitate the electronic transfer of funds to The Property Registry in a manner that safeguarded other client trust funds.

Director of Audit, Kathy Levacque and Insurance Counsel, Kate Craton worked closely with the team at The Property Registry and the real estate bar to develop an effective system. Its success was due, in large part, to extensive communication with, and education of, the profession at large. That project came to fruition with rules enacted in September 2017.

There are 92 restricted trust accounts in operation in Manitoba, expanding the scope of the law firm audits. The pandemic resulted in an increase in firms opening restricted trust accounts so as to avoid having to issue cheques to The Property Registry.

### ***Anti-money Laundering Rules***

In 2019, the benchers approved of amended rules intended to combat the improper use of lawyers' trust accounts to facilitate money laundering and terrorist financing. The Audit Department is primarily responsible for ensuring compliance with the rules. Additional expectations have been placed on the Audit Department to track and report on non-compliance with the anti-money

laundering rules as distinct from other trust accounting rule breaches. The Audit Department was also involved in the education of the profession regarding the changes and the expectations.

### ***Trust Account Supervisor Controls***

Trust account supervisors are not only responsible for the accuracy of the law firm's record keeping and reporting requirements, they are also responsible for the controls in relation to the firm's operation of its trust and general accounts.

A project that is in progress is the development of specific instructions and guidelines for the auditors to audit for firm controls and the development of policies and resources for trust account supervisors to assist them in developing controls for their firms.

### ***Trust Accounting Fundamentals Education Program***

The education program requires regular review and updating by the Audit Department.

A goal which has not yet been achieved is the ongoing annual education of trust account supervisors to ensure they are current on the trust accounting rules and requirements.

## **ISSUES ON OUR RADAR**

### ***Electronic Banking***

We anticipate that both the public and lawyers will soon have the expectation that electronic banking will be permissible for transactions on the firm's trust account. Research is underway to explore a variety of methods to facilitate electronic banking without placing client trust funds at risk. Changes to the rules and the methods by which transactions can be conducted electronically will be a significant undertaking for the Society and the Audit Department in particular.

### ***General Bank Accounts***

Of late we have observed that a small number of lawyers who do not have a trust account, either because they elected to practice without an account or had been denied permission to operate a trust account, have been employing their general accounts to deposit retainers or other trust monies. Currently, we do not have a program that regularly audits firm general accounts where the firm does not operate a trust account. Law Society auditors have a limited ability to audit general accounts and that is to determine if trust funds have been deposited into general. To embark on a program of auditing general accounts would amount to a substantial change in our current practices.

We will continue to monitor the situation and may return to you in the not so distant future to explore the issue further or with recommendations.



***General Bank Accounts and Records***

A similar issue arises in the context of general accounts and records. As the rules are currently drafted, lawyers are required to maintain a book of original entry, an accounts receivable ledger and supporting records for general accounts, but there is no requirement that the records be reconciled.

A lack of reconciled records has resulted in some difficulties in auditors tracing trust funds. However, further research is required in order to identify the breadth and scope of the challenges. We will continue to monitor the issues surrounding general bank accounts and will return to you with a report and recommendations in due course.



## MONITORING REPORT

To: Benchers

From: Sean Rivera

Date: October 18, 2021

**Re: Cyber Security Measures**

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### INTRODUCTION

At the June 2021 bencher meeting, interest was expressed in the measures undertaken by the Law Society to ensure that our data is secure. You will find herein information regarding our general security measures, security updates, education of staff, password protocols and the response to additional, recent insurance requirements.

### GENERAL OVERVIEW

The Law Society of Manitoba has several different security measures in place to protect its technology systems, corporate data and data collected from the membership, including endpoint protection, a firewall, network security applications and backups.

In addition to the endpoint security that is already included in all Microsoft Windows 10 installations, the Society has an endpoint protection application that is installed on all corporate Windows desktops and laptops. It performs regularly scheduled virus definition updates, daily virus scans and real-time protection of its computers' hard drive.

The Society also has an enterprise level firewall installed on the perimeter of the network. All external network data must go through the firewall's checks before it is allowed entry into the corporate network. There are Intrusion Prevention Systems, content filtering rules and packet inspection, among other things. The firewall also has a security subscription plan to have data pass through an external security check provided by the firewall manufacturer. The firewall is regularly updated when security patches are released.

In addition to the network protection provided by the firewall, there is additional network security provided by a secondary security company that also scans the data coming into the network. This extra network security is a secondary check of all data communications.

The Society has both onsite and offsite backups of its data servers and web servers. The onsite, backup storage device is protected in a fireproof and waterproof enclosure and the backup files are duplicated to a secondary fireproof and waterproof storage device also onsite. The offsite backup site is located in a large data centre in another province in Canada. The offsite data centre has several redundant systems in place to ensure high availability.

## SECURITY UPDATES

The Technology Department performs regular checks for security updates to any Law Society systems. Security updates to Windows workstations and servers are done according to Microsoft's monthly update schedule and sometimes sooner if a critical update has been released out of schedule. If a critical vulnerability has been reported out of the regular security update schedule and mitigation steps have been provided, the Technology Department strives to implement such recommended measures as given by the manufacturer and/or developer.

## EDUCATION

From time to time, the Technology Department will notify and warn staff of active campaigns that are exploiting newly found or as yet unprotected vulnerabilities. Staff are reminded of safe practices when dealing with attachments and links in emails, such as how to recognize phishing/spam emails and how to recognize insecure websites.

## PASSWORD PROTOCOLS

The Law Society has implemented password protocols that include regular password changes, restrictions on sharing passwords, restrictions on using (or re-using) the same password on multiple accounts and the use of strong passwords. Staff are discouraged from storing passwords in an insecure manner.

## NEW SECURITY POLICIES AND PROCEDURES

Due to new requirements imposed by the Law Society's insurer (which we understand to be industry wide), additional security measures will be implemented in the coming weeks.

### *1) Two-factor authentication on remote sessions*

For all staff accessing their workstations remotely, accounts used for the purpose of remote access will require the use of a second factor to authenticate and connect to the remote session. In addition to knowing their account credentials, staff will be using their mobile phone or a security key as their second factor.

### *2) Quarterly phishing email simulations*

Staff will participate in phishing email simulations at least quarterly. Annual phishing email training will also become necessary. Any staff failing their simulation will need to participate in training earlier than the scheduled annual training.

### *3) Quarterly backup testing*

The Technology Department will be checking the integrity of the backup files on a quarterly basis.

### *4) Cyber incident response plan*

A formal Cyber incident response plan is under development and will be finalized in the next short while.